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AS0022

ANTI-SUBSIDY INVESTIGATION CONCERNING IMPORTS OF OPTICAL FIBRE CABLES ORIGINATING IN THE PEOPLE'S REPUBLIC OF CHINA

Additional comments

by

The Government of the People's Republic of China

29 May 2023

OPEN

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1 INTRODUCTION

1. The Government of the People's Republic of China ("GOC") herewith submits additional comments in the context of the anti-subsidy ("AS") investigation concerning imports of single-mode optical fibre cables ("OFC") originating in the People's Republic of China (Investigation No. AS0022) initiated by the UK Trade Remedies Authority ("TRA") on 26 April 2022.

2. These comments are based on the information available in the open file until 19 May 2023.[1]

3. To avoid repetition, the GOC incorporates by reference the arguments made in the comments submitted on 19 August 2022 ("Initial Comments").

2 PROCEDURAL CONCERNS

2.1 The GOC remains willing to engage in consultations

4. As noted in the Initial Comments, the present investigation was initiated and is being conducted in violation of Article 13 of the WTO Agreement on Subsidies and Countervailing Measures ("SCMA"), as the GOC was not provided a meaningful opportunity to engage in pre-initiation consultations.[2]

5. The GOC wishes to confirm that it remains committed to fully cooperating with the TRA and engaging in consultations.

6. In this connection, the GOC notes that UK law is even stricter than the SCMA as regards the requirement for consultations. Specifically, Regulation 63 of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 ("basic Regulations") precludes the TRA from making an affirmative determination without having provided the GOC with a meaningful opportunity to engage in consultations:

[1] Including the Application, the Applicant's REVISED "AS0022 UK Producer Questionnaire OPEN" submitted on 9 February 2023, uploaded by the TRA to the public file on 22 February 2023 (hereinafter "ASQ Replies"); and the Applicant's "AD0021 Prysmian UK Group REVISED (Open version)" submitted on 7 February 2023, uploaded by the TRA to the public file on 22 February 2023 (hereinafter "ADQ Replies").
[2] GOC's Initial Comments of 19 August 2022, pp. 5-8.

> "*The TRA must not make a provisional affirmative or final affirmative determination in a subsidisation investigation unless it has given the government of the relevant foreign country or territory reasonable opportunity for consultation*."

7. The GOC thus looks forward to receiving further information and clarification from the TRA regarding this fundamental legal issue.

2.2 Uncertainty as to the definition of the UK domestic industry

8. Based on the information available in the public file, it is not fully clear which UK producer/s of OFC is/are included in the definition of the "UK industry" within the meaning of Paragraph 6 of Schedule 4 to the UK Taxation (Cross-border Trade) Act 2018 ("TCBA"). This is because the Application contains data on sales and market share concerning both the "complaining industry" (*i.e.*, the Applicant) and "all UK producers of OFC." Moreover, in its questionnaire responses, the Applicant acknowledged that "*the UK market is extremely competitive*" and that there are "*several producers*" of OFC within the UK.[3] It is nevertheless noted that no other UK producer seems to be actively participating in the present proceeding.

9. The GOC, therefore, requests clarity regarding the definition of the UK industry for the purposes of the present proceeding.

2.3 Non-confidential summaries of key information still not available

10. In its Initial Comments,[4] the GOC expressed its concerns regarding the extreme confidentiality of key information in the Application (*e.g.*, CRU estimates regarding the production of the UK OFC producers; the quantity, timing and level of trade of UK sales used to calculate the domestic unit prices; and data concerning the quantity of Chinese imports used to calculate the unit price of the imports). However, regrettably, no additional non-confidential summaries have been made available in the public file yet.

11. Additionally, extreme confidentiality has been claimed by the Applicant in its ADQ/ASQ Replies in the absence of good cause demonstration. The responses to several questions

[3] Applicant's ADQ Replies, p. 21; and Applicant's ASQ Replies, p. 23.
[4] GOC's Initial Comments of 19 August 2022, pp.11-15.

have been completely redacted.[5] Likewise, the public file does not contain non-confidential summaries of the domestic unit prices and the Applicant's costs of production.

12. It is recalled that, pursuant to Article 12.4.1 SCMA and Regulation 45 basic Regulations, interested parties submitting confidential information must mandatorily provide proper non-confidential summaries of the confidential information.[6]

13. In *China – X-Ray Equipment*, the Panel held that the statement "*[Confidential]*" in response to a general question in a questionnaire reply failed to meet the requirement of Article 6.5.1 of the WTO Anti-Dumping Agreement ("ADA") -- *i.e.*, the parallel provision of Article 12.4.1 SCMA -- as it did not contain a summary of the substantive content of the relevant confidential information.[7]

14. The GOC trusts that the TRA will require the Applicant to make the necessary non-confidential summaries available in the public file so that the GOC and other interested parties can properly exercise their rights of defence.

2.4 Delays in making evidence available in the public file

15. The GOC notes that the Applicant's ADQ and ASQ responses were supposedly filed on 5 August 2022. However, it appears that those "original" questionnaire responses were not made available in the public file. Additionally, the "revised" versions of the ADQ and ASQ responses were submitted to the TRA on 7 and 9 February 2023, respectively. However, these "revised" versions were made available in the public file only on 22 February 2023. This means that (i) the originally submitted ADQ and ASQ responses are still not available in the public file nine months later and the first time that interested parties had access to the questionnaire responses of the Applicant was in February 2023 by way of the "revised" ADQ and ASQ Replies; (ii) 15 days elapsed between the date on which the revised ADQ Replies were submitted and they were uploaded to the public file; and (iii) 13 days elapsed between the date on which the revised ASQ Replies were submitted and they were uploaded to the public file.

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[5] See for example, the Applicant's ADQ Replies, p. 23.
[6] Panel Report, *Mexico – Olive Oil (DS341)* para 7.86; and Panel Report, *China – GOES (DS414)*, para 7.189. See also Regulations 45(1) and 45(3) of the UK basic Regulation.
[7] Panel Report, *China – X-Ray Equipment (DS425)*, para 7.350 and 7.357.

16. The GOC recalls that, pursuant to Article 12.1.2 SCMA:

> "*Subject to the requirement to protect confidential information, evidence presented in writing by one interested Member or interested party shall be made available promptly to other interested Members or interested parties participating in the investigation*." (Underlining added).

17. As noted by the Panel in *EU – Footwear (China)*, "*[t]he word "promptly" is defined as "in a prompt manner, without delay" and "[i]n a prompt manner; readily, quickly; at once, without delay; directly, forthwith, there and then*."[8] In *Guatemala – Cement II*, a delay of 20 days in making a party's submission available to other parties participating in the proceeding was found to be inconsistent with Article 6.1.2 ADA (*i.e.*, the parallel provision of Article 12.1.2 SCMA).[9]

18. Based on the above, the GOC respectfully submits that the failure to make available the "original" ADQ and ASQ Replies in the public file and the delays in making the "revised" questionnaire responses available to interested parties could potentially constitute a violation of Article 12.1.2 SCMA.[10]

2.5 Procedural issues arising from the conflicting and incomplete data provided by the Applicant in the public file

19. Without prejudice to the above, the GOC notes that there are multiple inconsistencies between the information provided in the Application, the information provided in Annex 12 to the Applicant's ADQ/ASQ Replies ("Injury Annex"),[11] and the information that can be discerned from the TRA's Verification Reports dated 12 January 2023. This is questionable given that (i) only the Applicant's data was the basis of the claim of injury in the Application, and (ii) the periods and the product scope considered in the Application

[8] Panel Report, *EU – Footwear (China) (DS405)*, para. 7.583.
[9] Panel Report, *Guatemala – Cement II (DS156)*, para. 8.142, where the Panel held: "*Guatemala does not deny that Cementos Progreso's 19 December 1996 submission was not made available to Cruz Azul until 8 January 1997. Thus, there is no dispute between the parties that the Cementos Progreso submission was not made available to Cruz Azul until 20 days after its submission to the Ministry. In principle, we consider that a 20-day delay is inconsistent with the Ministry's Article 6.1.2 obligation to make this submission available to Cruz Azul "promptly*"."
[10] See, to this effect, Panel Report, *US – Softwood Lumber V (DS264)*, para. 7.137.
[11] The GOC noted that the "Injury Annex" seems to be available in the open AD file only. However, it is understood that the same injury data will be used for the purposes of the AD investigation and the AS investigation.

and in the Injury Annex are the same. In fact, in principle, the data provided by the Applicant in the Application and in its ADQ/ASQ Replies should have reflected the same facts and situation. Moreover, this puts into question the adequacy and accuracy of the information in the Application, on the basis of which the present investigation was initiated in the first place.

20. To recall, Article 11.2 SCMA "*sets forth the evidence that must be included in an application for initiation submitted to an investigating authority by or on behalf of a domestic industry*." Article 11.3 SCMA "*requires an investigating authority to review the accuracy and adequacy of the evidence in order to determine whether it is "sufficient" to justify initiation of an investigation*."[12] Paragraph 9, Schedule 4, TCBA, and Regulation 52 basic Regulations implement these requirements into UK law.[13]

21. As explained by the Panel in *Pakistan – BOPP Film (UAE)*, "*the ordinary meaning of "accurate" includes "exact, precise; conforming exactly with the truth or with a given standard; free from error", and the ordinary meaning of "adequate" includes "fully satisfying what is required; quite sufficient, suitable, or acceptable in quality or quantity". Thus, the authority must examine whether the evidence is exact, precise, and suitable, acceptable*."[14]

22. In any event, as explained in Section 2.5.6 below, if the verification carried out at the Applicant's premises resulted in the correction of some data, the outcome of any comparison between the data contained in the Application and the verified data contained in Injury Annex should be explained by the TRA, so as to allow interested parties to understand the factual background of this case. This is particularly important in light of the fact that it was the same Applicant's data in the Application and the questionnaire response for the same period and product.

23. Such a clarification is important because, as will be explained below, the factual basis of this case and of the Applicant's allegation of injury are unclear, even though the present proceeding was initiated over thirteen months ago.

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[12] Panel Report, *China – GOES (DS414)*, para 7.49.
[13] See also: GOC's Initial Comments of 19 August 2022, pp. 17-19.
[14] Panel Report, *Pakistan – BOPP Film (UAE) (DS538)*, para 7.20.

24. Moreover, the information provided in the Injury Annex is also incomplete and does not allow the GOC to gain a reasonable understanding of the situation of the Applicant because different units of measurement have been used to describe the trends of different injury factors.

25. These issues seriously undermine interested parties' rights to defend its interests and may potentially result in a violation of Articles 12.3 and 12.4.1 SCMA, as well as Regulation 45 basic Regulations.

2.5.1 Contradictory data regarding the Applicant's production

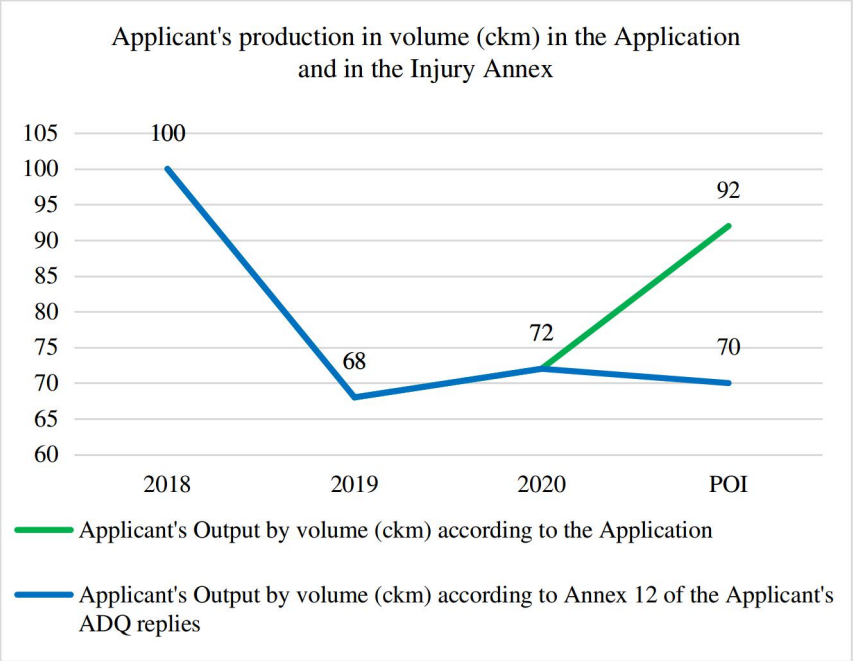
26. Although the GOC is relying on indexed data, there seems to be a mismatch between the production data provided in the Application, in the Injury Annex and in the TRA's Verification Report.

27. The Application contained the following information regarding the Applicant's production volumes:[15]

	2018	2019	2020	IP 2021
Complaining UK Industry Production volume (in ckm)	[40,000 - 45,000]	[27,000 - 32,000]	[27,000 - 32,000]	[37,000 – 42,000]
Index	100	68	72	92

28. The production information in the Injury Annex shows the opposite trend for the period of investigation ("POI").

[15] Application, p. 143.



29. In fact, while the Application shows that the Applicant's production volume substantially increased between 2019 and 2021, with an increase of 20% between 2020 and 2021, the Injury Annex shows that the Applicant's production declined by 2% between 2020 and the POI.

30. While this inconsistency, albeit substantial, remains unexplained, the TRA's Verification Reports state that "*in 2021, [the Applicant's] output by length grew*."[16] Therefore, in view of the conflicting information on the file, it is not clear whether the Applicant's output increased or decreased. Moreover, the conflicting information suggests that either the data in the Applicant's questionnaire response was incorrect, or the indexation of that response was incorrect – which would imply a violation of Article 12.4.1 SCMA and Regulation 45 basic Regulations –, or there is some other problem. Regardless, the underlying point remains that interested parties cannot exercise their rights of defence and cannot make meaningful comments.

31. Additionally, the GOC notes that, since the Applicant's production was the basis for calculating the Applicant's capacity utilisation rates, the inaccuracy of the Applicant's

[16] TRA, "Verification Report – UK Producer – Case AS0022: Single-mode Optical Fibre Cables From China" of 12 January 2023 (hereinafter "AS Verification Report"), p. 14; and TRA, "Verification Report – UK Producer – Case AD0021: Single-mode Optical Fibre Cables From China" of 12 January 2023 (hereinafter "AD Verification Report"), p. 14.

production data also casts doubt on the capacity utilisation data in the Injury Annex as also the total UK OFC production and demand.

32. In this connection, the GOC recalls that, as held by the Panel in *China – GOES*, a non-confidential summary is inadequate and deficient if there is a mismatch between the redacted information and the alleged summary. In fact, while a summary in the form of indexed data may be sufficient to enable a reasonable understanding of the information protected by confidentiality (depending on the circumstances of each case), a non-confidential summary containing incorrect indexed data does not satisfy the requirements of Article 12.4.1 SCMA and Regulation 45 basic Regulations. The provision of a summary containing incorrect data prevents interested parties from understanding the substance of the confidential information that the summary is meant to convey, and also effectively *misleads* interested parties as regards the grounds underlying the initiation and continuation of this the entire investigation.[17]

33. The provision of such a deficient summary thus constitutes a potential breach of Article 12.4.1 SCMA and Regulation 45 basic Regulations, not least because it obliges interested parties to "*piece together a puzzle of data and information*" scattered throughout different documents.[18]

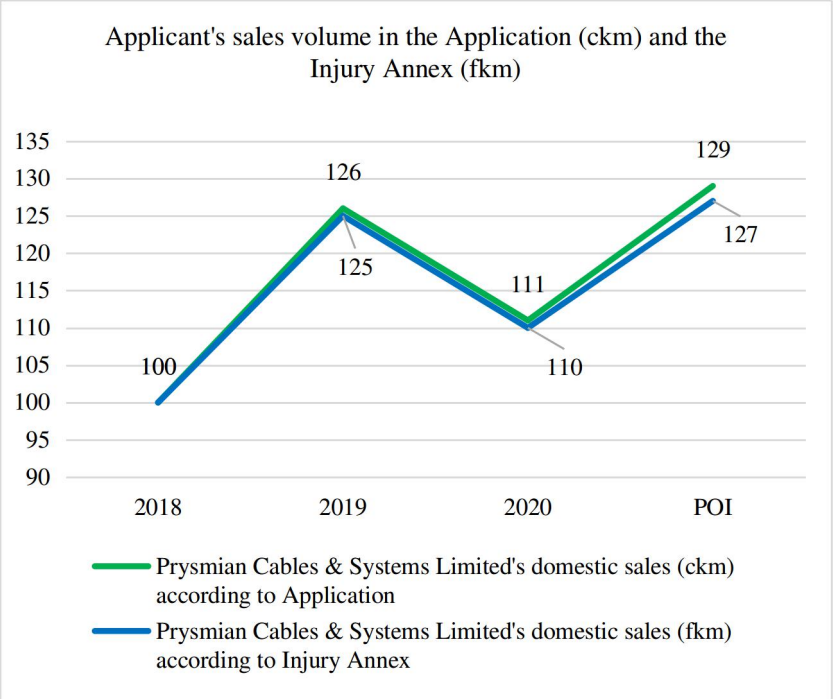
34. The GOC, therefore, trusts that the TRA will clarify the situation.

2.5.2 <u>Inconsistent data regarding sales</u>

35. There seems to be a further mismatch between the non-confidential summaries provided by the Applicant and the TRA's Verification Report regarding the Applicant's sales volume.

36. Both the Application and the Injury Annex indicate that the volume of the Applicant's domestic sales developed positively over the injury period ("IIP"), increasing by 27-29% during the IIP and by 17-18% in the POI compared to 2020.[19]

[17] Panel Report, *China – GOES (DS414)*, paras. 7.211 and 7.213.
[18] Panel Report, *China – GOES (DS414)*, para. 7.213.
[19] Application, p. 141; and Applicant's ADQ/ASQ Replies, Annex 12.

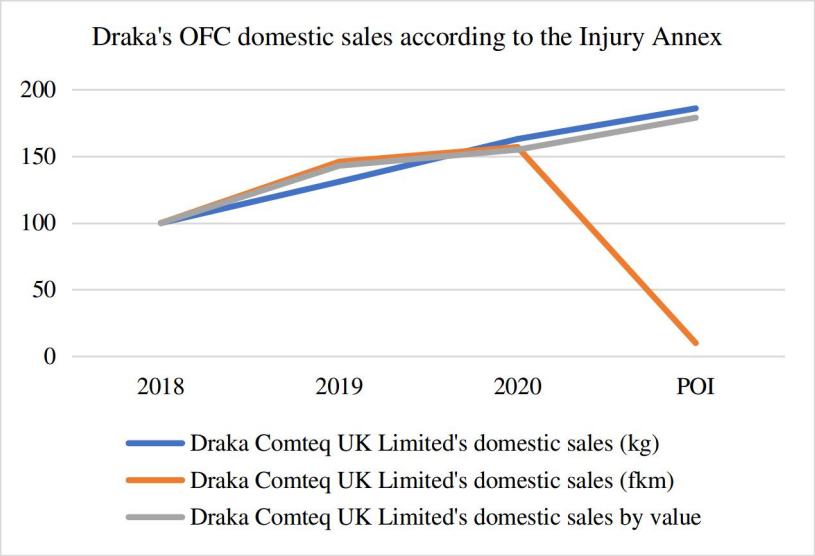


37. In contrast, the TRA's Verification Reports state that "*[b]ased on the verified data, the trend of sales of the like goods during the injury period was an increase in sales value and volume in 2019 relative to 2018, followed by a significant decline in 2020 and 2021.*"[20] (Underlining added).

38. This inconsistency adds to the questionability of the data and makes it impossible for interested parties to understand the basis of the injury claimed.

39. Additionally, there seems to be contradiction in the Injury Annex regarding Draka Cometeq Limited's ("Draka") sales volume during the POI. Draka's domestic sales volume in fibre-kilometres ("fkm") increased by 57% between 2018 and 2020 and then allegedly decreased by 147% during the POI. However, the same data shows that Draka's domestic sales volume in kilograms ("kg") increased by 63% between 2018 and 2020 and further by 23% during the POI. As illustrated in the graph below, this positive trend is also reflected in Draka's sales value, which increased by 55% between 2018 and 2020 and by a further 24% during the POI.

[20] TRA, AS Verification Report, pp. 13-14; and TRA, AD Verification Report, pp. 13-14.



40. In fact, one would expect these indicators to roughly follow a similar trend, as is the case with the Applicant's domestic sales. This discrepancy, therefore, again puts into question the accuracy of the non-confidential information and, alternatively, the data itself.

2.5.3 Inconsistent data regarding market share

41. The market share data also seems to be contradictory. This is likely the result of the inconsistency concerning the Applicant's sales and production data, and therefore, also the total UK consumption data.

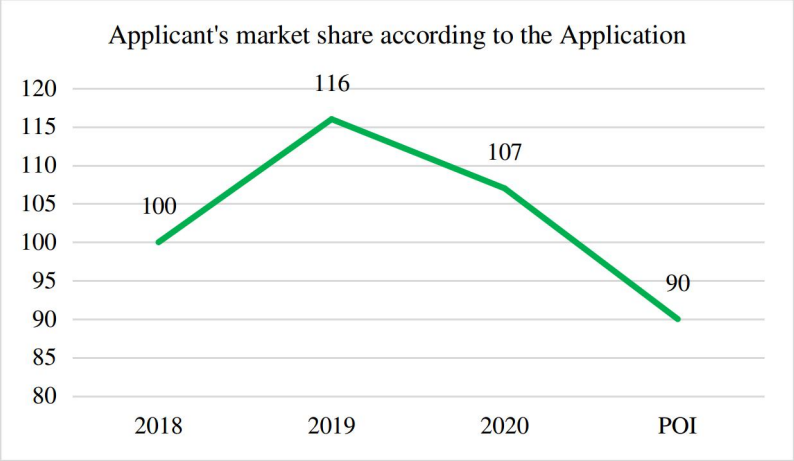
42. The Application contained the following data regarding market shares:[21]

Table 5: Estimated market shares of the product concerned[432]

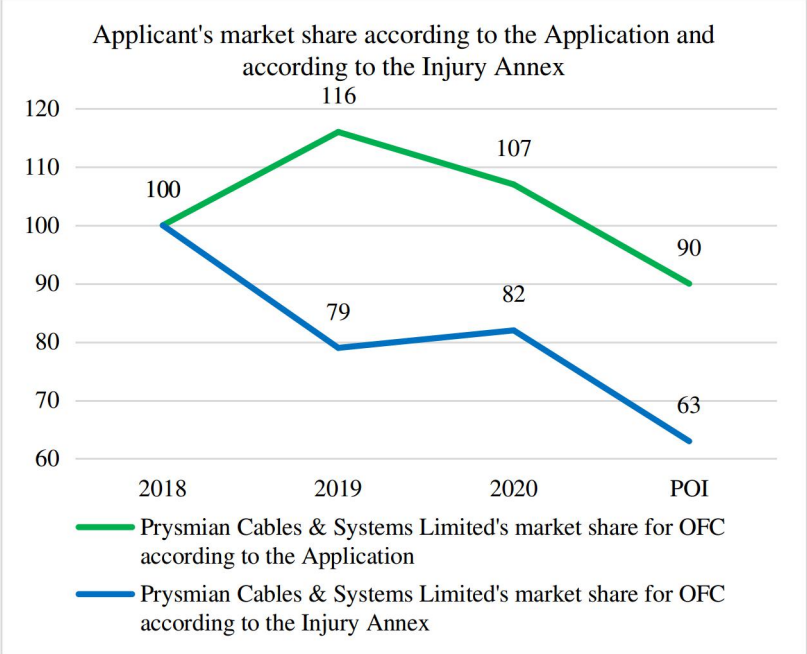
	2018	2019	2020	2021
Market share of all UK producers	48%	50%	50%	50%
Index	100	104	104	104
Market share of the Complaining UK Industry	[40-45]%	[45-50]%	[42-47]%	[35-40]%
Index	100	116	107	90
Market share of Chinese imports	4.3%	3.1%	4.2%	9.4%
Index	100	73	100	221
Market share of third country imports	47.7%	46.9%	45.8%	40.6%
Index	100	98	96	104

[21] Application, p. 142.

43. As the data above shows, according to the Application, the Applicant's market share decreased by 10% during the IIP.



44. In contrast, according to the Injury Annex, the Applicant's market share decreased by 37% during the IIP.



45. According to the TRA's Verification Reports, the "*market share estimate provided [by the Applicant] is complete and accurate. The trend shown by Prysmian UK is that it has lost a*

significant amount of market share over the injury period with only a slight recovery in market share in 2020."[22]

46. Nothing in the public file clarifies which set of data (if any) is correct. However, the TRA's Verification Reports suggest that the market share data provided in the Application was incorrect. This inconsistency, therefore, puts into question not only the market share of the Applicant but also that of all UK producers, the Chinese imports and third country imports.

2.5.4 Unclear indexation of the data concerning return on investments

47. The indexation of Annex 13 of the Applicant's ADQ/ASQ Replies – and more specifically of the Applicant's data concerning return on investments – does not allow a meaningful understanding of the confidential data provided by the Applicant.[23]

Company wide:	Return on Investment (ROI)
POI - 3 years	38
POI - 2 years	-31
POI - 1 year	-42
POI	100

In relation to like goods:	Return on Investment (ROI)
POI - 3 years	84
POI - 2 years	148
POI - 1 year	38
POI	-100

48. It is thus not possible to understand and interpret this information.

49. In this connection, the GOC recalls that, in *China – Broiler Products*, the Panel found that the non-confidential version of the Application did not comply with the requirements of Article 12.4.1 SCMA "*because providing year-over-year changes in percentage terms*

[22] TRA, AS Verification Report, p. 14; and TRA, AD Verification Report, p. 14.
[23] The GOC noted that Annex 13 seems to be available in the open AD file only. However, it is understood that the data contained therein will be used for the purposes of both the AD investigation and the AS investigation.

without a non-confidential summary of what constitutes the baseline does not allow a reasonable understanding of the magnitude of the change."[24]

2.5.5 Use of different units of measurement for several economic factors

50. In the Injury Annex, the Applicant's data regarding sales volumes and stocks are provided in kg and in fkm but not in cable-kilometres ("ckm"). This is questionable given that, in the Application, the Applicant claimed that ckm would be a more appropriate unit of measurement. In addition, this is to be seen in the context of the facts that, in the Injury Annex, the Applicant's data concerning output, production capacity, and capacity utilisation are provided in ckm only.

51. As explained in the Initial Comments, the GOC considers the conversion from fkm to ckm to be unnecessary.[25] The Applicant seems to agree. However, the use of different units of measurement for different injury factors makes it impossible for the GOC and other interested parties to gain a meaningful understanding of such data. Furthermore, by providing some injury data in fkm and others in ckm (and without providing the original data expressed in fkm) the Applicant seems to have provided an incomplete, and inaccurate data set. Any possible finding of the TRA based on such a data set cannot be considered as being based on positive evidence and entailing an objective examination as required by Article 15.1 SCMA.

52. The GOC reiterates its concerns regarding the lack of transparency caused by the contradictory information in the public file. Clearly, (i) the non-confidential summarisation provided by the Applicant regarding the injury factors does not comply with the requirements of Article 12.4.1 SCMA and Regulation 45 basic Regulations and does not permit an understanding of the factual data underlying the injury claim, thereby undermining the GOC's rights of defence; (ii) at least based on the indexed data, the information and data provided by the Applicant do not seem correct or consistent.

[24] Panel Report, *China – Broiler Products (DS427)*, para. 7.63.
[25] GOC's Initial Comments of 19 August 2022, p.48.

2.5.6 Lack of opportunity to see all information relevant to the presentation of the case

53. As alluded to above, access to the complete data forming the basis of the allegations of injury and the TRA's clarification as to why key injury data changed so drastically throughout the course of the present investigation – despite the fact that there is only one company providing the data – is necessary to enable interested parties to defend their interests.

54. Pursuant to Article 12.3 SCMA:

> "*The authorities shall whenever practicable provide timely opportunities for all interested Members and interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 4, and that is used by the authorities in a countervailing duty investigation, and to prepare presentations on the basis of this information*."

55. It is well established that the "relevance" of information within the meaning of Article 12.3 SCMA must be assessed from the perspective of the interested parties[26] and with reference to the issues under consideration.[27]

56. In this regard, the GOC notes that the obligation to provide interested parties with "timely opportunities" to see the information relevant to the presentation of their case is not conditional on receiving a request from an interested party.[28] This is because interested parties cannot request to see information that they may not know exists. However, to avoid any evidentiary difficulties, the GOC herewith requests (i) a clarification of the factual basis of the Applicant's claim of injury and the reasons for the data changes and inconsistencies; and (ii) meaningful summaries of all the injury-related data and information provided by the Applicant and being relied upon/used by the TRA.

57. Furthermore, as explained by the Panel in *Guatemala – Cement II* and recently noted by the Panel in *EU – Cost Adjustment Methodologies II (Russia)*, the obligation to provide

[26] Appellate Body Report, *EC – Tube or Pipe Fittings (DS219)*, para. 145; and Panel Report, *China – Broiler Products (Article 21.5) (DS427)*, para. 7.291.
[27] Panel Report, *EC – Salmon (Norway) (DS337)*, para. 7.769, cited with approval in Panel Report, *EU – Footwear (China) (DS405)*, para. 7.602; and Appellate Body Report, *EC – Fasteners (China) (DS397)*, para. 485.
[28] Panel Report, *China – Broiler Products (Article 21.5) (DS427)*, para. 7.291.

"timely opportunities" to see all information falling within the scope of Article 12.3 SCMA requires providing "regular and routine" access to such information:

> " *Assuming access to the file is the only practical means of complying with Articles […] 6.4 [ADA and 12.3 SCMA], access to the file need not necessarily be unlimited. Nor need the file be made available on demand. Provided access to the file is* ***regular and routine****, we consider that the requirements of Articles 6.1.2 and 6.4 [ADA and Articles 12.1.2 and 12.3 SCMA] would be satisfied*."[29] (Underlining and bold added).

58. However, as discussed above, in the present case, timely opportunities have not been provided to interested parties to access the injury-related data.

2.6 The rights of defence of interested parties should be ensured in the present investigation

59. Without prejudice to the GOC's position that AS measures should not be imposed in this case, should the TRA nevertheless consider the contrary, it should provide interested parties full opportunity to defend their interests. Therefore, unlike the situation in the AD proceeding concerning aluminium extrusions from China (AD0012), interested parties should be granted sufficient time and opportunity to comment on any provisional and final determinations issued in the present case. Indeed, the issuance of provisional and final determinations which form the basis of provisional and definitive measures respectively are two distinct phases in the investigatory procedure. Interested parties' rights of defence are violated if they are not provided adequate opportunity to comment on any of those determinations.

60. The TRA's approach as seen in AD0012 precluded interested parties from exercising their rights of defence at the most critical stage of the investigation as they had no opportunity to comment on the provisional affirmative determination because the provisional affirmative determination and statement of essential facts on final determination were released at same time. Such an approach is fundamentally unfair and not only violates the right to a fair hearing and the principle of legal certainty, but if followed in the present case, it would be plainly inconsistent with, among others, Article 12.8 SCMA. The mere mention of the

[29] Panel Report, *Guatemala – Cement II (DS156)*, para. 8.133, cited with approval in Panel Report, *EU – Cost Adjustment Methodologies II (Russia) (DS494)*, para. 7.610.

intended final determination in the provisional determination and statement of essential facts (as done in AD0012) cannot cure the above-mentioned illegalities as facts can and generally do evolve between the provisional and definitive determinations and calculations are most often revisited in light of the comments of the interested parties and other evidence on the record.

61. The GOC therefore, requests the TRA to ensure that interested parties have adequate time to comment on any disclosure issued and prior to the imposition of any provisional and definitive measures.

3 COMMENTS ON THE APPLICANT'S CLAIM OF SUBSIDISATION

62. In section F of its ASQ, the Applicant continues to make irrelevant references to various documents of general nature to assert that the Chinese OFC industry is being subsidised. Furthermore, the Applicant asserts that it conducted an "additional analysis" to show that the Chinese OFC industry "*continues to receive substantive subsidisation*."[30] Nevertheless, this purported "additional analysis" constitutes a mere list of financial figures sourced from the Annual Reports of some exporting producers and does not substantiate the allegations of subsidisation in the Application.

63. By referring to irrelevant documents and random financial figures, the Applicant is (i) misinterpreting the legal standard under Articles 1 and 2 SCMA; (ii) attempting to misrepresent and obfuscate the evidence before the TRA; and (iii) in so doing, also hampering the GOC's rights of defence.

64. Moreover, the continuation of an investigation is contingent upon the sufficiency of evidence provided in the investigation as regards injurious subsidisation. Indeed, as provided by Articles 11.7 and 11.9 SCMA and made clear by the Panel ruling in *US – Softwood Lumber V*, investigating authorities have a continuing obligation to terminate an investigation where there is insufficient evidence to justify the proceeding in view of the information deduced in the investigation.[31] The GOC considers that the information provided by it and the SDG Group showing the absence of subsidisation, compared to the

[30] Applicant's ASQ Replies, p. 44.
[31] See, to this effect, Panel Report, *US – Softwood Lumber V (DS264)*, para. 7.137.

unsubstantiated assumptions of subsidisation made by the Applicant, require an objective investigating authority to terminate the investigation.

3.1 The Applicant's general comments on the Chinese Government's plans and programmes are irrelevant and should be disregarded

65. The general country-wide and sector-wide allegations against the GOC and the OFC sector in Section F of the Applicant's ASQ Replies are unnecessary and irrelevant in the context of the present proceeding. Only issues related to the product concerned should be considered within the context of the present investigation.

66. The documents concerning "*Made in China 2025*" and "*14th Five Year Plan*" referred to by the Applicant merely indicate the country's development directions for certain industries and are not binding. As such, references to these guiding documents in the Applicant's ASQ Replies do not constitute "sufficient evidence", let alone "positive evidence", of either benefit or specificity and cannot substantiate the allegations of subsidisation advanced by the Applicant.[32]

67. Furthermore, in its ASQ Replies, the Applicant referred to "*several Measures of Suzhou Industrial Park on Promoting High-quality Development of Manufacturing Industry*" policy.[33] However, as confirmed by Annex AS.F12.A submitted by the Applicant itself, such measures supposedly aim at supporting "*three emerging high-tech industries*", namely the "*biomedicine, nanotechnology, and artificial intelligence (AI)*" industries.[34] The OFC industry is clearly outside the scope of this guideline. Therefore, the Applicant's reference to this document is plainly irrelevant.

68. Since the SCMA requires investigating authorities to only consider evidence that is "*relevant*",[35] the GOC respectfully asks the TRA to disregard the Applicant's new information.

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[32] Panel Report, *China – GOES (DS414)*, paras 7.66, 7.74, and 7.107.
[33] Applicant's ASQ Replies, pp. 42-44.
[34] Applicant's ASQ Replies, Annex AS.F12.A p. 1.
[35] Article 11.2 SCMA explicitly requires the evidence in an application to be "relevant." See also: Panel Report, *Pakistan – BOPP Film (UAE) (DS538)*, para 7.19.

3.2 The Applicant's "additional analysis" misinterprets the applicable legal standard and adds nothing to the previously made unsubstantiated allegations of subsidisation

69. In its ASQ Replies, the Applicant asserts that it conducted an "additional analysis" to show that the Chinese OFC industry "*continues to receive substantive subsidisation from the GOC*."[36] This purported "analysis" in Annex AS.F10 to the Applicant's ASQ Replies concerns 8 Chinese companies, and lists 97 alleged subsidies. In this connection, the GOC wishes to make two points.[37]

70. First, Annexes AS.F7.B, AS.F8.B and AS.F9.B are missing from the public file. It is suggestive that likely these documents may not have been provided even with the confidential response of the Applicant to the TRA.

71. Second, the purported "additional analysis" does not constitute "positive evidence" of subsidisation as it provides a mere list of certain figures sourced from the Annual Reports of certain Chinese OFC producers. For most of the supposed subsidies listed, the Applicant does not specify the nature of the financial contribution. Moreover, for none of the subsidies has the Applicant provided any evidence of the granting authority, the supposed program pursuant to which the grant was given and of specificity. In fact, while the additional "analysis" is provided under Section F2-Grants, in the ASQ Replies, the Applicant referred to some of the figures listed therein in other sections of the ASQ Replies that concern different types of financial contributions notably the provision of land at less than adequate remuneration.[38] Additionally, some amounts listed as grants are not mentioned in the annual reports of the exporting producers.[39] Furthermore, the total amounts listed by the Applicant certainly do not imply that those amounts concerned the product concerned. As can be observed from the listing provided by the Applicant itself,

[36] Applicant's ASQ Replies, p. 44.
[37] Applicant's ASQ Replies, Annex AS.F10.
[38] See, for example, Applicant's ASQ Replies, pp. 46-47, where, under the section of the questionnaire titled "Land-use rights", the Applicant alleges that the GOC granted Etern "financial subsidies related to land" by referring to one of the figures listed in Annex AS.F10.
[39] Applicant's ASQ Replies, Annex AS.F10, rows 9, 11, 25, and 32 of the Excel file.

some alleged subsidies were related to non-products concerned such as lithium batteries.[40] Clearly, this has no connection to the product concerned and is not evidence of subsidisation. Moreover, the fact that an alleged grant is listed in a company's annual report does not mean that it can be allocated to the product concerned and to the POI as such. Thus, the alleged benefit is also not established in the present case.

72. In this connection, the GOC recalls that Articles 1 and 2 SCMA require an individualised assessment of the financial contribution, benefit and specificity for each alleged subsidy. The Applicant, however, attempts to dispense with this legal requirement by grouping together different alleged subsides regardless of the grantor or the type of financial contribution involved and importantly the product involved, and by treating them as if they were the same and all for OFC. In so doing, the Applicant fails to provide *prima facie* evidence, let alone positive evidence, with regard to any of the alleged subsidies.

73. Indeed, both Article 1 SCMA and Paragraph 3, Schedule 4, TCBA, are drafted in the singular. To recall, Article 1.1(a) SCMA provides that "***a*** *subsidy shall be deemed to exist if: there is* ***a*** *financial contribution*…". Article 1.1(b) SCMA specifies that "***a*** *subsidy*" exists with regard to "***a*** *financial contribution*" if "***a*** *benefit is thereby conferred*". Article 1.2 SCMA then specifies that "***a*** *subsidy*" is subject to Part III only if "***such a*** *subsidy is specific in accordance with the provisions of Article 2*". Likewise, Paragraph 3(3), Schedule 4, TCBA provides that "***a*** *subsidy exists if (a)* ***a*** *financial contribution by a foreign authority which confers* ***a*** *benefit, or (b)* ***a*** *form of income or prince support […] received from a foreign authority which confers* ***a*** *benefit*." The UK basic Regulations then always refer to "***a*** *subsidy*" or "***the*** *subsidy*".[41] This drafting clearly envisages a separate analysis for each alleged subsidy.

74. Thus, the Applicant's approach is at odds with the structure of Article 1.1 SCMA and Paragraph 3, Schedule 4, TCBA, as well as Article 14 SCMA and Regulations 23, 25 and 26 basic Regulations.

[40] Applicant's ASQ Replies, Annex AS.F10, row 17, referring to an alleged grant to ZTT for a "Lithium battery construction project".
[41] See, for example, Regulations 19 and 22 of the UK basic Regulations.

75. Moreover, as noted in the Initial Comments, the Panel in *China – GOES* clarified that an applicant is required to provide sufficient evidence of the existence and the nature of a subsidy.[42] Evidence of the "*existence of a subsidy*" requires evidence of a financial contribution by a government or public body and a benefit to the recipient.[43] The Panel further clarified that there must be evidence of the existence of a present subsidy, including the existence of a benefit during the investigation period.[44] The evidence of the "*nature of the subsidy*" includes evidence regarding whether the subsidy is specific.[45] Accordingly, it is not enough to adduce evidence of only one of the three elements of a countervailable subsidy, *i.e.*, financial contribution by a public body, benefit, or specificity.

76. Based on the above, the GOC respectfully requests the TRA to disregard the Applicant's purported "*additional analysis*." Furthermore, in consideration of the fact that – as explained in the Initial Comments – the Application lacked sufficient evidence to justify the initiation of the present investigation, the GOC requests the TRA to terminate the present investigation pursuant to Article 11.9 SCMA because the "*overall state of the evidence*" does not justify the continuation of the present proceeding.[46]

4 COMMENTS ON THE APPLICANT'S CLAIM OF INJURY

4.1 The Applicant's injury data does not constitute "positive evidence" and cannot form the basis of an "objective examination"

77. As explained in Section 2.5 above, the non-confidential summaries of the injury data provided by the Applicant at different points in time in different submissions seem to be incomplete and inconsistent. Such data cannot constitute "positive evidence" and cannot form the basis for an "objective examination" within the meaning of Article 15.1 SCMA.

78. To recall, pursuant to Article 15.1 SCMA:

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[42] Panel Report, *China – GOES (DS414),* paras. 7.51-7.54.
[43] Panel Report, *China – GOES (DS414),* para. 7.58.
[44] Panel Report, *China – GOES (DS414),* paras. 7.71 – 7.72. The Panel in *China – GOES* underlined that the existence of subsidy refers to a present subsidy and not to some historical subsidy given to some company. See para. 7.96.
[45] Panel Report, *China – GOES (DS414),* paras. 7.60-7.61.
[46] See, to this effect, Panel Report, *US – Softwood Lumber V (DS264)*, para. 7.137.

> "*A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products*." (Underlining added).

79. The term "positive evidence" relates "*to the quality of the evidence that authorities may rely upon in making a determination*" and the word "positive" means that "*the evidence must be of an affirmative, objective and verifiable character, and that it must be credible*."[47]

80. The term "objective examination", on the other hand, "*is concerned with the investigative process itself*," *i.e.*, with "*the way in which the evidence is gathered, inquired into and, subsequently, evaluated.*" [48] In order to qualify as "objective", the investigation process "*must conform to the dictates of the basic principles of good faith and fundamental fairness*" and be conducted "*in an unbiased manner, without favouring the interests of any interested party, or group of interested parties, in the investigation*."[49] Moreover, as clarified in several WTO reports, to conduct an objective examination, "*the authority must take into account conflicting evidence and plausible explanations that may contradict its own hypotheses*."[50]

81. Further, as confirmed by the Appellate Body, Article 15.1 SCMA is an "overarching provision" that underlines all aspects of an injury determination:

> "*Article 3.1 of the Anti-Dumping Agreement and Article 15.1 of the SCM Agreement are "overarching provision[s]" that reinforce elements of Article 11 of the DSU by imposing certain "fundamental" obligations, in particular, that determinations of*

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[47] Appellate Body Report, *US – Hot-Rolled Steel (DS184)*, para. 192. See also: Appellate Body Report, *China – GOES (DS414)*, para. 126; Panel Report, *Morocco – Definitive AD Measures on Exercise Books (Tunisia) (DS578)*, para. 7.191; and Panel Report, *EC and Certain Member States – Large Civil Aircraft (DS316)*, para. 7.2079.

[48] Appellate Body Report, *US – Hot-Rolled Steel (DS184)*, para. 193. See also: Panel Report, *Morocco – Definitive AD Measures on Exercise Books (Tunisia) (DS578)*, para. 7.192.

[49] Appellate Body Report, *US – Hot-Rolled Steel (DS184)*, para. 193. See also: Appellate Body Report, *China – GOES (DS414)*, para. 126; and Panel Report, *Morocco – Definitive AD Measures on Exercise Books (Tunisia) (DS578)*, para. 7.192.

[50] Panel Report, *Morocco – Definitive AD Measures on Exercise Books (Tunisia) (DS578)*, para. 7.192, quoting Panel Report, *Pakistan – BOPP Film (UAE) (DS538)*, para. 7.258; and Appellate Body Report, *US – Softwood Lumber VI (Article 21.5 - Canada) (DS277)*, para. 97.

> *injury, including threat of injury, be based on positive evidence and an objective examination of the specific factors set out in these provisions*."[51] (Underlining added).

82. Against this background, the GOC wishes to make three points.

83. First, as confirmed by the TRA's Verification Reports, the forecasts provided by the Applicant as regards its market share, sale volume and prices do not constitute reliable indicators of future performance.[52] In other words, such forecasts do not constitute "positive evidence" within the meaning of Article 15.1 SCMA.

84. Second, as demonstrated in Section 2.5 above, the Applicant's data regarding production volume, sales volume, market share, capacity utilisation -- and likely the total UK consumption -- provided in the Application, in the Injury Annex and in the TRA's Verification Report do not match. This implies that the data concerning these key injury factors, which have thus far formed the basis of the Applicant's claim of injury, are *prima facie* unreliable, unless of course the problem is limited to indexing errors, which would then imply a violation of Article 12.4.1 SCMA.

85. Indeed, the conflicting non-confidential information affects the overall credibility of the data submitted by the Applicant and also casts doubt on whether the underlying confidential data can be considered "*affirmative, objective, verifiable, and credible*".

86. Third, even assuming that the injury data provided by the Applicant could constitute positive evidence (*quod non*), the use of different units of measurement with respect to the injury factors is again inconsistent with the positive evidence requirement.

87. The GOC recalls that "*the requirements to base a determination of injury on positive evidence and pursuant to an objective examination impose certain obligations on investigating authorities with regard to the completeness of the data used as the basis for their determinations*."[53] Indeed, according to WTO jurisprudence, an examination can only

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[51] Appellate Body Report, *US – Softwood Lumber VI (DS277)*, para. 96. See also: Appellate Body Report, *Thailand – H-Beams (DS122)*, para. 106. See also: Appellate Body Report, *Korea – Pneumatic Valves (DS504)*, para 5.168.
[52] TRA, AS Verification Report, p. 3; and TRA, AD Verification Report, p. 3.
[53] Panel Report, *Mexico – Olive Oil (DS341)*, para. 7.266, citing Panel Report, *Mexico – Anti-Dumping Measures on Rice (DS295)*, para. 7.79, upheld by Appellate Body Report, *Mexico – Anti-Dumping Measures on Rice (DS295)*, para. 180.

be "objective" if it is based on data "*which provide an accurate and unbiased picture of what it is that one is examining*."[54]

88. The fact that the Applicant used different units of measurement in the Injury Annex makes it impossible to obtain an accurate picture of the situation of the Applicant. This is not only because the use of different units of measurement renders the set of data provided by the Applicant incomplete (*i.e.*, some data is provided in ckm only and other data is provided in kg and fkm only) but also because it is not possible to evaluate the injury factors "*in context and in connection with one another*."[55]

4.2 Incorrect claim of injury

89. Without prejudice to the above, the GOC respectfully submits that, in any event, the Applicant's claim of injury is not supported by the data available in the public file.

90. To recall, pursuant to Regulation 33 basic Regulations:

> "*In considering […] the consequent impact of the dumped goods or subsidised imports on a UK industry, the TRA must take into account all relevant economic factors and indices having a bearing on the UK industry including:*
> *(a) actual and potential decline in sales, profits, output, market share, productivity, return on investments or utilisation of capacity;*
> *(b) factors affecting domestic prices of the like goods;*
> *(c) in the case of dumping, the magnitude of the margin of dumping;*
> *(d) actual and potential negative effects on cash flow, inventories, employment, wages, growth, the ability to raise capital or investments.*"

91. Regulation 33 basic Regulations seemingly transposes Article 15.4 SCMA.

92. According to WTO jurisprudence, the examination of the impact of the subsidised imports on the domestic industry pursuant to Article 15.4 SCMA "*requires an examination of the 'explanatory force' of subject imports for the state of the domestic industry*."[56] (Underlining added).

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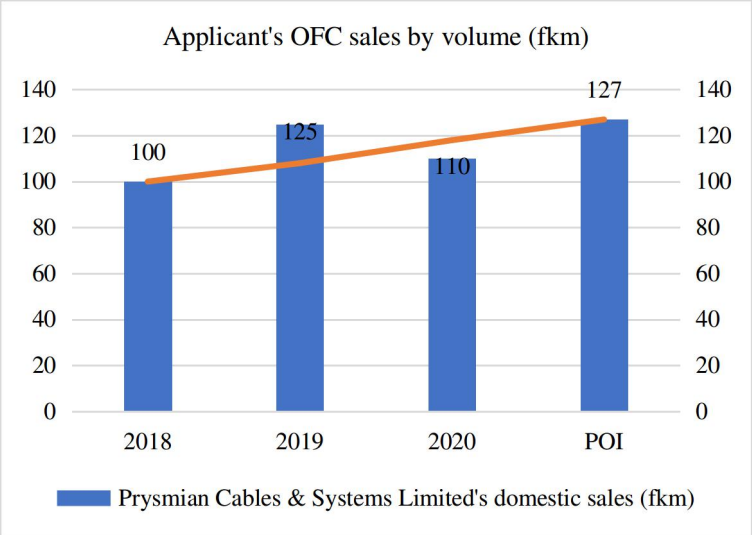
[54] Panel Report, *Mexico – Olive Oil (DS341)*, para. 7.255. See also: Appellate Body Report, *Mexico – Anti-Dumping Measures on Rice (DS295)*, para. 180.
[55] See, for example, Panel Report, *Korea – Certain Paper (DS312)*, para. 7.268.
[56] Appellate Body Report, *Korea – Pneumatic Valves (DS504)*, para. 5.166, citing Appellate Body Report, *China – GOES (DS414)*, paras. 149-150; and Appellate Body Reports, *China – HP-SSST (Japan) (DS454) / China – HP-SSST (EU) (DS460)*, para. 5.205.

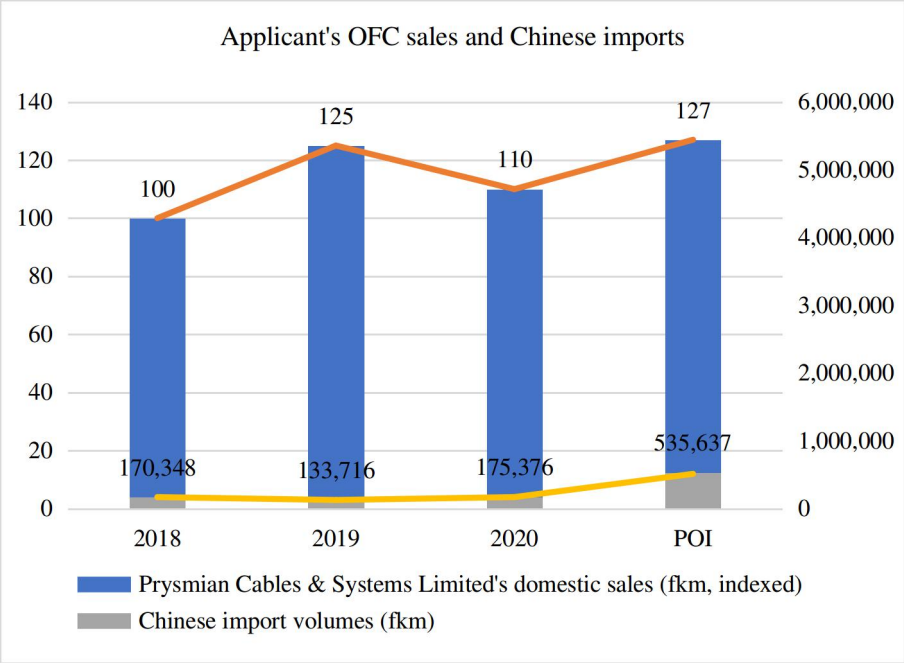
93. As further detailed below, the data available in the public file concerning sales, market share, profits, investments, cash flow, and employment showed positive trends. Moreover, to the extent that the other injury factors declined, the Chinese OFC imports were not the explanatory cause for that decline.

4.2.1 Sales volume and value

94. First, if the data provided in the Injury Annex is correct, the Applicant's sales volumes increased by 27% during the IIP notwithstanding the Chinese OFC imports.



95. Moreover, a consideration of the intervening trends shows that the Applicant's sales declined only in 2020, *i.e.*, when in fact the Chinese imports were low, and the COVID-19 pandemic hampered business across all of Europe and most of the world. Indeed, in 2020, the Applicant's export sales also declined drastically, indicating that sales were affected globally by the COVID-19 pandemic. The Applicant's UK sales increased by 17% between 2020 and 2021, *i.e.*, when the Chinese imports of OFC allegedly increased. Thus, clearly, it was the COVID-19 pandemic, and not the Chinese OFC imports, that impacted the Applicant's sales.



96. Indeed, there is no correlation between the decline in the Applicant's sales and the alleged increase in Chinese import volumes, and this clearly puts into question the explanatory force of the Chinese OFC imports alleged by the Applicant.

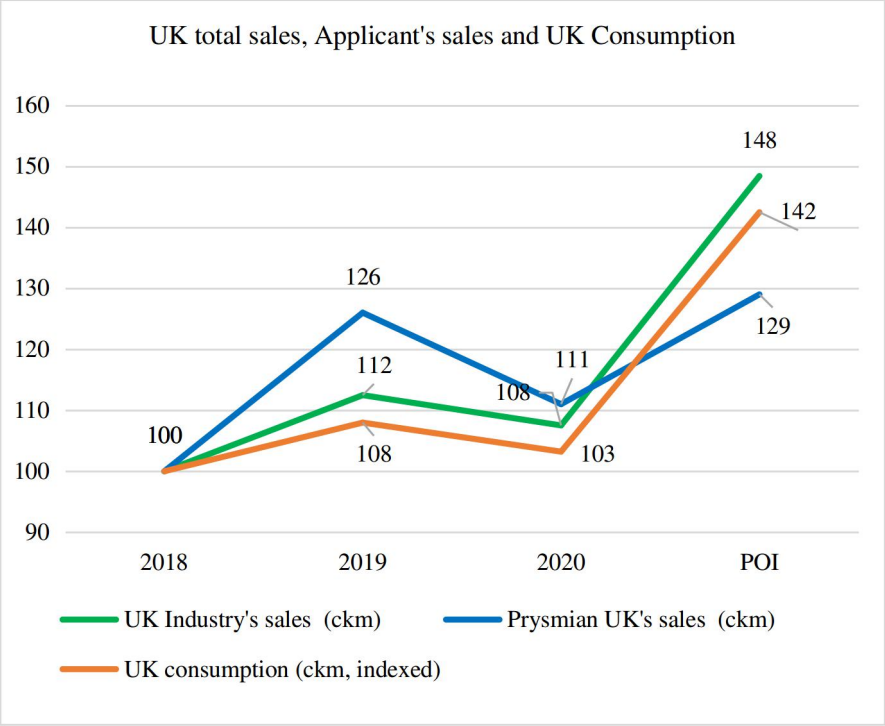
97. Second, as can be seen from the graph above, except for 2020, the Applicant did not lose sales volumes, and an isolated development in the IIP is not sufficient to claim injury.

98. In this context, the GOC recalls that, in *Morocco – Definitive AD Measures on Exercise Books (Tunisia)*, the Panel found that Morocco had acted inconsistently with Article 3.1 ADA – *i.e.*, the parallel provision of Article 15.1 SCMA – by limiting its analysis to a one-year period of the IIP:

> *"We note that the title of Article 3 "Determination of Injury" and the wording of Article 3.5 ("[i]t must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement") confirm that consideration of price effects is one of the steps in the determination of injury. As Tunisia recalls, this inquiry is part of a "logical progression ... leading to an investigating authority's ultimate injury and causation determination". Therefore, in order to determine whether imports cause, through the effects of dumping (including price effects) injury, the effects analysed must, in principle, relate to the period selected for the examination of the economic situation of the domestic industry. […] We note that, because it limited itself to a one-year period, MIICEN did not consider the evidence of the interaction between domestic and import prices over the period of four years and four months that had been placed on the record. […] We consider that the requirements of Article 3.1*

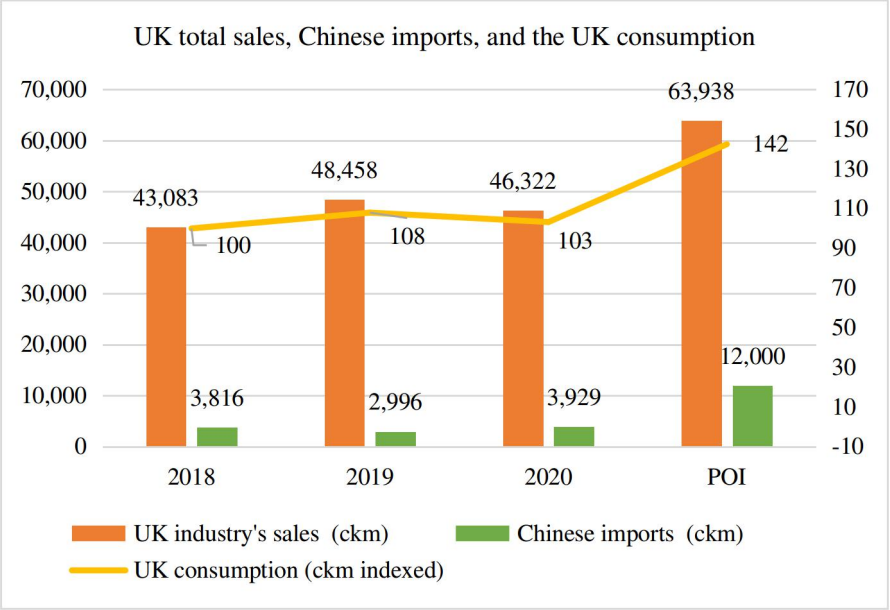
mean that an investigating authority is obliged to ensure that the data on which it bases its injury determination accurately and credibly reflect the state of the domestic industry." [57] (Underlining added and footnotes omitted).

99. Third, in any event, the Application makes clear that the OFC sales of all UK producers followed the same trend as the UK consumption and increased at a faster rate than the UK demand. Seen in this context, and as illustrated in the graph below, it was only the Applicant's sales that did not increase at the same rate as the UK consumption during the POI.



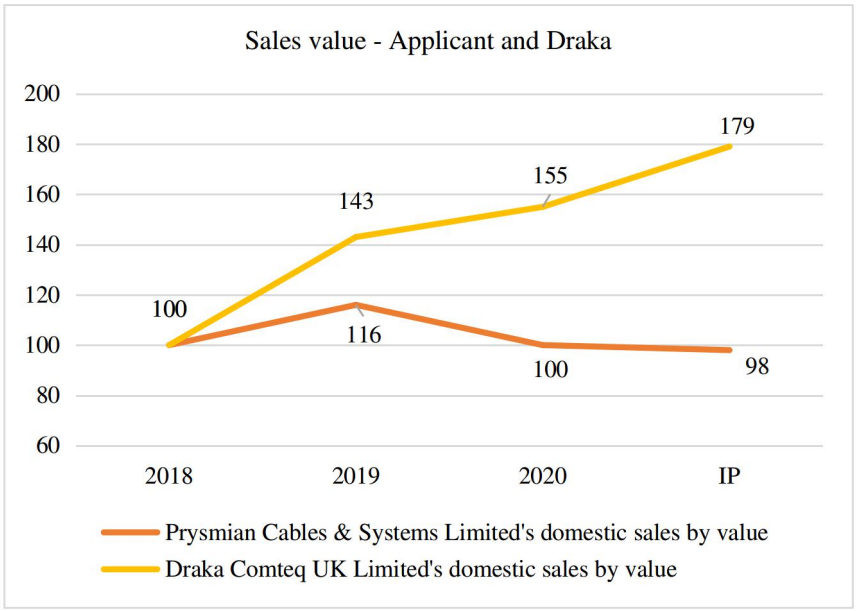
100. Fourth, as illustrated in the graph below, the Chinese OFC imports remained considerably smaller in volume compared to the UK producers' sales volumes. Moreover, the claim of a dramatic increase in Chinese OFC imports is not positive evidence when, in fact, the base figures for calculating the increase are very low. Since the Chinese import volumes were low at the beginning of the IIP, the GOC respectfully submits that, in the present case, absolute numbers are much more relevant compared to relative numbers.

[57] Panel Report, *Morocco – Definitive AD Measures on Exercise Books (Tunisia) (DS578)*, paras 7.216, 7.217, 7.220 and 7.289.



101. Thus, contrary to the Applicant's unsubstantiated assertions in the ADQ/ASQ Replies, the UK market is clearly not "*suffering serious injury*."[58]

102. Last, although, based on the Injury Annex, the value of the Applicant's sales seems to have remained stable during the IIP and the value of Draka's sales – which is also part of Prysmian UK Group[59] – increased by 79% throughout the IIP:

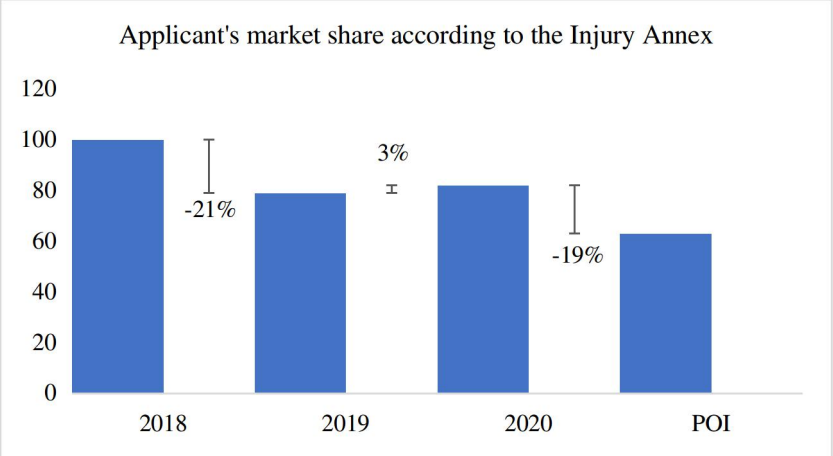


[58] Applicant's ADQ Replies, p. 21; and Applicant's ASQ Replies, p. 23.
[59] Applicant's ADQ Replies, Annex A.3.2.

103. In summary, the Applicant's sales do not show negative developments, and the Chinese imports of OFC could not have been the explanatory force for any injury claimed. The sales of all UK producers of OFC also show a positive trend and were not affected by the Chinese OFC imports.

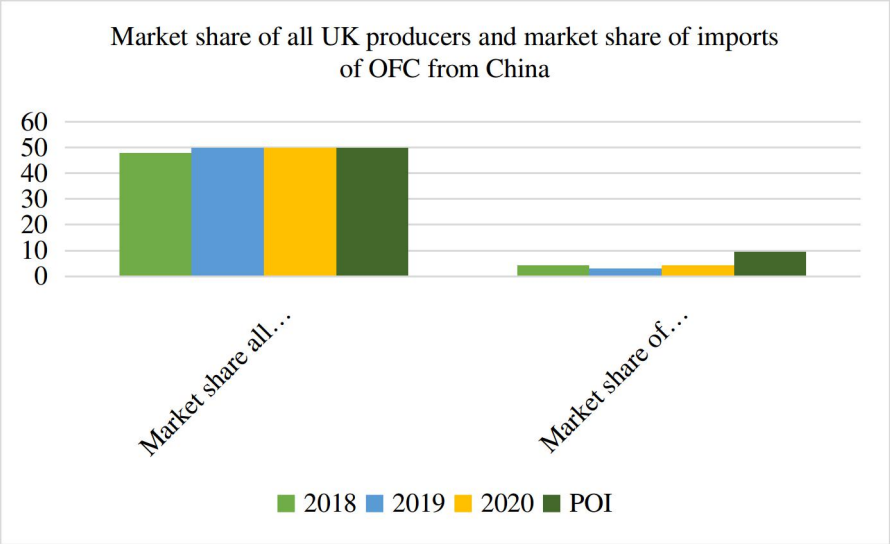
4.2.2 Market share

104. To the extent that the market share data provided by the Applicant is reliable, as shown in the graph below, the Applicant lost most of its market share (*i.e.*, 21%) in 2019, when the Chinese OFC imports were at their lowest and also lost market share.



105. The imports of OFC from China, therefore, did not have the explanatory force for the Applicant's loss of market share.

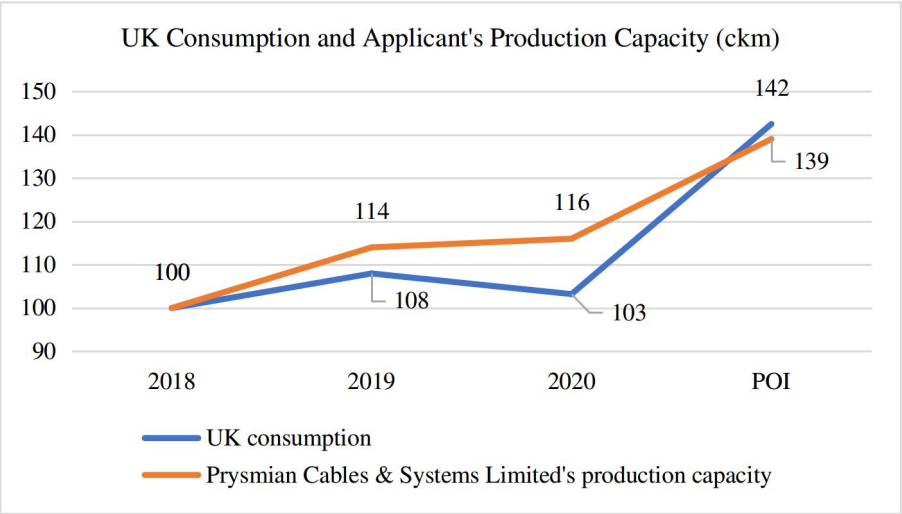
106. Moreover, as shown in the graph below, the market share of all UK producers of OFC increased throughout the IIP notwithstanding the imports of OFC from China, which indicates that the Applicants lost market share to other UK producers whether or not a part of the domestic industry.



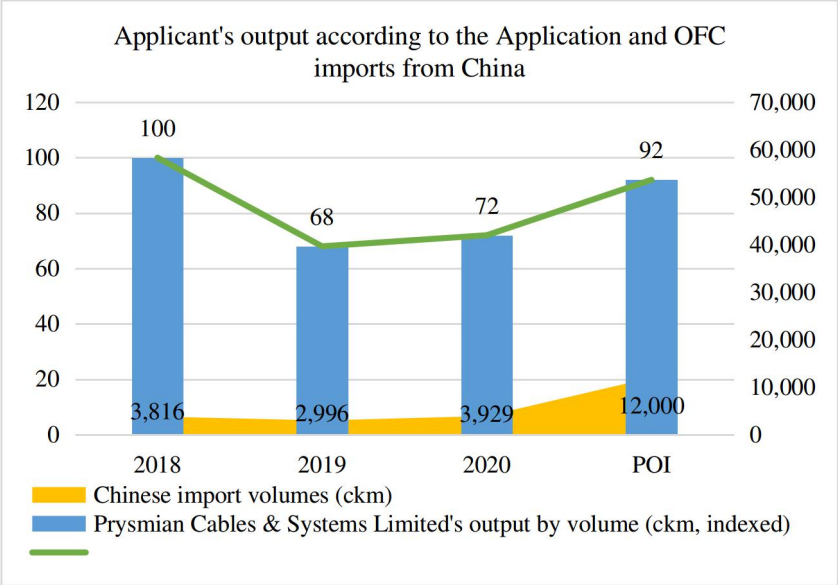
107. Given that information concerning the sales and market share of all UK producers is available, the GOC trusts that the TRA will carefully consider this factor.

4.2.3 *Production Capacity, Production and Capacity Utilisation*

108. The fact that the Applicant was able to increase its production capacity by 39% during the IIP and by 23% during the POI is, in itself, an indication that the Applicant is not suffering any injury and was not injured between 2018-2021. Moreover, it is relevant to note that the Applicant increased its production capacity well beyond the level of increase in the UK OFC demand between 2018 and 2020.

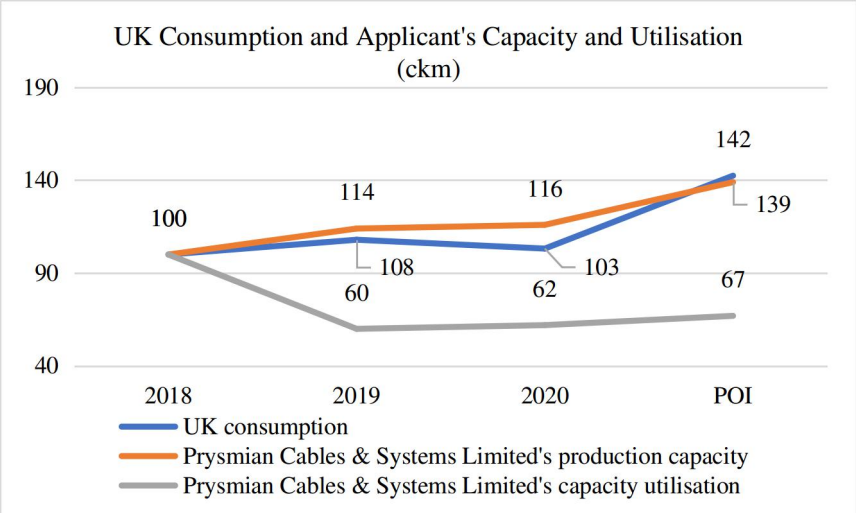


109. As regards production, the GOC recalls that the production data in the Injury Annex contradicts both the TRA's Verification Report and the data contained in the Application.[60] If, as the TRA's Verification Report suggests, the production data provided in the Application is correct, then the Applicant's production increased by 20% during the POI, *i.e.*, when the Chinese OFC imports allegedly increased. Therefore, there is no correlation between the alleged injury and the Chinese imports, implying that the OFC imports from China could not have been the explanatory force for the supposedly lower production of the Applicant. Indeed, it cannot be overlooked that the other UK OFC producers were performing well and the intra-UK producer competition would have affected the sales and consequently the production of the Applicant.



110. The Applicant's capacity utilisation cannot be seen in isolation of the sharp capacity increase by the Applicant over the IIP. Moreover, the sharpest decline in the Applicant's capacity utilization was in 2019, *i.e.*, when imports from China also declined and were at the lowest level in the IIP. Since 2019, as shown in the graph below, the Applicant's capacity utilisation has consistently increased, *i.e.*, by 2% in 2020 and by further 5% during the POI, *i.e.*, when imports from China allegedly increased. Therefore, again, the Chinese OFC imports could not have been the explanatory force for the reduction in the Applicant's capacity utilisation in 2019.

[60] See Section 2.5.1 above.

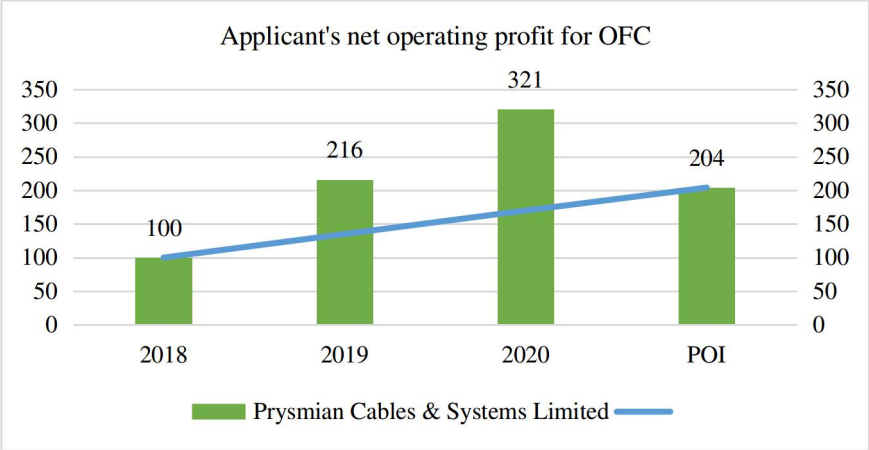


111. In summary, neither the decline in the Applicant's capacity utilisation nor the Applicant's inconsistent data concerning production indicate that the OFC imports from China had any explanatory force on the injury allegedly suffered by the Applicant.

4.2.4 Profit and Extraordinary Costs

112. The Applicant alleges that its profitability "*decreased by nearly [5-15] points from its peak in 2019.*"[61] In this connection, the GOC has five observations.

113. First, the Applicant's net profits for OFC grew considerably throughout the IIP, showing an overall increase of 104% as illustrated in the graph below.



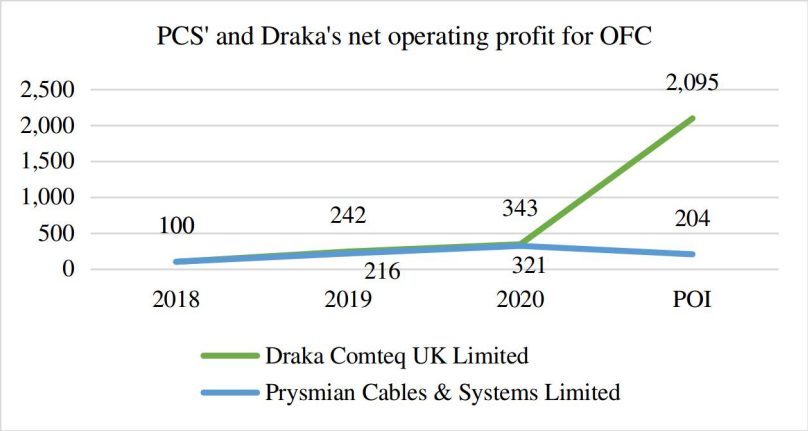
114. Second, according to the Applicant, its profitability started declining in 2019. Considering, however, that the imports of OFC from China decreased in 2019 and increased only in

[61] Applicant's ADQ Replies, p. 34; and Applicant's ASQ Replies, p. 36.

2021, there is no correlation between the decline in the Applicant's profitability and the Chinese OFC imports, and the latter were clearly not the explanatory force for the reduction in the Applicant's profitability.

115. Int his regard, it is recalled that, as noted by the Panel in *Morocco – Definitive AD Measures on Exercise Books (Tunisia)*, Morocco had "*failed to examine in an objective manner whether the subject imports had "explanatory force" for the negative profitability of the domestic producers*", as it had, among others, failed to consider the interaction among the domestic prices, the export prices and the costs of production of the domestic like product.[62]

116. Third, as shown in the graph below, Draka's net operating profit for OFC skyrocketed in 2021. This situation is not indicative of injury.



117. Fourth, the Applicant replied "*N/A*" to the TRA's question as to whether the Applicant had incurred "any extraordinary costs" during the POI.[63] However, as noted in the Initial Comments,[64] the Applicant "*reported exceptional costs of £0.7m (2020 £8.5m) in 2021, [including] a further provision related to the anti-trust legal claim in the year of £(0.5)m (2020: £6.3m).*"[65] This explains both the Applicant's decrease in net operating profit as well as the decrease in the Applicant's average net operating profit margin in 2021.

[62] Panel Report, *Morocco – Definitive AD Measures on Exercise Books ((Tunisia) (DS578)*, paras 7.306 - 7.307.
[63] Applicant's ADQ Replies, p. 25; and Applicant's ASQ Replies, p. 27.
[64] GOC's Initial Comments of 19 August 2022, p 58.
[65] Applicant's ADQ Replies, Annex A.6.3.a, p. 5 (p. 3 of the Annual Report).

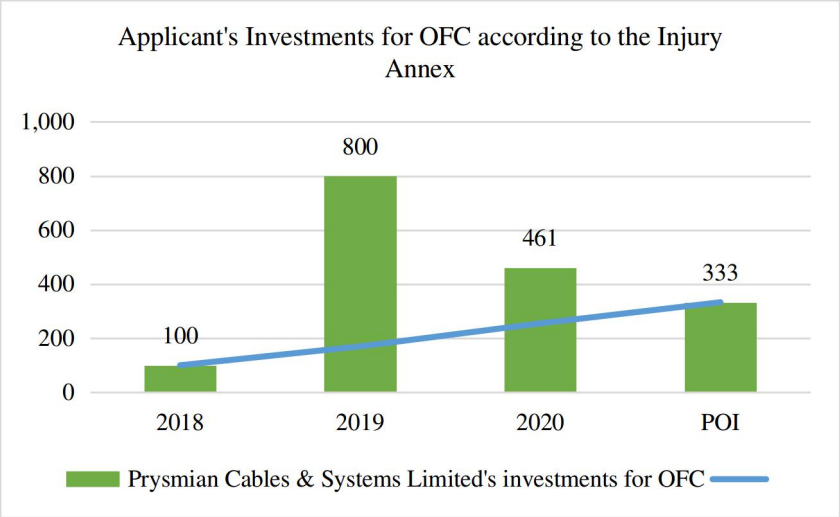
118. Fifth, as noted in the Initial Comments,[66] the Applicant's target profit of 20% is unrealistic. Indeed, according to the indexed data in the Application, the Applicant never reached this profitability level, including when the Chinese OFC imports were very low.[67] Moreover, the Applicant's target profit is much higher than the target profit that the European Commission had considered appropriate for the sales of the EU OFC producers in the context of its OFC investigation.[68]

119. In this context, the GOC recalls that, as confirmed by the Panel in *Pakistan – BOPP Film (UAE)*, an investigating authority has to consider whether the domestic industry would be able to reach the profitability levels claimed by the complainants.[69] Thus, it cannot just be assumed that, but for the Chinese OFC imports, the Applicant's average net operating profit margin would have been 20%.

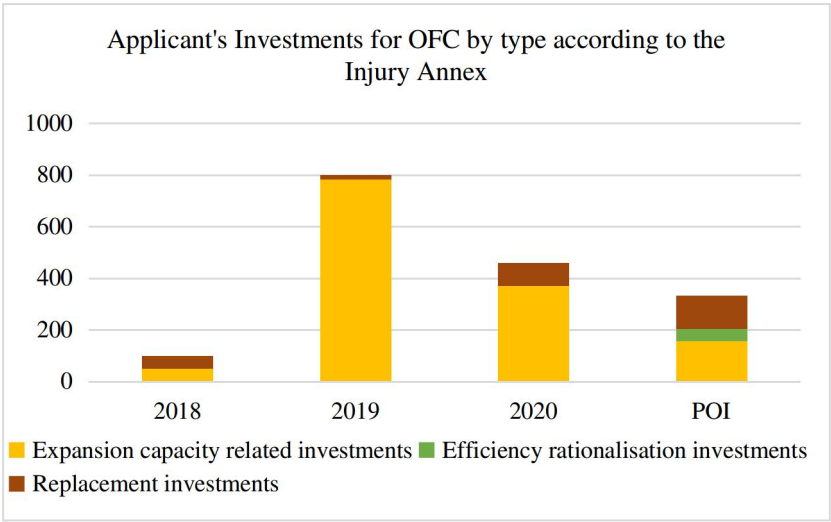
4.2.5 Investments and Return on Investments

120. As also confirmed by the TRA's Verification Reports,[70] the Applicant made massive investments in 2019. In 2020, the Applicant invested less, but still 361% more than in 2018. This decline was most likely due to the outbreak of the COVID-19 pandemic, which triggered the largest global economic crisis in more than a century. Likewise, during the POI, the Applicant's investments exceeded the investments made in 2018 by 233%. Thus, this factor is not indicative of injury.

[66] GOC's Initial Comments of 19 August 2022, pp. 57-59.
[67] Application, p. 145.
[68] 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 [2021] OJ L410/51, p. 139-140.
[69] Panel Report, *Pakistan – BOPP Film (UAE) (DS538)*, paras. 7.370 – 7.383.
[70] TRA, AS Verification Report, p. 14; and TRA, AD Verification Report, p. 14.



121. As regards the Applicant's return on investments, the GOC respectfully reiterates that, as discussed above, the indexation provided in the Injury Annex is not at all clear. It is nevertheless apparent, as shown in the graph below, that the Applicant made *almost all its investments* to increase its production capacity.



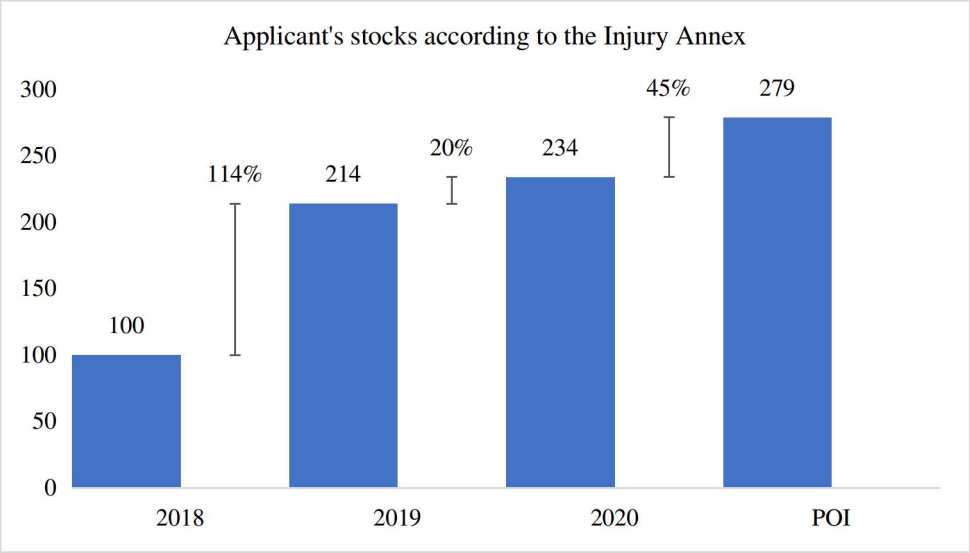
122. Since, as noted above, the Applicant increased its production capacity well beyond the level of increase in the UK OFC demand, it would not be surprising that its return on investments were low or negative during the IIP. Moreover, the Applicant does not mention the time lag between the increase in production capacity and the actual ramping up of the production, which would also affect the actual production.

4.2.6 Cash flow

123. As confirmed by the TRA's Verification Reports, the Applicant's net cash flow for the like product remained positive throughout the IIP.[71] This further indicates that the Applicant is not injured.

4.2.7 Stocks

124. According to the Injury Annex, the Applicant's stocks increased throughout the IIP. However, as shown in the graph below, stocks mainly increased (*i.e.*, by 114%) between 2018 and 2019, when the OFC imports from China also decreased and were at their lowest.



125. In addition, and without prejudice to the above, the GOC respectfully submits that, as found by the European Commission in the context of the EU OFC AD investigation, "*given that the majority of the production takes place based on orders and customers specifications, inventories do not constitute a main indicator of injury*."[72]

4.2.8 Employment

126. Employment for the production of OFC at the Applicant's premises increased by 7% in the IIP, and by 8% during the POI alone. This indicates absence of injury, and the Applicant's

[71] TRA, AS Verification Report, pp. 14-15; and TRA, AD Verification Report, pp. 14-15.
[72] 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 [2021] OJ L410/51, recital (483).

assertion that the "*increase is far below the 42% increase in UK consumption*"[73] is simply illogical. There is no direct correlation between the increase in demand and employment and none has been established by the Applicant. Moreover, the GOC recalls that the Applicant managed to increase its workforce to levels that it had never reached before in 2021 when allegedly the Chinese OFC imports increased significantly according to the Applicant. Therefore, the Applicant's claim that it was "*unable to expand its workforce mainly due to the significant increase in the volume of Chinese imports over the same period*"[74] is factually incorrect.

4.3 Interim conclusion on injury

127. In summary, the GOC respectfully submits that the injury data provided by the Applicant in the course of the present proceeding does not constitute "positive evidence" and cannot form the basis of an "objective examination" within the meaning of Article 15.1 SCMA.

128. Furthermore, and without prejudice to the above, the GOC notes that there is no basis for concluding that the domestic industry suffered any material injury. This is because six out of the eleven injury factors on which the GOC was able to provide some comments show positive trends. In fact, the non-confidential versions of the Applicant's questionnaire responses do not include data on all the injury factors listed in Regulation 33 basic Regulations, and there is no information regarding the Applicant's sales prices. Moreover, and in any event, to the extent that the other injury factors declined, the OFC imports from China are not the explanatory force for that development.

5 COMMENTS ON CAUSATION

129. Pursuant to Regulation 35 basic Regulations:

> "*(1) For the purposes of [determining whether the dumped or subsidised imports caused injury to the UK domestic industry], the TRA must examine whether any known factors other than the dumped goods or subsidised imports ("other known factors") have caused or are causing injury to a UK industry."*

[73] Application, p. 144.
[74] *Ibid.*

(2) Injury caused by other known factors must not be attributed to the dumped goods or subsidised imports.

(3) For the purposes of paragraph (2), other known factors may include:

(a) the volume and the prices of imports that are not dumped or subsidised into the [UK];
(b) contraction in demand or changes in the pattern of consumption of the like goods in the [UK];
(c) trade restrictive practices of and competition between the overseas exporters and the UK industry;
(d) developments in technology; and
(e) 12the export performance and productivity of the UK industry."

130. Regulation 35 basic Regulations encompasses the requirements of Article 15.5 SCMA. Thus, in line with well-established WTO jurisprudence, the determination of injury involves (i) demonstrating that the subsidised imports caused injury to the UK industry; and (ii) conducting a non-attribution analysis to ensure that injury caused by other known factors is not attributed to the dumped or subsidised imports.[75]

5.1 Absence of a causal link

131. According to WTO jurisprudence, the determination of a "*causal link*" between the allegedly dumped/subsidised imports and the alleged injury to the domestic industry is "*fundamental to the imposition and maintenance of an anti-dumping [and/or countervailing] duty*." [76] This determination "*shall be based on an examination of all relevant evidence*,"[77] and it requires the authorities to *demonstrate* that the subsidised imports caused injury to the domestic industry "*through the effects of subsidies*", as set forth in Articles 15.2 and 15.4 SCMA.[78]

132. In interpreting the first sentence of Article 3.5 ADA, *i.e.*, the parallel provision of Article 15.5 SCMA, the Appellate Body held that:

> "*The use of the phrase "as set forth in paragraphs 2 and 4" in Article 3.5 makes it clear that "proper assessment[s]" under Articles 3.2 and 3.4 are "necessary building*

[75] See, for example: Panel Report, *EC – Countervailing Measures on DRAM Chips (DS299)*, para. 7.397.
[76] See, for example: Panel Report, *US – Anti-Dumping Measures on Oil Country Tubular Goods (DS282)*, para. 117.
[77] Appellate Body Report, *Korea – Pneumatic Valves (Japan) (DS504)*, para. 5.189.
[78] See the text of Article 15.5 SCMA. See also to this effect, Appellate Body Report, *Korea – Pneumatic Valves (Japan) (DS504)*, para. 5.190.

> *block[s]", which "contribute[] to", rather than replicate, the "overall determination" of injury and causation that is required under Article 3.5. The first sentence of Article 3.5 thus suggests that these "building blocks" form part of and are "linked through a causation analysis between subject imports and the injury to the domestic industry, taking into account all factors that are being considered and evaluated". In requiring a "demonstrat[ion] that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury", the causation inquiry under Article 3.5 calls for a holistic assessment by an investigating authority that links together the considerations under Article 3.2 and the examination conducted under Article 3.4 in order to reach a definitive determination regarding the existence of a causal relationship between dumped imports and injury to the domestic industry. In this context, the inquiries under Articles 3.2 and 3.4 "should not be viewed in isolation", as they are "necessary components" and form part of the "logical progression of inquiry leading to an investigating authority's ultimate injury and causation determination".*
>
> *The use of the word "demonstrate[]" in Article 3.5 in contrast to the words "consider" in Article 3.2 and "examination" in Article 3.4 indicates that Article 3.5 establishes a standard that is distinct from Articles 3.2 and 3.4, inasmuch as Article 3.5 is concerned with the establishment of the causal link between dumped imports and injury. […] The use of the phrase "all relevant evidence" means that Article 3.5 covers a broad basket of evidence that encompasses, and is not limited to, the evidence relating to the inquiries under Articles 3.2 and 3.4. This suggests that Article 3.5 has a broader scope of examination than Articles 3.2 and 3.4*."[79] (Underlining added and footnotes omitted).

133. The Appellate Body further held that:

> "*A coincidence in time between upward trends in imports and a decline in the performance indicators of the domestic industry could be evidence of the existence of a causal link between increasing imports and material injury to the domestic industry. However, while such a coincidence, by itself, cannot prove causation, its absence would create serious doubts as to the existence of a causal link and would require a very compelling analysis of why causation is still present. Thus, the existence of a correlation, though indicative, is by no means dispositive of the existence of a causal link*."[80] (Underlining added).

134. In the present case, the Applicant asserts that "*the existence of a causal link […] is demonstrated by the fact that injury occurred at the same time as dumped imports from China flooded into the UK market*."[81] In this connection, the GOC wishes to make three points.

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[79] Appellate Body Report, *Korea – Pneumatic Valves (Japan) (DS504)*, paras. 5.191-5.192. See also: Appellate Body Report, *China – GOES (DS414)*, paras. 128 and 149; and Appellate Body Report, *China – HP-SSST (Japan) (DS454)/ China – HP-SSST (EU) (DS460)*, para. 5.141.
[80] Appellate Body Report, *Korea – Pneumatic Valves (Japan) (DS504)*, para. 5.291.
[81] Applicant's ADQ Replies, p. 38; and Applicant's ASQ Replies, p. 40.

135. First, for the reasons given in Section 4.1 above, the injury data submitted by the Applicant likely does not constitute "positive evidence" and cannot form the basis of an "objective examination" of the impact of the allegedly subsidised imports on the UK industry, as required by Articles 15.1 and 15.5 SCMA.

136. Second, and without prejudice to the above, the key injury indicators (*e.g.*, production capacity, sales, market share of all UK producers, profits, investments, cash flow, and employment) developed positively over the IIP. Moreover, the few injury factors that showed a negative trend during the IIP (*e.g.*, capacity utilisation, production, market share of the Applicant and stocks) started declining *prior* to the alleged increase in imports of OFC from China (*i.e.*, 2021). Therefore, contrary to the Applicant's unsubstantiated assertions, and as discussed in Section 4.2 above, there seems to be no temporal correlation between the injury allegedly suffered by the Applicant and the alleged increase in the OFC imports from China. This further reinforces the fact that the Chinese OFC imports were not – and, in fact, could not have been – the cause of injury to the Applicant (if any was suffered by the UK industry at all).

137. Third, and in any event, even if there was a temporal correlation between the Chinese OFC imports and the injury that the Applicant claims to have suffered, such a correlation would "*by no means [be] dispositive of the existence of a causal link*."[82]

5.2 Other factors affecting/injuring the Applicant during the IIP

138. The Applicant also asserts that "*there are no other factors that could break the causal link between the imports of the product concerned from China and the material injury suffered by the Complaining UK Industry*."[83] The GOC disagrees with this assertion and hereby incorporates by reference the arguments made in the Initial Comments at pages 61-66 and notes the following additional points.

[82] Appellate Body Report, *Korea – Pneumatic Valves (Japan) (DS504)*, para. 5.291.
[83] Applicant's ADQ Replies, p. 38; and Applicant's ASQ Replies, p. 40.

5.2.1 Intra-UK producer competition

139. As noted in the preceding Section, the intra-UK producer competition is clearly another causal factor that negatively affected the Applicant throughout the IIP.

140. According to the Applicant, the UK market for OFC "*is extremely competitive: there are multiple sources of supply within the UK (several producers)*".[84] This proves that the other UK OFC producers are in competition with the Applicant. Moreover, based on the Injury Annex, the Applicant incurred its biggest market share loss (*i.e.*, by 21%) between 2018 and 2019. In the same period, "all UK producers" gained market share, while the OFC imports from both China and other third countries lost market share. This demonstrates that OFC imports from China could not have gained market share at the expense of the Applicant in the first year of the IIP, and, in fact, the loss of sales and market share is clearly attributable to the other UK OFC producers.

141. Importantly, during the POI, the market share of third country imports fell from 45.8% to 40.6%, *i.e.*, showing a decline of 5.1%. This 5.1% drop corresponds in terms of both magnitude and timing to the market share gained by OFC imports from China. Therefore, this indicates that, to the extent that the OFC imports from China gained market share, this was at the expense of the third country imports not the Applicant or other UK producers. Indeed, the other UK producers did not join the Applicant and have not claimed injury on account of the Chinese OFC imports.

142. These facts are very similar to those in *China – Autos (US)*, where the Panel held that:

> "*[T]he record shows that the domestic industry lost market share in 2007 mostly to Chinese producers not part of the domestic industry. This data also indicates that subject imports and the domestic like product gained market share mostly from third country imports in the interim 2009 period. Thus, in our view, the evidence before MOFCOM clearly shows that the market shares of Chinese producers not part of the domestic industry and third country imports during the POI were relevant to MOFCOM's analysis of causation. Yet, the final determination contains no discussion of the role of Chinese producers not part of the domestic industry or their market share in connection with the analysis of causation. In our view, the absence of such a discussion requires us to conclude that MOFCOM's analysis of the causal*

[84] Applicant's ADQ Replies, p. 21; and Applicant's ASQ Replies, p. 23.

> *relationship between subject imports and injury to the domestic industry was not reasoned and adequate.*
>
> *Regarding third country imports, we note MOFCOM's statement in the final determination that the market share of third country imports did not affect its finding of a causal relationship between subject imports and injury to the domestic industry […]. We recall our finding that, in circumstances where market shares varied significantly during the POI, an IA should analyse developments throughout the entire POI. An analysis of market share limited to consideration of starting and ending levels, would not, in our view, constitute an objective examination of the evidence. The concerns we expressed regarding failure to objectively examine the market share evidence in MOFCOM's price effects analysis apply equally to MOFCOM's causation analysis. While MOFCOM concluded that the changes in the market share of third country imports had no bearing on its finding of causation, in our view, this conclusion reflects only consideration of the starting and ending figures, as third country imports accounted for 57.15% of the Chinese automobile market in 2006 and 57.40% in the interim 2009 period. For this reason, we conclude that MOFCOM's finding that third country imports had no bearing on MOFCOM's causation analysis lacks an adequate basis on the record and is not based on an objective examination of positive evidence*."[85] (Underlining added and footnotes omitted).

143. Likewise, in *EU – PET (Pakistan)*, the Panel found that the European Commission had acted inconsistently with Article 15.5 SCMA with respect to its analysis of competition from non-cooperating producers because "*the increase in market share of the non-cooperating producers […] warranted more specific examination*."[86] In that case, the Panel noted that: (i) "*the magnitude of the rise in market share of non-cooperating producers […] was, at least in absolute terms, similar to the drop in market share the Commission observed pursuant to the end-point-to-end-point analysis*"; (ii) the rise in market share of the non-cooperating producers coincided with, *inter alia*, a drop in the market share of the domestic industry; and (iii) "*the domestic industry's loss of market share during the period considered was a significant consideration in the Commission's finding that the domestic industry had suffered injury*." [87]

144. The intra-UK producer competition is also relevant to the assessment of other injury factors concerning the Applicant, such as capacity utilisation, production, profitability, and employment which, just like the Applicant's market share, dropped between 2018 and 2019,

[85] Panel Report, *China – Autos (US) (DS440)*, paras. 7.331-7.335.
[86] Panel Report, *Korea – Pneumatic Valves (DS504)*, para. 7.381.
[87] Panel Report, *EU – PET (Pakistan) (DS486)*, paras. 7.150-7.152.

i.e., when OFC imports from China decreased while "all other UK producers" increased their market share. The same is also true for the Applicant's stocks, which as noted in Section 4.2.7 above mainly increased between 2018 and 2019.

145. In light of the above, the GOC trusts that the TRA will carefully consider whether the Applicant suffered any injury due to the intra-UK producer competition.

5.2.2 COVID-19 pandemic

146. As acknowledged by both the Applicant and its Group Company *(i.e.,* the Prysmian Group), the COVID-19 pandemic "*had unprecedented negative impacts [and] severe repercussions [on] the entire manufacturing system*."[88] The pandemic, therefore, was another causal factor that adversely affected the Applicant in 2020 and 2021.

147. This is also clear from the data trends analysed in Section 4.2 above, which show a correlation between the outbreak of COVID-19 and the "negative" developments in the Applicant's sales, profitability, and investments. These factors, indeed, showed a decline in 2020 compared to 2019, *i.e.*, when the pandemic spread in Europe.

148. Moreover, the COVID-19 pandemic caused substantial supply-chain disruptions due to the restrictive measures taken by governments worldwide. The pandemic, therefore, is most likely to have impacted the Applicant's production, sales and capacity utilisation.

149. This means that, to the extent that the Applicant claims a decline in production, capacity utilisation, sales, profitability, and investments, the negative effects of the COVID-19 pandemic must be taken into consideration and segregated from those of the OFC imports from China.

150. It is deemed relevant to recall that, in *Pakistan – BOPP Film (UAE)*, the Panel found that Pakistan had acted inconsistently with the requirements of non-attribution and objective examination based on positive evidence by providing merely "*a bare assertion that the trends in the size of the domestic market showed the financial crisis had not affected the*

[88] Prysmian Group, "Press release results at 31 December 2020", available at <www.prysmiangroup.com/en/media/press-releases/press-release-results-at-31-december-2020>. See also, Prysmian UK's Annual Report 2020, Annex A.6.3.a (2020) to the Applicant's ADQ Replies, p. 2 (*i.e.*, p. 4 of the PDF document).

domestic industry…" and by failing "*to identify – let alone separate and distinguish – the injurious effects of the global financial crisis*."[89]

5.2.3 Brexit and increased costs of raw materials

151. As stated by the Applicant's Group Company on 23 February 2021, during the POI, "*the wire and cable industry [was] facing significant and sustained increases in key material cost inputs used in the manufacturing and distribution of [their] products*."[90] Moreover, as admitted by the CEO of the Applicant,[91] Brexit led to "*costs increasing on the back of a devaluing pound as Prysmian UK purchases most of its raw materials (in Euros) from European suppliers.*"[92] The negative effects of Brexit were also acknowledged by the Applicant's Group Company in its latest 2022 Integrated Annual Report.[93]

152. Thus, the devaluation of the GBP and Brexit in 2021 resulting in, among others, increased production costs of the Applicant were additional causal factors the impact of which needs to be carefully considered and distinguished from any effects of the OFC imports from China.

153. In this context, it is recalled that in *Pakistan – BOPP Film (UAE)*, the Panel found that Pakistan had acted inconsistently with Article 3.5 ADA (*i.e.*, the parallel provision of Article 15.5 SCMA) by failing to consider other potentially injurious factors that were raised by exporters and cited in the domestic producers' annual reports:

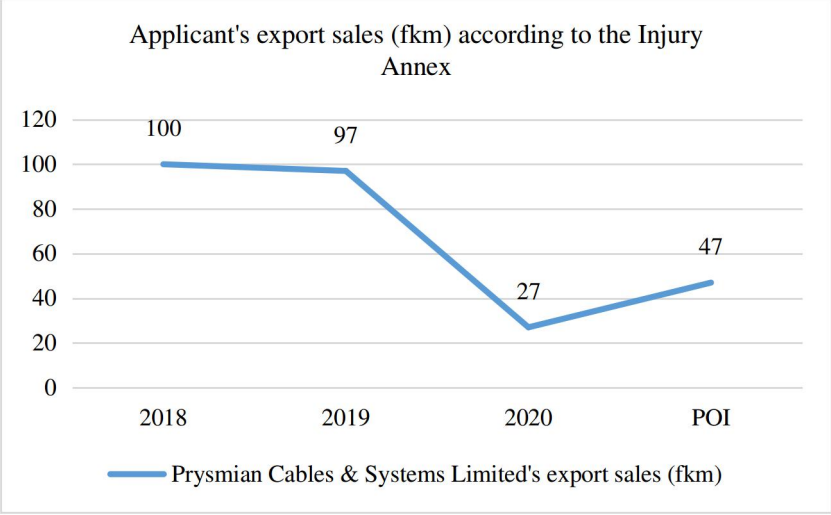
> "*[…] we disagree with Pakistan that Taghleef made "theoretical"/"bare assertions" to the NTC. Taghleef's assertions were supported by evidence – the domestic producer's annual report, where the domestic producer itself identified those other factors. The domestic producer is in the best place to know what factors have injured it. Tri-Pack Films, the domestic producer, enumerated conditions that were harming its business, and did so in its annual report, which is a formal company document. In our view, these statements in the domestic producer's own annual report were*

[89] Panel Report, *Pakistan – BOPP Film (UAE) (DS538)*, para. 7.450.
[90] Prysmian Group, "Energy Products Price Increase" (23 February 2021), available at <https://na.prysmiangroup.com/sites/default/files/atoms/files/Prysmian-Group_Price-Announcement-_02-23-2020.pdf>
[91] Prysmian Group, "Staying in the course in the UK", available at <www.prysmiangroup.com/staticres/insight-4-2017-en/global-scenario/staying-the-course-in-the-uk.html>.
[92] Prysmian Group, "Staying in the course in the UK", available at <www.prysmiangroup.com/staticres/insight-4-2017-en/global-scenario/staying-the-course-in-the-uk.html>.
[93] Prysmian Group, "Integrated Annual Report 2022", available at <www.prysmiangroup.com/sites/default/files/pr-2302-rsg-2022-integrated-annual-report-compr_1.pdf>, p. 118.

sufficient evidence to require the NTC to evaluate whether the factors in question were also injuring the domestic industry.
Pakistan argues that the fact that these statements were reflected in the annual report of the domestic producer cast doubt on their probative value. Pakistan maintains that publicly listed companies like Tri-Pack face different obligations and incentives when preparing their annual reports which "might require the disclosure of certain information to shareholders, including potential but unconfirmed factors that might affect the company's future performance". Thus, Pakistan argues that these circumstances limit the value of annual reports as evidence of other causal factors, especially when presented without any further evidence. This argument misses the point. The question is whether certain factors other than dumped imports were known to the authority to cause injury to the domestic industry. Taghleef raised these factors in the domestic proceedings and referred to the domestic producer's annual report as evidence. The fact that the annual report was not prepared by the domestic producer for purposes of the investigation does not disqualify it as evidence of other factors causing injury to the domestic industry. In our view, in the circumstances of this case, this evidence was sufficient, at a minimum, to warrant a consideration by the NTC."[94] (Underlining added and footnotes omitted)

5.2.4 The Applicant's poor export performance

154. According to the Applicant's Injury Annex, its export sales decreased substantially throughout the IIP.



155. Thus, to the extent that the Applicant suffered injury (if any), the decline in export sales would have been a contributory factor. The "*export performance and productivity of the UK industry*" is a factor explicitly listed under Regulation 35 basic Regulations and, as such, must be taken into consideration for the purposes of the non-attribution analysis.

[94] Panel Report, *Pakistan – BOPP Film (UAE) (DS538)*, paras. 7.456-7.457.

156. In relation to this, the Applicant asserts that "*if adequate measures are imposed, the UK production industry will regain viability and become more productive (notably [through] economies of scale), thereby creating a strong potential to increase its exports to third countries, especially in niche types of the like product*." The GOC notes that this argument seems misfit. In fact, contrary to what the Applicant asserts, if the OFC imports from China were affecting the UK sales of the Applicant (*quod non*), nothing prevented the Applicant from using its allegedly underutilized capacity to increase its sales to third countries.

157. Indeed, in *Korea – Pneumatic Valves*, the Panel explained that "*[…] if the domestic industry's capacity utilization rate is low, the domestic industry could, […] increase production to meet both domestic and export demand*." [95] (Underlining added)

5.2.5 The Applicant's anti-competitive behaviour

158. As noted in the Initial Comments,[96] the Applicant has a tendency to engage in anti-competitive behaviour. Indeed, the Applicant's Group Company was found to have operated a fixing-price cartel, and it was fined by the European Commission. The European Commission's decision to fine the Applicant's Group Company was upheld by the European Court of Justice,[97] and the Applicant's Group Company was also fined by the Brazilian[98] and Spanish[99] authorities for anti-competitive behaviour.

159. More recently, on 10 March 2023, the UK Competition Appeal Tribunal issued a Notice of Claim under section 47A of the Competition Act 1990 (Case No. 1532/5/7/22) acknowledging the receipt of a claim for damages against the Applicant.[100] The ground for

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[95] Panel Report, *Korea – Pneumatic Valves (DS504)*, para. 7.381.
[96] GOC's Initial Comments of 19 August 2022, Section 5.3.
[97] See Case C-601/18, *Prysmian SpA and Prysmian Cavi e Sistemi Srl v European Commission*, Judgment of the Court (Second Chamber) of 24 September 2020; and Case T-475/14, *Prysmian SpA and Prysmian Cavi e Sistemi Srl v European Commission*, Judgment of the General Court (Eighth Chamber) of 12 July 2018.
[98] See, Brazilian Government, "Cade applies BRL 20.9 million in fines for international cartel of underground and submarine cables" (1 November 2022), available at <www.gov.br/cade/en/matters/news/cade-applies-brl-20-9-million-in-fines-for-international-cartel-of-underground-and-submarine-cables>.
[99] Comision Nacional de los Mercados y la Competencia, Case S/DC/0562/15: CABLES BT/MT, Final Resolution available at <www.cnmc.es/expedientes/sdc056215>.
[100] Competition Appeal Tribunal, Notice of a Claim under section 47A of the Competition Act 1998, Case No.1532/5/7/22; available at <www.catribunal.org.uk/sites/cat/files/2023-03/2023.03.10_1532_RWE%20Renewables%20v%20Prysmian_Summary_of_Claim_Final.pdf>.

the claim for damages is the European Commission's decision to fine the Applicant's Group in 2014.

160. This not only confirms the Applicant's tendency to disregard EU and UK competition rules but also corroborates the argument that the Applicant's past actions are likely to have negatively impacted its reputation and business relationships. The GOC thus reiterates that companies may be reluctant to engage in business with the Applicant.

161. As confirmed by the Panel in *EC – Countervailing Measures on DRAM Chips*, "*forces that may have caused certain negative or positive developments*" should be considered by investigating authorities within the context of their causation analysis under Article 15.5 SCMA.[101] As such, the GOC submits that the Applicant's proven anti-competitive behaviour clearly constitutes a relevant known factor to be considered under Regulation 35 basic Regulations and should be considered in the causal link analysis.

5.3 Conclusion on causation

162. In summary, the GOC reiterates that, if the domestic industry suffered injury (*quod non*), it was clearly not due to the OFC imports from China. Moreover, contrary to the Applicant's factually incorrect assertions, there are other factors – including the intra-UK producer competition; the COVID-19 pandemic; Brexit and GBP devaluation; increased costs of raw materials; the Applicant's declining export performance; and the Applicant's proven anti-competitive behaviour – that most likely caused injury to the Applicant during the IIP, and which the TRA should carefully consider within the context of its non-attribution analysis.

6 CONCLUSION

163. For the above reasons, the GOC requests the TRA to terminate the present investigation without imposing any measures.

[101] Panel Report, *EC – Countervailing Measures on DRAM Chips (DS299)*, para. 7.364.