



2024/1943

12.7.2024

COMMISSION IMPLEMENTING REGULATION (EU) 2024/1943

of 11 July 2024

imposing a provisional anti-dumping duty on imports of optical fibre cables originating in India

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 ⁽¹⁾ ('the basic Regulation'), and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 16 November 2023, the European Commission ('the Commission') initiated an anti-dumping investigation with regard to imports of optical fibre cables ('OFC') originating in India ('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 on 3 October 2023 by Europacable ('the complainant'). The complaint was made on behalf of the Union industry of optical fibre cables in the sense of Article 5(4) of the basic Regulation. The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

- (3) Pursuant to Article 14(5a) of the basic Regulation, the Commission should register imports subject to an anti-dumping investigation during the period of pre-disclosure unless it has sufficient evidence within the meaning of Article 5 that the requirements either under point (c) or (d) of Article 10(4) are not met. One of these requirements, as indicated in Article 10(4)(d) of the basic Regulation, is that there is a further substantial rise in imports in addition to the level of imports which caused injury during the investigation period (i.e. 1 October 2022 to 30 September 2023).
- (4) However, as can be seen in Table 1, in the present case, the Commission analysis showed that when comparing the monthly average of imports from the initiation of the investigation onwards (i.e. December 2023 until April 2024) to the monthly average in the investigation period and the monthly average of the same months in the investigation period based on Surveillance statistics, no increase in imports took place. Therefore, the legal condition under Article 10(4)(d) are not met. Thus, the Commission decided not to register imports of OFC originating in India.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21, ELI: <http://data.europa.eu/eli/reg/2016/1036/oj>.

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of optical fibre cables originating in India (OJ C, C/2023/891, 16.11.2023, ELI: <http://data.europa.eu/eli/C/2023/891/oj>).

Table 1

Imports from India in the investigation period after initiation (cable-km) ⁽³⁾

Origin	Investigation period monthly average	December 2023 – April 2024 monthly average	December 2022 – April 2023 monthly average
India	8 591	4 541	9 731

Source: Surveillance3 database.

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 complainants, other known Union producers, the known exporting producers and the Indian authorities, known importers, users, and traders, as well as associations known to be concerned about the initiation of the investigation and invited them to participate.
- (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.

1.4. Comments on initiation

- (7) The Commission received comments on initiation from the exporting producers Birla Cable Ltd ('Birla'), HFCL Limited ('HFCL'), Sterlite Technologies Limited ('STL'), and the complainant.
- (8) The exporting producers HFCL and STL claimed that no meaningful non-confidential summary of the calculations of the dumping margin, normal value, price undercutting and price underselling had been provided by the complainant and requested to be granted access to the requisite information. HFCL also requested disclosure of a meaningful non-confidential summary of the information provided by the complainant on pricing behaviour of the Indian exporting producers in tender procedures in the EU. HFCL further claimed that the summaries provided relating to tender procedures in several Member States and of the price offer made by an Indian producer on the spot market was not meaningful.
- (9) The Commission assessed the claims but considered, with regard to the calculations of the dumping margin and normal value, that the non-confidential version of the complaint available in the file for inspection by interested parties contained all the essential evidence and non-confidential summaries of the confidential data allowing interested parties to properly exercise their rights of defence. In particular, the non-confidential summary contained information on the sources (export prices of cables containing 24 and 48 fibres – most representative OFC types – based on tenders that took place in three EU Member States) and dumping margins for the two most representative OFC types (plus the average dumping rate for both types). Therefore, these claims were rejected.
- (10) Following the claims of STL and HFCL, the Commission reassessed the summaries of the undercutting and underselling calculations, as well as the aggregate data of the complainant's figures available in the open file and decided to request the complainants to provide further details to the open version of the complaint. This additional non-confidential information was added to the file.
- (11) With regard to the claim concerning tenders, the Commission decided to reject the claim because of the confidential nature of the information (the sensitive annexes contain specific price offers, negotiations and concrete information on tender submissions – the non-confidential summaries provided by the complainant were deemed appropriate).

⁽³⁾ Data in the Surveillance database recorded in kg were converted in cable-km in line with the explanations set out in recital (96).

- (12) The exporting producer Birla claimed that the complaint relied on outdated figures, as it was lodged only in October 2023, i.e. more than six months after the end of the period of investigation used for the complaint (i.e. 31 March 2023).
- (13) The complaint was delivered to the Commission on 2 October 2023 and, according to Article 5(1) of the basic Regulation was deemed to have been lodged on the first working day following its delivery to the Commission, i.e. 3 October 2023. The basic Regulation does not set any legal obligation that a complaint should not contain data older than six months prior to the submission of the complaint. However, the Commission uses the time mentioned in the basic Regulation, including Article 6(1), as guidance⁽⁴⁾ to ensure that the complaints' data is as up to date as possible. Even if Article 6(1) applied at the initiation stage, that article provides for some flexibility as it states that 'an investigation period shall be selected which in the case of dumping shall, normally, cover a period of no less than six months immediately prior to the initiation of proceedings'. Birla's claim is without legal basis and was therefore rejected.
- (14) HFCL noted the difference between the data covered by the complaint (i.e. 1 April 2022 to 31 March 2023) and the investigation period (i.e. 1 October 2022 to 30 September 2023) and requested the complaint to be updated by the data pertaining to the investigation period. It claimed that not providing such data would prevent interested parties from providing meaningful comments in relation to the injurious situation of the Union industry during the investigation period of the investigation. HFCL pointed in particular to the Commission's alleged request to interested parties to present their submissions on injury to the Union industry. It claimed that interested parties were therefore denied their legitimate rights of defence and due process.
- (15) Europacable claimed that HFCL did not provide any legal basis in support of this claim. It noted that the period of investigation used for the purpose of the complaint is necessarily different from the one used in the proceeding itself, given the time lapse between the lodging of a complaint and the initiation of an investigation.
- (16) The information provided in the complaint was the basis of which the Commission decided to initiate the present investigation. Therefore, the fact that the period of investigation covered by the complaint differs from the investigation period of the investigation does not prevent interested parties from providing meaningful comments on the complaint and the initiation of the investigation. The complaint was deemed as complete as regards its mandatory requirements, according to Article 5(2) of the basic Regulation. Moreover, the Commission, in its notice of initiation, invited parties to cooperate by filling in a sampling form (point 5.3.1 (a) of the Notice of Initiation), to provide comments on the initiation or the complaint (point 5.2 of the Notice of Initiation), to provide information concerning the assessment of Union interest (point 5.5 of the Notice of Initiation); and provided for the possibility to comment on other parties' submission. Detailed findings regarding the investigation period of the investigation are disclosed to interested parties at a later stage and they are given the opportunity to comment at that stage of the investigation. These claims were therefore rejected.
- (17) STL, HFCL and Birla claimed that the import data in the complaint were not accurate considering that it relied upon the full CN code 8544 70 00 which is broader than the product under investigation, rather than the TARIC code 8544 70 00 10 created in the previous investigation concerning the imports of OFC originating in China⁽⁵⁾ ('the China investigation'), which includes only the product concerned. These companies also contested the adjustments made to the import statistics on CN code basis by adding imports of OFC allegedly mis-declared as optical fibres under commodity code 9001 10. These parties claimed that no evidence was provided of misdeclarations. All these parties highlighted that commodity code 9001 10 referred to optical fibre cables, not made of individually sheathed fibres as ruled by Indian Courts, and thus not forming part of the scope of the investigation. STL also claimed that other third country imports of OFC may be mis-declared as optical fibres under commodity code 9001 10 as well, which was not taken into account by the complaint. Therefore, it was claimed that the import data in the complaint were over-estimated.

⁽⁴⁾ <https://op.europa.eu/en/publication-detail/-/publication/5dd1dca7-b5b0-11ee-b164-01aa75ed71a1>.

⁽⁵⁾ Commission Implementing Regulation (EU) 2021/2011 of 17 November 2021 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China (OJ L 410, 18.11.2021, p. 51, ELI: http://data.europa.eu/eli/reg_impl/2021/2011/oj).

- (18) The methodology, reasoning, and sources for the adjustments to estimate the import volume of OFC from India were explained in detail in the complaint and considered to be sufficiently supported by evidence within the meaning of Article 5(2) of the basic Regulation. The complaint outlines and provides evidence why the statistics under CN code 8544 70 00 are more meaningful in the specific case of India, and why adjustments to this data were nonetheless required and on which basis such adjustments were made. Specifically, the complainant argues that the use of the TARIC code is preferable for China, which not only produces and exports to the Union the product concerned but also submarine cables and multi-mode cables, but not for India. The complainant explains that India does not produce any submarine cables and manufactures a marginal quantity of multi-mode cables and provides evidence that nearly all the volume of imports of OFC from India falling under CN code 8544 70 00 consists in the product concerned. The Commission reviewed the evidence presented in the complaint and deemed that the use of CN code 8544 70 00. was appropriate. With regard to the use of commodity code 9001 10, which covers OF only and not OFC, the Commission deemed that the evidence provided by the complainant (correspondence in which Indian producers state that OFC are imported into the EU under HS Code 9001 10, under Indian 'custom guidelines' applied also in exports to other exports regions) is also appropriate. The fact that according to Indian Courts CN code 9001 10 00 referred to optical fibre cables, not made of individually sheathed fibres, is irrelevant, given that the product considered is always sheathed, and therefore falls under a different CN code, which is CN code 8544 70 00.
- (19) Furthermore, the exporting producers did not provide any evidence that the estimates made by the complainant were unreasonable or substantially wrong. Finally, there was no indication and there was no evidence available to the complainant that other third country imports were misdeclared under commodity code 9001 10 and that the import statistics of those countries should have been adjusted accordingly. These claims were therefore rejected.
- (20) HFCL claimed that the dumping margin in the complaint could not be considered as representative as it was calculated based on prices for only certain types of OFC (containing 24 and 48 fibres), that did not form a significant part of Indian exports. HFCL argued further that no evidence was provided that the models on which normal value was based are the same than the ones used for the determination of the export price. Finally, they claimed that there are many characteristics that may have an impact on costs and prices and when not taken properly into consideration, these may inflate the dumping margin.
- (21) In accordance with Article 5(2) of the basic Regulation the complaint should include evidence reasonably available to the complainant. Due to the confidential character of costs and prices the complainant could not have access to very detailed information in this regard and was therefore not required to provide such information. It was considered that the evidence provided with regard to the normal value and export price was sufficient and representative enough to justify the initiation of the investigation. The claim was therefore rejected.
- (22) Birla, HFCL and STL claimed that no evidence was provided in the complaint regarding the undercutting and underselling calculations. Birla, in addition, claimed that the prices used were not representative for the Indian producers or for the Union industry, while STL claimed that they did not cover the entire scope of the product under investigation, but only a subset of it. In this regard, the types of OFC considered in the complaint (namely cables containing 24 and 48 fibres for the dumping calculations, and 12, 24, 48 and 72 fibres for undercutting and underselling calculations) represent the most sold OFC on the EU market and the types for which the complainants were able to collect evidence in relation to prices of the Indian imports. Birla claimed that the complainants' analysis of the import prices is flawed, and imports trends as shown in the complaint did in any event not show the alleged price pressure on the Union market. Birla also claimed that a separate analysis for the tender and spot markets should have been carried out, while STL further claimed that the target profit that was established during the investigation on OFC originating in China should not be taken into consideration to calculate the underselling margins in the current investigation.

- (23) As stated above, in accordance with Article 5(2) of the basic Regulation, the complainant is only required to provide evidence reasonably available to it. Thus, the complaint does not need to include data of all product types, or provide an analysis per market segment, in particular when such data is confidential and/or not publicly available. The Commission considered therefore that the evidence provided with regard to the undercutting and underselling calculations satisfied the threshold of Article 5(2) of the basic Regulation. Finally, the target profit used in the complaint for the calculation of the underselling margin was considered to be reasonable and STL could also not provide any convincing evidence at this stage of the proceeding that would show that its level was substantially erroneous or wrong. All claims with regard to the undercutting and underselling calculations were therefore rejected.
- (24) STL, referring to publicly available annual/interim reports of Prysmian Group, Acome, Hextronic, and Tratos, claimed that the Union industry did not suffer material injury, but was healthy and thriving.
- (25) The evidence in the complaint with regard to injury pertained to the development of injury indicators of the OFC business only and thus is considered more pertinent than publicly available information pertaining to companies at group level. This claim was therefore rejected.
- (26) Birla, HFCL and STL disagreed with the analysis of several injury indicators described in the complaint and claimed that their development did not point to an injurious situation. They also argued that data of the complainants was mixed with data of all Union producers of OFC and thus selectively used. STL and HFCL argued that in particular the data on production, sales, market share, production capacity and capacity utilization showed positive trends and therefore did not show any material injury. STL argued that the complainants had a healthy profitability, and any negative impact was due to drastic increases in investments, capacity, and the accumulation of stocks.
- (27) Overall, the trends of injury indicators in the complaint showed that the Union industry suffered material injury. Market share decreased from 2019 to 2022 and while regaining market share in the investigation period of the complaint, it remained below the levels of 2019. The same is true for the sales prices of the Union industry, i.e. they showed a decreasing trend, except in the investigation period of the complaint, where they increased albeit remaining largely below the sales prices in 2019. While production cost decreased, this was at a slower pace than the sales prices, with a negative effect on the Union industry's profitability. The fact that other injury indicators such as sales volume and production volume as well as investments showed a positive trend has to be seen in the overall economic context and must also be balanced against the parallel development of the Union consumption that increased more than the Union industry's sales volume. These positive developments as such do not mean that the Union industry did not suffer material injury. The fact that profitability increased at the end of the investigation period of the complaint does not contradict the significantly negative development since 2019 and the fact that the Union industry was not able to increase its sales prices in line with the increase of its cost. The Commission considered that the complainant provided sufficient evidence that the Union industry suffered material injury. The claims in this regard were therefore rejected.
- (28) With regard to the claim that data on the injury indicators was selectively provided, the Commission notes that the complainant established data for macroeconomic indicators (such as sales volume, production volume and market share) based on information pertaining to all Union producers, while data for microeconomic indicators (such as profitability and sales prices) were provided based on data pertaining to the complainants. This is the same methodology the Commission applies in investigations where sampling is used and was therefore considered legitimate and reasonable. It cannot therefore be argued that such data were selectively used, and this claim was therefore rejected. Moreover, as noted in recital (10) above, the Commission added an open version to the file for inspection by interested parties providing aggregate data of the complainant's figures.

- (29) Birla, HFCL, and STL claimed that the complaint failed to establish a causal link between the Indian imports and the alleged injury to Union producers. They claimed that the complainant did not establish a correlation between the imports of OFC from India and the material injury and did not sufficiently consider other factors that could have caused the material injury suffered by the Union industry.
- (30) STL claimed that the causation analysis was tainted because it was based on incorrect import volumes. Furthermore, they claimed that import volumes and market share from India could not be looked at in isolation but in the broader context of the dynamics of the whole market. Birla claimed that the increase in imports from India was not to the detriment of Union producers and that the market share of Union producers evolved mostly in accordance with the market share of imports from other countries. Further, they claimed that there was no proven undercutting or underselling, and that import prices were above the prices of the Union industry; therefore, imports from India did not have a negative price effect on the Union industry.
- (31) Birla, HFCL, and STL argued that it was other factors that caused the injury to the Union industry. They claimed that the imports of the same product from China that had lower import prices and higher market shares caused the injury, in particular considering that the absorption practices of OFC exporters from China still had effects during the investigation period of the complaint ⁽⁶⁾.
- (32) STL, HFCL and Birla further invoked a number of other factors that caused the injury to the Union industry that were not addressed in the complaint: (i) the cost increase in raw materials and energy, (ii) the COVID-19 pandemic, and supply chain disruptions; (iii) the substantial increase in investments, production capacity and stocks (self-inflicted injury); (iv) the imports from other third countries; (v) the competition amongst Union producers on the Union market; and (vi) the anti-competitive behaviour of certain complainants.
- (33) Europacable noted that, in contrast, the complaint showed that the Chinese imports did not break the causal link between the dumped imports and the material injury suffered by the Union industry. They further highlighted that the Union industry had to maintain its level of investments in line with the market growth to remain competitive and that the investments of the Union industry therefore could not break the causal link between the dumped Indian imports and the injury suffered by the Union industry. Europacable also refuted the argument of anti-competitive behaviour as it was not related to the product under investigation and highlighted that the increase in cost was followed by an increase in sales prices. They finally argued that the Commission during the investigation concerning imports of OFC originating in China had already established that the COVID-19 pandemic only had a very limited and temporary impact on the industry ⁽⁷⁾.
- (34) The Commission considered that the complaint provided sufficient evidence within the meaning of Article 5(3) of the basic Regulation that there was a coincidence in time of a substantial increase of dumped imports of OFC originating in India and the overall decline of the situation of the Union industry. The complaint also showed that import prices were undercutting the Union industry's sales price on the Union market. In conclusion, the evidence in the complaint pointed to a correlation between the imports from India and the injurious situation of the Union industry and thus a causal link. These arguments were therefore rejected.

⁽⁶⁾ Commission Implementing Regulation (EU) 2023/1617 of 8 August 2023 amending Commission Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China (OJ L 199, 9.8.2023, p. 34, ELI: http://data.europa.eu/eli/reg_impl/2023/1617/oj).

⁽⁷⁾ Implementing Regulation (EU) 2021/2011, recital (617).

- (35) The complaint also analysed other possible causes of injury, i.e. imports from other third countries; imports from China, and the export performance of the Union industry. The claim made by Birla, HFCL, and STL that the imports of the same product from China caused the injury was rejected. Antidumping measures on imports from China were imposed in November 2021 and amended in August 2023 after an anti-absorption investigation ⁽⁸⁾, and countervailing measures in January 2022 ⁽⁹⁾. While the volume of imports from China remains high, the imposition of measures had the effect of decreasing the volume of imports after the first quarter of 2022. The market share of Chinese imports of OFC decreased from 36,6 % in 2022 to 33 % in the investigation period used in the complaint. Moreover, according to TARIC statistics, the volume of imports of OFC from China decreased substantially by 57 % between Q4 2021 (310 249 cable-km) and Q1 2023 (133 164 cable-km), while prices only started increasing in Q3 2022. The absence of a sufficient and long-lasting increase in prices was addressed by the abovementioned anti-absorption investigation.
- (36) This analysis and the information provided in this regard was considered sufficient to initiate the investigation.
- (37) Birla submitted that the complaint failed to consider the impact of the measures in the overall economic context, taking into consideration also the interests of the importers and the users in the Union.
- (38) In accordance with Article 5(2) of the basic Regulation, the complainant is not required to include in its complaint an analysis of Union interest aspects, but only needs to provide evidence of dumping, injury and a causal link between the allegedly dumped imports and the alleged injury. This argument was therefore rejected.
- (39) STL claimed that the Union industry was not defined in the non-confidential file of the investigation which constituted a breach of its rights of defence. In STL's view neither the notice of initiation nor the macro-questionnaire response precisely specifies which OFC producers comprise the Union industry. The Commission made available in the non-confidential file the list of the known Union producers of OFC. This claim was therefore rejected.

1.5. Sampling

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

Sampling of Union producers

- (41) In its Notice of Initiation, the Commission stated that it had provisionally selected a sample of Union producers. The Commission selected a representative sample on the basis of the largest volume of production and sales of the like product in the Union during the investigation period that also ensured a large geographical spread. This sample consisted of three Union producers. The sampled Union producers accounted for more than 50 % of the estimated total volume of production and more than 75 % of the total estimated sales of the like product in the Union. The Commission invited interested parties to comment on the provisional sample. No comments were received on the provisional sample, and it was confirmed as the final sample.

Sampling of importers

- (42) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.

⁽⁸⁾ Implementing Regulation (EU) 2023/1617.

⁽⁹⁾ Commission Implementing Regulation 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China (OJ L 12, 19.1.2022, p. 34, ELI: http://data.europa.eu/eli/reg_impl/2022/72/oj).

- (43) One unrelated importer provided the requested information and agreed to be included in the sample. In view of the low number of replies, the Commission decided that sampling was not necessary. No comments were received.

Sampling of exporting producers in India

- (44) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in India to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the Republic of India to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (45) Eleven exporting producers belonging to nine groups 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 three 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 80 % of total exports of optical fibre cables from India to the Union during the investigation period. In accordance with Article 17(2) of the basic Regulation, all known exporting producers and the authorities of the country concerned were consulted on the selection of the sample.
- (46) No comments on the sample were received.

1.6. Questionnaire replies and verification visits

- (47) The Commission sent questionnaires to the sampled exporting producers, to the three sampled Union producers, to the importer that replied to the sampling form and to known users. The same questionnaires were made available online ⁽¹⁰⁾ on the day of initiation. The Commission also sent a questionnaire requesting the macro-indicators of the Union industry to the complainant.
- (48) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:

Union producers:

- Acome S. A. (France)
- Corning Optical Communications Sp. z o.o. (Poland), and its related companies Corning Pouyet SAS (France), Corning Optical Communication GmbH & Co. KG. (Germany), Corning Optical Communications, S.r.l. (Italy), and Corning Optical Communications, S.L. (Spain).

Exporting producers in India:

MP Birla Group:

- Birla Cable Ltd, Rewa ('BCL')
- Universal Cables Ltd, Goa ('UCL')
- Vindhya Telelinks Ltd, Rewa ('VTL')

HFCL Group:

- HFCL Ltd, Hyderabad ('HFCL')
- HTL Limited, Chennai ('HTL')

STL Group:

⁽¹⁰⁾ <https://tron.trade.ec.europa.eu/investigations/case-view?caseId=2692>.

- Sterlite Technologies Ltd, Rakholi ('STL')
- Sterlite Tech Cables Solutions Ltd, Aurangabad ('STCS').

(49) In addition, the Commission carried out a remote cross check of the questionnaire reply provided by the sampled company Prysmian S.p.A., and its related companies (Denmark, Finland, France, Germany, Italy, Netherlands, Romania, Spain, Sweden), and of the macro-questionnaire reply provided by the complainant.

1.7. Investigation period and period considered

(50) The investigation of dumping and injury covered the period from 1 October 2022 to 30 September 2023 ('the investigation period'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2020 to the end of the investigation period ('the period considered').

2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under investigation

- (51) The product under investigation is single mode optical fibre cables, made up of one or more individually sheathed fibres, with protective casing, whether or not containing electric conductors, whether or not connectorized.
- (52) The following products are excluded:
- (a) cables below 500 meters in length in which all the optical fibres are individually fitted with operational connectors at one or both extremities; and
 - (b) cables for submarine use, plastic insulated, containing a copper or aluminium conductor, in which fibres are contained in metal module(s).
- (53) Optical fibre cables are used as an optical transmission medium in telecommunication networks in long haul, metro, and access networks.

2.2. Product concerned

(54) The product concerned is the product under investigation originating in India, currently falling under CN code ex 8544 70 00 (TARIC codes 8544 70 00 10 and 8544 70 00 91) ('the product concerned').

2.3. 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 when exported to the Union;
 - the product under investigation produced and sold on the domestic market of India; and
 - the product under investigation 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.

2.4. Claims regarding product scope

(57) The Commission received a request for clarification of the product scope from one exporting producer, namely Aksh Optifibre Limited ('Aksh').

- (58) Aksh claimed that in case optical fibre cables are not made up of individually sheathed fibres, they should be excluded from the scope of the investigation, in line with the product definition in the Notice of Initiation. In this regard, the company argued that 'sheath' should be understood as 'any layer that covers or fits closely over something for protection'. Aksh claimed that all fibres which are not individually sheathed within this meaning would fall under HS heading 9001 ('optical fibre cables other than those of HS heading 8544') and are not subject to the present investigation. This exporting producer argued that the description of the product scope in the complaint, however, would be ambiguous because it specified that optical fibres are covered by tubes/modules and a single jacket or multiple jackets to protect the fibre, and thus did not refer explicitly to 'sheathing'. This exporting producer also claimed that optical fibres not individually sheathed are also used in different applications such as long haul and metro networks, while optical fibres with individually sheathed fibres are not used in these applications.
- (59) HFCL and Birla agreed with Aksh that optical fibres not individually sheathed should be excluded from the scope of this investigation. They relied in support of their interpretation of what constitutes 'an individual sheath' on a judgment of 21 November 2017 of the Indian Appellate Tribunal in the case Commissioner of Customs (Import) Mumbai vs Vodafone Essar Gujarat Ltd. ⁽¹¹⁾, which concerned the customs classification of certain OFC imported in India. The Indian authority considered the definition of the term 'individually sheathed' and found that a "sheath" is something different from a "coating".
- (60) Europacable disagreed with the Indian exporting producers and argued that the protective coating applied to a glass fibre core is generally considered as 'individually sheathed fibre', a view which would also be confirmed by the Explanatory Note to the Combined Nomenclature of the European Union ⁽¹²⁾ concerning CN code 8544 70 00, which sets out that the glass fibre core and the cladding are protected by an 'inner sheath of soft acrylate coating' and an 'outer sheath of hard acrylate coating'. Finally, Europacable reiterated that the scope of the current investigation cover OFC which are used, *inter alia*, in long haul, metro, and access networks, in contrast to what was claimed by Aksh.
- (61) The Commission considered that the Indian exporting producers' interpretation of the term 'individually sheathed fibres' did not correspond to the understanding in the European Union, as clarified in the Explanatory Notes to the Combined Nomenclature of the European Union. Besides what the Commission already recalled above at recital (18), a ruling of a foreign authority, such as the Indian Appellate Tribunal builds on foreign law and therefore cannot have a bearing on the interpretation and application of European Union customs law. Therefore, the claims made by the Indian exporting producers in this regard were rejected.

3. DUMPING

3.1. Normal value

- (62) The Commission first examined whether the total volume of domestic sales for each sampled cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represented at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period. On this basis, the total sales by each sampled exporting producer of the like product on the domestic market were considered as representative.
- (63) The Commission subsequently identified the product types sold domestically that were identical or comparable with the product types sold for export to the Union for the exporting producers with representative domestic sales.

⁽¹¹⁾ Reproduced in Annex to the non-confidential version of HFCL's submission of 2 January 2024 and in Annex 2 to the non-confidential version of Birla's submission of 2 January 2024.

⁽¹²⁾ OJ C 119, 29.3.2019, p. 1.

- (64) The Commission then examined whether the domestic sales by each sampled exporting producer on its domestic market for each product type that is identical or comparable with a product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that the domestic sales of certain product types were not representative for the sampled exporting producers.
- (65) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for each product type during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (66) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represented more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (67) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the IP.
- (68) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the IP, if:
- (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (69) The analysis of domestic sales quantity showed that, depending on the product type and the exporting producer, 3 % to 97 % of all domestic sales were profitable and that the weighted average sales price was, as long as more than 5 % of the domestic sales of the respective product type were profitable, higher than the cost of production. Accordingly, the normal value was calculated as a weighted average of the prices of all domestic sales during the investigation period or a weighted average of the profitable sales only.
- (70) For certain product types for which there were no domestic sales of a product type of the like product, in accordance with Article 2(1) of the basic Regulation, the Commission established the normal value based on the domestic prices of the other exporting producers, except in cases in which using such prices would lead to the disclosure of confidential business information. In such cases, the Commission constructed the normal value by adding to the cost of production the weighted average selling, general and administrative ('SG&A') expenses and profit of all transactions made in the ordinary course of trade on the domestic market. Detailed information was provided in the individual disclosures to the exporting producers concerned due to confidentiality reasons.
- (71) For certain product types for which there were no or insufficient sales of a product type of the like product in the ordinary course of trade or where a product type was not sold in representative quantities on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and (6) of the basic Regulation.
- (72) For certain product types, normal value was constructed by adding the following to the average cost of production of the like product of the cooperating sampled exporting producers during the investigation period:
- (a) the weighted average SG&A expenses incurred by the cooperating sampled exporting producers on domestic sales of the like product, in the ordinary course of trade, during the IP; and
 - (b) the weighted average profit realised by the cooperating sampled exporting producers on domestic sales of the like product, in the ordinary course of trade, during the IP.

- (73) For the product types not sold in representative quantities on the domestic market, the average SG&A expenses and profit of transactions made in the ordinary course of trade on the domestic market for those types were added. For the product types not sold at all on the domestic market, the weighted average SG&A expenses and profit of all transactions made in the ordinary course of trade on the domestic market were added.
- (74) During the on-spot verifications, HFCL group and STL group, claimed that the cost of production for OFC should not include the profit transferred between related parties or between business divisions that manufacture the semi-finished products (such as preformed glass and/or optical fibres) used in the production of OFC. These parties explained that for financial, accounting or taxes principles, the transfer price between two business divisions was based on market prices. Therefore, depending on the market price, the transfer price may have been higher compared with the actual costs for producing the semi-finished products. Both parties claimed that the transfer price/value between business divisions/related parties included a certain percentage of profit. The Commission used the costs of production as booked and reported by the company as verified in their accounting system. The Commission considered that those booked costs reflected correctly the costs in relation to those semi-finished products and therefore there was no basis for an adjustment. Therefore, the claim was rejected.
- (75) For one company within the Birla group and one within the STL group, the SG&A expenses included also expenses and income that were not linked to the sales of OFC in the investigation period. Therefore, these expenses and financial income were disregarded in the calculation of the SG&A expenses used in the determination of the normal value. More detailed explanations were provided in the individual disclosure to that exporting producers due to confidentiality reasons.

3.2. Export price

- (76) The sampled exporting producers exported to the Union either directly to independent customers or through related companies acting as an importer.
- (77) For the exporting producers that exported the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.
- (78) STL group claimed that its related subsidiary located in France was not acting as a related importer but had a limited role in logistic (i.e. acting as a warehouse).
- (79) However, the verification visit in India, revealed that the staff employed by STL France were dealing with the customs clearance operations, with sales of OFC and to develop the French market. Therefore, the Commission concluded that the related subsidiary was acting as a related importer and calculated the export price in accordance with Article 2(9) of the basic Regulation.
- (80) Accordingly, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses, and for profits accruing. In absence of cooperation from an unrelated importer, the Commission relied on the profit established in the China investigation for an unrelated importer of the same product as the product concerned in the present investigation and that was disclosed in ranges, i.e. 15 %–25 % ⁽¹³⁾. On this basis the Commission decided to use as a profit of 20 %.
- (81) Moreover, STL group also sold OFC to a second related company at provisional stage, but the Commission was not able to establish processing cost, SG&A expenses and a reasonable profit margin on the basis of which the export prices for these transactions should be constructed within the meaning of Article 2(9) of the basic Regulation. Therefore, these sales were not taken into account for the purpose of establishing the export price at provisional stage. The Commission will however further investigate this issue and establish these elements at definitive stage of this investigation.

⁽¹³⁾ Recitals (28) and (367) of Implementing Regulation (EU) 2021/2011.

3.3. Comparison

- (82) The Commission compared the normal value and the export price of the sampled exporting producers on an ex-works basis.
- (83) Article 2(10) of the basic Regulation requires the Commission to make a fair comparison between the normal value and the export price at the same level of trade and to make allowances for differences in factors which affect prices and price comparability. In the case at hand the Commission chose to compare the normal value and the export price of the sampled exporting producers at the ex-works level of trade. As further explained below, where appropriate, the normal value and the export price were adjusted in order to: (i) net them back to the ex-works level; and (ii) make allowances for differences in factors which were claimed, and demonstrated, to affect prices and price comparability.

3.3.1. Adjustments made to the normal value

- (84) In order to net the normal value back to the ex-works level of trade, adjustments were made on the account of transport, warehousing costs insurance, handling and loading and packing expenses.
- (85) Allowances were made for the following factors affecting prices and price comparability: commission, credit costs and bank charges.

3.3.2. Adjustments made to the export price

- (86) In order to net the export price back to the ex-works level of trade, adjustments were made on the account of transport, warehousing costs, insurance, handling and loading expenses and packing expenses.
- (87) Allowances were made for the following factors affecting prices and price comparability: commission, credit costs and bank charges.
- (88) All sampled companies claimed adjustments to the export price for duty drawback and Remission of Duties and Taxes on Exported Products (RODTEP). The Commission noted that under Article 2(10)(b) of the basic Regulation an adjustment for such schemes shall be made to the normal value, not to the export price. In addition, under the schemes the sampled exporters received export refunds worth a certain percentage of the export invoice value or a certain amount per unit of product exported, irrespective of whether any duties or taxes were actually paid for the raw materials used in the exported OFC and in what amount. Finally, the claimed adjustments could not be linked to the amounts corresponding to any import charges or indirect taxes borne by the like product and by materials physically incorporated therein, as provided in Article 2(10)(b) of the basic Regulation. For the above reasons, the claim was rejected.

3.4. Dumping margins

- (89) 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.
- (90) On this basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
MP Birla Group	6,9 %
Sterlite Technologies Limited	11,4 %
HFCL Limited	0 %

- (91) 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, disregarding the exporting found not to be dumping.
- (92) On this basis, the provisional dumping margin of the non-sampled cooperating exporting producers is 9,0 %.
- (93) For all other exporting producers in India, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers.
- (94) The level of cooperation in this case was considered high because the exports of the cooperating exporting producers covered the totality of imports during the investigation period. On this basis, the Commission decided to establish the dumping margin for non-cooperating exporting producers at the level of the sampled company with the highest dumping margin.
- (95) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
MP Birla Group	6,9 %
Sterlite Technologies Limited Group	11,4 %
HFCL Group	0 %
Other cooperating companies	9,0 %
All other companies	11,4 %

4. INJURY

4.1. Unit of measurement

- (96) Although the official import statistics are reported in kilograms, the Commission considered that this unit was not suitable for a proper measurement of the volumes concerned. The investigation showed that the industry commonly does not use weight but length as a main volume indicator. This could measure either the length of the cable (cable-km), or the total length of the fibres contained therein (fibre-km). During the investigation on imports of optical fibre cables originating in China ⁽¹⁴⁾ the Commission considered that cable-km was the most appropriate unit of measurement. The same approach was used in this case.

4.2. Definition of the Union industry and Union production

- (97) The like product was manufactured by 14 producers or groups of producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (98) The total Union production during the investigation period was established at around 1,7 million cable-km. The Commission established this figure on the basis of all the available information concerning the Union industry, such as direct information from the three sampled Union producers, five other Union producers supporting the complaint and market intelligence for the remaining producers. As indicated in recital (41), the three sampled Union producers represented more than 50 % of the estimated total volume of production of the like product.

⁽¹⁴⁾ See Implementing Regulation (EU) 2021/2011, recital (402).

4.3. Captive use

- (99) To establish whether the Union industry suffered injury as a result of dumping 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 (captive use) had to be taken into account in the analysis.
- (100) The Commission found that between 9 % and 13 % of the sampled Union producers' production was destined for captive use during the period considered. The cables were in that case delivered within departments of the same company or to groups of companies for further downstream processing, in particular for the production of cables fitted with connectors.
- (101) 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, products destined for free market sale are in direct competition with imports of the product concerned.
- (102) To provide a picture of the Union industry that is 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.
- (103) 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.
- (104) However, other economic indicators could meaningfully be examined only by referring to the whole activity, including the captive use of the Union industry ⁽¹⁵⁾. These are: production; production capacity, capacity utilisation; investments; stocks; employment; productivity; wages; and ability to raise capital. They depend on the whole activity, whether the production is captive or sold on the free market.

4.4. Union consumption

- (105) The Commission established the Union consumption on the basis of the sales made by the Union industry on the Union market as determined by the complainant plus import data from India established in line with the methodology described in Section 4.6.1.
- (106) Imports from other third countries were established on the basis of Eurostat data. Since Eurostat identifies imports of the product concerned in kg, imports were converted into cable-km in line with recital (96) using the same conversion factor that was applied for Indian exporting producers.
- (107) Union consumption developed as follows:

Table 2

Union consumption (cable-km)

	2020	2021	2022	Investigation period
Total Union consumption (free and captive)	2 388 549	2 744 968	2 578 597	2 480 978
<i>Index</i>	<i>100</i>	<i>116</i>	<i>108</i>	<i>104</i>

⁽¹⁵⁾ These indicators were based on direct data collected by the complainant on the 8 complaining or supporting Union producers, representing more than 50 % of the Union production in the IP, plus an estimate for the remaining Union producers based on market research and intelligence.

Captive market	139 500	141 971	212 803	205 264
<i>Index</i>	<i>100</i>	<i>88</i>	<i>145</i>	<i>145</i>
Free market	2 249 049	2 602 997	2 365 795	2 275 714
<i>Index</i>	<i>100</i>	<i>116</i>	<i>105</i>	<i>101</i>

Source: Cooperating exporting producers, Eurostat, complainant.

- (108) The total Union consumption, including free and captive, increased by 16 % between 2020 and 2021 from about 2,4 million cable-km in 2020 to about 2,7 million cable-km in 2021. Between 2022 and the investigation period, it decreased by about 4 % to about 2,5 million cable-km. The increase in consumption in 2021 can be explained by a catch-up effect following the disruptions linked to the COVID-19 pandemic.
- (109) The captive market is constituted by the use of OFC in connectivity solutions offered by the companies, including cables fitted with connectors. The volumes were 9 % of the total Union consumption during the investigation period. Captive sales showed an increase of 45 % throughout the period considered.
- (110) The free-market consumption developed in line with the total Union consumption. It increased in 2021 by 15 %, followed by a decrease of 9,5 % in 2022 and an increase in the investigation period by 5,7 %. There was an increase of 1 % from 2020 to the investigation period.

4.5. Imports from the country concerned

4.5.1. Volume and market share of the imports from the country concerned

- (111) The Commission established the volume of imports from India on the basis of the verified questionnaire replies of the sampled exporting producers and the information provided by the cooperating non-sampled exporting producers. As mentioned in recital (96), the unit of measurement used was cable-km. On this basis, the volume of imports from India in the investigation period constituted 113 % of the total Indian imports reported by Eurostat for the same period.
- (112) Europacable requested the Commission to include in the determination of import volumes from India also imports declared under commodity code 9001 10, claiming that the Indian exporting producers would wrongly declare imports of OFC under this code. The fact that import volumes declared by the Indian exporting producers exceeded the volumes recorded under CN code 8544 70 00 and TARIC codes 8544 70 00 10 and 8544 70 00 91 could be an indication of such misdeclarations. However, given the high cooperation received from the exporting producers in India, the import quantities from India were identified with a high level of accuracy, irrespective of the CN codes under which they were declared. This claim was therefore rejected.
- (113) The market share of the total imports from India was established on the basis of the import volume as compared to the volume of total free market consumption shown in Table 2.
- (114) As described in recital (90) significant dumping was found for two of the sampled exporting producers. The Commission therefore distinguished between dumped and non-dumped Indian imports in the further analysis. Thus, the effect of the dumped imports on the situation of the Union industry is addressed below, while the effect of the non-dumped imports is examined under causation aspects in recitals (182) and (183). Non-dumped imports are thus presented and discussed in Table 12 below.

(115) The volume of non-dumped imports from the HFCL group amounted to [25–35 %] of total imports from India in the investigation period. To establish whether the findings with regard to this company could be extended to all non-sampled imports, the Commission compared the prices of HFCL to prices from the non-sampled cooperating exporting producers. Based on the information submitted in the sampling forms and in the questionnaire reply, HFCL's average export price was [5–15 %] higher than the average export price of the 5 non-sampled Indian exporters that submitted sampling replies. The total export volume of those companies accounted for 15 % of all imports from India into the Union. Therefore, the Commission considered that it could not extend the findings of absence of dumping regarding HFCL group to the non-sampled exporting producers.

(116) Dumped imports into the Union from the country concerned developed as follows:

Table 3

Dumped import volume and market share

	2020	2021	2022	Investigation period
Volume of dumped imports from the country concerned (cable-km)	[48 300–58 500]	[76 300–92 400]	[136 700–165 500]	[136 700–165 400]
<i>Index</i>	100	158	283	283
Market share (%)	[2–3]	[2–4]	[5–7]	[6–8]
<i>Index</i>	100	136	269	279

Source: Sampled and non-sampled cooperating exporting producers, Eurostat.

(117) Dumped imports from India showed a strong increase over the period considered from [48 300–58 500] cable-km in 2020 to [136 700–165 400] cable-km in the investigation period. This increase of 183 % exceeds by far the development on consumption and shows the magnitude of the market penetration by Indian imports.

(118) As a result, the market share of the dumped imports increased from [2–3] % to [6–8] % over the period considered, a sharp increase of 181 %. It should be noted that the volumes of Indian dumped imports increased in particular in the period of 2020-2022.

4.5.2. Prices of the dumped imports from the country concerned, price undercutting and price suppression

(119) The Commission established the prices of dumped imports on the basis of the verified questionnaire replies of the sampled exporting producers and the information provided by the cooperating non-sampled exporting producers. Price undercutting of the imports was established on the basis of CIF prices for the sampled exporting producers and the verified questionnaire replies of the sampled Union producers.

(120) The weighted average price of dumped imports into the Union from the country concerned developed as follows:

Table 4

Import prices (EUR/cable-km)

	2020	2021	2022	Investigation period
India	1 015	593	574	548
<i>Index</i>	100	58	57	54

Source: Sampled and non-sampled cooperating exporting producers.

- (121) Prices of dumped imports from India decreased from 1 015 to 548 EUR/cable-km over the period considered, a fall of 46 %. Except for 2020; Indian prices were consistently below the price of the Union industry during the period considered (see Table 8).
- (122) Against this backdrop, the Commission determined the price undercutting during the investigation period by comparing:
- (1) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted to an ex-works level; and
 - (2) the corresponding weighted average prices per product type of the imports from the sampled cooperating Indian producers to the first independent customer on the Union market, established on a Cost, insurance, freight (CIF) basis, with appropriate adjustments for post-importation costs.
- (123) Where the export price was adjusted pursuant to Article 2(9) of the basic Regulation for the dumping calculation, for the calculation of undercutting and injury margin, 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, as allowed by the case law ⁽¹⁶⁾.
- (124) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period. For the two sampled exporting producers which were found to be dumping, it showed an undercutting margin of 37 % and 46 %, respectively.
- (125) In any event, regardless of the findings of undercutting, the Commission found that the dumped imports significantly depressed the prices of the Union, which decreased during the period considered whilst cost of production constantly increased. The Union industry could not increase their prices to the necessary levels to make reasonable profits, as shown by the underselling levels found during the IP.

4.6. Economic situation of the Union industry

4.6.1. General remarks

- (126) 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.

⁽¹⁶⁾ Judgment in Case T-865/19, AO Nevinnomysskiy Azot e.a. v Commission, EU:T:2022:559, paragraphs 238-239, upheld in Case C-725/22 P, AO Nevinnomysskiy Azot e.a. v Commission, EU:C:2024:217.

- (127) 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 questionnaire reply 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. The data related to the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (128) 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.
- (129) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.6.2. Macroeconomic indicators

4.6.2.1. Production, production capacity and capacity utilisation

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

Table 5

Production, production capacity and capacity utilisation

	2020	2021	2022	Investigation period
Production volume (cable-km)	1 441 476	1 694 627	1 755 090	1 730 822
<i>Index</i>	100	118	122	120
Production capacity (cable-km)	2 475 938	2 605 845	2 678 345	2 796 286
<i>Index</i>	100	105	108	113
Capacity utilisation (%)	58	65	66	62
<i>Index</i>	100	112	113	106

Source: Verified macro-questionnaire.

- (131) Throughout the period considered, the production volume of the Union industry increased from roughly 1,4 million cable-km to approximately 1,7 million cable-km, i.e. overall by 20 %. A more detailed analysis showed that the increase in production volume occurred mainly from 2020 to 2021 where it grew by 18 %, it further increased slightly by 4 % in 2022, while it fell again by 1 % in the investigation period.
- (132) During the period considered, production capacity increased by 13 % which reflects the investments made by some of the Union producers. Despite the increase, investment levels remained overall at very low levels and were at the minimum necessary to maintain market presence of the Union industry.
- (133) Capacity utilization increased by 13 % over the period of 2020 to 2022, followed by a decrease of 4 percentage points in the investigation period, which is due to the decrease in production during the same period.

4.6.2.2. Sales volume and market share

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

Table 6

Sales volume and market share

	2020	2021	2022	Investigation period
Total sales volume on the Union market (free and captive) (cable-km)	1 023 831	1 185 920	1 212 812	1 244 041
<i>Index</i>	100	116	118	122
Captive market sales (cable-km)	139 500	141 971	212 803	205 264
<i>Index</i>	100	102	153	147
Market share of captive market sales as % of the free market (%)	6,4	5,6	9,3	9,3
<i>Index</i>	100	88	146	146
Free market sales (cable-km)	884 331	1 043 949	1 000 009	1 038 777
<i>Index</i>	100	118	113	117
Market share of free market sales (%)	40,4	41,3	43,7	47,2
<i>Index</i>	100	102	108	117

Source: Verified macro-questionnaire.

- (135) Throughout the period considered, the total Union sales volume of the Union industry on the free and captive market increased from roughly 1 million cable-km in 2020 to over 1,2 million cable-km in the investigation period, i.e. by 22 %.
- (136) Union sales volume on the free market increased from around 880 000 cable-km in 2020 to around 1 040 000 cable-km in the investigation period, i.e. by 17 % over the period considered. This translated in an increase of market share from 40,4 % in 2020 to 47,2 % in the investigation period.
- (137) The increase in market share of the Union industry over the period considered must be accounted to two main factors: (i) price suppression suffered by Union producers (see Section 5.1) and (ii) the imposition of anti-dumping measures on Chinese OFC imports in November 2021. In a period of almost stable consumption, the market share of the Union producers was regained almost exclusively against the Chinese dumped imports. As explained below in Section 4.6.2.3, the Union industry could not fully benefit from the remedial effect of the anti-dumping duties against China as significant part of Chinese sales were taken over by the dumped Indian imports.
- (138) The Union's industry captive market (expressed as a percentage of the free market consumption) showed an increasing trend over the period considered from 6,2 % in 2020 to 9,0 % in the investigation period. Captive market is OFC that have been used for connectivity purpose (drop cables, in-building cables and datacentres cables). There is an increased demand in the connectorized market, hence the increase of captive use of OFC. Given the higher prices of these products and the available spare capacity, Union industry choose to maintain the captive use business since it allows to differentiate products, to increase capacity utilization and lower the unit cost and had a positive impact on the overall profitability of the Union industry. Therefore, it did not have any negative impact on the overall economic situation of the Union Industry.

4.6.2.3. Growth

- (139) Despite the anti-dumping measures in force on imports of OFC originating in China, the Union industry was not able to regain significant market share. Although the Chinese market share was reduced considerably from 37,5 % to 22,6 %, this was taken over by the dumped and non-dumped Indian imports, which increased significantly from 2,3 % to 6,3 %. Therefore, the Union industry was prevented from fully benefitting of the establishment of a level playing field with the Chinese imports and was prevented from increasing its production and sales volumes accordingly.

4.6.2.4. Employment and productivity

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

Table 7

Employment and productivity

	2020	2021	2022	Investigation period
Number of employees (FTE)	4 559	4 970	5 136	5 141
Index	100	109	113	113
Productivity (cable-km/FTE)	316	341	342	337
Index	100	108	108	106

Source: Verified macro-questionnaire.

- (141) The Union industry employment rose by 13 % from 2020 to the investigation period on an FTE basis. This development largely follows the trend in production volume shown in Table 5.
- (142) As the figures for production and employment mirrored each other closely, productivity in terms of cable-km per employee remained largely stable.

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

- (143) The dumping margins of Indian dumped imports covering [6–8] % of the market share 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.
- (144) OFC have already been subject to an anti-dumping investigation. Definitive anti-dumping measures on imports from China were imposed in November 2021 and amended in August 2023 following an anti-absorption investigation (the ‘anti-absorption investigation’) ⁽¹⁷⁾. During the first half of the period considered, the situation of the Union industry, including its profitability level, was still affected by dumped imports from China, as discussed in Section 5 below. The Union industry could not fully benefit from the remedial effect of the duties on Chinese imports due to the absorption, from the Chinese exporters, of the initial anti-dumping duties and the significant increase of the Indian dumped imports, as explained below in recital (173).

4.6.3. Microeconomic indicators

4.6.3.1. Prices and factors affecting prices

- (145) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

⁽¹⁷⁾ Implementing Regulation (EU) 2023/1617.

Table 8

Sales prices in the Union

	2020	2021	2022	Investigation period
Average unit sales price in the Union on the total market (EUR/ cable-km)	692	655	667	671
<i>Index</i>	100	95	96	97
Average unit cost of production (EUR/ cable-km)	608	578	648	662
<i>Index</i>	100	95	107	109

Source: Sampled Union producers.

(146) Sales prices on the Union market to unrelated parties (the free market) decreased between 2020 and 2021 by 5 % and increased slightly in the following years, without however reaching the levels of 2020.

(147) Although unit cost of production decreased in the period 2020-2021 by 5 %, in line with average prices in the free Union market, it showed an increase in the period 2021-IP (i.e. by 14,5 %), while sales prices increased only by 2,4 %. The cost increase between 2021 and the IP was mainly due to increases in raw material prices and employment costs in line with inflationary developments.

4.6.3.2. Labour costs

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

Table 9

Average labour costs per employee

	2020	2021	2022	Investigation period
Average labour costs per employee (EUR)	30 314	30 797	32 569	35 384
<i>Index</i>	100	102	107	117

Source: Sampled Union producers.

(149) The average labour costs per employee showed a steady increase over the period considered. This reflects the additional costs of workforce, including adjustments to inflation.

4.6.3.3. Inventories

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

Table 10

Inventories

	2020	2021	2022	Investigation period
Closing stocks (cable-km)	51 590	55 261	44 930	62 559
<i>Index</i>	100	107	87	121
Closing stocks as a percentage of production (%)	3,6	3,3	2,6	3,6
<i>Index</i>	100	91	72	101

Source: Sampled Union producers.

- (151) The stocks of the sampled Union producers fluctuated but overall increased by 21 % in the period considered. Given that the majority of the production takes place based on orders and customers specifications, inventories do not constitute a meaningful indicator of injury.

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

- (152) 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

	2020	2021	2022	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turnover)	12,7	10,7	3,9	3,4
<i>Index</i>	100	84	31	27
Cash flow (EUR)	74 368 597	65 137 408	36 942 692	38 047 732
<i>Index</i>	100	88	50	51
Investments (EUR)	11 062 374	5 557 882	9 359 958	15 934 927
<i>Index</i>	100	50	85	144
Return on investments (%)	31	30	13	18
<i>Index</i>	100	96	41	57

Source: Sampled Union producers.

- (153) 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.

- (154) The profitability decreased continuously throughout the period considered and dropped from 12,7 % in 2020 to 3,4 % in the investigation period. The most significant drop in profitability occurred in 2022 in parallel to a significant increase of the market share of the Indian dumped imports from [2–3] % to [6–8] %. During the period considered, the cost of the Union industry increased by 9 % while sales prices decreased by 3 %, which is due to the price pressure of the Indian dumped imports.
- (155) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed in line with the trend in profitability and showed a strong decrease over the period considered of about 50 %.
- (156) Investments dropped between 2020-2021 substantially by about 50 %. Over the period considered, the level of investments could be recovered and even increased by 44 % compared to 2020. However, investments remained overall at low levels since the beginning of the period considered and were mainly made to make efficiency gains, to maintain existing facilities and to perform research and development activities. As a direct result of the pressure from dumped imported, the Union industry had to postpone investments.
- (157) The return on investments is the profit in percentage of the net book value of investments. The return on investments developed negatively over the period considered and fell by 43 %. 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 fell substantially over the period considered due to the impossibility for the Union industry to improve the profitability rate.
- (158) With returns on investments falling so quickly, the ability to raise capital in the future is clearly in jeopardy should the situation continually fail to improve.

4.6.4. *Claims related to the injury analysis*

- (159) STL claimed that based on the questionnaire replies of the sampled Union producers, the situation of the Union industry had improved sufficiently, in particular regarding production and production capacity, unrelated and captive sales, exports, employment, and investments, and that the Union industry did therefore not suffer any material injury. STL further argued that Union producers were overall profitable with different levels of profitability due to different business models.
- (160) The Commission disagreed with STL's conclusions. As set out in recitals (169) to (170), the analysis of the injury indicators showed that the Union industry suffered material financial injury in the form of lower profits and a drop in investments and on the return thereon.
- (161) In addition to that, as explained below in recitals (164) to (168), the analysis of sales through tenders indicates that the price erosion was further accelerating despite the measures in place against imports from China and would continue to do so due to the rapidly increasing dumped imports from India. The claims of STL in this regard were therefore rejected.

4.6.5. *Analysis of tenders*

- (162) A vast majority of OFC is sold through tender procedures, whilst other OFC are sold via individual spot sales. In order to obtain the necessary insights into this market aspect, the Commission requested detailed information on tenders from the sampled Indian exporting producers, the sampled Union producers, importers and users. Information was requested on the characteristics of the tenders, such as process, timing and other relevant characteristics. No public tendering entity or telecom operator participated in the investigation and provided information.

- (163) The investigation showed a fragmented picture of tenders, including in terms of process, scope and outcomes. They can be organised by public or private entities such as large telecom operators. Negotiation in tenders can take place in different forms, such as e-auctions or direct bidding. The tender process will typically last 3-6 months from the announcement of the tender to the conclusion. Within one to two months after conclusion of the tender, purchase orders will be issued by the customer and deliveries will be made according to the terms and conditions defined in the contract. The investigation confirmed that the price represents the most important purchase criterion, considering that tenders are issued for products whose technical characteristics have been specified in detail ⁽¹⁸⁾.
- (164) The tendering process intensified competition, since the presence of the Indian exporting producers bidding at very low prices pushed the Union industry to reduce their prices to unsustainable levels in an effort to match the Indian bids and prevented them from passing on their cost increases to their customers. The tender conditions typically do not include a contractual obligation for the buyer to purchase the quantity tendered, whereas they include a contractual obligation for the supplier to supply the tendered quantity at the offered price.
- (165) Given that most of the market is supplied via tenders, the tender mechanism is the price setter in the market. Hence, the Indian exporter bidding at much lower prices than the Union industry, are, despite the still relatively low quantities sold, the ones setting the reference price that the Union industry is expected to match. This is confirmed also by the significant undercutting and underselling levels established in the investigation.
- (166) HFCL requested a separate injury analysis for sales through tenders on the one hand and for spot sales on the other hand, claiming that these would be two different market segments with different pricing strategies and demand behaviour.
- (167) HFCL did not provide any evidence to prove that the use of different sales channels would potentially have different injurious effects on the Union industry. Moreover, the investigation established that tenders constitute the major share of the market for OFC, as explained above in recital (162). On-spot sales are mainly carried out by the same telecom operators for small-scale projects or to complement quantities that were already subject to a tender. Therefore, in this case, the reference price for a given product type is still likely to be linked to the price agreed in the tender. Therefore, HCL's claim was rejected.
- (168) Given the nature of tenders, a delayed effect needs to be taken into consideration. The subsequent delivery (and invoicing) of OFC following a won tender would take place in the months or years after the conclusion of the tender. Over the period considered the Union industry was suffering from the sales volume lost to the Chinese exporters before the imposition of the measures while, at the same time, facing competition from the dumped Indian exports whose effects, on sales volume, will persist also after the investigation period. Therefore, overall, the development on tenders confirmed the continued effect of price suppression. The increased presence of Indian exporting producers prevented the recovery of the Union industry from Chinese imports and is set to continue having a negative effect, in the absence of measures.

4.6.6. *Conclusion on injury*

- (169) Several indicators showed a positive trend such as production, capacity, sales volume and market share as well as employment. However, the increase in the Union industry's market share can be linked to the decrease of market share for imports from China, following the imposition of measures in November 2021, when the Union industry managed to regain some of the market share previously lost to the Chinese imports. Nevertheless, at the same time, the Union industry faced increased cost of production while the average Union sales prices showed a decreasing trend. Although it was expected that the measures against imports from China would lead to a relief for the Union producers, the strong increase in the market share of Indian imports showed that there was continued price pressure generated by Indian exports, with significant undercutting, and, in any event, price suppression throughout the period 2021-IP. This became clear in the significant drop in profitability and cash flow and eventually, the very low levels of investment.

⁽¹⁸⁾ See open questionnaire reply of Corning and Acome.

- (170) 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

- (171) 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 were: non-dumped imports from India, imports from China, imports from other third countries, captive sales, increase of raw material and energy prices, supply chain disruptions due to the COVID-19 pandemic, anti-competitive behaviour of the Union industry, competition among the Union industry, and self-inflicted injury due to the effects of an initial increase in investments, capacity and stocks.

5.1. Effects of the dumped imports

- (172) The deterioration of the Union industry's situation coincided with the rapid increase of dumped imports from India which penetrated the Union market in substantial volumes, significantly undercutting the Union industry's prices and, in any event, exercising significant price suppression on Union sales.
- (173) The volume of dumped imports from India increased (as shown in Table 3) from [48 000–59 000] cable-km in 2020 to [137 000–165 000] cable-km in the investigation period, representing an increase of 183 %. In terms of market share, the increase over the same period was from [2–3] % to [6–8] %, an almost three-fold increase (179 %). Over the same period (as shown in Table 6), the Union industry's market share in the free market was less pronounced, from 40,4 % to 47,2 %, an increase of 17 % (6,8 percentage points) Therefore it can be concluded that it has been mainly dumped imports from India that took advantage of the decrease of the imports from China.
- (174) The average price of the dumped imports decreased significantly over the period considered by 46 % as described in Table 4 and were undercutting the Union industry's sales prices on average by 37,2 % and 45,6 %. Sales prices of the Union industry on the Union free market to unrelated parties dropped overall by 3 % over the period on the basis of the analysis in Table 8.
- (175) The level of undercutting, in combination with the low profitability of the Union industry, shows that the dumped imports were at prices well below the Union industry's cost of production, both via the mechanisms of tenders and via on-spot sales. This price behaviour prevented the Union industry from fully recovering the market share previously lost to the dumped Chinese import and eroded its profit levels since the beginning of the period considered. It has generated price suppression, and financial injury in terms of both depressed profitability and waning investments, jeopardising the existence of Union industry.
- (176) The Union industry, in an attempt to match the low, dumped prices set by the Indian producers and in order to defend its sales volume in a period of increasing costs, was not able to increase its prices at the pace of the increase of costs. This resulted in a profound profitability drop for all sampled Union producers.
- (177) Therefore, while the Union industry managed to increase their market share during the period considered, this was done at the expense of prices and resulting in significant decrease in profits (price suppression), to levels, which as explained in Section 6.1 below, are significantly below the target profit for this industry.
- (178) As described in recital (158) 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 Indian dumped imports.
- (179) It follows from the above that the increase of dumped imports from India prevented the Union industry from recovering market shares and from reaching sustainable levels of profit.

- (180) All three exporting producers claimed that there was no correlation between the imports from India and the material injury suffered by the Union industry. They argued that import levels from India were low and that prices were not at injurious levels. Given the above analysis, the Commission considered that the investigation clearly contradicted these views and rejected therefore these claims.
- (181) The Commission therefore concluded that there was a causal link between the dumped imports from India and the material injury suffered from the Union industry.

5.2. Effects of other factors

5.2.1. Non-dumped imports from India

- (182) The volume of non-dumped imports from India developed over the period considered as follows:

Table 12

Non dumped imports from India

	2020	2021	2022	Investigation period
Volume (cable-km)	[11 000–14 000]	[41 000–50 000]	[95 000–118 000]	[67 000–83 000]
<i>Index</i>	100	362	845	593
Market share (%)	[0–1]	[1–2]	[4–5]	[2–4]
Average price (EUR/ cable-km)	[214–264]	[350–432]	[370–457]	[369–456]
<i>Index</i>	100	164	173	172

Source: Verified exporting producer questionnaire.

- (183) Import volume and prices of the non-dumped Indian imports were based on the quantities reported by the sampled exporting producer for which no dumping was found. Since data were based on information relating to only one company, they were put in ranges in order to preserve confidentiality.
- (184) Import volume showed an increase from [11 000–14 000] cable-km in 2020 to [95 000–118 000] cable-km in 2022, followed by a decrease to [67 000–83 000] cable-km in the investigation period. The market share followed the same trend and increased from [0–1] % in 2020 to [2–4] % in the investigation period. Import prices were undercutting the Union industry price by around [25–35] % during the investigation period. Given this development, it cannot be excluded that these imports had a negative impact on the performance of the Union industry and contributed to the material injury. Nevertheless, import levels and market share of the non-dumped imports remained throughout the period considered largely below the volume of the dumped imports from India and decreased in the investigation period. Therefore, the Commission considered that they did not attenuate the causal link between dumped Indian imports and the injury suffered by the Union industry.

5.2.2. Imports from China

- (185) The three sampled exporting producers claimed that the Chinese imports caused the material injury to the Union industry rather than the Indian imports, noting that Chinese import volumes were much higher than the ones from India and that import prices were lower than the import prices from India.
- (186) The volume of imports from China developed over the period considered as follows:

Table 13

Imports from China

	2020	2021	2022	Investigation period
Volume (cable-km)	843 918	876 581	487 545	514 072
<i>Index</i>	100	104	58	61
Market share (%)	37,5	33,7	20,6	22,6
Average price (EUR/ cable-km)	532	572	774	687
<i>Index</i>	100	107	145	129

Source: Comext (Eurostat).

(187) Imports from China decreased over the period considered from 843 000 cable-km in 2020 to around 514 000 cable-km in the investigation period. The market share decreased accordingly from 37,5 % to 22,6 %. This development can be linked to the anti-dumping measures on OFC from China that were introduced in November 2021 following the China investigation mentioned in recital (17) and the increase of anti-dumping duties in August 2023 following the anti-absorption investigation. As mentioned in recital (139), due to the still strong presence of the Chinese imports at prices absorbing the anti-dumping duties, the Union industry was not fully shielded from the dumping practice of the Chinese exporting producers during the period considered. Therefore, the Commission concluded that the Chinese imports may have negatively affected the Union industry's situation and contributed to the injury suffered. However, following also the decision of the Commission to double the AD duties on OFC from China⁽¹⁹⁾, the Chinese imports showed also a significant downward trend during the period considered, both in absolute and in relative terms. In addition, they showed an increasing price trend, with average prices above the average prices of the dumped imports from India. Moreover, the decrease in profits of the Union industry was much more pronounced in 2022 and during the investigation period, which suggests that it is the increasing Indian imports, rather than the decreasing Chinese imports, which caused injury to the Union industry.

(188) Based on the above, the Commission rejected the claims from the Indian exporting producers and concluded that, even if Chinese imports may have had a negative impact on the situation of the Union industry during the period considered, they did not attenuate the causal link between dumped Indian imports and the material injury suffered by the Union industry.

5.2.3. Imports from other third countries

(189) The volume of imports from third countries other than India and China developed over the period considered as follows:

Table 14

Imports from other third countries

		2020	2021	2022	Investigation period
Morocco	Volume (cable-km)	26 431	72 886	87 911	103 567
	<i>Index</i>	100	276	333	392

⁽¹⁹⁾ Implementing Regulation (EU) 2023/1617.

	Market share (%)	1,2	2,8	3,7	4,6
	Average price (EUR/cable-km)	598	438	659	725
	<i>Index</i>	100	73	110	121
United Kingdom	Volume (cable-km)	80 442	80 442	82 631	78 103
	<i>Index</i>	100	100	103	97
	Market share (%)	3,6	3,1	3,5	3,4
	Average price (EUR/cable-km)	658	658	785	845
	<i>Index</i>	100	100	119	128
Türkiye	Volume (cable-km)	56 794	56 559	59 477	50 369
	<i>Index</i>	100	100	105	89
	Market share (%)	2,5	2,2	2,5	2,2
	Average price (EUR/cable-km)	414	390	408	499
	<i>Index</i>	100	94	99	121
South Korea	Volume (cable-km)	83 410	69 787	71 045	38 803
	<i>Index</i>	100	84	85	47
	Market share (%)	3,7	2,7	3,0	1,7
	Average price (EUR/cable-km)	604	585	723	797
	<i>Index</i>	100	97	120	132
Indonesia	Volume (cable-km)	64	2 523	58 233	35 734
	<i>Index</i>	100	3 946	91 079	55 889
	Market share (%)	0,0	0,1	2,5	1,6

	Average price (EUR/ cable-km)	10 960	3 850	973	1 039
	<i>Index</i>	100	35	9	9
Tunisia	Volume (cable-km)	39 486	47 284	36 414	33 996
	<i>Index</i>	100	120	92	86
	Market share (%)	1,8	1,8	1,5	1,5
	Average price (EUR/ cable-km)	658	737	847	756
	<i>Index</i>	100	112	129	115
Mexico	Volume (cable-km)	31 041	30 626	44 895	33 403
	<i>Index</i>	100	99	145	108
	Market share (%)	1,4	1,2	1,9	1,5
	Average price (EUR/ cable-km)	666	506	598	636
	<i>Index</i>	100	76	90	95
Switzerland	Volume (cable-km)	28 989	30 260	29 475	26 534
	<i>Index</i>	100	104	102	92
	Market share (%)	1,3	1,2	1,2	1,2
	Average price (EUR/ cable-km)	829	870	1 039	1 153
	<i>Index</i>	100	105	125	139
Other third coun- tries	Volume (cable-km)	109 988	163 777	152 108	99 783
	<i>Index</i>	100	149	138	91

	Market share (%)	4,9	6,3	6,4	4,4
	Average price (EUR/cable-km)	1 603	1 219	1 321	1 974
	<i>Index</i>	100	76	82	123
Total of all third countries excluding India and China	Volume (cable-km)	456 645	554 145	622 190	500 291
	<i>Index</i>	100	121	136	110
	Market share (%)	20,3	24,0	27,7	22,2
	Average price (EUR/cable-km)	855	783	875	1 017
	<i>Index</i>	100	92	102	119

Source: Comext (Eurostat).

- (190) Imports from other third countries were from various sources. The countries with the highest imports volume and market share were Morocco and the UK.
- (191) Imports from Morocco increased from around 26 000 cable-km in 2020 to around 103 000 cable-km during the investigation period. Their market share increased from 1,2 % in 2020 to 4,6 % in the investigation period. However, as shown above, average price trends increased by about 20 % during the same period and were at significantly higher levels as those from the dumped imports from India and above Union industry's prices in the IP. Therefore, the Commission concluded that Moroccan imports did not cause any material injury to the Union industry.
- (192) Import statistics related to the UK for the year 2020 were tainted by Brexit and not considered a reliable basis to establish import volumes and values for the UK for that year. Therefore, the Commission estimated the level of imports for 2020 at a similar level as the imports in 2021. On this basis, the UK imports had a rather stable trend, overall showing a slight decrease of 3 %, from about 80 000 cable-km in 2020 to about 78 000 cable-km during the investigation period. Their market share decreased accordingly from 3,6 % to 3,4 % in the same period. Considering that the average price for UK imports were significantly above the average price of Union, the Commission considered that they did not cause any material injury to the Union industry.
- (193) Imports from Türkiye were stable in 2020 and 2021, increased by 5 % in 2022 before dropping by 16 % in the investigation period. Overall, the imports had thus a decreasing trend of 11 % between 2020 and the investigation period. In absolute terms, imports decreased from about 56 800 cable-km in 2020 to about 50 000 cable-km in the investigation period. The market share remained relatively stable and decreased slightly from 2,5 % to 2,2 % in the period considered. Although the price level was below the one of the Union producers, no additional market share could be obtained. While the Commission could not exclude that those imports contributed to the injury of the Union industry, given their low and decreasing volume the impact was considered to be limited and the Commission therefore concluded that they did not attenuate the causal link between the dumped imports and the material injury suffered by the Union industry.

- (194) The Commission considered that imports from South Korea, Indonesia, Tunisia, Mexico and Switzerland were at very low levels throughout the period considered. With exception of Tunisia and Mexico they showed significant downward trends. Imports from Tunisia and Mexico had decreasing import volumes from 2022 to the investigation period. Average import prices from these countries were high and above the Union industry's average sales prices. On this basis, the Commission concluded that these imports did not cause any material injury to the Union industry.
- (195) Imports from other third countries decreased moderately in the period considered in absolute terms from about 110 000 cable-km in 2020 to about 100 000 cable-km in the investigation period. The market share decreased from 4,9 % to 4,4 %. They showed high and increasing price levels and therefore, there are no indications that they caused material injury to the Union industry.

5.2.4. *Captive sales*

- (196) As shown at Table 6, during the period considered the Union industry's captive sales increased by 47 %.
- (197) However, as explained above in recital (138) the Commission found no evidence that captive sales had any significant impact on the evolution of the injury indicators. Therefore, the Commission concluded that the captive use did not cause material injury to the Union industry.

5.2.5. *Raw material and energy cost*

- (198) All sampled exporting producers claimed that the injury suffered by the Union industry was due to the increase in raw material costs and energy prices.
- (199) As set out in recital (139), due to the price pressure of the dumped Indian imports, the Union industry was not able to increase its prices in line with the increase in its costs. Therefore, the increase in cost cannot be considered as the cause of injury, but rather a cost increase that could not be reflected in prices because of the dumped imports from India. These claims were therefore rejected.

5.2.6. *Effect of other factors*

- (200) In addition to the factors analysed in the precedent recitals, STL claimed that the material injury suffered by the Union industry, if any, was due to supply-chain disruptions due to the COVID-19 pandemic, competition amongst the Union industry, self-inflicted injury due to increases in investments, capacity and stocks, as well as anti-competitive behaviour of certain Union producers referring to a 2014 anti-trust decision⁽²⁰⁾ on producers of high voltage cables and subsequent decisions over the period considered in Brazil⁽²¹⁾, Spain⁽²²⁾, and the UK⁽²³⁾. Also, HFCL and Birla claimed that wrong investment decisions of the Union industry were the cause of the material injury allegedly suffered.

⁽²⁰⁾ Summary of Commission Decision of 2 April 2014 relating to a proceeding under Article 101 of the Treaty on the Functioning of the European Union and Article 53 of the EEA (OJ C 319, 17.9.2014, p. 10), Agreement (Case AT.39610 — Power Cables) (notified under document C(2014) 2139 final).

⁽²¹⁾ 'Cade applies BRL 20,9 million in fines for international cartel of underground and submarine cables' (1 November 2022), available at <https://www.gov.br/cade/en/matters/news/cade-applies-brl-20-9-million-in-fines-for-international-cartel-of-underground-and-submarine-cables>.

⁽²²⁾ Comision Nacional de los Mercados y la Competencia, Case S/DC/0562/15: CABLES BT/MT, Final Resolution; available at <https://www.cnmc.es/expedientes/sdc056215>.

⁽²³⁾ Competition Appeal Tribunal, Notice of a Claim under Section 47A of the Competition Act 1998, Case No.1532/5/7/22; available at https://www.catribunal.org.uk/sites/cat/files/2023-03/2023.03.10_1532_RWE%20Renewables%20v%20Prysmian_Summary_of_Claim_Final.pdf.

- (201) In recital (156), the Commission analysed the overall investment with the conclusion that investments of the Union industry had been at very low levels and at the minimum necessary to sustain operations throughout the period considered. The Commission also considered that the Covid-19 pandemic had only a very limited and temporary impact on the Union industry, considering that the period considered is from 1 January 2020 until 30 September 2023, while the COVID-19 pandemic was between 2020 and 2022. In addition, no evidence was provided regarding the alleged supply chain disruptions and the investigation did not reveal any specific evidence in this regard. As regards the alleged anti-competitive behaviour of the Union industry, the Commission notes that the antitrust investigation to which the exporting producer referred to, was related to high voltage power cables ⁽²⁴⁾ and therefore not relevant for the product concerned. The impact of changes in the level of investments, stocks and capacity was analysed in detail during the investigation as indicated in recitals (156), (151) and (132) and the Commission concluded that their impact was very limited. In particular, in contrast to what was claimed, the investigation revealed that stocks and investments of the Union industry remained at a very low level. As regards the competition amongst Union producers, the Commission considered that fair competition is encouraged in a free market and cannot be considered as a cause of injury. The investigation did not bring into light any evidence that it could have had any injurious effect.
- (202) All the claims regarding possible other factors that may have caused the material injury suffered by the Union industry were therefore rejected.

5.3. Conclusion on causation

- (203) The Commission established a causal link between the material injury suffered by the Union industry and the dumped imports from India. The increase of dumped Indian imports coincided with the deterioration of the Union industry's situation. The sharp increase of dumped imports from the country concerned was made at prices significantly undercutting the Union industry's sales prices at levels even below the cost of production of the Union industry. They thus prevented the Union industry from setting prices at sustainable levels necessary to achieve reasonable profit margins. To the contrary, price levels could not match the increase in costs with significant negative effects on the profitability and investment levels of the Union industry.
- (204) 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. The Commission concluded that other factors namely the imports from China, the non-dumped imports from India and imports from Türkiye may have contributed to the material injury suffered by the Union industry but, given their cumulated import volumes and price developments, did not attenuate the causal link between the dumped imports from India and the material injury suffered by the Union industry. Indeed, the market share of imports from these countries decreased from 41,7 % to 29,5 % while their prices increased by 31 % over the period considered. In contrast, the dumped imports from India had an increasing market share coupled with a constant price reduction, which coincided in time with the injury suffered by the Union industry. Therefore, none of the other known factors explained the Union industry's negative developments in terms of price suppression and profitability, its low investments levels and the negative development on the return on investments.
- (205) 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 and that the other factors, considered individually or collectively, did not attenuate the causal link between the dumped imports and the material injury.

6. LEVEL OF MEASURES

- (206) 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.

⁽²⁴⁾ ec.europa.eu/commission/presscorner/detail/en/IP_14_358.

6.1. Injury margin

- (207) The injury would be removed if the Union industry were able to obtain a target profit by selling at a target price in the sense of Articles 7(2c) and 7(2d) of the basic Regulation.
- (208) 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 %.
- (209) The complainant suggested a target profit of 13,4 %, referring to the China investigation ⁽²⁵⁾, and emphasized that high profit levels are required in this heavily investment-driven industry, which spends significant financial resources on research and development, to be able to invest in future technologies and in particular to develop the 5G network in the Union. Some Union producers claimed that a target profit of 15 % should be used.
- (210) The Commission noted that the target profit established in the China investigation was 12,4 %. The Commission examined these claims, together with the comments submitted by the exporting producers 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.
- (211) Birla disputed the appropriateness of the target profit used in the China investigation, in the economic context of the current investigation. Birla questioned the necessity of additional investments by the Union industry, since substantial investments have already been made to develop the 5G network in the Union. It also argued that the Union industry could not expect to reach excessively high profit margins while at the same time carrying out massive investments. Furthermore, Birla argued that telecom operators in the Union, the main customers of OFC, were facing increasingly difficult market conditions and could not sustain the high profit margin expectations of the Union OFC producers.
- (212) STL claimed that the target profit established in the China investigation was irrelevant, since the target profit must be based on the level of profitability before the increase of imports from the country subject to the current investigation, i.e., India. In response to this claim, the complainant submitted that the Indian producers have not provided any arguments demonstrating any change in circumstances that would show that the target profitability established in the China investigation would no longer be appropriate. STL in addressing this argument claimed that the target profitability established in the China investigation was based on a different economic reality and is thus irrelevant for the present investigation. The relevant timeframe for calculating the target profit margin should be post-2020. In addition, STL claimed that starting from 2022, there was a significant increase in the level of the complainants' investments compared to the investigation period of the China investigation (1 July 2019 to 30 June 2020), which meant a change in circumstances compared to the investigation concerning imports of OFC from China.
- (213) As regards the need for future investments in OFC production, the Commission noted that in its last report on the 'State of Digital Communications', the association of European Telecom Network Operators (ETNO) has revised upwards its forecasts for the deployment of Fibre-To-The-Home (FTTH) networks in the Union, suggesting strong future demand ⁽²⁶⁾. Therefore, the Commission rejected the claim that no further investments would be required.

⁽²⁵⁾ Implementing Regulation (EU) 2021/2011, recital (489).

⁽²⁶⁾ <https://etno.eu/library/reports/117-state-of-digital-2024.html>.

- (214) Regarding the claim that telecom operators could not sustain high profit margin expectations from the Union industry, the Commission noted that OFC represents a very small portion of EU telecom operators' capital expenses, which according to ETNO reached 59,1 billion EUR in 2022 ⁽²⁷⁾. Considering a total Union consumption of around 2,5 million cable/km ⁽²⁸⁾ and an average price of 756 EUR per cable/km ⁽²⁹⁾, the expenses related to OFC would represent around 3 % of telecom operators' investments. Moreover, the purpose of establishing the target profit is to determine the profitability that the Union industry would be able to achieve in the absence of dumped imports, including considerations of certain future investments. Whether duties are not against the overall Union interest is examined below in recitals (223) to (226) where amongst other, the possible impact of duties on downstream industries is addressed. The claims of Birla and STL in this regard had therefore to be rejected.
- (215) As regards the STL's claim that the target profit must be based on the level of profitability before the increase of imports from the country subject to the current investigation, the Commission recalled that the target profit must be established taking into account a number of factors, including in particular the level of profitability to be expected under normal conditions of competition. This claim was therefore also rejected.
- (216) In this respect, the Commission concluded that that Union industry's prices were suppressed in the investigation period mainly due to the dumped imports from India. Likewise, the economic reality before the increase of imports from India, i.e., before 2020, was equally affected by the presence of the dumped imports from China. 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 affected by imports from both China and India.
- (217) As concluded in the China investigation, in 2015 and 2016, the sampled Union producers were able to maintain consistent profits of 12,6 % and 12,4 % respectively. Those years were considered to be the most representative for the profitability under the normal conditions of competition in this industry.
- (218) The Commission considered that such analysis is still valid, in particular considering that during the period considered in the current investigation prices were still partly depressed by the Chinese imports, as established in the anti-absorption investigation. Therefore, the Commission concluded that a target profit of 12,4 % would still reflect the level of profitability to be expected under normal conditions of competition. Therefore, the argument that an increase of investments would constitute a 'change in circumstances' which would require a new evaluation of the target profit, was rejected.
- (219) 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. There were no such future costs reported by the Union industry. On this basis, the Commission calculated a non-injurious price for the like product of the Union industry by applying the target profit of 12,4 % (see recital (217)) to the cost of production of the sampled Union producers during the investigation period.
- (220) The Commission then determined the injury margin level on the basis of a comparison of the weighted average import price of the sampled cooperating exporting producers for which dumping was found in India, as also established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers in 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.
- (221) 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 (see recitals (91) to (94)).

⁽²⁷⁾ <https://etno.eu/library/reports/117-state-of-digital-2024.html>.

⁽²⁸⁾ See Table 2.

⁽²⁹⁾ Average unit cost of production in the IP (See Table 8) plus a 12,4 % profit margin.

Company	Dumping margin (%)	Injury margin (%)
MP Birla Group	6,9	86,7
Sterlite Technologies Limited Group	11,4	41,2
Other cooperating companies	9,0	63,1
All other companies	11,4	86,7

7. UNION INTEREST

- (222) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could clearly conclude that 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, and users.

7.1. Interest of the Union industry

- (223) The Union industry is composed of 14 producers or groups of producers, employing about 5 140 staff (FTE). The producers are widely spread throughout the Union.
- (224) The imposition of measures would increase the price levels in the Union and thus allow the Union industry to increase its prices in line with the increase in its cost of production. This will result in more sustainable profit levels allowing the Union industry to increase its investment levels and resume its investments in innovations that are necessary for the Union industry to maintain a competitive position in the market and to maintain its market presence, as well as recover the market share lost to the Chinese dumped imports in the past.
- (225) The non-imposition of measures is likely to have a significant negative effect on the Union industry in terms of further price suppression and possible depression. A further price decline would mean that the Union industry will be lossmaking in the short term. To avoid a deterioration of its profitability, the Union industry may decide to maintain its current price levels, which are, however, already unsustainable; or to increase its prices at the expense of sales. This will lead to an immediate reduction of production volume. Furthermore, this situation will prevent the Union industry to increase its investment levels, necessary to defend its presence in the market by offering innovative solutions and product developments. As a consequence, the Union industry will be subject to a further financial deterioration in terms of profitability and investments, jeopardising its future. Should measures not be imposed, it could be expected that the increase of dumped imports from India would continue and even increase significantly, given the substantial undercutting margins, and the nature of the market, which is driven by tenders having long-term effects. In that situation, the Union industry would be unable to recover from the injurious effects.
- (226) It is therefore concluded that provisional measures are in the interest of the Union industry.

7.2. Interest of unrelated importers

- (227) On the date of initiation, 51 importers and users were contacted and invited to cooperate in the investigation. One importer registered as an interested party but did not provide a questionnaire reply. Consequently, no unrelated importer cooperated during the investigation.
- (228) In the absence of cooperation from unrelated importers, the Commission was not able to determine the precise impact of anti-dumping duties on their businesses. In the China investigation, the Commission established that importers enjoyed profit margins of over 20 % and duties could be either absorbed or at least partially be passed on to their customers ⁽³⁰⁾. The current investigation has not brought into light any facts or evidence contradicting these findings.

⁽³⁰⁾ Recital (588) of Implementing Regulation (EU) 2021/2011.

- (229) While the anti-dumping measures are likely to have a certain negative impact on importers and may reduce their profitability, the Commission considered that importers will be able to absorb and/or pass on some of the cost increase caused by the duty to their customers. They also have the possibility to find alternative sources of supply, including India at non-dumped prices. Therefore, the Commission concluded that unrelated importers will not be disproportionately affected by the imposition of the measures.

7.3. Interest of users, installers, and distributors

- (230) The product under investigation is sourced by several industries, mainly telecom operators, public sector bodies (such as municipalities) owning or controlling fibre networks, installers, and distributors. None of these parties cooperated.
- (231) Only one user active in the telecoms industry cooperated during the investigation. The user's reply to the questionnaire did not contain any arguments or information on Union interest aspects. This user did not import OFC from India and did not express either support or opposition to the measures.
- (232) The Commission also considered that, as outlined in recital (213), OFC constitutes only a minor part of the users' overall costs, as the main cost driver for the fibre deployment is related to civil works.
- (233) Therefore, it was concluded that measures would not disproportionately affect users.

7.4. Supply on the Union market

- (234) STL argued that the Commission imposing anti-dumping measures on imports of OFC from India would be to the detriment of a resilient and self-sufficient OFC supply chain in the Union. This claim was not further developed. The exporting producer also did not provide any evidence, further information, or analysis in support of this claim.
- (235) The investigation has shown that there were multiple sources of supply available in the Union market. Countries other than India and China (the largest being Morocco and the UK) constituted 14,5 % of the total market share in the Union and there were also non-dumped imports from India. In addition, as shown in recital (130), the Union industry had a spare capacity of almost 40 % that could be used to supply the Union market. This argument was therefore rejected.

7.5. Competitive situation on the Union market

- (236) The same exporting producer claimed that the Union market is dominated by a group of large producers, and imposing measures would accentuate this situation which can lead to harmful effects, such as higher prices, less choice for consumers, and an increased risk of anti-competitive behaviour by the Union industry.
- (237) As above, the exporting producer did not further develop this claim nor provide any evidence, further information, or analysis in support of this claim.
- (238) The Commission considered that the Union industry consisted of 14 Union producers or groups of producers that were competing with each other on the Union market, in addition to the non-dumped imports from India, imports from China and other third countries. The level of competition was therefore considered sufficiently high. The claim regarding the risk of anti-competitive behaviour of the Union industry in the future is highly speculative and was rejected.
- (239) All claims regarding the competitive situation on the Union market were therefore rejected.

7.6. Other factors

- (240) OFCs are needed to build fast broadband networks. They are therefore of high importance for citizens, businesses and public entities across the Union, who depend on these networks for home working, home learning, for running a business or providing services. The investment through the NextGenerationEU programme ⁽³¹⁾ 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 Digital Decade ⁽³²⁾ and also for its digital sovereignty.

7.7. Conclusion on Union interest

- (241) The imposition of anti-dumping measures would release the Union industry from the price pressure in the Union market caused by the dumped Indian imports and enable them to increase their prices in line with cost increases. This would have a positive impact on their profitability and investment levels and enable them to defend their market position and invest in new technologies. Finally, survival of the Union producers is key for the EU's digital sovereignty. In contrast, the non-imposition of the measures would lead to a rapid further deterioration of the Union industry's profitability and would ultimately not allow the Union industry to develop which would lead to losses in market share and possible closure of factories.
- (242) At the same time, measures would not prevent imports from third countries (including India) from competing fairly on the Union market. The investigation did not reveal that measures would have a disproportionate negative effect on importers and downstream industries.
- (243) Overall, therefore, 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 India at this stage of the investigation.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (244) On the basis of the conclusions reached by the Commission on dumping, injury, causation, the level of measures, and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (245) Provisional anti-dumping measures should be imposed on imports of OFC originating in India, in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins. The amount of the duties was set at the level of the lower of the dumping and the injury margins.
- (246) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Provisional anti-dumping duty
Birla Cable Ltd; Universal Cables Ltd; Vindhya Telelinks Ltd	6,9 %
Sterlite Technologies Limited; Sterlite Tech Cables Solutions Limited	11,4 %
Other cooperating companies	9,0 %
All other companies	11,4 %

⁽³¹⁾ Next Generation EU aims to implement 5G and EU-wide ultra-fast broadband to accelerate among other goals the digital transition through greater digitalisation of public services and the wider economy: https://next-generation-eu.europa.eu/index_en#:~:text=With%20NextGenerationEU%3A,become%20smarter%20and%20more%20efficient.

⁽³²⁾ The EU is pursuing a human-centric, sustainable vision for digital society throughout the digital decade to empower citizens and businesses: [https://digital-strategy.ec.europa.eu/en/policies/europes-digital-decade.](https://digital-strategy.ec.europa.eu/en/policies/europes-digital-decade)

- (247) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflect 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.
- (248) To minimise the risks of circumvention due to the difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) of this Regulation. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (249) While presentation of this invoice is necessary for the customs authorities of the Member States to apply the individual rates of anti-dumping duty to imports, it is not the only element to be taken into account by the customs authorities. Indeed, even if presented with an invoice meeting all the requirements set out in Article 1(3) of this Regulation, the customs authorities of Member States must carry out their usual checks and may, like in all other cases, require additional documents (shipping documents, etc.) for the purpose of verifying the accuracy of the particulars contained in the declaration and ensure that the subsequent application of the lower rate of duty is justified, in compliance with customs law.
- (250) Should the exports by one of the companies benefiting from lower individual duty rates increase significantly in volume after the imposition of the measures concerned, such an increase in volume could be considered as constituting in itself a change in the pattern of trade due to the imposition of measures within the meaning of Article 13(1) of the basic Regulation. In such circumstances and provided the conditions are met an anti-circumvention investigation may be initiated. This investigation may, inter alia, examine the need for the removal of individual duty rate(s) and the consequent imposition of a country-wide duty.
- (251) Statistics of OFC are frequently expressed in cable-km. However, there is no such supplementary unit for OFC specified in the Combined Nomenclature laid down in Annex I to Council Regulation (EEC) No 2658/87 ⁽³³⁾. It is therefore necessary to provide that not only the weight in kg or tonnes but also the number of cable-km for the imports of the product concerned must be entered in the declaration for release for free circulation. The cable-km should be indicated for CN and TARIC codes.

9. INFORMATION AT PROVISIONAL STAGE

- (252) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (253) MP Birla Group commented on the accuracy of the calculation of its dumping margin. After analysis, the Commission corrected the calculation and the relevant dumping margin.
- (254) All other comments received following the pre-disclosure will be addressed at the definitive stage.

10. FINAL PROVISIONS

- (255) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission within a fixed deadline.

⁽³³⁾ 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, ELI: <http://data.europa.eu/eli/reg/1987/2658/oj>).

- (256) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional 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, whether or not connectorized, currently falling under CN code ex 8544 70 00 (TARIC codes 8544 70 00 10 and 8544 70 00 91) and originating in India.

The following products are excluded:

- cables below 500 meters in length in which all the optical fibres are individually fitted with operational connectors at one or both extremities; and
- cables for submarine use, plastic insulated, containing a copper or aluminium conductor, in which fibres are contained in metal module(s).

2. The rates of the provisional 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	Provisional anti-dumping duty	TARIC additional code
Birla Cable Ltd; Universal Cables Ltd; Vindhya Telelinks Ltd	6,9 %	89CF
Sterlite Technologies Limited; Sterlite Tech Cables Solutions Limited	11,4 %	89CG
Other cooperating companies listed in Annex	9,0 %	
All other imports originating in India	11,4 %	C999

3. Anti-dumping duties are not applicable to the Indian exporting producers of the HFCL Group, consisting of HFCL Limited and HTL Limited (TARIC additional code 89CH).

4. 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 [country concerned]. I declare that the information provided in this invoice is complete and correct.' Until such invoice is presented, the duty applicable to all other companies shall apply.

5. In accordance with Article 7(3) of the basic Regulation, the release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

6. Where a declaration for release for free circulation is presented in respect of the product referred to in paragraph 1, irrespective of its origin, the cable-km of the products imported shall be entered in the relevant field of that declaration, provided this indication is compatible with Annex I to Regulation (EEC) No 2658/87.

Member States shall, on a monthly basis, inform the Commission of the number of cable-km imported under TARIC codes 8544 70 00 10 and 8544 70 00 91.

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

Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.
2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.
3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings are invited to do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer may examine requests submitted outside this time limit and may decide whether to accept to such requests if appropriate.

Article 3

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

Article 1 shall apply for a period of six months.

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

Done at Brussels, 11 July 2024.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

INDIAN COOPERATING EXPORTING PRODUCERS NOT SAMPLED

Country	Name	TARIC additional code
India	Aberdare Technologies Private Limited	89CI
India	Aksh Optifibre Limited	89CJ
India	Apar Industries Limited	89CK
India	Polycab India Limited	89CL
India	UM Cables Limited	89CM
India	ZTT India Private Limited	89CN