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EUROPEAN UNION – DEFINITIVE COUNTERVAILING DUTIES ON NEW BATTERY ELECTRIC VEHICLES FROM CHINA

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY CHINA

The following communication, dated 13 March 2025, from the delegation of China to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 4 November 2024, the People's Republic of China ("China") requested consultations with the European Union ("EU") pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article 30 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), and Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), concerning the EU's imposition of countervailing duties on New Battery Electric Vehicles ("BEVs") originating in China.

The consultations took place in Geneva on 5 December 2024. However, these consultations failed to resolve the dispute. Accordingly, China respectfully requests, pursuant to Articles 4.7 and 6 of the DSU, Article 30 of the SCM Agreement, and Article XXIII of the GATT 1994, that the Dispute Settlement Body establish a panel to examine the matter, with the standard terms of reference as set out in Article 7.1 of the DSU.

The measures at issue are the definitive countervailing duties on BEVs from China, as well as the underlying investigation that led to the imposition of these measures (hereafter "countervailing measures"), which include, *inter alia*, the actions taken or omitted by the EU during the course of - or in relation to – the investigation. This request also covers any future action or measures that the EU may take in connection with these measures.

These countervailing measures include, but are not limited to, and are evidenced by the following instruments and/or documents:

1. Commission Implementing Regulation (EU) 2024/2754 of 29 October 2024 imposing a definitive countervailing duty on imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China ("Definitive Countervailing Duty Regulation")[1];

2. Commission Implementing Regulation (EU) 2024/1866 of 3 July 2024 imposing a provisional countervailing duty on imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China ("Provisional Countervailing Duty Regulation")[2]; and

[1] Published in the Official Journal of the European Union, L-series, dated 29 October 2024: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202402754.

[2] Published in the Official Journal of the European Union, L-series, dated 4 July 2024: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401866.

3. Notice of initiation of 4 October 2023 of an anti-subsidy proceeding concerning imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China.[3]

The measures at issue include all those mentioned above, as well as any amendments, supplements, extensions, replacement measures, renewal measures and implementing measures.

With respect to the countervailing measures, China considers that the following elements of the Definitive Countervailing Duty Regulation, the Provisional Countervailing Duty Regulation, the Notice of initiation and the investigation leading to the imposition of these measures are inconsistent with the following obligations under the SCM Agreement and the GATT 1994:

A. Pre-initiation Consultations

1. The EU's failure to hold good faith consultations with the Government of China prior to the initiation of the investigation, and to provide access to non-confidential evidence, including the non-confidential summary of confidential data used for initiating the investigation, is inconsistent with Articles 13.1 and 13.4 of the SCM Agreement.

B. Initiation of the Investigation

2. The EU's failure to demonstrate the existence of special circumstances, and sufficient evidence of the existence of subsidies, material injury and/or threat thereof and causal link to justify the *ex officio* initiation of the investigation, is contrary to Articles 11.2, 11.3 and 11.6 of the SCM Agreement.

C. Subsidization

Incorrect Application of Facts Available

3. The EU's failure to give notice to all interested parties, including financial institutions, industry associations and input suppliers, of the information required from them, and to collect this information from such parties – and the EU's decision to require the Government of China (the "interested Member") to perform these acts – are contrary to Articles 10, 12.1 and 12.9 of the SCM Agreement;

4. The EU's decision to resort to facts available with respect to the Government of China violates Article 12.7 of the SCM Agreement because the EU, *inter alia*, illegally required the Government of China to forward questionnaires to financial institutions, industry associations and input suppliers; issued requests for information and gave instructions that were vague and/or unclear; requested information that was not necessary (or did not establish why certain requested information was considered necessary); requested information that did not exist; required information that the Government of China did not possess or hold (or was such that the Government could not reasonably obtain); resorted to facts available even in instances where no allegedly necessary information was missing; and in general, failed to make a reasoned and adequate finding that the Government of China refused access to or otherwise did not provide allegedly necessary information or significantly impeded the investigation;

5. The EU's selection and assessment of replacement facts with respect to the Government of China violates Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not reasonably replace the allegedly missing information with the most appropriate replacement facts; based determinations on inferences and/or assumptions; drew adverse inferences; used facts available in a punitive manner rather than make an accurate determination; and thereby did not act as an objective and unbiased investigating authority;

6. The EU's decision to resort to facts available with respect to the SAIC, Geely and BYD groups violates Article 12.7 of the SCM Agreement because the EU, *inter alia*, issued requests for information and gave instructions that were vague and/or unclear; requested information that

[3] Published in the Official Journal of the European Union, C-series, dated 4 October 2023: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202300160.

was not necessary (or did not establish why certain requested information was considered necessary); requested information that did not exist; required information that these parties did not possess or hold (or was such that these parties could not reasonably obtain); resorted to facts available even in instances where no allegedly necessary information was missing; and in general, failed to make a reasoned and adequate finding that the SAIC, Geely and BYD groups refused access to or otherwise did not provide allegedly necessary information or significantly impeded the investigation;

7. The EU's selection and assessment of replacement facts with respect to the SAIC, Geely and BYD groups violates Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not reasonably replace the allegedly missing information with the most appropriate replacement facts; based determinations on inferences and/or assumptions; drew adverse inferences; used facts available in a punitive manner rather than make an accurate determination; improperly calculated and allocated the amount of benefit conferred on the BEV producers without doing a reasonable pass-through calculation; and thereby did not act as an objective and unbiased investigating authority. To give some examples, the EU's decision to allocate the alleged benefit from certain subsidy schemes (including grants, equity injection, bonds, and preferential pre-tax deduction of research and development expenses) received by some entities of the SAIC Group on the basis of the turnover of BEVs only (rather than on the basis of the turnover of the total sales) is based on an improper establishment of the facts and a biased and unobjective assessment of the facts and violates Article 12.7 of the SCM Agreement, as it disregards available information on the record; and the EU's decision to pass through the entire benefit received by Volkswagen Finance (China) Co. Ltd. ("VWFC") and SAIC-GMAC Automotive Finance Co Ltd ("GMAC") to the SAIC Group, is based on an improper establishment of the facts and a biased and unobjective assessment of the facts and violates Article 12.7 of the SCM Agreement, as it disregards evidence on the record showing that the benefit received by VWFC and GMAC did not pass through entirely to SAIC Volkswagen Automotive Company Ltd. and the SAIC Group;

8. The EU's unjustified resort to facts available and/or selection of inappropriate replacement facts, with respect to the Government of China and the SAIC, Geely and BYD groups in a manner contrary to Article 12.7 of the SCM Agreement, vitiated key determinations made by the EU including, *inter alia*, the existence of alleged financial contributions (including determinations regarding the existence of public bodies or private bodies allegedly entrusted or directed by the Government of China), benefit and specificity, leading to violations of, *inter alia*, Articles 1.1(a)(1), 1.1(b), 1.2, 2.1, 2.2, 2.4, 10, 14, 19.1, 19.3, 19.4 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994.

Alleged Preferential Financing

9. The EU's determination that the alleged preferential financing, allegedly provided through loans, credit lines, bank acceptance drafts, discounted bills, debt-to-equity swaps, capital injections and bonds constituted a countervailable subsidy, in particular, but not limited to:

    a) The EU's determination that financial institutions in China – including banks – and their subsidiaries are/acted as public bodies is inconsistent with Articles 1.1(a)(1) and 12.7 of the SCM Agreement because the EU, *inter alia*, failed to properly establish the facts relating to financial institutions in China and, among others, their relationship to the Government of China; disregarded and failed to take into account all information on the record; and failed to undertake an objective and unbiased assessment of positive and sufficient evidence, and instead based its determination on unsupported inferences and/or assumptions as well as misinterpretation of evidence. To the extent that the EU's determination is based on facts available, the application of facts available is inconsistent with Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not properly evaluate and establish the facts available on the record in accordance with the requirements of that provision;

    b) The EU's determination that the Government of China allegedly entrusts or directs financial institutions in China – including banks – to provide preferential financing is inconsistent with Articles 1.1(a)(1)(iv) and 12.7 of the SCM Agreement because the EU, *inter alia*, failed to properly apply the established legal standard under Article 1.1(a)(1)(iv); failed to properly establish the facts relating to the conduct of financial institutions in China; disregarded and failed to take into account all information

on the record; and failed to undertake an objective and unbiased assessment of positive and sufficient evidence, and instead based its determination on unsupported inferences and/or assumptions as well as misinterpretation of evidence. To the extent that the EU's determination is based on facts available, the application of facts available is inconsistent with Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not properly evaluate and establish the facts available on the record in accordance with the requirements of that provision;

c) The EU's determination of the existence of a financial contribution, allegedly provided through loans, credit lines, bank acceptance drafts, discounted bills, debt-to-equity swaps, capital injections and bonds, is inconsistent with Article 1.1(a)(1) of the SCM Agreement;

d) The EU's determination that the alleged preferential financing, allegedly provided through loans, credit lines, bank acceptance drafts, discounted bills, debt-to-equity swaps, capital injections and bonds, conferred a benefit on the Chinese BEV producers, and the calculation of the benefit amount, are inconsistent with Articles 1.1(b), 14, 19.1, 19.3, 19.4 and 12.7 as well as Articles 10 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994, because the EU, *inter alia*, resorted to an out-of-country benchmark without sufficient factual basis and a reasoned and adequate explanation; selected an inappropriate benchmark that did not reflect the prevailing market conditions for the alleged provision of preferential financing in China; failed to make the relevant adjustments to the benchmark to reflect the prevailing market conditions pursuant to which financing would, under market conditions, be purchased/provided in China; failed to take into account all information on the record; based its determination on unsupported inferences and/or assumptions; and improperly calculated and allocated the amount of benefit conferred on BEV producers. To the extent that the EU's determination is based on facts available, the application of facts available is inconsistent with Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not properly evaluate and establish the facts available on the record in accordance with the requirements of that provision;

e) The EU's determination that the alleged preferential financing, allegedly provided through loans, credit lines, bank acceptance drafts, discounted bills, debt-to-equity swaps, capital injections and bonds, is specific is inconsistent with Articles 1.2, 2.1, 2.2 and 2.4 of the SCM Agreement because the EU, *inter alia*, failed to establish that the alleged preferential financing was specific to an enterprise or industry or group of enterprises or industries and to substantiate its specificity determination on the basis of positive evidence. To the extent that the EU's determination is based on facts available, the application of facts available is inconsistent with Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not properly evaluate and establish the facts available on the record in accordance with the requirements of that provision.

Alleged Provision of Goods at Less Than Adequate Remuneration ("LTAR")

10. The EU's determination that the alleged provision of goods (batteries, lithium iron phosphate ("LFP") and land use rights ("LURs")) at LTAR constituted a countervailable subsidy, in particular, but not limited to:

    a) With regard to the alleged provision of batteries at LTAR:

        i. The EU's determination that the alleged provision of batteries resulted in a financial contribution by the Government of China is inconsistent with Article 1.1(a)(1)(iii) of the SCM Agreement;

        ii. The EU's determination that battery suppliers allegedly are/acted as public bodies is inconsistent with Articles 1.1(a)(1) and 12.7 of the SCM Agreement because the EU, *inter alia*, failed to properly apply the established legal standard under Article 1.1(a)(1); failed to properly establish the facts relating to battery suppliers in China and, among others, their relationship to the Government of China; disregarded and failed to take into account all information on the record; and failed

to undertake an objective and unbiased assessment of positive and sufficient evidence, and instead based its determination on unsupported inferences and/or assumptions as well as misinterpretation of evidence. To the extent that the EU's determination is based on facts available, the application of facts available is inconsistent with Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not properly evaluate and establish the facts available on the record in accordance with the requirements of that provision;

iii. The EU's determination that the Government of China allegedly entrusts or directs battery suppliers to provide batteries to BEV producers is inconsistent with Articles 1.1(a)(1)(iii) and (iv), and 12.7 of the SCM Agreement because the EU, *inter alia*, failed to properly apply the established legal standard under Article 1.1(a)(1)(iii) and (iv); failed to properly establish the facts relating to the conduct of battery suppliers in China; disregarded and failed to take into account all information on the record; and failed to undertake an objective and unbiased assessment of positive and sufficient evidence, and instead based its determination on unsupported inferences and/or assumptions as well as misinterpretation of evidence. To the extent that the EU's determination is based on facts available, the application of facts available is inconsistent with Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not properly evaluate and establish the facts available on the record in accordance with the requirements of that provision;

iv. The EU's determination that the alleged provision of batteries conferred a benefit on the Chinese BEV producers, and the calculation of the benefit amount are inconsistent with Articles 1.1(b), 14, 14(d), 19.1, 19.3, 19.4 and 12.7 as well as Articles 10 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994, because the EU, *inter alia*, erroneously concluded that the domestic Chinese prices for batteries are not market prices within the meaning of Article 14(d) and are not a suitable benchmark for evaluating the adequacy of remuneration, and resorted to an out-of-country benchmark without sufficient factual basis and a reasoned and adequate explanation; selected an inappropriate benchmark that did not reflect the prevailing market conditions for the alleged provision of batteries in China; failed to make the relevant adjustments to the benchmark to reflect the prevailing market conditions pursuant to which batteries would, under market conditions, be purchased/provided in China; failed to explain its calculation of the benchmark in a transparent and adequate manner; failed to take into account all information on the record; based its determination on unsupported inferences and/or assumptions; and improperly calculated and allocated the amount of benefit conferred on BEV producers. To the extent that the EU's determination is based on facts available, the application of facts available is inconsistent with Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not properly evaluate and establish the facts available on the record in accordance with the requirements of that provision;

v. The EU's determination that the alleged provision of batteries at LTAR is specific is inconsistent with Articles 1.2, 2.1 and 2.4 of the SCM Agreement because the EU, *inter alia*, failed to establish that the alleged provision of batteries at LTAR was specific to an enterprise or industry or group of enterprises or industries and to substantiate its specificity determination on the basis of positive evidence; and failed to identify the existence of a subsidy programme. To the extent that the EU's determination is based on facts available, the application of "facts available" is inconsistent with Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not properly evaluate and establish the facts available on the record in accordance with the requirements of that provision;

b) With regard to the alleged provision of LFP at LTAR:

i. The EU's determination that the alleged provision of LFP resulted in a financial contribution by the Government of China is inconsistent with Article 1.1(a)(1)(iii) of the SCM Agreement;

ii. The EU's determination that LFP suppliers allegedly are/acted as public bodies is inconsistent with Articles 1.1(a)(1) and 12.7 of the SCM Agreement because the EU, *inter alia*, failed to properly apply the established legal standard under Article 1.1(a)(1); failed to properly establish the facts relating to LFP suppliers in China and, among others, their relationship to the Government of China; disregarded and failed to take into account all information on the record; and failed to undertake an objective and unbiased assessment of positive and sufficient evidence, and instead based its determination on unsupported inferences and/or assumptions as well as misinterpretation of evidence. To the extent that the EU's determination is based on facts available, the application of facts available is inconsistent with Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not properly evaluate and establish the facts available on the record in accordance with the requirements of that provision;

iii. The EU's determination that the Government of China allegedly entrusts or directs LFP suppliers to provide LFP to BEV producers is inconsistent with Articles 1.1(a)(1)(iii) and (iv), and 12.7 of the SCM Agreement because the EU, *inter alia*, failed to properly apply the established legal standard under Article 1.1(a)(1)(iii) and (iv); failed to properly establish the facts relating to the conduct of LFP suppliers in China; disregarded and failed to take into account all information on the record; and failed to undertake an objective and unbiased assessment of positive and sufficient evidence, and instead based its determination on unsupported inferences and/or assumptions as well as misinterpretation of evidence. To the extent that the EU's determination is based on facts available, the application of facts available is inconsistent with Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not properly evaluate and establish the facts available on the record in accordance with the requirements of that provision;

iv. The EU's determination that the alleged provision of LFP conferred a benefit on the Chinese BEV producers, and the calculation of the benefit amount are inconsistent with Articles 1.1(b), 14, 14(d), 19.1, 19.3, 19.4 and 12.7, as well as Articles 10 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994 because the EU, *inter alia*, erroneously concluded that the domestic Chinese prices for LFP are not market prices within the meaning of Article 14(d) and are not a suitable benchmark for evaluating the adequacy of remuneration, and resorted to an external benchmark without sufficient factual basis and a reasoned and adequate explanation; selected an inappropriate benchmark that did not reflect the prevailing market conditions for provision of LFP in China; failed to make the relevant adjustments to the benchmark to reflect the prevailing market conditions pursuant to which LFP would, under market conditions, be purchased/provided in China; disregarded and failed to take into account all information on the record; based its determination on unsupported inferences and/or assumptions; and improperly calculated and allocated the amount of benefit conferred on BEV producers. To the extent that the EU's determination is based on facts available, the application of facts available is inconsistent with Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not properly evaluate and establish the facts available on the record in accordance with the requirements of that provision;

v. The EU's determination that the alleged provision of LFP at LTAR is specific is inconsistent with Articles 1.2, 2.1 and 2.4 of the SCM Agreement, because the EU, *inter alia*, failed to establish that the alleged provision of LFP at LTAR was specific to an enterprise or industry or group of enterprises or industries, and to substantiate its specificity determination on the basis of positive evidence and failed to identify the existence of a subsidy programme. To the extent that the EU's determination is based on facts available, the application of facts available is inconsistent with Article 12.7 of the SCM Agreement because the EU, *inter alia*, did not properly evaluate and establish the facts available on the record in accordance with the requirements of that provision;

c) With regard to the alleged provision of LURs at LTAR:

i. The EU's determination that the alleged provision of LURs resulted in a financial contribution by the Government of China is inconsistent with Article 1.1(a)(1)(iii) of the SCM Agreement;

ii. The EU's determination that the alleged provision of LURs conferred a benefit on the Chinese BEV producers and the calculation of the benefit amount are inconsistent with Articles 1.1(b), 14, 14(d), 19.1, 19.3, 19.4 as well as Articles 10 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994, because the EU, *inter alia*, erroneously concluded that the domestic Chinese prices for LURs are not market prices within the meaning of Article 14(d) and are not a suitable benchmark for evaluating the adequacy of remuneration, and resorted to an external benchmark without sufficient factual basis and a reasoned and adequate explanation; selected an inappropriate benchmark that did not relate to the prevailing market conditions for provision of land-use rights in China and was incorrect; failed to make the relevant adjustments to the benchmark to reflect the prevailing conditions pursuant to which land-use rights would, under market conditions, be purchased/provided in China; failed to explain its calculation of the benchmark in a transparent and adequate manner; and improperly calculated and allocated the amount of benefit conferred on BEV producers;

iii. The EU's determination that the alleged provision of LURs at LTAR is specific is inconsistent with Articles 1.2, 2.1 and 2.4 of the SCM Agreement, because the EU failed to establish that the alleged provision of LURs at LTAR was specific to an enterprise or industry or group of enterprises or industries, and to substantiate its specificity determination on the basis of positive evidence; and failed to identify the existence of a subsidy programme.

Fiscal Subsidy Policy

11. The EU's determination that the Fiscal Subsidy Policy – which had expired at the start of the investigation period ("IP") – resulted in a countervailable subsidy, in particular, but not limited to:

a) The EU's determination of the existence of a financial contribution in the form of a direct transfer of funds is inconsistent with Article 1.1(a)(1) of the SCM Agreement;

b) The EU's determination that the Fiscal Subsidy Policy conferred a benefit to the Chinese BEV producers and the EU's calculation and allocation of the amount of the alleged benefit are contrary to Article 1.1(b) of the SCM Agreement as well as Articles 10, 14, 19.1, 19.3, 19.4 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994, since, *inter alia*, the actual beneficiary under this Policy was the Chinese BEV consumer/purchaser; the alleged benefit was based on the amounts received before tax; the alleged benefit was only conferred on domestic sales of BEVs; and the EU countervailed payments for sales of BEVs made prior to the IP;

c) The EU's decision to countervail an alleged subsidy supposedly resulting from the Fiscal Subsidy Policy is contrary to Articles 19.1, 19.3, 19.4 and 21.1 of the SCM Agreement and Article VI:3 of the GATT 1994 since the alleged subsidy had ceased to exist at the start of the IP.

Alleged Grants

12. The EU's determination that the alleged grants constituted a countervailable subsidy, in particular, but not limited to:

a) The EU's determination that the alleged grants amounted to a financial contribution is inconsistent with Article 1.1(a)(1)(i) of the SCM Agreement;

b) The EU's determination that the alleged grants conferred a benefit on the Chinese BEV producers and the EU's calculation and allocation of the alleged benefit are contrary to

Articles 1.1(b), 10, 12.7, 14, 19.1, 19.3, 19.4 and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994;

c) The EU's decision to countervail the alleged grants on the basis of an assumption of specificity is contrary to Articles 1.2, 2.1 and 2.2 of the SCM Agreement, and in violation of the EU's obligation to establish specificity on the basis of positive evidence, as required by Article 2.4 of the SCM Agreement.

Alleged Revenue Foregone Through Tax Exemption and Reduction Programs

13. The EU's determination that the alleged revenue foregone, through the alleged tax exemption and tax reduction programs, constituted a countervailable subsidy, in particular, but not limited to:

a) The EU's determination that the alleged tax exemption and tax reduction programs including the Enterprise Income Tax ("EIT") reduction for high and new technology enterprises, the preferential pre-tax deduction of research and development expenses, the dividend exemption between qualified resident enterprises, the technology transfer revenue deduction, and the battery consumption tax exemption, resulted in a financial contribution within the meaning of Article 1.1(a)(1)(ii) of the SCM Agreement and/or amounted to an export subsidy within the meaning of Article 3.1(a) of the SCM Agreement[4] is inconsistent with those provisions;

b) The EU's determination that the alleged tax exemption and tax reduction programs including the EIT reduction for high and new technology enterprises, the preferential pre-tax deduction of research and development expenses, the dividend exemption between qualified resident enterprises, the technology transfer revenue deduction, and the battery consumption tax exemption conferred a benefit on the Chinese BEV producers and the calculation as well as allocation of the benefit amount, are inconsistent with Articles 1.1(b), 10, 14, 19.1, 19.3, 19.4 and 32.1 of the SCM Agreement and Article VI:3 GATT 1994;

c) The EU's determination that the alleged tax exemption and tax reduction programs including the EIT reduction for high and new technology enterprises, the preferential pre-tax deduction of research and development expenses, the dividend exemption between qualified resident enterprises, the technology transfer revenue deduction, and the battery consumption tax exemption are specific is inconsistent with Articles 1.2, 2.1, 2.2 and 2.4 of the SCM Agreement because the EU failed to establish that all the alleged tax exemption and tax reduction programs are specific to an enterprise or industry or group of enterprises or industries, and to substantiate its specificity determination on the basis of positive evidence.

D. Domestic Industry

14. The EU's definition of the domestic (EU) industry is inconsistent with Articles 16.1 and 15.1 of the SCM Agreement because the EU, *inter alia*, failed to exclude from the scope of the domestic industry, the domestic (EU) producers that were related to Chinese BEV producers and imported the subsidized product ("self-imports") in significant volumes, and, as a result, failed to make a determination of threat of material injury that is based on positive evidence and an objective examination of the facts with respect to the domestic (EU) industry; and because the inclusion of such producers in the definition of the domestic (EU) industry materially distorted the threat of material injury analysis as self-imports constituted the majority of the EU imports of the subsidized product, as well as an important/significant part of the business operations and strategy of several of the domestic (EU) producers.

E. Sampling of the Chinese BEV Producers

15. The EU's selection of a sample of Chinese BEV producers that was neither statistically valid nor based on the largest percentage of the volume of exports which could have been reasonably

[4] With regard to the alleged technology transfer revenue reduction.

investigated[5] and the non-inclusion of Tesla (Shanghai) Co. Ltd. in that sample resulted, *inter alia*, in the selection of a sample of the Chinese BEV producers that was not based on an objective examination of positive evidence and was not representative of the total Chinese BEV imports into the EU; and in the EU's failure to analyze, on the basis of positive evidence and an objective examination, the volume and the price effects of the subsidized imports and the consequent impact of those imports on EU producers, in violation of Articles 15.1, 15.2, 15.4, 15.5, 15.7 and 15.8 of the SCM Agreement.

F. Existence of a Threat of Material Injury and Causal Link

16. The EU's determination of a threat of material injury to the domestic (EU) industry on account of the subsidized imports, and of a causal link between the alleged threat of material injury and the allegedly subsidized imports including, but not limited to:

    a) The EU's failure to undertake an objective examination of the volume of the subsidized imports, and their effect on the prices of the like products on the domestic (EU) market, is inconsistent with Articles 15.1, 15.2, 15.7 and 15.8 of the SCM Agreement. The EU's consideration of whether there was a significant increase in the subsidized imports was not based on an objective examination of positive evidence and the EU failed to, *inter alia*, exclude or separately and properly consider the volume of the self-imports. The EU's consideration of the effect of the subsidized imports on the prices of the like products on the domestic (EU) market was not based on an objective examination of positive evidence and the EU failed to, *inter alia*, exclude or separately and properly consider the volume and prices of the self-imports; ensure product and price comparability as it did not take into account/adjust for the differences in the product mix, product segments, brand value and other factors affecting product and price comparability between the subsidized imports and the like product; consider all the evidence available on the record relevant for the assessment of the alleged price undercutting, significant price suppression and price underselling, including the exports of Tesla (Shanghai) Co. Ltd., and properly analyze the above price effects;[6] and select a sample of the EU producers on the basis of an objective examination of positive evidence, instead of relying on an unrepresentative and unknown sample of the domestic (EU) producers;

    b) The EU's failure to undertake an objective examination, based on positive evidence, of the impact of the subsidized imports on the domestic (EU) industry, is inconsistent with Articles 15.1, 15.4, 15.7 and 15.8 of the SCM Agreement. The EU, *inter alia*, relied on an unrepresentative and unknown sample of the domestic (EU) producers to assess the impact of the subsidized imports as regards several economic factors; failed to properly and objectively evaluate the various economic factors and indices listed in Article 15.4, on the basis of all the evidence on the record; and failed to consider factors affecting domestic prices and other economic indices such as the transitioning of the EU market and domestic (EU) producers from internal combustion engine ("ICE") vehicles to BEVs, the high production costs of the domestic (EU) producers and their self-imports. The EU's evaluation did not provide a proper basis for its determination that there was a threat of material injury to the domestic (EU) industry on account of the subsidized imports;

    c) The EU's determination of a threat of material injury to the domestic (EU) industry on account of the subsidized imports is not based on positive evidence and does not involve

[5] China considers that the sampling of the Chinese BEV producers was inconsistent with the EU's obligation to select a sample of exporters or producers and to determine, among others, the alleged injury, either by using a statistically valid sample on the basis of the information available to the EU at the time of selecting the sample, or on the basis of the largest percentage of the volume of exports from China which could reasonably be investigated. China refers in this regard to Article 6.10 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. China notes that, pursuant to the *Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Part V of the Agreement on Subsidies and Countervailing Measures*, disputes arising from anti-dumping and countervailing duty measures need to be resolved in a consistent manner.

[6] Referred to in the Definitive Countervailing Duty Regulation and the Provisional Countervailing Duty Regulation as the lower prices of the subsidized imports compared to the weighted average cost of production of the domestic (EU) industry.

an objective examination, and is inconsistent with Articles 15.1, 15.2, 15.4, 15.7, and 15.8 of the SCM Agreement because the EU, *inter alia*:

i. failed to properly consider, based on an objective examination of positive evidence, the factors listed in Article 15.7 of the SCM Agreement[7] and relied, when examining those factors, not on facts but on allegation, conjecture or remote possibility that conflicted with the evidence on the record and on flawed assessments and evaluations of the volume and price effects of the subsidized imports on the domestic (EU) industry's sales volumes and prices as well as other economic indicators;

ii. failed to demonstrate, on the basis of an objective assessment of all relevant facts that the totality of the factors considered would lead to the conclusion that further subsidized exports were imminent and that, unless protective action was taken, material injury would occur;

iii. failed to establish that a change in circumstances that would create a situation in which the subsidy would cause material injury was clearly foreseen and imminent and, *inter alia*, failed to undertake an objective examination of all the relevant evidence including for the IP and post-IP;

iv. failed to consider and decide with special care the application of countervailing measures;

d) The EU's determination of a causal link between the subsidized imports and the threat of material injury to the domestic (EU) industry is not based on an objective examination of positive evidence and is inconsistent with Articles 15.1, 15.2, 15.4, 15.5, 15.7 and 15.8 of the SCM Agreement because, the EU, *inter alia*:

i. failed to base the purported causal link determination on an objective examination of all the relevant evidence on the record and establish that the subsidized imports are, through the effects of subsidies, threatening to cause material injury to the domestic (EU) industry, and relied on, among others, the flawed assessments and evaluations of the volume and price effects of the subsidized imports on the domestic (EU) industry's sales volumes and prices as well as other economic indicators and the threat of injury;

ii. objectively and adequately examine the other known factors, including, *inter alia*, the volume and prices of self-imports, the overcapacity, lack of competitiveness, and high production and regulatory costs of the domestic (EU) industry, the intra-EU industry competition, the transitioning of the EU market from ICE vehicles to BEVs, and the competition between BEV and ICE vehicles on the domestic (EU) market; and ensure that the threat of material injury to the domestic (EU) industry that was caused/that could be caused in the future by those other factors was not attributed to the subsidized imports.

G. Inconsistencies concerning the conduct of the investigation

17. The EU's expansion of the scope of the investigation (post-initiation) by, *inter alia*, the investigation of new alleged subsidies is contrary to Articles 10, 11.2, 11.3, 11.6, and 13.1 of the SCM Agreement;

[7] In particular, the nature of the subsidies in question and the trade effects likely to arise therefrom; whether there was a significant rate of increase of the subsidized imports into the EU indicating the likelihood of substantially increased importation; whether there was sufficient freely disposable, or an imminent substantial increase in, capacity of the Chinese BEV producers indicating the likelihood of substantially increased subsidized exports to the EU, taking into account the availability of other export markets to absorb any additional exports; whether the subsidized imports were entering at prices that would have a significant suppressing effect on domestic prices, and would likely increase demand for further imports; and the inventories of the investigated product.

18. The EU's incorrect and imprecise establishment of the product scope of the investigation and the EU's expansion of the product scope (post-initiation) are contrary to Articles 10, 11.1, 11.2(ii), 12.1, 12.3, 15.1 and footnote 46 thereto of the SCM Agreement;

19. The EU's failure to provide the Chinese BEV producers and the Government of China ample opportunity for providing in writing all evidence they considered relevant, *inter alia*, by denying legitimate and well-reasoned requests for deadline extensions, is in violation of Articles 12.1, 12.1.1 and 12.11 of the SCM Agreement;

20. The EU's failure to provide timely opportunities for the Government of China and all interested parties to see all information that was relevant to the presentation of their cases, and that was not confidential, concerning, *inter alia*, the calculation of the subsidy margins, such as the benchmarks used for the calculation of the benefit on account of the alleged provision of LURs and batteries at LTAR; the calculation and assessments of price undercutting, significant price suppression and price underselling; the domestic (EU) industry producers' – including the sampled EU producers' – data, information, level of cooperation and transition to BEVs among other aspects related to the determination of threat of material injury, and as a result, the EU's failure to provide the Government of China and all interested parties ample opportunity to present evidence in writing, is in violation of Articles 12.1, 12.1.2, 12.3 and 12.4 of the SCM Agreement;

21. The EU's confidential treatment of the information and data of the domestic (EU) producers in the absence of 'good cause' shown, including, but not limited to, the names of the domestic (EU) producers that did not request confidential treatment, the sample of the domestic (EU) producers selected, the information provided by the domestic (EU) producers in various submissions, including, among others, the sampling form responses, the producer questionnaire responses and other submissions or requests filed, is in violation of Article 12.4 of the SCM Agreement;

22. The EU's failure to require from the domestic (EU) producers non-confidential summaries of the information provided on an allegedly confidential basis in various submissions, including, but not limited to, the domestic (EU) producers' sampling form responses, producer questionnaire responses and amendments thereof, the post-investigation period questionnaire responses and other submissions or requests filed, in sufficient detail to enable a reasonable understanding of the substance of such information, is in violation of Article 12.4.1 of the SCM Agreement;

23. The EU's failure to ensure the accuracy of the information it relied upon during the course of the investigation, as required by Article 12.5 of the SCM Agreement is inconsistent with that provision;

24. The EU's failure to inform the Government of China and all interested parties of the essential facts under consideration which formed the basis for the decision to impose definitive countervailing duties, including, *inter alia*, the essential facts concerning the calculation of the subsidy margins such as the benchmarks used for the calculation of the benefit on account of the alleged provision of LURs and batteries at LTAR; the information selected as facts available for certain sampled Chinese BEV producers; the calculation and assessments of price undercutting, significant price suppression and price underselling; the domestic (EU) industry producers' – including the sampled EU producers' – data, information and level of cooperation and transition to BEVs among other aspects concerning the determination of the threat of material injury, is in violation of Article 12.8 of the SCM Agreement;

25. The EU's calculation of the duty rate for the non-sampled cooperating Chinese BEV producers is inconsistent with Articles 10, 12.7, 19.1, 19.3, 19.4 and 32.1 of the SCM Agreement as well as Article VI:3 of the GATT 1994 because, *inter alia*, that duty rate was based on incorrectly calculated subsidy margins of the sampled Chinese BEV producers, and subsidy margins that were established on the basis of the application of facts available in varying degrees; and because the EU failed to take into account the subsidy margin of Tesla (Shanghai) Co. Ltd. for the purpose of the calculation; and

26. The EU's failure to provide in sufficient detail, during the investigation and in the public notice of the measures, the findings and conclusions reached on all matters of fact and law considered material, all relevant information on the matters of fact and law and reasons which led to the

imposition of the measures, and reasons for the acceptance or rejection of arguments and claims raised by interested parties and the Government of China, as required by Articles 22.3 and 22.5 of the SCM Agreement.

The EU measures set out above, including to the extent not already specified, resulted in the imposition or levying of countervailing duties in a manner that is inconsistent with Articles 10, 19.1, 19.3, 19.4, 21.1, and 32.1 of the SCM Agreement and Article VI:3 of the GATT 1994.

As a result of the above inconsistencies, China considers that the EU's measures nullify or impair the benefits accruing to China, directly or indirectly, under the covered agreements.

For these reasons, China respectfully requests, pursuant to Articles 4.7 and 6 of the DSU, Article 30 of the SCM Agreement, and Article XXIII of the GATT 1994, that the Dispute Settlement Body establish a panel to examine the matter, with the standard terms of reference as set out in Article 7.1 of the DSU. China requests that this request be placed on the agenda for the meeting of the Dispute Settlement Body to be held on 24 March 2025.