



2024/1866

4.7.2024

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

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not members of the European Union ⁽¹⁾, and in particular Article 12 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE

1.1. Initiation

- (1) On 4 October 2023, the European Commission ('the Commission') initiated on its own initiative an anti-subsidy investigation with regard to imports into the Union of new battery electric vehicles ('BEVs') designed for the transport of persons originating in the People's Republic of China ('the country concerned', 'the PRC', or 'China') pursuant to Article 10(8) of Regulation (EU) 2016/1037 of the European Parliament and of the Council of 8 June 2016 on protection against subsidised imports from countries not member of the European Union ('the basic Regulation'). It published a Notice of Initiation in the *Official Journal of the European Union* ⁽²⁾ ('the Notice of Initiation').
- (2) The Commission initiated the investigation on the grounds that imports of BEVs originating in the PRC are being subsidised and are thereby causing injury ⁽³⁾ to the Union industry.
- (3) After an in-depth analysis of recent market developments and considering the sensitivity of the electric vehicle sector and its strategic importance to the EU economy in terms of innovation, value added and employment, the Commission collected market information from various independent sources. This information tended to show the existence of subsidisation by the PRC which negatively affects the situation of the Union BEV industry.
- (4) On the basis of readily available information, there was sufficient evidence demonstrating that imports of the BEVs originating in the PRC benefit from countervailable subsidies provided by the Government of the People's Republic of China ('the GOC'). Those subsidies have allowed the subsidised imports to rapidly increase their market share in the Union to the detriment of the Union industry.
- (5) The available evidence showed the likelihood of substantially increased subsidised low-priced imports that would pose an imminent threat of injury to an already vulnerable Union industry. Such a surge of low-priced imports, gaining significant market share in a rapidly growing market in which a significant and sustained rate of investments is needed as the Union market transitions to full electrification, would lead the Union industry to incur heavy losses which could become rapidly unsustainable.

⁽¹⁾ OJ L 176, 30.6.2016, p. 55.

⁽²⁾ Notice of initiation 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, OJ C/2023/160, 4.10.2023.

⁽³⁾ The general term 'injury' refers to material injury as well as to threat of material injury or material retardation of the establishment of an industry as set out in Article 2(d) of the basic Regulation.

- (6) In these special circumstances, since the Commission was in possession of sufficient evidence tending to show the existence of subsidisation, threat of injury and causal link required for the initiation of an anti-subsidy investigation, it decided, in accordance with Article 10(8) of the basic Regulation, to proceed with such an initiation without having received a written complaint by or on behalf of the Union industry.
- (7) Prior to the initiation of the anti-subsidy investigation, the Commission notified the GOC that it had decided to initiate an *ex officio* proceeding concerning imports of new BEVs from the PRC and invited the GOC for consultations in accordance with Article 10(7) of the basic Regulation. The GOC accepted the offer for consultations, which were held on 2 October 2023. During the consultations, due note was taken of the comments submitted by the GOC. However, no mutually agreed solution could be reached.

1.2. Registration

- (8) The Commission, on its own initiative, made imports of new BEVs designed for the transport of persons, originating in China, subject to registration as of 7 March 2024 by Commission Implementing Regulation (EU) 2024/785 of 5 March 2024 ('the registration Regulation')⁽⁴⁾.

1.3. Investigation period and period considered

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

1.4. Interested parties

- (10) In the Notice of Initiation, interested parties were invited to contact the Commission in order to participate in the investigation. In addition, the Commission specifically informed the known Union producers, the known exporting producers and the GOC, the known importers, suppliers and users, as well as associations known to be concerned by the initiation of the investigation and invited them to participate.
- (11) Pursuant to Article 11(11) of the basic Regulation, Union producers of the like product were requested to cooperate with the Commission.
- (12) A number of Union producers requested the Commission to keep their identity confidential ('anonymity' or 'anonymous treatment') due to a risk of significantly adverse effect in the form of retaliatory actions. The Commission individually examined the merits of each anonymity request. The Commission established that the companies showed good cause within the meaning of Article 29(1) of the basic Regulation and that there was evidence of a significant possibility of retaliation in each individual case. The Commission therefore accepted that the identity of those companies should not be disclosed.
- (13) Other Union producers which came forward did not request anonymity. The Commission considered that there could be the risk that the Union producers, which requested and showed good cause for anonymous treatment of their identity, be identified by deduction. In order to ensure that the identity of the Union producers requesting anonymity is effectively treated as confidential, anonymity was extended also to all Union producers.
- (14) Furthermore, a number of interested parties other than the Union producers (such as suppliers and importers) requested anonymity claiming a risk of significantly adverse effect in the form of retaliatory actions. The Commission carefully analysed the requests received and considered that all the parties concerned showed good cause within the meaning of Article 29(1) of the basic Regulation. Therefore, anonymous treatment was also granted to the interested parties in question.

⁽⁴⁾ Commission Implementing Regulation (EU) 2024/785 of 5 March 2024 making imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China subject to registration, OJ L, 2024/785, 6.3.2024.

- (15) The GOC requested the Commission to clarify the factual and evidentiary basis of the Union producers' claim of a risk of retaliation on the basis of which certain Union producers have been granted confidentiality. The GOC also requested the Commission to make available the submissions filed by the Union producers requesting confidential treatment of their names. The GOC also argued that it did not have any opportunity to comment on the granting of anonymity to the Union producers and on the supposed good cause in the confidentiality requests of the Union BEV producers, even though the alleged risk of retaliation supposedly targeted the GOC. Furthermore, the GOC claimed that the granting of anonymity to Union producers who did not request it was WTO inconsistent as well as in breach of Article 29(1) of the basic Regulation as the granting of anonymity is contingent upon the demonstration of good cause by those producers. The China Chamber of Commerce for Import and Export of Machinery and Electronic Products ('the CCCME') claimed that the confidentiality granted to the Union producers was inconsistent with Article 29(1) of the basic Regulation as the Commission did not demonstrate good cause in this regard.
- (16) The Commission considered that it already provided sufficient information in this respect in the Note to the file of 25 October 2023 ⁽⁵⁾ whose content is reproduced *in extenso* in this recital. It was explained therein that Union producers claimed a risk of significantly adverse effect in the form of retaliatory actions. The Commission considered that the disclosure of further details on the factual and evidentiary basis of each Union producer's claim would be liable to reveal the identity of the cooperating Union producers by deduction because of the low number of groups manufacturing BEVs on the Union market and the significant amount of public and subscription-based information available about these groups. For this reason, the Commission could not make available in any format the anonymity requests filed. Furthermore, as it was explained in recital (13) the Commission had to grant the anonymity also to Union producers that did not request it, in order to protect the identity of the Union producers which requested and showed good cause for confidential treatment of their identity as they could be identified by deduction. Therefore, the request and the claims were rejected.
- (17) The GOC claimed that there was no information or evidence in the non-confidential file of the investigation regarding the registration of the Union BEV producers as interested parties within the 7-day time limit. Furthermore, the CCCME stated that the failure to make available the registration information and provide clarity as regards the cooperation of the Union BEV producers stands in stark contrast to the treatment of the registration forms and correspondence as well as submissions of the Chinese exporting producers which were made available in the non-confidential file without delay. CCCME further claimed that this impinges upon its rights of defence to make meaningful comments on the support of the Union industry in the investigation.
- (18) The Commission noted that according to the Notice of initiation ⁽⁶⁾ there was no such 7-day time limit for Union producers or other categories of parties to register as interested parties. The 7-day time limit that the Commission understands the GOC referred to was for the Union producers to submit a sampling form. In this respect, the Commission recalled that according to Point 5.6 of the Notice of initiation, Union producers which submitted sampling information will be considered as interested parties as from the moment they submitted such information. This was the case in this investigation.
- (19) Furthermore, contrary to the anonymity granted to the Union producers, anonymity was not requested by any Chinese exporting producers. Therefore, the information available in the non-confidential file regarding the registration and cooperation of Union producers was not comparable with the respective information available for the Chinese exporting producers. In particular, given that non-confidential submissions by parties who were granted anonymity must first be thoroughly checked to ensure that anonymity was preserved, the availability of these submissions in the non-confidential file was slightly delayed. Nevertheless, interested parties had enough time to comment on the respective documents once they were added to the non-confidential file and therefore no rights of defence were breached. As concerns the support of the Union industry, as explained in recital (45), in an *ex officio* investigation, the notion of support of the Union industry is not relevant.

⁽⁵⁾ t23.005006.

⁽⁶⁾ Referred to in footnote 2 above.

- (20) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings. Hearings with the Commission services were held with the GOC, the CCCME, Tesla (Shanghai) Co., Ltd. ('Tesla'), Smart Europe GmbH ('Smart'), Company 24, Company 22 and Green World Mobility B.V. ('Green World Mobility')⁽⁷⁾.
- (21) The CCCME claimed that the Commission hampered the CCCME's rights of defence by the undue delay of granting interested party status to the CCCME and imposing a heightened administrative burden on the CCCME from an overly detailed examination of Powers of Attorney by the Commission.
- (22) In this case, the CCCME got the status of an interested party on 10 October 2023. The CCCME was requested to demonstrate that it was representing companies having an objective link between their activities and the product under investigation. Therefore, the Commission carefully assessed the Power of Attorney documents provided by the exporting producers to the CCCME. The Commission concluded that this assessment did not hamper the rights of defence of the CCCME as the CCCME received sufficient opportunity to provide comments during the provisional stage of the investigation. In particular, an extension of the deadline to provide comments on initiation was granted so as to ensure that the CCCME had the same time for comments as other interested parties. Therefore, the claim was rejected.

1.5. Sampling

- (23) In the Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 27 of the basic Regulation.

1.5.1. Sampling of Union producers

- (24) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all Union producers to provide the information specified in the Notice of Initiation.
- (25) Several Union producers provided the requested information and agreed to be included in the sample.
- (26) Pursuant to Article 27 of the basic Regulation, the selection of the sample was based on the largest representative volume of sales and production in the Union of the like product during the investigation period. The Commission also considered the geographical spread of Union producers within the Union as well as ensured the inclusion of a wide range of BEVs models. The provisional sample consisted of four Union producers. The sampled Union producers accounted for 38 % of sales and 34 % of total production volume of the Union industry in the investigation period. The Commission invited interested parties to comment on the provisional sample.
- (27) The Commission received comments on the provisional sample and cooperation of Union producers from Company 21, the GOC and the CCCME.
- (28) The GOC claimed that there was no "save date" in the header of the sampling forms as was the case for the sampling forms of the Chinese exporting producers. Furthermore, the GOC, the CCCME and Company 21 stated that as the identity of the Union producers was not disclosed and there was a lack of detail on the sampling criteria used by the Commission, they could not comment on the sample of the Union producers and cross check the information provided by the Commission. Therefore, the GOC requested the Commission to: (i) clarify how many Union producers timely registered their interest in the investigation and were cooperating; (ii) indicate how many Union BEV producers that were cooperating were not members of the European Automobile Manufacturers' Association ('ACEA'); (iii) clarify whether companies 2, 4, 6, 10, 23 and 25 filed sampling forms and why their sampling forms were not available in the non-confidential file of the investigation – this request was also made by

⁽⁷⁾ For the GOC on 10 October 2023, 31 October 2023 and on 23 November 2023, for the CCCME on 11 April 2024, for Tesla on 30 October 2023 and 12 April 2024, for Smart on 8 November 2023, for Company 24 on 22 November 2023, for Company 22 on 5 December 2023 and 11 April 2024, and for Green World Mobility on 15 April 2024.

CCCME who added also companies 30 and 31 in this regard; (iv) clarify whether any of the sampled companies belonged to the same group; (v) whether the Commission was applying the single economic entity principle with regard to the sampled Union producers and whether all related parties of the sampled producers were being required to provide the relevant information; (vi) clarify what was implied by the inclusion of models in the context of the sample selection and how did the models relate to the supposed 'segments' since for the Chinese exporting producers, undefined 'segments' were used as a sampling criterion; (vii) whether or not the Union producers with the highest production and sales volumes in the investigation period were included in the sample and if not included, to explain on which basis and for what reasons the Commission decided not to include those companies in the sample; (viii) clarify the weight and relevance of each criterion in the selection of the Union producers' sample.

- (29) The CCCME also requested some of this information during the investigation. Company 21 claimed that one more Union producer should be included in the sample to enable the Commission to carry out an objective injury examination based on positive evidence, taking into account the overall relevance of the criteria put forward by the Commission for the sampling selection.
- (30) The Commission noted that the "save date" that appears on documents in the non-confidential file of the investigation was automatically generated by the TRON.tdi application used by the Commission and interested parties in trade defence investigations. However, due to the anonymity granted to the Union producers, the cooperating Union producers submitted the sampling forms via email and not via the TRON.tdi platform as the Chinese exporting producers did. Furthermore, all sampling replies of the Union industry were added in the non-confidential file together in a zipped folder following a thorough check in order to preserve the confidentiality of the cooperating Union producers. The TRON.tdi application cannot add a "save date" on a zipped folder. Therefore, such "save date" is not visible on the sampling form of the Union producers.
- (31) The Commission noted that all the sampling forms submitted by the Union producers were made available in the non-confidential file of the investigation on 30 October 2023 ⁽⁸⁾. As indicated in the non-confidential file, the sampling forms were submitted by the Union producers between 11 and 13 October (following a short deadline extension granted to some Union producers of two days due to the complexity of the sampling form). However, the Commission added them to the non-confidential file after having checked that the non-confidential versions of the sampling replies did not inadvertently disclose the identity of the Union producers who were granted anonymity, as explained in recitals (12) to (14). Furthermore, as anonymity was granted to the Union producers, the Commission could not disclose whether the sampled Union producers belonged to the same group and whether they were members of ACEA, as this could render the respective entities recognisable and thus jeopardise their anonymity.
- (32) Moreover, for the same reasons, the Commission could not disclose whether the Union producers with the highest production volumes and sales were sampled. Nevertheless, the Commission recalled that Article 27 of the basic Regulation contains no obligation to select only the largest producers in terms of production and sales volumes, nor does it contain any ranking in the criteria listed therein. This provision is meant to ensure that the Commission selects the most representative sample that can be reasonably investigated within the time available by applying such criteria. The selection of the sample in this investigation fully complied with this rationale while taking into account the specificities of this case.
- (33) The Commission also ensured the representativeness of the sample by including a wide range of BEV models which could be compared on the Union and export sides. As regards the question whether the Commission was applying the single economic entity principle with regard to the sampled Union producers and whether all related parties of the sampled producers were required to provide the relevant information, the Commission noted that the single economic entity principle applies to exporters for the calculation of the export price for exports made via traders/importers located in third countries and therefore it was not clear what the GOC was requesting in this regard. Furthermore, as it was specified in the sampling form for the Union producers, the sampling form was requested to be submitted at production legal entity level and not at group level. Therefore, each legal entity with production in the Union was requested to submit a sampling form.

⁽⁸⁾ Ref. t23.005111

- (34) The Commission, after having carefully analysed all comments, considered that the sample was consistent with EU and WTO law. The sample represented adequately the Union producers of the like product. At the outset, the Commission recalled that the relevant sampling provisions are laid down in Article 27 of the basic Regulation. The relevant provisions provide for a broad discretion in choosing the sample according to the relevant criteria listed therein. In particular, Article 27(2) of the basic Regulation clearly states that *'the final selection of parties [...] shall rest with the Commission.'* Furthermore, the Commission recalled that the WTO Agreement on Subsidies and Countervailing Measures ('SCM Agreement') does not contain provisions on sampling, which again confirms the broad discretion of the Commission on this matter. As explained in recital (26), based on the information provided in the sampling replies, the proposed sample amounted to 38 % of sales and 34 % of production in the Union in the investigation period. The Commission considered these percentages representative under Article 27 of the basic Regulation. The sampling methodology was explained in detail in the Note on the provisional sample of 30 October 2023.
- (35) In order to ensure the largest representativity of Union producers of BEVs, in addition to volumes, the Commission also considered the geographical spread of Union producers within the Union and ensured the inclusion of a wide range of BEVs models. The geographical spread was considered, like in other anti-subsidy investigations to confirm the representativeness of the sample representativity in line with Article 27 of the basic Regulation.
- (36) Moreover, a wide range of BEVs models was taken into consideration by the Commission in order to ensure a large degree of representativity when comparing them with the corresponding models exported by the Chinese exporting producers in accordance with the margin of discretion it has in selecting the final sample.
- (37) Therefore, the Commission considered that the sample was representative (including geographically) while a larger sample could not be reasonably investigated within the time available. Therefore, the claim was rejected.
- (38) The CCCME claimed that the non-confidential replies of the sampling forms of the Union producers did not comply with Article 29(2) of the basic Regulation as the Union producers did not reply to all the questions included in the sampling form. In particular, the CCCME stated that the Company 11 replied only to five of the 22 questions included in the sampling form. Furthermore, the CCCME argued that Company 11, Company 12 and Company 15 did not provide the information regarding employment, while Company 7, Company 8, Company 9 and Company 13 provided only indexed figures on employment during the investigation period, but no data on employment for the previous years while the sampling form indicated production during those years. Furthermore, the CCCME claimed that none of the Union producers justified the existence of 'exceptional circumstances' in any context and redacted the entire information.
- (39) The Commission disagreed with these claims. The sampling form included 10 main questions. In addition, questions 5 and 6 each included one additional sub-question which, in view of the anonymity granted to the Union producers, were confidential by nature as it requested the names of the related companies involved in the production and sales of the like product produced in the Union and by the sub-contractors. It is also clear that if a company did not have related companies involved in the production and sales of the like production produced in the Union or sub-contractors, it did not need to reply to the respective sub-question. This was the case of Company 11, who reported under question 6 that it did not have sub-contractors. Therefore, in this case it was not clear why the CCCME considered that Company 6 did not reply to the sub-question 6(1). Furthermore, questions 8 and 9 included 5 and 4 additional sub-questions respectively. However, as it was explained in the Note for the file of 25 October 2023 ⁽⁹⁾, question 8 and 9 which had to be filled in with a yes/no reply, could reveal the identity of the respective Union producer, based on market knowledge about the structure of the Union industry and therefore, the Commission concluded that replies to these questions (together with the sub-questions indicated) could not be summarized in the non-confidential version of the sampling form without risking revealing confidential information within the meaning of Article 29(2) of the basic Regulation, thus jeopardising the anonymity granted to the Union producers. Therefore, the Union producers did not need to provide a non-confidential reply to these questions. Company 11 replied to question 1, 2, 4, 5, 6 and 7. The reply to question 3 which requested the Union producers to report the BEV models that were produced and sold in the Union, in view of the anonymity granted, was confidential by nature as it could render the respective entities recognisable and thus jeopardise their anonymity.

⁽⁹⁾ Note for the file of 25 October 2023 (t23.005006).

- (40) As concerns the number of employees, the Commission noted that Company 11 manufactured BEVs only in the investigation period and in small volumes. Furthermore, the number of employees is not a criterion for the sampling selection. As explained in recital (26), the criteria used for the sampling of Union producers was production and sales volume, geographical spread and the BEV models. Therefore, the fact that one Union producer did not report the number of employees in the investigation period, or some Union producers reported the number of employees only in the investigation period, did not invalidate their reply to the sampling form. Therefore, the claim was rejected.
- (41) As regards the claim that the Union producers did not justify the existence of 'exceptional circumstances' in any context and redacted the entire information, the Commission noted that it was not clear which information the CCCME referred to. In case the CCCME referred to the contact information of the companies, as anonymity was granted to the Union producers as explained in recitals (12) and (13), the Union producers did not need to invoke 'exceptional circumstances' for the reply to the sampling form. Furthermore, the Union producers could not report their contact information as this could render the respective entities recognisable and thus anonymity would be jeopardised. Therefore, the claim was rejected.
- (42) The GOC and the CCCME claimed that according to a MLex press report, the German BEV producers such as Volkswagen, BMW and Mercedes-Benz had not been sampled. The GOC and the CCCME argued that this was the second time since the initiation of the investigation that MLex had information regarding the sampling of Union producers, which was not available to the CCCME and those Chinese exporting producers that were cooperating in the investigation. The CCCME and the GOC argued that MLex was aware of the anonymity requests of the Union producers on 13 October 2023 whereas interested parties became aware of this issue around two weeks later. Therefore, the CCCME argued that if the press report regarding the sample of the Union producers was accurate, the CCCME expressed its strong objection with the groups of exporting producers selected arguing that the Commission should use a sample which was statistically representative. It referred in this regard to the Judgment of the Court of Justice in *Fliesen-Zentrum Deutschland* ⁽¹⁰⁾. Furthermore, the CCCME argued that excluding the major Union producers from the sample represented a significant departure from well-established Commission practice wherein the largest producers are typically sampled for a comprehensive and representative analysis.
- (43) The Commission cannot comment on the content of press reports, since what matters for the present investigation is the information available on file. Furthermore, as explained in recitals (12) and (13), anonymity was granted to Union producers and therefore the Commission cannot disclose the names of the sampled Union producers. Moreover, as explained in recital (26), the proposed sample amounted to 38 % of sales and 34 % of production in the Union in the investigation period and these percentages were considered to be representative under Article 27 of the basic Regulation. Therefore, the claims were rejected.
- (44) The CCCME claimed that the Commission should disclose the level of cooperation of the Union BEV producers as this was a factual issue at the core of any threat of material injury assessment to be made by the Commission. The CCCME claimed that if the Union industry BEV producers did not want protection, no measures on imports of BEVs from China should be imposed.
- (45) The Commission noted that the level of cooperation in an investigation is required for the standing exercise only. As the current investigation was initiated *ex officio* the Commission did not need to disclose the level of cooperation. There was enough cooperation of the Union producers at the sampling stage in order for the Commission to select a representative sample of Union producers and continue the investigation. As explained in recital (26), the sampled Union producers accounted for 38 % of sales and 34 % of total production volume of the Union industry in the investigation period which was considered representative. Finally, in the section "Union interest" below, the Commission assessed whether it was in the interest of the Union to impose countervailing measures on imports of BEVs from China. Therefore, the claims were rejected.

⁽¹⁰⁾ Judgment of the Court of Justice of 10 September 2015, *Fliesen-Zentrum Deutschland GmbH v Hauptzollamt Regensburg*, C-687/13, EU:C:2015:573, para. 86.

1.5.2. *Sampling of importers*

- (46) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (47) No unrelated importers cooperated and therefore sampling was not necessary.

1.5.3. *Sampling of exporting producers in the PRC*

- (48) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all exporting producers in the PRC to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the People's Republic of China to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.
- (49) Twenty-one exporting producers/group(s) of exporting producers in the country concerned provided the requested information and agreed to be included in the sample. The Commission provisionally selected a sample of three cooperating producer groups. In addition to absolute volume of exports to the Union, the Commission further considered the sales of BEVs models in different 'market segments' (understood as in terms of different 'product types') in order to properly ensure the largest representativity of the industry of the product under investigation. The Commission also considered the potential eligibility of the groups of exporting producers for the subsidy schemes included in the Memorandum on sufficiency of evidence on the basis of the replies to the sampling questionnaires. Given the nature and effects of the subsidisation at issue, leading to increased production of BEVs and the threat of injury potentially suffered by the Union industry thereof, the availability of spare capacities was also taken into account for the selection. The sampled groups were:

- BYD Group, consisting of exporting producers:
 - BYD Auto Company Limited;
 - BYD Auto Industry Company Limited;
 - Changsha Xingchao Auto Company Limited;
 - Changzhou BYD Auto Company Limited;
 - Fuzhou BYD Industrial Company Limited.
- SAIC Group, consisting of exporting producers:
 - SAIC MAXUS Automotive Company Limited;
 - SAIC Motor Corporation Limited;
 - Nanjing Automobile (Group) Corporation.
- Geely Group, consisting of exporting producers:
 - Asia Euro Automobile Manufacture (Taizhou) Company Limited;
 - Zhejiang Geely Automobile Company Limited;

— Zhejiang Haoqing Automobile Manufacturing Company Limited.

- (50) The sampled groups of exporting producers ('the sampled exporting producers') represented in pieces 43 % of the production, 51 % of the domestic sales, and 39 % of the estimated total export volume from the PRC to the Union in the investigation period.
- (51) In accordance with Article 27(2) of the basic Regulation, all known exporting producers, and the GOC were consulted on the selection of the sample.
- (52) Comments on the proposed sample were received from the GOC, the CCCME, and three groups of exporting producers, one included in the sample (BYD), two not included namely Tesla and Great Wall Motor Company Limited ('GWM') and one Union producer (Company 24).
- (53) All these parties enquired about the reasons for deviating from the Commission's standard practice of just using the largest representative export volume to the Union as a decisive criterion to sample exporting producers. Additionally, they claimed that in using elements other than the largest volume of exports in the sampling process, such as the eligibility of the exporting producers for the subsidy schemes and the variety of models sold in different market segments, the Commission failed to select a sample in accordance with the requirements set out under Article 27(1) of the basic Regulation and under Article 6.10 of the WTO Anti-Dumping Agreement in absence of a provision on sampling in the SCM Agreement. Tesla requested to be included in the sample given the Commission's practice to rely on the "*largest representative volume of exports to the Union*".
- (54) In this respect, the Commission noted that Article 27 of the basic Regulation contains no obligation to select only the largest producers in terms of volume, nor does it contain any ranking in the criteria for the purpose of sampling. In order to ensure the effectiveness of the investigation, the Commission enjoys a margin of assessment⁽¹¹⁾ to select a sample based on criteria such so as to ensure that it is representative of the eligibility of the subsidies alleged in the Notice of Initiation. In particular, Article 27(2) of the basic Regulation states that "*the final selection of the parties [...] shall rest with the Commission*". Accordingly, the Commission has considered other elements which were also considered in past anti-subsidy investigations⁽¹²⁾ to guarantee the sample representativity of the BEVs industry in China.

⁽¹¹⁾ Case T-444/11, *Gold East Paper and Gold Huasheng Paper v Council*, 11/09/2014 (T-444/11) (§275) The Court recalls the margin of assessment enjoyed by the EU institutions, as recognised by the case-by-case-law, for which the judicial review of appraisal must be limited to a manifest error of assessment.

⁽¹²⁾ Commission Implementing Regulation (EU) 2015/1519 of 14 September 2015 imposing definitive countervailing duties on imports of biodiesel originating in the United States of America (OJ L 239, 15.09.2015, p.99 (§20) The Commission selected the sample of three exporting producers with the highest volume of domestic and export sales);

Commission Implementing Regulation (EU) 2021/2287 of 17 December 2021 imposing definitive countervailing duties on imports of aluminium converter foil originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2170 imposing definitive anti-dumping duties on imports of aluminium converter foil originating in the People's Republic of China, (OJ L 458, 22.12.2021, p. 344)

Commission Implementing Regulation (EU) 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China (OJ L 012, 19.01.2022, p.34, (§49) The Commission also considered the geographical spread of the companies);

Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 09.06.2017, p.17 (§28) the Commission considered that the four sampled groups of exporting producers were representative not only in terms of volume, but also in terms of their eligibility for the subsidies alleged in the complaint as well as the subsidy practices investigated as per the Notice of Initiation);

Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China (OJ L 283, 12/11/2018, p.1 (§41) "(...) *the purpose of the sample was to represent the overall tyres industry in the PRC with regards to the eligibility for all types of alleged subsidies.*");

Council Regulation (EC) No 930/2003 of 26 May 2003 terminating the anti-dumping and anti-subsidy proceedings concerning imports of farmed Atlantic salmon originating in Norway and the anti-dumping proceeding concerning imports of farmed Atlantic salmon originating in Chile and the Faeroe Islands (OJ L 133, 29.05.2003, p.1 (§25) Criteria that were also found to be important in the selection of the Chilean sample were representative domestic sales and significant production.

- (55) The sample selection of exporting producers not only relied on the volume of exports, but also on the variety of BEV models sold in different market segments (i.e. product types), the representativity of the companies/groups in terms of potential eligibility of the schemes included in the Memorandum on sufficiency of evidence, and overall production capacity including spare capacity. Considering all these factors together, the sample selected was deemed to be the most representative sample that could be reasonably investigated within the time available. The selection of the sample fully complied with the provisions of Article 27 of the basic Regulation, taking into account the specificities of the case. Considering the strong representativity of the sample in view of the criteria listed in recital (49) and the time available for the investigation, the Commission did not consider that the selection of an additional exporting producer in the sample was appropriate. Therefore, Tesla's request to be selected in the sample was rejected.
- (56) Furthermore, the GOC claimed that the Commission did not provide the requested clarification on the sample selection of the exporting producers, especially regarding the consideration and relative weights of the four criteria taken into account for the sample selection, the basis for determining the export sales of the different market segments, the basis for assessing the potential eligibility of the groups of exporting producers for the subsidy schemes and availability of spare capacities, and the meaning of the Commission's decision to rely on the sampling forms replies for the purpose of the sampling exercise, without prejudice to and regardless of whether they may be linked to other groups of exporting producers.
- (57) The Commission considered its selection of three company groups to be the most representative volume it could investigate within the time available, for which it did not solely look at absolute figures of production, sales, and exports, but considered a number of additional elements to assess the representativity of the sample, including the variety of BEV models sold in different market segments, the representativity of the companies/groups in terms of potential eligibility of the schemes included in the Memorandum on sufficiency of evidence, and overall production capacity including spare capacity based on the information provided in the sampling form. A comprehensive approach was taken in assessing these elements, where none of the individual elements was considered to be of decisive nature. The market segments were considered based upon publicly available information of the models sold by the exporting producers on the Union market. As set out in the Note on the definitive sample of exporting producers, the Commission considered the eligibility of subsidy schemes of the sampled exporting producers to be an objective criterion meant to ensure that the sample is representative of the level of subsidisation in the country concerned. The selection was based upon the sampling forms received from the cooperating exporting producers, which should include all their related parties relevant for the investigation. Since these replies are self-declared, the Commission made it explicit that any further assessment with regard to related parties of these sampled exporting producers might be warranted.
- (58) According to the GOC and the CCCME, no justification was provided in the final sample decision for the exclusion of the largest Chinese exporting producer Tesla from the exporting producers' sample.
- (59) Tesla was indeed one of the largest exporting producers in terms of exports to the Union during the investigation period. However, contrary to CCCME's claim, and as explained in recitals (54) and (57), the selection of the sample should not solely be based on the largest volume of production, sales or exports, but on the largest representative volume. As set out in the Note on the definitive sample of exporting producers, the final sample selection was considered to be adequately representing the exporting producers of BEVs operating in China and was based on the largest representative volume of production, sales or exports to the Union during the investigation period that could reasonably be investigated within the time available, taken into consideration the elements as set out in recital (57). Therefore, the Commission rejected the claim of the GOC and the CCCME.
- (60) Further, Tesla argued that the Commission did not sample full groups, but only selected some of the exporting producers and related companies within the sampled group.

- (61) This comment is factually incorrect. The Commission did not make its sample on the basis of individual entities but on the basis of groups identified in the information provided in the replies to the sampling forms. All producing entities belonging to such groups are part of the sample, irrespective of whether they are individually mentioned in the Note on the definitive sample of exporting producers.
- (62) Additionally, both the GOC and the CCCME raised that by selecting three Chinese-owned companies and not sampling any foreign-owned companies or joint ventures, Chinese brands are discriminated against. The GOC, BYD, and Tesla pointed out that the Memorandum on sufficient evidence on which the Commission based its assessment on potential eligibility for the subsidy schemes and sample selection is biased and purposefully identified and targeted certain producers in the PRC. The GOC, the CCCME, Tesla, and GWM claimed that, by selecting a sample on criteria likely to reach an affirmative conclusion of threat of injury, the Commission did not comply with the obligation to carry out an objective examination of injury set out under Article 8(1) of the basic Regulation. All commenting parties stressed the lack of sufficient disclosure in the methodology and the analysis followed to select the sample.
- (63) The Commission rejected the argument that it acted in a discriminatory manner. As explained in the Note to the file on the selection of a definitive sample, first, some of the sampled groups have joint ventures with European car manufacturers. Second, any measure imposed as a result of the investigation would apply to all BEVs produced and exported from the PRC, irrespective of the ownership of the exporting producers. Third, most of the companies/groups that came forward to be sampled are either fully or partly Chinese owned and/or have joint ventures agreements with foreign partners.
- (64) The potential eligibility of the schemes included in the Memorandum on sufficiency of evidence was one amongst several elements that the Commission considered to ensure the largest representativity of the BEV producers and to substantiate the representativity of the sample in accordance with Article 27 of the basic Regulation. In addition, the potential eligibility of subsidy schemes is an element which, far from being biased, is an objective criterion meant to ensure that the sample is representative of the level of subsidisation in the country concerned. Thus, when using potential eligibility as a criterion to choose among cooperating exporting producers, the Commission did not select companies with the highest subsidisation since, at the time of the sampling decision, the specific amounts received by those companies were unknown. Moreover, the fact that a company may be *a priori* potentially eligible to receive a subsidy from a specific scheme does not automatically mean that such a company benefited from such a scheme during the investigation period. Therefore, the Commission considered that the companies failed to demonstrate how the Commission made a manifest error of assessment⁽¹³⁾ in selecting the sampled exporters, which would have led to misleading results and constituted an infringement of the obligation to carry out an objective examination of injury – in which the Commission recalls it also enjoys a broad discretion⁽¹⁴⁾.
- (65) Finally, contrary to the arguments made by some parties, the sampling methodology was already explained in detail in the note on the provisional sample released on 25 October 2023.
- (66) The exporting producer GWM requested to be included in the sample and to have one sampled company to be removed, arguing that the selected company was not representative enough of the entire BEVs industry in the PRC in terms of the brand, technology, and pricing of its main BEV model exported to the Union. GWM argued that it should be included in the sample, because it was one of the few exporting producers that had timely submitted the requested sampling information and one of the largest representative BEV exporters in the PRC in view of the significantly different BEV models it exported to the Union, its geographical location, its compliance with products safety and environment technology, its significant R&D investment, and the vertical integration of its supply chain system.

⁽¹³⁾ Case T-30/19 and T-72/19, *CRIA and CCCMC v Commission*, 04/05/2022, (T-30/19) (§115 It must be borne in mind that the determination of the existence and amount of injury caused to the Union industry and the existence of a causal link requires an appraisal of complex economic situations in connection with which the EU institutions enjoy a broad discretion).

⁽¹⁴⁾ *Ibid.*

- (67) All companies that came forward in the sampling exercise submitted their replies within the deadline set in the Notice of initiation or within the agreed deadline following justified extension requests. As set out in recitals (53) to (57), the Commission considered the sample selected to be the most representative sample that could be reasonably investigated within the time available. The selection of the sample fully complied with the provisions of Article 27 of the basic Regulation, while taking into account the specificities of the case. Since none of the arguments made by GWM invalidated the choice of sample by the Commission, GWM's request to be selected in the sample was rejected.
- (68) The CCCME, BYD, GWM, and Tesla further argued that spare capacity could not be considered a factor to be used to establish a sample but is a factor that should be evaluated during the course of the investigation.
- (69) This investigation is based on a threat of injury. Therefore, information about the level of potential sales of exporting producers in the near future was considered to be of importance in selecting a representative sample. Having the spare capacity as one of the elements underpinning the Commission's decision on the sample did not exclude evaluating this factor in the course of the investigation for the purpose of establishing a threat of material injury to the Union industry.
- (70) In light of the aforementioned reasons, the Commission decided to retain the proposed sample as the final sample.
- (71) In their comments following the sample decision, NIO requested additional clarifications vis-à-vis its specific situation amongst the not sampled producers.
- (72) The Commission addressed their comments in a separate submission sent only to the company.
- (73) After the sampling exercise, on 8 November 2023, a hearing took place with Smart, which requested not to be considered as part of the Geely Group, but as a separate exporting producer. For this claim, Smart notably relied on findings from the European Commission's Directorate General for Competition in a merger procedure with regard to the production of Smart BEVs in the PRC ⁽¹⁵⁾.
- (74) The Commission rejected this claim. First, merger decisions are taken on the basis of a different legal basis than the basic Regulation, which sets up different objectives and requires different types of assessment. Second, the merger decision provided that the joint venture between Daimler and Geely is a fully functional joint venture but did not reach any conclusion as to its dependence from the Geely Group. In fact, the decision showed that Smart's manufacturing and distribution operations in the PRC are conducted from a joint venture with Geely. Moreover, the sales and marketing for the Union also fall under the joint venture. Besides, considering the existing business relationship between Smart and the Geely Group, the two parties clearly appeared related within the meaning of Article 127 of Commission Implementing Regulation (EU) 2015/2447 ⁽¹⁶⁾. On this basis, the Commission concluded that Smart should be treated as part of the Geely group.
- (75) The CCCME deemed the reporting requirements on the sampled Chinese exporting producers to be overly burdensome, especially regarding the information requested from related input suppliers and the translation of annual reports.
- (76) The Memorandum on sufficiency of evidence set out that subsidisation by the GOC spread to the entire production and supply chain of the BEV industry, among others, by the provision of parts and components for less than adequate remuneration. The Commission considered the requested information from related parties of the sampled exporting producers necessary to assess the existence of countervailable subsidies regarding BEV parts and components, including batteries and therefore rejected the claim made by the CCCME.

⁽¹⁵⁾ Case M.9360 – Daimler / Geely / JV, Commission decision of 10.12.2019, pursuant to Article 6(1)(b) of Council Regulation No 139/2004 and Article 57 of the Agreement on the European Economic Area.

⁽¹⁶⁾ OJ L 343, 29.12.2015, p. 558–893.

1.5.4. Questionnaire replies and verification visits

- (77) The Commission sent questionnaires to the GOC, the three groups of sampled exporting producers, the four sampled Union producers and two users.
- (78) The Commission received questionnaire replies from the GOC, the three groups of sampled exporting producers, the four sampled Union producers and the two users.
- (79) The Commission sought and verified all the information deemed necessary for a determination of subsidy, resulting injury (including threat of injury) and Union interest.
- (80) Verification visits under Article 26 of the basic Regulation were carried out at the premises of the following companies:

Union producers and their related companies:

- Company 7
- Company 17
- Company 18
- Company 27

Users:

- Leasys Luxembourg S.A.
- Leasys Mobility Portugal SA

Exporting producers in the PRC and related companies:

- BYD Group
 - Anyang BYD Industrial Co., Ltd., Anyang, China
 - Bengbu FinDreams Battery Co., Ltd., Bengbu, China
 - BYD Auto Co., Ltd., Xi'an, China,
 - BYD Auto Industry Co., Ltd., Shenzhen, China
 - BYD Auto Sales Co., Ltd., Shenzhen, China
 - BYD Europe B.V., the Netherlands
 - BYD Lithium Battery Co., Ltd., Shenzhen, China
 - BYD Co., Ltd., Shenzhen, China
 - BYD (Shenzhen) Supply Chain Management, Shenzhen, China
 - BYD Hong Kong, Hong Kong SAR
 - Changsha BYD Auto Co. Ltd., Changsha, China
 - Changsha FinDreams Battery Co., Ltd., Changsha, China
 - Changsha Xingchao Auto Co. Ltd., Changsha, China
 - Chongqing FinDreams Battery Co., Ltd., Chongqing, China
 - Chongqing FinDreams Battery Research Institute Co., Ltd., Chongqing, China
 - Fuzhou BYD Industrial Co., Ltd., Fuzhou, China
 - Fuzhou FinDreams Battery Co., Ltd., Fuzhou, China

- Hefei BYD Co., Ltd., Hefei, China
- Hengyang BYD Industrial Co., Ltd., Hengyang, China
- Jinan BYD Auto Co., Ltd., Jinan, China
- Jinan FinDreams Battery Co., Ltd, Jinan, China
- Nanjing BYD Co., Ltd., Nanjing, China,
- Shanghai BYD Co., Ltd., Shanghai, China
- Taiyuan BYD Auto Co., Ltd, Taiyuan, China
- Wuwei FinDreams Battery Co., Ltd., Wuwei, China
- Xi'an BYD Auto Parts Co., Ltd., Xi'an, China
- Xi'an BYD Electronics Co., Ltd., Xi'an, China
- Xi'an FinDreams Battery Co., Ltd., Xi'an, China
- Geely Group
 - Asia Europe Automobile Manufacturing (Taizhou) Co., Ltd.,
 - Chongqing Lifan Passenger Vehicle Co. Ltd.,
 - Chongqing Ruilan Automobile Research Institute Co., Ltd.
 - Geely Automobile Group Co., Ltd.
 - Geely Automobile Research Institute (Ningbo) Co., Ltd.
 - Hangzhou Geely Automobile Co. Ltd.,
 - Hangzhou Zeekr Automobile Sales Service Co., Ltd.
 - Lingwu Automobile Technology (Chongqing) Co., Ltd.
 - Ningbo Geely Automobile Research and Development Co., Ltd.
 - Ningbo Hangzhou Bay Geely Automobile Parts Co. Ltd.,
 - Ningbo Hangzhou Geely Automobile Parts Co. Ltd.,
 - Polestar Automotive China Distribution Co. Ltd,
 - Polestar Automotive Consulting Service Co. Ltd.
 - Qizheng New Energy Auto (Jinan) Co., Ltd.,
 - Quzhou Jidian Electric Vehicle Technology Co. Ltd.,
 - Shanghai Zeekr Blue New Energy Technology Co., Ltd.
 - Shanxi Geely Automobile Parts
 - Shanxi Geely Geometry Auto Co. Ltd.,
 - Shanxi New Energy Automobile Co. Ltd.,
 - Shidai Geely (Sichuan) Power Battery Co. Ltd.,
 - Sichuan LYNK&CO Automobile Manufacturing Co., Ltd.,
 - Smart Automobile Sales (Nanning) Co., Ltd.

- Smart Automobile Co., Ltd.
- Viridi E-Mobility Technology (Ningbo) Co., Ltd.,
- Volvo Car Asia Pacific Investment Holding Co. Ltd.,
- Volvo Car Consulting Service Co. Ltd.,
- Volvo Cars (China) Investment Co. Ltd.,
- Wuhan Geely Automotive Industry (holding) Co., Ltd.
- Wuhan Geely Automotive Parts. Co. Ltd.,
- Wuhan Lotus car sales (export sales) Co., Ltd.
- Wuhan Lotus cars (R&D) Co., Ltd.
- Wuhan Lotus Technology Co., Ltd.
- Xi'an Geely Automobile Co. Ltd.,
- ZEEKR Intelligent Technology Holding Limited Co., Ltd.
- Zhejiang Geely Automobile Co. Ltd., Ningbo branch,
- Zhejiang Geely Automobile Co., Ltd., Wuhan branch,
- Zhejiang Geely Automobile Co., Ltd., Chengdu branch,
- Zhejiang Geely Automobile Co., Ltd., head office
- Zhejiang Geely Holding Group Co. Ltd.,
- Zhejiang Haoqing Automobile Manufacturing Co. Ltd.,
- Zhejiang Haoqing Automobile Manufacturing Co., Ltd.
- Zhejiang Haoqing Automobile Manufacturing Co., Ltd.,
- Zhejiang Liankong Technology Co., Ltd.
- Zhejiang Zeekr Automobile R&D Co., Ltd.
- Zhejiang Zeekr Intelligent Technology Co., Ltd.
- Polestar Performance AB, Göteborg, Sweden
- Smart Europe GmbH, Stuttgart, Germany
- SAIC Group
 - SAIC Volkswagen Automotive Co., Ltd.
 - SAIC Volkswagen Power Battery Co., Ltd.
 - SAIC Volkswagen Sales Co., Ltd.
 - SAIC General Motors Co., Ltd.
 - SAIC General Motor Sales Co., Ltd.
 - SAIC Motor Co., Ltd.
 - United Auto Battery Co., Ltd.
 - United Auto Battery System Co., Ltd.

- Saike REPT Power Battery System Co., Ltd.
- Shanghai Automobile Group Finance Co., Ltd.
- Nanjing Automobile (Group) Co., Ltd.
- Nanjing Mingjue Automobile Trade Co., Ltd.
- SAIC MAXUS Automotive Co., Ltd
- SAIC GM Wuling Automobile Co., Ltd.
- Guangxi Haoling Automotive Technology Co., Ltd.
- Shanghai Automobile Gear Works Co., Ltd.
- SAIC Motor International Co., Ltd.
- Shanghai Automotive Industry Sales Co., Ltd.
- Shanghai Anji Automobile Sales Co., Ltd.
- Rising Auto Technology Co., Ltd.
- Shanghai Automotive Asset Management Co., Ltd.
- Z-One Technology Co., Ltd.
- SAIC Motor Europe B.V.
- SAIC Motor France SAS
- SAIC Motor Deutschland GmbH
- SAIC Motor Central and Eastern Europe Kft.

- (81) As highlighted in section 3.3, the Commission faced issues of cooperation whereby several Chinese sampled groups failed to provide questionnaire replies for certain companies or submitted incomplete or no information concerning their company structure or cost of production. On this basis, the Commission did not have a complete overview of the companies that should provide a questionnaire reply nor of the share that they represented as part of the total cost of production.
- (82) Hence, based on the information on file, the Commission decided to focus on BEV producers, suppliers of main inputs and other companies that were involved in financing and research and development activities, that provided a questionnaire reply and could be verified in the period preceding the imposition of provisional measures.
- (83) While the Commission also received questionnaire replies from other related companies whose activities fell within the scope of activities that required the submission of a questionnaire reply, the Commission was not able to assess these replies in the period preceding the imposition of provisional measures. The Commission reserves the right to assess the replies in question until the definitive stage of this proceeding.

1.5.5. *Claims regarding transparency and procedure*

- (84) According to the GOC, the fact that MLex seemed to have more information about the sample of the Union BEV producers than the interested parties confirmed that the investigation was not transparent and impinged on the interested parties' due process rights.
- (85) The Commission disagreed with this claim. As noted above in recital (43) the Commission cannot comment on the content of press reports, and the relevant information is contained in the file of the present investigation. The Commission added to the non-confidential file of the investigation all the relevant information in due course and allowed the parties ample opportunities to comment. All comments received were duly assessed by the Commission in the course of the investigation and are explained in the relevant section of this Regulation.

- (86) The CCCME claimed that the Commission delayed the inclusion in the non-confidential file of the investigation the questionnaire replies of the Union industry which was in sharp contrast to the speed with which the Commission uploaded the non-confidential versions of the questionnaire replies submitted by the Chinese exporting producers. The CCCME claimed that these delays contributed to the lack of transparency as regard the Union BEV industry and the injury aspects of the investigation.
- (87) The Commission disagrees with this claim. As explained in recitals (12) and (13), the Union producers were granted anonymity. Therefore, the Commission needed to check carefully that the documents submitted by the Union industry did not inadvertently disclose the identity of the Union producers and therefore jeopardise the anonymity granted. Such checks were time consuming. The CCCME and other interested parties had ample time to comment on the questionnaire replies once they were added to the non-confidential file of the investigation.
- (88) The CCCME claimed that the absence of correspondence in the non-confidential file between the Commission and ACEA was a clear indication of lack of transparency in the investigation as the data on macroeconomic indicators was usually submitted by trade associations. The CCCME requested the Commission to clarify how macroeconomic data will be gathered and evaluated in the investigation.
- (89) The Commission disagreed with this claim. There is no legal requirement for the Commission to obtain the data on macroeconomic indicators from a trade association such as ACEA. The Commission can use also other sources of information. These sources and the assessment of the macroeconomic indicators are provided in the section “*Injury*”. The Commission could not disclose the source and the methodology of the assessment of the macroeconomic indicators before the investigation was finalised at provisional stage.
- (90) The CCCME noted that Company 29 submitted certain information only in a confidential version and that, as a consequence, the interested parties were prevented from understanding and commenting on the information submitted by Company 29. Therefore, the CCCME asked the Commission to make this information available in the non-confidential file.
- (91) The Commission checked this information and concluded that it was not susceptible of meaningful summarisation. Furthermore, the Commission did not use this particular information in the current investigation. Therefore, the request was rejected.
- (92) The non-confidential version of the main information requested in the tables of the questionnaire for the sampled Union producers was added – on an indexed and consolidated basis (i.e. the data of the sampled Union producers was aggregated) in the non-confidential file of the investigation by the Commission. The Commission considered it appropriate not to add a non-confidential version of the respective tables of each Union producer separately in order to protect the anonymity of the identity of the sampled Union producers as there was a risk that the trends of the indexes on a per company basis could inadvertently reveal the identity of the sampled Union producers and therefore jeopardise the anonymity.
- (93) In this regard, the CCCME asked the Commission for clarification as to (i) how the justification for the change in practice of the Commission explained in recital (92) was supported by facts on the case record because each of the sampled Union producers provided their individually indexed data for several of the economic indicators (including for production capacity, production, sales volume and value to related and unrelated parties and employment) for the period considered in the sampling form responses that were made available in the non-confidential file of the investigation, (ii) how the individually indexed data and trends thereof pertaining to the remaining injury indicators could reveal the identity of a Union BEV producer, and (iii) how the individually indexed data of the four Union producers could result in their identities being revealed when the data pertaining to the economic indicators and specifically pertaining to BEVs was not publicly available in the annual reports or other filings of the Union BEV producers while most of the BEV Union producers also producer other vehicle types than BEVs.

- (94) Therefore, the CCCME asked the Commission to add in the non-confidential file of the investigation the indexed data on a per company basis of the four sampled Union BEVs producers as there was no risk of identification of the Union BEV producers based on that data. Furthermore, CCCME recalled that this information was relevant for the presentation of the CCCME's defence due to the following reasons: (i) the identity of the sampled Union BEV producers has been kept confidential and there was no way of knowing how the companies were actually performing and whether they faced a threat of injury on account of the Chinese BEV imports, (ii) the aggregated indexed data made available by the Commission did not provide any meaningful information and seemed to be in fact incorrect, (iii) the company specific indexed data would permit CCCME to understand the economic situation of the sampled Union producers as their data will be the basis for the assessment of the microeconomic indicators and undercutting/underselling, and (iv) while the CCCME had no way to check the accuracy of the data reported by the Union BEV producers, with company specific indexation at least CCCME would be in a position to compare the data provided originally in the sampling form responses and subsequently in the questionnaire responses.
- (95) The Commission noted that the Union BEV market is made of a small number of groups of producers. There is a significant amount of public information as well as very detailed information available based on a paid subscription regarding the Union BEV industry that CCCME could have access to. Therefore, there is a high risk that the trend of the economic and financial information requested by the Commission in the questionnaire together with certain public and paid subscription-based information could render the respective entities recognisable and thus anonymity would be jeopardised.
- (96) Furthermore, the information requested in the sampling forms was significantly less detailed than the information requested in the questionnaire. For example, as concerns economic and financial information the sampling form asked information about (i) volume of production, (ii) production capacity, (iii) the total volume and value of sales in the Union, (iv) the volume and value of sales to related companies and (v) the number of employees. In addition to this information, the respective file with consolidated indexes that was added in the non-confidential file of the investigation included also information about (i) average selling price of total sales, of the sales on the Union market to unrelated customers and related customers, (ii) the volume, value and prices of export sales to unrelated and related customers, (iii) average unit cost of production, (iv) profit before tax in the Union to unrelated and related customers, (v) capacity utilisation, (vi) closing stock quantity, (vii) labour cost for the BEVs, (viii) cash flow, (ix) total fixed assets used for the production of the product under investigation, (x) return on investment, (xi) total investment in the product under investigation, and (xii) total depreciation in the product under investigation.
- (97) Moreover, the Commission added the file in question in the non-confidential file of the investigation after the sampled Union producers submitted their questionnaire reply. Therefore, the file in question was based on unverified data. Once the data was verified the Commission added to the non-confidential file of the investigation a revised file. The Commission analysed this claim in view of the revised information and found that it was not applicable anymore. Furthermore, the Commission also added in the file the representativity percentages based on sales and production of the sampled Union producers after the data submitted by the sampled Union producers was verified.
- (98) Therefore, based on the above the request was rejected.
- (99) The CCCME also requested that in alternative to the request made in recital (94), the Commission should provide the aggregate data of the four sampled Union producers for each of the injury indicators in absolute numbers or in numerical ranges.
- (100) As explained in recital (95) the Commission has presented the microeconomic indicators in absolute values in section "*Injury*". The remaining macroeconomic indicators that the Commission also presented in section "*Injury*" are not based only on the data of the sampled Union producers, but of the entire Union as explained in section "*Injury*". Therefore, the request was rejected.

- (101) As regard the sales volume of the sampled Union producers, the CCCME asked the Commission to provide (i) the percentage of sales of the four sampled Union producers directly to independent customers and to related companies during the period considered in the Union and outside the Union; (ii) the geographical coverage of the sales of the Union producers to related and unrelated parties; (iii) whether all EU sales to the related parties were to related entities that have completed Annex I of the questionnaire; and (iv) what percentage of the total EU production of the four sampled Union producers was exported in each year of the period considered. Furthermore, the CCCME claimed that if not all the related companies have completed Annex I, this would imply that the sales to the independent customers would not be equal to 38% of the sales in the Union as indicated by the Commission in the note to the file concerning the sample of the Union producers.
- (102) As regards the sales to unrelated and related companies in the Union, the Commission provided additional clarifications in the Note for the file of 4 June 2024 ⁽¹⁷⁾ where it stated that it collected these sales at the level of the price to the first unrelated customer and consolidated these sales with the sales to unrelated customers of the sampled Union producers. As concerns the sales outside the Union, it is recalled that the purpose of the investigation is, *inter alia*, to assess the economic and financial situation of the production and sales of the Union industry in the Union and not outside the Union. The impact of the exports of the Union industry was explained in recitals (1183) to (1185). Furthermore, the geographical coverage of the sales of the sampled Union producers was confidential by nature and also the Chinese exporting producers were not requested to submit such information in the non-confidential file. Furthermore, the CCCME did not explain why this particular information was relevant.
- (103) The CCCME also requested the Commission to provide the ratio of the production capacity and production of BEVs and other vehicle types during the period considered.
- (104) The Commission recalled that the current investigation covered only BEVs and therefore the production capacity and production of other vehicles of the sampled Union producers was irrelevant. Therefore, the request was rejected.
- (105) The CCCME requested the Commission to provide the list of Member States covered by the sampled Union producers arguing that the geographical location of the sampled Union producers has been disclosed in cases where Union producers were granted anonymity.
- (106) The Commission recalled that there was a small number of groups of producers of BEVs in the Union. Furthermore, the location of their production is public information. Therefore, in this case, the Commission could not disclose the location of the sampled Union producers as this could render the respective entities recognisable and thus anonymity would be jeopardised. The request was, therefore, rejected.
- (107) The CCCME also requested the Commission to provide (i) a combined list of PCNs sold by the four sampled Union producers during the period considered in the Union and outside the Union, distinguishing between sales to related companies and to unrelated companies, (ii) market segments covered by the sales of the Union BEV producers to related and unrelated entities in the Union and outside the Union and (iii) product characteristics requested in the table titled “*product characteristics*” in the questionnaire for the Union producers.
- (108) The Commission noted that in the questionnaire it asked information at the PCN level only for the investigation period and not the entire period considered. This was done for both the sampled Union producers and sampled Chinese exporting producers. Therefore, the Commission could not provide to the CCCME information that it did not have. Furthermore, the information regarding PCNs and product characteristics for each sampled Union producer and Chinese exporting producer is confidential by nature and therefore it could not be added in the non-confidential file of the investigation. The PCNs are normally disclosed in the individual disclosure to the sampled Chinese exporting producers and Union producers when the PCNs are not confidential. As concerns market segments, as explained in recitals (1040) to (1048), the Commission did not consider it necessary to carry out a market segmentation analysis. Therefore, the request was rejected.

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1.5.6. *Comments on initiation*

- (109) Comments on initiation of the investigation were received from the GOC, the CCCME and Company 24.
- (110) The GOC claimed that the investigation is purely political and discriminatory, and that the EU has itself granted billions of euros of subsidies to build a BEV supply chain over the past years and will continue to subsidise its BEV industry in the future. The GOC considered this investigation harmful for the development of the global BEV industry, especially since the Chinese and Union BEV supply chains are interdependent and deeply integrated and will create obstacles to bilateral efforts to combat climate change.
- (111) Not all subsidies are countervailable under the SCM Agreement, and the present investigation is limited to subsidies provided in China for the benefit of exporting producers of the product concerned. In any event the allegations of the GOC do not affect the Commission's provisional findings that the GOC has provided subsidies to the exporting producers of BEVs, which are countervailable according to the SCM Agreement and the basic Regulation. Contrary to the claim of the GOC, the Chinese countervailable subsidies create unfair competition that would only hamper the development of the global BEV industry, especially the Union industry. Bilateral efforts to combat climate changes cannot be built upon unfair competition by low-priced subsidised BEVs but should be based upon a level-playing field where fair competition and innovation will drive the green transition. Therefore, the claims were rejected.
- (112) The GOC argued that it was not provided with a meaningful and proper opportunity within the meaning of Article 13.1 of the SCM Agreement for pre-initiation consultations, since the Commission did publicly announce the launching of the investigation before inviting the GOC for consultations, which were scheduled during a national holiday period in China, jeopardising the GOC's ability to conduct proper consultations. The GOC further claimed that it was not provided with any information or evidence with regard to the product scope, the special circumstances justifying the *ex officio* investigation, the composition of the Union industry, the information and evidence underlying the allegations of subsidisation, data with regard the threat of injury, and data underlying the causal link. Moreover, the pre-initiation consultations did not cover all alleged subsidy schemes.
- (113) In line with Article 10(7) of the basic Regulation and Article 13.1 of the SCM Agreement, the Commission invited the GOC for consultations with the aim of clarifying the situation with regard to the alleged subsidies before the initiation of the investigation. The announcement made by the President of the Commission in the State of the Union speech on 13 September 2023 that the Commission was launching an anti-subsidy investigation into electric vehicles coming from China did not constitute the initiation of the investigation. The GOC received on 22 September 2023 a Note Verbale where the GOC was notified of the European Commission's decision to initiate an *ex officio* anti-subsidy proceeding. This was ahead of the national holiday period in China. Together with this Note Verbale the GOC was provided a summary of subsidisation and threat of injury, providing sufficient evidence of the existence of countervailable subsidies, injury and causal link. Neither Article 11(8) of the basic Regulation nor Article 13.1 of the SCM Agreement required the Commission to send the full *ex officio* file to the GOC before the initiation of the investigation. The schemes that were allegedly not covered by the consultations are not other subsidies identified but fall within schemes that were discussed between the Commission and the GOC during the consultations. Therefore, the claims were rejected.
- (114) The GOC alleged that its rights of defence were affected by the Commission's denial of a proper deadline extension while the GOC provided a number of reasons for such an extension.
- (115) The Notice of Initiation set out in Section 9 that extensions to the time limits should only be requested in exceptional circumstances and will only be granted if duly justified upon good cause being showed. It moreover specified that regarding time limits for the submission of information other than questionnaire replies, extensions will be limited to 3 days unless exceptional circumstances are demonstrated. The GOC did not demonstrate circumstances of such exceptional nature that would justify a deadline extension of more than 3 days. Due to the weekend that fell within this 3-day extension, the GOC was provided an extension of 4 calendar days. Therefore, the claim was rejected.

- (116) Moreover, the GOC and the CCCME claimed that the requirements to initiate an *ex officio* investigation pursuant to Article 10(8) of the basic Regulation were not met. According to the GOC and the CCCME, the Commission failed to establish the presence of any special circumstances that would justify the initiation of an investigation without having received a written complaint by or on behalf of the Union industry. The GOC argued that the Union BEV industry could have filed a complaint itself and the fact that it did not was clear proof that there were no exceptional and special circumstances justifying the *ex officio* initiation of the investigation. The GOC further argued that, according to press reports, the Union BEV producers publicly opposed the current investigation and that this was clear proof that there were no exceptional and special circumstances justifying the *ex officio* initiation of the case.
- (117) In the Initiation document, the Commission justified sufficiently the *ex officio* initiation. In particular, the Commission considered the rapid market penetration by the Chinese low-priced and subsidised imports of BEVs, which threatens to irreparably damage the Union industry, to be of a special nature justifying the initiation of an *ex officio* investigation. The subsidisation of the Chinese BEV sector caused a large and accelerating influx of imports of Chinese produced BEVs on the Union market at prices that depress prices or prevent price increases which otherwise would have occurred, threatening to cause material injury to the Union BEV industry, which might be irrevocable because of the technological development and level of R&D financing required. The possibility that the Union BEV industry could have filed a complaint itself does not affect the Commission's finding that in this specific case, since special circumstances existed justifying the *ex officio* initiation of the investigation. Furthermore, the Commission does not comment on press reports. Therefore, the claims were rejected.
- (118) The GOC claimed that the Initiation document contained no evidence of preferential lending and export credit insurance, insufficient evidence of the provision of grants, no evidence of provision of goods and services at less than adequate remuneration, no evidence to investigate government revenue foregone or not collected, and an incorrect understanding of export tax rebates.
- (119) The evidence included in the Initiation document constituted the information reasonably available to the Commission before the initiation of the investigation. As shown in the Memorandum on sufficiency of evidence, which contains the Commission's assessment on all the evidence at the disposal of the Commission concerning China, and on the basis of which the Commission initiated the investigation, there was sufficient evidence at initiation stage tending to show that the alleged subsidies were countervailable in terms of their existence, amount and nature. For all different schemes alleged in the Initiation document, the Commission provided the legal basis, the specificity of these subsidy schemes to the BEV sector, and, to the extent the Commission had access to it, detailed information from publicly available sources on amounts of subsidies provided by the GOC to the BEV exporting producers. Therefore, the Commission considered that it had sufficient evidence of countervailable subsidisation in accordance with the basic Regulation and the SCM Agreement.
- (120) The GOC stated that in investigations initiated based on a complaint from the Union industry, the questions concerning imports by the Union producers from the country under investigation and their relationships with the exporting producers as well as their activities in the Union are generally verified by the Commission in the course of the standing exercise which is carried out before the initiation of the investigation. Therefore, the GOC requested the Commission to (i) clarify whether the Commission considered in the definition of the Union BEV industry in the Initiation document the fact that some Union producers have production in China, some are owned by Chinese companies or have small production in the Union, (ii) provide the composition of the Union BEV industry in terms of the number of producers and producer groups, the total volume of Union BEV production and the total volume and value of the Union BEV industry sales in each year of the period considered, (iii) clarify whether any Union BEV producers were excluded by the Commission from the list of 12 producers mentioned in the Initiation document, (iv) provide the total volume and value of the imports by the Union BEV producers from China and countries other than China, and (v) provide the volume and value, even if in ranges, of the imports by the Union BEV producers from China in comparison to their total EU production and sales.

- (121) The Commission noted that the current investigation was initiated on its own initiative and not based on a complaint. Therefore, in the current investigation the Commission did not need to carry out a standing exercise. It follows that the GOC's clarification requests, and the requests of information linked to the Initiation document were not relevant in this regard and therefore were rejected.
- (122) The GOC and the CCCME claimed that in the Initiation document the Commission used selectively and unjustifiably several databases such as Global Trade Atlas ('GTA'), Eurostat and S&P Global Mobility for different aspects of the injury assessment without trying to reconcile the information or explain how or why a specific data set was appropriate for a specific part of the injury assessment.
- (123) The Commission disagreed with this claim. In the Initiation document the Commission used the information that it had at its disposal before the initiation of the investigation. Apart from Eurostat, the other two databases are not owned by the Commission and therefore the Commission could not fully reconcile the information in these databases. Furthermore, in the Initiation document the Commission explained that when it was possible, it cross-checked the information in these databases and adjusted such information when necessary, with other information it had at its disposal. The Commission also explained that the S&P Global Mobility data provided a more granular view of the types of BEVs sold on the Union market and explained the two modules of data it used. Moreover, the Eurostat database was used for the volume of imports of BEVs from China, while GTA was used for the volume of exports of China to the Union. The volume of imports of BEVs from China into the Union and volume of exports of BEVs from China into the Union are not the same as they are based on data reported by different customs authorities. Furthermore, irrespective of the source of information, the conclusion was the same, i.e. the volume of imports/exports of BEVs from China increased during the period covered by the Initiation document. Therefore, the claim was rejected.
- (124) The GOC claimed that in the Initiation document the Commission had compared the half-year data for 2023 to previous full years such as 2020, 2021 and 2022 to draw conclusions about the Chinese import prices and market share and their price effects on the Union BEV industry, to estimate the future price effects of these imports as well as with regard to the situation of the Union BEV industry, and that such assessment was not objective.
- (125) In the Initiation document the Commission used as a period of assessment the full years 2020, 2021 and 2022 and the first half of 2023 considering that the investigation was initiated in October 2023 as explained in recital (1). For the assessment of the trend of the volume injury indicators such as volume of imports, sales, exports, production, and consumption, the Commission calculated an index only for the full years considering 2020 as a base year. The Commission did not calculate an index for the first half of 2023 using the base year the full year 2020 since for a volume indicator the period of assessment and the base year should be identical (i.e. a half year cannot be compared with a full year). Average prices are not a volume indicator and therefore the Commission calculated an index also for the first half of 2023 using the full year 2020 as a base year. Such assessment is perfectly objective for industries such as the BEV industry whose selling price does not vary per season and as long as the respective period of time is disclosed. As concerns market shares, the Commission calculated the market shares in each full year (2020, 2021 and 2022) as well as the first half of 2023 and explained how the market share evolved during this period. As concerns the conclusions reached by the Commission in the Initiation document regarding the Chinese imports' price effects on the Union BEV industry and the estimated future price effects of these imports, the GOC did not explain why exactly in its conclusions the Commission was not objective. Therefore, the claim was rejected.
- (126) The GOC claimed that the Union industry's sales volume and sales prices data were based on different data sources and sets and, therefore, that the Commission's assessment was not objective. The CCCME claimed that the fact that the Commission used different sets of data for different aspects of the injury assessment made it impossible to obtain an accurate picture of the situation of the Union BEV industry.

- (127) The Commission disagreed with these claims. The information included in the Initiation document is based on information reasonably available to the Commission before the initiation of the investigation. In the Initiation document the Commission had to use several databases such as Eurostat, GTA and S&P Global Mobility as there was no single database that included all the information the Commission needed in its assessment. The fact that the sales volume of the Union industry was not based on the same database as the sales prices, does not make the Commission's assessment not objective. As it was explained in the Initiation document the database used by the Commission for the assessment of the price trend of the Union industry did not indicate the origin of the car. This was particularly important for the BEVs manufactured by the Tesla group for which certain models of BEVs could be manufactured both in China and the Union. Therefore, the claims were rejected.
- (128) The GOC and the CCCME requested the Commission (i) to provide further details regarding the data modules and reports from S&P Global Mobility used by the Commission in the Initiation document namely regarding the methodology of S&P Global Mobility sales volume and value data collection including the basis of data collection, the source and whether the data includes any estimates and if so the nature of the estimates; and (ii) to disclose the underlying S&P Global Mobility data which the Commission has sorted/selected based on specific parameters. It was further stated that although the S&P Global Mobility was a paid publication, it could be equated to the GTA and that as in anti-dumping investigations the Commission discloses detailed data from the GTA (in the context of the representative country selection), similar to the GTA, the Commission should provide the detailed data with regard to the S&P Mobility modules. The CCCME further argued that the underlying S&P Global Mobility data and information regarding the source and methodology used for data collection as regards the volume and the value of the BEV sales and their origin are key to enable interested parties to verify the credibility and reliability of the data that is being used by the Commission. The CCCME claimed that it was not clear if the S&P Global Mobility data matches between the two modules used by the Commission and covers all sales of Chinese and EU-produced BEVs in the Union in the first place.
- (129) As it was explained in the Initiation document the Commission used two modules of data from the S&P Global Mobility in order to assess the imports of Chinese BEVs into the Union. One module of data (module 1) was based on data regarding production volume for sales on the Union market. In this module the Commission was able to identify the exact manufacturing location of a particular BEV model that was meant to be sold on the Union market. This was particularly relevant for those BEV models that were sold on the Union market but produced in several countries (not only in China) like, for example, Tesla group's models. Another module of data (module 2) was based on data regarding sales of BEVs on the Union market. However, in this module it was not possible to identify the exact location where a particular car model was manufactured. As highlighted by the GOC, the S&P Global Mobility is a paid publication and therefore the Commission cannot disclose the underlying data. The level of data in the S&P Global Mobility (production for sales in the Union per each producer, model of vehicles etc.) is not comparable with the information that the Commission is disclosing from GTA (import data) for the selection of the representative country in anti-dumping investigation. Nevertheless, the GOC and CCCME can purchase the data from S&P Global Mobility. In any event, the Commission noticed that CCCME already had access to the data from S&P Global Mobility, module 2, as this data was used in the analysis submitted in the Annex I of CCCME's submission of 20 December 2023. Therefore, the request was rejected.
- (130) The CCCME claimed that in the Initiation document the Commission classified the Union BEVs into various segments, but it did not provide any information regarding the Chinese BEVs and whether they are comparable to the Union BEVs in each segment. Furthermore, the CCCME claimed that in the Initiation document there was no consideration of the competition and substitutability between Chinese BEVs and the BEVs produced by the Union producers in the Union within each segment. Moreover, the CCCME claimed that within each segment, there could be different models and body-types of the BEVs such as cars and SUVs and this difference in body types affected price comparability and the difference in the body types among other factors, also makes BEV models within a specific segment likely incomparable.

- (131) The segments (in terms of product types) used by the Commission for the price comparison were not created by the Commission in the current investigation. The information regarding segments was available in the data retrieved from S&P Global Mobility as all BEVs sold on the Union market are classified in such segments by other third parties such as producers, dealers of cars, renting companies etc. These segments apply to both BEVs manufactured by the Union industry and the BEVs imported from China. Furthermore, in the Initiation document the Commission was not required to make an in-depth comparison assessment between Chinese imported BEVs and the BEVs produced by the Union industry. Such comparison is made in the course of the investigation based on PCNs that the sampled Chinese exporting producers and sampled Union producers are requested to submit. Therefore, the claim was rejected.
- (132) The GOC and the CCCME argued that for the evolution of Chinese prices of BEVs on the Union market the Commission had used the data from Eurostat which included self-imports by the Union industry and concluded that the prices decreased by 2% during the period 2020 and first half of 2023 but ignored the fact that the S&P Global Mobility data showed a 3% increase in the weighted average sales price of the Chinese BEV imports between 2022 and first half of 2023. Furthermore, the GOC also claimed that because the majority of the imports from China were made by the Union industry at transfer prices no meaningful assessment of the Chinese BEV import prices can be made on the basis of the Eurostat data.
- (133) The Commission noted that the GOC provided contradictory claims. On one hand it claimed that it was not objective for the Commission to compare average prices in a half year period with average prices of one year as explained in recital (124) and on the other hand it criticised the Commission for not taking into account in its analysis the increase in prices in the first half of 2023 as compared to 2022. Furthermore, in the assessment of the trend of import prices, the Commission must take into account all imports from China even if some of them were made at transfer prices. Moreover, the data of S&P Global Mobility did not report the import price from China, but the weighted average price to the end-consumer of BEVs imported from China. Therefore, the claims were rejected.
- (134) The GOC claimed that the weighted average unit import price based on Eurostat was disconnected from the actual sales price of the BEVs to the consumer as reported by S&P Global Mobility and therefore this indicated that the assessment of prices in the Initiation document was not objective or based on positive evidence.
- (135) The prices in the two databases Eurostat and S&P Global Mobility are different as they are prices to different type of customers and at different level of trade. Therefore, the claim was rejected.
- (136) The GOC claimed that the Commission's statement in the Initiation document that module 2 of S&P Global Mobility used for price comparison between Union industry and Chinese imports included most of the sales of all BEVs on the Union market in the main Member States puts into doubt the scope and coverage the S&P Global Mobility data. This claim was repeated by CCCME who further requested the Commission to explain its choice of data sources and the representativity of the data used.
- (137) The Commission disagreed with this claim. In the Initiation document the Commission was not required to make a price comparison of all the BEVs of the Union industry and Chinese BEVs. As it was explained in the Initiation document the module 2 of S&P Global Mobility included most of the sales of all BEVs on the Union market in the main Member States and therefore they were representative. Furthermore, as the investigation was initiated *ex officio*, the Commission did not have data from the Union industry in the Initiation document and therefore resorted to the best available information for the price comparison, that is, the data from S&P Global Mobility which is a reliable source of information used by cars producers.
- (138) Furthermore, the GOC and the CCCME stated that as the Commission did not disclose the volume of Chinese and Union BEVs considered for the price effects as a whole and per segment, they could not understand whether the segment specific as well as the overall price difference calculated was representative.

- (139) In the Initiation document, the Commission did not carry out a price assessment per segment in the sense of segmentation of the market. The Commission used the segment factor for price comparison in the sense of product types in order to make the comparison meaningful in view of the different models of BEVs sold on the Union market in the absence of other available information in this regard. Therefore, the Commission did not need to disclose the volume of Chinese and Union BEVs considered for the price effects. The claim was, therefore, rejected.
- (140) Furthermore, the GOC argued that the Commission did not specify whether the passenger car segments indicated by the Commission and considered for the price comparison were created by the Commission or were also used by the S&P Global Mobility.
- (141) The Commission recalled that the information regarding the segments was available in the module 2 of S&P Global Mobility.
- (142) The GOC and the CCCME also claimed that no price comparison had been provided for certain segments in the Initiation document and no explanation was provided regarding their exclusion. The GOC and CCCME further argued that in case Chinese BEVs were not sold in those segments on the Union market, then those BEV types should be excluded from the product scope.
- (143) As explained in recital (139) the Commission did not make a price comparison per segment in the sense of segmentation. Furthermore, the investigation covered all battery electric vehicles and therefore whether the Chinese exporting producers were not exporting to Union market BEVs in certain segments was irrelevant. Therefore, the claims were rejected.
- (144) The GOC and the CCCME claimed that in its price comparison the Commission should have taken into account other factors that affect the comparability such as the differences in sales volumes to the customers and the level of trade.
- (145) In the Initiation document the Commission is not required to make a price comparison that takes into account all factors that affect comparability as before the initiation of the investigation the Commission does not have access to such detailed information. Such calculation is carried out in the course of the investigation based on the detailed information submitted by the sampled Chinese exporting producers and sampled Union producers. Therefore, the claim was rejected.
- (146) The GOC, CCCME and Company 24 claimed that the price comparison made by the Commission in the Initiation document was not objective as it excluded the sales of Tesla group while these sales were significant.
- (147) The Commission disagreed with this claim. As it was explained in the Initiation document the origin of the sales of Tesla group on the Union market was not reported in the database from S&P Global Mobility that the Commission used for the price comparison. Furthermore, in the Initiation document the Commission was not required to make a price comparison for all export sales and all Union industry sales. The information in the Initiation document is based on the information reasonably available to the Commission before the initiation of the investigation. Therefore, the claim was rejected.
- (148) The GOC claimed that in the Initiation Document, the Commission made a price comparison for 2022 and first half of 2023 and did not consider the data for 2020 and 2021, and also did not consider how prices of the Chinese and Union BEVs interacted over time and referred in this regard to the Appellate Body reports in *China – HP-SSST (EU and Japan)* ⁽¹⁸⁾. CCCME repeated this claim in its submission of 20 December 2023 and referred also to the Panel report in *Morocco – Definitive AD Measures on Exercise Books (Tunisia)* ⁽¹⁹⁾.

⁽¹⁸⁾ Appellate Body Reports, *China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes (“HP-SSST”) from Japan / China – Measures Imposing Anti-Dumping Duties on High-Performance Stainless Steel Seamless Tubes (“HP-SSST”) from the European Union*, WT/DS454/AB/R and Add.1 / WT/DS460/AB/R and Add.1, adopted 28 October 2015, DSR 2015:IX, p. 4573, paras. 5.159-5.160.

⁽¹⁹⁾ Panel Report, *Morocco – Definitive Anti-Dumping Measures on School Exercise Books from Tunisia*, WT/DS578/R and Add.1, circulated to WTO Members 27 July 2021, appealed 28 July 2021, paras. 7.218-7.220.

- (149) The Commission noted that the two WTO reports refer to the price analysis made during an investigation and not to the one made in a complaint or Initiation document, where the standard of evidence is lower. The Commission considered that before initiation of the investigation the price analysis presented in the Initiation document was sufficient. A more in-depth analysis is made in the course of the investigation based on the data submitted by the sampled Chinese exporters and sampled Union producers. Therefore, the claim was rejected.
- (150) The GOC and the CCCME also claimed that for the price comparison the Commission did not take into account the imports by the Union BEV producers and that the pricing strategy of the Union producers for the BEVs manufactured in China was likely affected by the overall business strategy of the Union producers.
- (151) For the price comparison, the Commission only excluded from the price comparison the sales of Tesla as the information it had at its disposal could not differentiate between Tesla BEVs manufactured in China and the ones manufactured in the Union as explained in recital (147). Furthermore, the Commission noted that the GOC and the CCCME did not substantiate their claim regarding the pricing strategy of the Union industry. Therefore, the claims were rejected.
- (152) The GOC and the CCCME also claimed that for the price comparison the Commission did not take into account the brand factor without explaining how the Commission should take such factor into account in its price comparison. Furthermore, the GOC and the CCCME also claimed that the rise in sales prices of the Union industry in conjunction with the rising sales volume raises questions about the extent to which Chinese branded BEVs are competing with the Union industry and that the allegedly lower prices of the Chinese BEV imports are not in themselves indicative of price suppression or depression. The GOC and the CCCME stated that the Panel in *Morocco – Definitive AD Measures on Exercise Books (Tunisia)* ⁽²⁰⁾ noted that a price effects examination requires an investigating authority to take into account the differences between the three price effects, as the elements relevant to the consideration of significant price undercutting differ from those relevant to the consideration of significant price depression and suppression. The GOC and the CCCME further noted that no independent analysis of price depression and suppression was carried out and that the assertion of price depression was unfounded as the prices of the Union industry increased throughout the period considered. Company 24 also added as factors not taken into account by the Commission in the Initiation document for the price analysis (i) market segments, and (ii) other factors that influence competitive dynamics in the automotive sector, without specifying those factors.
- (153) The Commission considered that it provided sufficient information regarding prices in the Initiation document which was based on the information reasonably available to the Commission before the initiation of the investigation. In the course of the investigation, the Commission will carry out an in-depth analysis of prices based on the information submitted by the sampled Chinese exporting producers and sampled Union producers.
- (154) As regards the assessment of the alleged vulnerability of the Union BEV industry, the GOC and the CCCME claimed that (i) in the Initiation document the Commission selectively focused on specific economic indicators of the Union industry such as production volume, sales volume, market share, sales prices and employment, while overlooking other indicators crucial for the evaluation of the situation and the prospects of the Union BEV industry such as production capacity, capacity utilisation, production costs, factors influencing sales prices, profitability and return on investments, (ii) the indicators used by the Commission in the Initiation document showed a healthy Union industry as the Union industry held the majority market share during the period considered and that the marginal decrease in the market share observed over a six-month period did not serve as a reliable indicator of vulnerability as the Union BEV producers were successfully selling their entire and increasing production and concurrently experiencing substantial sales growth in an expanding market, (iii) the sales of the Union industry increased between 2020 and 2022 at a rate higher than the rate of increase of the Union consumption, (iv) the sales prices of the Union industry which increased by 30% suggest that the Union producers were able to maintain their market share and raise prices notwithstanding the Chinese BEV imports and (v) the growing employment shows that the Union industry is optimistic about its future prospects, and (vi) exports of the Union industry increased. Company 24 also argued that the Union industry was not in a vulnerable position, that it was in fact growing as the data on sales volume, production and exports show a positive trend, while the data on market share does not indicate any clear trend although there had been a market improvement since 2021.

⁽²⁰⁾ Panel report, *Morocco – Definitive AD Measures on Exercise Books (Tunisia)*, paras. 7.195-7.196.

- (155) In the Initiation document the Commission presented the information that was publicly available considering that the investigation was initiated *ex officio*. The Commission considered that it provided sufficient information in the Initiation document regarding the vulnerability of the Union industry. In particular, the Commission explained that the situation of the Union industry did not point to the existence of material injury that would be caused by imports from China. However, the Chinese exporters have significantly increased their penetration on the Union market in a very short period of time, at prices significantly lower compared to the prices of the Union industry, thereby depressing prices or preventing price increases which otherwise would have occurred and, consequently, placing significant pressure on Union sales, market shares and profit margins. This was especially relevant in a context where the Union industry will need to achieve higher volumes of sales in the BEV market to absorb the heavy investments it needs to spend to remain competitive in the transition to full electrification. The surge of low-priced imports of BEVs originating in China gaining significant market shares in a growing market would lead the Union industry to incur heavy losses which could become rapidly unsustainable.
- (156) As regards the threat of injury, the GOC and the CCCME claimed that the Commission had not provided any evidence and explanation regarding the legal requirement in the “*chapeau*” of Article 8(8) of the basic Regulation regarding the change in circumstances resulting in a situation in which injury is clearly foreseen and imminent and that the Commission did not carry out any prospective analysis.
- (157) In the Initiation document the Commission did provide sufficient evidence tending to show that the development of the subsidised imports would pose an imminent threat of injury to an already vulnerable Union industry. In particular, the Commission provided evidence that the combination of high volumes and market shares at very low prices of Chinese BEVs could put the survival of the Union BEVs industry at risk. The Chinese BEVs exporting producers consider the Union market very attractive in view of the clear roadmap to electrification, size and prices. Furthermore, regarding the prospective analysis the Commission noted that a threat of injury analysis is prospective by nature and that the elements analysis in section 6 of the Initiation document constitute a prospective analysis. Therefore, the claim was rejected.
- (158) The GOC and the CCCME claimed that to evaluate the rate of increase of Chinese imports in the Initiation document the Commission only considered the Chinese brands’ market share, while it should have included all imports from China.
- (159) The Commission disagrees with this claim. In the Initiation document the Commission calculated the market share of all imports from China in the injury section. In the threat of injury section, the Commission complemented the information regarding market share specified in the injury section and explained that the imports of BEVs from China could be broken down into three categories such as European brands, American brand, and Chinese brands, and it provided also the market share of the Chinese brands. Therefore, the claim was rejected.
- (160) Company 24 claimed that the Commission did not explain properly in the Initiation document the methodology for the calculation of the significant rate of increase of subsidies imports into the Union market. In particular, Company 24 argued that the Commission relied heavily on export data of Chinese BEVs from the GTA database and it did not explain the underlying methodology of the GTA database in view of the significant differences between the data from GTA and other sources such as Eurostat and S&P Global Mobility.
- (161) The Commission did not agree with Company 24’s unsubstantiated conclusion that it heavily relied on the data of GTA for the assessment of the rate of increase of subsidies imports into the Union. Furthermore, it is not clear what methodology the Commission was supposed to explain as concerns GTA. The Commission used three sources that it had at its disposal before the initiation of the investigation for assessing the increase of imports/export of Chinese BEVs into the Union: Eurostat, S&P Global Mobility and GTA. The Commission did not give a particular weight to any of these databases in its assessment. As highlighted by Company 24 itself, GTA reported the data of Chinese exports to the Union market. Eurostat reported the data of imports from China into the Union market. The volume of exports can differ from the volume of imports especially in cases when the data is provided by different customs authorities. Therefore, the claim was rejected.

- (162) The GOC claimed that the market share calculated by the Commission of the Chinese brands based on a mixture of data sources seemed to purposefully overestimate the share of Chinese brands in order to create the fake impression of a significant rate of increase of imports of Chinese brands in the Union as the market share calculated by the Commission was higher than the respective market share reported by ACEA.
- (163) The Commission disagreed with this claim. The Commission cannot comment on the market share data submitted by ACEA and its sources and methodology as it did not have access to the detailed set of data used by ACEA in this regard. Nevertheless, by comparing the market share reported by ACEA with the one calculated by the Commission for the Chinese brands, it appears that ACEA did not include in this calculation the imports from the Chinese group Geely, in particular the sales of Polestar.
- (164) The GOC and CCCME claimed that the Commission's assessment was not objective as the self-imports by the Union industry were excluded in the assessment of the rate of future increase of the Chinese imports and from the assessment of the Union sales volume.
- (165) The imports made by the Union industry were not excluded in the assessment of the future increase of Chinese imports. Furthermore, in the injury analysis the sales volume of Union industry must include only the volume of BEVs manufactured in the Union, the volume of BEVs imported from China are in fact resales of the Union industry on the Union market as for this type of sales the Union industry acts as a trader on the Union market and not producer. Therefore, the claim was rejected.
- (166) The GOC and Company 24 claimed that the Commission did not do an objective examination as the assessment of the Chinese BEV imports had not been done on a segment-basis as was done for the price effect analysis.
- (167) In the Initiation document the Commission did not carry out a price effect analysis on a segment basis. The Commission simply compared prices of Union industry's BEVs with the Chinese BEVs in different segments in the sense of product types in order to make the price comparison meaningful in view of the several types of BEVs sold by the Union industry. Therefore, the claim was rejected.
- (168) As regards the market share of Chinese brands based on the S&P Global Mobility in the Initiation document, the GOC requested the Commission (i) to confirm whether the market share ranges provided are correct, (ii) clarify as to why ranges have been provided when in fact, according to the Initiation document, the Commission had the exact data, and the exact market share of Chinese brands has been provided for 2021 (i.e., 3%).
- (169) The market share for Chinese brands was provided in ranges as the Commission used two modules of data from S&P Global Mobility whose basis for collection of data was different as it was clearly explained in the Initiation document. The ranges provided by the Commission indicated the result of the calculation of the market shares based on these two modules. For 2021 the Commission did not provide a range as the result of the calculation of the market share was the same for both modules of data.
- (170) The GOC and the CCCME also claimed that the Commission's allegations of Chinese overcapacity were inaccurate and that a substantial portion of BEV production capacity in China could be attributed to Union BEV production. Company 24 claimed that the Commission's analysis of spare capacity in China lacked granularity as it did not take into account the different segments in the market and policy developments in China and in third countries that will increase the demand of BEVs in the future in all segments. Furthermore, the GOC and the CCCME argued that the Commission did not assess the expected growth in the Chinese domestic demand even though China is the world's largest market for BEVs, that the majority of the production of BEVs in China was for the Chinese domestic market and the absorption capacity of other markets. Company 24 argued that the Commission made an insufficient assessment of developments and trends in BEV markets in third countries.

- (171) The Commission considered that it provided sufficient information regarding capacity and spare capacity in China in the Initiation document. In particular, the Commission explained that several sources stated that the spare capacity is around 50% in China and it is expected to increase in the future as more factories are being built. While indeed China is the largest market for BEVs, it is also export oriented. A large number of Chinese BEV companies have expressed publicly their interest to exports BEVs to the Union and they are building BEV models specifically for the Union market as it was explained in the Initiation document. Furthermore, in the Initiation document the Commission explained that the third largest market for BEVs after China and the Union, was the US which was effectively closed to the Chinese exporting producers in view of the 27,5 % total import duties (2,5 % custom duties and 25 % duties ⁽²¹⁾ based on Section 301 of the Trade Act of 1974 ⁽²²⁾). Other smaller markets such as Türkiye and India also had high import duties for imports of BEVs from China. During the investigation the Commission will assess in depth the absorption capacities of other markets for the Chinese spare capacity.
- (172) The CCCME claimed that the Commission did not evaluate whether the Chinese BEV imports and the Union BEVs are in a competitive relationship and substitutable with one another, such that the former could have the effect of causing a threat of injury to the Union BEV industry. The CCCME referred in this regard to the Appellate Body reports in *China – HP-SSST (Japan and EU)* ⁽²³⁾.
- (173) The Commission noted that this report referred to the respective assessment that the Commission has to carry out during an investigation and not in a complaint or Initiation document where the level of evidence is lower than during an investigation. Furthermore, in the Initiation document under section 5.4.2 the Commission showed the price comparison between Chinese BEVs and Union BEVs based on segments in the sense of product types, in the section 5.4.4 the Commission explained the components of the cost of production of BEVs which are the same for the Chinese exporting producers and the Union producers, in section 5.5 the Commission concluded that the Chinese BEV producers have significantly increased their penetration on the EU market in a very short period of time, at prices significantly lower compared to the prices of the Union industry, then in sections 6.2 and 6.3 the Commission explained why the Union market is attractive for Chinese producers especially for particular Chinese exporting producers that the Commission presented in section 6.3. Furthermore, in section 7.1 on causation, the Commission explained that the presence of the Chinese cars on the Union market in high volumes at significant lower prices than the Union industry's prices will not allow the Union industry to build a proper BEV industry on the Union market. Therefore, at initiation stage there was sufficient evidence tending to show that the Chinese BEVs and the Union BEVs are in direct competition and are substitutable with one another. The claim was therefore rejected.
- (174) Company 24 claimed that there was no evidence showing that the imports of the allegedly subsidised BEVs from China would cause a threat of material injury to the Union BEV industry, taking into account (i) the growing Union BEV industry, which was, according to Company 24, not in a vulnerable position, (ii) the expected growth of the Union BEV market, and (iii) the evolution of imports from other third countries. Company 24 also claimed that the Commission failed to take into account the segmentation of passenger cars market while this element is relevant as it would explain that low prices of Chinese BEVs in one market segment cannot cause any alleged threat of injury to the Union industry which operates in different market segments. Furthermore, Company 24 claimed that even if there was a threat of injury to the Union industry, such threat was not attributable to the imports of BEVs from China, as (i) large parts of the EU industry focused on ICE cars where they had a competitive edge and only started to invest recently in the BEV market, (ii) low investments in a global electric batteries supply chain, and (iii) the lack of affordable raw materials for battery production and high energy prices aggravated by external shocks, most notably the Russian aggression in Ukraine.
- (175) The GOC claimed that the Commission did not assess properly (i) the imports from third countries, (ii) the self-imports of BEVs from China by the Union BEV producers – this was raised also by the CCCME, and (iii) the changes in patterns of consumption.

⁽²¹⁾ <https://www.piie.com/blogs/trade-and-investment-policy-watch/more-soybeans-trumps-section-301-tariffs-and-chinas>

⁽²²⁾ <https://crsreports.congress.gov/product/pdf/IF/IF11346#:~:text=Section%20301%20divides%20such%20actions,burdens%20or%20restricts%E2%80%9D%20U.S.%20commerce>

⁽²³⁾ Appellate Body Report, *China – HP-SSST (Japan and EU)*, para. 5.262.

- (176) The CCCME claimed that the Commission failed to adequately consider other known factors that risk injuring the Union BEV producers in the future such as (i) the reliance of the Union BEV producers on batteries and other components in third countries which affects their competitiveness in general and in case of supply chain disruptions such as during Covid-19 pandemic and the Russian – Ukraine war, (ii) the inflationary pressure and high energy prices in the Union, (iii) the EU policy to promote biofuels, (iv) competition between ICE cars and BEVs, (v) the start-up situation of several Union BEV producers and their limited production scale, and (vi) the pricing policy of traditional EU automotive brand producers manufacturing BEVs as well and the intra-EU producer competition.
- (177) The Union BEV industry was indeed increasing in line with the Union market that is progressively transitioning from ICE vehicles to the BEVs. However, in the Initiation document the Commission further explained that the available information showed that the Union BEV industry would be at around breakeven point on their BEV business and was expecting to reach profitable levels around 2025. The low performance of the industry was mainly attributable to the high battery costs and the expensive R&D efforts over still relatively low volumes. The Union BEV industry needed to continuously invest especially in batteries plants and research and development for new BEVs models to stay competitive. While the situation was currently sustainable as most Union BEVs producers could cross-compensate with the higher margins they achieve from the sale of ICE vehicles, this possibility would however gradually subside as the Union market transitions to full electrification. In other words, the future profitability of the Union BEV industry will heavily depend on them securing high production and sales volumes of BEVs. Furthermore, as it was explained in the Initiation document, the Union industry needed to continue to increase its sales of BEVs on the Union market in high volumes. The presence of the Chinese BEVs on the Union market in high volumes at significantly lower prices than the Union industry's prices will not allow the Union industry to build a proper BEV industry on the Union market.
- (178) The data provided in the Initiation document was based on the information publicly available to the Commission before the initiation of the investigation. Before the initiation of the investigation, the Commission did not have information that indicated that a segment analysis was needed. The Commission further investigated this issue in the course of the investigation and reached the conclusion that a segment analysis was not warranted nor appropriate in this case as explained in recitals (1041) to (1049) .
- (179) Furthermore, the Commission did not need to include in the Initiation document an exhaustive list of factors that could cause a threat of injury to the Union industry as the level of evidence needed in the Initiation document is significantly lower than during the investigation that imposes countervailing measures. In the Initiation document the Commission assessed the evolution of imports from third countries and other factors affecting the performance of the Union industry such as the shortage of semiconductors, difficulties in sourcing enough raw materials and the charging infrastructure. During the investigation, the Commission will assess in detail such factors as showed in section 6.2. Therefore, these claims were rejected.
- (180) As regards the Union interest, while admitting that the Commission did not usually consider Union interest for the initiation of an investigation, the GOC claimed that in the current investigation such assessment would have been relevant and appropriate as the investigation was initiated *ex officio* and it did not seem to be supported by the Union BEV producers. The GOC considered that the initiation of the present investigation was counterintuitive for the EU and that the imposition of measures would be against the Union interest as: (i) the investigation would not benefit the Union BEV industry and if measures were imposed it would create problems of affordability and availability of BEVs in the Union, and (ii) the investigation was inconsistent with the EU's climate and green energy goals.
- (181) There is no legal requirement to include a Union interest assessment either in a complaint or in an Initiation document for investigations initiated *ex officio*. Furthermore, the Commission strongly disagreed with GOC's claims stated in recital (180). The Commission addressed in detail the aspects of the Union interest in the course of the investigation and presented its findings in the section 'Union interest'.

- (182) The evidence included in the Initiation document constituted the information reasonably available to the Commission before the initiation of the investigation. As the investigation was initiated *ex officio*, the Commission did not have access to the same information as in the case when an investigation is initiated based on a complaint. Certain information such precise data on cost of production and therefore profitability is not publicly available. Nevertheless, the Initiation document contained sufficient evidence tending to show the existence of a threat of injury to the Union industry and causal link between the threat of injury to the Union industry and the Chinese BEV imports, which was caused by the subsidised imports. Therefore, the Commission considered that it had sufficient evidence of a threat of injury resulting from subsidised imports in accordance with the basic Regulation and the SCM Agreement.

1.6. Individual examination

- (183) Tesla (Shanghai) Co., Ltd, an exporting producer in the PRC, submitted a request for individual examination under Article 27(3) of the basic Regulation. Subsequently, it also submitted a questionnaire reply. This request is being considered at this stage of the proceeding.

2. PRODUCT UNDER INVESTIGATION, PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product under investigation

- (184) The product under investigation is new battery electric vehicles principally designed for the transport of nine or less persons, including the driver, excluding L6 and L7 categories of vehicles according to Regulation (EU) No 168/2013 ⁽²⁴⁾, propelled (regardless of the number of wheels set in motion) solely by one or more electric motors, including those with an internal combustion range extender (an auxiliary power unit) currently falling under CN code ex 8703 80 10 (TARIC code 8703 80 10 10) ('the product under investigation'). Motorcycles are excluded from the present investigation.
- (185) In the Notice of initiation, the explicit reference to the range extender was not included in the definition of the product under investigation. However, the Commission considered it necessary to clarify that a type of BEVs are also the vehicles that have a range extender (an auxiliary power unit) consisting of a small internal combustion engine coupled with an electric generator which is used to re-charge the battery while the vehicle is propelled. This type of BEVs have the same physical characteristics and uses and competes with the other types of BEVs that do not have a range extender. In the period considered this type of BEVs was imported from China and produced in the Union in small volumes. Thus, the Commission's analysis included, since the initiation, data concerning this type of BEVs.

2.2. Product concerned

- (186) The product concerned is the product under investigation originating in China ('the product concerned').

2.3. Like product

- (187) The investigation showed that the following products have the same basic physical and technical characteristics as well as the same basic uses:

the product concerned when exported to the Union;

- (a) the product under investigation produced and sold on the domestic market of China; and
- (b) the product under investigation produced and sold in the Union by the Union industry.

- (188) The Commission decided that, for the purpose of this investigation, those products are therefore like products within the meaning of Article 2(c) of the basic Regulation.

⁽²⁴⁾ Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles, OJ L 60, 2.3.2013, p. 52.

2.4. Comments on product scope

- (189) Comments on product scope were received from Shanghai Yoyao Technology Co., Ltd. ('XEV') and Green World Mobility.
- (190) XEV is a Chinese exporting producer of quadricycles marketed under the brand 'XEV' and exported to the Union. Its main model is the XEV YOYO.
- (191) XEV submitted that the XEV YOYO is a fully electric category L7 quadricycle, according to the vehicle categories defined in Annex I of Regulation (EU) No 168/2013 ⁽²⁵⁾. As such, according to XEV, it differs from motor vehicles for the carriage of passengers and their luggage, referred to as category M vehicles according to the vehicle categories defined in Article 4 of Regulation 2018/858 ⁽²⁶⁾. Moreover, XEV claimed that category L7 quadricycles bear no similarities to the BEVs targeted by the investigation, because of physical and technical differences. Amongst these, XEV showed that the XEV YOYO had lower power performance, battery capacity, maximum range, kerb weight and maximum speed than some small category M BEVs, in addition to different license requirements and different dimensions of the license plate. XEV also identified different uses and consumer perceptions.
- (192) Therefore, XEV requested the Commission to confirm that quadricycles, such as the XEV YOYO, are not considered as BEVs for the purposes of the current investigation and therefore were not covered by the definition of the product under investigation.
- (193) The Commission's analysis confirmed that indeed quadricycles (category L6 and L7) do not have the same physical and technical characteristics as the battery electric vehicles covered by the investigation. In particular, amongst the physical and technical characteristics, quadricycles are defined by limits in terms of maximum speed, weight, motor power and seats while the battery electric vehicles covered by the scope of the investigation do not have such limits. Thus, the Commission concluded that quadricycles were not part of the product under investigation and, therefore, they were not covered by the investigation. As a consequence, the exports of quadricycles into the Union from, *inter alia*, XEV were found not to be concerned by this investigation. ()
- (194) Green World Mobility imports from China electric mopeds and certain electric vehicles designed for persons with disabilities. Green World Mobility submitted that such vehicles were different from the product under investigation. Indeed, mopeds fell in the category L6 as defined by Regulation (EU) No 168/2013, whereas electric vehicles designed for persons with disabilities imported by Green World Mobility had been classified in the past under CN code 8713 90 00. However, the customs authorities of the Netherlands subsequently reclassified them under CN code 8703 80 10. Such vehicles can carry a maximum of two people only and can travel at a maximum speed of 45 km/h on the public road. Finally, Green World Mobility confirmed that they were also classified within the category L as defined by Regulation (EU) No 168/2013.
- (195) The Commission's analysis confirmed that mopeds and the type of electric vehicles designed for persons for disabilities imported by Green World Mobility did not have the same physical and technical characteristics as battery electric vehicles covered by the scope of the investigation. Thus, the Commission concluded that these products were not part of the product under investigation and, therefore, they were not covered by the investigation.

⁽²⁵⁾ Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles, OJ L 60, 2.3.2013, p. 52.

⁽²⁶⁾ Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC, OJ L 151, 14.6.2018, p. 1.

3. SUBSIDISATION

3.1. Introduction: Presentation of Government plans, projects and other documents

- (196) Before analysing the alleged subsidisation in the form of subsidies or subsidy programmes, the Commission assessed government plans, projects, and other documents, which were relevant for the analysis of the investigated subsidy programmes.
- (197) As a preliminary remark, the Commission pointed out that China's overall economic setup is characterised by a particularly strong role of the State, with the State authorities being in turn controlled by the Chinese Communist Party ('CCP'), the ruling political entity of the country. As a result, businesses in China operate in a specific environment which - unlike the Western economies where market forces represent the dominant organizing principle - features numerous mechanisms that provide the GOC with substantial degree of control over any aspect of the economic activity in the country. This tight control prevents economic operators from acting as rational market operators seeking to maximise profits, and in fact forces them to act as an arm of the government in implementing its policies and plans.
- (198) The following features are most significant in transmitting the GOC policy decisions into the day-to day business conduct of economic operators: (i) doctrine of socialist market economy, (ii) leadership of the CCP, (iii) system of industrial planning, (iv) financial system.
- (199) The socialist market economy doctrine, embodied in the Chinese Constitution ⁽²⁷⁾, grants the State an inherent and all-encompassing control over the economy, which goes way beyond the traditional standards of setting a regulatory framework within which market players are free to operate. In particular, according to Article 6 of the Constitution: *"The basis of the socialist economic system of the People's Republic of China is socialist public ownership of the means of production [...]. In the primary stage of socialism, the State upholds the basic economic system in which the public ownership is dominant and diverse forms of ownership develop side by side and keeps to the distribution system in which distribution according to work is dominant and diverse modes of distribution coexist."* Moreover, pursuant to Article 15 of the Constitution: *"The State practices socialist market economy. The State strengthens economic legislation, improves macro-regulation and control. The State prohibits in accordance with law any organization or individual from disturbing the socio-economic order."* Moreover, Article 11 of the Constitution assigns to the State an interventionist role that goes beyond protecting the rights and interests of the non-public sectors, in that the State shall *"encourages, supports and guides the development of the non-public sectors of the economy and, in accordance with law, exercises supervision and control over the non-public sectors of the economy."*
- (200) These constitutional fundamentals are reflected in all relevant pieces of legislation ⁽²⁸⁾ which emphasize the socialist market economy as the leading principle on which the Chinese economy is based. Moreover, the State, under the leadership of the CCP, indeed makes extensive use of a variety of instruments - both incentivizing and restricting - to guide the economy towards socialist modernization, i.e. towards objectives (including industrial policy objectives) set by the GOC.

⁽²⁷⁾ Constitution of the PRC, adopted on 4 December 1982, as amended; available at: http://en.moj.gov.cn/2021-06/22/c_634901.htm.

⁽²⁸⁾ See for example Articles 1 and 206 of the Civil Code of the PRC, according to which: *"This Law is formulated [...] for the purposes of protecting the lawful rights and interests of the persons of the civil law, regulating civil-law relations, maintaining social and economic order, meet the needs for developing socialism with Chinese characteristics, and carrying forward the core socialist values"* and *"[t]he State upholds and improves the fundamental socialist economic systems, such as the ownership system under which diverse forms of ownership co-develop with public ownership as the mainstay, the distribution system under which multiple forms of distribution co-exist with distribution according to work as the mainstay, as well as the system of socialist market economy. The State consolidates and develops the public sector of the economy, and encourages, supports, and guides the development of the non-public sector of the economy. The State implements a socialist market economy [...]"*; available at: https://www.trans-lex.org/601705/_/civil-code-of-the-peoples-republic-of-china/. Similarly, according to Article 1 of the Company Law of the PRC: *"The Company Law of the People's Republic of China [...] has been enacted in order to standardize the organization and activities of companies, protect the lawful rights and interests of companies, shareholders and creditors, safeguard the social and economic order and promote the development of the socialist market economy"*; available at: <http://mg.mofcom.gov.cn/article/policy/201910/20191002905610.shtml>.

- (201) The leadership of the CCP - while formally enshrined in the country's Constitution ⁽²⁹⁾, as well as in relevant secondary legislation and in the Constitution of the Party ⁽³⁰⁾ itself – takes various forms in practice; in particular, as separation of powers does not exist in China and the Party exercises full control over the legislative ⁽³¹⁾, executive ⁽³²⁾, as well as judicial ⁽³³⁾ branches of the State apparatus; moreover, the Party oversees crucial areas of the economy, including the financial sector and industrial sectors considered strategic, notably through ownership and/or by appointing and rotating key personnel; in addition, setting up Party cells is mandatory in all enterprises with more than a three members of the Party ⁽³⁴⁾ (see also recital (785)), state-owned and private alike, and Party structures within undertakings claim frequently the right to participate in operational decision-making of companies (see also recital (786)). All these controlling mechanisms provide the CCP with a tight grip over the country's economy and allow the Party to formulate and implement its economic policies in line with its strategic considerations and priorities.
- (202) The direction of the Chinese economy is to a significant degree determined by an elaborate system of planning which sets out priorities and prescribes the goals the central and local governments must focus on. Relevant plans exist at all levels of government and cover all economic sectors. The objectives set by the planning instruments are of binding nature and the authorities at each administrative level monitor the implementation of the plans by the corresponding lower level of government. Overall, the system of planning in the PRC results in resources being allocated to sectors designated by the government as strategic or otherwise politically important, rather than being allocated in line with market forces ⁽³⁵⁾.
- (203) To allocate resources in line with the GOC's policy priorities, instrumentalizing the financial sector is of essence for the Chinese authorities. China's financial system remains dominated by the banking sector and the State controls the banking sector (see also section 3.5.1, in particular sub-section 3.5.1.3), through ownership (see recital (465)), as well as through personal ties. Accordingly, the GOC, in its capacity as the majority/controlling shareholder, has the power to appoint the most important positions within the management state-owned policy banks (see recital (454)), as well as of banks partially or fully owned by the State itself or by State-held legal persons (see recital (468)).
- (204) Moreover, articles of association of major Chinese banks regularly contain a dedicated chapter on the creation of a Party committee ⁽³⁶⁾. For example, according to the articles of association of the Industrial and Commercial Bank of China ('ICBC'), "*the chairman of the board of directors of the Bank and the secretary of the Party Committee shall be the same person*" ⁽³⁷⁾. Article 53 lists the duties of the Party committee, including the monitoring of the practical

⁽²⁹⁾ See Article 1 of the Constitution: "*The socialist system is the fundamental system of the People's Republic of China. Leadership by the Communist Party of China is the defining feature of socialism with Chinese characteristics. It is prohibited for any organization or individual to damage the socialist system.*"

⁽³⁰⁾ See the General Program of the CCP Constitution, according to which: "*Leadership of the Communist Party of China is the most essential attribute of socialism with Chinese characteristics, and the greatest strength of this system. The Party is the highest force for political leadership. The Party exercises overall leadership over all areas of endeavour in every part of the country*"; available at: <https://english.news.cn/20221026/d7fff914d44f4100b6e586372d4060a4/c.html> (accessed on 3 June 2024).

⁽³¹⁾ Concerning the composition of the National People's Congress and its relation to the Chinese Communist Party, see for example at: <https://npcobserver.com/about-npc/>.

⁽³²⁾ See at: <https://www.gov.cn/>.

⁽³³⁾ See Article 12 of the Judges Law of the PRC which provides that judges must "[u]phold [...] the Constitution of the People's Republic of China, the leadership of the Communist Party of China, and the socialist system"; available at: www.npc.gov.cn/englishnpc/c23934/202012/9c82d5dbefbc4ffa98f3dd815af62dfb.shtml#:~:text=Article%201%3A%20This%20Law%20is,in%20accordance%20with%20the%20law.

⁽³⁴⁾ See Article 30 of the CCP Constitution: "*A primary-level Party organisation shall be formed in any enterprise, [...], government organ, [...] and any other primary-level [organisation where people work] where there are three or more full Party members*".

⁽³⁵⁾ Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 20 December 2017, SWD(2017) 483 final/2 (the 'China Report of 2017') – Chapter 4, p. 41-42, 83. See also the updated Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 10 April 2024, SWD(2024) 91 final (the 'China Report') – Chapter 4, pp. 57-59, 99.

⁽³⁶⁾ Articles of association of the ICBC, Chapter 6, Articles 52-53; available at: http://v.icbc.com.cn/userfiles/Resources/ICBCLTD/download/2017/gszc_en.pdf.

⁽³⁷⁾ *Ibid.*, Article 52.

implementation of Party and State decisions in the bank. The Party committee is also playing a role in the selection and evaluation of personnel, together with the board of directors. Finally, the Party committee is to be involved in the discussion of “*major operational and management issues and major issues concerning employee interests and put forth comments and suggestions*” ⁽³⁸⁾. Moreover, according to the provisions concerning the board of directors, the Party committee has to be consulted before material issues are decided upon ⁽³⁹⁾. The articles of association of the Agricultural Bank of China contain identical language on establishing the Party committee in Article 58 and on the Committee’s involvement in the discussion of major issues in Article 161 ⁽⁴⁰⁾.

- (205) Beside GOC’s ability to control the banking sector through ownership and organisational setup, the GOC exercises control over the sector also in view of the applicable Chinese legislation (see 3.5.1.5 for the analysis of the relevant regulatory documents) which requires the banks to align with the country’s industrial policy objectives when making financial decisions.
- (206) In conclusion, all these elements show that the structure of the legal and political system in the PRC relies on a tight grip by the government on all aspects of the economy and trade, as they are centrally managed and monitored by the GOC. The economic operators are integral part of this system not as free market actors aiming to take business decisions purely driven by economic logic and profit maximisation, but rather as one of the integral actors to implement the overarching policies and their specific objectives set by the GOC at central level.

3.2. Government plans and policies to support the BEV industry

- (207) Against this background, the Commission found that all subsidies or subsidy programmes under assessment form part of the implementation of the GOC’s central planning to encourage the BEV industry for the following reasons.
- (208) The BEV industry is regarded as an industry of strategic importance by the GOC, and the GOC has consistently emphasized at least since 2010 the political support for the accelerated developments of the sector. Such categorisation is of significant importance as it qualifies given sectors for coverage by a variety of specific policies and support measures designed to spur development in each sector ⁽⁴¹⁾.
- (209) This is evident from a number of industrial policy documents which have been successively put in place since at least 2010 and which are listed below.

Decision No 40 of the State Council on Promulgating and Implementing the “Temporary Provisions on Promoting the Industrial Structure Adjustment”

- (210) Decision No. 40 of the State Council of the People’s Republic of China is a legal document issued in 2005 aiming to promote industrial structure adjustments in China by encouraging the development of high-tech industries and the elimination of outdated production capacity. The ‘Guidance Catalogue for the Industrial Structure Adjustment’, which is an implementing measure of Decision No 40, sets the basis for guiding investment directions by designating industrial sectors which should benefit from privileged access to credit. It also guides the GOC to administer investment projects and to formulate and enforce policies on public finance, taxation, credit, land, import and export. The National Development and Reform Commission (‘NDRC’) released, and later amended, a guidance catalogue for industrial structure adjustment in February 2013 and in 2019.
- (211) The 2013 and 2019 documents both refer to the NEV industry, which includes BEVs, as an encouraged industry.

⁽³⁸⁾ *Ibid.*, Article 53 (3).

⁽³⁹⁾ *Ibid.*, Article 144.

⁽⁴⁰⁾ Articles of association of the ABC; available at: <https://www.abchina.com/en/investor-relations/corporate-announcements/announcements/201811/W020181126632885896610.pdf>.

⁽⁴¹⁾ China Report of 2017 – Chapter 2, p. 17 and p. 20.

2010 State Council Decision on Accelerating the Development of Strategic Emerging Industries

- (212) In the 2010 State Council Decision on Accelerating the Development of Strategic Emerging Industries ⁽⁴²⁾, the GOC identified the NEV sector among the industries to be upgraded as a matter of priority.
- (213) Under Art. II of the Decision, the GOC took the commitment to “give priority to fostering and developing such industries as energy conservation, environmental protection, new generation information technology, biology, high-end equipment manufacturing, new energy resources, new materials, new energy automobiles, etc.”
- (214) The Decision also contained an explicit long-term development goal for the industry, entailing also the formation of globally active large-scale enterprises: “By 2020, [...] new energy resources, new materials and new energy automobile industries will have become the pioneer industries of the national economy. The innovation ability will have been substantially improved, a batch of key and core technologies will have been controlled by us, and the world leading level will have been reached in some fields. A group of large enterprises having international influence and a group of vigorous small- and medium-sized enterprises will have been formed.” ⁽⁴³⁾
- (215) Designating NEVs as a strategic industry indicated to all levels of government the importance that the GOC attaches to the sector, thereby making it clear that additional policies in support of the industry would follow at the central level and are expected on the lower levels of the country’s administration.

Energy-saving and New Energy Vehicle Industry Development Plan (2012-2020)

- (216) Support to the development of the NEV industry found its way already into the 12th national Five-Year Plan (“FYP”) ⁽⁴⁴⁾ for the period from 2011 to 2015 and was articulated more specifically in the Energy-saving and New Energy Vehicle Industry Development Plan (2012-2020) ⁽⁴⁵⁾ which indicated that “the new energy vehicles referred to in this plan mainly include pure electric vehicles, plug-in hybrid vehicles and fuel cell vehicles. Energy-saving vehicles refer to vehicles with the internal combustion engine as the main power system [...]” ⁽⁴⁶⁾
- (217) The Plan further specified that while “China’s new energy vehicles basically have the foundation for industrialization development, and key technologies such as batteries, motors, electronic control and system integration have made significant progress and pure electric vehicles and plug-in hybrid vehicles have begun to be put on the market on a small scale” major obstacles for the development of the sector remained in place: “the key technologies of China’s new energy vehicles and some core components have not yet broken through, the product cost is high, the measures to support the NEV industry are not perfect, and the industrialization of the NEV industry and its evolution towards a market-based are restricted; the key core technologies of automobile energy conservation have not been fully mastered [...]”.
- (218) Against this background, the GOC formulated the overall industrial policy objective for the sector as follows: “we must seize the opportunity, foster the deployment, accelerate the cultivation and development of energy-saving and new energy automobile industry, promote the optimization and upgrading of the automobile industry, and realize the transformation from a large automobile industry to an automobile industry power.”
- (219) The methods – relying primarily on government support mechanisms - to achieve these objectives were also laid down into the Plan: “Adhere to the combination of government guidance and market drive. In the industrial cultivation period, we will actively play the role of planning guidance and policy incentives, gather scientific and technological and industrial resources, encourage the development and production of energy-saving and new energy vehicles, and guide market consumption. After entering the mature period of the industry, give full play to the driving role of the market in industrial development [...]” ⁽⁴⁷⁾

⁽⁴²⁾ Available at: <http://www.lawinfochina.com/display.aspx?lib=law&id=8570&EncodingName=big>

⁽⁴³⁾ See Art. II(3) of the Decision.

⁽⁴⁴⁾ See Chapter 10 Section 3 of the Plan; available at: <https://policy.asiapacificenergy.org/sites/default/files/12th%20Five-Year%20Plan%20%282011-2015%29%20for%20National%20Economic%20and%20Social%20Development%20%28EN%29.pdf>

⁽⁴⁵⁾ Available at: www.gov.cn/jwqk/2012-07/09/content_2179032.htm

⁽⁴⁶⁾ See Article 1 of the Plan.

⁽⁴⁷⁾ See Article 2(2) of the Plan.

- (220) This Article in the Plan set out that the market guidance by the GOC was applicable not only to the production of finished NEVs but also to their parts: “Adhere to the combination of cultivating industries and strengthening supporting facilities. With the whole vehicle as the leader, cultivate and drive the accelerated development of the industrial chain such as power batteries, motors, automotive electronics, advanced internal combustion engines, and high-efficiency transmissions”.⁽⁴⁸⁾
- (221) Having specified the objectives and the methods to achieve them, the Plan went to set specific (output) targets: “By 2015, the cumulative production and sales of pure electric vehicles and plug-in hybrid vehicles will reach 500 000 units; by 2020, the production capacity of pure electric vehicles and plug-in hybrid vehicles will reach 2 million units, and the cumulative production and sales will exceed 5 million units [...]”.⁽⁴⁹⁾ Eventually, the Plan listed the government support mechanisms to which the NEV sector would be eligible, encompassing areas such as assistance related to international standard-setting or recruitment and talent cultivation, the government support centred around various forms of financial support, subdivided into:
- Grants (“The central government arranges funds to give appropriate support to the implementation of energy-saving and new energy vehicle technology innovation projects, guide enterprises to increase investment in technology development, engineering, standard formulation, market application and other development stages, and build a technological innovation system that combines production, education and research; provide subsidies for energy saving and new energy vehicle demonstrations in the public service field and private purchase of new energy vehicle, and encourage consumers to purchase and use energy-saving vehicles [...]”);
 - Taxation policy support (“Energy-saving and new energy vehicle and its key parts and components enterprises that are recognized as eligible for high-tech enterprise income tax incentives may enjoy relevant preferential policies in accordance with the law.”);
 - Financial service support (“Guide financial institutions to establish credit management and loan evaluation systems to encourage the development of energy-saving and new energy vehicle industries, actively promote the innovation of financial products such as intellectual property pledge financing and industrial chain financing, accelerate the establishment of a multi-level guarantee system including financial contributions and social capital investment, comprehensively use risk compensation and other policies, and promote increased financial support.”); and
 - Venture capital support (“The new energy vehicle venture capital fund that meets the requirements can apply for central financial participation in accordance with regulations, and guide social funds to invest in the energy-saving and new energy vehicle industry in various ways”).

Guiding Opinions on Accelerating the Promotion and Application of New Energy Vehicles

- (222) In 2014, the State Council released the “Guiding Opinions on Accelerating the Promotion and Application of New Energy Vehicles”⁽⁵⁰⁾ (Guobanfa [2014] No. 35) (also referred to as ‘NEV Guiding Opinions’). The NEV Guiding Opinions intend to “combine market dominance with government support”⁽⁵¹⁾, and envision different forms of government support for the development of the industry, such as local plans for the promotion of NEVs, subsidies purchases, financial support, bonds, etc.
- (223) The goals and instructions contained in 14th Five-Year Plans are often complemented by implementing plans, action plans, guiding opinions, guidelines, etc. Guiding Opinions are documents issued by the government, with the aim to guide industry behaviour to achieve the GOC’s policy objectives in specific sectors. Although the Guiding Opinions are considered within the Chinese legal system to be guidance documents, they point to concrete state intervention to shape different sectors of the Chinese economy⁽⁵²⁾. This holds particularly true for the NEV Guiding Opinions, which includes both top-down instructions to local government to formulate plans

⁽⁴⁸⁾ Ibid.

⁽⁴⁹⁾ See Article (3)(2) of the Plan.

⁽⁵⁰⁾ Available at https://www.gov.cn/zhengce/content/2014-07/21/content_8936.htm

⁽⁵¹⁾ See Section I (1) of the NEV Guiding Opinions.

⁽⁵²⁾ See, for example, OJ L 228, 15.9.2023, pp. 217 - 220., and 14th Five-Year Plan for National Economic and Social Development and Long-Range Objectives for 2035.

and incentives for the promotion of NEVs, and also directives at central levels on the allocation of funds to reward cities and enterprises which score particularly well in the promotion of new energy vehicles, as well as fiscal, financial, and investment incentives by government authorities, financial institutions, etc. Consequently, Guiding Opinions are another tool used by state authorities to exercise their direct control on the way the NEV industry develops *The Chinese 13th National Five-Year Plan*

- (224) Similar language concerning the support of the sector can be found in all recent government policy documents, starting with the 13th National Five-year Plan ('13th FYP') for the years 2016 to 2020 ⁽⁵³⁾. According to Section 1 of Chapter 23 of the 13th FYP, the GOC intended to “support the development of next generation information technology, new-energy vehicles, biotechnology, green and low-carbon technology, high-end equipment and materials, and digital creative industries.”
- (225) Moreover, the same chapter of the 13th FYP listed a number of policies which the GOC planned to employ in support of the full development of the sector, including from vital inputs to the end product, namely: (i) “Promote the use of new-energy vehicles; (ii) Encourage the use of new-energy vehicles for urban public transport and taxi services; (iii) Develop all-electric vehicles and hybrid electric vehicles with a focus on making advancements in key technological areas such as battery energy density and battery temperature adaptability; (iv) Facilitate the development of a network of charging facilities and services that are compatible with each other and come under unified standards [...]; (v) Ensure the cumulative total production and sales figures for new-energy vehicles in China reach five million; (vi) Strengthen efforts to recover and dispose of used batteries from new-energy vehicles.” ⁽⁵⁴⁾

Made in China 2025

- (226) In 2015, the GOC published its long-term comprehensive industrial strategy known as Made in China 2025. ⁽⁵⁵⁾ This strategy set milestones for upgrading the country's selected manufacturing sectors by 2020 and 2025 and reiterated the GOC's intention to “[c]ontinue to support the development of electric vehicles and fuel cell vehicles, master the core technologies of low-carbon, informatized, and intelligentized automobiles, [improve the engineering and industrialization capabilities of core technologies such as starter batteries, drive motors, high-efficiency internal combustion engines, advanced transmissions, lightweight materials, and intelligent controls, form a complete industrial system and innovation system from key components to complete vehicles, and promote the integration of energy-saving and new energy vehicles with independent brands at internationally advanced levels” ⁽⁵⁶⁾ and, accordingly, to “[o]rganize and implement a number of special projects and major projects for innovation and industrialization for large aircraft, aircraft engines and gas turbines, civilian aerospace, intelligent green trains, energy-saving and new energy vehicles, marine engineering equipment and high-tech ships, complete sets of equipment for smart grids, high-end CNC machines, nuclear power equipment, and high-end medical equipment.” ⁽⁵⁷⁾
- (227) To achieve these goals, Made in China 2025 emphasised the need to “[d]eepen the reform in the financial field, expand the financial channel for manufacturing industry, and reduce financial cost, [to g]ive play to the advantages of policy finance, development finance, and commercial finance, and increase the support to the new generation of information technology, high-end equipment, new material, [to s]upport the Export-Import Bank of China to increase the service to manufacturing industry going out within its business cope, encourage the China Development Bank to increase the loan to manufacturing enterprises, and direct financial institutions to innovate products and businesses which are suitable for the characteristics of the manufacturing enterprises.” ⁽⁵⁸⁾

⁽⁵³⁾ Available at: <https://en.ndrc.gov.cn/policies/202105/P020210527785800103339.pdf>

⁽⁵⁴⁾ See Chapter 23, Box 8 of the FYP.

⁽⁵⁵⁾ See at: https://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm ; English translation available at: https://cset.georgetown.edu/wp-content/uploads/t0432_made_in_china_2025_EN.pdf

⁽⁵⁶⁾ See Section 3.6.6. of Made in China 2025.

⁽⁵⁷⁾ Idem, Box 5.

⁽⁵⁸⁾ Idem, Section 4.3.

- (228) The strategy further foresees the use of fiscal instruments: *“Make full use of existing channels, strengthen the support of financial funds to the manufacturing industry, focus on key fields in transformation and upgrade of the manufacturing industry such as [...] high-end equipment, [...] and create a favourable policy environment for development of the manufacturing industry. Use the public-private partnership [...] mode to direct social funds to take part in the construction of major projects, enterprise technological innovation, and construction of key infrastructures of the manufacturing industry. Innovate the means of financial support, transform from “construction support” to “operation support”, and improve the use efficiency of financial funds.”* ⁽⁵⁹⁾

Regulation on the Standards of the Automotive Power Battery Industry

- (229) The Commission also found that in 2015, the Ministry of Industry and Information Technology issued the “Regulation on the Standards of the Automotive Power Battery Industry” ⁽⁶⁰⁾ (‘the Regulation on the Standards’), to *“guide and regulate the healthy development of the automotive power battery industry. [...] The State encourages automotive power battery enterprises to become better and stronger, establish product production specifications and quality assurance systems, strengthen technological and management innovation, improve product research and development and manufacturing levels, and enhance product performance and quality to meet the needs of the development of the new energy vehicle industry”*. ⁽⁶¹⁾ The Regulation lays out the requirements for automotive power batteries enterprises to apply for inclusion on the catalogue of enterprises that meet the requirements, one of which being a producer and supplier of *“automotive products within the territory of the People’s Republic of China (except Taiwan, Hong Kong, and Macao)”* ⁽⁶²⁾. As a result, *“[t]he list of enterprises included in the announcement will serve as the basic basis for relevant policy support”* ⁽⁶³⁾. Following this announcement, four batches of catalogue of enterprises that meet the conditions set out in the Regulation on the Standards have been published, and no foreign power battery producer has been included in it ⁽⁶⁴⁾. Despite the fact that the requirements were abolished in 2019 by Announcement No.22 of the Ministry of Industry and Information Technology of the People’s Republic of China ⁽⁶⁵⁾, the existence of the catalogue of power battery enterprises can be assumed to have given Chinese battery manufacturers a competitive edge over foreign producers when the power battery industry was in its initial development.

Action plan for promoting the development of the NEV battery industry

- (230) The Action plan for promoting the development of the NEV battery industry ⁽⁶⁶⁾ of 2017 explains that power batteries are the heart of electric vehicles and the key to the development of the new energy vehicle industry. After more than ten years of development, the country’s power battery industry has made great progress. However, the current performance, quality and cost of power battery products do not yet meet the needs of the promotion and popularization of new energy vehicles, especially in basic key materials, system integration technology, manufacturing equipment and processes, etc. The plan was drawn up to accelerate the improvement of the development capabilities and level of the country’s automotive power battery industry and promote the healthy and sustainable development of the new energy vehicle industry.

⁽⁵⁹⁾ Idem, Section 4.4.

⁽⁶⁰⁾ Announcement No. 22 of 2015 of the Ministry of Industry and Information Technology of the People’s Republic of China, MIIT, available at: <http://www.mofcom.gov.cn/article/b/g/201505/20150500987728.shtml>

⁽⁶¹⁾ Section 1(2) of the Regulation on the Standards.

⁽⁶²⁾ Section 1(4) of the Regulation on the Standards.

⁽⁶³⁾ Section 8(26) of the Regulation on the Standards.

⁽⁶⁴⁾ First batch: http://www.caam.org.cn/chn/9/cate_107/con_5178317.html; Second batch: http://www.caam.org.cn/chn/1/cate_2/con_5184276.html; Third batch: <http://www.chinabattery.org/content2/1308/1302/1052405.html>; Fourth batch: <http://www.chinabattery.org/content2/1308/1302/1052407.html>

⁽⁶⁵⁾ Announcement No. 22 of 2019 of the Ministry of Industry and Information Technology of the People’s Republic of China, available at https://www.gov.cn/xinwen/2019-06/24/content_5402761.htm.

⁽⁶⁶⁾ https://www.gov.cn/xinwen/2017-03/02/content_5172254.htm#1

- (231) The implementation of power battery upgrade project by the MIIT and the Ministry of Science and Technology (MST) relies on national science and technology plans (special projects, funds) and other overall types of support for power battery research and development to achieve a single specific energy of more than 300 Wh/kg in 2020, continuously improve product performance, and accelerate the realization of high-level product installation and application. The aim was to encourage leading power battery companies to collaborate with upstream and downstream superior resources, concentrate on breakthroughs in key technologies of materials and components, battery cells and systems, greatly improve the performance and safety of power battery products, and strive to achieve a single unit of 350 Wh/kg and industrialization and vehicle application of new lithium-ion products with a system of 260 Wh/kg.
- (232) The plan also envisions an increase in policy support, relying on the guiding role of government investment in social capital, encouraging the use of social capital to establish power battery industry development funds, and increasing support for power battery industrialization technology. According to the plan, if power battery products meet the conditions, they will be exempted from the consumption tax according to regulations; if power battery companies meet the conditions, they will enjoy preferential tax policies for high-tech enterprises, technology transfer, and technology development according to regulations.

The Chinese 14th national Five-Year Plan

- (233) Not deviating from the Made in China 2025 strategy, the 14th national FYP ⁽⁶⁷⁾ for the period from 2021 to 2026 shows that the GOC's policy of prioritising and supporting the NEV sector *continued* and, in fact, is growing. Under Art. IX of the Plan, the Chinese authorities pledged to "*raise the added value of strategic emerging industries to more than 17% of GDP*". For the NEV sector, as one of the strategic emerging industries, that commitment entails "*mak[ing] breakthroughs in key technologies such as high-safety power batteries, high-efficiency drive motors, and high-performance power systems for new energy vehicles and accelerate the R&D of key components such as the basic technology platforms for intelligent (connected) vehicles, software and hardware systems, steer-by-wire chassis, and smart terminals.*" ⁽⁶⁸⁾
- (234) Given the nature of the Chinese planning system, higher level plans – such as the 12th, 13th or 14th national FYPs – are to be followed-up and implemented by all relevant authorities. The national plans set out explicit obligations in that respect, such as Art. LXV of the 14th national FYP, according to which the GOC "*will strengthen the organization, coordination, and supervision of the implementation of this plan and establish and improve planning and implementation monitoring and evaluation, policy assurance, and assessment and supervision mechanisms.*" Accordingly, lower-level authorities "*must create a favorable policy environment, institutional environment, and legal environment. The annual plans shall implement the development goals and key tasks proposed in this plan.*" ⁽⁶⁹⁾
- (235) Crucially, the GOC unequivocally commits to provide financial support, as well as support in the form of other factors of production – such as land – to projects and sectors identified in the Plan: "[w]e will adhere to the principle of the plan setting the direction, with fiscal spending as a guarantee, finance as support, and coordination with other policies. [...] We will persist in making public fiscal spending obey and serve public policy, enhance financial support for major national strategic tasks, strengthen the coordination of mid-term financial plans and annual budgets, government investment plans, and the implementation of this plan, and prioritize central fiscal funds for the major tasks and major engineering projects identified in this plan. We will insist that projects follow the plan and funds and factors of production follow projects, develop a list of major engineering projects based on this plan, simplify the approval procedures for the projects in the list, and ensure that the priority is given to planning site selection, land supply, and capital needs. The land needs for individual major engineering projects are guaranteed by the state in a unified manner." ⁽⁷⁰⁾

⁽⁶⁷⁾ See: https://www.gov.cn/xinwen/2021-03/13/content_5592681.htm. An English translation is available at: https://cset.georgetown.edu/wp-content/uploads/t0284_14th_Five_Year_Plan_EN.pdf.

⁽⁶⁸⁾ See Art. XI, Table 4 of the Plan.

⁽⁶⁹⁾ See Art. LXV, Section 1 of the Plan.

⁽⁷⁰⁾ See Art. LXV, Section 3 of the Plan.

- (236) This implementation mandate therefore results in an entire network of additional policy instruments being put in place by the relevant government authorities, in particular the long-term national sectoral plan, namely the New Energy Vehicle Industry Development Plan (2021-2035) ⁽⁷¹⁾ which replaced the corresponding 2012-2020 Plan as set out in recitals (216) to (224).

New Energy Vehicle Industry Development Plan (2021-2035)

- (237) The New Energy Vehicle Industry Development Plan sets the following vision: “By 2025, the competitiveness of China’s new energy vehicle market will be significantly enhanced, major breakthroughs will be made in key technologies such as power batteries, drive motors, and vehicle operating systems, and the safety level will be comprehensively improved. The average power consumption of new pure electric passenger vehicles has dropped to 12.0 kWh/100 km, the sales volume of new energy vehicles has reached about 20% of the total sales of new vehicles, and highly autonomous vehicles have achieved commercial application in limited areas and specific scenarios, and the convenience of charging and swapping services has been significantly improved.” ⁽⁷²⁾
- (238) To achieve this objective, the Plan lists various steps which need to be undertaken. Some of them foresee horizontal government support for the industry, such as to “improve the support capacity of public services such as technology transfer, information services, talent training, project financing, and international exchanges” ⁽⁷³⁾, to “effectively undertake financial subsidy policies” ⁽⁷⁴⁾ or to “[i]mplement preferential tax policies related to new energy vehicles” ⁽⁷⁵⁾. Other focus on specific vehicle components or individual elements of the NEV value chain, such as “[e]ncourage enterprises to improve the ability to guarantee key resources such as lithium, nickel, cobalt and platinum”, “strengthen the energy interaction between new energy vehicles and the grid” ⁽⁷⁶⁾, “[a]ccelerate the construction of charging and replacing infrastructure” ⁽⁷⁷⁾, or “[s]upport the use of existing sites and facilities to carry out integrated oil, gas, hydrogen, and electricity supply services” ⁽⁷⁸⁾.

The NDRC’s implementation opinions on strengthening new energy vehicles

- (239) In January 2024, the NDRC published reform recommendations on the integration of NEVs into China’s power grid planning. Aside from vehicle-network interaction, these recommendations also include the encouragement of innovation and unification of standards in the NEV sector to “promote the research of key technologies and core equipment, strengthen the main role of enterprise innovation, and lead development with innovation. Accelerate the formulation and revision of standards, and lead the collaborative and standardized development of the industry.” ⁽⁷⁹⁾

Provincial and municipal plans

- (240) The support measures specified in the New Energy Vehicle Industry Development Plan (2021-2035) are reflected – and translated into more precise directions – in the corresponding provincial and municipal plans ⁽⁸⁰⁾.
- (241) The provincial plans provide more details on how the objectives of the central plans should be translated into policies within individual provinces, taking the form of measures as *examples* below.

⁽⁷¹⁾ Available at: https://www.ndrc.gov.cn/fggz/fzzlgh/gjjzxgh/202111/t20211101_1302487.html?code=&state=123.

⁽⁷²⁾ See Chapter II, Section 3 of the Plan.

⁽⁷³⁾ See Chapter III, Section 3 of the Plan.

⁽⁷⁴⁾ See Chapter VIII, Section 1 of the Plan.

⁽⁷⁵⁾ See Chapter VIII, Section 2 of the Plan.

⁽⁷⁶⁾ See Chapter V, Section 1 of the Plan.

⁽⁷⁷⁾ See Chapter VI, Section 1 of the Plan.

⁽⁷⁸⁾ See Chapter VI, Section 3 of the Plan.

⁽⁷⁹⁾ The National Development and Reform Commission and other departments on strengthening new energy vehicles- Implementation opinions for integration and interaction with the power grid, Development and Reform Energy [2023] No. 1721. Available at https://www.ndrc.gov.cn/xxgk/zcfb/tz/202401/t20240104_1363096.html.

⁽⁸⁰⁾ As acknowledged in the 2018 NDRC management rules applicable to car investment projects. According to Article 38: Local governments at all levels shall not hinder fair competition in the market, they shall focus on providing car investment projects with tax, capital, land and other preferential conditions.

- (242) The general governmental control over the industry is provided for example the 14th FYP development plan for the new energy vehicles industry in the Anhui province: “Government guidance, market leadership. Give full play to the role of the government in various aspects such as top-level design, platform construction, demonstration, application and promotion, etc. Strengthen policy support and further create an environment guiding high-end production factors to concentrate towards the new energy automobile industry. Guided by market demand, give full play to the decisive role of the market as regards resource allocation, strengthen the key position of enterprises in the selection of technological paths and product manufacturing capacity layout, foster a better combination of an efficient market with a favourable government, and establish a dynamic development environment” ⁽⁸¹⁾.
- (243) This provincial plan further provided detailed production targets: “Strive to ensure that by 2025, the scale of the city’s new energy automobile industry exceeds RMB 700 billion and the production capacity of complete vehicles exceeds 3 million, to foster 10 enterprises with a scale of RMB 10 billion and to ensure that the output value and output volume rank first in the country; Develop a new energy vehicle and parts industry system with a comprehensive layout and a reasonable structure, the annual production capacity of batteries shall exceed 300GWh, and the annual production capacity of drive motor systems shall exceed 3 million sets” ⁽⁸²⁾ and investment support in facilities and projects: “Strive to build by 2025, at national level 1 new energy vehicle industry innovation center, 5 public innovation centers, and to foster 1 business model innovation project as well as 10 new innovation platforms above the provincial level by 2025” ⁽⁸³⁾.
- (244) Furthermore, the 14th FYP high-quality development plan for the automobile industry in the province of Anhui sets out investment support in industrial parks: “Accelerate and promote the construction of the Xinqiao Smart Electric Vehicle Industrial Park, and create a world-class smart electric vehicle industrial cluster with a complete industrial chain and integrating R&D and manufacturing, demonstration and application, as well as industry and supporting services. Support NIO’s long-term development planning and layout around Xinqiao Industrial Park, and establish R&D, manufacturing, marketing and management teams within the park. Establish NIO R&D and Innovation Center, carry out innovative research and development concerning complete vehicles, core components and autonomous driving, create a globally competitive and leading innovation chain; attract R&D staff and technical workers and strive to form an innovative place gathering high-level talents. (...) After completion of the park, it is estimated that the final vehicle production capacity will be 1 million vehicles per year, and the battery production capacity will be 100GWh per year” ⁽⁸⁴⁾.
- (245) It further expanded on export promotion: “Support the e-commerce of component supplying companies, build public overseas warehouses for export products, share channels to overseas markets and service support systems. Create tools such as import and export trade platforms, overseas industry parks as well as trade parks and guide the development of clusters of Chinese overseas investment enterprises. (...) By 2025, Chery Automobile shall export 500,000 vehicles with an export value of USD 5 billion. Foster Chery to further enhance its international competitiveness, (...) focus on expanding on strategic markets such as Europe, North America, and ASEAN countries (...). Support NIO to expand on the European market. Foster NIO to implement the “Marco Polo Plan”, adopt a differentiated development path and turn the “NIO China Model” into the “NIO Overseas Model” according to local conditions. (...) Support NIO to continue to expand on the European market, to expand on 5 national markets by 2025, and to select opportunities to build factories overseas” ⁽⁸⁵⁾.
- (246) The 14th FYP for high-quality development of the manufacturing sector of the province of Guangdong provides for the governmental control of the NEV geographical industry distribution: “Rely on Guangzhou, Shenzhen, Zhuhai, Foshan, Zhaoqing, Dongguan, Huizhou, Zhanjiang, Maoming, Shanwei, Yunfu and other cities and speed up the development pace of new energy vehicles. Guangzhou shall speed up the construction of new energy vehicle production bases and promote the quick industrialization of new energy vehicle models. Shenzhen, with Pingshan District as the core, shall build a national-level new energy vehicle industry base. Zhuhai, with Jinwan District as the core, shall focus on developing the manufacturing of complete new energy vehicles, lithium battery materials, powertrain, charging equipment and key components of new energy vehicles” ⁽⁸⁶⁾.

⁽⁸¹⁾ Hefei’s 14th Five-Year development plan for the new energy vehicles industry. Available at <https://www.ahchanye.com/zc/24046.html>. See Chapter II, Section 2.

⁽⁸²⁾ See Chapter II, Section 3. For the main development indicators, see table 1 of the plan.

⁽⁸³⁾ Ibid.

⁽⁸⁴⁾ Anhui Province’s 14th Five-Year Plan high-quality development plan for the automobile industry, Available at <http://jx.ah.gov.cn/group6/M00/05/3A/wKg8BmJGrKiADusMAAY2nfCCzQM591.pdf>. See Chapter III, Section 1, Column 1.

⁽⁸⁵⁾ See Chapter VI, Section 2, Project 9.

⁽⁸⁶⁾ Guangdong Province’s 14th Five-Year Plan for high-quality development of the manufacturing industry. Available at http://www.gd.gov.cn/zwgk/wjk/qbwj/yf/content/post_3458462.html. See chapter III, Section 1, Column 4

- (247) The 14th FYP development plan of the New Energy Automobile Industry of the province of Guizhou further sets out support for key projects related to parts and components: “Support the building of key projects. Speed up and foster the Guiyang BYD’s power battery project with an annual output of 10GWH, the Evergrande new energy power battery project (first phase), Dongfang Electric’s hydrogen fuel cell project, Anda Technology’s 30 000- ton/year lithium iron phosphate and supporting construction projects as well as its 20 000-ton/year lithium iron phosphate smart manufacturing technical transformation and expansion project, Anda Technology’s 50 000 tons/year new energy vehicle waste battery recycling technical transformation project, Wuchuan Automobile’s annual production of 1 million tons of automotive aluminium alloy die-casting projects, Baike automobile brake molds production line project, a number of key projects such as the Guizhou Aerospace Smart Manufacturing Industry Cluster Base Project in Guiyang Economic and Technological Development Zone, Zhenhua New Materials Production Line Construction Project with an annual output of 12 000 tons of lithium-ion battery cathode materials (Shawen Phase II)”⁽⁸⁷⁾.
- (248) Also other provincial and municipal plans mention the development of strategic emerging industries, among which electric vehicles are mentioned, such as Beijing⁽⁸⁸⁾, Shanghai⁽⁸⁹⁾, Tianjin⁽⁹⁰⁾, Jiangsu⁽⁹¹⁾, and Shaanxi⁽⁹²⁾.
- (249) There is also support for specific NEVs companies in some of the provincial FYPs, such as in the Implementation Plan for Accelerating the Development of the New Energy Automobile Industry in Shanghai: “Support SAIC Motor to develop new energy vehicles. By 2025, the sales of self-owned brand passenger vehicles and new energy vehicles will account for more than 30%, and the group’s new energy vehicle sales will account for more than 20%, ensuring that the core technology is under independent control and a comprehensive position of strength and domestic leadership. Encourage domestic and foreign strong companies with leading technology to invest in complete vehicle manufacturing and R&D projects in Shanghai”⁽⁹³⁾.
- (250) Leading NEV and specifically BEV companies are often identified in provincial and municipal plans as models for further development of the industry through government support. In the Brand-building Plan for the New Energy Automobile Industry in Pingshan District, Shenzhen,⁽⁹⁴⁾ BYD and Kaiwo New Energy Automobile Group are identified as the base for the implementation of the “Headquarters R&D + High-end Manufacturing” layout: “Relying on the research and development strong capacities of high-quality new energy automobile enterprises in the Pingshan District, such as BYD and Kaiwo, strengthen the building of colleges and universities, research institutions, national key laboratories, national engineering laboratories and engineering centers and improve innovation at the regional level. Complement the innovation chain around the new energy vehicle industry chain, improve the upstream and downstream industry chains of new energy vehicles, batteries, communication power supplies, (UPS), charging guns, wires and cables, supercapacitor chemicals, semiconductor chemicals, etc.so as to form a complete industry chain. Ensure a high degree of clustering of the new energy vehicle industry, continue to build and introduce a number of technology Industry innovation platforms that closely support new energy vehicles R&D and manufacturing, and accelerate the construction of a technological innovation system that deeply integrates production, academics, research and application. Focus on “integrating headquarters, R&D and production”, develop actions for listed companies to take root, actions for key enterprises to stabilize growth, and accelerate the formation of a functional layout of “headquarters R&D + high-end manufacturing”.⁽⁹⁵⁾

⁽⁸⁷⁾ Guizhou Province’s 14th Five-Year Development Plan of the New Energy Automobile Industry. Available at <https://m.askci.com/news/zszc/20220317/1739301746254.shtml>. See Chapter III, Section 3, Column 3.

⁽⁸⁸⁾ Recommendations from the Beijing Municipal Party Committee on formulating the 14th Five-Year Plan and the long-term goals for 2035. Available at https://wb.beijing.gov.cn/home/gjjwzx/zgdt/202012/t20201207_2159122.html.

⁽⁸⁹⁾ Shanghai’s 14th Five-Year Plan for National Economic and Social Development and outline of long-term goals for 2035. Available at <https://www.shanghai.gov.cn/cmsres/8c/8c8fa1641d9f4807a6897a8c243d96ec/c70c2c6673ae425efd7c11f0502c3ee9.pdf>.

⁽⁹⁰⁾ Tianjin Municipal People’s Government on the issuance of Tianjin 14th Five-Year Plan for National Economic and Social Development and the Outline of the Vision 2035. Available at https://www.tj.gov.cn/zwgk/szfwj/tjsrmzf/202102/t20210208_5353467.html.

⁽⁹¹⁾ Jiangsu 14th Five-Year Plan for National Economic and Social Development and outline of long-term goals for 2035. Available at <http://www.jiangsu.gov.cn/module/download/download.jsp?classid=0&filename=ebff723535ca4bf8a5b3c604174c9db3.pdf>.

⁽⁹²⁾ Outline of the Shaanxi 14th Five-Year Plan for National Economic and Social Development of the Province and the Long-Range Objectives for the Year 2035. Available at http://www.shaanxi.gov.cn/xw/sxyw/202103/t20210302_2154680_wap.html.

⁽⁹³⁾ Implementation Plan for Accelerating the Development of the New Energy Automobile Industry in Shanghai (2021-2025). Available at <https://app.sheitc.sh.gov.cn/xnyqc/688177.htm>. See Chapter II, Section 2, Point 1.

⁽⁹⁴⁾ Available at https://www.sist.org.cn/psqxnyqccyyq/yappjs/202008/t20200812_2302116.html.

⁽⁹⁵⁾ See chapter IV, Section 1, Point 3.

Automotive Industry Stable Growth Work Plan (2023-2024)

- (251) In August 2023, the MIIT and seven other departments issued the Automotive Industry Stabilizing Growth Work Plan (2023 – 2024) ⁽⁹⁶⁾, with the purpose of laying down the main goals for the economic development of the automobile industry. Among the measures, the first one concerns the new energy vehicle consumption tax, and it mandates the implementation of “existing preferential policies such as vehicle and vessel tax and vehicle purchase tax for new energy vehicles, do a good job in clearing and reviewing new energy vehicle subsidy funds, and actively expand the proportion of personal consumption of new energy vehicles”. In addition to that, the notice also contains instructions on increasing policy support for new energy vehicles, such as: “Implement preferential vehicle purchase tax policies for new energy vehicles to stabilize industry expectations. Encourage the use of social capital to establish automobile industry development funds and increase support for core technology research. Use various financial instruments such as credit, bonds, and insurance to support enterprise development”.
- (252) Consequently, there is ample documented evidence showing the political support for the accelerated developments of the BEV industry.
- (253) Considering the above-mentioned plans and programmes, the BEV industry is thus regarded as a key/strategic industry, whose development is actively pursued by the GOC as a policy objective. The BEV sector is shown to be of paramount importance for the GOC and receives political support for its accelerated development. Including from vital inputs to the end product. On the basis of the policy documents referred to in this section, the Commission concluded that the GOC intervenes in the BEV industry to implement the related policies and interferes with the free play of market forces in the BEV sector, notably by promoting and supporting the sector through various means and key steps in their production and sale.

3.3. Partial non-cooperation and use of facts available

3.3.1. Application of the provisions of Article 28(1) of the basic Regulation in relation to the GOC

- (254) Although the GOC responded to certain information requests from the Commission during the investigation, there were notable instances of low cooperation. Specifically, in its reply to the government questionnaire, the GOC failed to provide essential information related to the preparation, monitoring, and implementation of various schemes. All these critical elements were meticulously documented in the Article 28 letter sent to the GOC. The GOC responded with comments, which the Commission addressed in the sections below.

3.3.1.1. Application of the provisions of Article 28(1) of the basic Regulation in relation to preferential lending

- (255) In order to obtain the necessary information from the financial institutions in China effectively and for administrative convenience, the Commission requested the GOC to forward specific questionnaires to any financial institution that had provided loans or export credits to the sampled companies.

⁽⁹⁶⁾ Notice of the Ministry of Industry and Information Technology and other seven departments on issuing the work plan for stabilizing growth in the automobile industry (2023-2024). Available at https://www.gov.cn/zhengce/zhengceku/202309/content_6901733.htm.

- (256) The GOC considered that the Commission's request to the GOC to forward the specific questionnaire violated Articles 12.1 and 12.9 of the SCM Agreement. It considered that the obligation to conduct the investigation and collect information from financial institutions lies with the investigating authority and it cannot request the GOC to forward the questionnaires to financial institutions on a presumption that these entities are public bodies. It argued that this presumptive approach is inconsistent with Article 1.1(a)(1) of the SCM Agreement. The GOC also argued that the Commission already had access to the list of commercial banks of the sampled exporting producers and it could have sent the questionnaires directly to the financial institutions at stake.
- (257) The GOC further stated that the financial institutions were not properly notified of the information required of them, were not given 30 days to provide the requested information and were also not provided ample opportunity to provide the relevant information in writing within the meaning of Article 12.1 of the SCM Agreement. Besides, the GOC also considered that staff members of those commercial banks are not allowed to disclose state secrets or commercial secrets that they have become aware of in the course of their employment according to Article 53 of the Commercial Banks Law, and therefore cannot respond to the questionnaire.
- (258) The Commission disagreed with this view. First, it is the Commission's understanding that the information requested from State-owned entities is available to the GOC for all entities where the GOC is the main or major shareholder. In addition, whereas the Commission did not assume in any way that the entities are public bodies, it considered that the GOC also has the necessary authority to interact with the financial institutions even when they are not State-owned, since they all fall under the jurisdiction of the National Financial Regulatory Administration ('NFRA'), which replaced the China Banking and Insurance Regulatory Commission ('CBIRC') ⁽⁹⁷⁾ in 2023. In this regard, the fact that the Commission could have contacted the financial institutions concerned directly is irrelevant. The form and modalities to collect the necessary information remain within the discretion of the investigating authority ⁽⁹⁸⁾. The Commission also noted that the GOC had forwarded the questionnaire to certain banks in previous investigations ⁽⁹⁹⁾ without questioning the approach taken by the Commission. Furthermore, as far as the information requested and deadline to submit a questionnaire reply is concerned, the Commission did not receive any request for clarification or a deadline extension request from any financial institution. The Export-Import Bank of China ('EXIM bank'), which submitted a questionnaire reply, did not request any clarification either.
- (259) The Commission further noted that the GOC forwarded the questionnaire exclusively to EXIM bank. The Commission also noted that EXIM bank was the only bank that provided a questionnaire reply after it received the questionnaire as forwarded by the GOC. EXIM bank provided a questionnaire reply within the agreed extended deadline. Although the questionnaire was deficient, the Commission noted that EXIM bank indeed had ample opportunity to provide the relevant information in writing. Thus, the Commission concluded that, had the GOC forwarded the questionnaire to other financial institutions, it is likely that the Commission would have received more replies.
- (260) The Commission did not address its questionnaire to the staff of the financial institutions but rather to the institutions themselves. In any case, the fact that certain information may be considered as State or commercial secret is irrelevant in the framework of an anti-subsidy proceeding given the confidentiality treatment given to any submitted information considered confidential. Furthermore, the sampled producers were requested to provide a bank authorization granting express permission to the representatives of the Commission to review all documents ⁽¹⁰⁰⁾ pertaining to the loans provided by individual financial institutions. Some of the sampled groups provided the requested authorisation for certain types of loans.

⁽⁹⁷⁾ The NFRA replaced the China Banking and Insurance Regulatory Commission ('CBIRC') in 2023.

⁽⁹⁸⁾ Panel Report, *China – Broiler Products (Article 21.5 – US)*, paras. 7.229-7.231. WT/DS427

⁽⁹⁹⁾ See recital (139) in OJ L 325, 5.12.2013, pp.88 and recital (48) in OJ L, 283, 12.11.2018, pp.7.

⁽¹⁰⁰⁾ Such as, but not limited to: loan agreements, loan applications, internal assessment of the bank on the loan application, loan approval documents.

- (261) As mentioned in recital (259), the Commission only received a questionnaire reply from EXIM bank. The questionnaire reply only contained information on corporate structure, governance and ownership. As far as ownership is concerned, EXIM bank was not in a position to provide additional shareholding information concerning one of its shareholders; i.e. Wutongshu Investment Platform Co., Ltd. which held close to 90% of its shares. EXIM bank did not provide any information on the loans (or other financing instruments) to the sampled producers. In the absence of reply by any financial institution, the Commission did not receive any verifiable company-specific information with regard to preferential financing.
- (262) In the absence of such information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation. Therefore, the Commission informed the GOC that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through preferential financing.
- (263) The sampled exporting producers reported the issuance of green bonds and asset-backed securities during the investigation. While these bonds are only a variation of the bonds already countervailed in past investigations as part of the preferential lending programme, it appeared that they were governed by a legislative and regulatory framework that was specific to green industries, to which the BEV sector belongs. The Commission identified over ten legislative and regulatory documents such as “NDRC: Guidelines on the Issuance of Green Bonds”, “the Green Bonds Supporting Project Catalogue (2021 Edition) issued by the three ministries and commissions including the People’s Bank of China” and “Announcement of the People’s Bank of China [2015] No. 39 on the Issuance of Green Financial Bonds in the Interbank Bond Market pertaining to these specific bonds and requested the GOC to explain the regulatory framework for the issuance and management of green funding and asset-backed securities and the role of each of the actors involved including auto finance companies. The GOC refused to provide this information arguing that the Commission’s request did not provide a complete description of the program and that the Memorandum on sufficiency of evidence did not provide any evidence of financial contribution, benefit and specificity as regards such bonds. Furthermore, during the on-the-spot verification visit, the GOC refused to engage on this particular topic and answer the Commission’s questions.
- (264) The Commission noted that the provision of preferential financing through the issuance of the bonds was listed in the Memorandum on sufficiency of evidence and that the existence of such scheme was not contested by the GOC before the initiation of the investigation. The Commission also considered that the green bonds and asset-backed securities are only a variation of this scheme, which is similar in most aspects.
- (265) On 21 May 2024, the GOC submitted comments concerning the Commission’s letter dated 8 May 2024 indicating its intention to apply facts available in accordance with Article 28 of the basic Regulation (‘Article 28 Letter’).
- (266) In response to the request to forward Appendix A to the financial institutions, the GOC claimed that the Commission should directly address its information requests to the relevant entities. Furthermore, the GOC claimed that financial institutions are independent economic entities, not affiliated with the GOC. Furthermore, the GOC claimed that Appendix A requests confidential and business-sensitive information.
- (267) The Commission disagreed with this view. First, it is the Commission’s understanding that the information requested from state-owned entities (be it companies or public/financial institutions) is available to the GOC for all entities where the GOC is the main or major shareholder. Indeed, according to the Law of the People’s Republic of China on State-Owned Assets of Enterprises ⁽¹⁰¹⁾, State-owned assets supervision and administration agencies established by the State-owned Assets Supervision and Administration Commission of the State Council and local people’s governments perform the duties and responsibilities of the capital contributor of a State-invested enterprise on behalf of the government. Such agencies are thus entitled to receive returns on assets, to participate in major decision-making and to select managerial personnel of State-invested enterprises.

⁽¹⁰¹⁾ Law of the People’s Republic of China on State-Owned Assets of Enterprises, Decree No. 5 of the President of the People’s Republic of China, 28 October 2008, article 11 & 12

Furthermore, according to Article 17 of the above-mentioned Law on State-owned Assets, State-invested enterprises shall accept administration and supervision by governments and relevant governmental departments and agencies, accept public supervision, and be responsible to capital contributors.

- (268) In addition, the GOC also has the necessary authority to interact with the financial institutions even when they are not State-owned, since they all fall under the jurisdiction of the Chinese banking regulatory authority. For example, according to Articles 33 and 36 of the Banking Supervision Law ⁽¹⁰²⁾, the NFRA has the authority to require all financial institutions established in the PRC to submit information, such as financial statements, statistical reports and information concerning business operations and management. The NFRA can also instruct financial institutions to disclose information to the public.
- (269) The GOC claimed to have explained the Loan Prime Rate ('LPR') formation mechanism, and mentioned a lack of clarity regarding the Commission's request of information concerning the Credit Management and Loan Evaluation System. Regarding green bonds, the GOC claimed that there was also a lack of clarity and precision in the Commission's requests, which prevented them from providing an accurate reply.
- (270) The Commission considered the comments to be ill-founded. The Commission repeatedly asked specific clear and relevant questions to which the GOC refused to supply pertinent information. The GOC did not provide the necessary information that could enable the understanding of the LPR formation mechanism and support the GOC's reply in this regard. Similarly, the GOC failed to provide the legal basis and regulatory framework of the Credit Management and Loan Evaluation System. Moreover, in its request for information, the Commission referred to several specific official documents relating to green bonds and auto finance companies, for which the GOC did not provide the legal and regulatory framework, nor was the GOC willing to explain what constitutes a green bond despite its mentioned in official documents.
- (271) With regard to the EXIM Bank, the GOC claimed that the requested information could not be deemed necessary. Additionally, the GOC claimed that the requested information contained trade secrets and could not be provided by EXIM Bank. Furthermore, the Commission should have received relevant information by the sampled exporting producers.
- (272) The Commission noted that it is for the Commission to determine what information is deemed necessary for the investigation and not for a party to make that determination. In addition, the information related to EXIM bank has a direct link to the investigated scheme. Consequently, the requested information is both relevant and necessary for the Commission to properly assess the scheme. Finally, the Commission reminded that the GOC has not only regulatory authority but also responsibilities on the management of EXIM Bank. Consequently, the GOC cannot entirely shift the responsibility of providing information to the sample producers. Consequently, the claims were rejected.
- (273) In the absence of the requested information, the Commission considered that it had not received crucial information relevant to this aspect of the investigation. Therefore, the Commission informed the GOC that it might have to resort to the use of facts available under Article 28(1) of the basic Regulation when examining the existence and the extent of the alleged subsidisation granted through preferential financing, including the issuance of green bonds and asset-backed securities.

3.3.1.2. Application of the provisions of Article 28(1) of the basic Regulation in relation to input materials

- (274) In order to obtain the necessary information from the unrelated suppliers of input materials (parts, components, and raw materials) located in China effectively and for administrative convenience, the Commission requested the GOC to forward a specific questionnaire to the suppliers of input material to the sampled exporting producers as communicated to the GOC by the sampled exporting producers.

⁽¹⁰²⁾ Law of the People's Republic of China on Regulation of and Supervision over the Banking Industry, Order No. 58 of the President of the People's Republic of China, 31 October 2006

- (275) The GOC considered that the Commission's request to the GOC to forward the specific questionnaire violated Articles 12.1 and 12.9 of the SCM Agreement. It considered that the obligation to conduct the investigation and collect information from suppliers of input material lies with the investigating authority and it cannot request the GOC to forward the questionnaires to independent commercial entities on a presumption that these entities are public bodies. It argued that this presumptive approach is inconsistent with Article 1.1(a)(1) of the SCM Agreement. The GOC also argued that the Commission already had access to the list of suppliers of the sampled exporting producers and it could have sent the questionnaires directly to them.
- (276) The GOC further stated that the input suppliers were not properly notified of the information required of them, were not given 30 days to provide the requested information and were also not provided ample opportunity to provide the relevant information in writing within the meaning of Article 12.1 of the SCM Agreement.
- (277) Furthermore, it argued that suppliers could be discouraged to submit their replies, containing confidential information, through the GOC, and that the questionnaire did not contain instructions as to the submission of a non-confidential version.
- (278) In this respect, the Commission noted that the questionnaire sent to the GOC included instructions requesting it to provide evidence that it had indeed forwarded the questionnaire to the input suppliers. The GOC did not provide such evidence in its questionnaire reply. In the absence of such evidence, the Commission considered that the claims relating to the practical aspects pertaining to the questionnaire to be sent to input suppliers were moot.
- (279) The GOC did not provide an overview with the names and the ownership structure of Chinese suppliers of the input materials under investigation, claiming that this was confidential information or that the information was not available. Furthermore, the GOC failed to provide detailed information on most of the characteristics of the domestic market in China of input materials for BEV, among which: the share of state-owned enterprises ('SOEs') in the domestic production and consumption, the size of the domestic market, the State's and/or SOEs' pricing policies, actual prices of input materials in the domestic market, and statistics.
- (280) Since the Commission received no information from the GOC concerning all elements listed above, among which the domestic market structure, price-setting mechanisms and prices, and shareholding of companies, the Commission considered that it had not received crucial information relevant to the investigation.
- (281) In its reply to the Commission's Article 28 Letter, the GOC objected to the application of facts available.
- (282) As regards the information on various parts and components and raw materials, the GOC reiterated its argument that it had no information on the suppliers of parts and components, that it had no control over the suppliers, that it was impossible to force them to cooperate and that it is the Commission that should address the requests. In addition, it claimed that the information requested by the Commission was too broad, not necessary for the investigation and that the scope of the investigation had been illegally expanded. Similarly, regarding the information on the China Battery Industry Association ('CBIA'), it also claimed that it had no control over the CBIA, which is not formally affiliated with the GOC, and that the Commission should make its requests directly to the association.
- (283) Finally, with regard to information on production, consumption, the structure of the domestic supplier market and elasticity, the GOC argued that the data was not available to it.
- (284) The Commission noted that it is for the Commission to determine what information is deemed necessary for the investigation and not for a party to make that determination. The Commission also cannot accept the argument that the request for information is too broad since, given the number of suppliers and the input materials involved, the information, by definition, requires a large amount of data to be collected. Furthermore, regarding the argument that the GOC has no control over the suppliers and thus impossible to force them to cooperate, the Commission referred to the reasons explained in recital (278) above for which it considered these claims moot.

- (285) As regards the claim of extended scope, the Commission noted that this particular scheme was already part of the Memorandum on sufficiency of evidence, it was included in the Notice of Initiation and part of the consultations with the GOC. Therefore, the information requested was never extended beyond the original scope.
- (286) The Commission first observed that the GOC did not put into question that it failed to provide information regarding any of the other associations the Commission requested information about, namely CBIA, China non-ferrous metal fabrication Industry Association ('CNFA'), China Industrial Association of Power Sources ('CIAPS'), the China Photovoltaic Industry Association ('CPIA'), the China Nonferrous Metals Industry Association ('CNMIA') and the China Nonferrous Metals Processing Industry Association ('CNMPIA'). Furthermore, as described in recital (278), the GOC failed to provide evidence that it had forwarded the questionnaires to suppliers or CBIA. The absence of such evidence raises concerns regarding cooperation in the investigation. The Commission cannot accept either that the GOC had no information whatsoever regarding the structure of the domestic suppliers' markets. As described in Section 3.7.2 below, the Commission established that the State has shares in a number of battery and lithium suppliers. Therefore, for the reasons explained in recital (268), the State has numerous means to collect information to collect data for State-invested enterprises. Furthermore, as evidenced by the direct role of CBIA and CIAPS on the suppliers' markets, the State has a number of other means to collect data for all State owned and other entities operating on the suppliers' markets. Finally, collecting overall statistics on consumption, production, market structure and prices is inherent to the functions typically exercised by a sovereign state. Since the Commission received no information from the GOC concerning the elements listed above, the Commission thus concluded that it had not received crucial information relevant to the investigation and that it had to rely on facts available for its findings concerning input materials.

3.3.1.3. Application of the provisions of Article 28(1) of the basic Regulation in relation to the Fiscal Subsidy Policy for the Promotion and Application of New Energy Vehicles

- (287) The Commission requested the GOC to complete a questionnaire with specific questions concerning the Fiscal Subsidy Policy for the Promotion and Application of New Energy Vehicles scheme. In its reply, the GOC failed to provide basic information requested on various elements such as the preparation, monitoring and implementation of the scheme, as well as the estimations of the amounts of vehicles to which the scheme applied.
- (288) The GOC did not disclose any preparatory documents (feasibility, expected results), neither intermediate nor final documents (assessment of results, impact on the development of the BEV industry, distribution of benefits between producers and consumers). It neither identified nor explained the types of records maintained by the relevant authorities regarding the programme.
- (289) Similarly, the GOC failed to provide the government's payment schedule for the BEVs sold during the investigation period. Furthermore, it did not provide the total amounts of subsidies transferred in connection with BEV applications over the past four years. Additionally, it failed to provide the basis on which the subsidy per vehicle had been reduced over the years. It neither provided the number of BEVs for which subsidies were transferred since 2018. Furthermore, the GOC was unable to explain the procedure to claim the funds in the case of imported BEVs.
- (290) Furthermore, the GOC was unable to provide the following: i) annual consolidated tables indicating the amounts paid per foreign producer per imported model for the last four years; ii) foreign companies' requests for instructions on the settlement of the application for fiscal subsidy funds in 2020-2023; iii) the number of imported BEV for which funds were transferred during the investigation period or previous years.
- (291) Finally, the GOC failed to provide an explanation on whether schemes similar exist at central or provincial level.
- (292) Since the Commission received no information from the GOC concerning all elements listed above, the Commission considered that it had not received crucial information relevant to the investigation.

- (293) In its reply to the Commission's Article 28 Letter, the GOC objected to the application of facts available.
- (294) The GOC claimed not to have access to information relating to feasibility studies, expected results, neither intermediate nor final documents.
- (295) The GOC also claimed that information concerning the government's payment schedule for the BEVs sold during the IP, the nature of the records kept by the relevant governments in relation to the programme and the number of BEVs for which subsidies were transferred and the declared BEV sales, is irrelevant and not necessary to the present investigation.
- (296) With regard to information on the amounts paid to foreign producers under the programme per model, the GOC claimed that it did not have this information and that it was irrelevant and unnecessary for the purposes of the present investigation.
- (297) The Commission noted the extreme unlikelihood that the GOC has not retained information regarding feasibility studies or expected results of a program that has been in place for several years, which had undergone multiple revisions and adjustments on the basis of evaluations, and which, most importantly had involved significant amounts of the central budget managed by the GOC. Those re-evaluations should require some information about expected results and information about the companies benefiting from those programmes. Therefore, to the extent that the information is deemed necessary for the Commission to reach its conclusions, the Commission may, where appropriate, use facts available.
- (298) As regards the relevance of the information, the Commission noted that it is for the Commission to determine what information is deemed necessary for the investigation and not for any party to make that determination. Furthermore, the government's payment scheme to BEV producers based on their sales of BEVs, the amounts disbursed to domestic versus foreign producers, and the records kept on these disbursements have a direct link to the alleged subsidy scheme for its calculation and determination of specificity among other elements. Therefore, the information requested is both relevant and necessary for the Commission to properly assess the scheme.
- (299) The Commission thus concluded that it had to rely on facts available for its findings concerning the Fiscal Subsidy Policy for the Promotion and Application of New Energy Vehicles scheme.

3.3.1.4. Application of the provisions of Article 28(1) of the basic Regulation in relation to the grants / other subsidy programmes including state / regional / local government schemes

- (300) The Commission requested the GOC to provide information regarding subsidy schemes at national, provincial or municipal level that conferred a benefit to producers / exporters of the product under investigation during the last three calendar years before and during the investigation period. Whereas the GOC failed to provide any information in this regard, it appeared that it did not contact any subcentral authorities whether at provincial or municipal level to gather the information that was requested.
- (301) In its reply to the Commission's Article 28 Letter, the GOC objected to the application of facts available.
- (302) The GOC claimed that it lacked monitoring of the grants received by companies from sub-central governments. Furthermore, it argued that the lack of specificity in the Commission's question made it burdensome for the GOC to collect extensive information from all China provinces and municipalities. Finally, it claimed that relevant documentation had been provided by Chinese exporting producers.
- (303) The Commission noted that it was unlikely that the GOC had retained no information or is not entitled to request the provinces and municipalities information regarding the transfer of cash by the GOC or on behalf of the GOC. This includes details such as the reasons for those cash transfers, the amounts involved, and the recipients of the disbursements. Therefore, to the extent that the information is deemed necessary for the Commission to reach its conclusions, the Commission may, where appropriate, use facts available.

- (304) The Commission also noted that information requests contained in the questionnaire and the deficiency letters were detailed and specific. Similarly, the Commission reminded that the GOC is actively involved in the schemes as it controls the legal framework, the decision-making process, the disbursement and the programme design of the grants. Consequently, the GOC cannot fully shift the responsibility for providing information to the sample producers.
- (305) Since the Commission received no information from the GOC concerning the elements listed above, the Commission considered that it had not received crucial information relevant to the investigation and that it had to rely on facts available for its findings concerning grants / other subsidy programmes including state / regional / local government schemes.

3.3.1.5. Purchase tax exemption scheme

- (306) The Commission requested the GOC to complete a questionnaire with specific questions concerning the purchase tax exemption scheme. In its reply to the government questionnaire, the GOC failed to provide basic information requested on areas such as the preparation, monitoring and implementation of the scheme, as well as the estimations of the amounts of vehicles to which the scheme applied.
- (307) With regard to the preparation and monitoring of the programme, the GOC failed to provide an analysis of the expected results. The GOC also failed to identify and explain the types of records kept by the relevant authorities (e.g., accounting records, company-specific files, databases, budget authorisations, etc.). Additionally, the GOC failed to provide the amount of tax forgone under this policy. Furthermore, the GOC failed to provide any intermediate documents, including evaluation results, impact assessment on the development of the BEV industry, and a distribution of benefits between producers and consumers. Similarly, the GOC was unable to provide the sales of imported BEVs included in the catalogue that were eligible under this programme.
- (308) Concerning the Catalogue of New Energy Vehicle Models Exempted from Vehicle Purchase Tax, the GOC failed to provide responses regarding i) the eligibility criteria, ii) information documents concerning rejected models and model applications, and iii) communication received from producers about their applications. Specifically, the GOC failed to provide an explanation or evidence to substantiate the basis on which applications for vehicles to be included in the programme were accepted or rejected. Furthermore, the GOC did not provide information documents for rejected models, nor did it provide the model applications and the documents sent to producers regarding the rejection of these models.
- (309) Similarly, the GOC failed to provide information concerning the volume of BEVs registered in China. Furthermore, the GOC did not provide information concerning the volume of imported BEVs registered during the investigation period or previous periods. The GOC also failed to provide information concerning the registration volume of NEVs or BEVs by brand, model, and place of registration. Finally, the GOC failed to provide any research that could be used as a reference regarding price elasticity in China.
- (310) Since the Commission received no information from the GOC concerning any of the elements listed above, the Commission considered that it had not received crucial information relevant to the investigation.
- (311) In its reply to the Commission's Article 28 Letter, the GOC objected to the application of facts available on the grounds that none of the information requested was available to the GOC.
- (312) In addition, the GOC argued that the information concerning the volume of BEV registrations was irrelevant for the purpose of the investigation.

- (313) The Commission noted that it is highly unlikely that the GOC does not have information on the number of BEVs registered in China during a given period. This is particularly the case given that BEVs benefit from special conditions at the time of registration, which need to be evaluated, controlled and monitored by the GOC. There is a comprehensive set of documents that vehicle owners must submit to the traffic authorities during the process of purchasing, registering and obtaining a license plate number for a vehicle in China. From the moment of purchase, vehicle buyers are required to comply with purchase tax regulations by submitting a Vehicle Purchase Tax Declaration. This declaration requires detailed information, including the Vehicle Identification Number (VIN), which uniquely identifies the model of the vehicle and some of its characteristics. In addition, vehicles registered in China must undergo a registration process with the Chinese traffic authority, which includes identification of the vehicle type and model. Similarly, licence plates can be linked to specific vehicles.
- (314) It is similarly unlikely that the GOC retains no written documentation pertaining to the rejection of models for inclusion in the catalogue, especially when the procedure for inclusion in the catalogue involves the submission of a significant amount of data from the producers and implies the evaluation of several technical services within the GOC. Furthermore, the Commission noted that it is unlikely that the GOC is unaware of the estimated tax revenue foregone from a long-standing programme. Indeed, this is a programme with direct impact on the budget and the potential to result in hundreds of billions of RMB of tax revenue being forgone per year.
- (315) Therefore, to the extent that the information is deemed necessary for the Commission to reach its conclusions, the Commission relied on publicly available sources.
- (316) As regards the relevance of the information, the Commission notes that it is for the Commission to determine what information is deemed necessary for the investigation and not for any party to make that determination. Furthermore, the registration of BEVs has a direct link to the alleged subsidy scheme and therefore the information requested was both relevant and necessary for the Commission to properly assess the scheme.
- (317) While, as stated in Section 3.9, the Commission provisionally decided not to issue findings on this scheme, it reserves the right to further investigate the countervailability of the program. Consequently, the Commission may have to rely on available facts for its findings regarding the purchase tax exemption scheme, should it gather sufficient elements to conclude that such scheme is countervailable.

3.3.2. *Application of the provisions of Article 28(1) of the basic Regulation concerning the SAIC Group*

- (318) The SAIC Group initially cooperated with the Commission by providing replies to the questionnaire. In particular, its related entities, including 6 BEV producers, sent replies to the questionnaire. However, these replies were found to be highly deficient and, on 12 December 2023, the Commission informed the SAIC Group of the Commission's intention to apply Article 28(1) of the basic Regulation with respect to information not provided prior to the verification visits and the fact that, failing to receive this information, the Commission's findings may be based on facts available. The missing information related *inter alia* to cost of production, detailed information relating to purchases of main inputs, and the absence of questionnaire replies by related companies involved in activities related to the product under investigation for which a questionnaire reply had been requested.
- (319) The SAIC Group failed to provide the missing information and argued this was due to the high number of related companies in the group, and that the application of "*facts available*" would not properly reflect its high level of cooperation up to that point of the investigation. It argued that the high number of deficient replies submitted being due to the, often unjustified, amount of information requested by the Commission and the high coordination burden needed between the numerous related companies.

- (320) However, the lack of cooperation was confirmed whether prior, during, and after the verification visits as crucial information including *inter alia* costs of production, bills of material (BOM), product specifications including the chemical composition of the raw material purchased from suppliers, supporting purchase transaction-by-transaction listing for suppliers, and information relating to grants received were not provided. The Commission explained to SAIC Group that such information was considered necessary to arrive at concrete findings with regard to the subsidies received from a variety of support measures. Furthermore, it appeared that additional related companies had also failed to provide a questionnaire reply, although their activities would have required them to do so.
- (321) The Commission found that the absence of such necessary information impeded the investigation. Hence, on 23 April 2024, the SAIC group was duly informed on the consequences of only partially cooperating with the investigation and of the Commission's intention to apply Article 28 of the basic Regulation regarding the information not submitted or the information that could not be verified. The Commission invited the company to submit comments.
- (322) On 30 April 2024, the Commission received comments from the SAIC Group. The SAIC Group disagreed with the Commission's assessment of the overall level of cooperation provided by the various entities part of the group and put forward several claims leading to the conclusion that the intended application of Article 28 of the basic Regulation was not justified.

3.3.2.1. SAIC Group's allegation that legal standards for applying Article 28 of the basic Regulation were not fulfilled

- (323) The SAIC Group stated that certain aspects of the Commission's assessment for the application of Article 28 of the basic Regulation misrepresented the facts on record and repeated that it had cooperated with the investigation to the best of its ability. The SAIC Group explained that in instances where it was unable to provide full or only partial information as requested, it provided 'alternative documents' to facilitate the Commission's investigation.
- (324) In this regard, the SAIC Group referred to Article 28(3) of the basic Regulation, as well as to the Case-law of the Court of Justice of the European Union ⁽¹⁰³⁾ alleging that even the incomplete or otherwise deficient responses should be accepted.
- (325) The SAIC Group highlighted a finding by the Court in this case ⁽¹⁰⁴⁾ where it considered that "*the term 'necessary information' refers to information held by the interested parties which the EU institutions ask them to provide in order to enable them to reach the appropriate findings in an anti-dumping investigation*". In the same case ⁽¹⁰⁵⁾, the Court found that "*the burden lies with those institutions to prove that the product concerned has been dumped, that there has been injury and that there is a causal link between the dumped imports and the injury and, therefore, that certain information is 'necessary' for the purpose of reaching the appropriate conclusions in the anti-dumping investigation*".
- (326) In the light of the Court's finding, the SAIC Group considered "*that due to the highly complex nature of this investigation (both in terms of the large scope of information requested, the great number of companies required to supply information and the short turnaround of time to provide information), the Commission should not apply the aforementioned criteria too strictly to the information submitted*" and "*where the information is deemed deficient, the use of facts available should be strictly limited to the necessary purpose of that information and in all circumstances be checked by reference to other independent sources, in full accordance with Article 28(5) of the basic Regulation*".

⁽¹⁰³⁾ See T-413/13, *City Cycle Industries v. Council*, EU:T:2015:164, para. 120; Case T-633/11, *Guangdong Kito Ceramics and Others v. Council*, EU:T:2014:271, para. 100; WTO Appellate Body Report, *US – Hot-Rolled Steel*, WT/DS184/AB/R, adopted on 23 August 2001, para. 81 and Case C-61/16 P *European Bicycle Manufacturers Association (EBMA) v Giant (China) Co. Ltd*, ECLI:EU:C:2017:968.

⁽¹⁰⁴⁾ Case C-61/16 P *European Bicycle Manufacturers Association (EBMA) v Giant (China) Co. Ltd*, ECLI:EU:C:2017:968, paragraphs 53 to 57.

⁽¹⁰⁵⁾ Case C-61/16 P *European Bicycle Manufacturers Association (EBMA) v Giant (China) Co. Ltd*, ECLI:EU:C:2017:968, paragraph 65.

- (327) The Commission recalled that the information requested was actually provided by the other sampled group(s) and thus readily available to the SAIC Group. Hence, it was the SAIC's Group's choice not to provide the requested information, as evidenced by the list of non-submitted documents, which it signed and agreed to during the verification. This list demonstrates that it impeded the investigation by consciously not acting to the best of its abilities. Furthermore, the information was deemed to be necessary for the purpose of reaching appropriate conclusions in the subsidy investigation and in this regard, in line with the findings of the Court. Also, any relevant information provided by the SAIC Group as 'alternative documents', including the deficient one, was appropriately taken into account, when verifiable. The Commission resorted to facts available, including from independent sources as mentioned in section 3.3 concerning preferential lending, export credit insurance, purchase tax exemptions, input materials and Fiscal Subsidy Policy for the Promotion and application of New Energy Vehicles only when the information submitted was clearly deficient (and listed in the jointly signed annexes to the on-spot verification reports) and the Commission had sufficient elements to conclude on these schemes. It is incorrect to assume that the Commission applied too strictly the criteria set out in Article 28(3) of the basic Regulation.
- (328) As the SAIC Group claimed in its comments that *"the benefit of the doubt should be given to the information that is on the record as supplied"*, the Commission explained in the disclosure of the essential facts and considerations to the sampled exporting producer, that in using facts available withing the meaning of Article 28 of the basic Regulation, it has used the information provided by the SAIC group to the largest possible extent, and in the absence of such verified information only then reverted to public independent sources. The claim that the legal standards for applying Article 28 of the basic Regulation were not met was therefore rejected.

3.3.2.2. Requests for information concerning related suppliers

- (329) As mentioned in recitals (318) - (319), several unreported related companies for which the SAIC Group failed to provide a questionnaire reply were found during the investigation. These 'new' companies were found to be related and were involved in various key contractual relations involving activities such as the provision of input materials, capital, loans, guarantees and other types of financing within the SAIC Group. The SAIC Group repeatedly rejected the Commission's requests to fill in a questionnaire, arguing that it was a breach of the SAIC group's fundamental rights, without however, giving any substantiated arguments.
- (330) In its comments, the SAIC Group claimed that those related companies could not or did not have to cooperate in the investigation and in any case, the use of Article 28 of the basic Regulation to these companies was not justified or should be strictly limited. The reasons alleged by the SAIC group were related to several factors such as:
- Very low transaction value of the related company in the SAIC Group turnover (less than 1%).
 - Lack of shareholdings or meaningful control on the related companies, which was confirmed by the fact these companies refused to accede to the request of cooperation addressed by the SAIC Group or to provide confidential documents to which the companies referenced are a party.
 - The business activities of the related companies were not covered by the scope of either the instructions of the exporting producer questionnaire or the clarification note⁽¹⁰⁶⁾ published by the Commission on 17 November 2023.
 - Production volume resulting from a tolling agreement already covered by the reply of the SAIC Group.
 - The alleged related company had no R&D transactions or R&D contracts valid with SAIC group during the investigation period.
 - An allegedly related company was the recipient but not the title holder of a land-used right.

⁽¹⁰⁶⁾ Note to the file: Related companies required to submit a questionnaire reply. (t23.005730)

- (331) The Commission agreed that, in line with the above-mentioned clarification note, a related company with a very low transaction value representing less than 1% of purchases of the SAIC Group could indeed be exempted from providing a questionnaire reply in this investigation. However, the Commission reserved the right to apply Article 28 of the basic Regulation to the supplied parts of this related company to the SAIC Group as it had not been able to verify this information.
- (332) The Commission noted that the related supplier in question and the SAIC Group jointly operated a company to develop, produce and sell battery cells, modules and packs, and were therefore legally recognised partners in business. Therefore, they are considered related within the meaning of Article 127 of Commission Implementing Regulation (EU) 2015/2447, which warrants the legal obligation to submit a subsidy questionnaire reply as a related party, as per instructions of the questionnaire and the subsequent correspondence. The claim of the group was therefore rejected.
- (333) The SAIC Group claimed that the Commission should review its assessment and refrain from applying Article 28 of the basic Regulation to companies having refused to disclose financial or contractual links and joint ventures agreement and, in such cases, to only use publicly available information in line with Article 28(5) of the basic Regulation. The Commission repeatedly indicated to the SAIC Group that the fact that certain information was considered “*core business secret*” was irrelevant given the confidentiality treatment given to any information submitted in the framework of anti-subsidy proceedings in line with Article 29 of the basic Regulation. Therefore, the claim was rejected.
- (334) The SAIC Group claimed that the Commission failed to properly explain why some related companies should have filled in a questionnaire. However, in its second request, the Commission explained that according to information available in the file (organisation chart showing an important financial and/or controlling role by the related companies) these companies were related since they seemed to be involved in the provision of capital, loans, or other types of financing within the SAIC Group. However, having received a second negative reply to its request from the SAIC Group, the Commission did not reiterate its request and informed the SAIC Group of the consequences of non-cooperation on 23 April 2024.
- (335) The SAIC Group refused to provide a questionnaire reply concerning a related company found, during one of the verification visits, to be engaged in a tolling agreement. Although, the SAIC Group recognised that this related company was involved in the production of the product under investigation (‘PUI’), it also claimed that that the Commission should have “*confirmed*” that a questionnaire reply was needed. This comment showed the lack of cooperation of the SAIC group, who finally claimed that any use of Article 28, if any in relation to this related company, should be limited to elements not related to subsidies. The claim was rejected.
- (336) In fact, the existence of these related companies was revealed by the information provided in the initial submission of information prior to the submission of the questionnaire replies, in the questionnaire replies or during the on-spot verification visits on a casual basis. These related companies were either suppliers or customers to the SAIC Group and often appeared to be involved in activities related to the PUI whether as research institute, supplier of parts and components listed in the Memorandum on sufficiency of evidence, logistic companies, etc. Given the nature of their activities they should have provided a questionnaire reply allowing the Commission to verify the information and eventually request further evidence.

3.3.2.3. Information not provided by the SAIC group and other undisclosed documents before and during on-spot verification visits

- (337) In its comments, the SAIC Group claimed that following substantial deficiency letters received from the Commission some information had effectively been provided subsequently and could be fully verified during the on-spot verification visits. However, the SAIC Group only referred to information relating to purchases and consumption tax exemption to domestic customers, thus recognising that all the other missing information remained undisclosed during the investigation. In fact, the deficiency letters highlighted key issues that the individual producers being part of the SAIC Group deliberately omitted to report (information in their questionnaire replies relating to production and sales forecasts, cost of production, purchases and consumption tax exemption on domestic sales).

(338) The SAIC Group provided an overview of the documents not submitted before and during on-spot verification visits asking the Commission to apply Article 28 of the basic Regulation only to those documents which were not provided by individual entities. The Commission reviewed the lists and maintained its position regarding those elements in the list which had been sent to the SAIC Group which were subject to the use of facts available, such as grant programmes, provision of batteries for less than adequate remuneration, revenue foregone through Tax Exemption and Reduction programme and provision of preferential financing (such as bonds and equity injections) and missing questionnaire replies. The claim not to reject the information provided as regards the following elements listed below was rejected:

(a) *Bill of Material (BOM) finished products and supply product specifications (e.g. chemistry, composition, etc.).*

(339) The Bills of materials (BOM) are extensive lists of raw materials, components, and instructions required to manufacture a product. The Commission repeatedly explained to the SAIC Group their importance in the investigation as they allowed to identify the main individual components and materials that make up the finished product and their origin.

(340) In the subsidy case at hand, the BOM were equally important to identify the parts used in the assembly of the finished product (BEV or components such as batteries), the quantities used, their specification, internal material number and consequently the name of their suppliers. The BOMs also allowed to establish a direct link to the cost of production, as they could be used as a basis for the calculation of standard costs, actual costs and variances deriving from the difference between them.

(341) The SAIC Group did not provide full data concerning, neither the BOM, nor the costs of production and maintained that the BOM was not necessary for anti-subsidy investigations, as it did not pertain to any of the elements for the calculation of the subsidy margin. The Commission disagreed with this assessment and confirmed that this information was required to be able to assess the completeness and accuracy of information related to cost of production but also to the most important parts and components.

(342) The SAIC Group recognised that information related to product specifications could only be provided on a case-by-case basis and only in parts. Furthermore, the SAIC Group considered that the Commission could have used a different approach to be able to reconcile the data provided. In fact, by asking the same level of information regarding the BOM to each entity, the SAIC Group considered that it was an unfair treatment which constituted a breach of the Charter of Fundamental Rights, as they were other methods available to verify the information provided in the table concerning the supply of parts.

(343) The Commission maintained that none of related battery suppliers provided the necessary supporting documents requested by the investigation team and in particular their specifications. The Commission first considered that BOM information should have been provided by each of the entities, as when requested during the on-spot verification visits, they confirmed that while having such information, it could not be provided for different reasons, mostly linked to confidentiality agreement signed with suppliers and company's own business secrets. Furthermore, the BOM was actually used by the entities when preparing its questionnaire reply in order to determine the input materials that needed to be reported and corresponding suppliers that should provide a questionnaire reply. This is one of the reasons which prompted the Commission to renew its request after the on-spot verification visit. In fact, contrary to its normal practices, the Commission allowed each entity to provide the information regarding the BOM and other supply parts and raw material specifications, reserving however the right to disregard this information as it could not be verified on spot.

(344) As mentioned above, the SAIC Group alleged that the chemistry and specification of the battery cell and battery system used by some of the producers could be verified without using BOM or that the information relating to the specification for certain raw materials used by some battery related producer could be verified without using a BOM. In some cases, the SAIC Group provided BOM-related information as part of the verification exhibits.

- (345) However, the fact that a company would allow the Commission to view a BOM for a unique type of PUI could, in no case, be equivalent to the provision of the requested information. In addition to the lack of completeness of the information that could be viewed (only one type of PUI in some exceptional cases), the SAIC Group confirmed that it refused to provide readily available information to the Commission when it was so requested.
- (346) The Commission first rejected the claim that the BOM were not relevant in the investigation and could not have any impact on the subsidy amount calculations. Second, having identified the batteries and other raw material as key factors which may be subject to subsidisation, in the absence of BOM information which would have allowed the Commission to assess the completeness, accuracy and specifications of the parts supplied to the sampled producers, the Commission decided to use, as fact available, other sources of information concerning raw materials.

(b) *Transaction by Transaction (T-by-T) purchase listing for parts and components (account ledger)*

- (347) In its comments to the application of Article 28, the SAIC Group confirmed that for confidential reasons it could not always provide T-by-T purchase listings as these elements related to production costs and were therefore business secret. However, in some cases, it claimed that the relevant table could be verified during the on-spot verification visits. The SAIC Group claimed that it had submitted a comprehensive summary of the information requested in the form of tables, which contained all the necessary information for the calculation of subsidy amount and that it could be verified by the Commission during the on-spot verification visits. However, the SAIC Group could only provide screenshot of the information showed to the Commission as the information source remained confidential and the requested purchase listing could not be provided, though readily available. The SAIC Group concluded that in any event, the information submitted was meeting the criteria of Article 28(3) of the basic Regulation.
- (348) The Commission disagreed with the claim that the information submitted was meeting the criteria of Article 28(3) of the basic Regulation. Not giving direct access to certain documents and providing screenshots or aggregated data without providing the relevant requested information can, in no case, be equivalent to the provision of the requested information in the form of an exhibit ensuring that the information can be duly verified. Deficiencies in providing the actual requested data cause difficulties in arriving at a reasonably accurate finding. Furthermore, given that the information was readily available, it cannot be considered that the party acted to the best of its abilities.
- (349) The Commission also noted that the information relating to purchases did not reflect actual cost but standard cost (budget cost recorded in the company's Enterprise Resource Planning ('ERP')). On this basis, and considering the above-mentioned findings related to the BOM, the Commission was not able to verify the accuracy of the quantity and cost information relating to parts and components reported by the sampled producers of the PUI and therefore, rejected the claim that the information submitted was meeting the criteria of Article 28(3) of the basic Regulation.

(c) *Purchase framework agreement (full version) for parts and components suppliers listed in Table E-3-3 (a/b)*

- (350) In its comments, the SAIC Group alleged that in one case, it reconciled on spot a Transaction-by-Transaction list with its accounting records. It alleged that for this entity and for the other producing entities, when requested during the on-spot verification visits, it had provided the relevant purchase documents including invoices, purchase orders, entries in the ERP systems in the form of exhibits. In particular, two battery suppliers provided their contracts with customers, i.e. the BEV manufacturers within the group, as verification exhibits. Hence, the SAIC Group considered that the criteria of Article 28(3) of the basic Regulation were met and the information should be fully taken into account by the Commission.

(351) The Commission rejected the claim that the SAIC Group had cooperated fully by providing a set of purchase framework agreements. In fact, the SAIC Group itself recognised that due to the alleged highly confidential nature of these documents it could not provide any purchase framework agreement in full for parts and components suppliers that were listed in the relevant section of the questionnaire reply. This was also confirmed by the list of documents not provided either during or after the verification visit whereby no full set of documents including documents such as framework contract and technical specifications could be provided. Furthermore, the Commission reminded the SAIC Group that such document should have been provided as part of the initial questionnaire reply. Given the confidentiality treatment given to any “sensitive” information submitted in the framework of anti-subsidy proceedings, such claim was unsubstantiated. Considering that these documents were readily available to the SAIC Group and should have been provided as part of the questionnaire reply, the Commission considered that the SAIC Group did not act to the best of its abilities. The Commission therefore rejected the claim that the information submitted was meeting the criteria of Article 28(3) of the basic Regulation.

(d) *T-by-T sales listing (2020-IP) identifying sales value, sales volume, date, model, item number, short code, VIN, customer name, retail price, selling price, net price, net price excluding VAT, quantity, related / unrelated, PUI / non PUI*

(352) The Commission considered that showing excel files and account ledger extracts on a screen and provide screenshots without providing the underlying information could not be a surrogate for providing the full T-by-T sales listing in order to allow a full reconciliation of the figures provided in the relevant tables.

(353) In its comments, the SAIC Group claimed that the Commission did not take into account the diversity of accounting and financial systems existing within the SAIC Group and that it was not essential or necessary for the Commission to receive T-by-T listing in order to fully reconcile the tables concerning sales in the questionnaire. Therefore, the Commission should refrain from using Article 28 as some of the verified companies have submitted the T-by-T listing as part of verification exhibits and, in any event, the information provided by the different entities met the conditions set out in Article 28(3) of the basic Regulation.

(354) The Commission considered that information provided only in the form of screenshots including only limited data or showing some examples would make the verification and reconciliation of essential figures unattainable and, therefore, rejected this claim. By not providing the detailed information, and only providing screenshots, the Commission could not verify the accuracy of the information provided, such as whether the individual sales transactions actually related to the product under investigation.

(e) *Joint venture agreements*

(355) In its comments, the SAIC Group confirmed that it was unable to provide the original copies of the joint venture agreements with respect to some of its producing entities, arguing, however, that the content of these joint venture agreements was reflected in the Articles of Association as they were “restated” in the Articles of Association. Only one entity submitted the joint venture agreement as part of the original questionnaire reply.

(356) As mentioned above, the Commission repeatedly indicated to the SAIC Group that the fact that certain information was considered “core business secret” was irrelevant given the confidentiality treatment given to any information submitted in the framework of anti-subsidy proceedings in line with Article 29 of the basic Regulation. The claim that the content of the missing joint venture agreements was “restated” in the Articles of Association could not be verified without receiving the joint venture agreements. Whereas one BEV producer within the SAIC Group provided a copy of the joint venture, none of the other BEV producers provided such document. Therefore, the claim was rejected.

(f) *Investment plans, approval, investment monitoring and feasibility studies 2020-2023 and sales forecasts*

- (357) The SAIC Group claimed that the requested documents (investment plans, approval, investment monitoring and feasibility studies 2020-2023 and sales forecasts) were not relevant for the calculation of the subsidy amount during the investigation period as these documents did not contain any elements or data necessary for the calculation of the subsidy amount. Furthermore, the requested documents were either already available in the publicly available annual reports or it contained confidential information relating to parties on which the SAIC Group had no meaningful control and therefore could not be disclosed.
- (358) The Commission did not agree with the SAIC Group and considered that information allowing to assess the nature and volume of planned investment regarding the PUI was relevant in the investigation not only for assessing the threat of material injury, but for instance to assess the production capacity of the PUI. The claim was therefore rejected.

(g) *Documents relating to forecast report for “NEV credits” (see Art. 18 of Corporate average fuel consumption of passenger cars and new energy vehicles Parallel management of points)*

- (359) The SAIC Group claimed that the requested forecast reports did not need to be provided as they were either not existing or they were related to the information post-IP and therefore, did not need to be verified. Therefore, the SAIC Group concluded that it would be irrelevant to apply Article 28 with respect to this element of the investigation.
- (360) Since the Commission considered that it could not verify these allegations during the on-spot verification visits, the claim that it would be irrelevant to apply Article 28 with respect to this aspect of the investigation was rejected.

(h) *Bank authorizations, credit lines.*

- (361) The Commission highlighted that the bank authorizations provided did not cover all the banks with which the entities of the SAIC Group were in a business relation and that the questionnaire template pertaining to the bank authorization had been modified without prior notification.
- (362) The SAIC Group claimed that it modified the template to include bank acceptances and credit lines into the scope of the bank authorizations and therefore, such modifications to the template should not be in any way considered as reduction of the scope of the bank authorizations, on the contrary. The SAIC Group claimed that the requested information was provided and should be taken at face-value by the Commission.
- (363) The Commission noted that some entities within the SAIC Group failed to report information relating to bank authorizations, credit lines and debt-to-equity swaps, and therefore did not receive crucial information relevant to these aspects of the investigation. The claim was therefore rejected.

(i) *Grant programs*

- (364) Whilst not denying the receipt of grants from the GOC, the SAIC Group claimed that it was not essential to use “the individual amounts received per grant, time of receipt of the grants, description of the grants, corresponding government notifications specifying the nature of the grants and other necessary information” for the purpose of the calculation of subsidy amount, as the amounts reported concerned the grants received for the entities as a whole and not only related to the PUI. Moreover, the amount of the grants received during the investigation period, as reported in the tables, could be directly reconciled to the trial balance and the general ledger accounts, especially the accounts concerning non-operating income and/or income from subsidies.
- (365) However, as a result, the Commission was unable to determine the underlying subsidy schemes, the amount of grants received during the investigation period, as well as whether these grants related to fixed assets or not. The Commission rejected the claim that the information relating to grants could be verified.

(j) *Land Use Rights ('LURs')*

(366) The SAIC Group claimed that land-use rights were not one of the areas covered in the Commission's request for the underlying documents. Nor did the Commission have any land-use rights-related questions after the verification visits, except for two entities to which it replied on 21 February 2024.

(367) For certain documents that were asked during the verification visits, some entities belonging to the SAIC Group explained that the requested documents were dating back one or two decades ago and have already been archived, or they were concerning a third party on which it had not authority. Therefore, the SAIC Group claimed that the amount reported for land used rights should be deemed to be accurate and used as such and the Commission should not apply Article 28. The Commission considered that all the original LUR agreements, the purchase contract and supporting documents showing the initial price paid for the LURs had been requested and found in several cases that the information received was incomplete and did not permit a complete verification of the information received. The claim was therefore rejected.

(k) *Bonds and intercompany financing*

(368) The SAIC Group claimed that the documents related to bonds and intercompany financing were not requested by the Commission. The SAIC Group noted that the information on Asset Backed Security (ABS) was not required in the Section of the questionnaire relating to provision of preferential financing by State policy banks and State-owned commercial banks and therefore rejected any intended application of Article 28.

(369) The Commission considered that the questionnaire specifically requests information on intercompany financing and on bonds in particular. First, companies involved in the provision of capital were requested to provide a questionnaire reply; second, ABS are a type of bond for which information was requested in the questionnaire. Furthermore, the Commission found contradicting information in the public domain with regard to related companies, who did not cooperate (see recital (320)), clearly showing that crucial information relevant to the subsidies had not been disclosed and therefore the claim was rejected.

(l) *R&D Deduction Tax Agent report*

(370) The SAIC Group commented that the R&D deduction agent reports are normally prepared by the tax agents as per the companies' instructions; However, their preparation is not mandatory and therefore, the request for such reports was not applicable. Furthermore, these reports were not necessary or essential to verify any R&D deduction amounts, as the relevant amounts declared in the enterprise income tax return were prevailing. The SAIC Group objected to any intended application of Article 28 of the basic Regulation.

(371) The Commission considered that as found in one on-spot verification visit, the redaction of the information in an R&D deduction tax agent report, which allowed additional deduction of the R&D expenses as was the case in one of the entities, could not be considered as full cooperation. By not providing such information, which allegedly did not relate to the product under investigation but was readily available to the SAIC Group, the Commission was not in a position to assess the specificity aspect of the tax reduction scheme at stake. Consequently, the claim was rejected.

3.3.3. *Application of the provisions of Article 28(1) of the basic Regulation concerning the Geely Group*

(372) In the course of the investigation, the Commission found that the absence of certain necessary information impeded the investigation, namely:

- it was found that a supplier of the Geely Group was considered to be related within the meaning of Article 127 of Commission Implementing Regulation (EU) 2015/2447⁽¹⁰⁷⁾, and that this company had failed to submit a questionnaire reply;

⁽¹⁰⁷⁾ Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ L 343, 29.12.2015, p. 558).

- none of the Geely Group financing companies that raised funds for its BEV business through syndicated loans, bilateral bank facilities and asset-backed securities (“ABS”), including green asset-backed securities, provided a complete questionnaire reply;
 - none of the Geely Group companies provided complete information regarding the nature of the grant programmes under which they received support, as requested in the questionnaire;
 - the Geely Group did not report all ongoing and future projects linked to the production of BEVs, as requested in the questionnaire;
 - a number of actual BEV producers in the Geely Group did not provide a full questionnaire reply, instead, these entities solely responded to sections designated for suppliers of input materials, whereby a large part of the information typically expected from producers was not provided.
 - the Geely Group also failed to submit Annex IV – Bank authorization as part of its questionnaire reply. Lastly, the group did not provide the information on the land use rights owned by the holding entities relevant to one exporting producer in the group.
- (373) As a result, on 23 April 2024, the Commission notified the Geely Group of its intention to apply Article 28 of the Basic Regulation with regard to the information not submitted. The Commission invited the company to submit comments.
- (374) On 30 April 2024, the Geely Group submitted comments concerning the Commission’s intention to apply facts available on the information covered in the recital (372) and the letter of 23 April 2024.
- (375) Firstly, the Geely Group argued that it cannot be requested to submit confidential information from an unrelated supplier which it cannot instruct, and, in any event the Commission has been provided with reasonably relevant information. The Geely Group did not own that supplier or had any power over its supplier’s business and management.
- (376) The Commission noted, however, that a supplier in question and Geely Group jointly operated a company to develop, produce and sell battery cells, modules and packs, and were therefore legally recognised partners in business. Therefore, they are considered related within the meaning of Article 127 of Commission Implementing Regulation (EU) 2015/2447, which, as per the instructions of the questionnaire and the subsequent correspondence, warrants the legal obligation to submit a subsidy questionnaire reply as a related party. The claim of the group was therefore dismissed.
- (377) Secondly, the Geely Group claimed that it was not in a position to provide more information from financing companies that raised funds for its BEV business. All Geely Group entities involved in financing in connection with BEVs have submitted the required responses to Sections A and E of the initial questionnaires. In addition, the Geely Group argued that the request was too wide, not precise enough and not of direct relevant for the investigation.
- (378) Nonetheless, through publicly available sources the Commission found a number of asset-backed securities (including green asset-backed securities) applicable in the investigation period (‘IP’) issued by at least one of the Geely Group’s companies, for which no information had been provided by the group, even after sending a specific request for it, while ABS was a type of bond for which information had been requested in the initial questionnaire. The claim of the Geely Group was therefore dismissed.
- (379) Thirdly, regarding the provision of complete information regarding the nature of the grant programmes, the Geely Group explained the nature and description of the grant programs could almost always be identified in the bank slips related to the individual grant payments. Furthermore, the Geely Group explained that additional information related to the grant programs including the legal basis is not in its possession and should be requested from the GOC.

- (380) The Commission noted that from the limited information, when available on the bank slip, it was unable to determine the underlying subsidy schemes for the grant programmes in relation to the product under investigation. At the same time, as mentioned in recital (300), the Commission noted that the GOC did not provide any information regarding the *ad hoc* grants provided to the sampled groups. The claim of the group was therefore dismissed.
- (381) Fourthly, on the absence of reporting regarding some projects linked to the production of BEVs, Geely Group was of the view that on-going and future projects such as potential new car launches are not related to the investigation period and not within the scope of this investigation. Geely Group also stressed the highly confidential and market sensitive feature of this information.
- (382) The Commission noted that ongoing and future projects linked to the production of BEVs were requested in the initial questionnaire, as well as during on-spot verifications, since a number of subsidy schemes are linked to the future BEV production, while a foreseen increase in BEV production capacity are relevant for establishing a threat of injury. Without this complete information the Commission was unable to determine all the underlying subsidy schemes in relation to the product under investigation. The claim of the group was therefore dismissed.
- (383) Fifthly, regarding the fact that the actual BEV producers in the Geely Group did not provide a full questionnaire reply, the Geely Group did not consider these companies to be BEV producers, since the vehicles that they produce still need to pass a series of inspections and tests. Geely Group also indicated that it provided additional information related to these companies, as requested by the Commission services.
- (384) The Commission noted that, whereas the companies provided the information requested, the very late submission of this information prevented it from verifying its completeness and accuracy. In particular, it was unable to adequately validate the supplies of certain inputs relative to the production volume and costs of BEVs, since the cost information provided by these companies did not provide sufficient details, as normally requested from the producing entities in the Commission's questionnaire. The claim of the group was therefore dismissed.
- (385) Regarding the provision of Annex IV – Bank authorization, Geely Group argued that it submitted a consolidated version of the bank authorizations, at the time of submission of the initial questionnaire responses. The Commission reverted to the document submitted and confirmed its usability.
- (386) Last, on the provision of the information on the land use rights relevant to one exporting producer in the group, Geely Group indicated that the land use rights related to the headquarters were not related to the production and sales of BEVs, and were irrelevant and immaterial to the investigation.
- (387) The Commission noted that the headquarters are for part used for the activities related to BEV. Subsidies related to these headquarters should therefore be allocated in proportion to the activities related to BEV that are taking place there, while its materiality cannot be established without having the basic information on the land use rights owned. The claim of the group was therefore dismissed.

3.3.4. *Application of the provisions of Article 28(1) of the basic Regulation concerning the BYD Group*

- (388) On 8 December 2023, the Commission notified the BYD Group of its intention to apply Article 28 of the Basic Regulation with regard to the information that BYD Group failed to provide and invited the company to submit comments on it. The BYD Group submitted the missing information on 15 December 2023.

- (389) In the course of the investigation, the Commission found that the BYD Group had not disclosed its relationship with (at least) two suppliers of raw materials used in the production of batteries, and that these companies had thus not submitted a questionnaire reply. In addition, both suppliers were found to be supplying significant quantities of lithium, representing more than 1 % of the total input purchases from the companies that submitted a questionnaire reply. Furthermore, no information about unrelated suppliers was submitted to the GOC, despite the fact that the anti-subsidy questionnaire contained provisions on the disclosure of unrelated suppliers, nor Annex IV – Bank authorization was provided. The Commission found that the absence of such necessary information impeded the investigation and access to information to relevant schemes. As a result, on 24 April 2024, the Commission notified the BYD Group of its intention to apply Article 28 of the Basic Regulation with regard to the information not submitted and invited the company to submit comments.
- (390) On 30 April 2024, the BYD Group submitted comments concerning the Commission's intention to apply facts available on the information covered in recital (389).
- (391) First, the BYD Group argued that no information about the related suppliers of raw materials was submitted, because the questionnaire indicated that only related companies involved in *“production of fixed assets or inputs used in the production process of the exporting producer, such as the inputs listed in Section E-3-3 below”*, should submit a questionnaire reply. Based on this, the BYD Group argued that some inputs were not used in the production process of the exporting producer, but instead in the production process of the upstream battery producer.
- (392) In addition, the BYD Group declared that it had submitted a list of suppliers to the GOC based on the same rationale (i.e. related companies involved in the production of inputs used in the production process of the exporting producer), and that, hence, some of the inputs in section E-3-3 were used in the production process of battery producers, not in the production process of the exporting producer.
- (393) The Commission recalled that on 17 November 2023 it issued a Note to file with clarifications on the related companies asked to submit a questionnaire reply, adding that related companies, *“whether related to producers selling domestically or for export”*, involved in the production of fixed assets or inputs, including raw materials, parts or components covered in Section E-3-3 of the questionnaire, and *“used in the production process of the manufacturing entities”* were required to submit a questionnaire reply. Considering the clarification issued by the Commission, the Commission considered that the company should have submitted clear and complete instructions on the company structure and its suppliers, triggering a questionnaire reply especially from the suppliers of raw materials used in the production of batteries. Furthermore, considering the level of vertical integration of the BYD group, the Commission considered that it was not possible to consider the production process of batteries as separated from and unrelated to the production process of the exporting producer. Therefore, the claim was rejected.
- (394) The Commission also highlighted that Section E-3-3b of the questionnaire clearly explained that a full list with the names and contact details of suppliers of pieces and raw materials during the investigation period should have been provided both to the Commission and the GOC. The questionnaire also specified that if the supplier is not a related company, *“the original independent supplier of the material in question”* had to be indicated. In addition to the aforementioned instructions, the Commission noted that in the list of suppliers sent to the GOC, the company had already included some names of related suppliers of raw materials used in the production of batteries. While the Commission acknowledged that the BYD Group had filed a list of suppliers to the GOC, this list was incomplete, since it did not include any unrelated supplier, as specified in Section E-3-3b of the questionnaire, nor the related suppliers identified by the Commission. The lack of such information impeded the investigation, as it did not give the opportunity to the GOC to contact those upstream suppliers to provide a reply to the questionnaire. Therefore, the Commission rejected the claim.
- (395) The BYD Group claimed that it did not submit Annex IV – Bank authorization forms, because the group considered that the Commission was able to obtain the requested information by examining the information provided by the respective companies and especially through the Credit Reference Center of the People's Bank of China.

- (396) As stated in the Commission's letter of 24 April 2024, the bank authorization forms were considered crucial for the collection of information from the GOC regarding the respective subsidy schemes. The bank authorization forms were needed to receive company confidential data from the various banks that provided loans to the BYD Group, which was information requested to the GOC. Without these forms, banks were not in the position to provide this information via the GOC to the Commission, resulting in impeding the investigation. Therefore, the claim of the BYD Group had to be rejected.
- (397) The BYD Group disputed the fact that one of their related raw material suppliers should have provided a questionnaire reply. The group argued that the Commission used the wrong denominator to calculate the percentage of the purchase value, and that the company actually supplied less than 1 % of all purchases by the producing companies that submitted a reply to the questionnaire. The BYD Group also referred to the fact that the Commission granted an exemption for the suppliers of inputs representing less than 1 % of the purchases of the BEV producers. In addition, the Group disputed the usefulness of a questionnaire reply, since the supplier in question only provided a raw material indirectly used in the production of batteries.
- (398) The Commission observed that the percentage of purchase value reported by the Commission in its Annex to the Article 28 letter had been calculated by the company itself and discussed with the case team during the verification at the company's premises. This piece of information was also included in the mission report sent to the company. In addition, the Commission acknowledged that it had granted an exemption for those input suppliers supplying less than 1 % of the purchase value of the BEV producers of the BYD Group. However, this decision was taken based on the information submitted by the group to substantiate its exemption requests. The Commission noted that no information on related suppliers of raw materials was submitted at initiation stage, and that the Commission thus lacked the necessary underlying information to make an assessment on whether the related raw material suppliers needed to submit a reply. At initiation stage, despite the clear instructions provided in Section E-3-3 of the questionnaire, the BYD Group limited its disclosure of information on the company structure only to the parts and components listed in the first part of Section E-3-3. Lastly, the Commission stressed that the lack of a questionnaire reply from the related raw material suppliers impeded the Commission services from assessing whether upstream suppliers were benefitting from subsidies.
- (399) The BYD Group contested the fact that another upstream supplier should have submitted a reply to the questionnaire, based on the fact that BYD's shareholding was below 5 % for part of the investigation period and thus the supplier did not qualify as a related party, and that the limited shareholding also meant that the information requested was not held by, or in control of the BYD Group, and therefore could not be provided by the BYD Group.
- (400) The Commission recalled that for part of the investigation period the BYD Group still held more than 5 % in the upstream supplier in question and recalled that this relationship was not disclosed at the beginning of the investigation, but only during the deficiency process. Besides, considering the existing business relationship between the two companies, the two parties clearly appeared related within the meaning of Article 127 of Commission Implementing Regulation (EU) 2015/2447. Therefore, the claim was dismissed. The Commission restated the fact that considering the importance of the raw material supplied in the production process of the BYD Group, the purchase volume and value bought by BYD from the upstream supplier, and notwithstanding the fact that the raw material in question had also been included in Section E-3-3 of the questionnaire, which explicitly provides for related raw material suppliers to submit a questionnaire reply, the Commission considered that the BYD Group cooperated only partially by withholding relevant information on the group structure and its suppliers at the beginning of the investigation. This is also confirmed by the fact that the list of purchases from suppliers was only submitted as a result of the first Article 28 letter referenced in recital (388). Article 28(1) of the basic Regulation provides that in cases where any interested party *"does not provide necessary information [...] provisional or final findings, affirmative or negative, may be made on the basis of the facts available"*. The lack of a questionnaire reply from the related raw material suppliers impeded the Commission services from assessing whether upstream suppliers were benefitting from subsidies, and whether the purchase price of one of the main inputs used in the production of batteries could be deemed at arms' length.

3.3.5. *Comments submitted by the GOC on the intended application of Article 28 to the sampled exporting producers*

- (401) On 30 April 2024, the GOC submitted comments contesting the intended application of Article 28 of the basic Regulation by the Commission and to make its findings based on facts available for specific aspects pertaining to three sampled exporting producers.
- (402) The GOC claimed that the Commission not only “failed to rectify its illegal approach on several procedural and substantive issues in this case, but also overlooked the complexity of the industries involved, the large number of companies forming part of the sampled exporting producers that provided a questionnaire reply in the case, the complexity of the alleged programs and the extremely tight timeframes provided by the Commission to provide the unjustifiably vast amount of information sought from the companies.” In doing so, the GOC claimed that the Commission was in breach of the rules of the World Trade Organization (‘WTO’) and the EU basic Regulation on a number of points.
- (403) Similarly to the claims made by the SAIC Group (see above recitals (323) to (328)) the GOC claimed that the Commission’s application of Article 28 of the basic Regulation lacked sufficient legal basis and was inconsistent with the relevant WTO rules. The GOC referred to requests for information which were not considered as “necessary” for the identification of the alleged subsidies and the calculation of benefit in particular. These claims, already addressed in (323) to (328) were therefore rejected.
- (404) The GOC claimed that the Commission unreasonably increased the burden on Chinese exporting producers in the investigation by: a) expanding the scope of related companies that were required to provide a questionnaire reply, b) expanding the scope of the alleged subsidies being investigated and the information requested, and continuously amended or supplemented the information requested and c) imposing very short deadlines while requesting an un unreasonable amount of information. Whilst the GOC acknowledged that in several instances the sampled exporting producers were unable to provide the requested information, but claimed it was because the Commission put an unreasonable burden on them. Finally, the GOC stated that the “Commission’s determination that the sampled enterprises did not cooperate with the investigation was obviously contrary to the principle of fair and objective investigation provided for in the WTO rules and the EU Basic Anti Subsidy Regulation”.
- (405) While recognising that the three sampled exporting producers had cooperated to a different degree, the Commission noted that the GOC failed to consider a number of elements such as:
- The numerous requests of deadline extensions which were granted by the Commission to alleviate the alleged burden on the cooperating parties.
 - The argument of ‘confidentiality’ and ‘business secret’ which allegedly prevented the three sampled exporting producers from providing complete information. In particular, all groups initially refused to provide information relating to cost of production, so that the Commission was deprived from crucial information relating to the input materials which would have allowed a better understanding of the cost structure and identification of the main input materials pertaining to BEVs.
 - The non-cooperation by a number of related suppliers as highlighted in section 3.3.2.2 above).
 - The provision of incomplete underlying information without any justification (as highlighted in section 3.3.2.3 above).
- (406) The Commission had to send numerous deficiency letters to the three sampled exporting producers inviting them to provide the information initially requested, it also sought to accommodate their request for deadline extensions as much as possible and even agreed to consider information provided after the on-spot verification visits giving a chance to the sampled exporting producers to complete the information to be supplied. Nonetheless, the Commission found that in several instances, the entities belonging to one of the sampled exporting producers deliberately denied access to the information to the Commission’s investigation team. Therefore, the claim that the sampled exporting producers were subject to an unjustified imposition of excessive burdens, which prevented them to cooperate was rejected.

3.4. **Subsidies and subsidy programmes for which the Commission makes findings in the current investigation**

(407) On the basis of the information contained in the Memorandum on sufficiency of evidence, the Notice of Initiation and the replies to the Commission's questionnaires, the following subsidies by the GOC were investigated:

- Provision of preferential financing and directed credits by State policy banks and State-owned commercial banks (e.g. policy loans, credit lines, bank acceptance drafts, export financing)
- Grant Programmes
- Direct cash grants to BEV producers and other related support programmes in the form of credit measures in favour of BEV producers
- Technology, innovation and R&D grants
- Equity investments financed by the state or otherwise incentivized by the government
- Government provision of goods and services for less than adequate remuneration ('LTAR')
- Government provision of land use rights for less than adequate remuneration;
- Government provision of batteries and their raw materials inputs (namely lithium iron phosphate) for less than adequate remuneration.
- Revenue foregone through Tax Exemption and Reduction programmes
- Enterprise Income Tax ('EIT') reduction for High and New Technology Enterprises;
- Preferential pre-tax deduction of research and development expenses;
- VAT exemptions and import tariff rebates for the use of imported equipment and technology and VAT rebates on domestically-produced equipment;
- Exemption or waiving of real estate and land use taxes;
- Consumption tax exemption, license plate fee exemption, and other cash subsidies for BEV producers;
- Accelerated depreciation of instruments and equipment used by High-Tech enterprises for High-Tech development and production;
- Dividend exemption between qualified resident enterprises;
- Withholding tax reduction for dividends from foreign-invested Chinese enterprises to their non-Chinese parent companies;
- Export tax rebates.

3.5. **Preferential financing**

3.5.1. *Financial institutions providing preferential financing*

(408) According to the information provided by the three sampled groups of exporting producers, at least 37 financial institutions located within the PRC had provided financing to them in accordance with the Chinese Bank Law. As mentioned in recital (256), the GOC did not forward the questionnaires to financial institutions and did not provide information on the ownership of the financial institutions which provided loans to the sampled companies. Only one State-owned bank filled in the specific questionnaire, despite a request to the GOC that covered all financial institutions which had provided loans to the sampled companies. On this basis, the Commission therefore was not able to determine whether they were State-owned or privately owned.

3.5.1.1. State-owned financial institutions acting as public bodies

Legal standard

- (409) The Commission ascertained whether the State-owned banks were acting as public bodies within the meaning of Articles 3 and 2(b) of the basic Regulation. According to the relevant WTO case-law⁽¹⁰⁸⁾, a public body is an entity that 'possesses, exercises or is vested with governmental authority'. A public body inquiry must be conducted on a case-by-case basis, having due regard to 'the core characteristics and functions of the relevant entity', that entity's 'relationship with the government', and 'the legal and economic environment prevailing in the country in which the investigated entity operates'. Depending on the specific circumstances of each case, relevant evidence may include: (i) evidence that 'an entity is, in fact, exercising governmental functions', especially where such evidence 'points to a sustained and systematic practice'; (ii) evidence regarding 'the scope and content of government policies relating to the sector in which the investigated entity operates'; and (iii) evidence that a government exercises 'meaningful control over an entity and its conduct'. When conducting a public body inquiry, an investigating authority must 'evaluate and give due consideration to all relevant characteristics of the entity' and examine all types of evidence that may be pertinent to that evaluation; in doing so, it should avoid 'focusing exclusively or unduly on any single characteristic without affording due consideration to others that may be relevant'.
- (410) In particular, WTO case law specified that⁽¹⁰⁹⁾: 'What matters is whether an entity is vested with authority to exercise governmental functions, rather than how that is achieved. There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed on a particular entity. Evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority, particularly where such evidence points to a sustained and systematic practice. It follows, in our view, that evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions. We stress, however, that, apart from an express delegation of authority in a legal instrument, the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish the necessary possession of governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority. In some instances, however, where the evidence shows that the formal indicia of government control are manifold, and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.'
- (411) In order to properly characterize an entity as a public body in a particular case, it may be relevant to consider 'whether the functions or conduct [of the entity] are of a kind that are ordinarily classified as governmental in the legal order of the relevant Member'⁽¹¹⁰⁾, and the classification and functions of entities within WTO Members generally. Thus, whether the functions or conduct are of a kind that are ordinarily classified as governmental in the legal order of the relevant Member may be a relevant consideration for determining whether or not a specific entity is a public body.
- (412) There are many different ways in which government in the narrow sense could provide entities with authority. Accordingly, different types of evidence may be relevant to showing that such authority has been bestowed on a particular entity. Evidence that an entity is, in fact, exercising governmental functions may serve as evidence that it possesses or has been vested with governmental authority, particularly where such evidence points to a sustained and systematic practice.

⁽¹⁰⁸⁾ WT/DS379/AB/R (US – Anti-dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US — Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9 - 4.10, 4.17 - 4.20 and WT/DS437/AB/R (US – Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

⁽¹⁰⁹⁾ WT/DS379/AB/R (US – Anti-dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 318. See also WT/DS436/AB/R (US — Carbon Steel (India)), Appellate Body Report of 8 December 2014, paragraphs 4.9 - 4.10, 4.17 - 4.20 and WT/DS437/AB/R (United States – Countervailing Duty Measures on Certain Products from China) Appellate Body Report of 18 December 2014, paragraph 4.92.

⁽¹¹⁰⁾ WT/DS379/AB/R (US – Anti-dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 297.

- (413) Evidence that a government exercises meaningful control over an entity and its conduct may serve, in certain circumstances, as evidence that the relevant entity possesses governmental authority and exercises such authority in the performance of governmental functions. Indeed, government ownership of an entity, while not a decisive criterion, may serve, in conjunction with other elements, as evidence. However, the existence of mere formal links between an entity and government in the narrow sense is unlikely to suffice to establish governmental authority. Thus, for example, the mere fact that a government is the majority shareholder of an entity in itself does not demonstrate that the government exercises meaningful control over the conduct of that entity, much less that the government has bestowed it with governmental authority. In some instances, however, where the evidence shows that the formal indicia of government control are manifold, and there is also evidence that such control has been exercised in a meaningful way, then such evidence may permit an inference that the entity concerned is exercising governmental authority.
- (414) The central focus of a public body inquiry is not whether the conduct that is alleged to give rise to a financial contribution is logically connected to an identified 'government function'. In this respect, the legal standard for public body determinations under Article 1.1(a)(1) of the SCM Agreement does not prescribe a connection of a particular degree or nature that must necessarily be established between an identified government function and the particular financial contribution at issue. Rather, the relevant inquiry hinges on the entity engaging in that conduct, its core characteristics, and its relationship with government. This focus on the entity, as opposed to the conduct alleged to give rise to a financial contribution, comports with the fact that a 'government' (in the narrow sense) and a 'public body' share a 'degree of commonality or overlap in their essential characteristics' – i.e. they are both 'governmental' in nature.
- (415) The nature of an entity's conduct or practice may certainly constitute evidence relevant to a public body inquiry. Indeed, the conduct of an entity – particularly when it points to a 'sustained and systematic practice' – is one of the various types of evidence that, depending on the circumstances of each investigation, may shed light on the core characteristics of an entity and its relationship with government in the narrow sense. However, the assessment of such evidence is aimed at answering the central question of whether the entity itself possesses the core characteristics and functions that would qualify it as a public body. For instance, relevant for the assessment as to whether an entity is a public body in the context of Chinese State-owned commercial banks ('SOCBs') in DS379 included information showing that: (i) '[t]he chief executives of the head offices of the SOCBs are government appointed and the [CCP] retains significant influence in their choice'; and (ii) SOCBs 'still lack adequate risk management and analytical skills'. This evidence was not limited to SOCBs' lending activity *per se*, but rather spoke to their organizational features, chains of decision-making authority, and overall relationship with the GOC. Thus, the WTO Appellate body ('AB') in DS379 noted that, while the United States Department of Commerce ('USDOC') did take into account evidence relating to the conduct of SOCBs ['making loans'], it did so within the framework of its inquiry into the core characteristics of those entities and their relationship with the GOC. These SOCBs exercised governmental functions on behalf of the Chinese Government.
- (416) Moreover, the AB has also given importance to the fact that the government in question failed to cooperate during the investigation. Indeed, in DS379, the AB confirmed the USDOC's determination that the SOCBs in the CFS Paper investigation constituted 'public bodies' on the following considerations: (i) near complete state-ownership of the banking sector in China; (ii) Article 34 of the Commercial Banking Law, which states that banks are required to 'carry out their loan business upon the needs of [the] national economy and the social development and under the guidance of State industrial policies'; (iii) record evidence indicating that SOCBs still lack adequate risk management and analytical skills; and (iv) the fact that 'during [that] investigation the [USDOC] did not receive the evidence necessary to document in a comprehensive manner the process by which loans were requested, granted and evaluated to the paper industry' ⁽¹¹¹⁾.

⁽¹¹¹⁾ WT/DS379/AB/R (US – Anti-dumping and Countervailing Duties on Certain Products from China), Appellate Body Report of 11 March 2011, DS 379, paragraph 349.

- (417) In order to determine whether State-owned banks possess, exercise or are vested with governmental authority, the Commission paid due regard to the core characteristics and functions of the banks, their relationship with the government, and the legal and economic environment prevailing in the country in which the investigated entity operates. In this respect, the Commission sought information about State ownership as well as formal indicia of government control in the State-owned banks. It also analysed whether control had been exercised in a meaningful way in view of the normative framework in place. For this purpose, the Commission had to partially rely on facts available due to, among others, the refusal of the GOC and the State-owned banks to provide evidence on the decision-making process that had led to the preferential lending, as set out in recitals (255) to (265).
- (418) In order to carry out this analysis, the Commission first examined information from the State-owned bank that had filled in the specific questionnaire.

3.5.1.2. Partially cooperating State-owned financial institutions

- (419) Only one State-owned bank, namely EXIM bank, provided a questionnaire reply. In previous AS investigations, ⁽¹¹²⁾ the Commission already concluded that EXIM bank was a public body. The Commission concluded that such a characterisation appears to still be valid as shown by the analysis below.

3.5.1.3. Core characteristics and functions of State-owned banks

- (420) The Chinese banking sector is dominated by State-owned Banks, based on their specific primary functions typically referred to as SOCBs or State policy banks (see recital (407)).
- (421) Since the State maintains control over the State-owned banks through multiple channels – beside shareholding (analysed in Section 3.5.1.4), it also ensures presence of Party structures and their influence in the financial institutions and it mandates certain types of the banks' commercial conduct by means of regulatory measures (see Section 3.5.1.5) –, it is in position to make use of the financial sector's resources in pursuit of its policy objectives (see also recitals (203) – (205)), including the overarching goal to “*promote the development of the socialist market economy*”, as stipulated by Article 1 of the Bank Law (see Section 3.5.1.5 for a more detailed analysis of the Bank Law).
- (422) Accordingly, the core functions of banking institutions, in particular their lending policies are shaped to serve policy purposes, the banks' economic performance is subordinated to the requirements of the GOC's industrial policies. The applicable legal framework and the institutional setup ensures in this respect that whenever the GOC identifies economic priorities, for example development of the BEV sector, requisite funds are channelled as a priority to corresponding projects via the financial sector. Consequently, State-owned banks effectively perform government functions, insofar as their key management personnel is required to be CCP-affiliated – and, therefore, loyal primarily to the Party – and their core business activities have to be carried out with due regard to policy objectives set by the government authorities.

3.5.1.4. Ownership, formal indicia and exercise of control by the GOC

- (423) Concerning State policy banks, in the absence of appropriate reply concerning the major shareholder of EXIM bank (see recital (261)), the Commission had to rely on facts available. It appeared that the Wutongshu Investment Platform Co., Ltd. is a wholly owned subsidiary of China's State administration of Foreign Exchange, which itself is 100% state-owned through the People's Bank of China. On this basis, and on the basis of the information received in the questionnaire reply, the Commission established that the GOC held, either directly or indirectly, 100% of the shares in this financial institution.
- (424) Concerning the formal indicia of government control of the cooperating State-owned bank, the Commission qualified it as a ‘key State-owned financial institution’. In particular, the notice ‘Interim Regulations on the Board of Supervisors in Key State-owned Financial Institutions’ ⁽¹¹³⁾ states that: ‘*The key State-owned financial institutions mentioned in these Regulations refer to State-owned policy banks, commercial banks, financial assets management companies, securities companies, insurance companies, etc. (hereinafter referred to as State-owned financial institutions), to which the State Council dispatches boards of supervisors*’.

⁽¹¹²⁾ Idem footnote 12.

⁽¹¹³⁾ Decree of the State Council of the People's Republic of China (No 283).

- (425) The Board of Supervisors of the key State-owned financial institutions is appointed according to the 'Interim Regulations of Board of Supervisors of Key State-owned Financial Institutions'. Based on Articles 3 and 5 of these Interim Regulations, the Commission established that Members of the Board of Supervisors are dispatched by and accountable to the State Council, thus illustrating the institutional control of the State on the cooperating State-owned bank's business activities.
- (426) In addition to these generally applicable indicia, the Commission found the following with respect to EXIM bank. EXIM bank was formed and operates in accordance with 'The Notice of Establishing Export-Import Bank of China' issued by the State Council, as well as the Articles of Association of EXIM bank. According to its Articles of Association, the State directly nominates the management of EXIM bank. The Board of Supervisors is appointed by the State Council in accordance with the 'Interim Regulations on the Boards of Supervisors in Key State-owned Financial Institutions' and other laws and regulations, and it is responsible to the State Council.
- (427) The Articles of Association also mention that the Party Committee of EXIM bank plays a leading and political core role to ensure that policies and major deployment of the Party and the State are implemented by EXIM bank. The Party's leadership is integrated into all aspects of corporate governance.
- (428) The Articles of Association also state that EXIM bank is dedicated to supporting the development of foreign trade and economic cooperation, cross-border investment, the One Belt One Road Initiative, cooperation in international capacity and equipment manufacturing. Its scope of business includes short-term, medium-term and long-term loans as approved and in line with the State's foreign trade and 'going out' policies, such as export credit, import credit, foreign contracted engineering loans, overseas investment loans, Chinese government foreign aid loans and export buyer loans.
- (429) Furthermore, in its annual report of 2022, EXIM Bank stated that it "*firmly implemented the country's full range of policies and follow up measures*" and that its responsibilities included "*conscientiously implement[ing] the decisions of the CPC Central Committee and the State Council*". The annual report also stated that "*Multiple measures were adopted to ensure that mid- and long-term loans were provided to the manufacturing industry to support national projects*".
- (430) Concerning SOCBs, the Commission observed that the six largest banks accounted for more than 40% of the Chinese financial sector terms of total assets by the end of 2022 ⁽¹¹⁴⁾. At least two of these six SOCBs, namely ICBC and ABC, are among the financial institutions which provided loans to the sampled groups of exporting producers in the present investigation (see recital (468)). The State holds a majority share both in ICBC ⁽¹¹⁵⁾ and in ABC ⁽¹¹⁶⁾. In addition to controlling the six largest SOCBs, the State maintains significant shares in a number of other SOCBs, in which its involvement is more often indirect, e.g. through SOEs. Accounting for approximately 20% of the total assets of the Chinese banking sector in 2021, several of these SOCBs, such as Shanghai Pudong Development Bank, China Everbright Bank, Ping An Bank, China Minsheng Bank, are among the financial institutions which provided loans to the sampled groups of exporting producers in the present investigation (see recital (468) for a full list), with a varying degree of State shareholding, ranging from some 3% in the case of China Minsheng Bank ⁽¹¹⁷⁾ to more than 80% for China Everbright Bank ⁽¹¹⁸⁾.

⁽¹¹⁴⁾ See for example at: <https://www.statista.com/statistics/434566/leading-banks-in-china-assets/>.

⁽¹¹⁵⁾ See ICBC, Annual Report 2021; available at file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2022/2022-3/2022-03-31/7943541.PDF.

⁽¹¹⁶⁾ See ABC, Annual Report 2021; available at: <https://www.abchina.com/en/investor-relations/performance-reports/annual-reports/202204/P020220427580795705015.pdf>.

⁽¹¹⁷⁾ See China Minsheng Bank, Annual Report 2022; available at: <https://ir.cmbc.com.cn/media/mc3d2wm2/%E4%B8%AD%E5%9B%BD%E6%B0%91%E7%94%9F%E9%93%B6%E8%A1%8C2022%E5%B9%B4%E5%B9%B4%E5%BA%A6%E6%8A%A5%E5%91%8A.pdf>, p. 94.

⁽¹¹⁸⁾ See China Everbright Bank, 2021 Semi-Annual Report; available at: https://vip.stock.finance.sina.com.cn/corp/view/vCB_AllBulletinDetail.php?stockid=601818&id=7512500.

- (431) The Commission also found that State-owned financial institutions have changed their Articles of Associations in 2017 to increase the role of the CCP at the highest decision-making level of the banks ⁽¹¹⁹⁾.
- (432) These new Articles of Association stipulate that:
- the Chairman of the Board of Directors shall be the same person as the Secretary of the Party Committee;
 - the CCP's role is to ensure and supervise the Bank's implementation of policies and guidelines of the CCP and the State; as well as to play a leadership and gate keeping role in the appointment of personnel (including senior management); and
 - the opinions of the Party Committee shall be heard by the Board of Directors for any major decisions to be taken.
- (433) Recital (204) above provides specific examples of these changes to the Articles of Associations with respect to ICBC and ABC.

3.5.1.5. Meaningful control by the GOC

- (434) The Commission further sought information about whether the GOC exercised meaningful control over the conduct of EXIM bank with respect to its lending policies and assessment of risk, where they provided loans to the BEV industry. The following regulatory documents have been taken into account in this respect:
- Article 34 of the Law of the PRC on Commercial Banks ('Bank law')
 - Article 15 of the General Rules on Loans (implemented by the People's Bank of China)
 - Decision No 40
 - Implementing Measures of the CBIRC for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBIRC [2017] No 1) ⁽¹²⁰⁾
 - Implementing Measures of the CBIRC for Administrative Licensing Matters relating to Foreign-funded Banks (Order of the CBIRC [2015] No 4) ⁽¹²¹⁾
 - Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBIRC [2013] No 3) ⁽¹²²⁾
 - Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022) (CBIRC, 28 August 2020) ⁽¹²³⁾
 - Notice on the Commercial banks performance evaluation method, (CBIRC, 15 December 2020)
 - Notice on the Supervision regulations concerning the behaviour of large shareholders of bank and insurance institutions (CBIRC, [2021] No 43).

⁽¹¹⁹⁾ <https://www.reuters.com/article/us-china-banks-party-idUSKBN1JN0XN>.

⁽¹²⁰⁾ Amended by the CBIRC concerning the Management of Capital of Commercial Banks (Decree No. 4 of 2023 of the State Administration of Financial Supervision and Administration promulgated on October 26, 2023, effective as of January 1, 2024).

⁽¹²¹⁾ Amended by the CBIRC concerning Administrative Licensing of Foreign-funded Banks (Decree No. 10 of 2019 of the CBIRC on December 26, 2019, effective as of the date of promulgation).

⁽¹²²⁾ Amended by the CBIRC concerning the operation of risk management measures of banking and insurance institutions (Decree No. 5 of 2023 of the State Administration of Financial Supervision and Administration promulgated on December 27, 2023, effective as of July 1, 2024).

⁽¹²³⁾ Official policy document of the CBIRC of 28 August 2020: Three-year action plan for improving corporate governance of the banking and insurance sectors (2020-2022). <http://www.cbirc.gov.cn/cn/view/pages/ItemDetail.html?docId=925393&itemId=928> (last viewed on 3 April 2021)

- (435) Reviewing these regulatory documents, the Commission found that financial institutions in the PRC are operating in a general legal environment that directs them to align themselves with the GOC's industrial policy objectives, in particular, the Energy-saving and New Energy Vehicle Industry Development Plan (2012-2020) which provides for "policy incentives through financial service support with credit management and loan evaluation systems to encourage the development of energy-saving and new energy vehicle industries", when taking financial decisions, as developed below.
- (436) With respect to EXIM Bank, its public policy mandate is established in the notice of establishing EXIM Bank setting out that *"The main task of the Export-Import Bank of China is to implement national industrial policies and foreign trade policies, and to provide policy financial support for expanding the export of capital goods such as mechanical and electrical products and complete sets of equipment."* ⁽¹²⁴⁾ as well as in its Articles of Association stipulating that *"The Export-Import Bank of China is a state-owned policy bank funded by the state, directly under the leadership of the State Council"* ⁽¹²⁵⁾.
- (437) At the general level, Article 34 of the Bank law, which applies to all financial institutions operating in China, provides that *'commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State'*. Although Article 4 of the Bank Law states that, *'commercial banks shall, pursuant to law, conduct business operations without interference from any unit or individual. Commercial banks shall independently assume civil liability with their entire legal person property'*, the investigation showed that Article 4 of the Bank law is applied subject to Article 34 of the Bank law, i.e. where the State establishes a public policy the banks implement it and follow State instructions.
- (438) In addition, Article 15 of the General Rules on Loans provides that *'In accordance with the State's policy, relevant departments may subsidize interests on loans, with a view to promoting the growth of certain industries and economic development in some areas'*.
- (439) Similarly, Decision No 40 instructs all financial institutions to provide credit support specifically to 'encouraged' projects. As already explained in Section 3.1 and more specifically in recitals (210) - (211), projects of the BEV industry belong to the 'encouraged' category. Decision No 40 hence confirms the previous finding with respect to the Bank law that banks exercise governmental authority in the form of preferential credit operations. The Commission also found that the NFRA has far-reaching approval authority over all aspects of the management of all financial institutions established in the PRC (including privately owned and foreign owned financial institutions), such as ⁽¹²⁶⁾:
- approval of the appointment of all managers of the financial institutions, both at the level of headquarters and at the level of local branches. Approval of the NFRA is required for the recruitment of all levels of management, from the most senior positions down to branch managers, and even includes managers appointed in overseas branches as well as managers responsible for support functions (e.g. the IT managers); and
 - a very long list of administrative approvals, including approvals for setting up branches, for starting new business lines or selling new products, for changing the Articles of Association of the bank, for selling more than 5 % of their shares, for capital increases, for changes of domicile, for changes of organisational form, etc.
- (440) The Bank law is legally binding. The mandatory nature of the Five-Year Plans and of Decision No 40 has been established above in Section 3.5.1.5. The mandatory nature of the NFRA regulatory documents derives from its powers as the banking regulatory authority. The mandatory nature of other documents is demonstrated by the supervision and evaluation clauses, which they contain.

⁽¹²⁴⁾ Available at <http://rd.reformdata.org/xinwen/2021/show-1352.html>

⁽¹²⁵⁾ Available at http://www.eximbank.gov.cn/aboutExim/profile/zczy/201902/t20190225_8813.html

⁽¹²⁶⁾ According to the Implementing Measures of the CBIRC for Administrative Licensing Matters for Chinese-funded Commercial Banks (Order of the CBIRC [2017] No 1), the Implementing Measures of the CBIRC for Administrative Licensing Matters relating to Foreign funded Banks (Order of the CBIRC [2015] No 4) and the Administrative Measures for the Qualifications of Directors and Senior Officers of Financial Institutions in the Banking Sector (CBIRC [2013] No 3). After the CBIRC was replaced with the NFRA, the Implementing measures were not amended.

- (441) Decision No 40 of the State Council instructs all financial institutions to provide credit support only to investment projects pertaining to the encouraged category and promises the implementation of *'other preferential policies for projects pertaining to the encouraged industries category'*. On this basis, banks are required to provide credit support to the BEV industry as an encouraged industry.
- (442) Furthermore, even private commercial banking decisions must be overseen by the CCP and remain in line with national policies. In fact, one of the State's three overarching goals in relation to banking governance is now to strengthen the Party's leadership in the banking and insurance sector, including in relation to operational and management issues in companies. In this respect, the Three Year Action Plan of the CBIRC for the years 2020 to 2022 instructs to *'further implement the spirit embodied in General Secretary Xi Jinping's keynote speech on advancing the reform of corporate governance of the financial sector'*. Moreover, the Plan's section II aims at promoting the organic integration of the Party's leadership into corporate governance: *'we shall make the integration of the Party's leadership into corporate governance more systematic, standardised and procedure-based [...] Major operational and management issues must have been discussed by the Party Committee before being decided upon by the Board of Directors or the senior management.'*
- (443) Also, the GOC has recently stipulated that even shareholders of financial institutions need to facilitate the exercise of the GOCs control via the institution's corporate governance framework, as follows: *'Large shareholders of bank and insurance institutions shall support bank and insurance institutions in establishing an independent and sound corporate governance structure with effective checks and balances, and encourage and support banks and insurance institutions to ensure the organic integration of Party leadership with corporate governance'* ⁽¹²⁷⁾.
- (444) Finally, the performance evaluation criteria of the NFRA for commercial banks now, notably, take into account how financial institutions *'serve the national development objectives and the real economy'*, and in particular how they *'serve strategic and emerging industries'* ⁽¹²⁸⁾.
- (445) Therefore, the Commission concluded that the GOC has created a normative framework that had to be adhered to by the managers and supervisors of the cooperating State-owned bank, who are appointed by the GOC and accountable to the GOC. Therefore, the GOC relied on this normative framework in order to exercise control in a meaningful way over the conduct of the cooperating State-owned bank whenever it was providing loans to the BEV industry. The core functions of the State-owned bank relate to the specific tasks assigned by the GOC through this normative framework, leading to becoming the GOC's tool to perform governmental functions.
- (446) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete loans provided to the sampled exporting producers. In its questionnaire reply, the partially cooperating State-owned bank explained that it uses an internal rating model to assess the creditworthiness of borrowers based on historical default data, including qualitative and quantitative indicators whereby borrowers are ranked according to the magnitude of their default probability. EXIM bank further explained that there is no policy difference regarding the industry in which the borrower operates or its ownership and that its risk assessment model is market-based.
- (447) As already indicated in recital (261), the partially cooperating State-owned bank refused to provide concrete examples of its credit risk assessment relating to the sampled companies on the ground that the information requested is internal of the bank and contains business confidential information that is not permitted to be disclosed even though the Commission had a written consent from some of the sampled companies waiving their confidentiality rights. Also, EXIM bank failed to answer questions regarding the qualitative and quantitative indicators used to rank borrowers according to their default probability.

⁽¹²⁷⁾ Article 13 of the Notice on the Supervision regulations concerning the behaviour of large shareholders of bank and insurance institutions (CBIRC, [2021] No 43)

⁽¹²⁸⁾ See CBIRC's Notice on the Commercial banks performance evaluation method, issued on 15 December 2020. http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm

- (448) In the course of the investigation, the GOC referred to the NPC's interpretation of the Bank law and Articles 4, 5 and 41 of the Bank law claiming that commercial banks in China were operating as independent legal entities that “*make their own decisions*”, “*without interference from any unit or individual*” and that “*no entity or individual may coerce a commercial bank into granting loans or providing a guarantee*”. Furthermore, the GOC claimed that Article 15 of the General Rules on loans are not mandatory but only of a guidance nature.
- (449) As explained in recital (440), the Commission considered that the Chinese Bank law and Decision No. 40 are of a mandatory nature. Furthermore, the findings of this investigation as well as the Commission's findings in previous investigations concerning the same subsidy programme ⁽¹²⁹⁾ did not support the claim that banks do not take government policy and plans into account when making lending decisions. For example, the Commission found that the three groups of sampled exporting producers benefited from preferential lending at below-market interest rates.
- (450) The investigation showed that Article 15 of the General Rules on Loans was actually applied in practice, and that Articles 4, 5 and 41 of the Bank law were applicable subject to Article 34 of the Bank Law, i.e. where the State establishes a public policy the banks implement it and follow State instructions. In fact, while Articles 4 and 5 of the Bank Law are part of Chapter I, which sets the general provisions, Article 34 is part of Chapter IV, which establishes the basic rules governing loans. The wording of Article 34: “*commercial banks carry out their loan business upon the needs of national economy and the social development and under the guidance of the State industrial policies*”, demonstrates that this provision is not of a guiding nature but has rather a mandatory character and provides a clear instruction to banks to take into account the State industrial policies when carrying out their loan business. In this particular case, as mentioned in recital (221), the Energy-saving and New Energy Vehicle Industry Development Plan (2012-2020) clearly points to “*credit management and loan evaluation systems to encourage the development of energy-saving and new energy vehicle industries*”. The Commission also noted that the Decision No. 40 of the State Council instructs all financial institutions to provide credit support only to encouraged projects and promises the implementation of “*other preferential policies for projects pertaining to the encouraged industries category's*”. While Article 17 of the same Decision requires banks to respect credit principles, the Commission could not establish during the investigation that this was done in practice. To the contrary, loans were provided to the exporting producers irrespective of their financial situation and creditworthiness. This finding is not new and was already made in previous investigations ⁽¹³⁰⁾.
- (451) Finally, as noted in recitals (442) to (444) above, the fact that all the bank's major operational and management issues are reviewed by the Party, which is thoroughly embedded in the corporate governance structure of the banks, and the fact that the performance of the banks is evaluated in line with their efforts to serve strategic and emerging enterprises such as the BEV industry, also shows the tight and binding nature of the regulatory framework over the operations of the financial institutions.
- (452) In the absence of concrete evidence of creditworthiness assessments, the Commission therefore examined the overall legal environment as set out above in recitals (434) to (444), in combination with the behaviour of the cooperating State-owned bank regarding loans provided to the sampled companies. This behaviour contrasted with its official stance as in practice EXIM bank was not acting based on thorough market-based risk assessments.
- (453) In the course of the investigation, the Commission found that loans were provided to the three sampled groups of exporting producers at interest rates below or close to the Loan Prime Rate (‘LPR’), as announced by the National Interbank Funding Center (NIFC). The LPR was introduced on 20 August 2019, and replaces the previous PBOC's central bank benchmark rate ⁽¹³¹⁾. The provision of financing at rates below or close to the country's risk-free interest rate on the interbank market clearly shows that risk was not adequately taken into consideration. In the absence of cooperation by financial institutions or refusal to provide information pertaining to the sampled groups by the EXIM bank despite the existence of a bank authorization, the Commission had to use facts available and thus concluded that the loans were granted regardless of the companies' real financial and credit risk situation, as established in section 3.5.2.3 below. Hence, the loans were provided below market rates when compared to the rate corresponding to the risk profile of the sampled exporting producers.

⁽¹²⁹⁾ See for example the HRF, Tyres and E-bikes cases cited in footnote 12, respectively in Section 3.4.1.1.b and Section 3.5.1.1.

⁽¹³⁰⁾ Ibidem footnote 12

⁽¹³¹⁾ <http://www.pbc.gov.cn/zhengcehuobisi/125207/125213/125440/3876551/de24575c/index2.html>.

- (454) Moreover, as concerns specifically EXIM Bank, it is undisputable that this is a policy bank directly pursuing government policies by its own admission. As explained on its website ⁽¹³²⁾, EXIM bank is a State-funded and State-owned policy bank directly under the leadership of the State Council and dedicated to supporting inter alia China's foreign trade and implementing the 'going global' strategy.
- (455) On that basis, the Commission concluded that the GOC has created a normative framework with respect to lending to encouraged industries that had to be adhered to by the managers and supervisors of the bank, which are appointed by the GOC and accountable to the GOC. This normative framework did not leave any margin of manoeuvre to the managers and supervisors of the bank as to whether to follow this framework or not with respect to the sampled exporting producers, thus putting the management of that bank in a position of dependence.
- (456) Therefore, the GOC relied on the normative framework in order to exercise control in a meaningful way over the conduct of the cooperating State-owned bank whenever it was providing loans to the BEV industry.
- (457) As explained in recital (434), the Commission sought proof of the exercise of control in a meaningful way based on concrete loans. However, the cooperating State-owned bank did not provide certain necessary information, including its specific credit risk assessment related to the sampled companies. In the absence of concrete evidence of such credit risk assessments, the Commission examined the overall legal environment applicable to lending to encouraged industries such as the BEV industry in combination with the behaviour of the cooperating State-owned bank and established that the bank was not acting based on thorough market-based credit risk assessments.
- (458) Furthermore, as explained in recital (453), loans were provided to the three sampled groups of exporting producers at interest rates below or close to the Loan Prime Rate regardless of their financial and credit risk situation. Therefore, considering the risk profile of the sampled exporting producers described in Section 3.5.1.10 below and that, according to the risk analysis performed by the Commission, the exporting producers should have received a B credit rating and should thus have paid interest rates significantly above the risk-free rate, the Commission concluded that the loans at issue were provided below market rates.
- (459) The Commission therefore concluded that the GOC has exercised meaningful control over the conduct of the cooperating State-owned bank with respect to its lending policies and assessment of risk concerning the BEV industry.

3.5.1.6. Conclusion on cooperating State-owned financial institutions

- (460) The Commission established that the partially cooperating State-owned bank implemented the legal framework set out above in the exercise of governmental functions with respect to the BEV sector. Therefore, it was acting as public body in the sense of Article 2(b) of the basic Regulation read in conjunction with Article 3(1)(a)(i) of the basic Regulation and in accordance with the relevant WTO case-law.

3.5.1.7. Non-cooperating State-owned financial institutions

- (461) The General Rules on Loans ⁽¹³³⁾ promulgated in 1996 aimed to regulate the activities connected with loans in particular, with the promotion of specific socio-economic development ⁽¹³⁴⁾. According to Decision No. 40 ⁽¹³⁵⁾, the GOC also intervenes into the lending operations of financial entities by designating industrial sectors which should benefit from privileged access to credit and mandating financial institutions to take into account industrial state policies when providing loans.

⁽¹³²⁾ See <http://english.eximbank.gov.cn/Profile/AboutTB/Introduction/>.

⁽¹³³⁾ The General Rules on Loans promulgated by the PBOC on 28 June 1996.

⁽¹³⁴⁾ Chapter 1, Article 1 of the General Rules on Loans promulgated by the PBOC on 28 June 1996.

⁽¹³⁵⁾ Decision of the State Council Regarding Promulgating the Implementation of Interim Provisions on the Promotion of Industrial Restructuring, 2 December 2005, Guo Fa [2005] No.40.

- (462) The prominent role of State policy considerations (instead of purely commercial ones) which the State imposes upon the commercial banks, particularly State-owned financial institutions, in shaping their lending strategies is also clearly visible in the MOF's Notice on the Commercial banks performance evaluation method issued on 15 December 2020. According to the notice's provisions, the performance evaluation criteria of commercial banks have to take into account how entities "serve the national development objectives and the real economy", and in particular how they "serve strategic and emerging industries". Article 4 of the notice stipulates that "the performance evaluation of commercial banks shall provide a strong and effective guarantee that national macro-policies will be implemented" ⁽¹³⁶⁾.
- (463) As set out in Section 3.3.1.1 above, none of the State-owned financial institutions except for EXIM bank, which provided loans to the sampled companies, replied to the specific questionnaire. The list of the banks includes: Agricultural Bank of China, Bank of Beijing ⁽¹³⁷⁾, Bank of China, Bank of Communications Co. Ltd, Bank of Kunlun ⁽¹³⁸⁾, Bank of Nanjing ⁽¹³⁹⁾, Bank of Ningbo ⁽¹⁴⁰⁾, Bank of Shanghai ⁽¹⁴¹⁾, Bank of Tianjin ⁽¹⁴²⁾, China CITIC Bank ⁽¹⁴³⁾, China Construction Bank Corporation, China Everbright Bank ⁽¹⁴⁴⁾, China Industrial Bank Co. Ltd ⁽¹⁴⁵⁾, China Merchants Bank ⁽¹⁴⁶⁾, China Minsheng Bank ⁽¹⁴⁷⁾, Export-Import Bank of China – EXIM bank, ICBC, Ping An Bank ⁽¹⁴⁸⁾, Shanghai Automotive Group Finance Co., Ltd ⁽¹⁴⁹⁾, Shanghai Pudong Development Bank Co. Ltd ⁽¹⁵⁰⁾, Chong Hing Bank Limited ⁽¹⁵¹⁾, Huishang Bank Co., Ltd. ⁽¹⁵²⁾, Sun Life Everbright Asset Management Co. Ltd. ⁽¹⁵³⁾, and the Zhongyuan Bank Co., Ltd ⁽¹⁵⁴⁾. The GOC did not provide information neither on the ownership of the banks, or on their governance structure, risk assessment or examples relating to specific loans to the BEV industry.
- (464) Therefore, in line with the conclusions reached in Section 3.3.1.1, the Commission decided to use facts available to determine whether those State-owned financial institutions qualify as public bodies.

⁽¹³⁶⁾ See the Notice on the Commercial banks performance evaluation method, issued on 15 December 2020 by MOF; at: http://jrs.mof.gov.cn/gongzuotongzhi/202101/t20210104_3638904.htm.

⁽¹³⁷⁾ See Bank of Beijing Y2022 Annual Report (April 2023) <https://pdf.valueonline.cn/web/viewer.html?v=20200509&file=https://oss.valueonline.cn/cloud-irh-bucket/public/formal/0/167278f7-743a-4dca-be0f-bb065e3f8748.pdf>

⁽¹³⁸⁾ See Bank of Kunlun Co. Ltd abstract of annual report 2022 <https://www.klb.cn/eklbank/resource/cms/2023/06/2023062916001985556.pdf>

⁽¹³⁹⁾ See Bank of Nanjing 2023 Annual Report <https://q.stock.sohu.com/newpdf/202458060499.pdf>

⁽¹⁴⁰⁾ See the PBOC list of China's systematically important banks for 2022 available at: <http://www.pbc.gov.cn/en/3688110/3688172/4437084/4655510/index.html>.

⁽¹⁴¹⁾ See Bank of Shanghai 2022 Annual Report <https://www.bosc.cn/en/AnnualReport/202306/P020230630696730742992.pdf>

⁽¹⁴²⁾ See Bank of Tianjin Annual Report 2020 https://www.bankoftianjin.com/tianjinyinwen/investor_relations97/investor_calendar/financial_reports/2021101306303981693/2021101306294251287.pdf

⁽¹⁴³⁾ See China CITIC Bank, 2021 Annual Report; available at: <https://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESHTOCK/2022/2022-3/2022-03-25/7912624.PDF>.

⁽¹⁴⁴⁾ See China Everbright Bank, 2021 Semi-Annual Report; available at: https://vip.stock.finance.sina.com.cn/corp/view/vCB_AllBulletin-Detail.php?stockid=601818&id=7512500.

⁽¹⁴⁵⁾ See ICBC, Annual Report 2021; available at: <file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESHTOCK/2021/2021-8/2021-08-27/7488935.PDF>.

⁽¹⁴⁶⁾ See China Merchants Bank, Annual Report 2022, p. 125; available at: https://pdf.dfcfw.com/pdf/H2_AN202303241584543269_1.pdf.

⁽¹⁴⁷⁾ See China Minsheng Bank, Annual Report 2022; available at: <https://ir.cmbc.com.cn/media/mc3d2wm2/%E4%B8%AD%E5%9B%BD%E6%B0%91%E7%94%9F%E9%93%B6%E8%A1%8C2022%E5%B9%B4%E5%B9%B4%E5%BA%A6%E6%8A%A5%E5%91%8A.pdf>, p. 94.

⁽¹⁴⁸⁾ See Ping An Bank, Homepage – Investor Relations – Major Shareholders; available at: https://group.pingan.com/investor_relations/major_shareholders.html.

⁽¹⁴⁹⁾ See SAIC Motor Corporation Limited https://www.saicmotor.com/english/images/investor_relations/annual_report/2022/7/12/763203D083E54499855A319FB8356217.pdf

⁽¹⁵⁰⁾ See Shanghai Pudong Development Bank, 2021 Semi-Annual Report; available at: https://static.sse.com.cn/disclosure/listedinfo/announcement/c/new/2021-08-28/600000_20210828_4_HEBMzsvE.pdf.

⁽¹⁵¹⁾ See Chong Hing Bank Limited Corporate structure : <https://www.chbank.com/en/personal/footer/about-ch-bank/investor-relations/group-members-and-structures/index.shtml>

⁽¹⁵²⁾ See Annual report 2023 <https://inv.hsbank.com.cn/uploads/jiis/202404/11165178-0.PDF>

⁽¹⁵³⁾ See Annual report 2023 https://staticpacific.blob.core.windows.net/press-releases-attachments/1656728/HKEX-EPS_20240417_11162624_0.PDF

⁽¹⁵⁴⁾ See Annual Report 2023 <https://www1.hkexnews.hk/listedco/listconews/sehk/2024/0328/2024032801590.pdf>

- (465) In a previous anti-subsidy investigation ⁽¹⁵⁵⁾ the Commission established that the banks which had provided loans to the sampled groups of exporting producers in the investigation were partially or fully owned by the State itself or by State-held legal persons. Since the banks did not reply to the specific questionnaire, the Commission used publicly available information, such as the bank's website, annual reports, information available in bank directories or on the internet. In line with the findings of this past investigations the Commission Staff Working Document ⁽¹⁵⁶⁾ confirmed that the State dominates the banking sector ⁽¹⁵⁷⁾ by maintaining controlling stakes in all state-owned commercial banks, as well as by being the majority shareholder in a number of joint-stock commercial banks, either through direct investment by Central Huijin or indirectly through other state-owned legal entities. Recital (468) below list those banking entities reported by the exporting producers in which the State holds a majority shareholding .and in the absence of changes since recent similar investigations ⁽¹⁵⁸⁾, it was considered that all State-owned financial institutions that provided financing to the sampled exporting producers as partially or fully owned by the State itself or by State-held legal persons.

3.5.1.8. Conclusion on all State-owned financial institutions

- (466) In light of the above considerations, the Commission established that all State-owned Chinese financial institutions that provided financing to the three sampled groups of cooperating exporting producers are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation.
- (467) In addition, even if the State-owned financial institutions were not to be considered as public bodies, the Commission established on the basis of the same information that they would be considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation for the same reasons, as set out in Section 3.5.1.9 below. Thus, their conduct would be attributed to the GOC in any event.

3.5.1.9. Private financial institutions entrusted or directed by the GOC

- (468) As in previous investigations ⁽¹⁵⁹⁾, the Commission established in the case at hand that the following banks and private financial institutions operating in China had provided loans to the sampled groups of exporting producers in the investigation at hand: China Postal Savings Bank Co. Ltd., Citibank (China) Co., Ltd., DBS Bank (China)

⁽¹⁵⁵⁾ Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China (OJ L 283, 12/11/2018, p.1 (§210 and §211))

⁽¹⁵⁶⁾ Updated Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 10 April 2024, SWD(2024) 91 final (the 'China Report') – Chapter 6.3 Banking Sector, pp. 137-144.

⁽¹⁵⁷⁾ See also Chorzempa, M. and Véron, N., *Will China's impending overhaul of its financial regulatory system make a difference?*, PIIE, March 2023, p. 2; available at: <https://www.piie.com/sites/default/files/2023-03/pb23-1.pdf>.

⁽¹⁵⁸⁾ Ibidem footnote 12

⁽¹⁵⁹⁾ See Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17) ('HRF case'), Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1) ('Tyres case'), Commission Implementing Regulation (EU) 2021/2287 imposing definitive countervailing duties on imports of aluminium converter foil originating in the People's Republic of China (OJ L 458, 22.12.2021, p. 344) ('ACF case'), and Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 189, 15.6.2020, p. 33) ('GFF case'), Commission Implementing Regulation (EU) 2022/72 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China (OJ L 12, 19.1.2022, p. 34) ('OFC case').

Limited, East West Bank (China) Co., Ltd., Hana Bank (China) Co., Ltd., HSBC Bank (China) Limited, Mitsubishi UFJ Bank (China) Co., Ltd., Mizuho Bank (China) Co., Ltd., OCBC Wing Hang Bank (China) Limited, Standard Chartered Bank (China) Limited, Sumitomo Mitsui Banking Corporation (China) Co., Ltd., United Overseas Bank (China) Limited, and the Yushan Bank (China) Co. In line with the corresponding analysis provided in Section 3.5.1.8, it was considered that these banks and private financial institutions have been operating under the supervision of the CBRC have been entrusted or directed by the GOC. Since no information was provided indicating otherwise, the Commission maintained the same conclusion in the present investigation.

- (469) The Commission analysed whether all these financial institutions had been entrusted or directed by the GOC to grant subsidies to the BEV sector within the meaning of Article 3(1)(a)(iv) of the basic Regulation.
- (470) According to the WTO Appellate Body, ‘entrustment’ occurs where a government gives responsibility to a private body and ‘direction’ refers to situations where the government exercises its authority over a private body⁽¹⁶⁰⁾. In both cases, the government uses a private body as a proxy to make the financial contribution, and ‘in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement’⁽¹⁶¹⁾. At the same time, Article 3(1)(a)(iv) does not allow Members to impose countervailing measures to products ‘whenever the government is merely exercising its general regulatory powers’⁽¹⁶²⁾ or where government intervention ‘may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market’⁽¹⁶³⁾. Rather, entrustment or direction implies ‘a more active role of the government than mere acts of encouragement’⁽¹⁶⁴⁾.
- (471) The Commission noted that the normative framework concerning the industry mentioned above in recitals (434) to (442) applies to all financial institutions in the PRC, including privately owned financial institutions. To illustrate this, the Bank Law and the various orders of the CBIRC cover all Chinese-funded and foreign-invested banks under the management of the CBIRC.
- (472) Furthermore, the majority of loan contracts with private financial institutions had similar conditions as the contracts with State-owned banks, and the lending rates provided by the private financial institutions were similar to the rates provided by the State-owned financial institutions. This shows that de facto preferential lending conditions are granted by those banks in accordance with the GOC’s control over the banking sector.
- (473) In the absence of any divergent information received from the private financial institutions, the Commission concluded that, in so far as the BEV industry is concerned, all financial institutions (including private financial institutions) operating in China under the supervision of the NFRA have been entrusted or directed by the State in the sense of Article 3(1)(a)(iv), first indent of the basic Regulation to pursue governmental policies and provide loans at preferential rates to the BEV industry⁽¹⁶⁵⁾.

3.5.1.10. Credit ratings

- (474) In previous anti-subsidy investigations, the Commission already determined that domestic credit ratings awarded to Chinese companies were not reliable, based on a study published by the International Monetary Fund⁽¹⁶⁶⁾, showing a discrepancy between international and Chinese credit ratings. Indeed, according to the IMF, over 90 %

⁽¹⁶⁰⁾ WT/DS/296 (DS296 United States – Countervailing duty investigation on Dynamic Random Access Memory (DRAMs) from Korea), Appellate Body Report of 21 February 2005, para. 116.

⁽¹⁶¹⁾ Appellate Body Report, DS 296, para. 116.

⁽¹⁶²⁾ Appellate Body Report, DS 296, para. 115.

⁽¹⁶³⁾ Appellate Body Report, DS 296, para. 114 agreeing with the Panel Report, DS 194, para. 8.31. on that account.

⁽¹⁶⁴⁾ Appellate Body Report, DS 296, para. 115.

⁽¹⁶⁵⁾ See the cases cited in footnote 12 before.

⁽¹⁶⁶⁾ IMF Working Paper ‘Resolving China’s Corporate Debt Problem’, by Wojciech Maliszewski, Serkan Arslanalp, John Caparusso, José Garrido, Si Guo, Joong Shik Kang, W. Raphael Lam, T. Daniel Law, Wei Liao, Nadia Rendak, Philippe Wingender, Jiangyan, October 2016, WP/16/203.

of Chinese bonds are rated from AA to AAA by local rating agencies. This is not comparable to other markets, such as the EU or the United States of America ('US'). For example, less than 2 % of firms enjoy such top-notch ratings in the US market. Chinese credit rating agencies are thus heavily skewed towards the highest end of the rating scale. They have very broad rating scales and tend to pool bonds with significantly different default risks into one broad rating category ⁽¹⁶⁷⁾. According to the China bond market insight 2021 by Bloomberg ⁽¹⁶⁸⁾, five Chinese local rating agencies dominate the bond market: China Chengxin, Dagong, Lianhe, Shanghai Brilliance, and Golden credit rating, and around 90 % of the bonds are rated AAA by local rating agencies. However, many of the issuers have received a lower S&P global issuer rating of A and BBB ⁽¹⁶⁹⁾.

- (475) In addition, foreign rating agencies, such as Standard and Poor's and Moody's, typically apply an uplift over the issuer's baseline credit rating based on an estimate of the firm's strategic importance to the Chinese Government and the strength of any implicit guarantee when they rate Chinese bonds issued overseas ⁽¹⁷⁰⁾.
- (476) To complement this analysis, previous cases showed that the GOC can also exercise its influence over the credit rating market.
- (477) According to the information provided by the GOC in previous cases, there were 14 credit rating agencies active on China's bond market, including 12 domestic rating agencies. Second, there is no free entrance on the Chinese credit rating market. It is essentially a closed market, since rating agencies need to be approved by the China Securities Regulatory Commission ('CSRC') or the PBOC before they can start operations ⁽¹⁷¹⁾. The PBOC announced mid-2017 that overseas credit rating agencies would be allowed to carry out credit ratings on part of the domestic bond market, under certain conditions. However, these credit rating agencies follow Chinese rating scales and are thus not exactly comparable with international ratings, as explained in recital (475).
- (478) Finally, a 2021 research by Allianz Global Investors confirms the Commission's findings, stating that 'China's onshore credit rating system differs from international rating conventions. For example, onshore bonds rated AA+ would typically be rated as "high yield" on an international scale' ⁽¹⁷²⁾.
- (479) Finally, the OECD pointed out in 2022 that "[d]eficiencies in the credit-rating market, including inflated ratings and weak warning systems hinder the healthy development of the bond market" ⁽¹⁷³⁾.
- (480) Furthermore, the Commission has also determined ⁽¹⁷⁴⁾ that the Chinese credit rating system cannot be considered to be solely driven by market forces and that it operates on a distorted basis.
- (481) In view of the situation described in recitals (474) to (478), the Commission concluded that Chinese credit ratings do not provide a reliable estimation of the credit risk of the underlying asset. Those ratings were also distorted by the policy objectives to encourage key strategic industries, such as the BEV industry.

⁽¹⁶⁷⁾ Livingston, M. Poon, W.P.H. and Zhou, L. (2017). Are Chinese Credit Ratings Relevant? A Study of the Chinese Bond Market and Credit Rating Industry, in: Journal of Banking & Finance, p. 24.

⁽¹⁶⁸⁾ China bond market insight 2021, <https://assets.bbhub.io/professional/sites/10/China-bond-market-booklet.pdf>.

⁽¹⁶⁹⁾ China bond market insight 2021, Footnote 59, p. 31.

⁽¹⁷⁰⁾ Price, A.H., Brightbill T.C., DeFrancesco R.E., Claey's, S.J., Teslik, A. and Neelakantan, U. (2017). China's broken promises: why it is not a market-economy, Wiley Rein LLP, p. 68.

⁽¹⁷¹⁾ See Footnote 71 in Commission Implementing Regulation (EU) 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China.

⁽¹⁷²⁾ Available at <https://ch.allianzgi.com/-/media/allianzgi/globalagi/china-microsite/9-things-to-know/9-things-to-know-about-chinas-bond-markets.pdf>

⁽¹⁷³⁾ See OECD Economic Surveys: China, March 2022, p. 34-35; available at: <https://www.oecd-ilibrary.org/docserver/b0e499cf-en.pdf>

⁽¹⁷⁴⁾ See the Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the purposes of Trade Defence Investigations, 10 April 2024, SWD(2024) 91 final (the 'China Report') – Chapter 6, pp. 156-160.

3.5.2. *Preferential financing: loans*

3.5.2.1. Types of loans

(1) Short-term and long-term loans

- (482) The Commission established that companies in all three sampled groups used various short-term and long-term loans to finance their activities. These loans were mainly used for daily operations, working capital needs, for special projects, investments or to replace other loans. The sampled groups of exporting producers also used short-term and long-term export credits.

(2) Loans with the specific purpose to replace other loans (revolving loans)

- (483) In the course of the investigation, the Commission found that one of the sampled groups contracted loans with the specific purpose to replace the capital repaid on loans at the maturity date by fresh capital from new loans. Such revolving loans are usually a sign of liquidity problems of the borrower and involve a greater risk exposure for the banks granting them. In line with the findings in previous investigations ⁽¹⁷⁵⁾, the Commission established that with this practice some companies could rearrange their liabilities and obtain the funds without which they would not be able to meet their repayment obligations, evidencing therefore problems to repay debt.

(3) Financing with the aim to restructure long term debt

- (484) In the course of the investigation, the Commission found that certain sampled companies issued bonds with the specific purpose of debt repayments, namely loans. The Commission established that by restructuring their debt via this instrument, some companies could rearrange and defer their liabilities as well as obtain the funds without which they would not be able to meet their repayment obligations, evidencing therefore problems to raise funds.
- (485) The use of bonds to that aim raises concerns on the ability of a given company to pay for its debts, therefore questioning not only its short-term liquidity, but also the solvency in the long term. The existence of bonds issued with the purpose of repayment of loans in a given company is therefore considered an indication that the company is in a worse financial situation than what the financial statements would suggest at first sight, and that there is an additional risk related to its short and long-term financing.

3.5.2.2. Specificity

- (486) As demonstrated in Section 3.5.1.5, several legal documents, which specifically target companies in the BEV sector, direct the financial institutions to provide loans at preferential rates to the BEV industry. These documents demonstrate that the financial institutions only provide preferential financing to a limited number of enterprises or industries, which comply with the relevant policies of the GOC. The Commission considered that the reference to the BEV industry is sufficiently clear as this industry is identified either by its name or by a reference to the product that it manufactures or the industry group that it belongs to.

⁽¹⁷⁵⁾ Commission Implementing Regulation (EU) 2017/969 of 8 June 2017 imposing definitive countervailing duties on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2017/649 imposing a definitive anti-dumping duty on imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel originating in the People's Republic of China (OJ L 146, 9.6.2017, p. 17) ('HRF case'), Commission Implementing Regulation (EU) 2018/1690 of 9 November 2018 imposing definitive countervailing duties on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries and with a load index exceeding 121 originating in the People's Republic of China and amending Commission Implementing Regulation (EU) 2018/1579 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of certain pneumatic tyres, new or retreaded, of rubber, of a kind used for buses or lorries, with a load index exceeding 121 originating in the People's Republic of China and repealing Commission Implementing Regulation (EU) 2018/163 (OJ L 283, 12.11.2018, p. 1) ('Tyres case') and Commission Implementing Regulation (EU) 2020/776 of 12 June 2020 imposing definitive countervailing duties on imports of certain woven and/or stitched glass fibre fabrics originating in the People's Republic of China and Egypt (OJ L 189, 15.6.2020, p. 33) ('GFF case').

3.5.2.3. Calculation of the subsidy amount

- (487) The Commission calculated the amount of the countervailable subsidy based on the benefit conferred on the recipients during the investigation period. According to Article 6(b) of the basic Regulation, the benefit conferred on the recipients is the difference between the amount of interest that the company has paid on the preferential loan and the amount that the company would have paid for a comparable commercial loan, which the company could have obtained on the market.
- (488) As explained in Sections 3.5.1 and 3.5.2 above, the loans provided by Chinese financial institutions reflect substantial government intervention and do not reflect rates that would normally be found in a functioning market.
- (489) The sampled groups of companies differed in terms of their general financial situation. Each of them benefitted from different types of loans during the investigation period with variances in respect of maturity, collateral, guarantees and other conditions. For those two reasons, each company had an average interest rate based on its own set of loans received.
- (490) The Commission assessed individually the financial situation of each sampled group of exporting producers in order to reflect these particularities. In this respect, the Commission followed the calculation methodology for preferential financing through loans established in the anti-subsidy investigation on aluminium converter foil originating in the PRC, as well as the anti-subsidy investigation on hot-rolled flat steel products originating in the PRC, the anti-subsidy investigations on tyres originating in the PRC, certain woven and/or stitched glass fibre fabrics originating in the PRC and optical fibre cables originating in the PRC ⁽¹⁷⁶⁾, as explained in the recitals below. As a result, the Commission calculated the benefit from the preferential financing through loans practices for each sampled group of exporting producers on an individual basis and allocated such benefit to the product under investigation.

(1) BYD Group

- (491) The Commission noted that the BYD Group was awarded an AAA rating by a Chinese credit rating agency in 2020. In light of the overall distortions of Chinese credit ratings mentioned in Section 3.5.1.10, the Commission concluded that this rating is not reliable.
- (492) As mentioned in recitals (452) to (459), the lending Chinese financial institutions did not provide any creditworthiness assessment. Hence, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the BYD Group were at market level.
- (493) The BYD Group presented itself in a generally profitable financial situation with a profit margin of around 6 % according to its own financial accounts. The group used short-term and long-term debt to finance its operations. The Commission assessed the short-term liquidity and the long-term solvency situation of the company.
- (494) Regarding short-term liquidity, the Commission used the current ratio. This ratio measures the company's ability to pay short-term obligations, including short-term debt.
- (495) The company's current ratio was at 0,89 in 2021, decreased to 0,75 in 2022 and then decreased to 0,68 in the investigation period. Despite the AAA rating attributed to the company in 2020, the company's current assets were thus not enough to pay the short-term obligations. This does not justify a high credit rating, for which a company should present a ratio of at least 2.
- (496) Considering this short-term liquidity indicator, the Commission concluded that the company at issue presented short-term liquidity problems which results in having a high-risk debtor profile.

⁽¹⁷⁶⁾ OJ L 458, 22.12.2021, p. 344 (recital 237) ('Aluminium foil case') OJ L 146, 9.6.2017, p. 17, recitals (152) to (244) ('HRF case'), OJ L 283, 12.11.2018, p. 1, recital (236) ('Tyres case'), OJ L 189, 15.6.2020, p. 33, recital (300) ('GFF case') and OJ L 12, 19.1.2022, p.75, recital 294 ('OFC case').

- (497) The Commission based the long-term solvency risk assessment on the debt ratio. This ratio measures the company's ability to meet its long-term debt obligations. It is used by lenders and bond investors when assessing the company's creditworthiness.
- (498) The debt ratio measures the amount of liabilities, in particular long-term debt. The company had a high debt to equity ratio of 0,78, which points to the fact the company is financing its activity through debt. The debt-to-equity ratio also increased continuously from 0,67 in 2021 to 0,78 in the IP, which points to the fact the company is financing more and more of its activity mainly through debt. The higher the debt-to-equity ratio, the higher the financial risk of the company is, which means that the company may have a harder time servicing its existing debts.
- (499) Therefore, considering the liquidity and solvency issues described in recitals (495) to (498), the Commission considered that the company was not in a solid financial situation and a high risk profile for potential lenders and investors.
- (500) Moreover, the Commission analysed the debt-to-equity ratio of the individual companies with the highest rate of financial benefits and found that their debt-to-equity ratio in 2022 ranged from 0,71 up to 0,97.
- (501) Following the above and in view of the overall distortions of Chinese credit ratings, mentioned in Section 3.5.1.10, the Commission concluded that the AAA credit rating awarded to the BYD Group is not reliable.
- (502) The Commission considered that the overall financial situation of the group corresponds to a B rating, which does no longer qualify as 'investment grade'.
- (503) Based on publicly available data on Bloomberg, the Commission used as a benchmark the premium expected on bonds issued by firms with a B rating, which was applied to the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate as announced by the NIFC ⁽¹⁷⁷⁾ in order to determine the market rate.
- (504) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US B rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate published by the NIFC, at the date when the loan was granted ⁽¹⁷⁸⁾ and for the same duration as the loan in question. This was done individually for each loan provided to the group of companies.
- (505) As for loans denominated in foreign currencies, the same situation in respect of market distortions and the absence of valid credit ratings applies, because these loans are granted by the same Chinese financial institutions. Therefore, as found before, B rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

(2) Geely Group

- (506) As mentioned in recitals (452) to (459), the Chinese lending financial institutions did not provide any creditworthiness assessment. Hence, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the Geely Group were at market level.
- (507) The Geely Group reported a profitable financial situation with a 3% profit margin according to its own financial accounts. However, profitability declined compared to 2021. Its return on equity ratio, which is the group's ability to turn equity capital into net profit, decreased from 8 % in 2021 to 5 % at the end of the investigation period.
- (508) Geely Group used short-term and long-term debt to finance its operations. The Commission assessed the short-term liquidity and the long-term solvency situation of the group.

⁽¹⁷⁷⁾ See recital (453) above.

⁽¹⁷⁸⁾ In case of fixed interest loans. For variable interest rate loans, the PBOC benchmark rate during the IP was taken.

- (509) Regarding short-term liquidity, the group presented an average current ratio of 1,03 during the investigation period. Although the current ratio is slightly above 1, the company's current assets are just enough to pay the short-term obligations, which is not sufficient to justify a high credit rating, for which a company should present a ratio of at least 2. The quick ratio of the company was 0,79 at the end of the IP, 0,76 in 2022, and 0,79 in 2021, while a quick ratio of at least 1 is considered as a reference. In fact, a company that has a quick ratio below 1 may not be able to pay off its current liabilities in the short-term. The cash ratio of the company was on average 0,4 in the IP; therefore, the company had insufficient cash at hand to pay its short-term debt. Considering the short-term liquidity indicators, the Commission concluded that the company at issue presented short-term liquidity problems which results in having a risk debtor profile.
- (510) Concerning long-term debt, the Geely group had a high Debt-to-Assets ratio of 0,69, which means that 69 % of the assets of the company are financed by debt. The Debt-to-Equity ratio was 2,1 in 2021, 2,11 in 2022 and 2,22 at the end of the IP, which points to the fact the company is financing its activity mainly through debt. The higher the Debt-to-Assets and the Debt-to-Equity ratios are, the higher the financial risk of the company is. In addition, during the investigation period, one of the companies of the group (Ningbo Hangzhou Bay Geely Automobile Parts Co., Ltd.) concluded a debt-to-equity swap deal with State-owned banks, in order to improve its debt structure. Under such a deal, the company could convert part of its debt to State-owned banks into shares, and thus reduce the liabilities on its balance sheet.
- (511) Furthermore, the Commission found that Geely Group contracted loans with the specific purpose of replacing loans. As explained in Section 3.5.2.1 the existence of revolving loans is considered an indication of additional risks related to liquidity problems.
- (512) Similarly, the Commission found that Geely Group issued bonds with the purpose of debt restructuring. In this case, as explained in Section (4), the Commission considered that this is a sign of being in a worse financial situation than what the financial statements would suggest at first sight, and that there is an additional risk related to its short and long-term financing.
- (513) The Commission noted that the Geely Group was awarded an AAA rating by a Chinese credit rating agency. In light of the overall distortions of Chinese credit ratings mentioned in Section 3.5.1.10, the Commission concluded that this rating is not reliable.
- (514) The Commission considered that the overall financial situation of the group corresponds to a B rating. According to Standard & Poor's credit rating definitions, a debtor rated 'B' is more vulnerable than a debtor rated 'BB', but the debtor currently still has the capacity to meet its financial commitments. Nevertheless, adverse business, financial, or economic conditions may impair the debtor's capacity or willingness to meet its financial commitments. This benchmark is therefore considered appropriate to reflect the additional risk arising from the use of revolving loans and bonds issued for debt restructuring purposes.
- (515) The premium expected on bonds issued by firms with this a B rating was then applied to the PBOC Loan Benchmark Rate, or after 20 August 2019 to the Loan Prime Rate as announced by the NIFC in order to determine the market rate.
- (516) That mark-up was determined by calculating the relative spread between the indices of US AA rated corporate bonds to US B rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the PBOC Loan Benchmark Rate, or after 20 August 2019, to the Loan Prime Rate as announced by the NIFC, at the date when the loan was granted, and for the same duration as the loan in question. This was done individually for each loan and financial leasing provided to the company.
- (517) As for loans denominated in foreign currencies in the PRC, the same situation in respect of market distortions and the absence of valid credit ratings applies, because these loans are granted by the same Chinese financial institutions. Therefore, as found before, B rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

(3) SAIC Group

- (518) As mentioned in recitals (452) to (459) above, the Chinese lending financial institutions did not provide any creditworthiness assessment. Hence, in order to establish the benefit, the Commission had to assess whether the interest rates for the loans accorded to the Geely Group were at market level.
- (519) SAIC Motor Corporation Limited reported at consolidated group level a profitable financial situation with a 4 % profit margin according to its own financial accounts. However, profitability declined compared to 2021. Its return on equity ratio, which is the group's ability to turn equity capital into net profit, decreased from 13% in 2021 to 8 % at the end of the 2022.
- (520) SAIC Motor Corporation Limited used short-term and long-term debt to finance its operations. The Commission assessed the short-term liquidity and the long-term solvency situation of the group.
- (521) Regarding short-term liquidity, the group presented an average current ratio of 1,07 in 2022. Although the current ratio is slightly above 1, the group's current assets are just enough to pay the short-term obligations, which is not sufficient to justify a high credit rating, for which a company should present a ratio of at least 2. The quick ratio of the company was 0,87 in 2022, and 0,97 in 2021, while a quick ratio of at least 1 is considered as a reference. In fact, a company that has a quick ratio below 1 may not be able to pay off its current liabilities in the short-term. The cash ratio of the group was on average 0,4 in 2022. Therefore, the group had insufficient cash at hand to pay its short-term debt. Considering the short-term liquidity indicators, the Commission concluded that the group at issue presented short-term liquidity problems which results in having a risk debtor profile.
- (522) Concerning long-term debt, the SAIC Motor Corporation Limited at consolidated level had a high Debt-to-Assets ratio of 0,66, which means that 66 % of the assets of the group are financed by debt. The Debt-to-Equity ratio was 1,79 in 2021 and 1,94 in 2022, which points to the fact the company is financing its activity mainly through debt. The higher the Debt-to-Assets and the Debt-to-Equity ratios are, the higher the financial risk of the company is. In addition, in the period between 2009 and 2015, two of the exporting producers of the group (SAIC Maxus Automotive Company Limited and Nanjing Automobile (Group) Corporation), concluded four debt-to-equity swap deals with State-owned banks, in order to improve their debt structure. Under such a deal, the companies could convert part of their debt to State-owned banks into shares, and thus reduce the liabilities on their balance sheet. In addition, in 2017, SAIC Motor Corporation Limited benefited from an equity injection involving among others State-owned financial institutions, which again had a positive impact on the debt structure of the group. Although these events took place before the investigation period, they had a lasting structural effect on the balance sheet.
- (523) Furthermore, the Commission found that the group contracted loans with the specific purpose of replacing loans. As explained in Section 3.4.2.1 the existence of revolving loans is considered an indication of additional risks related to liquidity problems.
- (524) The Commission noted that the SAIC Motor Corporation Limited was awarded an AAA rating by a Chinese credit rating agency. In light of the overall distortions of Chinese credit ratings mentioned in Section 3.4.1.9, and the group's financial situation as described above, the Commission concluded that this rating is not reliable.
- (525) The Commission considered that the overall financial situation of the group corresponds to a B rating. According to Standard & Poor's credit rating definitions, a debtor rated 'B' is more vulnerable than a debtor rated 'BB', but the debtor currently still has the capacity to meet its financial commitments. Nevertheless, adverse business, financial, or economic conditions may impair the debtor's capacity or willingness to meet its financial commitments. This benchmark is therefore considered appropriate to reflect the additional risk arising from the use of revolving loans and bonds issued for debt restructuring purposes.

- (526) That mark-up was thus determined by calculating the relative spread between the indices of US AA rated corporate bonds to US B rated corporate bonds based on Bloomberg data for industrial segments. The relative spread thus calculated was then added to the PBOC Loan Benchmark Rate, or after 20 August 2019, to the Loan Prime Rate as announced by the NIFC, at the date when the loan was granted, and for the same duration as the loan in question. This was done individually for each loan and financial leasing provided to the company.
- (527) As for loans denominated in foreign currencies in the PRC, the same situation in respect of market distortions and the absence of valid credit ratings applies, because these loans are granted by the same Chinese financial institutions. Therefore, as found before, B rated corporate bonds in relevant denominations issued during the investigation period were used to determine an appropriate benchmark.

3.5.2.4. Conclusion on preferential financing: loans

- (528) The Commission established that all sampled groups of exporting producers benefited from preferential financing through loans during the investigation period. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, the Commission considered preferential financing through loans a countervailable subsidy.
- (529) The subsidy rates established with regard to the preferential financing through loans during the investigation period for the sampled groups of companies amounted to:

Preferential financing: loans

Company name	Subsidy rate
BYD Group	0,16 %
Geely Group	0,81%
SAIC Group	1,38 %

3.5.3. Preferential financing: other types of financing

3.5.3.1. Credit lines

(a) General

- (530) The purpose of a credit line is to establish a borrowing limit that the company can use at any time to finance its current operations thus making working capital financing flexible and immediately available when needed. The credit line agreements granted to the sampled groups refer to the various forms of financing available to the companies signing such agreements, which cover all types of short-term financing, such as short-term loans, bank acceptances, letters of credit, etc. Furthermore, according to financial literature, credit lines are also prevalent in a majority of cases in market economies. For example, they account for over 80% of the bank financing provided to U.S. public firms⁽¹⁷⁹⁾. Furthermore, in Canada, where bank acceptances are a direct and unconditional liability of the accepting bank (as is the case in China), banks would normally only accept bank acceptance draws from corporate borrowers that have an established line of credit with that bank⁽¹⁸⁰⁾. Therefore, the Commission considered that in principle, all short-term financing of the sampled companies, such as short-term loans, bank acceptance drafts etc., should be covered by a credit line instrument.

⁽¹⁷⁹⁾ <https://www.bde.es/f/webbde/SES/Secciones/Publicaciones/PublicacionesSeriadas/DocumentosTrabajo/08/Fic/dt0821e.pdf> ANALYSIS OF CORPORATE CREDIT LINES (bde.es)

⁽¹⁸⁰⁾ <https://www.bankofcanada.ca/wp-content/uploads/2018/06/SDP-2018-6.pdf>

(b) Findings of the investigation

- (531) The Commission established that Chinese financial institutions provided credit lines to each sampled group in connection with the provision of financing. These consisted of framework agreements, under which the bank allowed the sampled companies to use various debt instruments, such as working capital loans, bank acceptance drafts and other forms of trade financing within a certain maximum amount.
- (532) As mentioned in recital (530) above, all short-term financing should be covered by a credit line. Therefore, the Commission compared the amount of the credit lines available to the cooperating companies during the investigation period with the amount of short-term financing used by these companies during the same period to establish whether all short-term financing was covered by a credit line. Where the amount of the short-term financing exceeded the credit line limit, the Commission increased the amount of the existing credit line by the amount actually used by the exporting producers beyond that credit line limit.
- (533) Under normal market circumstances, credit lines would be subject to a so-called ‘arrangement’ or ‘commitment’ fee to compensate for the bank’s costs and risks at the opening of a credit line, as well as to a ‘renewal fee’ charged on a yearly basis for renewing the validity of the credit lines ⁽¹⁸¹⁾. These fees cover administrative costs, such as the cost of processing the application, and performing security checks, but also the cost stemming from the prudential requirements imposed on banks, since the capital committed under a credit line diminishes the capital ratios of the bank, which it needs to maintain to ensure against systemic risks. However, the Commission established that all sampled group of companies benefited from credit lines provided free of charge. Therefore, a benefit was conferred to the investigated groups of companies within the meaning of Article 6(d) of the basic Regulation.

(c) Specificity

- (534) As mentioned in recital (210), according to Decision No 40 financial institutions shall provide credit support to encouraged industries.
- (535) The Commission considered that since credit lines are intrinsically linked to all types of short-term financing provided to the sampled companies, they should be considered as a form of a preferential financial support by financial institutions to encouraged industries such as the BEV sector. As specified in Section 3.1 above, the BEV sector is among the encouraged industries and is therefore eligible for all possible financial support.

(d) Calculation of the subsidy amount

- (536) In accordance with Article 6(d)(ii) of the basic Regulation, the Commission considered the benefit conferred on the recipients to be the difference between the amount that they paid as a fee for the opening or the renewal of the credit lines by Chinese financial institutions, and the amount that they would pay for a comparable commercial credit line obtained at an undistorted market rate.
- (537) None of the sampled companies paid a fee for their credit line. Similarly, the Commission did not find any in-country credit line fees in previous investigations. To the contrary, the only instance in which a sampled exporting producer paid a credit line fee concerned a company which obtained credit lines from two banks whose headquarters were established in a financial jurisdiction other than the PRC, and which thus were subject to fees as is the usual practice on world financial markets ⁽¹⁸²⁾. Publicly available information seems to suggest that in some cases, credit line charges are levied for companies in China ⁽¹⁸³⁾, but the level of these fees could not be found. Therefore, the Commission had no other choice than to look for an appropriate benchmark fee outside China. The rates for the arrangement fee and for the renewal fee were thus established at 1,75 % and 1,25 % respectively by reference to publicly available data ⁽¹⁸⁴⁾.

⁽¹⁸¹⁾ See for example: https://en.wikipedia.org/wiki/Line_of_credit, https://users.ssc.wisc.edu/~jchoi266/Choi_Jason_JMP.pdf, https://pages.stern.nyu.edu/~sternfin/vacharya/public_html/pdfs/working-papers/ARFE_ContingentCredit_AJS.pdf (nyu.edu), <https://www.business.hsbc.uk/-/media/library/business-uk/pdfs/156-business-banking-price-list.pdf>.

⁽¹⁸²⁾ See Tyres case, recital (297).

⁽¹⁸³⁾ See example Bank of China: Credit Line https://www.bankofchina.com/en/cbservice/cb2/cb22/200806/t20080630_1324055.html (bankofchina.com)

⁽¹⁸⁴⁾ <https://www.metrobankonline.co.uk/business/borrowing/products/business-overdrafts/> consulted on 29 April 2024.

- (538) In principle, the arrangement fee and the renewal fee are payable on a lump sum basis at the time of the opening of a new credit line or the renewal of an existing credit line respectively. However, for calculation purposes, the Commission took into account credit lines which had been opened or renewed before the investigation period, but which were available to the sampled groups during the investigation period and also the credit lines that were opened during the investigation period.

3.5.3.2. Bank acceptance draft

(a) General

- (539) Bank acceptance drafts are a financial product aimed at developing a more active domestic money market by broadening credit facilities. It is a form of short-term financing that might “*reduce fund cost and enhance capital efficiency*” of the drawer⁽¹⁸⁵⁾. In addition, as stated by the PBOC on its website, “*the bank acceptance draft can guarantee the establishment and performance of the contract between the buyer and the seller, as well as promote the capital turnover via the intervention of Bank of China’s credit*”⁽¹⁸⁶⁾. In addition, on its website DBS Bank advertises bank acceptance drafts as a mean to “*improve working capital by deferring payments*”⁽¹⁸⁷⁾. The general conditions for the issuance and use of bank acceptances are set out in the Negotiable Instruments Law of the People’s Republic of China⁽¹⁸⁸⁾.
- (540) The Commission already established in previous investigations that bank acceptance drafts are largely used as a means of payment in commercial transactions as a substitute to a money order thus, facilitating the cash turnover and the working capital of the drawer⁽¹⁸⁹⁾.
- (541) Indeed, bank acceptance drafts can only be used to settle genuine trade transactions and the drawer must produce sufficient evidence in that respect, e.g. through purchase/sales agreement, invoice and delivery order etc. Bank acceptance drafts may be used as a standard means of payment in purchase agreements together with other means such as remittance or money order.
- (542) The bank acceptance draft is drawn by the applicant (the drawer, which is also the buyer in the underlying commercial transaction) and accepted by a bank. By accepting the draft, the bank accepts to make unconditional payment of the amount of money specified in the draft to the payee/bearer on the designated date (the maturity date).
- (543) In general, the bank acceptance contracts contain the list of the transactions covered by the amount of the draft with indication of the payment due date with the supplier and the maturity date of the bank acceptance draft.
- (544) The Commission also established that bank acceptance drafts in China are issued within the framework of a bank acceptance draft agreement specifying the identity of the bank, suppliers and buyer, the obligations of the bank and the buyer and detailing the value per supplier, the payment due date agreed with the supplier and the maturity date of the bank acceptance draft.
- (545) The Commission also established that credit line agreements generally list bank acceptance drafts as possible use of the finance limit along with other short-term financial instruments such as working capital loans.
- (546) Depending on the conditions established by each bank, the drawer might be required to make a small deposit in a dedicated account, make a pledge and pay acceptance commission. In any event, the drawer is obliged to transfer the full amount of the bank acceptance draft to the dedicated account at the latest at the maturity date of the bank acceptance draft.

⁽¹⁸⁵⁾ See website of the People’s Bank of China: https://www.boc.cn/en/cbservice/cncb6/cb61/200811/t20081112_1324239.html

⁽¹⁸⁶⁾ Ibid.

⁽¹⁸⁷⁾ See website of DBS Bank: <https://www.dbs.com.cn/corporate/financing/working-capital/bank-acceptance-draft-bad-issuance>

⁽¹⁸⁸⁾ https://english.www.gov.cn/services/doingbusiness/202102/24/content_WS6035f46ec6d0719374af97ba.html

⁽¹⁸⁹⁾ See GFF case, recitals (359) to (370), Aluminium foil case, recitals (334) to (356), and OFC case, recitals (358) to (370).

- (547) Once accepted by the bank, the drawer endorses the bank acceptance draft and transfers it to the payee, who is also the supplier in the underlying commercial transaction, as a payment of the invoice. Consequently, the payment obligation of the buyer (drawer) towards the supplier (payee) is cancelled. A new payment obligation of the buyer is created towards the accepting bank for the same amount (the drawer has the obligation to pay the bank in cash before the maturity of the bank acceptance draft). This was further confirmed by the GOC during the verification visit in a previous investigation⁽¹⁹⁰⁾, namely that once the company pays the supplier with the bank acceptance draft, they no longer have an obligation in relation to the supplier but to the bank because the one who requested the bank acceptance draft to be issued will need to pay the bank in full on maturity date. Therefore, the issuance of a bank acceptance drafts has the effect to replace the obligation of the drawer towards its supplier by an obligation towards the bank.
- (548) The maturity of bank acceptance drafts varies depending on the conditions set by each bank and can go up to 1 year.
- (549) The payee (or bearer) of the bank acceptance draft has three options before the maturity:
- wait until maturity to be paid in cash the full amount of the face value of the draft by the accepting bank;
 - endorse the bank acceptance draft, i.e. use it as a means of payment for its liabilities towards other parties; or
 - discount the bank acceptance draft with the accepting bank or another bank and obtain the cash proceeds against the payment of a discounting rate.
- (550) The issuance date of the bank acceptance draft generally corresponds to the payment due date agreed with the supplier but can also be a date prior or posterior to the payment due date. The investigation found that, as far as the sampled companies are concerned, the issuance date was generally on or before the due date of the payment with the supplier and in some cases even after the payment due date. The Commission established that the maturity of the bank acceptance drafts of the sampled companies is in most cases from 1 month up to 12 months after the payment due date of the invoice.
- (551) Regarding the accounting treatment of bank acceptance drafts, they are recognized as liabilities to the bank in the accounts of the drawers, i.e. the sampled exporting producers. The Credit Reference Center of the People's Bank of China ("CRCP") recognises bank acceptance drafts as "*unsettled credit*" provided by banks at the same level as loans, letters of credit or trade financing. It should also be noted that the CRCP is fed by the financial institutions, which grant various types of loans, and that such financial institutions have thus recognised bank acceptance drafts as liabilities to them. Furthermore, the bank acceptance agreements collected during the investigation provide that, should the buyer not make the full payment on the expiry date of the bank acceptance drafts, the bank would treat the amount unpaid as an overdue loan to the bank.
- (552) From a cash point of view, the instrument therefore *de facto* grants the drawer a deferred due date of payment because the actual cash payment of the transaction amount occurs at the maturity of the bank acceptance draft and not at the moment when the drawer had to pay its supplier. In the absence of such a financial instrument, the drawer would either use its own working capital, which has a cost, or contract a short-term working capital loan with a bank in order to pay its suppliers, which also has a cost. In fact, by paying with bank acceptance drafts, the drawer uses the supplied goods or services for a period of 1 month to 1 year but without advancing any cash and without bearing any cost.
- (553) As an illustration of the use of bank acceptance drafts as a substitute of short-term loans, the Commission established that some sampled companies barely had any loans. However, the bank acceptance drafts issued by these companies during the investigation period represented a significant part of their liabilities. For example, two of the companies in the SAIC Group barely had any loans, but outstanding bank acceptances at the end of the investigation period represented around 20% of their current liabilities.

⁽¹⁹⁰⁾ See GFF case, recital (381).

- (554) Under normal market circumstances ⁽¹⁹¹⁾, as a financial instrument, bank acceptance drafts would imply a cost of financing for the drawer. The investigation showed that all the sampled companies used bank acceptance drafts during the investigation period and only paid a commission for the acceptance service provided by the bank, which was in general 0,05 % of the face value of the draft ⁽¹⁹²⁾. However, none of the sampled companies bore a cost for the financing via bank acceptance drafts by deferring the cash payment of the supply of goods and services. Therefore, the Commission considered that the investigated companies benefitted from financing in the form of bank acceptance drafts for which they did not bear any cost.
- (555) Considering the above, the Commission concluded that the bank acceptance system put in place in the PRC provided all sampled exporting producers a free financing of their current operations, which conferred a countervailable benefit as described in recitals (562) to (566) below, in accordance with Article 3(1)(a)(i) and 3(2) of the basic Regulation.
- (556) This is in line with previous investigations, where the Commission established ⁽¹⁹³⁾ that bank acceptance drafts effectively have the same purpose and effects as short-term working capital loans, as they are used by companies to finance their current operations instead of using short-term working capital loans, and that consequently, they should bear a cost equivalent to a short-term working capital loan financing.
- (557) In the course of the investigation, the BYD Group explained that for certain bank acceptances it had a bank acceptance offset system in place with different banks. The Commission deemed that the issuing of an offset agreement does not alter the fact that a bank acceptance was issued, and in light of the evidence found in recitals (539) to (556), the Commission considered the offset bank acceptances in its calculation of the benefit for the BYD Group.

(b) Specificity

- (558) Concerning specificity, as mentioned in recital (534) according to Decision No 40, financial institutions shall provide credit support to encouraged industries.
- (559) The Commission considered that bank acceptance drafts are another form of preferential financial support by financial institutions to encouraged industries such as the BEV sector. Indeed, as specified in Section 3.1 above, the BEV sector is among the encouraged industries and is therefore eligible for all possible financial support. Moreover, similar to credit lines, bank acceptance drafts are intrinsically linked to other types of preferential lending such as loans, and as they are part of the credit support specifically provided to encouraged industries, so the public body analysis and the specificity analysis as developed in Sections 3.4.1.1 to 3.4.1.5, as well as Section 3.4.2.2 above for loans is equally applicable.
- (560) Furthermore, in 2020, the CBIRC issued a notice in which it states that in order to strengthen credit support to downstream enterprises in core enterprises, banking financial institutions may provide credit support for downstream enterprises to obtain goods and pay for goods by opening bank acceptance bills, domestic letters of credit, advance financing, etc ⁽¹⁹⁴⁾. Bank acceptance drafts, as a form of financing, are thus part of the preferential financial support system by financial institutions to encouraged industries, such as the BEV industry.
- (561) No evidence was provided that any undertaking in the PRC (other than within encouraged industries) can benefit from bank acceptance drafts under the same preferential terms and conditions.

⁽¹⁹¹⁾ See for example the case of Canada: <https://www.bankofcanada.ca/wp-content/uploads/2018/06/SDP-2018-6.pdf>.

⁽¹⁹²⁾ In line with the rate set in the Administrative measures for payment and settlement 393/1997, issued by the PBOC

⁽¹⁹³⁾ See GFF case, recital (385), Aluminium foil case, recital (353), and OFC case, recital (373).

⁽¹⁹⁴⁾ 国家金融监督管理总局 (cbirc.gov.cn)

(c) Calculation of the subsidy amount

- (562) For the calculation of the amount of the countervailable subsidy, the Commission assessed the benefit conferred on the recipients during the investigation period.
- (563) As mentioned in recital (531), the Commission found that the sampled exporting producers used bank acceptance drafts to address their needs for short-term financing without paying a remuneration.
- (564) The Commission thus concluded that bank acceptance drawers should pay a remuneration for the period of financing. The Commission considered that the period of financing started on the date of the issuance of the bank acceptance draft and ended on the maturity date of the bank acceptance draft. Regarding bank acceptance drafts issued before the investigation period and bank acceptance drafts with a maturity date after the end of the investigation period, the Commission calculated the benefit only for the period of financing covered by the investigation period.
- (565) In accordance with Article 6(b) of the basic Regulation, considering that bank acceptance drafts are a form of short-term financing and that they effectively have the same purpose as short-term working capital loans, the Commission considered that the benefit thus conferred on the recipients is the difference between the amount that the company had actually paid as remuneration of the financing by bank acceptance drafts and the amount that it should pay by applying a short-term financing interest rate.
- (566) The Commission determined the benefit resulting from the non-payment of a short-term financing cost. The Commission considered, as established in previous investigations⁽¹⁹⁵⁾, that bank acceptance drafts should bear a cost equivalent to a short-term loan financing. Therefore, the Commission applied the same methodology as to short-term loans financing denominated in RMB, described in Section 3.5.2.3.

3.5.3.3. Discounted bills

(a) General

- (567) The investigation showed that Chinese financial institutions discounted receivables to the BYD group in return for cash.
- (568) Through this operation, financial intermediaries advanced amounts of receivables before their due date. The companies received early funds by transferring the rights of future receivables to financial institutions after the deduction of fees and the applicable discount rates. The applicable discount rate should specifically compensate for the risk of default, which is highly influenced by the credit rating of the last entity liable to meet the payment obligation.
- (569) As established in previous investigations⁽¹⁹⁶⁾, under normal market circumstances, the applicable discount rate should compensate for the bank's costs and risks. As explained in Sections 3.5.1 and 3.5.2 above, the loans provided by Chinese financial institutions reflect substantial government intervention, in particular affecting the credit rating of the exporting producers, and do not reflect rates that would normally be found in a functioning market.
- (570) The benefit thus conferred on the recipients would be the difference between the discount rate applied by Chinese financial institutions and the discount rate applicable for a comparable operation on the market, for instance a loan.

(b) Specificity

- (571) Concerning specificity, as mentioned in recital (210) according to Decision No 40, financial institutions shall provide credit support to encouraged industries.

⁽¹⁹⁵⁾ See GFF case recital (399), and Aluminium foil case, recital (356).

⁽¹⁹⁶⁾ See GFF case recital (413) to (419).

(572) As established in previous investigations ⁽¹⁹⁷⁾, the Commission considered that discounted bills are another form of preferential financial support by financial institutions to encouraged industries such as the BEV sector. Indeed, as specified in Section 3.1 above, the BEV sector is among the encouraged industries and is therefore eligible for all possible financial support. Discounted bills, as a form of financing, are part of the preferential financial support system by financial institutions to encouraged industries, such as the BEV industry.

(573) No evidence was provided that any undertaking in the PRC (other than within encouraged industries) can benefit from discounted bills under the same preferential terms and conditions.

(c) Calculation of the subsidy amount

(574) As mentioned in recital (567), the Commission found that one sampled exporting producer used discounted bills to address its needs for short-term financing.

(575) In accordance with Article 6(b) of the basic Regulation, considering that discounted bills are a form of short-term financing and that they effectively have the same purpose as short-term working capital loans, the Commission considered that the benefit thus conferred on the recipients is the difference between the discount rate actually paid and the amount that it should pay by applying a short-term financing interest rate.

(576) The Commission determined the benefit resulting from the non-payment of a short-term financing cost. The Commission considered that discounted bills should bear a cost equivalent to a short-term loan financing. Therefore, the Commission applied the same methodology as to short-term loans financing denominated in RMB, described in Section 3.5.2.3.

3.5.3.4. Support for capital investment

3.5.3.4.1. Debt- to-equity swap

(a) General

(577) The Commission established that one of the Geely group companies, Ningbo Hangzhou Bay Geely Automobile Parts Co., Ltd ('NHBGAP'), carried out during the investigation period a debt-to-equity swap for CCBC Financial assets investment Co., Ltd, subsidiary of the Industrial and Commercial Bank of China. CCBC Financial assets investment Co., Ltd is an investment fund belonging to the State-owned bank, considered a public body and/or entrusted or directed according to section 3.5.1.1 above.

(578) There is no information on the file on the conditions according to which such a debt-to-equity swap took place during the investigation period.

(579) The Commission considered that a bank would not convert debt to equity under normal market conditions without further compensation. It considered that equity is a far more speculative financial instrument than debt, as there is no certainty that the bank will recover its original capital investment. Furthermore, equity does not necessarily ensure a return on investment, in contrast to the interest rate associated with a loan. The increased risk CCBC Financial assets investment Co., Ltd has undertaken thanks to this debt-to-equity swap is supported by evidence of weak financial situation contained in Geely Group, as described in recitals (507) to (514). Also, during the period from 2021 to the investigation period, NHBGAP significantly expanded its business operations, experiencing a nearly tenfold increase. Consequently, it is likely that the company required additional liquidity to support this growth, a need that was met by releasing funds previously tied up in long-term debt arrangements, which was beneficial to NHBGAP.

⁽¹⁹⁷⁾ See GFF case recital (413) to (419).

- (580) In light of the above considerations, the Commission concluded that during the investigation period the debt-to-equity swap conferred a benefit to NHBGAP and that this benefit was provided by public body or entity otherwise entrusted or directed by the State in pursue of industrial policy objectives.

(b) Specificity

- (581) The Commission considered that the preferential financing through debt-to-equity swap is specific within the meaning of Article 4(2)(a) of the basic Regulation since the investors are entities, which operate under the guidelines of the State's policies that list BEV as an encouraged industry. In any event, the information available points towards the granting of this ad hoc subsidy to Ningbo Hangzhou Bay Geely Automobile Parts Co., Ltd, which makes the subsidy specific to an enterprise.

(c) Calculation of the benefit

- (582) There was no evidence on the file for the Commission to assess whether the significant risks the banks undertake have been somehow compensated or factored into the investment made. However, all the elements explained in recital (579) point to a specific economic situation of NHBGAP and to the industrial objectives pursued with this transaction, supporting the conclusion that it did not have market logic reflecting the significant actual risks involved, such as likely need for liquidity for financing growth of the company and weak financial situation of the Geely Group overall, as explained in section 3.5.2.3 above.
- (583) Consequently, the Commission considered the transaction as equivalent to debt forgiveness, and treated it as a loan financing at free interest. Therefore, the Commission decided to follow the calculation methodology for loans as described above in Section 3.4.2. This means that the relative spread between US AA corporate bonds and the applicable US B corporate bonds with the same duration is applied to the benchmark interest rates published by the PBOC to establish a market-based interest for loans, which is then compared with the actual interest rate paid by the company in order to determine the benefit.

3.5.3.4.2. Capital injections

(a) Geely Group

(1) General

- (584) The Commission established that two of the Geely group companies, Zhejiang Geely Automobile Co., Ltd. ('ZGA') and NHBGAP, during the investigation period benefited from funds provided by State-owned entities, namely Xi'an Jixiang Automobile Industry Partnership, Hubei Jiyuan Yangtze River Industrial Fund Partnership and BOC Financial assets Investments Co., Ltd. through special forms of equity injections.
- (585) These funds were transferred in the form of equity increases that, however, did not automatically provide the investors with full shareholders rights. The investors, despite having transferred the funds, did not gain full access to shareholding rights, nor received any payment of interest in exchange.
- (586) As established in previous investigations,⁽¹⁹⁸⁾ to compensate for the use of funds, a company would transfer a portion of the company's ownership shortly after the funds had arrived, or it would register the funds as a debt. However, in this case, this form of financing is in fact closer to a classic interest-free shareholder loan for a long period of time than to an equity instrument.
- (587) In light of the above considerations, the Commission concluded that during the investigation period these two related companies, benefited from access to substantive amounts of financing for which they did not bear any cost via companies acting as a funding mechanism. Since this special form of equity injections in question did not confer shareholders rights to the investors, the Commission considered that they had a similar effect similar as to a free interest loan.

⁽¹⁹⁸⁾ See GFF case recital (430) to (432).

- (588) Using publicly available information, such as, annual reports, information available in business directories or on the investors' websites or publicly available databases, the Commission found that the investors that had provided funds to the Geely Group were partially owned by the State.
- (589) Concerning Xi'an Jixiang Automobile Industry Partnership, the Commission found that more than 63% of the shares were ultimately held by the local government and SOEs. Specifically, 99,9% of the shares are owned by Dexiang Automobile Industry, which in turn is owned 53,72% by Xi'an Xiangji automobile partnership, which in turn is related to KINGFAR Group (Xi'an JINGFAR Economic Development Group), an SOE held by the management committee of the Xi'an Economic and Technological Development Zone, where the local government has the final decision-making authority and supervision over the company, including management appointment, decision on its strategic development and investment plan and supervision of its major funding decisions. Xi'an Kingfar receives ongoing government support in forms of capital/asset injections and financial subsidies to support its business operations ⁽¹⁹⁹⁾. Dexiang Automobile Industry is also 10,6% owned by Yuanxiang automobile company Ltd. which is also owned by the aforementioned SOE (Xi'an JINGFAR Economic Development Group).
- (590) Similarly, the Commission established that Hubei Jiyuan Yangtze River Industrial Fund Partnership, a venture capital vehicle of the government of central Hubei province ⁽²⁰⁰⁾, is a SOE. According to the fund's website, Yangtze River Industrial Fund is listed among the top Chinese Government Guidance Funds since, at least, 2017. The fund focuses on the national strategy and the construction of modern industrial clusters in Hubei province, develops around strategic emerging industries such as (among others) new energy and intelligent connected vehicles, which is clear evidence of link between the management of the fund and the implementation of major GOC industrial projects in Hubei province. Among its industrial projects Lotus Global Smart Factory Project and Geely Intelligent Network Headquarters Project are mentioned on funds website ⁽²⁰¹⁾.
- (591) Through these funds, the GOC directly transferred funds to the Geely group. As explained in recital (582), the Commission established that their operations did not follow a purely market logic and did not reflect the actual market risks associated with the transactions investigated. Rather, in line with the governmental policies to encourage specific industries, as established in Section 3.1 above, those investors did not behave as a normal market operator would do when financially supporting the Geely Group.
- (592) The Commission further established the existence of formal indicia of control by the State of those investors. In particular, in the absence of specific information indicating otherwise, the Commission considered that managers and supervisors in the State-owned companies owning the entities at issue are assumed to be appointed by and accountable to the State based on the conclusions reached in Sections 3.5.1.5 to 3.5.1.8
- (593) In addition, the Commission considered that this equity injection serves as another form of preferential financial support for encouraged industries. As mentioned in Section 3.1, the BEV sector falls within the category of encouraged and strategic industries, making it eligible for all available financial support. Furthermore, the Memorandum on sufficiency of evidence ⁽²⁰²⁾, provides extensive information about Guidance Funds, which were established to invest in China's high-growth sectors, including BEVs. Through these guidance funds, the GOC directly or indirectly transfers funds to the Chinese BEV via State-owned or State-backed equity funds.

⁽¹⁹⁹⁾ https://lhratingsglobal.com/wp-content/uploads/bsk-pdf-manager/2023/11/Rating-Report_Xian-Kingfar-EN-20231127.pdf

⁽²⁰⁰⁾ <https://www.cbinsights.com/investor/yangtze-river-industry-fund>

⁽²⁰¹⁾ <https://yangtze-fund.com/>

⁽²⁰²⁾ See Memorandum on sufficiency of evidence, Section 3.3.3: *Equity investments financed by the state or otherwise incentivized by the government.*

(594) Likewise, BOC Financial assets Investments Co., Ltd. was found to be a wholly owned subsidiary of the Bank of China. Concerning the financial institutions involved in the equity injection, the Commission already established in section 3.4.1.7 above that all State-owned Chinese financial institutions that provided financing to the three sampled groups of cooperating exporting producers are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation. In the alternative, as Xi'an Jixiang Automobile Industry Partnership, Hubei Jiyuan Yangtze River Industrial Fund Partnership and BOC Financial assets Investments Co., Ltd, BOC Financial assets Investments Co., Ltd could be considered a funding mechanism by the GOC in the sense of Article 3(1)(a)(iv).

(595) In addition, even if the State controlled entities and financial institutions were not to be considered as public bodies, the Commission established that they would be considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation for the same reasons, as set out in recital (269). Thus, their conduct would be attributed to the GOC in any event.

(2) *Specificity*

(596) The Commission considered that the preferential financing through equity is specific within the meaning of Article 4(2)(a) of the basic Regulation since the investors are entities, which operate under the guidelines of the State's policies that list BEV as an encouraged industry. In any event, the information available points towards the granting of this ad hoc subsidy to Geely Group, which makes the subsidy specific to an enterprise.

(3) *Calculation of the benefit*

(597) The Commission considered that Geely Group benefitted from substantive financing through equity, which had an effect similar to loan financing at free interest. Therefore, the Commission decided to follow the calculation methodology for loans as described above in Section 3.5.2. This means that the relative spread between US AA corporate bonds and the applicable US B corporate bonds with the same duration is applied to the benchmark interest rates published by the PBOC to establish a market-based interest for loans, which is then compared with the actual interest rate paid by the company in order to determine the benefit.

(b) *SAIC Group*

(598) In addition to the direct loans and other forms of preferential financing, SAIC Motor Group Corp. also benefited from funds provided by its parent company and State-owned financial institutions, through an equity injection to support BEV projects, IT projects related to auto finance business, projects related to intelligent mass customization business models and to forward-looking technology and internet of vehicles.

(1) *Findings of the investigation*

(599) The Commission established on the basis of publicly available information that in 2017, SAIC Motor Corporation Limited benefitted from an equity injection of RMB 15 billion, provided by its parent company, its employees and six financial institutions ⁽²⁰³⁾. Although SAIC Motor Corporation Limited is a publicly listed company, the funds for this equity injection were raised through a non-public offering approved by the CSRC, in which only the parent company, employees and selected financial institutions could participate.

(600) As mentioned in recital (318), several companies of the SAIC Group did not provide questionnaire replies. Shanghai Automotive Industry Group, the parent company of SAIC Motor Corporation Limited, is one of the group's companies that did not cooperate. Furthermore, as mentioned in section above, the GOC did not provide the necessary information concerning financial institutions. Therefore, the Commission had to resort to facts available as far as its assessment of this transaction is concerned.

⁽²⁰³⁾ <https://auto.ifeng.com/xinnengyuan/20170123/1081051.shtml>

- (601) Concerning the financial institutions involved in the equity injection, the Commission already established in section 3.5.1.8 above that all State-owned Chinese financial institutions that provided financing to the three sampled groups of cooperating exporting producers are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation.
- (602) In addition, even if the State-owned financial institutions were not to be considered as public bodies, the Commission established on the basis of the same information that they would be considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation for the same reasons, as set out in Section 3.5.1.9.
- (603) In addition to the evidence provided in the previous sections, it is also important to note that according to the Guiding Opinions on Building a Green Financial System, the GOC aims to “actively support the qualified green enterprises to obtain financing via initial public offerings and secondary offerings, to actively assist qualified green enterprises in their efforts for IPOs, and to help listed green enterprises to issue additional shares via secondary offerings according to legal procedures”⁽²⁰⁴⁾. This last point exactly corresponds to the situation at hand.
- (604) Concerning Shanghai Automotive Industry Group, the Commission could establish based on the information submitted by SAIC Motor Corporation Limited that this company is fully owned by SASAC. However, the Commission could not find any publicly available financial statements, or any other meaningful public information available on this company. The Commission could also not find any investments of the parent company in any other companies of the SAIC Group. Furthermore, although Shanghai Automotive Industry Group and SAIC Motor Corporation Limited have different business registration numbers, all searches in the public domain for the parent company systematically returned results for its sole subsidiary, SAIC Motor Corporation Limited. Finally, the Commission noted that several members of the Board of SAIC Motor Corporation Limited also exercised similar functions on the Board of Shanghai Automotive Industry Group. In the absence of any further information, it is therefore reasonable to assume that Shanghai Automotive Industry Group is a non-operational shell company. Since no evidence could be found of operational activities at the level of this company that would require significant funding, and since the only known investment of the company is SAIC Motor Corporation Limited, the only possible flow of funds is from its full owner, SASAC, to the listed entity, SAIC Motor Corporation Limited. The transaction should thus be regarded as equivalent to a direct cash injection by the GOC into SAIC Motor Corporation Limited.

(2) *Benefit*

- (605) The Commission then analysed whether the financial contribution provided by GOC via SASAC and via several financial institutions conferred a benefit to SAIC. Due to the non-cooperation of SAIC and the GOC, the Commission had to base its findings on facts available according to Article 28 of the basic Regulation.
- (606) The body of evidence above has shown that the mandate and objective of SASAC and of financial institutions is to implement governmental policies and plans, including by providing financial support and funding for the encouraged sectors among which BEV is one.
- (607) Based on the evidence on file and in accordance with Article 28 of the basic Regulation, the Commission concluded that the financial contribution provided by SASAC and various financial institutions conferred a benefit within the meaning of Article 3(2) of the basic Regulation to the SAIC Group in the sense that it did not have to obtain such financing from other sources and pay a corresponding market interest rate for such financing.

(3) *Specificity*

- (608) Concerning specificity, as mentioned in recital (210), according to Decision No 40, financial institutions shall provide credit support to encouraged industries.

⁽²⁰⁴⁾ Guiding Opinions on Building a Green Financial System, issued by CSRC, No. 228 [2016]

- (609) The Commission considered that this equity injection amounts to another form of preferential financial support to encouraged industries such as the BEV sector. Indeed, as specified in Section 3.1 above, the BEV sector is among the encouraged and strategic industries and is therefore eligible for all possible financial support. Equity injections, as a form of financing, are part of the preferential financial support system to encouraged industries, such as the BEV industry ⁽²⁰⁵⁾.

(4) *Calculation of the subsidy amount*

- (610) In the absence of reporting of this equity injection by the SAIC group, the Commission had to resort to facts available in application of Article 28 of the basic Regulation to determine the subsidy amount conferred by the financial contribution by SASAC and various financial institutions in the form of an equity injection. In the absence of cooperation, the Commission could not link this capital increase to specific assets and depreciate the equity injection over a period equivalent to the depreciation of the assets at stake. Consequently, the Commission considered such equity injection as equivalent to a loan. Indeed, in the absence of this capital increase, the company would have had to secure an equivalent amount of financing on the financial market. Thus, the benefit was calculated using the same method as that described in Section 3.5.2.3.

3.5.4. *Bonds*

- (611) All of the sampled groups benefited from preferential financing in the form of bonds.

3.5.4.1. *Legal basis/Regulatory Framework*

- Law of the People's Republic of China on Securities (version 2014) ('Securities Law') ⁽²⁰⁶⁾;
- Administrative Measures for the Issuance and Trading of Corporate Bonds, Order of the China Securities Regulatory Commission No 113, 15 January 2015;
- Regulation on the Administration of Corporate Bonds, issued by the State Council on 18 January 2011;
- Measures of the Administration of Debt Financing Instruments of Non-financial Enterprises on the Inter-bank Bond Market Issued by the People's Bank of China, Order of the People's Bank of China [2008] No 12, 9 April 2008.
- Guiding Opinions on Building a Green Financial System, issued by CSRC, No. 228 [2016];
- Notice on Issuing the Green Bond Endorsed Projects Catalogue (2021 Edition), issued by the PBOC, NDRC, and CSRC, No. 96 [2021], effective 1 July 2021;
- Green Financial Evaluation Programme for Banking Financial Institutions issued by the PBOC, effective 1 July 2021;
- Monetary policy tool to support carbon emission reduction projects, issued by the PBOC, 8 November 2021;
- Guidelines on Environmental Disclosure for Financial Institutions, issued by the PBOC, 22 July 2021;
- Environmental Equity Financing Tool, issued by the PBOC, 22 July 2021;
- Clarifying Mechanisms in Relation to Carbon Neutrality Bonds, issued by NAFMII, 18 March 2022;
- Green Debt Financing Instrument Business Guidelines for Non-financial Enterprises, issued by NAFMII;

⁽²⁰⁵⁾ See Memorandum on sufficiency of evidence, Section 3.3.3: *Equity investments financed by the state or otherwise incentivized by the government*

⁽²⁰⁶⁾ Lastly amended on 28 December 2019 by Presidential Decree No 37 with effect from 1 March 2020.

— Guidelines on the Issuance of Green Bonds, issued by the NDRC.

- (612) In line with the regulatory framework, bonds cannot be issued or traded freely in China. The issuance of each bond must be approved by various governmental authorities, such as the PBOC, the NDRC or the CSRC, depending on the type of bond and the type of issuer. In addition, according to the Regulations on the Administration of Corporate Bonds, there are annual quotas for the issuance of corporate bonds.
- (613) Furthermore, according to Article 16 of the Securities Law applicable during the IP, a public offering of corporate bonds should satisfy the following requirements: *“the usage purpose of the proceeds shall comply with State industrial policies [...]”* and *“the proceeds from a public offering of corporate bonds shall be used for approved purpose(s) only”*. Article 12 of the Regulations on the Administration of Corporate Bonds reiterates that the purpose of the raised funds must comply with the industrial policies of the State. The issuance of bonds under such conditions targets an encouraged industry such as the BEV industry and corresponds with the practice of financial institutions to support those industries ⁽²⁰⁷⁾.
- (614) According to Article 16(5) of the Securities Law, *“the coupon rate of the corporate bonds shall not exceed the coupon rate stipulated by the State Council”*. In addition, Article 18 of the Regulations on the Administration of Corporate Bonds provides further details by stating that, *“the interest rate offered for any corporate bonds shall not be higher than 40 % of the prevailing interest rate paid by banks to individuals for fixed-term savings deposits of the same maturity”*.
- (615) Furthermore, Article 18 of the Administrative Measures for the Issuance and Trading of Corporate Bonds stipulates that only certain bonds complying with strict quality criteria, such as an AAA credit rating, may be issued in a public manner to public investors or be issued in a public manner to qualified investors only at the sole discretion of the issuer. The corporate bonds that fail to meet these standards can be issued in a public manner only to qualified investors. Therefore, it results that most corporate bonds are issued to qualified investors which have been approved by the CSRC and which are Chinese institutional investors.
- (616) On top of the commonly known bonds, so called “green” debt instruments specific to this investigation were also found. According to the “Notice on Issuing the Green Bond Endorsed Projects Catalogue”, *“green bonds refer to marketable securities that use raised funds specifically to support green industries, green projects, or green economic activities that meet specified conditions, and are issued in accordance with legal procedures ..., including but not limited to green financial bonds, green corporate bonds, green enterprise bonds, green debt financing tools and green asset-backed securities”*. These debt instruments can thus only be issued by companies active in certain industrial activities listed in a catalogue of green industrial activities. The production and sales of new energy vehicles, as well as of their key components, is one of them.
- (617) Green debt instruments allow companies to raise funds at preferential rates. In line with the “Green Financial Evaluation Programme for Banking Financial Institutions” of the PBOC, Chinese banks need to subscribe to such green debt instruments in order to reach a given threshold in their financial asset base that will contribute to a positive assessment of their performance by the bank regulating authority. In addition, according to the PBOC’s “Monetary policy tool to support carbon emission reduction projects”, financial institutions have to provide financing in support of the green industrial activities in the above-mentioned catalogue to companies at preferential interest rates close to the level of the country’s loan prime rate. In return, the People’s Bank of China proposes preferential refinancing rates to the banks for the green funds disbursed ⁽²⁰⁸⁾.
- (618) Though the legal and regulatory framework of this alternative source of funds was clearly identified, the GOC refused to provide any information in this regard. Findings were thus based on facts available under Article 28 of the basic Regulation.

⁽²⁰⁷⁾ See OFC case, recitals (400) and (401).

⁽²⁰⁸⁾ https://english.www.gov.cn/statecouncil/ministries/202111/08/content_WS61892c79c6d0df57f98e4ace.html

- (619) BEV producers used two types of green debt instruments, i.e. green bonds and green Asset backed securities (ABS). ABS are in essence green bonds backed up by assets as a collateral. They consist in repackaging automotive loans provided to individuals and leasing companies as collateral for an asset-backed debt instrument issued on the bond market, and on which a given interest rate applies. This system allows the BEV producers to replace mid-term receivables on car loans by liquidities immediately available, and thus to pre-finance their loan business on a very beneficial basis, since the interest rates paid on the ABS are far below the interest rates charged to their customers for the car loans.
- (620) Furthermore, as an encouraged industry under the ‘Guiding Catalogue for Industry Restructuring’, the BEV industry is entitled to credit support by financial institutions based on Decision No 40. The fact that the bonds issued by the sampled companies bear a low interest rate; i.e. an interest rate close or below the LPR, is a strong indication that financial institutions, which are the major investors in these bonds, are obliged to provide “*credit support*” to these companies and take into account other considerations than commercial considerations when taking the investment or financing decision, such as government policy objectives. Indeed, an investor operating in market conditions would be more sensitive to the financial return on the investment and would most probably not invest in corporate bonds bearing very low interest rates. This is especially the case for financial institutions, as the return of these bonds is close to or lower than the rate at which they can obtain funds themselves from other financial institutions. Moreover, the conclusions reached by the Commission about the financial situation of the three groups of exporting producers in Section 3.5.2.3 above in terms of their liquidity and solvency profiles further indicate that investors operating in market conditions would not invest in financial instruments such as these groups’ bonds, offering low financial returns, while the issuer presents high liquidity and solvency risks. Therefore, in the Commission’s view only investors having motivations other than a financial return on their investment, such as compliance with the legal obligation to provide financing to companies in encouraged industries, would make such an investment.

3.5.4.2. Financial institutions acting as public bodies

- (621) According to the China bond market insight 2022 by Bloomberg, the bonds listed in the interbank bond market account for 88% of the total trading volume of bonds ⁽²⁰⁹⁾. According to the same study, most of the investors are institutional investors, including financial institutions. In particular, commercial banks represent 57% of the investors and policy banks represent 3% ⁽²¹⁰⁾. Therefore, investors buying bonds are mainly Chinese banks, including State-owned banks.
- (622) On the basis of the above, the Commission considered that there is a body of corroborating evidence, according to which a major proportion of the investors in the corporate bonds issued by the sampled companies, are financial institutions which have a legal obligation to provide credit support to BEV producers.
- (623) As described in recital (612), Article 16 of the Securities Law and Article 12 of the Regulations on the Administration of Corporate Bonds require that a public offering of corporate bonds complies with the industrial policies of the State. This has the effect that bonds can only be issued for purposes that are in line with the targets of the planning of the GOC regarding encouraged industries as explained in recital (619). The institutional investors, which are, as shown in recital (620), to a large extent commercial banks and policy banks, have to follow the policy orientations laid down in Decision No 40, which read together with the Guiding Catalogue for Industry Restructuring, provides for specific treatment of certain projects within certain encouraged industries, such as the BEV industry. The beneficial treatment to all of the sampled groups resulted in the decision to invest in bonds issued with an interest rate that does not reflect market-based criteria.
- (624) Furthermore, as described in Section 3.5.1.1 above, the financial institutions are characterized by a strong State presence, and the GOC has the possibility to exercise a meaningful influence on them. The general legal framework in which these financial institutions operate is also applicable to bonds. Furthermore, a supplementary detailed regulatory framework exists for green bonds.

⁽²⁰⁹⁾ <https://assets.bbhub.io/professional/sites/10/China-bond-market-booklet-2022.pdf>, p. 15,

⁽²¹⁰⁾ *Idem*, p. 33.

- (625) In Section 3.5.1.1 above, the Commission concluded that State-owned financial institutions are public bodies within the meaning of Article 2(b) read in conjunction with Article 3(1)(a)(i) of the basic Regulation and that they are in any event considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation. In Section 3.5.1.9 above, the Commission concluded that private financial institutions are also entrusted and directed by the government.
- (626) The Commission also sought concrete proof of the exercise of control in a meaningful way based on concrete issuances of bonds. It therefore examined the overall legal environment as set out above in recitals (611) to (619), in combination with the concrete findings of the investigation.
- (627) The Commission found that the bonds were issued with an interest rate below the level that should have been expected given the companies' financial and credit risk situation, including below the risk-free reference rate published by the NIFC as referred to in recital (632) below.
- (628) In practice, interest rates on bonds are influenced by the credit rating of the company, similar to loans. However, the Commission concluded in recital (481) that the local credit rating market is distorted and credit ratings are unreliable.
- (629) In light of the above considerations, the Commission concluded that the Chinese financial institutions followed the policy instructions laid down in Decision No 40 and in the relevant guidelines pertaining to green bonds by providing preferential financing to companies pertaining to an encouraged industry and thus acted either as public bodies within the meaning of Article 2(b) of the basic Regulation or as bodies which are entrusted or directed by the government within the meaning of Articles 3(1)(a)(iv) of the basic Regulation.
- (630) By organising the issuance of a bonds with an interest rate below the market rate corresponding to the actual risk profile of the issuer, as determined in section 3.5.2.3 above, and by accepting to invest in such bond, the financial institutions provided a benefit to the sampled producers.

3.5.4.3. Specificity

- (631) The Commission considered that the preferential financing through bonds is specific within the meaning of Article 4(2)(a) of the basic Regulation as the bonds cannot be issued without approval from government authorities, and the Securities Law states that the issuance of bonds must comply with the State's industrial policies. As already mentioned in recital (439) and (619) the BEV industry is regarded as an encouraged industry in the Guiding Catalogue of Industry Restructuring.
- (632) In addition, concerning green bonds specifically, they can only be issued by companies active in certain industrial activities listed in a catalogue of green industrial activities.

3.5.4.4. Calculation of the subsidy amount

- (633) Since bonds are in essence another type of debt instrument, in principle similar to loans, and since the calculation methodology for loans is already based on a basket of bonds, the Commission decided to follow the calculation methodology for loans as described above in Section 3.5.2.3. This means that the relative spread between US AA corporate bonds and US B corporate bonds with the same duration is applied to the PBOC Loan Prime Rate to establish a market-based interest rate for bonds, which is then compared with the actual interest rate paid by the company in order to determine the benefit.
- (634) As noted in the recital (378), at least one Geely Group company was found to have issued ABS applicable in the IP, for which no information had been provided by the group. For this company the calculation of the subsidy amount was based on the information found in the public domain, namely information issued to investors on stock exchanges and the benefit found at the other cooperating sampled group.

(635) As highlighted in recital (329), several related companies in the SAIC Group did not provide a questionnaire reply. This was notably the case for several group companies specializing in financing activities. For these companies, the calculation of the subsidy amount was based on the information relating to amounts, start and end dates and interest rates of the bonds, found either in publicly available financial statements or in information issued to investors on stock exchanges.

3.5.4.5. Conclusion on preferential financing: other types of financing

- (636) The Commission established that all sampled groups of exporting producers benefited from preferential financing in the form of credit lines, bank acceptance drafts and bonds. In view of the existence of a financial contribution, a benefit to the exporting producers and specificity, the Commission considered these types of preferential financing a countervailable subsidy.
- (637) The subsidy rate established with regard to the preferential financing described above during the investigation period for the sampled groups of companies amounted to:

Preferential financing: other types of financing

Company name	Subsidy rate
BYD Group	3,60 %
Geely Group	3,30 %
SAIC Group	8,27 %

3.6. Grant Programmes

(638) The Commission found that all three sampled groups of companies benefitted from a variety of grant programmes.

3.6.1. Direct cash grants

- (639) Only one of the sampled exporting groups, the BYD Group, provided the underlying information for the grants received during the investigation period. The other two sampled exporting groups did not provide any legal basis for the grants received and therefore the calculation of the subsidy amount related to the direct cash grants given to these exporting groups was based upon facts available, in accordance with Article 28 of the basic Regulation.
- (640) The grants received by the BYD Group related to technology, innovation and development, the purchase of fixed assets, industrial support and promotion, and cash awards for labour, taxation, and various other purposes.

(a) Legal basis

(641) The grants to the BYD Group were awarded by national, provincial, city, or district government authorities and appeared to be specific to the group, or specific in terms of geographical location or type of industry. The level of legal detail for the particular law under which these benefits were granted, if there was any legal basis for them at all, was not disclosed. However, the Commission was given for all the grants a copy of a document issued by a government authority which accompanied the grant of funds (referred to as 'the notice').

(b) Findings

(642) Given the large amount of grants that the Commission found in the financial accounts of the BYD Group, only a summary of the key findings is presented in this Regulation. Evidence of the existence of numerous grants and the fact that they had been granted by various levels of the GOC were provided to the BYD Group in its specific disclosure.

- (643) With regard to the other two sampled exporting groups, the Commission found that they had only given the total amount of grants received in their questionnaire replies with a differentiation between grants related to income and grants related to assets and were not willing to provide a more detailed breakdown and the legal basis of the various grants received.
- (644) The Commission found that among the instruments through which the GOC steers the development of the BEV sector, there are direct state subsidies. These subsidies were confirmed in the publicly available annual reports of the sampled exporting producers and during the on-spot verifications and were received as other income or as deferred income in the exporting producers' financial accounts.

(c) Conclusion

- (645) These grants constituted subsidies within the meaning of Article 3(1)(a)(i) and Article 3(2) of the basic Regulation, as a transfer of funds from the GOC in the form of grants to the sampled groups of companies took place and a benefit was thereby conferred.
- (646) Most of these funds were booked as government subsidies in the accounts of the sampled exporting groups. The detailed information on these grants provided by BYD Group has been taken by the Commission as positive evidence of a subsidy that conferred a benefit.
- (647) The Commission assessed all the grants received by BYD Group and found that not all were specific to the production of BEVs. The grants related to technology, innovation and development, the purchase of fixed assets, and industrial support and promotion were considered to be specific within the meaning of Articles 4(2)(a) and 4(3) of the basic Regulation given that, from the documents provided by the BYD Group, they appear to be limited to certain companies, certain industries, such as the BEV industry, or specific projects in specific regions.
- (648) Furthermore, these grants did not meet the non-specificity requirements of Article 4(2)(b) of the basic Regulation, given that the eligibility conditions and the actual selection criteria for enterprises to be eligible are not transparent, not objective and do not apply automatically.
- (649) Since the other two sampled exporting groups did not provide any detailed information with regard to the grants they received, the Commission based its findings on Article 28 of the basic Regulation and concluded that all the grants received by these groups were specific and related to the production of the product concerned.

(d) Calculation of the subsidy amount

- (650) The benefit was calculated as the amount received in the IP, or allocated to the investigation period where the amount was depreciated over the useful life of the fixed asset to which the grant received before the investigation period was related.
- (651) The subsidy rates established with regard to all grants during the investigation period for the sampled exporting producers were as follows:

Grants	
Company name	Subsidy rate
BYD Group	0,61 %
Geely Group	2,31 %
SAIC Group	8,56 %

3.6.2. Fiscal Subsidy Policy for the Promotion and Application of New Energy Vehicles

- (652) The investigation established that the GOC, both at central and sub-central level transferred funds to the BEV producers in the form of cash disbursements per unit of BEVs sold in China, directly benefiting BEV producers. This constitutes a direct transfer of funds to the BEV producers based on their sales in China.

- (653) The scheme applies to New Energy Vehicles ('NEVs'), including BEVs, sold domestically. The amount of the cash disbursements is set at the level of the central government and varies depending on the period during which the sales took place and the type of NEVs (for instance battery electric vehicles or plug-in hybrids).
- (654) The programme is limited to the sales of NEV models listed in a catalogue published by the GOC. To receive disbursements, BEV producers are required to submit every year a comprehensive liquidation report along with detailed information about their sales from the previous year. This shall include sales invoices, technical specifications of the products, and vehicle registration details. Once submitted, the relevant authorities at various government levels verify the provided data. Subsequently, the funds are transferred to the producers.

(a) Legal basis

- (655) The legal basis for this program is the Notice on Financial Support Policies for the Promotion and Application of New Energy Vehicles from 2016 to 2020 ([2015] No.134), which was revised by the Notice of the Ministry of Finance on Adjusting Policy of Fiscal Subsidies for the Promotion and Application of New Energy Vehicles ([2016] No. 958), further amended by the Notice on Fiscal Subsidy Policies for Improving Promotion and Application of New Energy Vehicles ([2020] No. 86) and the Notice on the Fiscal Subsidy Policy for the Promotion and Application of New Energy Vehicles in 2022 ([2021] No. 466).

(b) Findings of the investigation

The GOC's intention to directly support the domestic BEV industry

- (656) Contrary to the claim made by the GOC and other parties that this subsidy was intended to benefit consumers, the investigation established that the programme was intended to increase the sales of domestic producers by means of disbursements from State resources. The program is designed to promote the development of the NEV industry and it is specifically addressed to NEV producers (as opposed to consumers).
- (657) The main purpose of this subsidy scheme was to promote the accelerated development of the new energy vehicle industry, including the BEV industry. Specifically the Notice on the financial support policy for the promotion and application of new energy vehicles from 2016 to 2020 reads: "In order to maintain policy continuity and promote the accelerated development of the new energy vehicle industry, the Ministry of Finance, the Ministry of Science and Technology, and The Ministry of Industry and Information Technology and the National Development and Reform Commission (hereinafter referred to as the four ministries and commissions) will continue to implement subsidy policies for the promotion and application of new energy vehicles from 2016 to 2020 in accordance with the requirements of the 'Guiding Opinions of the General Office of the State Council on Accelerating the Promotion and Application of New Energy Vehicles'" (Guobanfa [2014] No. 35). Later amendments and revisions contain similar language ⁽²¹¹⁾.
- (658) NEV producers rather than consumers, are at the heart of the Fiscal Subsidy Policy. NEV producers are the addressees of the program; they are the one who must meet the requirements to receive disbursements; they must provide the information related to their production and sales process. This includes the submission of previous year's fund calculation reports, along with details on product sales, operations, including sales invoices, product technical parameters, and vehicle registration information. Furthermore, they were encouraged to develop monitoring and control platforms to report this information.
- (659) NEV producers (along with local governments) were also the direct addressees of a punitive mechanism in case of fraud, and the legal framework provides that actions are to be taken directly against producing companies that obtain the subsidies through illegal means.

⁽²¹¹⁾ Notice of the Ministry of Finance on Adjusting Policy of Fiscal Subsidies for the Promotion and Application of New Energy Vehicles (Caijian [2016] No. 958), Notice on Fiscal Subsidy Policies for Improving Promotion and Application of New Energy Vehicles (Caijian [2020] No. 86) and the Notice on the Fiscal Subsidy Policy for the Promotion and Application of New Energy Vehicles in 2022 (Caijian [2021] No. 466).

- (660) Finally, the main reasons for the discontinuation of the programme, on 31 December 2022, were related to the development of the NEV industry in China. As acknowledged by the GOC ⁽²¹³⁾, it decided to end the programme when it considered that the Chinese NEV industry had reached an appropriate level of development and scale.
- (661) Furthermore, the fact that the programme was limited to domestically produced NEVs shows that the purpose of the programme was to develop the production rather than the consumption of BEVs. Indeed, the Commission established that no imported vehicle benefited from this scheme. The GOC was specifically requested to provide information on the extent to which imported BEVs benefited from the scheme over its duration. The GOC claimed that imported BEVs were eligible for this programme, however, the GOC acknowledged that this subsidy had never been granted to importing companies or foreign producers. In fact, the GOC was unable to show the existence of a procedure for foreign producers or importer to request and receive funds under the Fiscal Subsidy Policy. Additionally, according to available information ⁽²¹³⁾, NEVs could only be subsidized if the battery was made by a Chinese company. As a result, it was concluded that this programme has only benefited BEV producers in China and was only designed for them.

The duration of the programme, the role of local authorities and parallel programmes developed

- (662) As explained under recital (641) - (659), NEVs sold after 31 December 2022, are no longer eligible for the Fiscal Subsidy Policy. The investigation established, however, that BEV producers continued to benefit from this subsidy scheme during the investigation period and will continue to benefit from funds received under this scheme for an extended period of time after the investigation period.
- (663) For instance, the transfer of funds related to all eligible BEVs sold and registered in 2020 took place only at the end of 2023. The investigation also revealed that funds were transferred during the investigation period to sampled exporting producers for cars sold in 2018. Therefore, the Commission concluded that BEV producers will continue to benefit from direct transfer of cash under this scheme in the years following the investigation period.
- (664) Furthermore, the investigation revealed that local authorities, under the direct or indirect guidance of the GOC, have established a large number of similar programmes, some of which closely resemble the national scheme. These local initiatives share the common objective to incentivize the production of BEVs which will result in continued support for Chinese BEV manufacturers.

(c) Benefit

- (665) During the IP, BEV producers benefited from direct cash disbursements from the GOC based on their reported sales.
- (666) Sampled producers and the GOC claimed that the subsidy primarily benefits consumers, not producers, since, allegedly, producers would be advancing the subsidies to consumers on behalf of the government while selling the vehicles. Under this scheme, when BEV manufacturers sell a new energy vehicle product, the company establishes a price with the customer. The price paid by the customer is, allegedly, the result of discounting the subsidy amount from a theoretical base price established by the company. This discount should account for the subsidy amount. In this sense, the customer is supposed to be paying a discounted price, for which the company is later reimbursed for by the Government.
- (667) Despite the alleged intention to benefit consumers, the reality is that the GOC directly transferred funds in the form of direct cash to BEV producers based on their economic activity and reported past sales. This unequivocally represents a clear incentive for the production of BEVs and conferred a tangible benefit to the producers.

⁽²¹²⁾ According to Notice on the Fiscal Subsidy Policy for the Promotion and Application of New Energy Vehicles in 2022 (Cai Jian [2021] No. 466),

⁽²¹³⁾ Why a Chinese Company Dominates Electric Car Batteries, New York Times, December 22, 2021.
<https://www.nytimes.com/2021/12/22/business/china-catl-electric-car-batteries.html>.

- (668) Moreover, the investigation revealed that the presence or absence of the subsidy did not correlate with the final price charged to consumers. There was no noticeable impact of the subsidy on the price charged to consumers before or after its removal.
- (669) There is evidence that prices to consumers for representative models remained stable or even decreased across all three sampled companies following the formal end of the Fiscal Subsidy Policy programme in December 2022. If during the life of the scheme, the prices of the vehicles sold in 2022 had been reduced by the subsidy amount, the prices of those vehicles should have risen by the same amount in January 2023 once the vehicle was no longer eligible for the subsidy.
- (670) However, the opposite occurred. Prices for those models either remained the same or gradually decreased over the rest of the investigation period. Therefore, the subsidy in 2022 did not benefit consumers in terms of getting lower prices. Instead, producers set prices that allowed them to capture the full subsidy.
- (671) In addition, the investigation established that the GOC did not implement any measures to ensure that the benefits of the subsidy were passed on to customers and price setting was left to the discretion of the producers. Thus, by its design and operation, this scheme aimed at benefiting NEV's producers.
- (672) Due to the temporal discrepancy between the sale of BEVs and the disbursement of government funds, which producers are unable to predict, the uncertainty regarding disbursement timing can extend up to four years. As a result, the benefit to producers fully materializes when the disbursements are finally received.

(d) Specificity

- (673) The subsidy is specific as it targets only the NEV industry, including the BEV industry. Furthermore, among BEV producers, the programme only benefited BEV producers in China and was only designed for them.

(e) Conclusion

- (674) The Commission considered that the Fiscal Subsidy Policy described above is a subsidy within the meaning of Article 3(1)(a)(i) of the basic Regulation because there is a financial contribution in the form of a direct transfer of funds that confers a benefit to the company concerned.

(f) Calculation of the subsidy amount

- (675) The subsidy was granted based on the quantities of BEV unit sold in China. The amount of benefit in the investigation period has been calculated on the basis of the disbursements received for BEVs under this scheme by the sampled producers during the investigation period.
- (676) The subsidy rate established with regard to this scheme during the investigation period for the sampled exporting producers amounts to:

Company name	Subsidy rate
BYD Group	2,18 %
Geely Group	2,14 %
SAIC Group	2,28 %

3.7. Government provision of goods and services for less than adequate remuneration ('LTAR')

3.7.1. Government provision of land use rights for less than adequate remuneration

- (677) All land in the PRC is owned either by the State or by a collective, constituted of either villages or townships, before the land's legal or equitable title may be patented or granted to corporate or individual owners. All parcels of land in urbanized areas are owned by the State and all parcels of land in rural areas are owned by the villages or townships.

(678) Pursuant to the PRC Constitution and the Land Law, companies and individuals may however purchase 'land use rights' ('LUR'). For industrial land, the leasehold is normally 50 years, renewable for a further 50 years.

(a) Legal basis/Regulatory Framework

(679) The land-use right provision in China falls under Land Administration Law of the People's Republic of China ⁽²¹⁴⁾. In addition, also the following documents are part of the legal basis:

- (1) Property Law of the People's Republic of China (Order of the President of the People's Republic of China No 62) ⁽²¹⁵⁾;
- (2) Land Administration Law of the People's Republic of China (Order of the President of the People's Republic of China No 28) ⁽²¹⁶⁾;
- (3) Law of the People's Republic of China on Urban Real Estate Administration (Order of the President of the People's Republic of China No 29) ⁽²¹⁷⁾;
- (4) Interim Regulations of the People's Republic of China Concerning the Assignment and Transfer of the Right to the Use of the State-owned Land in the Urban Areas (Decree No 55 of the State Council of the People's Republic of China) ⁽²¹⁸⁾;
- (5) Regulation on the Implementation of the Land Administration Law of the People's Republic of China (Order of the State Council of the People's Republic of China [2014] No 653) ⁽²¹⁹⁾;
- (6) Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation (Announcement No 39 of the CSRC) ⁽²²⁰⁾; and
- (7) Notice of the State Council on the Relevant Issues Concerning the Strengthening of Land Control (Guo Fa (2006) No 31) ⁽²²¹⁾.

(b) Findings of the investigation

(680) According to Article 10 of the Provision on Assignment of State-owned Construction Land Use Right through Bid Invitation, Auction and Quotation, local authorities set land prices according to the urban land evaluation system, which is updated every three years, and the government's industrial policy.

(681) In previous investigations ⁽²²²⁾, the Commission found that prices paid for LURs in the PRC were not representative of a market price determined by free market supply and demand, since the auctioning system was found to be unclear, non-transparent and not functioning in practice, and prices were found to be arbitrarily set by the authorities. As mentioned in the previous recital, the authorities set the prices according to the urban land evaluation system, which instructs them among other criteria to consider also industrial policy when setting the price of industrial land.

(682) The current investigation did not show any noticeable changes in this respect. For instance, the Commission found that most of the sampled groups of companies obtained their LUR for the exact price as offered in a bidding procedure by the local authorities.

⁽²¹⁴⁾ See Land Administration Law of the PRC of 25 June 1986, as amended, available at: <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC003560..>

⁽²¹⁵⁾ See Property Law of the PRC of 16 March 2007, available at: http://www.npc.gov.cn/zgrdw/englishnpc/Law/2009-02/20/content_1471118.htm.

⁽²¹⁶⁾ See Regulation on the Implementation of the Land Administration Law of the PRC of 27 December 1998, as amended, available at: <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC170451..>

⁽²¹⁷⁾ See <https://law.pkulaw.com/chinalaw/d8db5e659bc282b9bdfb.html>.

⁽²¹⁸⁾ See <https://law.pkulaw.com/chinalaw/66cde758ad66f43bbdfb.html>.

⁽²¹⁹⁾ See <https://law.pkulaw.com/chinalaw/6ef282863f024c04bdfb.html>.

⁽²²⁰⁾ See <https://law.pkulaw.com/chinalaw/58891db210496a5fbdfb.html?keyword=%E5%9B%BD%E6%9C%89%E5%BB%BA%E8%AE%BE%E7%94%A8%E5%9C%B0%E4%BD%BF%E7%94%A8%E6%9D%83>.

⁽²²¹⁾ See https://www.gov.cn/zwqk/2006-09/05/content_378186.htm.

⁽²²²⁾ See HRF case recitals (295) to (299), Tyres case recitals (488) to (490), GFF case recitals (500) to (502), OFC case recitals (541) to (543), ACF case recitals (540) to (548).

- (683) The above evidence contradicts the claims of the GOC that the prices paid for LUR in the PRC are representative of a market price, which is determined by free market supply and demand.

(c) Conclusion

- (684) The findings of this investigation show that the situation concerning acquisition of LUR in the PRC is non-transparent and the prices were arbitrarily set by the authorities.
- (685) Therefore, the provision of land-use rights by the GOC should be considered a subsidy within the meaning of Article 3(1)(a)(iii) and Article 3(2) of the basic Regulation in the form of provision of goods, which confers a benefit upon the recipient companies. As explained in recitals (676) to (679) above, there is no functioning market for land in the PRC and the use of an external benchmark (see recital (688)) demonstrates that the amount paid for land-use rights by the sampled exporting producers is well below the normal market rate.
- (686) In the context of preferential access to industrial land for companies belonging to certain industries, the Commission noted that the price set by local authorities has to take into account the government's industrial policy, as mentioned above in recital (680). Within this industrial policy, the BEV industry is listed as an encouraged industry. In addition, according to Decision No 40 of the State Council, public authorities shall take into account 'The Guiding Catalogue of the Industrial Restructuring' and the industrial policies when providing land. Article XVIII of Decision No 40 makes clear that industries that are 'restricted' will not have access to land use rights. It follows that the subsidy is specific under Article 4(2)(a) and 4(2)(c) of the basic Regulation because the preferential provision of land is limited to companies belonging to certain industries, in this case the BEV industry, and government practices in this area are unclear and non-transparent.

(d) Calculation of the subsidy amount

- (687) As in previous investigations ⁽²²³⁾ and in accordance with Article 6(d)(ii) of the basic Regulation, land prices from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu ('Chinese Taipei') were used as an external benchmark ⁽²²⁴⁾. The benefit conferred on the recipients is calculated by taking into consideration the difference between the amount actually paid by each of the sampled exporting producers (i.e., the actual price paid as stated in the contract and, when applicable, the price stated in the contract reduced by the amount of local government refunds/grants) for land use rights and the amount that should normally have been paid on the basis of the Chinese Taipei benchmark.
- (688) The Commission considers Chinese Taipei as a suitable external benchmark for the following reasons:
- the comparable level of economic development, GDP and economic structure in Chinese Taipei and a majority of the provinces and cities in the PRC where the sampled exporting producers are based;
 - the physical proximity of the PRC and Chinese Taipei;
 - the high degree of industrial infrastructure in both Chinese Taipei and many provinces of the PRC;
 - the strong economic ties and cross border trade between Chinese Taipei and the PRC;
 - the high density of population in many of the provinces of the PRC and in Chinese Taipei;
 - the similarity between the type of land and transactions used for constructing the relevant benchmark in Chinese Taipei with those in the PRC; and
 - the common demographic, linguistic and cultural characteristics between Chinese Taipei and the PRC.

⁽²²³⁾ See Tyres case, GFF case, OFC case, and ACF case.

⁽²²⁴⁾ Upheld by the General Court in Case T-444/11 Gold East Paper and Gold Huacheng Paper versus Council, Judgment of the General Court of 11 September 2014 ECLI:EU:T:2014:773.

(689) Following the methodology applied in previous investigations ⁽²²⁵⁾, the Commission used the average land price per square meter established in Chinese Taipei corrected for inflation and GDP evolution as from the dates of the respective LUR contracts. The information concerning industrial land prices as of 2013 was retrieved from the website of the Industrial Bureau of the Ministry of Economic Affairs of Taiwan ⁽²²⁶⁾. For the previous years, the prices were corrected using the inflation rates and evolution of GDP per capita at current prices in USD for Chinese Taipei as published by the IMF for 2013.

(690) The subsidy rate established with regard to this subsidy during the investigation period for the sampled exporting producers amounts to:

Company name	Subsidy rate
BYD Group	1,20 %
Geely Group	0,84 %
SAIC Group	0,67 %

3.7.2. *Government provision of batteries and key inputs for the production of batteries (namely lithium iron phosphate) for less than adequate remuneration*

(a) Introduction

(691) In the Memorandum on sufficiency of evidence, the Commission found that a large number of specific plans appear to exist by which the GOC or local governments provide support specifically to the development of BEV's raw and input materials, as well as for batteries. The evidence contained in the Memorandum on sufficiency of evidence showed that the GOC created a framework whereby all levels of the BEV industry chain are supported, from the mining of key raw materials for the production of inputs to midstream inputs and the final product, with a view to quickly and strongly develop the BEV industry. This was confirmed by the analysis carried out by the Commission showing that the GOC envisions the upstream raw material suppliers and battery suppliers as part of a wider framework for the development and promotion of the BEV industry as a whole.

(692) Lithium, cobalt, nickel, copper (used in the form of copper foil), aluminium (also used in the form of aluminium foil and as aluminium strip for the casing of the cells), and graphite, are the main raw materials used in lithium iron phosphate (herein referred as 'lithium' or 'LFP') and nickel-manganese-cobalt oxides ('NMC') batteries. Both types of batteries fall under the umbrella of the so-called 'lithium-ion batteries'. The Commission found that the BYD Group was the only vertically integrated sampled BEV exporting producer producing LFP batteries for BEVs. The Commission collected information from the BYD Group on the raw materials used in the production of cells for the battery pack (i.e. aluminium strip, aluminium foil, copper foil, graphite and LFP). Given the importance of LFP in the production process of batteries (amounting to around [25% - 35%] of the battery's costs of production), the Commission focused its investigation at provisional stage on the provision of LFP for less than adequate remuneration.

(693) In the course of the investigation, the Commission found in particular that the only vertically integrated group was sourcing LFP from related and unrelated suppliers for the production of BEV batteries. LFP is the type of lithium used in LFP batteries and is obtained by mixing lithium carbonate with iron phosphate. LFP is the main component of the battery cells, representing overall around [25 – 35] % of the battery pack cost.

(694) The other two groups (SAIC and Geely) sourced their batteries from unrelated and related suppliers, as well as from joint ventures with Contemporary Amperex Technology Company Limited ('CATL'). The battery pack is the main cost-driver of BEVs, representing overall [40 – 50] % of the cost of production.

⁽²²⁵⁾ See GFF, OCS, Solar panels, and OFC cases.

⁽²²⁶⁾ <https://lvr.land.moi.gov.tw>.

- (695) At this stage of the proceeding, the Commission thus focused on the main cost-drivers in the production of BEVs, namely, (1) the provision of batteries as regards the non-integrated BEV exporting producer, and (2) the provision of LFP as regards the integrated BEV exporting producer, as the main raw material used in the production of batteries.

(b) Non-cooperation and use of facts available

- (696) As pointed out in Section 3.3.1.1, although requested to do so, the GOC did not forward the specific questionnaire intended for suppliers of raw materials and batteries of BEVs to known suppliers in China. In addition, the GOC failed to provide crucial information on the characteristics of the domestic market of input materials for BEVs in China and its economic operators.
- (697) Since the Commission received no information from the GOC on the legislative framework in place, on the domestic market structure, on price-setting mechanisms and prices and on the shareholding of companies, the Commission considered that it had not received crucial information relevant to the investigation.
- (698) In the absence of any information provided by the GOC concerning the number and ownership of domestic suppliers of raw materials and batteries for BEVs, the Commission had to rely on facts available within the meaning of Article 28(1) of the basic Regulation. In this regard the Commission analysed specific plans on the Chinese new energy vehicles ('NEVs') battery industry, of which BEVs are part, and the situation of the suppliers of raw materials for the vertically integrated exporting producer and related suppliers of batteries of the two non-vertically integrated sampled exporting producers. Where necessary because of the absence of information on file, the Commission had to draw inferences from the facts and information available on file.
- (699) As pointed out in Section 3.3.2, the SAIC Group failed to provide information related to cost of production, bills of material, product specifications including the chemical composition of the raw material purchased from suppliers and supporting purchase transaction-by-transaction listing for suppliers although requested to do so. In this context, the Commission considered that it was missing crucial information necessary to arrive at a reasonably accurate finding and that it had to rely on facts available in accordance with Article 28(1) of the basic Regulation.
- (700) Consequently, as far as the non-integrated BEV exporting producers are concerned, the Commission could only rely on the information collected from the Geely Group. Considering that both non-integrated BEV exporting producers source their batteries from similar battery suppliers and that the Commission could base its findings as regards the provision of batteries to the Geely Group on data directly provided by its suppliers, the Commission considers that the information concerning the Geely Group amounts to a reasonable replacement of the necessary information in order to make findings for the SAIC Group. However, the Commission still relied on the information collected from the SAIC group that could be verified; notably the names of the battery suppliers to the SAIC group.

3.7.2.1. Government provision of batteries for less than adequate remuneration

- (701) In order to establish the existence of a countervailable subsidy, three elements must be present under Articles 3 and 4 of the basic Regulation: (1) a financial contribution; (2) a benefit, and (3) specificity.

3.7.2.1.1. *Financial contribution*

(a) Battery suppliers acting as 'public bodies'

- (702) The Commission first analysed whether the battery suppliers could be found to amount to public bodies so that the provision of batteries for less than adequate remuneration could be attributed to the GOC within the meaning of Article 3(1)(a) of the basic Regulation. As explained in detail in Section 3.5.1.1, recitals (409) to (418), the legal standard for the existence of a public body must be interpreted in accordance with the WTO jurisprudence detailed therein. On the basis of the relevant case law referred to in recitals (409) to (418), whether the inputs producers in China engaged in supplying inputs are 'public bodies' (i.e. entities which possess, exercise or vested

with authority to exercise governmental functions) should be examined having due regard (i) to legal and economic environment prevailing in the country in which the investigated entities operate, (ii) the relationship between the entities at hand and the government, and (iii) the core characteristics and functions of the relevant entities.

- (703) Furthermore, as pointed out in recital (416), the Appellate Body emphasised the relevance of the non-cooperation by the government in question in order to make findings that some entities are public bodies.⁽²²⁷⁾ Indeed, in the context where an investigating authority has to examine the elements about the relationship between the government and certain entities exercising governmental functions, the government is in possession of key information necessary to make a determination about public bodies. If the government withholds such information, the investigating authority may draw inferences from the lack of co-operation, including that the requested information would, for instance confirm key State presence in those entities which implies the exercise of its meaningful control over those entities. Thus, evidence of formal indicia of State ownership, direct control by the State, and government intervention in the market to achieve certain policy objectives may show, also in a context where there is no cooperation by the government in question, that the input producers are vested with government authority and exercise governmental functions.
- (704) Finally, in order to be considered public bodies, the suppliers at issue would not necessarily have to be controlled by the GOC in every sale of input to downstream producers. The central question is whether the entities themselves possess the core characteristics and functions that would qualify them as public bodies.

(1) *Legal and economic environment prevailing in the PRC*

- (705) As explained in detail in recitals (197) to (203), the legal and economic environment in the PRC in which BEV input suppliers operate is characterised by strong presence and extensive control by the government, where the State exerts a decisive influence on the allocation of resources and on their prices. Thus, in the context of analysing the legal and economic environment the GOC created for the supply of inputs for BEVs for less than adequate remuneration, it is therefore worth recalling at the very outset the level of intervention by the GOC and CCP over the Chinese economy (see, in particular, recital (201)).
- (706) In line with the socialist market economy doctrine, the GOC lays claim on shaping the economic structure of the country, not least in view of Article 11 of the Constitution, according to which the government explicitly exercises supervision and control also over the non-public sectors of the economy (see in particular recital (199)), including therefore even privately-owned BEV input suppliers. Based on this constitutional anchoring and with institutional and organisational structures in place, the GOC is in position to pursue its policy objectives, notably through the elaborate planning system (see also recital (203)) and the adoption of specific measures, including of support, to key operators in encouraged sectors.
- (707) As will be detailed below, the development of the upstream inputs for the production of batteries and the batteries are interlinked, as the development of both upstream and midstream inputs serve in turn the development of the BEV sector. The GOC has not only put forward policies and measures for the development of the BEV sector and the industries around it but created an all-encompassing framework. This framework shows how the GOC intervenes in the market so that input suppliers are not free market operators but entities which performed the assigned governmental functions, namely, to develop the BEV industry. Therefore, this section will analyse both policy objectives pertaining to upstream materials (i.e. key inputs in the production of batteries) and midstream inputs such as batteries, as well as specific measures adopted by the GOC pursuing those objectives.

⁽²²⁷⁾ Appellate Body Report, *US – Anti-dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, paragraph 349.

(2) *GOC's policy objectives to develop the BEV industry*

- (708) Section 3.1 has detailed the relevant background and context explaining the importance the GOC attaches to the development of the BEV industry, including via the development of the industries surrounding it as instrumental for the success of BEV producers. The overarching policy objective to encourage the BEV sector including via the supply of inputs is shown by a large number of regulations and other policy documents and plans issued by different governmental bodies to supervise each aspect of these sectors concerning batteries and/or their inputs.
- (709) The 2017 Action Plan for Promoting the Development of the Automotive Power Battery Industry ('2017 Battery Action Plan'), ⁽²²⁸⁾ covered *inter alia* at recitals (230) to (232), shows how the policy guidance of the Government encompasses the whole value chain of NEVs.
- (710) This plan was adopted "in order to implement the "Notice of the State Council on Issuing the Development Plan for the Energy Saving and New Energy Vehicle Industry (2012-2020)" (Guofa [2012] No. 22) and the "Guiding Opinions of the General Office of the State Council on Accelerating the Promotion and Application of New Energy Vehicles" (Guobanfa [2014] No. 35) (...) and to promote the healthy and sustainable development of the new energy vehicle industry" ⁽²²⁹⁾. Furthermore, the 2017 Battery Action Plan foresees a development of the battery industry with a goal to serve in turn the development of the NEV industry, of which the BEV industry is part of ("power batteries are the heart of electric vehicles and the key to the development of the new energy vehicle industry"). These links between the battery plan and the main plans supporting BEV production show that the GOC encouraged the development of the battery industry as instrumental to the development of the BEV sector. In particular, it shows that the development of the battery industry is directed to serve the purposes of the development of the BEV industry by reducing costs in order to supply cheaper batteries. Finally, it shows the preference accorded by the GOC to domestic battery producers, with a view to strengthening them and encourage their market penetration abroad.
- (711) In addition to the 2017 Battery Action Plan mentioned above, the legal basis of the most relevant rules and regulations are the following:
- 13th Five Year Plan for the Development of Strategic and Emerging Industries ⁽²³⁰⁾;
 - 14th Five Year Plan for Raw Material Industry Development ('14th Raw Materials FYP') ⁽²³¹⁾;
 - Catalogue of Encouraged Industries in the Western Region (Order No. 40 [2021]) ('Encouraged Industries Catalogue') ⁽²³²⁾;
 - Catalogue for Guiding Industrial Restructuring (Order No. 49 [2019]) ('the Industrial Catalogue') ⁽²³³⁾;
 - Energy-saving and NEV Industry Development Plan (2012-2020) ('NEV Plan 2012-2020') ⁽²³⁴⁾;
 - Guiding Opinions on Expanding Investment in Strategic Emerging Industries and Cultivating Strengthened New Growth Points and Growth Poles (Order No. 1409 [2020]) ('Guiding Opinions on Investment') ⁽²³⁵⁾;

⁽²²⁸⁾ See at: https://www.gov.cn/xinwen/2017-03/02/content_5172254.htm#2.

⁽²²⁹⁾ See at: https://www.gov.cn/xinwen/2017-03/02/content_5172254.htm#1

⁽²³⁰⁾ Available at : https://www.gov.cn/zhengce/content/2016-12/19/content_5150090.htm. An English translation is available at <https://cset.georgetown.edu/publication/national-13th-five-year-plan-for-the-development-of-strategic-emerging-industries/>

⁽²³¹⁾ Full text of the plan available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_2960538d19e34c66a5eb8d01b74cbb20.html.

⁽²³²⁾ Available at https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202101/t20210126_1265895.html

⁽²³³⁾ Available at https://www.gov.cn/zhengce/2021-12/27/content_5713262.htm

⁽²³⁴⁾ Available at https://www.gov.cn/gongbao/content/2012/content_2182749.htm

⁽²³⁵⁾ Available at https://www.ndrc.gov.cn/xxgk/zcfb/tz/202009/t20200925_1239582.html. An English translation is available at <https://cset.georgetown.edu/publication/new-chinese-ambitions-for-strategic-emerging-industries-translated/>

- Notice by the Ministry of Industry and Information Technology and the State Administration for Market Regulation on the coordinated and stable development of the lithium-ion battery industry chain and supply chain (*'Notice on the battery industry'*) ⁽²³⁶⁾;
- New Energy Vehicle Industry Development Plan (2021-2035) (*'NEV Plan 2021-2035'*) ⁽²³⁷⁾;
- Made in China 2025 (*'MIC 2025'*) ⁽²³⁸⁾;
- Mineral Resources Law (*'MRL'*) ⁽²³⁹⁾;
- Standardized conditions of the Lithium-ion battery industry – 2021 version (*'Standardized conditions'*) ⁽²⁴⁰⁾.

(712) The instruction of the aforementioned plans are reflected and implemented in the corresponding provincial, regional, municipal and local plans. Examples of this include, but are not limited to:

- Action Plan for Promoting High-Quality Development of New Energy Batteries and Materials Industry in Guizhou Province in 2022 (*'Guizhou Action Plan'*) ⁽²⁴¹⁾
- Fujian province's "Guiding Opinions on Accelerating the High-Quality Development of the Lithium Battery, New Energy and New Materials Industry" (*'Fujian Guiding Opinions'*) ⁽²⁴²⁾;
- Ningde City's Special Plan for the High-Quality Development of the Manufacturing Industry during the 14th Five-Year Plan (*'Ningde Manufacturing Plan'*) ⁽²⁴³⁾;
- Shandong Zhaozuang Municipality development plan 2021- - 2025 on developing the lithium battery industry (*'Shandong development plan'*) ⁽²⁴⁴⁾;
- Shenzhen province's "Opinions on supporting the high-quality development of the new energy automobile industry chain" (*'Shenzhen plan'*) ⁽²⁴⁵⁾;
- Sichuan Suining 14th Five-Year Plan on lithium battery development (*'Suining Plan'*) ⁽²⁴⁶⁾;
- Yichun Mineral Resources Plan (2021-2025) ⁽²⁴⁷⁾;
- Notice on several policy measures to improve and strengthen the lithium battery new energy industry in our province (Notice No. 21 [2022]) (*'Measures on li-ion battery'*) ⁽²⁴⁸⁾;

⁽²³⁶⁾ Available at https://www.gov.cn/zhengce/zhengceku/2022-11/20/content_5727976.htm

⁽²³⁷⁾ Chinese version available at: http://www.gov.cn/zhengce/content/2020-11/02/content_5556716.htm and https://www.ndrc.gov.cn/fggz/fzzlgh/gjjzxgh/202111/t20211101_1302487.html?code=&state=123, English overview available at: <https://transition-china.org/wp-content/uploads/2022/01/New-Energy-Vehicle-Industrial-Development-Plan.pdf>.

⁽²³⁸⁾ See at: https://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm; English translation available at: https://cset.georgetown.edu/wp-content/uploads/t0432_made_in_china_2025_EN.pdf

⁽²³⁹⁾ Available at https://www.mee.gov.cn/ywggz/fbgz/fl/201904/t20190429_701421.shtml. An English version is available on the website of the National People's Congress (NPC): http://www.npc.gov.cn/zgrdw/englishnpc/Special/CombatingClimateChange/2009-08/28/content_1516264.htm

⁽²⁴⁰⁾ Available at https://www.miit.gov.cn/zwgk/zcwj/wjfb/gg/art/2021/art_8c1b0573f1234c138faa03d0c38c8eda.html. In particular, see attachment 1.

⁽²⁴¹⁾ Available at <http://gzvcpce.org/index.php?id=483>

⁽²⁴²⁾ Available at <https://h5.drcnet.com.cn/docview.aspx?version=edu&docid=6705522&leafid=47&chnid=1022>

⁽²⁴³⁾ Available at <https://www.ningde.gov.cn/zfxxgkzl/zfxxgkml/fggzghf/xzgfxwj/202111/P020211122362938546996.pdf>

⁽²⁴⁴⁾ Available at <http://www.zzctp.gov.cn/zwgk/xxgkml/qzbm/jjzj/202206/P020220608303013167796.pdf>

⁽²⁴⁵⁾ Available at <https://img3.gelonghui.com/pdf/b614c-1c9440f1-f551-4fe9-8501-2578ae44e544.pdf>

⁽²⁴⁶⁾ Available at <https://www.shehong.gov.cn/gongkai/show/bb8dce09764e4cb2aa9d9374f6e31743.html>

⁽²⁴⁷⁾ Available at <http://www.yichun.gov.cn/yysrmzf/kjgh/202212/c173570ca3d7465aa8b27f999b0d3d00/files/%E5%AE%9C%E6%98%A5%E5%B8%82%E7%9F%BF%E4%BA%A7%E8%B5%84%E6%BA%90%E6%80%BB%E4%BD%93%E8%A7%84%E5%88%92%E5%BC%882021-2025%E5%B9%B4%E5%BC%89-20221215142744694.pdf>

⁽²⁴⁸⁾ Available at <http://www.yichun.gov.cn/yysrmzf/jxszc/202210/12e1a57f3eb24bae9a873a819b6baca2.shtml>

— Yichun municipality's "Several Opinions on Strengthening the Management of Lithium Mineral Resources" (Yichun Lithium Mineral Resources) ⁽²⁴⁹⁾.

- (713) All the plans referred to above are interlinked with the more general BEV plans covered in section 3.1. In particular, the GOC built a support framework encompassing all levels of the BEV industry chain, from the mining and provision of raw materials for the production of inputs, to inputs such as batteries, e-motor, etc., to the final product.
- (714) The Mineral Resources Law (MRL) ⁽²⁵⁰⁾ is the national law regulating the extraction of mineral resources and the registration of mining rights. The MRL was initially promulgated by the Standing Committee of the National People's Congress on March 19, 1986 and amended in 1996 and 2009. Article 3 of the MRL states that "[m]ineral resources belong to the State", and Article 4 explains that "[t]he State-owned mining enterprises are the main body in mining mineral resources. The State guarantees the consolidation and expansion of State-owned mining enterprises". The "Rules for Implementation of the Mineral Resources Law" ⁽²⁵¹⁾ (Implementation Law) reaffirms state ownership over mineral resources, detailing what is covered under the Law ⁽²⁵²⁾ and further defines in Article 3 that "the State ownership over surface and subsurface mineral resources shall not be changed [...]. The State Council represents the State to execute the ownership over mineral resources. The State Council authorizes the competent department of the State Council for geology and minerals to impose a unified control over the allocation of mineral resources in the whole country". Article 24 of the Implementation Law states that "the distribution, development and utilization of mineral resources across the country should take into account the current and long-term interests of the central and local governments, and implement unified planning, effective protection, rational exploitation, and comprehensive utilization". In other words, the GOC ensures that these SOEs carry out the policy objectives set by the GOC and thus act within these legal constraints. Article 25 defines that the State Council and the relevant competent departments shall draft the national plan of mineral resources, which shall "make an unified arrangement on the allocation of national mineral resources, and shall define reasonably the limits of consideration and approval and exploitation of mineral resources between the Central Government and the people's governments of provinces, autonomous regions and municipalities directly under the Central Government". The government thus has full control over the allocation of resources, can define who obtains the mining rights and the limits of what is mined, based on the principles of "unified planning, rational geographical distribution, multi-purpose exploration, rational mining and multi-purpose utilization" (Article 7 of the MRL). As a result of these binding rules, the covered SOEs exercise government functions.
- (715) In December 2021, the Ministry of Industry and Information Technology (MIIT), Ministry of Science and Technology and Ministry of Natural Resources published the 14th Raw Materials FYP ⁽²⁵³⁾. The plan covers several industrial sectors, and supports the establishment of lithium, nickel and cobalt enterprises and industrial clusters, and to "[b]uild a mineral resource reserve system in which the state and enterprises jointly participate and combine product reserves and resource area reserves. Improve the ore trading market system and form an open, transparent, fair and reasonable pricing mechanism." ⁽²⁵⁴⁾
- (716) While the MRL and the 14th Raw Materials FYP apply at the national level and are quite affirmative on the fact that mineral resources belong to the State, the New Energy Vehicle Industry Development Plan (2021-2035), provides evidence of support throughout the entire supply chain specifically to encourage the NEVs sector, which includes both BEVs and hybrids. The Plan mandates to "[p]romote the development of the entire value chain of power batteries [and] encourage enterprises to improve their ability to secure key resources such as lithium, nickel, cobalt, and platinum" ⁽²⁵⁵⁾.

⁽²⁴⁹⁾ Available at <https://www.yichun.gov.cn/yycrmzf/yff8e/200911/b1fc3970e57b494bb9c413632d1b47f9.shtml>

⁽²⁵⁰⁾ Available at https://www.mee.gov.cn/ywggz/fgbz/fl/201904/t20190429_701421.shtml. An English version is available on the website of the National People's Congress (NPC): http://www.npc.gov.cn/zgrdw/englishnpc/Special/CombatingClimateChange/2009-08/28/content_1516264.htm

⁽²⁵¹⁾ Available at https://www.gd.gov.cn/zwgk/gongbao/1994/10/content/post_3357141.html. An English translation is available on the website of the FAO: <https://faolex.fao.org/docs/pdf/chn128687.pdf>

⁽²⁵²⁾ For example: lithium, copper, bauxite, nickel, graphite, phosphorous, mineral salt, etc.

⁽²⁵³⁾ Full text of the plan available at: https://www.miit.gov.cn/zwgk/zcwj/wjfb/tz/art/2021/art_2960538d19e34c66a5eb8d01b74cbb20.html.

⁽²⁵⁴⁾ Available at https://www.gov.cn/zhengce/zhengceku/2021-12/29/content_5665166.htm

⁽²⁵⁵⁾ Available at https://www.gov.cn/zhengce/content/2020-11/02/content_5556716.htm

- (717) The 13th Five Year Plan on the Development of Strategic and Emerging Industries set out the following objectives: *“Facing the development needs of (...) new energy vehicles and other industries, [China shall] expand high-strength light alloys, high-performance fibers, special alloys, advanced inorganic non-metallic materials, high-quality special steel, new display materials, power battery materials, (...) [and] increase the added value of new materials, build new material brands, and enhance international competitiveness”*. This Plan also includes key task 21 *“Realize the large-scale application of new energy vehicles and organize the implementation of new energy vehicle power battery improvement projects”* which only confirms the battery sector development is instrumental to the ultimate goal of NEV (including BEVs) development.
- (718) The Catalogue for Guiding Industrial Restructuring (Order No. 49 [2019])⁽²⁵⁶⁾ issued by the National Development and Reform Commission (NDRC) and into effect since 1 January 2020 consists of three categories – “encouraged”, “restricted”, and “obsolete” and demonstrates how the Government explicitly encourages and supports the development of certain industries and specific technologies, while discouraging, restricting and even prohibiting others. All main elements of the BEV supply chain, such as positive electrode materials such as LFP, lithium-ion batteries, electrolytes, lithium exploration projects⁽²⁵⁷⁾, high-performance copper foil materials, graphite, aluminium, and steel for the industry new energy are indicated as encouraged industries. This further restates that government does not consider the BEV industry as a stand-alone industry but envisions the creation of an all-encompassing framework for the development of this industry, and for the creation of favorable market conditions that allow the BEV producers to gain a competitive edge over foreign players. The 2019 Catalogue for Guiding Industrial Restructuring was replaced by the 2024 edition, effective on 1 February 2024⁽²⁵⁸⁾. The latest catalogue is characterized by an expanded focus on new high-tech and green tech sectors falling into the category as “encouraged industries”, such as smart manufacturing, machine automation, green hydrogen carbon capture, utilization, and storage, and next-generation solar cells.
- (719) The NEV Plan 2021-2035 confirms the policy guidance on the whole supply chain from key raw materials such as lithium, nickel and cobalt to the improvement of the process and production efficiencies so as to *“implement battery technology breakthrough actions; carry out research on key core technologies such as positive and negative electrode materials, electrolytes, separators, and membrane electrodes, strengthen technical research on the shortcomings of high-performance, lightweight, high-safety, low-cost, and long-life power batteries”*⁽²⁵⁹⁾. Batteries for NEVs are covered also in Section 2 of Chapter IV, labelled *“Promote the innovative application of key systems”*, which strives to promote the development of the whole value chain of batteries. This includes, notably, encouraging companies to secure access to key resources such as lithium, nickel, cobalt and platinum. The NEV Plan 2021-2035 and the 2017 Battery Action plan, which provide also for tax exemptions and incentives and investment support from the government, constitute the main governmental plans covering the battery industry.
- (720) The Made in China 2025 is another example of the all-encompassing governmental support of the industry. Announced in 2015, this is a national strategy which focuses on ten core sectors that receive special support and attention in the period up to 2025. The support is granted through loans from State-owned banks on a non-commercial basis and as well as exemption from compliance with certain standards and regulations, among other privileges. The Chinese battery industry is included in the sectors to be supported as an instrumental part of the NEV sector: *Energy saving and new energy vehicles: Continue to support the development of electric vehicles and fuel cell vehicles, (...) and improve the engineering and industry of core technologies such as power batteries, drive motors, high-efficiency internal combustion engines, advanced transmissions, lightweight materials, and intelligent control capabilities, so as to form a complete industrial system and innovation system from key components to complete vehicles* [emphasis added], *and promote independent brands of energy-saving and new energy vehicles to be in line with international advanced levels*⁽²⁶⁰⁾.

⁽²⁵⁶⁾ Available at https://www.gov.cn/zhengce/2021-12/27/content_5713262.htm

⁽²⁵⁷⁾ Under Section 11 (Petrochemical Industry), point 2: *“Exploration, development, and comprehensive utilization of scarce mineral resources such as sulfur, potassium, boron, lithium and bromine; development and application of technology for comprehensive utilization of phosphate ore dressing tailings; selection and utilization of low- and medium-grade phosphorite and fluorite ore; and comprehensive utilization of resources associated with phosphorite and fluorite ore”*.

⁽²⁵⁸⁾ See https://www.ndrc.gov.cn/xxgk/zcfb/fzggwl/202312/t20231229_1362999.html

⁽²⁵⁹⁾ See footnote 237.

⁽²⁶⁰⁾ See Point III.6.6 of the State Council Notice on MIC 2025 available at: https://www.gov.cn/zhengce/content/2015-05/19/content_9784.htm

- (721) The “Guiding Opinions on Expanding Investment in Strategic Emerging Industries and Cultivating Strengthened New Growth Points and Growth Poles” (Order No. 1409 [2020]) ⁽²⁶¹⁾ by the NDRC mandate that in key industrial areas such as the new materials ⁽²⁶²⁾ and the NEVs industry, the government should create industrial clusters and “promote the formation of new regional growth poles”, optimize the business environment and increase fiscal and investment support. The Guiding Opinions also promote national strategic emerging industries through the “use of fiscal, land, financial, S&T, talent, intellectual property, etc. policies”. ⁽²⁶³⁾ Section IV of the Guiding Opinions gives clearer instructions on funding and investment support, such as: government funds, venture capital, and government-funded industry investment funds. The Guiding Opinions encourage financial institutions to increase support for core enterprises in the production chain and optimize financial services for upstream and downstream enterprises in the production chain, and also encourage banks to establish financial service centres or business units for emerging industries, including NEVs. The Guiding Opinions explicitly support cooperation between government, banks and enterprises, and support the increase in the issuance of bonds by enterprises in strategic emerging industries, including NEVs. At the financial level, the designated responsible departments are the PBOC, the China Banking and Insurance Regulatory Commission, China Securities Regulatory Commission, and the NDRC ⁽²⁶⁴⁾.
- (722) Furthermore, both battery producers and suppliers of raw materials used in the production of batteries are also included in the Encouraged Industries Catalogue and can benefit from a reduced tax rate of 15 %.
- (723) While the objectives and the measures laid out in the plans and policy documents at central level provide guidance concerning the development of the batteries and the upstream inputs connected to the new energy vehicles sector for the benefit of the BEV industry as a whole, the provincial and local plans are also targeted to address the specifics of their territory and the companies established there. In particular, they provide detailed goals and targets on how to build local production and control supply chains for the domestic industry, encompassing every aspect of the industry’s development and giving clear instructions on the type of incentives offered to companies along the supply chain.
- (724) Several local Mineral Resources Plans exist, which constitute the guidelines for provinces and cities for the exploration and mining of mineral resources and set the target for 2025 for the exploration and development of mineral resources. One such example of that is the Yichun Mineral Resources Plan (2021-2025) ⁽²⁶⁵⁾. The stated goal of the Yichun Mineral Resources Plan is to build a lithium battery industry base with international influence ⁽²⁶⁶⁾. This plan also provides a detailed overview about the newly planned mines and industries around it. For example, the Yichun Yashan Tantalum-Niobium-Lithium Mining Development Zone is built with the goal of supporting the development of Yichun lithium battery and new energy industry cluster worth 100 billion ⁽²⁶⁷⁾.
- (725) The Suining Plan contains provisions on development targets (“by 2025 [...] the [annual production of] positive electrode material will reach more than 800 000 tons, and the positive electrode material precursor will reach more than 500 000 tons”, annual production targets (“accelerate [...] the annual production capacity of lithium-ion batteries which should reach 100GWh, of which the power battery production capacity will reach 60GWh. [...] Promote the construction of a

⁽²⁶¹⁾ Available at https://www.ndrc.gov.cn/xxgk/zcfb/tz/202009/t20200925_1239582.html. An English translation is available at <https://cset.georgetown.edu/publication/new-chinese-ambitions-for-strategic-emerging-industries-translated/>

⁽²⁶²⁾ Section II(4): “Improve the technical levels of rare earth, vanadium-titanium, tungsten-molybdenum, lithium, rubidium-caesium, graphite, and other special resources in the links of mining, smelting, and deep processing”.

⁽²⁶³⁾ Section III(9) of the Guiding Opinions on Expanding Investment in Strategic Emerging Industries.

⁽²⁶⁴⁾ Section IV(15) of the Guiding Opinions on Expanding Investment in Strategic Emerging Industries.

⁽²⁶⁵⁾ Available at <http://www.yichun.gov.cn/ycsrmzf/kjgh/202212/c173570ca3d7465aa8b27f999b0d3d00/files/%E5%AE%9C%E6%98%A5%E5%B8%82%E7%9F%BF%E4%BA%A7%E8%B5%84%E6%BA%90%E6%80%BB%E4%B D%93%E8%A7%84%E5%88%92%E5%BC%88%2021-2025%E5%B9%B4%E5%BC%89-20221215142744694.pdf>

⁽²⁶⁶⁾ See Chapter 4, Section 1 of the Yichun Mineral Resources Plan.

⁽²⁶⁷⁾ See column 6 of the Yichun Mineral Resources Plan.

five-in-one urban lithium battery energy complex consisting of "charging, storage, preparation, replacement and sales", and strive to ensure that the city's lithium battery industry's operating income exceeds 100 billion yuan", and profit targets ("by 2025 (...) We will strive to cultivate three enterprises with operating income exceeding 10 billion yuan and 15 enterprises with operating income exceeding 1 billion yuan, and create a tiered development cluster of large, medium, small and micro enterprises"), while the Shandong Development Plan gives instructions on the sales targets ("From 2021 to 2025, we will introduce more than 5-10 lithium battery leading enterprises that produce light power, power and energy storage batteries, cultivate a group of supporting enterprises with sales revenue between 500 million and 1 billion yuan, and form an industrial cluster of 50-100 upstream and downstream enterprises in the lithium battery new energy industry chain").

- (726) Jiangxi is a major lithium production hub, and the province where Yichun, dubbed as "the lithium capital of Asia" ⁽²⁶⁸⁾, is located. Due to its rich lithium reserves, the province pays particular attention to the new energy materials and lithium battery sector. In October 2022, the province issued the "Notice on several policy measures to improve and strengthen the lithium battery new energy industry in our province" (Notice No. 21 [2022]) ⁽²⁶⁹⁾ ('Measures'). Support is shown at all levels of the supply chain, starting from the supply of mineral resources up to the set-up of lithium battery industries. The Measures, for example, envision the establishment of guidance funds for the exploration, development and investment in lithium mineral resources ⁽²⁷⁰⁾. The battery industry in Jiangxi is supported by several types of compensation, rewards ⁽²⁷¹⁾, and support in terms of land use, electricity use ⁽²⁷²⁾, gas use, etc., ⁽²⁷³⁾ including equity pledges, and insurance compensation.
- (727) The Commission also found that already in 2009 the Yichun Municipality started to direct and protect the city's mineral resources to promote the development of the battery new energy industry. This is covered by Yichun municipality's "Several Opinions on Strengthening the Management of Lithium Mineral Resources" ⁽²⁷⁴⁾ ('Yichun Lithium Mineral Resources'). Article 3 further defines that the Yichun Lithium Battery New Energy Industry Development Leading Group Office is responsible for guiding and coordinating the comprehensive development and utilization of lithium mineral resources in the city, and for ensuring a stable supply of lithium for the city's battery enterprises. In Article 6, the municipal government further instructs lithium mining enterprises to "actively support and help [Yichun's] battery new energy enterprises to become bigger and stronger, establish a long-term cooperative, mutually beneficial strategic partnership between [mining companies and battery companies]". Article 7 gives instructions on the pricing mechanism in place to prevent price monopoly. The Leading Group is in charge of "tak[ing] the lead in organizing lithium new energy enterprises and [mining companies] to make adjustments based on the market development trend under the premise of determining a benchmark price, and uniformly negotiate and determine the lithium mica supply price required by lithium new energy enterprises".
- (728) Also the Fujian provincial plans and Ningde municipal plans contain specific provisions on the type of support offered, sometimes going as far as explicitly mentioning the companies supported. This is namely the case of the largest world battery producer CATL, which is headquartered and has important production facilities in this province.

⁽²⁶⁸⁾ On the dispute of Lithium Capital in China from the Perspective of Yichun of Guoxuan Suo Mine, Shanghai Metals Market. Available at <https://news.metal.com/newscontent/101490021/on-the-dispute-of-lithium-capital-in-china-from-the-perspective-of-yichun-of-guoxuan-suo-mine>

⁽²⁶⁹⁾ Available at <http://www.yichun.gov.cn/yicsrmzf/jxszc/202210/12e1a57f3eb24bae9a873a819b6baca2.shtml>

⁽²⁷⁰⁾ Point 5 of the Measures.

⁽²⁷¹⁾ Point 3 of the Measures.

⁽²⁷²⁾ Point 1 of the Measures.

⁽²⁷³⁾ Point 8 of the Measures.

⁽²⁷⁴⁾ Available at <https://www.yichun.gov.cn/yicsrmzf/yff8e/200911/b1fc3970e57b494bb9c413632d1b47f9.shtml>

- (729) The Fujian Province's 13th Five Year Plan on the Development of New Energy Vehicles indicates that “with CATL at the core [Fujian Province] shall actively promote the expansion of industry chains such as power batteries” ⁽²⁷⁵⁾.
- (730) The ‘Fujian Guiding Opinions’ supports investment in high-quality projects in the fields of lithium batteries, new energy and new materials, and seeks to promote financial institutions to cooperate with related industries and special funds to carry out investment and loans, increase credit support for lithium battery, new energy and new materials industry projects including interest discount support for major construction projects in the field of lithium battery new energy and new materials production bases. The Plan also proposes to create an independent and “controllable” industrial innovation system, supporting the development of innovation platforms like the National Engineering Research Center for Electrochemical Energy Storage Technology of CATL. This is a reflection of the implementation of national policies carried out by a local government, in cooperation with a private enterprise. In fact, the construction of a power battery innovation platform, built upon cooperation between enterprises, universities and research centers, is among the key tasks of the 2017 Battery Action Plan ⁽²⁷⁶⁾.
- (731) Ningde City's Special Plan for the High-Quality Development of the Manufacturing Industry during the 14th Five-Year Plan ⁽²⁷⁷⁾ sets out the goal of reaching 350GWh lithium battery production capacity by 2025, and to become an industry leader through the development of CATL. CATL's deep links with the governments of different municipalities and provinces are also reflected by the strategic cooperation agreement signed in 2021 between CATL and Guizhou Provincial People's Government ⁽²⁷⁸⁾, resulting in the CATL Guizhou New Energy Power and Energy Storage Battery Manufacturing Base project. ⁽²⁷⁹⁾ These deep links are also explicitly confirmed by CATL Guizhou's Director of Operations declaring that “CATL Guizhou Company will continue to adhere to innovative and high-quality development (...) and actively support and comply with the high-quality development goals of the Gui'an New District Party Working and Management Committee and contribute to the creation of a new energy industry chain in Guiyang and Gui'an” ⁽²⁸⁰⁾. Guiyang and Gui'an are both located in Guizhou province. Other examples of close governmental involvement include the comprehensive cooperation agreement with the government of Zhaoqing, ⁽²⁸¹⁾ the strategic cooperation agreement with the government of Sichuan province ⁽²⁸²⁾ and Shudao Investment Group, a state-owned investment group. ⁽²⁸³⁾ In addition, CATL also cooperates on lithium hexafluorophosphate, a type of lithium used as electrolyte in lithium-ion batteries, and iron phosphate with Guizhou Phosphate Chemical Group, a State-owned enterprise. Moreover, in December 2021, CATL Guizhou, a subsidiary of CATL, set up Guizhou Shidai Mining Co., Ltd., a mining company with Guizhou Phosphate Chemical Group ⁽²⁸⁴⁾. Guizhou Phosphate Chemical Group is mentioned in the Guizhou Action Plan, which sets specific production targets for the companies located in Guizhou province that produce materials used for the energy transition. The plan contains clear targets on the annual production of lithium iron phosphate, electrolyte, which conducts ions between the anode and the cathode in lithium-ion batteries and gives clear indication on which governmental departments and units are responsible for these targets. In particular, among the several companies mentioned, Guizhou Phosphorus Chemical New Energy's annual production should reach 30 000 tons of iron phosphate, Guizhou Yuneng's should reach an annual production of 150 000 tons of lithium iron phosphate.

⁽²⁷⁵⁾ Available at https://pdf.dfcfw.com/pdf/H3_AP201709300922205858_01.pdf

⁽²⁷⁶⁾ See Section III (1) of the 2017 Battery Action Plan

⁽²⁷⁷⁾ Available at <https://www.ningde.gov.cn/zfxgkzl/zfxgkml/fggzhgf/xzgfxwj/202111/P020211122362938546996.pdf>

⁽²⁷⁸⁾ Available at <https://www.catl.com/en/news/790.html>

⁽²⁷⁹⁾ Info available at <https://www.catl.com/news/6263.html>

⁽²⁸⁰⁾ See Guizhou Daily, 10 March 2023 available at http://szb.eyesnews.cn/pc/cont/202303/10/content_88202.html

⁽²⁸¹⁾ CATL signs comprehensive cooperation agreement with the city of Zhaoqing, CATL, 12 October 2023. Available at <https://www.catl.com/en/news/6122.html>

⁽²⁸²⁾ Sichuan Province and CATL deepen strategic cooperation, CATL, 05 February 2024, available at <https://www.catl.com/en/news/6213.html>

⁽²⁸³⁾ CATL and Shudao Investment Group reach strategic cooperation, CATL, 18 February 2024. Available at <https://www.catl.com/en/news/6218.html>

⁽²⁸⁴⁾ CATL sets up mining company after BYD, CnEVPost, 4 January 2022. Available at <https://cnevpost.com/2022/01/04/catl-sets-up-mining-company-after-byd/>

- (732) The development of CATL and the city of Ningde are inextricably linked, as the city sets out the goal of reaching 350GWh lithium battery production capacity by 2025, and to become an industry leader by “[focusing] on promoting the third, fourth and fifth phase capacity expansion of CATL and CATL New Energy Technology and the construction of CATL FAW projects, continue to expand the two major industrial leaders of CATL and CATL New Energy Technology, further expand power battery production capacity and market share [...]”⁽²⁸⁵⁾. Other support measures include for equipment purchase subsidies⁽²⁸⁶⁾, rewards based on enterprises’ annual output⁽²⁸⁷⁾, and financial support⁽²⁸⁸⁾.
- (733) Lastly, regarding Shenzhen where among others the headquarters of BYD are located, the *Shenzhen Plan* gives detailed instructions on the type of financial support that banking and financial institutions should provide to the industry all throughout its supply chain, starting from the procurement of goods up to boosting consumer consumption of new energy vehicles. For example, the Shenzhen plan allows for “support[ing] core enterprises in issuing supply chain bills, and encourage financial institutions to increase discount financing of supply chain bills, [...] support[ing] banking financial institutions to focus on the development direction of the new energy vehicle industry economy [...] formulating full life cycle financial service plans, and implementing flexible loan pricing and interest repayment methods”⁽²⁸⁹⁾. For new energy vehicles companies, the plan mandates financial institutions to “increase credit support for technological transformation, R&D investment, production expansion, increase the proportion of medium and long-term loans”⁽²⁹⁰⁾ and to “[a]ctively explore and develop innovative products such as new energy vehicle points income rights pledge loans and carbon emission reduction loans to support the green and low-carbon development of vehicle companies”⁽²⁹¹⁾.
- (734) Power battery companies are supported by financial institutions through financial guarantees, investment-loan linkage, syndicated loans, etc.,⁽²⁹²⁾ while motor and electronic control companies are supported through science and technology loans, venture capital, equity financing, etc.⁽²⁹³⁾. At the final stage of NEV consumption, “[b]anking financial institutions are encouraged to increase their support for automobile consumer credit, explore innovations in online loan products, adopt new digital risk control methods, improve customer process experience, and provide differentiated financial service solutions”⁽²⁹⁴⁾. In addition, the Shenzhen plan mandates to “[s]upport car companies to establish automobile consumer finance companies and other institutions to provide professional financial services for new energy vehicle consumption and further increase the market penetration rate of new energy vehicles”⁽²⁹⁵⁾. Section III (1.9) of the Shenzhen plan envisages support of the entire industry chain from financial institutions for all kinds of NEV enterprises (start-ups, small, medium, micro enterprises) through loans, external direct investment, government guarantees, bank loans risk compensation funds, awards and subsidies. Lastly, the Shenzhen plan recommends to “[m]ake good use of Shenzhen enterprise bond issuance financing subsidy project funds to support qualified new energy vehicle companies in issuing debt financing instruments, corporate bonds, enterprise bonds and other corporate credit bonds”. The industry is supported both at the domestic level, and also on the international stage (“[o]ptimize cross-border financial services to support new energy vehicle companies in “going global”⁽²⁹⁶⁾).
- (735) The plans emphasize the need to further integrate the battery and electric vehicles industries through securing key raw materials, reduce costs and support the promotion and R&D advancement of batteries to improve the performance of battery electric vehicles and promote its popularization.

⁽²⁸⁵⁾ Chapter III, Section 1 of the *Ningde Manufacturing Plan*.

⁽²⁸⁶⁾ See Point 2 of the *Ningde Measures* available at https://www.ningde.gov.cn/zfxxgkzl/zfxxgkml/fggzhgf/xzgfxwj/202206/t20220629_1637471.htm

⁽²⁸⁷⁾ For example, see Point 3 of the *Ningde Measures*.

⁽²⁸⁸⁾ For example, under point 7 of the *Ningde Measures*: “Encourage state-owned enterprises to explore the establishment of equity funds for new energy industry [supply] chain projects”.

⁽²⁸⁹⁾ Section III (1.7) of the *Shenzhen plan*.

⁽²⁹⁰⁾ Section III (1.1) of the *Shenzhen plan*.

⁽²⁹¹⁾ *Ibid.*

⁽²⁹²⁾ Section III (1.2) of the *Shenzhen plan*.

⁽²⁹³⁾ Section III (1.3) of the *Shenzhen plan*.

⁽²⁹⁴⁾ Section III (1.6) of the *Shenzhen plan*.

⁽²⁹⁵⁾ *Ibid.*

⁽²⁹⁶⁾ Section III (1.12) of the *Shenzhen plan*.

(736) The Commission also found in the various plans and policy documents listed above in this section that enterprises involved in the production and processing of inputs for the BEV industry can benefit from a number of preferential schemes, such as:

- Access to government funds, venture capital, and government-funded industry investment funds
- Bonds
- Export restrictions
- Government-backed equity pledges
- Guidance funds
- Insurance compensation
- Land, electricity and gas at cheaper prices
- Loans from State-owned banks at a non-commercial basis;
- Preferential fiscal policies
- Purchase subsidies
- Rewards

(737) In sum, the above documents and evidence confirm that the GOC policy objective as implemented therein was to encourage the development of the BEV industry *inter alia* by supporting the industries of batteries and their inputs as a key factor for the successful achievement of such objective.

(3) *Specific measures adopted by the GOC pursuing its policy objectives to develop the BEV industry*

(a) *Public support to the industry of battery producers and their inputs*

(738) In addition to those mentioned in recital (736), the Commission identified several legal sources indicating public support to the industry of battery producers and their inputs with the final goal of developing those sectors for the benefit of BEV producers. These sources clearly show the strong interference and central government control in the batteries and inputs for batteries sector, with regard to production, sales targets and price controls. This is not a mere regulatory framework for the input suppliers, but the framework in which input suppliers are given authority which has enabled them to develop governmental functions relating to the marketing and supply of inputs (i.e. batteries and lithium), so as to achieve the relevant government objective of developing the NEV sector, of which BEVs are part. Measures supporting LFP and batteries shows that there is an intention to develop the BEV industry via supporting the upstream inputs. Input suppliers are provided with the means to perform their public functions, namely, to develop the BEV industry, thanks to the support of the GOC.

(739) The Commission also examined whether battery producers were also receiving financial support from the GOC that allowed them to implement national policies and act as public bodies. In view of the limited information available to the Commission because of no cooperation, the Commission had to rely on facts available. In this regard, the Commission relied on publicly available information relating to CATL and to the information provided by the battery producers related to the Geely and SAIC groups.

- (740) The available information relating to CATL showed that it was able to become a profitable and influential company thanks to government support and the characteristics of the Chinese domestic market. In particular, public sources indicate that up to 2020, government funding equalled a fifth of its net income ⁽²⁹⁷⁾. This support was confirmed by more recent publication showing that “CATL received 5.72 billion yuan (\$790 million) in 2023, more than double its figure the year before.” and accounting for “13% of its net profit” ⁽²⁹⁸⁾.
- (741) The Commission also established that the battery producers related to the Geely and SAIC groups, that provided a questionnaire, also benefitted from countervailable subsidies such as preferential financing, tax exemption and reduction programmes and grants. This is also in line with the Commission’s findings described in recital (735).
- (742) In the absence of cooperation by unrelated LFP suppliers, the Commission could not ascertain whether LFP suppliers also benefitted from government support in a similar way to the battery producers. Yet, given the regulatory framework and national policies in force, the Commission could draw inferences that, similarly to battery producers, LFP producers also benefitted from government financial support in various forms.
- (743) Consequently, the Commission concluded that the GOC artificially kept the battery producers and LFP producers financially afloat in order to allow them to exercise their government authority to sell batteries and LFP for less than adequate remuneration to Chinese BEV producers.

(b) *GOC’s measures on pricing of batteries and on cost reductions for the BEV industry*

- (744) The GOC implemented several measures to ensure that the batteries and their inputs would be supplied at cheap prices to the BEV industry. Furthermore, the GOC ensured that the corresponding costs for the BEV industry of such important inputs for the BEV production would be reduced. These measures clearly favoured the BEV industry. Among them, the following documents show this.
- (745) Specific instructions on the cost of batteries were already included in the NEV Plan 2012-2020, which mandated that by 2015, power battery modules should cost less than 2 yuan/watt-hour, and this cost should be further reduced to less than 1.5 yuan/watt-hour by 2020 ⁽²⁹⁹⁾. The plan also mandated for the establishment of 2-3 leading power battery enterprises with a production and sale scale of more than 10 billion watt-hours, and to form 2-3 backbone production enterprises for positive and negative electrodes, electrolytes and other key materials ⁽³⁰⁰⁾. The plan shows how the government has played a pivotal role in the development of the industry, by “adher[ing] to the combination of government guidance and market drive”. In particular, during the initial period, the government “will actively play the role of planning guidance and policy incentives, gather scientific and technological and industrial resources, encourage the development and production of energy-saving and new energy vehicles, and guide market consumption” ⁽³⁰¹⁾. This was to be achieved through allocation of central funds, tax preferential policies and support from financial institutions ⁽³⁰²⁾.
- (746) The 2017 Battery Action Plan, developed in accordance with the goals set out in the Made in China 2025, set out three key tasks: first, “further reduce costs and ensure the supply of high-quality power batteries before 2018”; second, “by 2020, the system specific energy density will strive to reach 260 watt-hours/kilogram, and the cost will be reduced to less than 1 yuan/watt-hour; third, by 2025, the energy density will reach 500 watt-hours/kilogram”.

⁽²⁹⁷⁾ See CATL 2020 Annual Report, and also: Why a Chinese Company Dominates Electric Car Batteries, The New York Times, 22 December 2021, available at <https://www.nytimes.com/2021/12/22/business/china-catl-electric-car-batteries.html>

⁽²⁹⁸⁾ <https://asia.nikkei.com/Business/China-tech/CATL-tops-China-s-corporate-subsidies-list-outranking-oil-majors>

⁽²⁹⁹⁾ Section 5(1), NEV Plan 2012-2020.

⁽³⁰⁰⁾ Section 2(2), NEV plan 2012-2020.

⁽³⁰¹⁾ Section 2(2), NEV plan 2012-2020.

⁽³⁰²⁾ Section 5(2) and 5(3), NEV Plan 2012-2020.

- (747) In this respect, evidence on price caps shows that the provision of those goods regulated by the GOC become a governmental function which is then executed by the input suppliers acting as the public bodies. The GOC is setting very specific qualitative development targets in order to achieve market stability and bring down costs. Therefore, the growth of the battery industry must be ‘coordinated’⁽³⁰³⁾ and the R&D is directed towards the improvement of lithium-ion power batteries⁽³⁰⁴⁾, the main battery type used for BEVs. To achieve these goals, the 2017 Battery Action Plan provided for an “increase [of] policy support”⁽³⁰⁵⁾. This policy support includes the “guiding role of the government” and the “[e]xemption from excise tax if the power battery product is eligible; [p]ower battery enterprises are eligible to benefit from tax incentives such as those for high-technology enterprises, technology transfer and technology development”⁽³⁰⁶⁾.
- (748) The 2017 Battery Action Plan also covers the relationship between government and industry associations as highlighted in Section 4(3) of the plan by “giv[ing] full play to the role of industry associations and other organizations, and exchange and cooperate on [...] policy measures and suggestions, strengthen industry self-discipline management, and promote the coordinated development of power batteries and related industries”. The role of industry associations in the Chinese economic system will be examined in recital (778).
- (749) Above all, government intervention across the entire supply chain and its goal to lower prices for the benefit of the BEV industry is evident from the Notice on the battery industry, which envisions cooperation between upstream and downstream actors “to stabilize expectations, clarify the quantity and price, ensure supply, and win-win cooperation”⁽³⁰⁷⁾. The Notice on the battery industry also instructs local markets supervision departments to “strengthen supervision and strictly investigate and deal with hoarding, price gouging, unfair competition and other behaviours in the upstream and downstream of the lithium battery industry, so as to maintain market order”⁽³⁰⁸⁾.
- (750) This further indicates how pervasive is the GOC interference in proactively ensuring that prices in the battery supply chain must be aligned downwards in order to favour market stability to the advantage of BEV producers. Hence, the GOC has set out the provision of these goods at certain price as a government function which is in turn executed by public bodies.
- (751) Even more tellingly, government interference on domestic raw material prices is also reflected in press statements given by the MIIT. During a press conference held in Beijing in April 2022 on the price hikes in raw materials used in electric cars, a spokesperson of the MIIT, affirmed that “we will push [the prices of raw materials] back toward the reasonable level as soon as possible”, that “the ministry will help accelerate the development of local resources in China” and that “The sector’s stable operation is facing great pressure that requires all relevant parties to cope with together”⁽³⁰⁹⁾. This was a follow-up of a symposium held in March 2022 by the MIIT and the Department of Raw Materials Industry and the First Department of Equipment Industry of the MIIT, together with the Price Department of the NDRC and the State Administration for Market Regulation on the price increases of upstream materials for power batteries⁽³¹⁰⁾. The China Nonferrous Metals Industry Association (CNMIA), China Association of Automobile Manufacturers (CAAM), and the China Automotive Power Battery Industry Innovation Alliance (CAPBIIA), and other industry organizations, as well as relevant persons in charge of key upstream and downstream enterprises in the lithium resource development, lithium salt production, cathode materials, power batteries and other industrial chains attended the meeting⁽³¹¹⁾.

⁽³⁰³⁾ Section 1(2), 2017 Battery Action Plan.

⁽³⁰⁴⁾ Section 2(2), 2017 Battery Action Plan.

⁽³⁰⁵⁾ Section 4(1), 2017 Battery Action Plan.

⁽³⁰⁶⁾ Section 4(1), 2017 Battery Action Plan.

⁽³⁰⁷⁾ See Point 2 of the Notice on the battery industry.

⁽³⁰⁸⁾ Idem.

⁽³⁰⁹⁾ Ministry set to stabilize price hikes affecting auto industry, State Council of the People's Republic of China, 25 April 2022. Available at https://english.www.gov.cn/statecouncil/ministries/202204/25/content_WS62664ddcc6d02e5335329e3a.html

⁽³¹⁰⁾ Available at https://m.thepaper.cn/kuaibao_detail.jsp?contid=17182063&from=kuaibao

⁽³¹¹⁾ Available at <https://m.yicai.com/news/101354043.html>

- (752) Cost reduction is particularly stressed in the government-mandated guidelines for the Li-ion battery industry, the Standardized conditions of 2021 propose technical standards, such as minimum energy density of battery packs of 180 Wh/kg ⁽³¹²⁾, and to “guide enterprises to reduce manufacturing projects that simply expand production capacity, strengthen technological innovation, improve product quality, and reduce production costs” ⁽³¹³⁾.
- (753) The Commission also found that some of the raw materials used in the production of batteries are subject to export restrictions, such as export control measures and no refund of the domestic VAT, if exported. The stated policy objective of these measures is to discourage their export and create a domestic oversupply, so that there are cheap domestic prices and at sufficient quantities for the benefit of domestic downstream industries, including BEV producers.
- (754) In this respect, the Commission found that LFP, the type of lithium used in batteries, is not subject to the 13 % VAT refund upon export, making the domestic price of these raw materials artificially lower for domestic consumption.
- (755) Since 2006, the Chinese government has been imposing temporary export restrictions on graphite-related goods with the “Decision on the temporary export control of graphite-related products” (Announcement No. 50 [2006]) ⁽³¹⁴⁾. The Decision subjects seven types of graphite-related products ⁽³¹⁵⁾ to temporary export control measures. The temporary export control measures were repealed by the announcement on “Optimizing and Adjusting Temporary Export Control Measures on Graphite Items” (Announcement No. 39 [2023]) ⁽³¹⁶⁾, published on 20 October 2023, and effective from 1 December 2023. At the same time, the policy adds two new types of graphite products to the export control list. Graphite is also subject to export restrictions in the form of no refund of the 13 % domestic VAT if exported ⁽³¹⁷⁾.
- (756) The Commission also found that some types of copper are subject to an export duty of 30 % under the 2022 Tariff Adjustment Plan ⁽³¹⁸⁾ and the 2023 Tariff Adjustment Plan ⁽³¹⁹⁾. An additional 5 – 15 % provisional export tax is levied based on the relevant HS code.
- (757) Finally, the Commission also found that China is consolidating its rare earths industry, also necessary for BEV battery production, to control, among others, pricing levels, and secure strategic, economic, and sustainability goals. In particular, in December 2021 three state entities merged to establish the China Rare Earth Group Co. Ltd, covering around 62% of total heavy rare earths supplies in China ⁽³²⁰⁾. Consequently, at national level the Government undertook other measures, such as the imposition of export restrictions, with the same aim to increase supply to the domestic producers with low priced and available raw materials necessary to produce, among others, BEVs.

(c) Conclusion

- (758) In conclusion, governmental guidelines, opinions, and regulations concerning the BEV industry demonstrate that the government steers the industry towards its development and improvement through cost reduction and stable supply of key inputs. Furthermore, the government has set out a system of clear and constant control and monitoring of the pricing of batteries and their inputs to ensure that the BEV industry can source them at cheap prices and in sufficient quantities.

⁽³¹²⁾ See section III, point (1) of the Standardized conditions.

⁽³¹³⁾ See section I, point (3) of the Standardized conditions.

⁽³¹⁴⁾ Available at <http://exportcontrol.mofcom.gov.cn/article/zcfg/gnzcfc/zcfggzqd/202111/432.html>

⁽³¹⁵⁾ HS codes: 3801100090, 3801900000, 6815100000, 8545110010, 8545110090, 8545190000, and 8545900000.

⁽³¹⁶⁾ Available at <http://www.mofcom.gov.cn/article/zcfb/zcblgg/202310/20231003447368.shtml>

⁽³¹⁷⁾ See HS codes: 38011000 at <https://hd.chinatax.gov.cn/nszx2023/cktslxc2023.html>

⁽³¹⁸⁾ Available at <http://cws.mofcom.gov.cn/article/swcjc/202201/20220103246934.shtml>, see exhibit 7.

⁽³¹⁹⁾ Available at https://www.gov.cn/zhengce/zhengceku/2022-12/29/content_5734125.htm, see exhibit 6.

⁽³²⁰⁾ <https://www.china-briefing.com/news/china-merges-three-rare-earths-state-owned-entities-to-increase-pricing-power-and-efficiency/>

- (759) All of the above demonstrates that the GOC has established at central and local level a number of policies and measures targeting suppliers of batteries and inputs in order to support ultimately the BEV industry. All these inputs constitute a significant part of the cost of production of BEVs. As a result of these policies, the GOC sets out targets for ensuring a stable and ample supply of these batteries and inputs, coupled with cheaper prices, to the benefit of BEV producers in the form of a significant cost reduction, thereby allowing them to sell BEVs at cheaper prices including on the Union market. Evidence of the financial support provided to battery producers was covered in recitals (739) - (743).

(1) *Relationship between the input suppliers and the GOC*

- (760) Having analysed the legal and economic framework in which the input suppliers operate, heavily dictated by the GOC's policy objectives to develop the BEV industry via input suppliers, the Commission also analysed the characteristics of the Chinese domestic market of batteries, the evidence of State presence/ownership in input suppliers as well as other indicia that the GOC exercised meaningful control over those entities (including their organisational features, chains of decision making authority and the overall relationship with the GOC).
- (761) The Commission sought information on the *structure of the domestic market of batteries*. As explained in Section 3.3.1.2, the GOC failed to cooperate with regard to the input materials suppliers operating on the Chinese domestic market, including suppliers of batteries for BEVs, and did not provide clarification or crucial information on the domestic market of batteries. Therefore, the Commission had to base its conclusions on facts available in accordance with Article 28 of the basic Regulation.
- (762) In this regard, the Commission relied on four sets of information, i.e. the information presented in the Rhodium report⁽³²¹⁾, the geographical battery cell market balance as presented by Benchmark Mineral Intelligence ('BMI')⁽³²²⁾, a report by the China Automotive Power Battery Industry Innovation Alliance⁽³²³⁾ and the information provided by the sampled groups that purchased batteries.
- (763) The information presented in the Rhodium report shows that "*with the exception of LG Energy Solution, the Chinese EV battery market is dominated by domestic players*"⁽³²⁴⁾. More specifically, the report shows that Chinese-owned battery manufacturers held over 88 % market share on the Chinese domestic market in 2021, leaving only 4 % market share to battery manufacturers that are foreign-owned. As for the remaining 8 %, no indication of the home country was indicated. Yet, considering the limited share of major foreign battery suppliers on the Chinese market and in the absence of cooperation by the GOC, the Commission inferred that the other producers would be also Chinese owned. The same report also established that CATL had over 52 % market share in the Chinese market in 2020. In the absence of information to the contrary, the Commission concluded that these findings were also valid during the investigation period.
- (764) The Commission also established that the ten identified battery producers presented in the Rhodium report were either members of the CBIA (or of its executive council), the CIAPS and/or partially State-owned. While the members of the CBIA and CIAPS represented over 86 % of the market share, the members holding vice chairmanship or sitting on the executive council at some time held over 62 % market share in 2021. The report also indicated that there was a set of policies aiming to favour Chinese domestic battery suppliers⁽³²⁵⁾.

⁽³²¹⁾ Distortions in International Markets and China: Government Support in Electric Vehicle Batteries, Rhodium Group, December 2022 (herein referred to as the 'Rhodium report'). page 42.

⁽³²²⁾ <https://www.benchmarkminerals.com/forecasts/lithium-ion-batteries/>

⁽³²³⁾ See the report by the China Automotive Power Battery Industry Innovation Alliance published on 11 January 2024, and reported on <https://libattery.ofweek.com/2024-01/ART-36001-8120-30623203.html#:~:text=%E8%BD%A6%E9%87%8FTOP15%E3%80%82-,2023%E5%B9%B4%E5%85%A8%E5%B9%B4%E5%9B%BD%E5%86%85%E4%B8%89%E5%85%83%E5%8A%A8%E5%8A%9B%E7%94%B5%E6%B1%A0%E4%BC%81%E4%B8%9A,%E5%8A%9B%E7%A5%9E%E3%80%81%E5%B7%A8%E6%B9%BE%E6%8A%80%E7%A0%94%E3%80%82&text=%E5%8D%AB%E8%93%9D%E6%96%B0%E8%83%BD%E6%BA%90%E3%80%81%E5%B7%A8,%E7%AC%AC11%E4%B8%8E%E7%AC%AC15%E3%80%82>

⁽³²⁴⁾ Rhodium report, p. 41

⁽³²⁵⁾ Rhodium report, p. 58.

- (765) The geographical battery cell market balance presented by BMI ⁽³²⁶⁾ shows that the Chinese battery supply accounted for over 170 % of the local demand in 2022 and 2023 also pointing to a clear dominance of the Chinese battery producers on their local market.
- (766) Furthermore, the China Automotive Power Battery Industry Innovation Alliance report indicated that around 97 % of the 2023 market share of installed capacity ⁽³²⁷⁾ was held by Chinese domestic battery producers. The Chinese battery producing members of the CBIA represented at least 66 % of the market share, while BYD, the second largest producer representing 27 % of China's installed capacity in 2023, is part of the CIAPS. One company, China Aviation Lithium Battery (CALB), was both a member of the CBIA executive council and a state-owned enterprise. CATL alone represented more than 40 % of China's total installed capacity in 2023 and is a member of the executive council of the CBIA.
- (767) The Commission also noted that the CBIA and the CIAPS do not publish the full list of their members online. The Commission was able to ascertain companies' participation in the CBIA, CIAPS, and other industry associations by looking at their annual reports and other information available online, such as the list of members of their executive bodies. In the absence of information provided by the GOC as well as of official public data covering the full list of members of the CBIA and the CIAPS, the Commission drew inferences that even more battery suppliers could be members of these associations.
- (768) Eventually, while no conclusion could be drawn with regard to the value of the battery purchases made by the SAIC Group due to their non-cooperation, the Commission established that the suppliers of batteries that it reported were all located in the PRC. As for the Geely Group, at least 65 % of its purchases were made from companies that were either members of the CBIA, CIAPS or partially State-owned. As far as the SAIC Group is concerned, while no information on purchase value or volume could be verified, the information on file shows that its four main battery suppliers were partially directly or indirectly State-owned, members of the CBIA or closely associated with it through one of the suppliers' shareholder (CATL).
- (769) Based on the above, the Commission concluded that the Chinese domestic market is served almost exclusively by domestic battery suppliers. A significant majority of those suppliers are members of associations such as CBIA and CIAPS and/or are State-owned.
- (770) The Commission further examined the *relationship between the GOC and the battery suppliers*, to establish whether the government exercised meaningful control over the entities at hand and their conduct on the market. The role played by the associations is crucial to show how the GOC, through the associations, ensures the implementation of its policy objectives to develop the BEV industry.
- (771) In the absence of any information provided by the GOC concerning the number and other information on the formal indicia of government ownership and control of domestic suppliers of batteries for BEVs, the Commission had to rely on facts available according to Article 28 of the basic Regulation. For this purpose, the Commission analysed the situation of the battery suppliers of the two non-integrated sampled groups (Geely and SAIC groups). As mentioned before, the GOC did not provide the requested information on ownership and control of the battery suppliers and/or the associations of battery producers. In addition, the unrelated battery suppliers to the Geely and SAIC groups failed to provide a questionnaire reply and information on ownership and control by the GOC. The Commission therefore had to seek this information in the public domain. When the Commission was unable to find information in the public domain, it had to draw inferences on the basis of Article 28 of the basic Regulation.

⁽³²⁶⁾ <https://www.benchmarkminerals.com/forecasts/lithium-ion-batteries/>

⁽³²⁷⁾ See footnote 323, Table 4.

- (772) With regard to the SAIC Group, while no information on purchase value or volume could be verified, the information on file still showed that the SAIC Group's four main battery suppliers, accounting for a major share of their battery purchases, were partially directly or indirectly State-owned. As far the Geely group is concerned, 3 out of 14 battery suppliers were found to be partially State-owned. A large share of the battery suppliers of the SAIC and Geely groups were also found to be part of industry associations. Furthermore, the Commission also established that out of the top ten identified battery producers presented in the Rhodium report ⁽³²⁸⁾ and active on the Chinese domestic market in 2020, at least 7 of them were partially State-owned.
- (773) As already mentioned in recitals (763), the battery suppliers found to be part of either the CBIA or the CIAPS represented over 86 % of the market share in China in 2020. CALB was both a member of the CBIA executive council and a state-owned enterprise (recital (765)). CATL, a key operator on the Chinese market accounting for 52 % of the total Chinese domestic market in 2020 is a direct and indirect (through joint ventures) supplier to the Geely and SAIC groups and a member of the executive council of the CBIA.
- (774) In the absence of cooperation by the GOC, the Commission had to rely on publicly available information in order to determine which of those suppliers are members of associations. The Commission noted that the CBIA and the CIAPS do not publish the full list of members online. The Commission was however able to ascertain companies' participation in the CBIA, CIAPS, and other industry associations by looking at their annual reports and other information available online, such as the list of members of their executive bodies. In the absence of information provided by the GOC as well as of official public data covering the full list of members of the CBIA and the CIAPS, the Commission drew inferences that even more suppliers are likely to be members of these associations.
- (775) Furthermore, the CBIA only publishes the list of members part of the executive council and of "new members". The latter includes the members that joined starting in March 2017, while the association has been founded in 1988. According to information online, the association has more than 500 group members ⁽³²⁹⁾. The Commission sought information about the members included in the incomplete list available online and found that some SOEs were part of it, including not only raw material suppliers and battery manufacturers, but also State-owned investment funds and research institutes. On this basis, the Commission inferred that the GOC could exercise direct control over entities covering a wide range of essential actors involved not only in the battery sector and lithium needed for batteries, but in the BEV sector as a whole. The fact that several actors across the entire BEV supply chain are part of the CBIA reinforces the evidence that the GOC built a framework encompassing all levels of the supply chain.
- (776) The Commission analysed the Articles of Association of the CBIA and CIAPS in order to assess the level of government control over the associations and their members. For this purpose, the Commission had to rely entirely on facts available according to Article 28 of the basic Regulation due to the refusal by the GOC to provide information on the characteristics of its market and on the associations the Commission requested information about, including both the CBIA and the CIAPS (recital (279)).
- (777) In its comments on the application of Article 28, as detailed in recital (282), the GOC denied any control over the CBIA and formal affiliation with the association. The investigation revealed, however, that the GOC's statement that it had no control over the CBIA, and that the association is not formally affiliated with the GOC, were factually incorrect. On the contrary, the Commission found that the GOC exercises control of the CBIA, and also of the CIAPS.

⁽³²⁸⁾ Rhodium report, p. 58.

⁽³²⁹⁾ See <https://baike.baidu.com/item/%E4%B8%AD%E5%9B%BD%E7%94%B5%E6%B1%A0%E5%B7%A5%E4%B8%9A%E5%8D%8F%E4%BC%9A/7368598>

- (778) First, the CBIA is an industry association under the direct management of the State Council. The State Council is the executive organ of the National People's Congress and the highest organ of state power in China. It is composed of a limited number of people including the premier, vice premiers and the secretary-general. Article 3 of the CBIA's Articles of Association ⁽³³⁰⁾ also provide that the Association “*adheres to the overall leadership of the Communist Party of China and [...] establishes organizations of the Communist Party of China to carry out party activities and provide necessary conditions for the activities of party organizations*”. Thus, the CBIA is not an independent association established by market actors and acting according to the free economy market principles, but an entity guided by the GOC and managed by it through the State Council and thus in charge of achieving public policy objectives set by the GOC.
- (779) Many Chinese industry associations define their role in their Articles of Association as to serve as a bridge between the government and their members. The Measures for Comprehensive Supervision on Industry Associations and Chambers of Commerce issued by the NDRC, the Ministry of Civil Affairs, and eight other departments in 2016 called for the establishment of party organisations in industry associations and chambers of commerce, and that party building ⁽³³¹⁾ requirements shall be written in the articles of associations of the industry associations. Despite the fact that in 2019, the NDRC launched an exercise with the declared task of institutional separation of industry associations and chambers of commerce from government, the NDRC Opinions ⁽³³²⁾ issued in this connection formally foresaw a separation of institutions, functions, financial assets etc., they ensured not only a continued financial dependency of industrial associations on the government authorities but also the continued full CCP control over them: “*Party building work bodies of social organizations at all levels shall [...] strengthen concrete guidance, deeply promote Party building in decoupled industry associations and chambers of commerce, [...] comprehensively strengthen the Party's leadership over industry associations and chambers of commerce, and ensure that the Party's work is uninterrupted and the role of Party organizations is not weakened in the decoupling process. [...] Party building work bodies of social organizations at all levels shall urge industry associations and chambers of commerce to introduce the requirement of Party building work into their articles of association, so as to complete the working mechanisms ensuring the Party organizations' participation in decision-making on major issues and to standardize management*” ⁽³³³⁾. The opinions also ensured a financial dependency of the industry associations over government authorities and full CCP control over them ⁽³³⁴⁾.
- (780) Second, the executive power of the CBIA is exercised by the board of directors, which is elected by the general assembly composed of all the members of the association, amongst the members companies (Article 21 of the Articles of Association). The GOC is also fully involved in the selection of the board of directors' candidates. According to Article 22 of the Articles of Association of the CBIA, the committee in charge of selecting the candidates includes “*representatives of the board of supervisors*” and “*representatives of the Party organization*”. In the event that the board of directors cannot convene, the members of the committee are directly selected by the party building leadership agency. Party building organs are in charge of all activities related to the expansion of Party ideology. According to the “*Opinions on the Implementation of the Reform of Comprehensively Decoupling Industry Associations and Chambers of Commerce from Administrative Organs*” (herein referred to as ‘*Opinions on industry associations*’), party building work bodies of social organisations shall “*comprehensively strengthen the Party's leadership over industry associations and chambers of commerce, and ensure that the Party's work is uninterrupted and the role of Party organizations is not weakened in the decoupling process. [...] Party building work bodies of social organizations at all levels shall urge industry associations and chambers of commerce to introduce the requirement of Party building work into their articles of association, so as to complete the working mechanisms ensuring the Party organizations' participation in decision-making on major issues and to standardize management*” ⁽³³⁵⁾. The general meeting of members to elect and

⁽³³⁰⁾ China Battery Industry Association Articles of Association (herein referred as ‘CBIA AoA’), available at <http://www.chinabattery.org/content/2/11/1104/1053234.html>

⁽³³¹⁾ Party building work can be diverse and ultimately aims at expanding the party's influence in enterprises, associations, administrations etc. An official definition of party building is available here <http://dangjian.people.com.cn/n1/2022/0624/c117092-32455009.html> “*The content of party building work is relatively rich, including a series of tasks such as political construction, ideological construction, organizational construction, style construction, discipline construction, anti-corruption struggle, and system construction.*”

⁽³³²⁾ Opinions on the Implementation of the Reform of Comprehensively Decoupling Industry Associations and Chambers of Commerce from Administrative Organs, NDRC, Ministry of Civil Affairs et. al., 14 June 2019 ; available at: http://www.gov.cn/xinwen/2019-06/17/content_5400947.htm

⁽³³³⁾ Section 4 of the NDRC Opinions.

⁽³³⁴⁾ See the China Report – Section 2.3.3, pp. 24-25 and Point 3(2) of the NDRC Opinions, according to which administrative organs are encouraged to purchase services from qualified industry associations.

⁽³³⁵⁾ See Section 2.3.3 of the China Report, pp. 25-26, and also Section 4 of the NDRC Opinions

remove directors must also be convened with the approval of the Party building leadership agency. Influence of the government on the daily activities of the association is further emphasised in Article 36 of the Articles of Association, which impose that the persons in charge of association must “[a]dhere to the leadership of the Communist Party of China, support socialism with Chinese characteristics, resolutely implement the party’s line, principles, and policies, and have good political qualities”. The persons in charge of the association include the Chairman, twenty-three Vice Chairmen and one Secretary General. Several SOEs are also appointed as Vice Chairmen. Based on the above, the CBIA is not only under the management of the State Council, but the GOC also remains in control of the administration of the CBIA and of the key individuals in charge of its work.

- (781) Furthermore, Article 46(5) of its Articles of Association provides that the board of supervisors shall report problems existing in the work of the Association to the party-building leadership agencies and industry management departments. It is recalled that in DS379, in the context of Chinese State-owned commercial banks (‘SOCBs’), information relevant for the assessment whether an entity is a public body also included evidence about chief executives being government appointees, whereby the CCP retained significant influence in their choice, as covered in recital (415).
- (782) The relationship between the CBIA and the GOC is further confirmed in NDRC reports⁽³³⁶⁾ and press articles online. In a report on the 8th Member Congress of the CBIA held in Beijing in 2020, Zhang Chonghe, President of China National Light Industry Council (‘CNLIC’), of which the CBIA is part and receives guidance from⁽³³⁷⁾, emphasized that the CBIA has served as “a good assistant of the government”⁽³³⁸⁾, proposing amendments to several industry policies, and reflecting the demands of enterprises to the government, among other achievements. Similarly, to the CBIA, the CNLIC is under the management of the SASAC of the State Council, and its business scope includes participating in the formulation of industry plans and industrial policies, build industrial clusters and regions focused on light industry, “standardize industry behaviour” and “undertake other tasks entrusted by the government and relevant departments”⁽³³⁹⁾. In fact, according to the association itself, it has always been committed to “**serving the government**” (emphasis added)⁽³⁴⁰⁾.
- (783) The same provisions apply for the CIAPS. As in the case of the CBIA (see recital (779)), the executive power is exercised by the board of directors (Article 21). The GOC is fully involved in the selection of the board of directors’ candidates. According to Article 22 of the Articles of Association of the CIAPS, the committee in charge of selecting the candidates includes “representatives of the board of directors, representatives of the board of supervisors” and “representatives of the Party organization”. In the event that the board of directors cannot convene, the members of the committee are directly selected by the party building leadership agency. Thus, not only is the CBIA under the management of the State Council, but the GOC also remains in control of the administration of the CBIA and of the key individuals in charge of its work. Article 46(5) of its Articles of Association also provide that the board of supervisors shall report problems existing in the work of the Association to the party-building leadership agencies and industry management departments.

⁽³³⁶⁾ See https://www.ndrc.gov.cn/fzggw/jgsj/cys/sjdt/202010/t20201030_1249440.html. In particular, Xia Nong, the first-level inspector of the Industry Department of the National Development and Reform Commission expressed the hope that the CBIA “would continue to play a good role as a bridge and link under the background of the new development pattern of “dual circulation” [...]”

⁽³³⁷⁾ The list of associations part of the CNLIC is available at <http://www.cnlic.org.cn/footer/footer-dgxxh.html>

⁽³³⁸⁾ Adhere to the Party Building to lead the work of the association and promote the transformation and upgrading of the battery industry and green development, Sohu, 31 October 2020. Available at https://www.sohu.com/a/428642882_118081

⁽³³⁹⁾ The articles of associations of the CNLIC are available at <http://www.cnlic.org.cn/footer/footer-zc.html>

⁽³⁴⁰⁾ Meng Xiangfeng, assistant to the chairman of CATL, and his delegation visited the association for exchanges, CBIA, 15 February 2023. Available at <http://www.chinabattery.org/content/2/11/1102/1054254.html>

- (784) Article 21 of the CIAPS Articles of Association provide that the directors of the association shall “[a]dhere to the leadership of the CCP, support socialism with Chinese characteristics, resolutely implement the party’s line, principles, and policies, and possess good political qualities”. In the same case as with the CBIA, in the event that the board of directors cannot convene, the members of the committee are directly selected by the party building leading organ. Not only is the CIAPS under the management of the State Council, but the GOC also remains in control of the administration of the association and of the key individuals in charge of its work.
- (785) As demonstrated in recital (779), the GOC set up a system that ensures that all management and administrative bodies of the association, such as the board of directors, the Chairman, the Vice Chairmen and the Secretary General, are selected in order to advance the policy objectives of the CCP and the GOC. As already extensively covered in recitals (197) to (203) and recitals (704) to (705), the legal and economic environment in the PRC in which BEV input suppliers operate is characterised by strong and extensive control by the government. Evidence of such extensive control is found, among others, in Article 11 of the Constitution, according to which the government explicitly exercises supervision and control also over the non-public sectors of the economy (see in particular recital (199)).
- (786) In addition, the Commission has also established the presence and pervasive influence of CCP members and organisations in multiple battery suppliers. In accordance with the Company Law ⁽³⁴¹⁾, not only in SOEs but also in private companies “an organisation of the Communist Party of China shall be established to carry out the activities of the party in accordance with the Constitution of the Communist Party of China. The company shall provide the necessary conditions for the activities of the party organisation”. Furthermore, the 2017 Opinions of the CCP Central Committee and the State Council on Creating a Healthy Environment for the Development of Entrepreneurs, Promoting Entrepreneurship and Allowing Full Play to the Role Played by Entrepreneurs ⁽³⁴²⁾ leave no doubt as to the role of CCP organisations in companies: “Educate and guide private entrepreneurs to support the leadership of the party and support the party building work of enterprises. Establish and improve the party building work mechanism of non-public enterprises, actively explore various ways of party building work, and strive to expand the coverage of party organization and work in non-public enterprises. Give full play to the political core role of party organizations in the masses of workers and the political leading role in the development of enterprises”. As a matter of fact, CATL CCP members consider their “party building work is also to lead the development of the enterprise” ⁽³⁴³⁾.
- (787) Evidence of CCP control over not only State-owned enterprises, but also private entities, is further confirmed by the provision of the “Corporate Governance Guidelines for Listed Companies” mandated by the CSRC in 2018 ⁽³⁴⁴⁾, which mandates in Article 5 that “in listed companies, according to the provisions of the Company Law, organizations of the Communist Party of China shall be established to carry out party activities. Listed companies shall provide the necessary conditions for the activities of party organizations. State-controlled listed companies shall, in accordance with the Company Law and relevant regulations, and in light of the company’s equity structure, business operations, and other actual conditions, incorporate relevant requirements for party building work into their articles of association.”. This confirms that the CCP exerts influence over all types of companies in China, and that it can use party building work units within businesses to exert its influence. Furthermore, some of the biggest battery makers in China (CATL, BYD and Gotion) are all listed on the Shenzhen Stock Exchange and are bound by the guidelines issued by the CRSC. This is confirmed by Article 12 of CATL’s Articles of Association, which mandates that the company “shall establish a Communist Party organization and carry out party activities in accordance with the provisions of the Constitution of the Communist Party of China. The company provides the necessary conditions for the activities of the Party organization” ⁽³⁴⁵⁾.

⁽³⁴¹⁾ Available at <http://mg.mofcom.gov.cn/article/policy/201910/20191002905610.shtml>

⁽³⁴²⁾ Available at http://www.gov.cn/zhengce/2017-09/25/content_5227473.htm

⁽³⁴³⁾ See press report https://www.fjdaily.com/app/content/2022-10/20/content_1635848.html

⁽³⁴⁴⁾ See https://www.gov.cn/gongbao/content/2019/content_5363087.htm

⁽³⁴⁵⁾ See CATL Articles of Association of May 2022, available on CATL’s website: https://www.catl.com/uploads/1/file/public/202204/20220426200308_qr532d21u6.pdf

- (788) Moreover, Zeng Yuqun, the Chairman and General Manager of CATL is also the Vice Chairman of the All-China Federation of Industry and Commerce (ACFIC) since December 2022 ⁽³⁴⁶⁾. The ACFIC is a chamber of commerce led by the CCP, “with private enterprises and private economic actors as the main body” ⁽³⁴⁷⁾. Based on the articles of association of the ACFIC, its scope is to “strengthen and improve the ideological and political work of private economic actors” and to “guide private economic actors to consciously combine their individual development with the national development” (Article 1 and Article 1(2)). According to Article 2 of the Articles of Association, ACFIC is also in charge of carrying out investigations and research around the implementation of the CCP policies. The guiding principle of the association is also to assist the government in managing and serving the private economy (Article 3).
- (789) Based, *inter alia*, on (a) the level of control the GOC exercises over the Chinese industry associations analysed in this section (namely the CBIA and the CIAPS), (b) the fact that most of the Chinese domestic battery producers were found to be part of them, and (c) the fact that CATL, the biggest battery producer in China was also appointed as Vice Chairmen of the CBIA ⁽³⁴⁸⁾, and of the ACFIC, a chamber of commerce led by the CCP with the explicit intent to guide private enterprises into implementing the CCP policies, the Commission concluded that the batteries market is dominated by several companies which are managed and controlled by the State through their participation in the CBIA and the CIAPS. Given the presence in the management of the associations as well as the direction of its business decisions, the GOC exercises meaningful control over the battery suppliers through their participation in the CBIA and the CIAPS.

(2) *Core characteristics and functions of the battery suppliers*

- (790) The organisation of the input suppliers via associations and their relationship with the GOC show how the input suppliers are vested with governmental authority in the performance of public functions. Rather than acting as free market operators, the input suppliers perform the assigned governmental function of developing the BEV industry. Those functions are performed by the input suppliers, having the direct support of the GOC, when providing key inputs to the BEV producers for less than adequate remuneration.
- (791) As already covered in Section 3.1, the Commission found evidence that the GOC has full control over both the CBIA and the CIAPS and their members. Therefore, the Commission focused its investigation on the functions performed by the CBIA, the CIAPS, and their members, which can be characterised as of governmental nature.
- (792) The CBIA is fully involved in the formulation of industrial policies through the issuing of opinions and suggestions to the government and in the implementation of the legislative and regulatory framework of the battery sector. Chapter II, Article 6(1) and 6(10) of the Articles of Association of the CBIA explicitly state that the business scope of the Association is to “[p]articipate in the formulation and organization of the implementation of the battery industry development plan [...] and promote the implementation of plans and related policies formulated by the government”, as well as “[u]ndertake other tasks authorized or entrusted by the government and relevant departments”. In this regard, the Commission recalls that the implementation of plans is not a mere indicative framework but is mandated by law, including by the Constitution of the PRC ⁽³⁴⁹⁾.
- (793) The Commission found evidence in this regard on the CBIA website ⁽³⁵⁰⁾. The CBIA, together with representatives from the MIIT, and key enterprises such as CATL, and Sunwoda, another smaller Chinese battery producer, took part in a discussion meeting to formulate the “14th Five-Year Plan for the Development of the Battery Industry” ⁽³⁵¹⁾ and propose revisions on industrial policies, domestic and foreign consumer markets, and green development,

⁽³⁴⁶⁾ Zeng Yuqun, Chairman of CATL, was elected as the new Vice Chairman of the All-China Federation of Industry and Commerce, The Paper, 13 December 2022. Available at <https://finance.sina.cn/2022-12-13/detail-imxwnyvt2285318.d.html>

⁽³⁴⁷⁾ See the Articles of Association of the ACFIC, available at <https://www.acfic.org.cn/bhjj/gk/zc/>.

⁽³⁴⁸⁾ See <http://www.chinabattery.org/channel3/12/1053074/1.html>

⁽³⁴⁹⁾ The China Report – Chapter 4.3.1, p. 93 and also Article 62, 67 and 89 of the Constitution of the People’s Republic of China, available at https://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6d0b3f0e9499913.html

⁽³⁵⁰⁾ See China Battery Industry Association holds a discussion meeting on the formulation of the “14th Five-Year Plan for the Development of the Battery Industry”, China Battery Industry Association, 23 August 2021. Available at <http://www.chinabattery.org/content2/11/1102/1053190.html>

⁽³⁵¹⁾ Later finalised as the “14th Five-Year New Energy Storage Development Plan”. Available at <https://www.ndrc.gov.cn/xwdt/tzgg/202203/P020220321550104020921.pdf>

among others. According to what was reported on the CBIA website, the working group and the MIIT worked closely together on the preparation of the plan, “so that it can become a guiding document that can lead the industry and serve the government and enterprises”.

- (794) The CBIA was also found to be vested with extraordinary power to “strengthen industry discipline” and to regulate the activities of the association, industry and members, and coordinate members relations ⁽³⁵²⁾. Strengthening industry (self-discipline and market behaviour are specific instructions provided for in several national plans, as covered in recitals (747) and (748). Article 11 of the CBIA Articles of Associations provides that members shall comply with the Association’s regulations and implement the resolutions of the Association.
- (795) In addition to the evidence found in the Articles of Association of the CBIA, in the introduction of the association available on its website, it is stated that its purpose is to “reflect the demands of enterprises and industries, regulate the behaviour of enterprises and industries, safeguard the legitimate rights and interests of its members, implement national policies and laws, promote the continuous improvement of the economy, technology and management level of the whole industry, and promote the development of the whole industry, [...] to foster the market for the industry [...] and to coordinate issues in corporate production, sales and export” ⁽³⁵³⁾. According to the CBIA manifesto ⁽³⁵⁴⁾, the mission of the association is to “serve members’ needs, industry development and government management wholeheartedly” and the aim is to “create a first-class association that leads the development of the global battery industry”. Based on Article 2 of the Articles of Association, its scope is also to serve as a bridge between the government and members. According to Article 10(2) of the CBIA Articles of Association, members also supervise the work of the Association.
- (796) The CIAPS is another association comprised of enterprises and institutions related to the battery industry. The purpose of the association is not only to serve its members, but also assist them in expanding in domestic and foreign markets, and to promote the overall technological progress and industrial development of the industry. Similarly to the CBIA, Article 3 of the CIAPS’ Articles of Association ⁽³⁵⁵⁾ provides that the association adheres to the leadership of the Communist Party of China and abides by national policies, and carries out party activities. The CIAPS is also entrusted with making recommendations to government departments on the formulation of battery industry policies and regulations (Article 6(1)), and to act as a link between government by conveying the demands of members to the government, and by in turn assisting members in the implementation of governmental policies (Article 6(1)), organize the formulation of industry rules and regulations, “assisting the government in regulating the market behaviour, expand markets for members, create conditions for establishing an external environment of fair and orderly competition” and safeguard the interests of both its members and the industry (Article 6(3)). Lastly, Article 6(14) provides that the association “undertake[s] matters entrusted by government departments and carr[ies] out other activities that are beneficial to the industry”. Members taking part in the CIAPS have the also the power to supervise the work of the Association (Article 10).
- (797) Furthermore, the Articles of Association of the CIAPS impose obligations to its members as provided for in Article 11 thereof that members shall ‘comply with the Association’s charter and various regulations and implement the resolutions of the Association’.
- (798) Therefore, the CIAPS not only performs advisory functions for the government and acts as a facilitator between the GOC and its members but is also vested with the extraordinary authority to regulate the market behaviour of its members and of also other entities active in the battery industry. Similar provisions on the market behaviour of their actors and pricing mechanism are included in the Articles of Association of the Shenzhen Battery Industry Association (SBIA), of which Sunwoda is part of. The SBIA is under the management of the Shenzhen government, and explicitly provides for coordination in price disputes among their members. In particular, the SBIA’s articles of association state that “[u]nder the guidance of the price administration department, supervise the pricing of products or services within the industry, coordinate price disputes among members, and maintain fair competition” ⁽³⁵⁶⁾.

⁽³⁵²⁾ See Article 6(8) of the CBIA AoA.

⁽³⁵³⁾ Available at <http://www.chinabattery.org/detail/11101.html>

⁽³⁵⁴⁾ See <http://www.chinabattery.org/channel3/11/1053046/1.html>

⁽³⁵⁵⁾ Available at <https://www.ciaps.org.cn/news/show-htm-itemid-39456.html>

⁽³⁵⁶⁾ See Article 8(8) of SBIA’s Articles of Association available at <http://www.szbattery.org/bylaws.html>

- (799) As in the case of the CBIA, the members of the CIAPS are vested with governmental authority in the sense that they have the power, individually and collectively, to influence and take decisions for the Association, to perform duties or functions on behalf of the government for the development of the BEV industry. These associations also exercise government functions in that their role is to implement the GOC policies to provide batteries and raw materials at cheap prices for the development of the BEV industry and supervise that all the relevant suppliers are fully complying with them. In light of this, the Commission considered the CIAPS and its members to be ‘public bodies’ within the meaning of Article 1.1(a)(1) of the SCM Agreement.
- (800) The Commission further assessed whether the battery suppliers individually, and in particular CATL, a major operator on the Chinese domestic market, possess governmental authority and whether they exercise this authority in the performance of governmental functions. The evidence showed that the battery suppliers abide to and implement the GOC’s policy objectives set out in point (i) of Section 3.7.2.1.1 and thus perform governmental functions.
- (801) The role of a public body exercising government functions is aptly illustrated by the behaviour of CATL in the battery and BEV market whereby it built a network of strategic joint ventures with the following state-owned enterprises: FAW, GAC, Dongfeng, SAIC, Chang’an Automotive and, more recently, with BAIC⁽³⁵⁷⁾. These partnerships show close governmental links that help not only consolidate CATL’s position but also benefit the BEV industry in the sense that they ensure a stable supply to these BEV producers from a member of the executive council of the CBIA⁽³⁵⁸⁾. In the same spirit, CATL also signed a joint venture agreement with the Geely group⁽³⁵⁹⁾ aiming at ensuring a “stable supply” and “lower[ing] the procurement price for parts and consequently increase the competitiveness of electric cars”. This shows that such dynamics are not limited to state-owned BEV producers but also influences the behaviour of the privately owned companies.
- (802) With regard to transactions with related companies, the Commission established that Article 46 of the Articles of Association of CATL provide that transactions between the Company and its related parties may be exempted from being submitted to the shareholders’ meeting for deliberation when [...] the “pricing of related party transaction shall be stipulated by the State”⁽³⁶⁰⁾. A similar provision is contained in CATL’s Related Transaction Management System, Article 22 thereof⁽³⁶¹⁾. The Commission considered that there would be no reason why such a provision would be necessary if there were no instances of the State-fixing prices in this industry, in particular when purchasing/selling raw materials and/or batteries. Considering the above-mentioned joint ventures signed between CATL and state-owned BEV producers, the existence of joint ventures between CATL and the two non integrated sampled producers, and the large share of battery purchases made by the Geely and SAIC groups from CATL, it appears that the GOC plays a key role in the price mechanism relating to the batteries supplied to the BEV industry and that CATL exercises government authority in the performance of its functions.

⁽³⁵⁷⁾ FAW/CATL established a new company, Ningde, a popular brand, gathered six state-owned enterprise partners, Sohu, 26 April 2024. Available at https://www.sohu.com/a/310427005_205282

⁽³⁵⁸⁾ On SAIC, see “CATL, SAIC’s joint ventures celebrate first spade cut for power battery base phase II”, Gasgoo, 22 June 2021. Available at <https://autonews.gasgoo.com/m/70018344.html>

See last paragraph: “This agreement enables them to begin discussions on a broad range of areas including joint development, stable supply [...]”

On FAW, see “China’s FAW Secures NEV Battery Supplies by Teaming With Energy Champion CATL”, Yicai, 28 February 2019, available at <https://www.yicai.com/news/china-faw-secures-nev-battery-supplies-by-teaming-with-energy-champion-catl>: “For FAW, the tie-up may ensure a stable stream of power unit supplies at a competitive price”

On GAC, see “GAC and CATL Agreed to Establish Two Joint Ventures”, GAC Group, 19 July 2018. Available at <https://www.gac.com.cn/en/csr/detail?baseid=16931>: “For GAC, this cooperation will secure stable supply of core components of new energy vehicles, further reduce procurement cost, and enhance its market competitiveness.”

⁽³⁵⁹⁾ <https://www.electrive.com/2019/01/02/geely-catl-found-battery-jv-in-china/>

⁽³⁶⁰⁾ https://www.catl.com/uploads/1/file/public/202204/20220426200308_qr532d21u6.pdf

⁽³⁶¹⁾ https://vip.stock.finance.sina.com.cn/corp/view/vCB_AllBulletinDetail.php?stockid=300750&id=9876443.

- (803) As the leading battery producer in China, accounting for 52 % of the domestic battery market ⁽³⁶²⁾, CATL also features extensively in national and local plans, especially in Guizhou and Fujian. In Guizhou, CATL signed several cooperation agreements with the local government, as covered in recital (730). Moreover, the creation of the National Engineering Research Center for Electrochemical Energy Storage Technology of CATL is the reflection of one of the key tasks of the 2017 Battery Action Plan ⁽³⁶³⁾ (recital (729)). CATL, *“as the backbone of the development of China’s lithium battery industry [...] took the lead and jointly established the National Engineering Research Center for Electrochemical Energy Storage Technology”* ⁽³⁶⁴⁾. The research center is comprised of six universities including Tsinghua University and Xiamen University, two scientific research units including China Electric Power Research Institute and China Automotive Technology R&D Center, and seven upstream and downstream enterprises including Xiamen Tungsten Industry Co., Ltd. The scientific research units and Xiamen Tungsten Industry Co., Ltd are all SOEs.
- (804) The National Engineering Research Center for Electrochemical Energy Storage Technology is one of the latest examples of CATL undertaking key national tasks. For example, in CATL’s 2019 corporate social responsibility report, the company underlines that, among its main achievements, in 2016, it *“undertook specific R&D tasks both on New Energy Vehicles and smart grid under the 13th Five Year Plan national key R&D plan; founded the CATL New Energy Technology Li Ningde Times New Energy Technology Co., Ltd. Co., Ltd. Academician Expert Workstation; established Jiangsu CATL Technology Co., Ltd”* ⁽³⁶⁵⁾.
- (805) In addition to cooperation with SOEs and undertaking national key tasks, the Commission found that in 2023, CATL started offering price rebates, which triggered other players to follow suit in order to keep market share. According to information online, CATL provided lithium carbonate for car manufacturers at CNY 200 000 per ton, lower than the market price of about CNY 470 000 per ton in order to solidify some customers’ loyalty, namely Li Auto, NIO, Huawei, and Zeekr, one of the brands commercialised by the Geely group ⁽³⁶⁶⁾. CATL’s preferential program targets some ‘strategic’ companies, which are required to procure 80 % of their batteries from CATL over the next three years ⁽³⁶⁷⁾. In July 2023, the battery-maker allegedly also asked cathode material suppliers to offer a 5 percent to 10 percent discount in settling lithium carbonate prices ⁽³⁶⁸⁾. To keep up with CATL, other battery-manufacturers launched a similar reduction ⁽³⁶⁹⁾. This discount offered by CATL was confirmed by the evidence found in the verified sampled producers of the Geely group. In fact, during the investigation period, the models produced by the Zeekr brand were found to be subject to a higher subsidy margin for batteries, as compared to other producers.
- (806) Based on the above, the Commission further examined whether the fact that the battery suppliers were vested with government authority and considered ‘public bodies’ had an impact on prices for the Chinese domestic BEV producers.

⁽³⁶²⁾ Rhodium report, p. 42

⁽³⁶³⁾ See Section III (1) of the 2017 Battery Action Plan

⁽³⁶⁴⁾ The awarding ceremony of the National Engineering Research Center for Electrochemical Energy Storage Technology was grandly held at CATL, CATL, 22 January 2019. Available at <https://www.catl.com/news/4041.html>

⁽³⁶⁵⁾ See page 10 of CATL’s CSR Report of 2019, available at <https://www.catl.com/uploads/1/file/public/2020/04/30/15882360220084qox1w.pdf>

⁽³⁶⁶⁾ See CATL reportedly cut lithium costs for strategic customers, DigTimes Asia, 20 February 2023. Available at <https://www.digitimes.com/news/a20230220VL203/catl-china.html>

⁽³⁶⁷⁾ Ibid.

⁽³⁶⁸⁾ See CATL reportedly asks suppliers to offer up to 10% discount on lithium carbonate prices, CnEVPost, 20 July 2023. Available at <https://cnevpost.com/2023/07/20/catl-asks-up-to-10-discount-on-lithium-prices-report/>

⁽³⁶⁹⁾ See CATL launches “lithium ore rebate” plan to car companies, setting off a price war in the battery industry, 36kr, 17 February 2023. Available at <https://36kr.com/p/2135430109806721>

- (807) The Commission concluded in recital (798), that both the CBIA and the CIAPS were vested with governmental power to regulate and steer the economic behaviour of its members to the benefit of the BEV industry. In the case of the CBIA, the association is vested with the power to “strengthen industry self-discipline” and to “regulate the association, industry and behaviour of members” ⁽³⁷⁰⁾. In order to assist its members to increase their “real economy capabilities”, the association sets out the establishment of a financial services platform “to assist the real economy” ⁽³⁷¹⁾. The CBIA has also the power and task to “coordinate issues in corporate production, sales and export” ⁽³⁷²⁾. This system is in compliance with the provisions of the Notice on the battery industry, referred to in recital (748), which provides that behaviours of upstream and downstream battery players should be supervised and regulated accordingly. As already pointed out in recital (748), the Notice on the battery industry instructs State authorities to “strengthen supervision and strictly investigate and deal with hoarding, price gouging, unfair competition and other behaviours in the upstream and downstream of the lithium battery industry, so as to maintain market order” ⁽³⁷³⁾. This role is intrinsically assigned to all public bodies, be it the associations CBIA and CIAPS or their members.
- (808) Given the power conferred to the industry associations in question and their members over pricing mechanisms, the Commission examined the effect of governmental control over industry associations in terms of batteries and lithium/LFP.
- (809) As already examined in point (i) of Section 3.7.2.1.1, the GOC set up a network of industry associations whose members are vested with governmental authority and exercise governmental functions notably because of their power in controlling the association they are part of, which is in turn vested with authority to exercise governmental functions. This finding is notably based on the influence that associations, such as CBIA and CIAPS, have on the legislative, regulatory and normative frameworks that apply in the PRC. For all associations and their members, the Commission found that these powers are not limited to the drafting of policies and laws, but also include the strengthening on industry self-discipline whereby the associations regulate the behaviour of its members and extend to the setting of prices of raw materials and market behaviour of companies in the PRC.
- (810) As mentioned in Section 3.3.1.2, as a consequence of the non-cooperation of the GOC, the Commission did not receive any questionnaire reply from any unrelated battery supplier, nor any information concerning the Chinese battery market such as its structure, the ownership of its economic operators or the level of prices. Also, although contacted by two of the sampled groups with which it had joint ventures, CATL refused to provide a questionnaire reply so that the Commission did not have crucial information in order to assess the situation of CATL based on its own data.
- (811) Furthermore, as mentioned in section 3.3.2.3 in the absence of verifiable information provided by the SAIC group, the Commission was left with a limited set of information pertaining to the Geely Group only. Considering the much lower market share of this company on the Chinese market in terms of BEVs sales and consequently a lower volume of battery purchases in comparison with the SAIC Group, this information was not considered by itself sufficient to draw meaningful conclusions with regard to the effect of governmental control over power battery industry association on battery prices charged to BEV producers. Consequently, the Commission had to rely on other facts available.
- (812) The facts relied on by the Commission consisted of the information publicly available such as market intelligence information from BMI ⁽³⁷⁴⁾, information on the main battery player in the Chinese market, CATL, verified purchase information relating to the Geely group and certain verified information relating to a battery supplier related to the SAIC group.

⁽³⁷⁰⁾ Article 6(8) of the CBIA Articles of Association.

⁽³⁷¹⁾ Article 6(6) of the CBIA Articles of Association.

⁽³⁷²⁾ See CBIA Introduction.

⁽³⁷³⁾ Idem.

⁽³⁷⁴⁾ Data provider and market intelligence publisher for the lithium-ion battery to electric vehicle (EV) supply chain, <https://www.benchmarkminerals.com/price-assessments/lithium-ion-batteries/reports/>

- (813) The BMI data presents monthly lithium-ion battery cell price assessments for the Chinese, European, Asian (excluding PRC) and North American markets expressed on an ex works basis. As far as the investigation period is concerned, it shows that the ex-works NMC cell price per kW/h was at least 10 % and up to 30 % higher in the EU, North American or Asian markets than on the Chinese market regardless of the specific NMC chemistries (111, 523, 622 or 811). In the absence of publicly available cell price assessment for LFP cells and in the absence of cooperation by the GOC, the price difference between the Chinese and other markets was also considered valid for LFP cells. Such comparison should be seen against the background that the market share of Chinese battery producers in the EU and North American markets exceeded 60 % ⁽³⁷⁵⁾ in 2022 and 2023 so that Chinese battery producers can be considered price setters on these markets. While this price comparison shows that the prices on non-Chinese markets are systematically higher, the Commission also considered that this analysis was made on a conservative basis since the price quotations were made on ex-works basis so that shipping costs from the PRC to these markets were not taken into account. Should shipping costs be included and considering the market share of Chinese battery producers on these markets, the price difference would be even higher.
- (814) As for CATL, in the absence of more precise data, the Commission analysed the annual reports of CATL for the period 2021-2022 ⁽³⁷⁶⁾. The reports showed a deterioration of profitability on the Chinese domestic market which was compensated by higher profits recorded on the export side. While the company reported high gross profit margins both on the domestic and on the overseas market for batteries in December 2021, this trend was reversed in June 2022, when the company started to lose profitability on the Chinese domestic market, while it increased its profit margin on the export side. In the absence of cooperation by CATL either through the non-cooperation of the GOC or CATL's refusal to provide a questionnaire reply in its quality of related supplier of batteries to two sampled groups, the Commission relied on facts available and inferred that the decrease in profitability on the domestic Chinese market for batteries was the reflection of the governmental policies aiming at the provision of batteries to BEV producers on the domestic market for less than adequate remuneration. On the contrary, the export markets were not affected by such policies so that the profitability remained stable and even increased as a consequence of the higher prices offered by CATL on these markets. This clearly shows that CATL was unable to maximise its profits in China and take rationale business decisions as a normal market player operating in an open market economy. Instead, CATL was forced by the GOC policies to supply batteries at cheaper prices to the domestic BEV industry and could only achieve a normal level of profit on the exports of batteries, whose prices were not polluted by the GOC overarching policies in favour of the BEV industry. Such practice is also confirmed by the provisions contained in CATL's Articles of Associations and Related Transaction Management System, as explained in recital (801), which provide that prices of any kind of transactions with related entities shall be set by the State.
- (815) The Geely group purchased its batteries through its various entities in the form of packs and modules both from unrelated and related suppliers. Given the existence of joint ventures between the Geely group and CATL, these two companies were considered related in the framework of this proceeding. On this basis, the Commission established that the majority of the purchases were made from related companies.
- (816) The related battery suppliers of the SAIC and Geely groups also sold batteries for export during the investigation period. The Commission established that these exports were made at higher prices (on a kW/h basis) than the price paid by the Geely group to unrelated suppliers. Furthermore, the Commission also established that the related battery suppliers of the SAIC and Geely groups exported the same batteries at a significantly higher price than that charged on the domestic market. Depending on the models, the price difference exceeded 25 %, which points to different price behaviours depending on the destination of the batteries, supporting the findings in recital (813).

⁽³⁷⁵⁾ <https://www.benchmarkminerals.com/price-assessments/lithium-ion-batteries/reports/>

⁽³⁷⁶⁾ CATL annual report 2022, p. 17 and p. 18 and CATL half year report 2023, p. 15 and p. 148.

- (817) Based on the above, the Commission concluded that the governmental control over power battery industry associations and their members leads to a preferential treatment towards domestic BEV producers. More concretely, battery producers charge lower prices to BEV producers on the domestic market than on export markets. Consequently, the Commission concluded that the battery producers acting as public bodies implemented national policies aiming at providing batteries for less than adequate remuneration to the domestic BEV producers.

(3) *Conclusion*

- (818) On the basis of the information analysed above, the Commission considered that the companies supplying batteries are vested with government authority and exercise government functions in that they implement the GOC policies covered in point (i) of Section 3.7.2.1.1 rather than acting according to the free market principles in order to maximise their profits. Their company decisions and management are clearly affected by the GOC policies to supply batteries at cheaper prices for the development of the BEV industry, as well as to follow the guidance on production targets, which therefore cannot be considered expression of private behaviour in a free market economy. The evidence found on the pricing behaviour on the export market vis-à-vis the domestic pricing behaviour further confirms that battery producers in China abide by the GOC policies rather than by free market principles.
- (819) In addition, considering the functions performed by the Chinese industry associations the battery suppliers were part of (i.e. the CBIA and the CIAPS), and the pervasive GOC influence over the associations, and the powers the members of such associations acquired by taking part in them, the Commission concluded that taking part in the CBIA and the CIAPS conferred members with governmental authority, in the sense that members have the power, individually and collectively, to influence and take decisions for the Association, to perform duties or functions on behalf of the government for the development of the BEV industry. These associations also exercise government functions in that their role is to implement the GOC policies to provide batteries at cheaper prices for the benefit of the BEV industry, and supervise that all the relevant suppliers are fully complying with them. Because of the GOC plans and all these strict control and supervision mechanisms governing the associations, the acts of these associations and their members, as well as the other suppliers, are in fact acts of the GOC.
- (820) The characteristics of the Chinese domestic market and the pricing mechanisms that are implemented and monitored by the battery associations, their members, and the battery and LFP suppliers, further corroborate the conclusion that they are vested with government authority and exercise governmental functions. In particular, the GOC created an environment whereby battery and LFP would be provided to BEV producers for less than adequate remuneration.
- (821) On this basis, the Commission concluded that the battery suppliers are considered to be public bodies within the meaning of Article 3(1)(a) of the basic Regulation.

(b) *Battery suppliers acting as private bodies entrusted or directed by the GOC*

- (822) In the alternative, even if battery producers were not to be considered as public bodies in the sense of Article 3(1)(a) of the basic Regulation, the Commission established on the basis of the information described in this section that they would be considered entrusted or directed by the GOC to carry out functions normally vested in the government within the meaning of Article 3(1)(a)(iv) of the basic Regulation for the reasons set out below. Thus, their conduct would be attributed to the GOC in any event.
- (823) Article 3(1)(a)(iv), second indent of the basic Regulation states that a financial contribution exists if a government: 'entrusts or directs a private body to carry out one or more of the type of functions illustrated in points (i), (ii) and (iii) which would normally be vested in the government, and the practice, in no real sense, differs from practises normally followed by governments'. The type of functions described by Article 3(1)(a)(iii) of the basic Regulation occurs where '*a government provides goods or services other than general infrastructure, or purchases goods...*'. Those provisions mirror paragraphs (iii) and (iv) of Article 1.1(a)(1) of the SCM Agreement and should be interpreted and applied in the light of the relevant WTO case law.

- (824) The WTO panel in *US – Export Restraints* ruled that the ordinary meaning of the two words ‘entrust’ and ‘direct’ in Article 1.1(a)(1)(iv) of the SCM Agreement require that the action of the government must contain a notion of delegation (in the case of entrustment) or command (in the case of direction). It rejected the US ‘cause-and-effect-argument’ and asked for an explicit and affirmative action of delegation or command. However, in a subsequent case (*US – Countervailing duties on DRAMS*), the Appellate Body held that the replacement of the words ‘entrusts’ and ‘directs’ by ‘delegation’ and ‘command’ is too rigid as a standard. According to the Appellate Body, ‘entrustment’ occurs where a government gives responsibility to a private body and ‘direction’ refers to situations where the government exercises its authority over a private body. In both cases, the government uses a private body as proxy to effectuate the financial contribution, and ‘in most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement’.
- (825) At the same time, paragraph (iv) of Article 1.1(a)(1) of the SCM Agreement does not allow Members to impose countervailing measures to products ‘whenever the government is merely exercising its general regulatory powers’ or where government intervention ‘may or may not have a particular result simply based on the given factual circumstances and the exercise of free choice by the actors in that market’. Rather, entrustment and direction implies ‘a more active role of the government than mere acts of encouragement’. Moreover, the WTO did not consider that ‘leaving discretion to a private body is necessarily at odds with entrusting or directing that private body [...]’. While there may be cases where the breadth of discretion left to the private body is such that it becomes impossible to properly conclude that that private body has been entrusted or directed (to carry out a particular task), this is a factual/evidentiary matter to be addressed on a case-by-case basis.’ In line with those WTO rulings, not all government measures capable of conferring benefits equate to a financial contribution under Article 3 of the basic Regulation and Article 1.1 (a) of the SCM Agreement.
- (826) In a nutshell, the relevant WTO rulings provide that:
- (i) the determination of whether there is a ‘financial contribution’ under Article 1.1(a)(1) of the SCM Agreement should focus on the nature of the government action, rather than on the effects or the results of the government action. In other words, it is well acknowledged that governments intervene in the market as regulators and, when so doing, they cause effects on the market and its operators. In this sense, a government may legitimately impose export taxes in order to generate revenue in case of a very competitive commodity in the international markets. In contrast, there is no such legitimate imposition of export restrictions when it becomes evident that the use of such an instrument together with other mechanisms to keep commodities in the domestic market, and to force suppliers to sell below market prices, are part of a broader scheme engineered by the government to support a particular industry or set of industries to boost their competitiveness. Thus, the nature of the government action, including its context, object and purpose, is relevant in assessing the ‘financial contribution’ element;
 - (ii) ‘entrustment’ or ‘direction’ would involve an explicit and affirmative action addressed to a particular party in relation to a particular task or duty, this being very different from the situation in which a government intervenes in the market in some way, which may or may not have a particular result given the factual circumstances and exercise of free choice by the actors in that market. Ultimately, the key question behind the concepts of entrustment or direction is whether the conduct in question, i.e. the financial contribution in the form of provision of goods for less than adequate remuneration, can be attributed to the government or still is the free choice of the private operators in view of market considerations, such as regulatory constraints;
 - (iii) Article 1.1(a)(1)(iv) of the SCM Agreement is, in essence, an anti-circumvention provision and, thus, a finding of entrustment or direction requires that the government gives responsibility to a private body or exercises its authority over a private body in order to effectuate a financial contribution. In most cases, one would expect entrustment or direction of a private body to involve some form of threat or inducement, which could, in turn, serve as evidence of entrustment or direction. However, governments are likely to have other means at their disposal to exercise authority over a private body some of which may be ‘more subtle’ than a command or may not involve the same degree of compulsion;

- (iv) There must be 'a demonstrable link' between the government act and the conduct of the private body. There is no reason why a case of government entrustment or direction should not be premised on circumstantial evidence (such as implicit and informal acts of delegation or command), provided that such evidence is probative and compelling. In this respect, evidence of the government's intention to support the downstream industry (for example, through publicly stated policies or government decisions, or other governmental actions), or the existence of other government measures ensuring a particular result on the market (e.g. an export restraint together with a government measure preventing operators subject to those restraints from stocking their products or a government price regulation with a view to keeping domestic prices low for the product concerned), may be relevant to determine the existence of a 'financial contribution' under Article 1.1 (a)(1)(iv) of the SCM Agreement (in particular as an indirect manner for the government to provide goods, as provided in sub-paragraph (iii)). In some circumstances, 'guidance' by a government can constitute direction. Finally, depending on the circumstances, a private body may decide not to carry out a function with which it was so entrusted or directed, despite the possible negative consequences that may follow. This does not show, however, on its own, that the private body was not entrusted or directed.
- (827) In line with that case-law, assuming that battery suppliers are 'private bodies' within the meaning of Article 3(1)(a)(iv) of the basic Regulation, the Commission examined, on the one hand, the nature of the GOC's actions, i.e. whether the GOC's intervention involves the entrustment or direction of battery producers to provide batteries for less than adequate remuneration to BEV producers; and, on the other hand, the action of the battery suppliers i.e. whether the battery producers provide inputs to the Chinese BEV producers for less than adequate remuneration and hence whether there is a demonstrable link between the GOC's actions and the conduct of the battery suppliers acting as a proxy for the GOC. Finally, the Commission assessed whether the function carried out by the battery suppliers would normally be vested in the government, i.e. whether the provision of batteries to BEV producers in China is a normal government activity, and whether such function does not, in real sense, differ from the practices normally followed by governments, i.e. whether the actual provision of inputs by producers, in no real sense, differs from what the government would have done itself.
- (828) In view of the WTO case-law referred to in recitals (822) - (826), the Commission analysed first whether the GOC's support to the Chinese BEV industry in the form of provision of batteries for less than adequate remuneration is effectively an objective of the various government measures in question and not merely a 'side effect' of the exercise of general regulatory power. The investigation examined in particular whether the lower prices of batteries found were part of the government's objectives, or whether the lower prices were rather an 'inadvertent' by-product of general governmental regulation. The Commission concluded that the various interventions by the GOC had as their objective to support the BEV industry, and that the lower battery prices were an intended objective of these measures, which were in turn enforced through the industry associations that have the obligation to respect and enforce these plans.
- (829) The GOC took a number of measures throughout the years to achieve its policy goal. Section 3.1 has detailed the relevant background and context explaining the importance the GOC attaches to the development of the BEV industry and the industries around it.
- (830) As explained in detail in the previous point (i) of Section 3.7.2.1.1., the GOC has created a series of measures which apply to all companies irrespective of whether they are State-owned or privately owned, aimed at directing them towards the supply of batteries at cheap prices. In particular, the 2017 Battery Action Plan contains specific instructions on the pricing of batteries, mandating that by 2020, the system specific energy density will strive to reach 260 watt-hours/kilogram, and the cost of power batteries will be reduced to less than 1 yuan/watt-hour. By 2025, the energy density will reach 500 watt-hours/kilogram.

- (831) Moreover, the battery industry is heavily supported in China. A large number of regulations, issued by different governmental bodies supervising each aspect of the battery sector exist, as demonstrated in point (i) of Section 3.7.2.1.1, and in particular the 2017 Battery Action Plan covered in recitals (708) - (710)-, the NEV Plan 2012-2020 (recital (744)), and the measures in Jiangxi, Fujian and Shenzhen (recitals (725) - (733)). The Commission found evidence in national and local policies that battery producers were benefitting from a series of support measures, covered in recital (735). These include rewards, provision of land, electricity and gas at cheaper prices, loans from state-owned banks at a non-commercial basis and preferential fiscal policies. The Commission also established that the battery producers related to the Geely and SAIC group that provided a questionnaire also benefited from preferential policies, such as preferential financing, tax exemption and reduction programmes and grants (recital (740)).
- (832) By providing financial support to battery producers, the GOC further directed companies to increase and support the domestic supply of batteries in favour of the development of the BEVs industry. Such a support acts as an inducement for battery suppliers to fully align their behaviour with the GOC's policy objectives to develop the BEV industry.
- (833) Moreover, in the section above, the Commission already established how the GOC ensures a particular conduct from the battery suppliers through the Chinese industry associations (i.e. CBIA and CIAPS), which are not independent industry associations, in light of the level of control by the GOC over them (recitals (777) - (784)) and the functions they perform (recitals (791) - (798)). As already covered in recitals (763) and (772), battery suppliers that were members of the CBIA and/or CIAPS represented 86 % of the market share in 2020, and 93 % of China's total installed capacity in 2023. The Commission also found that the aforementioned Chinese industry associations were not independent associations acting according to free economic principles, but entities guided by the GOC and managed by it through the State Council (recitals (777) - (784)). In particular, both associations were found to be undertaking tasks entrusted by the government, and their role is to assist the government in the implementation of governmental policies and in regulating the behaviour of their members. The fact that the associations and their members are vested with the power to “*strengthen industry self-discipline*” and to “*regulate the association, industry and behaviour of members*”, and, in the case of the CBIA specifically also to “*coordinate issues in corporate production, sales and export*”. Hence, these two associations exercise government functions in that their role is to implement the GOC policies to provide batteries at cheaper prices for the benefit of the domestic BEV industry, and supervise that all the relevant suppliers are fully compliant with them. In light of this, the Commission considered the CBIA and the CIAPS to be ‘public bodies’ within the meaning of Article 1.1(a)(1) of the SCM Agreement.
- (834) Moreover, at the CBIA's 7th Members Congress, the association expressed that “*the association should give full play to its role as an industry self-regulatory organization, shoulder the important responsibilities of maintaining market behaviour, guiding the industry to orderly competition, rule constraints, supervising self-discipline, and optimizing development, [...] **restrains and punishes behaviors that disrupt market order, harm the interests and image of the industry**, and strives to create a fair and orderly development environment for the battery industry*” [emphasis added] ⁽³⁷⁷⁾. This shows that, members must abide by the directions of the association aimed at regulating the economic behaviour of their members in order to comply with GOC policies, in order to avoid repercussion inflicted upon them by the CBIA. This further shows that the GOC, through the associations, mandates the battery producers to abide by a certain conduct from the battery producers. Additional evidence that the GOC actively participates in the market and intervenes when issues with prices and supply arise has been found in the press statements given by the MIIT in 2022 (recital (750)), when the MIIT pledged to “*push [the prices of raw materials] back toward the reasonable level as soon as possible*” ⁽³⁷⁸⁾.

⁽³⁷⁷⁾ See https://www.clii.com.cn/qgytpxw/qgyzhtpxw/201507/t20150721_3875898.html

⁽³⁷⁸⁾ See footnote 308.

- (835) Furthermore, the Commission observed that the provisions contained in CATL's Articles of Associations and Related Transaction Management System, as explained in recital (801), provide that there are instances when prices of any kind of transactions with related entities shall be set by the State. Given the fact that CATL is by far the biggest supplier on the domestic market and has joint ventures with State owned BEV producers as well as with the two non-integrated sampled producers, the Commission inferred, in the absence of cooperation by CATL, that the GOC plays a key role in the price mechanism relating to the batteries supplied to the BEV industry and that CATL's behaviour is not that of a free market operator as far as the Chinese domestic market is concerned.
- (836) This is further exemplified by CATL's irrational behaviour on the domestic and export markets (recital (813)), where CATL sacrifices profits on sales of batteries in the Chinese domestic market. Indeed, its irrational behaviour shows that it was directed by the GOC policies to supply batteries at cheaper prices to the domestic BEV industry, rather than following a market driven behaviour which would suggest that it sells batteries mostly on export markets where it could have optimised substantially its profits during the investigation period. As explained in recitals (738) - (742) above, the GOC also provided financial support to the batteries suppliers to ensure that the companies in question can stay afloat and develop further their capacities so that they can pursue their irrational behaviour directed by the GOC of providing batteries at low prices and sufficient quantities to the BEV producers, rather than redirecting their sales to exports, whereby they would have achieved significant profits.
- (837) The Commission considered that, in view of the evidence available, the GOC took a 'more active role than mere acts of encouragement', as required by the WTO Appellate Body ⁽³⁷⁹⁾. The measures taken by the GOC restrict the freedom of action of the battery producers by limiting in practice their business decision at what price to sell their product, as shown in the plans covered in point (i) of Section 3.7.2.1.1, to the benefit of the BEV industry. The role of the GOC went well beyond an ordinary intervention as a market regulator in the battery sector. The relevant measures not only regulated general aspects of the market but imposed a specific behaviour on battery companies. All these measures were undertaken in order for battery companies to provide batteries at cheaper prices for the benefit of the BEV industry. That intention was made clear through numerous policy statements and actions covered in point (i) of Section 3.7.2.1.1.
- (838) By obliging battery companies to comply with these measures, which were in turn enforced through the industry associations that have the obligation to respect and enforce these plans, the GOC deprived them of the ability to freely choose their selling strategies according to market considerations. In other words, these measures clearly constitute a 'demonstrable link' between the government actions and the conduct of the battery companies. The GOC used the battery companies as a proxy to support the BEV producers.
- (839) Finally, the Commission assessed whether the actual provision of inputs by producers, in no real sense, differs from what the government would have done itself. The Commission considered this to be the case. Rather than providing the batteries directly to the BEV industry in order to achieve the GOC public policy objectives of boosting the development of this industry, the GOC through a set of measures induces private entities to do so on its behalf. Moreover, to the extent that such provision of goods by the government involves some revenue expenditure (such as the provision of subsidies to the inputs or the sacrifice of income by providing goods for less than adequate remuneration), such an action should be understood as the typical functions normally vested in the government. ⁽³⁸⁰⁾

⁽³⁷⁹⁾ Appellate Body Report, DS 296, para. 115.

⁽³⁸⁰⁾ See Panel Report, *United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (Drams) from Korea*, WT/DS296, 21 February 2005, footnote 57 ('[W]e consider that the reference to functions "normally vested in the government" should also be understood to mean functions of taxation and revenue expenditure. (...) To the extent that loans and restructuring measures involve taxation or revenue expenditure, they are capable of falling within the scope of that provision').

- (840) In light of the above, the Commission concluded that the set of measures adopted by the GOC lead to a financial contribution in the form of government's provision of batteries for less than adequate remuneration to the Chinese BEV producers under Article 3(1)(a)(iv) of the basic Regulation. Battery suppliers are induced by the GOC to provide batteries for less than adequate remuneration ⁽³⁸¹⁾ to the BEV industry so that their conduct must be attributed to the GOC, and it is not merely an unintended result of the GOC's actions. The GOC ensures that battery prices are controlled via the industry associations and the support granted to battery producers to abide by the GOC's policy objectives.

3.7.2.1.2. Benefit, specificity and calculation of the subsidy amount

(a) *Benefit*

- (841) As explained in Section 3.3.1.2, no unrelated manufacturing supplier of LFP or batteries provided information to the Commission by replying to the specific questionnaire intended for suppliers of input in China. Given the existence of a relationship between the two non-integrated sampled producers and CATL, the latter was also requested to fill in a questionnaire but failed to do so.
- (842) As a consequence, the Commission had to rely on facts available in accordance with Article 28 of the basic Regulation in order to determine the level of the benefit for the sampled exporting producers that purchased batteries on the domestic market.
- (843) The Commission concluded that suppliers of batteries were considered to be public bodies or private companies entrusted and/or directed by the GOC to provide batteries for less than adequate remuneration.
- (844) In accordance with Articles 3(2), 5 and 6(d) of the basic Regulation, the Commission assessed the amount of countervailable subsidies in terms of the benefit conferred on the recipient, which was found to exist during the investigation period.
- (845) In order to determine the existence of benefit and its amount the Commission first assessed whether prices in China could amount to an appropriate benchmark.
- (846) In view of the non-cooperation by the GOC and consequent lack of information on the Chinese domestic battery market, the Commission considered that it was not appropriate to base its benchmark on Chinese domestic prices because of the large market share of suppliers of batteries that were members of the CBIA or CPIAS and the findings that the Chinese market was distorted due to the applicable national and sectoral policies implemented by the domestic battery suppliers covered in Section 3.7.2.1, and in particular the ones relating to pricing.
- (847) The Commission identified two possible sources for establishing an appropriate benchmark for the batteries: Bloomberg New Energy Financials ('BNEF') and Benchmark Mineral Intelligence ('BMI') ⁽³⁸²⁾. Whereas BNEF provided a useful source of information, the use of BNEF did however not allow to calculate potential benchmark prices for the investigation period using monthly prices. BNEF did not identify a price per chemistry per geographical area either. Furthermore, it did not report ex-works prices so that price comparisons could be affected by different delivery terms. On the contrary, the BMI data allowed the calculation of benchmarks for the IP, per chemistry (LFP and NMC) and geographical area ⁽³⁸³⁾, on an ex-works basis. It could also weigh the different sub-chemistries of NMC batteries (111, 523, 622, 811) based on the corresponding demand in the EV sector. However, it only reported prices per kw/h at cell level, not at pack level. Considering the level of accuracy in terms of time period, geographical area, chemistry and delivery terms, BMI was considered the most appropriate source to establish a benchmark price for cells. In addition, the ex-works prices used from the selected source was a conservative alternative, since the actual battery purchases may have been carried-out on various delivery terms including different transport costs.

⁽³⁸¹⁾ See also section 3.7.2.1 on benefit.

⁽³⁸²⁾ Data provider and market intelligence publisher for the lithium-ion battery to electric vehicle (EV) supply chain, <https://www.benchmarkminerals.com/price-assessments/lithium-ion-batteries/reports/>

⁽³⁸³⁾ Regions available were the North America, Asia, China and Europe.

- (848) In order to calculate a corresponding benchmark for NMC battery cell out of China ⁽³⁸⁴⁾, the Commission used an average benchmark price weighted on the demand of sub-chemistries of NMC battery in the EV sector as reported by BMI. In the absence of benchmark for LFP battery cell out of China, it was considered reasonable to establish this price by applying the ratio of NMC battery cell benchmark in and out of China ⁽³⁸⁵⁾.
- (849) In order to calculate a corresponding benchmark for battery packs, the Commission used LFP and NMC battery cell benchmarks out of China described in the recitals above and applied cell to pack ratio, based on publicly available information published by BNEF ⁽³⁸⁶⁾. The cell to pack ratio was confirmed by the data on the case file provided by one of the cooperating groups.
- (850) The benefit for the Geely group was calculated by taking into consideration the difference between the amount actually paid by the sampled exporting producers for batteries (cells, modules, and packs) and the amount that should normally have been paid on the basis of the established benchmark.
- (851) As explained in recital (815), the Commission established that two related battery suppliers sold batteries for export at a significantly higher price than the same batteries sold on the Chinese domestic market.
- (852) Whereas no accurate conclusion could be drawn with regard to the battery purchases made by the SAIC Group in view of the lack of cooperation as described in Section 3.3.2, the Commission established that, at least, the 4 main battery suppliers were state-owned, members of the CBIA and/or closely associated with it through CATL. The Geely Group was found to purchase over 65 % of its batteries from companies that were members of one of these two associations. Based on the above and in the absence of any other information, this was considered representative of the situation on the domestic Chinese batteries market.
- (853) Consequently, it was considered that the two non-integrated sampled producers purchased their batteries from key operators considered as 'public bodies' or private bodies entrusted or directed by the GOC and that the Chinese BEV producers benefitted from batteries sold for less than adequate remuneration.
- (854) In addition, due to the partial non-cooperation of the GOC, the Commission lacked crucial information on the market situation in China of suppliers of batteries and on possible adjustments that needed to be made.
- (855) On this basis, the Commission concluded that the prevailing conditions on the Chinese market did not justify adjustments, in light of the lack of market conditions in the country of origin, and in line with the provisions of Article 6(d)(ii) of the basic Regulation, and calculated therefore the benchmark using the methodology described before.

(b) *Specificity*

- (856) The set of measures applied by the GOC were directed to benefit exclusively the NEV industry, of which BEVs are part, since the batteries in question that are subject to the measures are only used by the NEV industry.

Moreover, the specific legal acts and various documents covered in point (i) of Section 3.7.2.1.1 clearly identify the BEV industry as beneficiary of the measures in question.

- (857) The Commission therefore concluded that subsidies in the form of provision of batteries at less than adequate remuneration are not generally available but are specific within the meaning of Article 4(2)(a) of the basic Regulation. Moreover, there was no evidence submitted by any of the interested parties suggesting that such form of subsidies is based on objective criteria or conditions in the sense of Article 4(2)(b) of the basic Regulation.

⁽³⁸⁴⁾ The out of China benchmark relied on prices applicable in North America, Europe and Asia, therefore excluding China.

⁽³⁸⁵⁾ In China benchmark relied on prices applicable in China. The out of China benchmark relied on prices applicable in North America, Europe and Asia, therefore excluding China.

⁽³⁸⁶⁾ <https://about.bnef.com/blog/lithium-ion-battery-pack-prices-hit-record-low-of-139-kwh/> and <https://about.bnef.com/blog/lithium-ion-battery-pack-prices-rise-for-first-time-to-an-average-of-151-kwh/>

(c) *Calculation of the subsidy amount*

- (858) The Commission analysed prices on a kW/h basis and took chemistry (NMC vs LFP), battery type (module vs pack), and relationship into account. On this basis, it concluded that purchase prices from related companies were on average ⁽³⁸⁷⁾ higher than purchases prices from unrelated suppliers. Such difference exceeded 8 % and, in some cases, even 20% for certain combinations of chemistry/battery type.
- (859) In view of such differences, the Commission analysed the information on file relating to transfer price in order to determine whether such transactions could be considered as made at arm's length. However, the information on file i.e. submitted price agreements and contracts did not include any information in this regard. In this context and in the absence of claim by the Geely group that such transactions were at arm's length, the Commission was not in a position to use such prices and replaced them with the price paid per kW/h for similar products to unrelated suppliers. When certain companies within the Geely group did not purchase from unrelated suppliers, the weighted average price per kW/h for similar products, at Geely group level, was used. This comparison was made on a kW/h basis taking the battery chemistry, namely LFP and NMC, and the battery type into account (cell, module or pack). In the absence of an applicable benchmark for modules, the cell price benchmark was used as a conservative alternative. The benchmarks were based on the battery cell prices sourced from BMI ⁽³⁸⁸⁾ considering the average LFP or NMC cell prices outside China during the IP, as established in the recitals above.
- (860) Considering the partial non-cooperation by the SAIC group with regard to the supply of batteries and corresponding data as described in Section 3.3.1.4, the Commission had to rely on facts available. In this regard it relied on a significant volume of purchases by the other sampled group that purchased batteries. The considered transactions excluded certain batteries destined to BEV models that were not similar to those sold by SAIC.

Provision of batteries for less than adequate remuneration

Company name	Subsidy rate
Geely group	10,32 %
SAIC group	13,24 %

3.7.2.2. Government provision of LFP for less than adequate remuneration

- (861) As noted before, one of the sampled exporting producers (BYD Group) is vertically integrated. Thus, for this group, the Commission examined whether the provision of key raw materials for the production of batteries used in the models made by this group could amount to a countervailable subsidy. At this stage, the Commission focused this inquiry on the main key component used for batteries, LFP, representing more than 25 % of the costs of production of the battery.
- (862) In order to establish the existence of a countervailable subsidy, three elements must be present under Articles 3 and 4 of the basic Regulation: (1) a financial contribution; (2) a benefit, and (3) specificity. The Commission will examine those elements below.

3.7.2.2.1. *Financial contribution*

(a) LFP suppliers acting as 'public bodies'

- (863) The Commission first analysed whether the LFP suppliers could be found to amount to public bodies so that the provision of this key raw material for less than adequate remuneration could be attributed to the GOC within the meaning of Article 3(1)(a) of the basic Regulation. As explained in detail in Section 3.5.1, recitals (409) to (418), the legal standard for the existence of a public body must be interpreted in accordance with the WTO

⁽³⁸⁷⁾ The price comparison between related and unrelated suppliers was made by taking purchase volumes into account in order to calculate a weighted average price difference.

⁽³⁸⁸⁾ Data provider and market intelligence publisher for the lithium-ion battery to electric vehicle (EV) supply chain, <https://www.benchmarkminerals.com/price-assessments/lithium-ion-batteries/reports/>

jurisprudence. On the basis of the relevant case law referred to in recitals (409) to (418), whether the inputs producers in China engaged in supplying inputs are ‘public bodies’ (i.e. entities which possess, exercise or vested with authority to exercise governmental functions) should be examined having due regard (i) to legal and economic environment prevailing in the country in which the investigated entities operate, (ii) the relationship between the entities at hand and the government, and (iii) the core characteristics and functions of the relevant entities.

(i) *Legal and economic environment prevailing in the PRC*

- (864) In recitals (704) – (758), the Commission already examined the legal and economic environment prevailing in China showing how from the inputs (including raw materials such as LFP), to mid-inputs (such as batteries), the GOC has established a framework ensuring that input suppliers comply with the GOC’s policy objectives to develop the BEV industry. The relevant measures adopted by the GOC to achieve its policy goal of supporting the main industries across the BEV supply chain for the benefit of the BEV producers, encompassing both upstream key materials used in the production of batteries, and batteries, is covered in point (i) of Section 3.7.2.1.1.
- (865) In particular, the “Mineral Resources Law” and the “Rules for Implementation of the Mineral Resources Law” (recital (723)) show how the State envisages mineral resources as belonging to the state, and that the government has full control over the allocation of resources and can define who obtains the mining rights and the limits of what is mined. The 14th Raw Materials FYP (recital (714)) supports the establishment of a mineral resource reserve system in which the state and enterprises jointly work together. Overall, the GOC has created a system whereby it can exercise full control over mineral resources.
- (866) Several incentives to suppliers of raw materials used in the production of batteries are also available, such as tax incentives (recital (721)), guidance funds, rewards, equity pledges (recital (720)).
- (867) In addition, the Commission found that lithium iron phosphate is not subject to the 13 % VAT refund upon export, making it cheaper and abundant for domestic consumption as compared with export (recital (753)). Evidence of GOC intervention in the pricing of raw materials for new energy vehicles was found in press statements by the MIIT in 2022 (recital (750)), when the government pledged to push the price of raw materials used in NEV (including lithium) back to a reasonable level.
- (868) All of the above demonstrates that the GOC has established at central and local level a number of policies and measures targeting input suppliers in order to support ultimately the BEV industry. All these inputs constitute a significant part of the cost of production of BEVs. As a result of these GOC policies ensuring a stable and ample supply of these inputs, coupled with cheaper prices, BEV producers benefit from subsidies in the form of a significant cost reduction, thereby allowing them to sell BEVs at cheaper prices including on the EU market.

(a) *Relationship between LFP suppliers and the GOC*

- (869) Having analysed the legal and economic framework in which the input suppliers operate, heavily dictated by the GOC’s policy objectives to develop the BEV industry via input suppliers, the Commission also analysed the characteristics of the Chinese domestic market of LFP, the evidence of State presence/ownership in input suppliers as well as other indicia that the GOC exercised meaningful control over those entities (including their organisational features, chains of decision making authority and the overall relationship with the GOC).
- (870) LFP is a type of lithium derived from lithium carbonate. While lithium carbonate can be sourced from suppliers both within and outside China - most of China’s imports of lithium carbonate come from Chile and Argentina ⁽³⁸⁹⁾- according to information available online, around 75 % of the worldwide lithium refining takes

⁽³⁸⁹⁾ Based on Global Trade Atlas (GTA) import statistics of China, HS code 28369100, from October 2022 to September 2023.

place in China ⁽³⁹⁰⁾. This means that the world is dependent on China for lithium refining, and China's dominant position in this market allows them to be price-setters on the international stage. This was further confirmed by China's import data of LFP from the rest of the world, which showed that insignificant quantities of LFP were sourced from third countries ⁽³⁹¹⁾.

- (871) The Commission was unable to find more information on government ownership and control for the LFP supplier market as a whole in the public domain. Given the absence of cooperation by GOC as explained in more details in Section 3.3.1.2 and by the BYD group as far as its main related supplier is concerned as explained in Section 3.3.4, the Commission could draw inferences that it is likely that the degree of government ownership and control of the LFP suppliers could be more significant than the level of information available on it.
- (872) In this respect, information available online on the market share of lithium producers in China ⁽³⁹²⁾ showed that the information submitted by the BYD Group could be deemed representative of the Chinese domestic market. The Commission considered the information submitted by the sole sampled vertically integrated producer (the BYD group), deeming it representative of the whole Chinese market of LFP. The Commission identified nine suppliers of LFP to the BYD Group. When the Commission was unable to find information in the public domain, it had to draw inferences on the basis of Article 28 of the basic Regulation.
- (873) The Commission established that all nine Chinese lithium suppliers were located in China. Hence, the Commission inferred that the Chinese LFP market was dominated by domestic suppliers.
- (874) The Commission also established that the activities of the LFP suppliers are regulated by the same subordinated associations as the battery producers, i.e. the CBIA and CIAPS ⁽³⁹³⁾, whereby the same provisions covered in Section 3.7.2.1 apply to LFP suppliers. As noted in recital (773), the CBIA and the CIAPS do not publish the full list of members online. The Commission was able to ascertain companies' participation in the CBIA, CIAPS, and other industry associations by looking at their annual reports and other information available online, such as the list of members of their executive bodies. In the absence of information provided by the GOC as well as of official public data covering the full list of members of the CBIA and the CIAPS, the Commission reckoned that even more suppliers could be members of these associations. Indeed, among the nine suppliers of LFP to the BYD group, the Commission found that at least two of them were members of the CBIA and also partially state-owned. Two other suppliers were also found to be partially State-owned. According to its annual report, one of the partially state-owned companies was also managed as an enterprise having State-owned equity ⁽³⁹⁴⁾. Another company was found to be a member of the CIAPS. The SOE and the other members of the CBIA and the CIAPS represented 90 % of the total quantity of LFP supplied to the sampled exporting producer and up to 92 % of the total value during the investigation period. One of the biggest suppliers was not only a member of the CBIA, but also part of its executive council. Consequently, the Commission established that several suppliers of LFP, representing most of the total quantity of LFP sourced by BYD, and also being some of the biggest market players, were found to be members of the CBIA and/or the CIAPS.
- (875) Based on the above, the Commission concluded that the Chinese domestic market for LFP is largely dominated by domestic suppliers that are, to a large extent members of subordinated associations such as CBIA, CIAPS and Hunan Battery Industry association and/or state-owned.

⁽³⁹⁰⁾ See The battle to break China's battery-making supremacy, in five charts, Bloomberg, 1 December 2022, available at <https://www.bloomberg.com/professional/insights/commodities/the-battle-to-break-chinas-battery-making-supremacy-in-five-charts/>

⁽³⁹¹⁾ Based on GTA import statistics of China, HS code 28429040, from October 2022 to September 2023.

⁽³⁹²⁾ See "China's lithium iron phosphate production (January-August) Top 10 list", ESCN, 16 October 2023. Available at <https://www.escn.com.cn/20231016/ea32ade01ece4dce95eecd92e91ce8/c.html#:~:text=%E4%BD%9C%E4%B8%BA%E7%94%B5%E6%B1%A0%E7%9A%84%E6%A0%B8%E5%BF%83%E6%9D%90%E6%96%99,%E7%89%B9%E7%91%9E%E3%80%81%E5%B1%B1%E4%B8%9C%E4%B8%B0%E5%85%83%E3%80%82>

⁽³⁹³⁾ https://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2023/2023-4/2023-04-13/8980089.PDF, p. 29

⁽³⁹⁴⁾ See <https://q.stock.sohu.com/newpdf/202352048916.pdf>, p. 82

- (876) The Commission further examined the relationship between the GOC and the LFP suppliers, to establish whether the government exercised meaningful control over the entities at hand and their conduct on the market.
- (877) The Commission also found evidence of CCP influence through party building association in some of the major suppliers of LFP to the BYD group. Similarly to CATL (recital (786)), the Articles of Association of three LFP suppliers to the BYD group contained specific provisions on the establishment of CCP organisations and party activities within the company.
- (878) The Commission found that 89 % of the total quantity of LFP supplied to the BYD Group and up to 91 % of the total value during the IP were sourced from LFP suppliers that were members of the CBIA and/or the CIAPS. Another main LFP supplier was also partially state-owned and managed, according to its Annual Reports, as an enterprise having state-owned equity.
- (879) Based on (a) the level of control the GOC exercises over the Chinese industry associations analysed in point (ii) of Section 3.7.2.1.1 (namely the CBIA and the CIAPS), and (b) the fact that most of the Chinese domestic LFP producers were found to be part of them, were state-owned or managed as an enterprise having State-owned equity (recital (873)), and (c) the fact that several LFP suppliers' articles of association contained provisions on the establishment of CCP organisations within the company (recital (876)), the Commission concluded that the LFP market is dominated by several companies which are managed and controlled by the State through their participation in industry associations such as CBIA and the CIAPS. Given the presence in the management of the associations as well as the direction of its business decisions, the GOC is capable of exercising meaningful control over the battery suppliers, also through their participation in the CBIA and the CIAPS.

(b) *Core characteristics and functions of the lithium suppliers*

- (880) In the absence of any information provided by the GOC concerning the number and other information on the formal indicia of government ownership and control of domestic suppliers of lithium and batteries for BEVs, the Commission had to rely on facts available according to Article 28 of the basic Regulation. For this purpose, the Commission analysed the situation of the lithium suppliers reported by the sole sampled vertically integrated producer (the BYD group). When the Commission was unable to find information in the public domain, it had to draw inferences on the basis of Article 28 of the basic Regulation.
- (881) The Commission found that some of these suppliers were directly or indirectly partially State-owned. In particular, the Commission established that the main LFP supplier to the BYD group, Hunan Yuneng New Energy Materials Co. Ltd was partially state-owned as at least 21,9% of its shares were held by state-owned entities in 2022 ⁽³⁹⁵⁾. Despite this apparent partial state ownership, this company was managed as a state-owned shareholding enterprise ⁽³⁹⁶⁾. Three other suppliers to the BYD group were also found to be partially directly or indirectly state-owned ⁽³⁹⁷⁾. Moreover, the Commission also established the presence and pervasive influence of CCP members and organisations in multiple LFP suppliers to BYD. The framework in which CCP organisations operate in companies and their purpose have been described in recitals (785) and (786). Lithium suppliers of the BYD Group, accounting for over 90% of its LFP purchase in value or volume were found to be part of industry associations acting as 'public bodies' within the meaning of Article 1.1(a)(1) of the SCM Agreement, and whose participation in the association conferred the same public authority to its members.
- (882) The Commission assessed whether the LFP suppliers are vested with governmental authority and whether they exercise this authority in the performance of governmental functions. The evidence showed that the LFP suppliers abide to and implement the GOC's policy objectives set out in point (i) of Section 3.7.2.1.1 and thus perform governmental functions.

⁽³⁹⁵⁾ See http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2023/2023-4/2023-04-13/8980089.PDF p76

⁽³⁹⁶⁾ See <https://q.stock.sohu.com/newpdf/202352048916.pdf>, p. 82

⁽³⁹⁷⁾ http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESH_STOCK/2023/2023-4/2023-04-25/9055616.PDF p115;
<https://platform.wirelesscreen.ai/organization/1390c27a-e67d-5198-ab30-8eab6da0f784>;
http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2023/2023-3/2023-03-07/8868659.PDF p88

- (883) Given the lack of cooperation from the GOC (see Section 3.2.3), the Commission had to rely on information available online. The Commission found evidence of LFP suppliers undertaking national tasks, for example, in Anju district (Suining city, Sichuan) and in Yunnan. These two projects concern the subsidiaries of Hunan Yuneng New Energy Materials, the major LFP producer in China⁽³⁹⁸⁾ whose main customers are BYD and CATL⁽³⁹⁹⁾. Moreover, during the investigation period both BYD and CATL were among the shareholders of Hunan Yuneng New Energy Materials, together with a state-owned group⁽⁴⁰⁰⁾.
- (884) Suining district is particularly important for its lithium reserves. As already covered in recital (724), the Commission found evidence on national plans containing provisions on annual production, profit targets and development targets, such as, by 2025, an annual production of more than 800 000 tons of positive electrode materials and more than 500 000 tons of positive electrode precursors. Within this framework, in 2021, Hunan Yuneng New Energy Materials, China's leading LFP producer, and Suining city signed an agreement for the construction of project yielding 110 000 tons of lithium battery positive electrode materials annually⁽⁴⁰¹⁾. This is one of several agreements signed with other companies in the field of batteries for the construction of "China's Lithium Industry Capital", which is one of the key goals of the Suining Plan.
- (885) In 2021, Yunnan Yuneng New Energy Battery Materials signed an agreement with Anning Municipal Government for the establishment of a production line in Anning Industrial Park⁽⁴⁰²⁾. Yunnan Yuneng is another subsidiary of Hunan Yuneng New Energy Materials referred in recital (883). This agreement is part of the wider framework of agreements for the construction of the Dianzhong New Area; as reported by the Yunnan province's government website, *"The Three-Year Action Plan for the Development of New Energy Battery Industry in Yunnan Province (2022-2024)"* ('Yunnan Action Plan') [emphasis added] clearly states that new energy battery manufacturing industrial bases will be built in the Dianzhong New Area and other places. The Party Working Committee and Management Committee of the New Area immediately anchored the goal of "building a 100 billion-level new energy battery industrial cluster in Anning" to lay out the entire industrial chain. Focusing on the production of core materials such as positive and negative electrodes, diaphragms, copper foil/aluminum foil, electrolytes, shells and other auxiliary materials for new energy batteries, focusing on the leading production and manufacturing of battery cells and battery PACKs, carrying out precise investment promotion, and striving to form a complete industrial chain gathering place, and strive to build an important national green new energy battery industrial cluster in Anning area by the end of the "14th Five-Year Plan"⁽⁴⁰³⁾. Thus, based on the evidence found, the construction of production lines in Anning Industrial Park is also meant at achieving the goals contained in the Yunnan Action Plan.
- (886) Based on the above, the Commission further examined whether the fact that the LFP suppliers were vested with government authority and considered 'public bodies' had an impact on prices for the Chinese domestic BEV producers.
- (887) In the absence of cooperation by any unrelated or related lithium supplier, as explained in section 3.3.1.2, the Commission had to rely on facts available. In this regard, it is recalled that crucial information concerning the structure of the domestic market of raw materials, as well as the mechanism of price settings were not available to the Commission. Therefore, the Commission had to rely on facts available and considered that the information provided by the vertically integrated sampled producer was illustrative for the situation on the Chinese domestic market of LFP.

⁽³⁹⁸⁾ See China strengthens LFP investments in 2023 but structural surplus looms, S&P Global, 9 May 2023, available at <https://www.spglobal.com/commodityinsights/en/market-insights/latest-news/metals/050923-china-strengthens-lfp-investments-in-2023-but-structural-surplus-looms>

⁽³⁹⁹⁾ See Cathode Supplier Yuneng's 2022 Revenue Reached Nearly RMB 42.8 Billion, of Which CATL and BYD Accounted for Over 80%, Energy Trend, 24 April 2023, available at <https://www.energytrend.com/news/20230424-31816.html>

⁽⁴⁰⁰⁾ See http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2023/2023-4/2023-04-13/8980089.PDF, p.76

⁽⁴⁰¹⁾ See <https://www.suining.gov.cn/phone/articshow/c6304818bb3e48138a25e7523d599a6e.html>

⁽⁴⁰²⁾ Yunnan Central New Area accelerates the creation of new energy battery industry cluster, Yunnan Province Government, 08 July 2022, available at https://www.yn.gov.cn/ztgg/zxylcyfzq/cypyzs/202207/t20220708_244167.html

⁽⁴⁰³⁾ Ibid.

- (888) The Commission concluded in recital (795) that both the CBIA and the CIAPS were vested with governmental power to regulate and steer the economic behaviour of its members to the benefit of the BEV industry and the LFP suppliers activities are also regulated by the same subordinated associations (see recital (873)) .
- (889) LFP is a type of lithium derived from lithium carbonate, and China's dominant position in its refining means that China's dominant position in this market allows them to be price-setters on the international stage. As already described in recital (869), the Commission found that China imported marginal quantities of LFP, ⁽⁴⁰⁴⁾ showing that Chinese domestic suppliers are price-setters rather than price-followers and can enjoy discretion in their pricing behaviour considering the dominant position China holds in the refining of LFP.
- (890) This was further confirmed by the fact that 100 % of the suppliers of LFP of the BYD Group were based in the PRC.
- (891) With regard to prices themselves, the Commission established that the average monthly purchase price for LFP by the sole integrated BEV producer decreased by [40-60%] over the investigation period whereas the average monthly export price of the same product originating in the PRC remained stable over the same period. ⁽⁴⁰⁵⁾ Such price decrease could be observed for all major suppliers of LFP to the BYD group. In the Commission's view, this confirms that the GOC, via the mechanism in place, notably the industry associations and support measures to LFP producers, ensures that LFP is provided to BEV producers at cheap prices and the LFP suppliers strictly follow the price mechanism in place. LFP producers are required to perform public functions when providing LFP to domestic producers, as opposed to act as rational economic operators.
- (892) As far as BYD's main supplier is concerned, the Commission established that its contract with the BYD group contained a provision relating to price ensuring that it would benefit from the most favourable supply ⁽⁴⁰⁶⁾; i.e. that it would not pay a higher price than any other customer of Hunan Yuneng New Energy Materials Co. Ltd. This provision is also confirmed in the IPO prospectus issued by the same company indicating that "Party A [Hunan Yuneng New Materials Co. Ltd] promises to provide Party B [the BYD group] with the most favorable supply conditions for lithium iron phosphate (including supply of lithium iron phosphate quantity, supply price), and shall not be higher than the lowest price of similar products sold by Party A to any other customers" ⁽⁴⁰⁷⁾. The same document also acknowledged that BYD was a strategic investor of Hunan Yuneng New Materials Co. Ltd.
- (893) Furthermore, while CATL is also both a strategic investor and major customer of Hunan Yuneng New Materials Co. Ltd ⁽⁴⁰⁸⁾, the Commission established in recital (801) that its Articles of Association provide that the "*pricing of related party transaction shall be stipulated by the State*" ⁽⁴⁰⁹⁾. Hence, considering the relationship between the two companies and in the absence of any other evidence pointing to the contrary, the Commission considered that the price paid by CATL for LFP was set by the State. This covers a major share of the LFP purchased on the Chinese market destined to BEV producers given the fact that CATL is the biggest "independent" battery producer in China ⁽⁴¹⁰⁾
- (894) Consequently, considering that Hunan Yuneng New Materials Co. Ltd is bound to provide the BYD group with the most favourable supply conditions for LFP in terms of prices as described in recital (891), the Commission inferred that CATL and the BYD group, the two major battery producers on the Chinese market, were purchasing LFP at the most favourable price which was set by the State thanks to a price mechanism designed by the GOC to benefit the BEV industry.

⁽⁴⁰⁴⁾ Based on GTA import statistics of China, HS code 28429040, from October 2022 to September 2023.

⁽⁴⁰⁵⁾ Based on GTA export statistics of China, HS code 28429040, from October 2022 to September 2023.

⁽⁴⁰⁶⁾ This means that the conditions of the supplier to BYD shall not be less favourable than the conditions this supplier provides to other clients. For example, the price for the supplier to BYD shall not be higher to the price to other clients for the same product.

⁽⁴⁰⁷⁾ https://pdf.dfcfw.com/pdf/H2_AN202302021582656416_1.pdf, p. 1.1.384

⁽⁴⁰⁸⁾ https://pdf.dfcfw.com/pdf/H2_AN202302021582656416_1.pdf, p. 1.1.47

⁽⁴⁰⁹⁾ https://www.catl.com/uploads/1/file/public/202204/20220426200308_qr532d21u6.pdf

⁽⁴¹⁰⁾ Rhodium report, p. 41

- (895) In view of the above considerations, the Commission established that the suppliers of LFP are not free to set prices according to normal market considerations and to maximise their profits. This is not only illustrated by the GOC intervention in the market as described in recital (750) but also by the price setting mechanism benefitting the main economic operators in the battery and BEV industry as described in recitals (891) to (893). The above confirms that LFP suppliers provide BEV producers with this input for less than adequate remuneration, thereby conferring a benefit to the BEV producers.

(c) *Conclusion*

- (896) On the basis of the information analysed above, the Commission concluded that the LFP suppliers are vested with governmental authority and exercise governmental functions. Because of the GOC plans and the applicable strict control and supervision mechanisms governing the associations, the acts of these associations and their members, as well as the other suppliers, are in fact acts of the GOC.
- (897) The Commission considered likewise that the companies supplying lithium phosphate are also vested with government authority and exercise government functions in that they also have to abide by the GOC policies covered in Section 3.7.2 rather than acting according to the free market principles in order to maximise their profits. Their company decisions and management are clearly affected by these GOC policies to supply LFP at cheaper or set prices for the development of the BEV industry, as well as to follow the guidance on production targets, which therefore cannot be considered expression of private behaviour in a free market economy. The evidence found on pricing on the domestic market, and on the pricing behaviour on the export market vis-à-vis the domestic market further confirms that LFP producers in China abide by the GOC policies rather than by free market principles.
- (898) The characteristics of the Chinese domestic market and the pricing mechanisms that are implemented and monitored by the battery associations, their members, and the LFP suppliers, further corroborate the conclusion that they are vested with government authority and exercise governmental functions.
- (899) As a result, the Commission considered that the GOC created an environment whereby LFP would be provided to vertically-integrated BEV producers and battery producers such as CATL, which acts as a public body implementing government policy, for less than adequate remuneration. On this basis, the Commission concluded that the batteries associations including the CBIA and CIAPS, the members of these associations and all other suppliers of batteries and lithium are also considered to be public bodies within the meaning of Article 1.1(a)(1) of the SCM Agreement as they have no choice but to comply with the overarching GOC policy objectives in favour of BEV producers.

(b) *LFP producers acting as private bodies entrusted with functions or directed by the GOC*

- (900) In addition to the findings of the LFP producers being a 'public body' for the purpose of Article 3(1)(a) of the basic Regulation, the Commission also examined in the alternative whether the GOC provided a financial contribution by entrusting or directing LFP producers (as private bodies) to provide batteries to the BEV producers for less than adequate remuneration, as provided by Article 3(1)(a)(iv) of the basic Regulation.
- (901) This analysis is carried out based on the applicable legal standard covered in recitals (822) - (826). The Commission analysed first whether the GOC's support to the Chinese BEV industry in the form of provision of LFP for less than adequate remuneration is effectively an objective of the various government measures in question and not merely a 'side effect' of the exercise of general regulatory power. The investigation examined in particular whether the lower prices of LFP found were part of the government's objectives, or whether the lower prices were rather an 'inadvertent' by-product of general governmental regulation. The Commission concluded that the various interventions by the GOC had as their objective to support the BEV industry, and that the lower battery LFP-prices were an intended objective of these measures, which were in turn enforced through the industry associations that have the obligation to respect and enforce these plans.

- (902) The GOC took a number of measures throughout the years to achieve its policy goal. Section 3.2 has detailed the relevant background and context explaining the importance the GOC attaches to the development of the BEV industry and the industries around it.
- (903) The LFP industry, together with the battery industry, is heavily supported in China. A large number of regulations, issued by different governmental bodies supervise each aspect of the battery sector exist, and also their upstream materials as demonstrated in Section point (i) of Section 3.7.2.1.1, and in particular “*Mineral Resources Law*” and the “*Rules for Implementation of the Mineral Resources Law*” (recital (723)) and the 14th Raw Materials FYP (recital (714)). Moreover, evidence of GOC intervention in the pricing of raw materials for new energy vehicles was found in press statements by the MIIT in 2022 (recital (750)), when the government pledged to push the price of raw materials used in NEV (including lithium) back to a reasonable level.
- (904) Moreover, the Commission already established that the Chinese industry associations (i.e. CBIA and CIAPS) are not independent industry associations, in light of the level of control by the GOC over them (recitals (777) - (784)) and the functions they perform, which demonstrates that they are vested with government authority (recitals (791) - (798)). In particular, members of CIAPS have the power to “*strengthen industry self-discipline*” and to “*regulate the association, industry and behaviour of members*” while CBIA members have the power to “*coordinate issues in corporate production, sales and export*”. Hence, these two associations exercise government functions in that their role is to implement the GOC policies to provide LFP at cheaper prices for the benefit of the domestic BEV industry, and supervise that all the relevant suppliers are fully compliant with them.
- (905) This confirms that LFP suppliers are not acting as free market operators in the Chinese domestic market and are not taking economically rational decision, as exemplified by the trend in the domestic and export prices of LFP (recital (919)), whereby domestic and export prices follow completely different trends. Indeed, their irrational behaviour shows that it was directed by the GOC policies to supply LFP at cheaper prices to the domestic BEV industry. This is further confirmed by the findings in recital (892) above, whereby the Commission inferred that the majority of LFP prices on the market, that is the LFP purchased by CATL and BYD from related suppliers, are directly and indirectly fixed by the State.
- (906) Moreover, the Commission found evidence in national and local policies that LFP suppliers are eligible to a series of support measures, covered in point (i) of Section 3.7.2.1.1. It is recalled that no upstream supplier cooperated in this investigation, and thus the Commission was not able to ascertain whether LFP suppliers were recipients of the support measures listed in point (i) of Section 3.7.2.1.1. In this regard, the Commission established that BYD’s main LFP supplier, Hunan Yuneng New Energy Materials, benefitted from a wide range of direct grants on top of the income tax benefits that it can avail thanks to its high-tech enterprise certificate ⁽⁴¹¹⁾.
- (907) On this basis and given the support framework created by the GOC, it is reasonable to infer that other LFP suppliers would also benefit from such incentives, so that the GOC could further direct companies to increase and support the domestic supply of LFP in favour of the development of the BEVs industry.
- (908) Moreover, as already covered in recitals (873), LFP suppliers that were members of the CBIA and/or CIAPS represented over 90 % of the total quantity of LFP supplied to the BYD Group and over 90 % of the total value during the investigation period. The Commission also found that the aforementioned Chinese industry associations were not independent associations acting according to free economic principles, but entities guided by the GOC and managed by it through the State Council (see point (ii) of Section 3.7.2.1.1(a)). In particular, both associations were found to be undertaking tasks entrusted by the government (recitals (781) and (783)), and their role is to assist the government in the implementation of governmental policies and in regulating the behaviour of their members. The fact that the associations and their members are vested with the power to “*strengthen industry self-discipline*” and to “*regulate the association, industry and behaviour of members*”, and, in the case of the CBIA specifically also to “*coordinate issues in corporate production, sales and export*” shows that the associations are public bodies entrusted by the GOC to direct its members to adapt their economic decisions for the benefit of the BEV industry.

⁽⁴¹¹⁾ http://file.finance.sina.com.cn/211.154.219.97:9494/MRGG/CNSESZ_STOCK/2023/2023-4/2023-04-13/8980089.PDF, pp. 122, 128 and 150

- (909) The Commission considered that, in view of the evidence available, the GOC took a 'more active role than mere acts of encouragement', as required by the WTO Appellate Body ⁽⁴¹²⁾. The measures taken by the GOC restrict the freedom of action of the LFP producers by limiting in practice their business decision at what price to sell their product, as shown in the plans covered in Section 3.2, to the benefit of the BEV industry. The role of the GOC went well beyond an ordinary intervention as a market regulator. The relevant measures, including export restrictions on LFP and support measures to LFP suppliers, not only regulated general aspects of the market but imposed a specific behaviour on LFP suppliers. All these measures were undertaken in order for LFP suppliers to provide LFP at cheaper prices for the benefit of the BEV industry. That intention was made clear through numerous policy statements and actions covered in Sections 3.7.2.1.1 and 3.7.2.2.1.
- (910) By obliging LFP suppliers to comply with these measures, which were in turn enforced through the industry associations that have the obligation to respect and enforce these plans, the GOC deprived them of the ability to freely choose their selling strategies according to market considerations. In other words, these measures clearly constitute a 'demonstrable link' between the government act and the conduct of the battery companies. The GOC used the battery companies as a proxy to support the BEV producers.
- (911) Finally, the Commission assessed whether the actual provision of LFP, in no real sense, differs from what the government would have done itself. The Commission considered this to be the case. Rather than providing LFP directly to the BEV industry in order to achieve the GOC public policy objectives of boosting the development of this industry, the GOC through a set of measures induces private entities to do so on its behalf. Moreover, to the extent that such provision of goods by the government involves some expenditure (such as the provision of subsidies to the inputs or the sacrifice of income by providing goods for less than adequate remuneration), such an action should be understood as the typical functions normally vested in the government.
- (912) In light of the above, the Commission concluded that the set of measures adopted by the GOC lead to a financial contribution in the form of government's provision of LFP for less than adequate remuneration to the Chinese BEV producers under Article 3(1)(a)(iv) of the basic Regulation.

3.7.2.2.2. *Benefit, specificity and calculation of the subsidy amount*

(a) *Benefit*

- (913) As explained in Section 3.3.1.2, no unrelated manufacturing supplier of LFP or batteries provided information to the Commission by replying to the specific questionnaire intended for suppliers of input in China. The related LFP supplier of BYD did not provide a questionnaire reply, and the Commission could not assess whether the price at which the BYD group purchased LFP could be deemed at arms' length.
- (914) As a consequence, the Commission had to rely on facts available in accordance with Article 28 of the basic Regulation in order to determine the level of the benefit for the sampled exporting producers that purchased LFP and batteries on the domestic market.
- (915) The Commission concluded in recitals (895) - (898) that suppliers of LFP were considered to be public bodies and/or private companies entrusted and directed by the State.
- (916) In accordance with Articles 3(2), 5 and 6(d) of the basic Regulation, the Commission assessed the amount of countervailable subsidies in terms of the benefit conferred on the recipient, which was found to exist during the investigation period.
- (917) The Commission therefore first assessed whether prices in China could amount to an appropriate benchmark.
- (918) Due to the partial non-cooperation of the GOC, the Commission lacked crucial information on the market situation in China of suppliers of raw materials used in the production of batteries and on possible adjustments that needed to be made. The Commission found that the prevailing conditions in the PRC market were distorted in view of the applicable national and sectoral policies implemented by all economic operators.

⁽⁴¹²⁾ Appellate Body Report, DS 296, para. 115.

- (919) Several examples of heavy government intervention and support across the entire BEV supply chain, that prevented the normal market dynamics to determine the price exist. The prices of the main input used in the production of batteries, i.e. LFP, was therefore deemed not to be a market price, but a price influenced by the government to achieve its policy objectives.
- (920) This is also evidenced by the fact that the domestic prices at which BYD was purchasing LFP were significantly lower than the Chinese export price. The Commission found that the steep downward trend (over 30 %) observed in the domestic purchase price for LFP over the investigation period was completely disconnected from the evolution of the export price from the PRC to the rest of the world that remained rather stable. Hence, the data available to the Commission showed, not only, that the GOC, via the associations and its members acting as public bodies, established a pricing mechanism for the raw materials used for batteries and in particular, LFP, but also the effect of that mechanism was visible on the Chinese domestic market during the investigation period.
- (921) For that reason alone, the Commission considered that the domestic prices of LFP in China are distorted and cannot be used as benchmark for the purpose of determining the benefit.
- (922) Therefore, the Commission had to look for appropriate out-of-country benchmarks.
- (923) In line with Article 6(d), second subparagraph, (ii) of the basic Regulation, the Commission analysed the biggest producers of LFP as the closest possible proxies for an undistorted Chinese domestic price.
- (924) Given the dominant market position of China in the production of LFP and the fact that no other out-of-country prices could be found and, considering the impossibility to draw a comparison between Chinese domestic prices and out-of-country prices, the Commission had to rely on export prices from China to the rest of the world, delivered on FOB basis. These prices were thus considered as an appropriate benchmark in light of the existing dominant conditions on this specific type of lithium, and the lack of any other reasonable benchmark. On this basis, the Commission found the domestic prices of LFP to be lower than the export prices to the rest of the world.

(b) Specificity

- (925) The set of measures applied by the GOC ensuring the provision of LFP for less than adequate remuneration, including export restraints and support to LFP producers to comply with the GOC's policy objectives and plans, are benefitting only certain industries which purchase LFP. In addition, LFP is a specific type of refined lithium for the production of batteries used in BEVs.
- (926) The Commission therefore concluded that subsidies in the form of provision of LFP for the production of batteries at less than adequate remuneration are specific within the meaning of Article 4(2)(a) of the basic Regulation. Those subsidies are limited to a class of enterprises or industries, notably those using LFP as an input material. Moreover, there was no evidence submitted by any of the interested parties suggesting that such form of subsidies is based on objective criteria or conditions in the sense of Article 4(2)(b) of the basic Regulation.

(c) Calculation of the subsidy amount

- (927) The Commission compared the domestic price at which the BYD Group purchased LFP during the investigation period with the average Chinese export price during the investigation period ⁽⁴¹³⁾.
- (928) Since one of the suppliers of LFP was also found to be a related company to the BYD Group for part of the IP, and in the absence of a questionnaire reply from this supplier, as covered in Section 3.3.4, the Commission did not have evidence on file that the prices set by the upstream supplier and the BYD Group were not affected by their relationship. The Commission had thus no evidence of such prices to be at arm's length, and thus replaced this price with the average purchase price of LFP from unrelated suppliers.

⁽⁴¹³⁾ Based on GTA export statistics of China, HS code 28429040, from October 2022 to September 2023.

- (929) The benefit for BYD was calculated by comparing the domestic prices with the Chinese export price of LFP, in view of China's dominant position in the refining of this type of lithium. As described in recital (400), since the Commission did not have evidence on file whether the purchases of LFP from the related supplier were at arm's length, the average price from the related LFP supplier was replaced by the average purchase price sourced from unrelated suppliers. No adjustments were made.

Provision of lithium for the production of batteries for less than adequate remuneration

Company name	Subsidy rate
BYD group	7,35 %

3.8. Revenue foregone through tax exemption and reduction programmes

(1) *Enterprise Income Tax ('EIT') reduction for High and New Technology Enterprises*

- (930) According to the Law of the People's Republic of China on Enterprise Income Tax ('EIT Law'), high and new technology enterprises to which the State needs to give key support benefit from a reduced enterprise income tax rate of 15 % rather than the standard tax rate of 25 %.

(a) **Legal basis**

- (931) The legal basis of this programme is Article 28 of the EIT Law and Article 93 of the Implementation Rules for the Enterprise Income Tax Law of the PRC ⁽⁴¹⁴⁾, as well as:

- Circular of the Ministry of Science and Technology, Ministry of Finance and the State Administration of Taxation on revising and issuing Administrative Measures for the Recognition of High-Tech Enterprises (No. 32 of 2016);
- Circular of the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation on Revising and Issuing the Guidelines for the Administration of Accreditation of High-tech Enterprises, (No. 195 of 2016);
- Announcement of the State Administration of Taxation on the Application of Preferential Income Tax Policies to High-tech Enterprises (Announcement No. 24 of 2017);
- The 2016 Catalogue of High-tech Fields Supported by the State ⁽⁴¹⁵⁾.

- (932) Furthermore, in January 2021, the NDRC issued the 2020 version of the "Catalogue of Encouraged Industries in the Western Region" (Order No. 40 of 2021), effective from 1 March 2021. Encouraged enterprises located in 12 western provinces, autonomous regions, and cities can enjoy the preferential policy of levying enterprise income tax at a reduced tax rate of 15%. The Catalogue encourages Sichuan, Yunnan, Qinghai, Shaanxi, Gansu, Inner Mongolia and Guangxi to develop the lithium industry. Copper, aluminium, and graphite are also included in the Catalogue.

- (933) Chapter IV of the EIT Law contains provisions regarding 'Preferential Tax Treatment'. Article 25 of the EIT Law, which stands as a chapeau for Chapter IV, provides that "The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State". Article 28 of the EIT law provides that "the rate of enterprise income tax on high and new technological enterprises needing special support of the State shall be reduced to 15%".

⁽⁴¹⁴⁾ Implementing Regulations of the Enterprise Income Tax Law of the People's Republic of China (Revised in 2019) - Order of the State Council of the People's Republic of China No. 714.

⁽⁴¹⁵⁾ http://kj.quanzhou.gov.cn/wsbs/xgxz/201703/t20170322_431820.htm.

(934) Article 93 of the Implementation Rules for the Enterprise Income Tax Law clarifies that:

"The important high and new technology enterprises to be supported by the state" as referred to in Clause 2 of Article 28 of the Enterprise Income Tax Law refer to the enterprises which own key intellectual property rights and satisfy the following conditions:

1. *Complying with the scope of the Key State Supported High and New Technology Areas;*
2. *The proportion of the research and development expense in the sales revenue shall be no less than the prescribed proportion;*
3. *The proportion of the income from high-tech technology/product/service in the enterprise's total revenue shall be no less than the prescribed proportion;*
4. *The proportion of the technical personnel in the enterprise's total employees shall be no less than the prescribed proportion;*
5. *Other conditions prescribed in the Measures for the Administration of High-Tech Enterprise Identification.*

Measures for the Administration of High-Tech Enterprise Identification and Key State Supported High and New Technology Areas shall be jointly formulated by the technology, finance and taxation departments under the State Council and come into effect after approved by State Council".

(935) The above-mentioned provisions clearly specify that the reduced enterprise income tax rate is reserved to "important high and new technology enterprises to be supported by the State" which own key intellectual property rights and satisfy certain conditions such as "complying with the scope of the Key State Supported High and New Technology Areas".

(936) According to Article 11 of the Administrative Measures for the Recognition of High-Tech Enterprises, to be recognized as high-tech an enterprise must simultaneously meet certain conditions among which: "it has obtained the ownership of intellectual property rights, which plays a central role in technically supporting its main products (services), through independent research, transfer, grant, mergers and acquisitions, etc." and "the technology that plays a central role in technically supporting its main products (services) is within the range predetermined in the "high-tech fields supported by the state".

(937) The key high technology fields supported by the State are listed in the 2016 Catalogue of High-tech Fields Supported by the State. This catalogue clearly mentions under 'I. Electronic Information', point 4. 'Communication technology' "optical transmission network" and "optical transmission system technology", which cover optical fibre cables, as high technology fields supported by the State.

(938) Companies benefiting from this measure have to file their income tax return and the relevant annexes. The actual amount of the benefit is included in the tax return.

(b) Findings of the investigation

(939) The Commission found that companies within the sampled exporting producer groups qualified as high-tech companies during the investigation period and thus enjoyed a reduced EIT rates of 15 %.

(c) Benefit

(940) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(d) Specificity

(941) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this scheme only to enterprises that are operating in certain high technology priority areas determined by the State. The BEV industry is such a high technology priority.

(942) In addition to the EIT reduction based on high-tech enterprise status, EIT reduction to 15 % is available to NEV (including BEV) manufacturers also on the basis of criteria related to their physical location. In particular, if an enterprise is located in the Western region, the EIT may be paid at the reduced rate of 15 %.

(943) Thus, the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain sectors and geographical regions.

(e) Calculation of the subsidy amount

(944) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable under the reduced tax rate.

(945) The subsidy rate established for this specific scheme was 0,36 % for BYD group.

(2) *Preferential pre-tax deduction of research and development expenses*

(946) The tax offset for research and development entitles companies to preferential tax treatment for their R&D activities in certain high technology priority areas determined by the State and when certain thresholds for R&D spending are met.

(947) More specifically, R&D expenses incurred by an enterprise when it conducts any R&D activity, an extra 100% of the amount of R&D expenses actually incurred shall be deducted before tax payment, in addition to the deduction of actual expenses as prescribed, as of 1 January 2023, provided that the said expenses are not converted into intangible assets and included in the current profits and losses.

(948) If the said expenses have been converted into intangible assets, such expenses may be amortized at the rate of 200% of the costs of the intangible assets before tax payment as of 1 January 2023.

(a) Legal basis

(949) The legal basis for the programme is Article 30(1) of the EIT Law, along with article 95 of the Implementation Rules for the Enterprise Income Tax Law of the PRC as well as the following notices:

- Announcement of the State Administration of Taxation on Issues concerning the Attribution Scope of the Weighted Pre-tax Deduction of R&D Expenses (Announcement No 40 of 2017);
- Announcement of the Ministry of Finance and State Administration of Taxation on Further Improving the Policies Regarding Weighted Pre-tax Deduction of R&D Expenses (Announcement No 7 of 2023);

(b) Findings of the investigation

(950) The Commission found out that companies within the sampled groups enjoyed additional deduction on research and development expenses incurred from the research and development of new technologies, new products and new techniques.

(c) Benefit

(951) The Commission considered that the tax offset at issue is a subsidy within the meaning of Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(d) Specificity

- (952) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this measure only to enterprises that incur R&D expenses in certain high technology priority areas determined by the State, such as the BEV sector. Thus, the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises and sectors.

(e) Calculation of the subsidy amount

- (953) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated as the difference between the total tax payable according to the normal tax rate and the total tax payable after the additional 100 % deduction of the actual expenses on R&D.
- (954) The subsidy rate established for this specific scheme was 0,57 % for BYD group, 0,03 % for Geely group, and 1,53 % for SAIC group.

(3) *Dividends exemption between qualified resident enterprises*

- (955) The EIT Law offers income tax preferences to Enterprises engaged in industries or projects the development of which is specifically supported and encouraged by the State and in particular, exempt from tax the income from equity investment, such as dividends and bonuses, between eligible resident enterprises.

(a) Legal basis

- (956) The legal basis for the programme is Article 26(2) of the EIT Law, along with the Implementation Rules for the Enterprise Income Tax Law of the PRC.
- (957) Article 25 of the EIT, which stands as a chapeau for Chapter IV 'Preferential Tax Policies', provides that "*The State will offer income tax preferences to Enterprises engaged in industries or projects the development of which is specially supported and encouraged by the State*". Furthermore, Article 26(2) specifies that the tax exemption is applicable to income from equity investments between "*eligible resident enterprises*", which appears to limit its scope of application to only certain resident enterprises.

(b) Findings of the investigation

- (958) The Commission found that some companies in the sampled groups received an exemption from tax of dividend income between qualified resident enterprises.

(c) Benefit

- (959) The Commission considered that this scheme is a subsidy under Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(d) Specificity

- (960) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this exemption only to qualified resident enterprises which have the major support of, and the development of which is encouraged by the State. Thus, the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises and sectors.

(e) Calculation of the subsidy amount

- (961) The Commission has calculated the amount of the subsidy by applying the normal tax rate to the dividend income that has been deducted from taxable income.
- (962) The subsidy rate established for this specific scheme was 0,17 % for Geely group, and 1,09 % for SAIC group.

(4) Accelerated depreciation of equipment used by High-Tech enterprises

- (963) According to Article 32 of the EIT law, “where accelerated depreciation of fixed assets of an enterprise is really necessary due to technological advancement or other reasons, the number of years for the depreciation may be lessened or the accelerated depreciation method may be adopted”.

(a) Legal basis

- (964) The legal basis for the programme is Article 32 of the EIT Law, along with the Article 98 of the Implementation Rules for the Enterprise Income Tax Law of the PRC as well as the following notices:

- Notice of the Ministry of Finance and the State Administration of Taxation on Further Improving the EIT Policies for the Accelerated Depreciation of Fixed Assets (Notice No.106 of 2015);
- Announcement on Issues concerning Further Improving the Enterprise Income Tax Policies for the Accelerated Depreciation of Fixed Assets (State Administration of Taxation Announcement No. 68 of 2015);
- Notice by the Ministry of Finance and the State Administration of Taxation of the Relevant Enterprise Income Tax Policies for the Deduction of Equipment and Instruments (Notice No. 54 of 2018);
- Announcement of the State Administration of Taxation on the Implementation of Relevant Enterprise Income Tax Policies for the Deduction of Equipment and Instruments (State Administration of Taxation Announcement No. 46 of 2018);
- Announcement of the Ministry of Finance and the State Taxation Administration on Expanding the Scope of Application of the Preferential Policies on the Accelerated Depreciation of Fixed Assets (Announcement No. 66 of 2019);
- Announcement of the Ministry of Finance and the State Taxation Administration on Extending the Implementation Period of Certain Preferential Tax Policies (Announcement No. 6 of the Ministry of Finance and the State Administration of Taxation in 2021);
- Announcement of the Ministry of Finance and the State Taxation Administration on the Relevant Enterprise Income Tax Policies for the Deduction of Equipment and Instruments (Announcement No. 37 of the Ministry of Finance and the State Administration of Taxation in 2023)

- (965) According to the Notice on the Policies of Deduction of Equipment and Appliances for Enterprise Income Tax Purposes (Cai Shui [2018] No. 54), “where the unit value of a piece of equipment or appliance newly purchased by an enterprise during the period from January 1, 2018 to December 31, 2020 does not exceed RMB five million, the enterprise is allowed to include such value in the cost and expenses of the current period on a lump-sum basis for deduction upon calculation of its taxable income, and is no longer required to calculate depreciation on an annual basis”. This legislation is not industry-specific.

- (966) As regards assets with unit value above 5 million RMB, the Notice on Fine-tuning the Enterprise Income Tax Policies Applicable to Accelerated Depreciation of Fixed Assets (Cai Shui [2014] No. 75) and the Notice on Further Fine-tuning the Enterprise Income Tax Policies Applicable to Accelerated Depreciation of Fixed Assets (Cai Shui [2015] No. 106) continue to apply. According to these notices, fixed assets purchased by companies in 10 key industries may opt for the accelerated depreciation method.

(b) Findings of the investigation

- (967) The Commission established that, during the investigation period, the sampled groups have not applied accelerated depreciation for assets with unit value that exceeds 5 million RMB. Therefore, since those assets did not fall under Notice Cai Shui [2014] No. 75 and Notice Cai Shui [2015] No. 106, the Commission found that the exporting producers did not benefit from countervailable subsidies.

(5) *Technology transfer revenue deduction*

- (968) The tax offset for technology transfer entitles companies to preferential tax treatment for their export activities. Under this scheme 50% of the revenue gained from selling the technology abroad is deductible from EIT base, limited up to the level of break even.

(a) *Legal basis*

- (969) The legal basis of this programme is Article 27 of the EIT Law, as well as:

— Notice of the State Administration of Taxation on Issues relating to Exemption and Reduction of Enterprise Income Tax on Income from Technology Transfer (Notice No. 212 of 2009).

(b) *Findings of the investigation*

- (970) The Commission found that one of the sampled groups benefitted from a “*transfer technology*” income tax deduction for the technology transferred abroad.

(c) *Benefit*

- (971) The Commission considered that this scheme is a subsidy under Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(d) *Specificity*

- (972) The subsidy is specific withing the meaning of Article 4(2)(a) and Article 4(4)(a) of the basic Regulation as the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to enterprises involved in transfer of technologies and under the condition of export performance.

(e) *Calculation of the subsidy amount*

- (973) The Commission has calculated the amount of the subsidy by applying the normal tax rate to the technology transfer income that has been deducted from taxable income.

- (974) The subsidy rate established for this specific scheme was 0,05 % for the Geely group.

(6) *Battery consumption tax exemption*

- (975) The battery consumption tax exemption entitles BEV producers that purchased certain batteries to an exemption of the normally applicable 4% consumption tax. This scheme is limited to certain products including lithium batteries.

(a) *Legal basis*

- (976) The legal basis for the programme can be found in the following documents:

— Circular of the Ministry of Finance and the State Administration of Taxation on Imposing Consumption Tax on Batteries and Coatings (No. 16 of 2015) (‘the circular on batteries’);

— Announcement of the State Administration of Taxation on Issues concerning the Administration of the Imposition of Consumption Tax on Batteries and Coatings (Announcement No 5 of 2015);

— Announcement of the State Administration of Taxation on Clarifying Matters relating to the Imposition of Consumption Tax on Batteries and Coatings (Announcement No 95 of 2015).

(977) According to the circular on batteries, batteries became subject to consumption tax at the applicable rate of 4%. However, certain types of batteries such as lithium primary batteries and lithium-ion batteries were exempted from such consumption tax.

(978) Such circular was originally published to promote energy conservation and environmental protection.

(b) Findings of the investigation

(979) The Commission found out that at least one sampled group enjoyed a 4% consumption tax exemption on its purchases of batteries.

(c) Benefit

(980) The Commission considered that this scheme is a subsidy under Article 3(1)(a)(ii) and Article 3(2) of the basic Regulation because there is a financial contribution in the form of revenue foregone by the GOC that confers a benefit to the companies concerned. The benefit for the recipients is equal to the tax saving.

(d) Specificity

(981) This subsidy is specific within the meaning of Article 4(2)(a) of the basic Regulation as the legislation itself limits the application of this measure only to certain batteries such as lithium primary batteries and lithium-ion batteries. The investigation also revealed that such batteries are primarily used in the BEV sector. Thus, the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises and sectors.

(e) Calculation of the subsidy amount

(982) The amount of countervailable subsidy was calculated in terms of the benefit conferred on the recipients during the investigation period. This benefit was calculated based on value of the batteries purchased during the IP to which the normally applicable 4% consumption tax was applied.

(983) Considering the methodology used to calculate the subsidy amount pertaining to the provision of batteries for less than adequate remuneration as described in Section 3.7.2, no subsidy amount was calculated for the non-integrated BEV producers.

(984) The subsidy rate established for this specific scheme was 1,37 % for the BYD group.

(7) *Subsidisation as regards non-cooperating companies (SAIC Group)*

(985) As described in section 3.3.2.2 and in recital (336), certain related companies within the SAIC group failed to provide a questionnaire reply although the scope of their activities would normally have required them to submit a questionnaire reply based on the instructions contained in the questionnaire and subsequent note to the file clarifying the activities requiring the submission of a questionnaire reply ⁽⁴¹⁶⁾.

(986) In the absence of reply by certain related companies involved in research and development ('R&D') activities and the supply of certain parts and components listed in the Memorandum on sufficiency of evidence, the Commission had to rely on facts available for these companies. In particular, the Commission relied on its assessment about subsidisation for similar companies of the other non-vertically integrated sampled exporting producer to determine the level of subsidisation.

(987) As far as R&D companies are concerned, the SAIC group provided a questionnaire reply for one related company involved in such activities. The Commission identified another related company involved in the same activities. However, the SAIC group refused to provide a questionnaire reply for this company. Hence the Commission had to rely on facts available.

⁽⁴¹⁶⁾ Note to the file: Related companies required to submit a questionnaire reply. (t23.005730)

- (988) As the Commission could only partially verify the information provided by the related R&D company, the Commission considered that the findings related to this company were not representative. Hence, the Commission decided to rely on the amount of subsidisation established for the verified R&D companies within the Geely Group. In the case of the Geely Group, all companies with R&D related activities concerning the product under investigation provided a questionnaire reply that could be verified subsequently. Consequently, the Commission decided to base its findings for the SAIC Group based on the amount of subsidisation established for the verified R&D companies within the Geely Group. The subsidy amounts related to the following schemes: preferential financing as described in section 3.5, grant programmes as described in section 3.6, provision of land use rights for less than adequate remuneration as described in section 3.7.1 and revenue foregone through tax exemption and reduction programme as described in section 3.8. Those amounts were added to the overall subsidy result for the SAIC Group.
- (989) Certain related companies within the SAIC Group involved in the supply of inputs (excluding batteries and their components) did not provide a questionnaire reply. The Commission first considered the amounts of subsidisation found for the related suppliers of batteries and their components. However, considering the share that these products represent in the total cost of production in comparison with that of the parts supplied by the related companies that did not provide a questionnaire reply, the Commission considered that such companies were not representative. The Commission then turned to the verified information for companies supplying inputs, excluding batteries and their components and considered that the amount of subsidisation established for the sole related supplier ⁽⁴¹⁷⁾ that was verified at this stage of the proceeding constituted a reasonable basis for its findings in view of its activities (supply of inputs) and the share that these products represented in the total cost of production. The subsidy amounts related to the following schemes: preferential financing as described in section 3.5, grant programmes as described in section 3.6, provision of land use rights for less than adequate remuneration as described in section 3.7.1. Those amounts were added to the overall subsidy result for the SAIC Group.

3.9. Other schemes

- (990) The Memorandum on sufficiency of evidence also listed other schemes for which there was sufficient evidence tending to show the existence of countervailable subsidies available for the BEV producers. The Commission also acquired information in the course of the investigation on additional programmes benefiting the sampled exporting producers which may also be countervailable. Without prejudice to their countervailability, the Commission provisionally decided not to issue findings on these programmes at this stage. The list of such programmes includes but is not limited to:
- Provision of power for less than adequate remuneration;
 - Provision of other raw materials for the production of batteries for less than adequate remuneration;
 - Preferential insurance : export credit insurance
 - Grants under measure for the Parallel Administration of the Corporate Average Fuel Consumption (CAFC) and New Energy Vehicle (NEV) Credits of Passenger Vehicle Enterprises (the “Parallel Credits Measure”)
 - Consumption tax exemption, license plate fee exemption, and other cash subsidies for BEV producers;
 - VAT exemptions and import tariff rebates for the use of imported equipment and technology and VAT rebates on domestically-produced equipment;
 - Export tax rebates
- (991) The Commission reserves the right to investigate further the countervailability of these schemes and issue findings until the definitive findings of this investigation are disclosed, or subsequently in the context of a review pursuant to Article 19 of the basic Regulation.

⁽⁴¹⁷⁾ This supplier is not active in the supply of batteries so there is no overlapping of provision of batteries at less than adequate remuneration described in Section 3.7.2.

3.10. Conclusion on subsidisation

- (992) Based on the information available, the Commission calculated the amount of countervailable subsidies for the sampled exporting producers in accordance with the provisions of the basic Regulation by examining each subsidy or subsidy programme, and added these figures together to calculate a total amount of subsidisation for each exporting producer group for the investigation period. To calculate the overall subsidisation below, the Commission first calculated the percentage subsidisation, being the subsidy amount as a percentage of the company's total turnover. This percentage was then used to calculate the subsidy allocated to exports of the product concerned to the Union during the investigation period. The subsidy amount per piece of product concerned exported to the Union during the investigation period was then calculated, and the rates below calculated as a percentage of the Costs, Insurance and Freight ('CIF') value of the same exports per piece.
- (993) In accordance with Article 15(3) of the basic Regulation, the total subsidy amount for the cooperating exporting producers not included in the sample was calculated on the basis of the total weighted average amount of countervailing subsidies established for the cooperating exporting producers in the sample with the exclusion of negligible amounts as well as the amounts of subsidies established in the circumstances referred to in Article 28(1) of the basic Regulation. However, the Commission did not disregard findings partially based on facts available to determine those amounts. Indeed, the Commission considers that the facts available used in those cases did not affect substantially the information needed to determine the amount of subsidisation in a reasonable manner, so that exporters who were not asked to cooperate in the investigation will not be prejudiced by using this approach ⁽⁴¹⁸⁾.
- (994) Given the high rate of cooperation of Chinese exporting producers and the representativeness of the sample also in terms of subsidy eligibility, the Commission considered it appropriate to set the amount for 'all other companies' at the level of the highest amount established for the sampled companies. The 'all other companies' amount was applied to those companies which did not cooperate in the investigation.

Company	Amount of countervailable subsidies
BYD Group:	17,4 %
— BYD Auto Company Limited	
— BYD Auto Industry Company Limited	
— Changsha BYD Auto Company Limited	
— Changsha Xingchao Auto Company Limited	
— Changzhou BYD Auto Company Limited	
— Fuzhou BYD Industrial Company Limited	
— Hefei BYD Auto Company Limited	
— Jinan BYD Auto Company Limited	
Geely Group:	19,9 %
— Asia Euro Automobile Manufacture (Taizhou) Company Limited	
— Chongqing Lifan Passenger Vehicle Co.,Ltd.	
— Fengsheng Automobile (Jiangsu) Co., Ltd.	
— Shanxi New Energy Automobile Industry Co., Ltd.	

⁽⁴¹⁸⁾ See also, *mutatis mutandi*, WT/DS294/AB/RW, US — Zeroing (Article 21.5 DSU), Appellate Body Report of 14 May 2009, paragraph 453.

Company	Amount of countervailable subsidies
— Zhejiang Geely Automobile Company Limited	
— Zhejiang Haoqing Automobile Manufacturing Company Limited	
SAIC Group:	37,6 %
— SAIC MAXUS Automotive Company Limited	
— SAIC Motor Corporation Limited	
— Nanjing Automobile (Group) Corporation	
Other cooperating companies	20,8 %
All other companies	37,6 %

4. INJURY

4.1. Definition of the Union industry and Union production

- (995) The like product was manufactured by around 10 groups of producers in the Union, some of which produced the like product in several legal entities, during the investigation period. Most of these companies are original equipment manufacturers (OEMs) of internal-combustion engine (‘ICE’) vehicles that are transitioning to the production of BEVs following the entry into force of Regulation (EU) 2019/631 ⁽⁴¹⁹⁾ setting the CO₂ emission performance standards for new passenger cars and vans. Other companies are pure BEV producers. They together constitute the ‘Union industry’ within the meaning of Article 4(1) of the basic Regulation.
- (996) The transitioning of the Union market from ICE vehicles to BEVs represents a relevant factor in this case which affects a number of indicators relating to the state of the industry. The transitioning from ICE vehicles to BEVs implies high upfront as well as continuous investments and costs in a new developing market with fast increasing consumption. The Union industry started to invest in electrification before 2020 ⁽⁴²⁰⁾. As shown in Table 10 the sampled Union producers invested EUR 2 bn per year during the period considered while the total investments for the transition to the electrification are estimated to EUR 170 bn as stated in recital (1092). The examination of all the economic factors having a bearing on the state of the Union industry should be carried out by having due regard to the nature of the Union industry as being in this transition. Thus, the resulting trends may be affected and follow a different pattern than those observed in situations of other more mature industries.
- (997) The total Union production during the investigation period was established at around 1,6 million pieces. The Commission established this figure on the basis of Prodcom ⁽⁴²¹⁾ and crosschecked it against all other available sources of information concerning the Union industry. This included sampling replies and publicly available data on producing group websites.
- (998) Some of the Union producers also manufactured the product under investigation in the country concerned during the period considered in joint ventures with Chinese companies. These producing groups (BMW, Renault and Mercedes-Benz) imported the product concerned from China in that period. In fact, during the investigation period each such Union group of producers imported mainly one model of BEVs from China and thus complemented its portfolio of BEVs that it manufactured in the Union and sold on the Union market. These producers imported a quantity of around [4,7 – 5,7]% of the Union consumption in the investigation period as explained in Table 12. Tesla also imported significant quantities of BEVs from China. Volvo, which is owned by the Chinese company Geely, did not import BEVs with the brand Volvo from China during the investigation period. Its shareholder though, Geely, exported BEVs from China to the Union under different brands.

⁽⁴¹⁹⁾ Regulation (EU) 2019/631 of the European Parliament and of the Council of 17 April 2019 setting CO₂ emission performance standards for new passenger cars and for new light commercial vehicles, and repealing Regulations (EC) No 443/2009 and (EU) No 510/2011, OJ L 111 of 25.4.2019, p. 13.

⁽⁴²⁰⁾ <https://autovista24.autovistagroup.com/news/volkswagen-electric-vehicle-leader/>

⁽⁴²¹⁾ The production data for 2023 will be publicly available on 1 July 2024.

(999) In defining the Union industry and Union production, the Commission did not focus on brands or OEM groups, but on the origin of production of BEVs. Therefore, the Commission included all Union production of BEVs (i.e. BEVs brought into existence or made in the Union) in its injury, causation and Union interest analyses.

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

(1000) Bearing in mind that there was no significant captive market for BEVs, the Commission examined all economic indicators relating to the Union industry on the basis of data for the free market.

4.3. **Union consumption**

(1001) The Commission established the Union consumption on the basis of both apparent and actual consumption.

(1002) Apparent consumption took into account the total sales of the Union industry on the Union market as reported by the European Environment Agency ⁽⁴²²⁾ ('EEA') for 2020, 2021 and 2022, and as reported by S&P Global Mobility ⁽⁴²³⁾ for the investigation period since this information was not made yet publicly available by EEA by the time this regulation was published, as well as imports from Member States customs data. Customs data was collected from eight Member States with large volumes of imports and the largest regional seaports: Belgium, France, Germany, Italy, Netherlands, Slovenia, Spain and Sweden. A granular examination of this data enabled a distinction to be made between imports of BEVs (as clarified in recitals (184)) and imports of other goods such as quadricycles, electric mobility scooters etc. Only very minor volume of imports were reported by other Member States and their very low average price indicated that they concerned, by and large, other products outside the product scope. The data from these eight Member States was, therefore, on a conservative basis, accepted as an accurate indicator of BEV imports.

(1003) It should be noted that, as explained in recital (1084), the Union industry mainly works on orders and therefore its sales volume closely equates to the number of BEV registrations of BEVs manufactured in the Union.

(1004) Actual consumption took into account all registered BEVs on the Union market as reported by the ACEA.

(1005) To be noted that both EEA and ACEA report the total number of registrations of all BEVs in the Union. When comparing the data, there is a very small difference between the two sources ranging between – 0,34% to 1,15% during the period considered.

(1006) Union consumption developed as follows:

Table 1

Union consumption (pieces)

	2020	2021	2022	Investigation period
Apparent Union consumption	550 460	897 384	1 148 950	1 649 486
Index	100	163	209	300
Actual Union consumption (registrations of BEVs) ⁽¹⁾	538 734	877 985	1 123 444	1 519 082

⁽⁴²²⁾ https://co2cars.apps.eea.europa.eu/?source=%7B%22track_total_hits%22%3Atrue%2C%22query%22%3A%7B%22bool%22%3A%7B%22must%22%3A%5B%7B%22constant_score%22%3A%7B%22filter%22%3A%7B%22bool%22%3A%7B%22must%22%3A%5B%7B%22bool%22%3A%7B%22should%22%3A%5B%7B%22term%22%3A%7B%22year%22%3A2022%7D%7D%5D%7D%7D%2C%7B%22bool%22%3A%7B%22should%22%3A%5B%7B%22term%22%3A%7B%22scStatus%22%3A%22Provisional%22%7D%7D%5D%7D%7D%5D%7D%7D%7D%2C%22display_type%22%3A%22tabular%22%7D

⁽⁴²³⁾ <https://www.spglobal.com/mobility/en/index.html>

	2020	2021	2022	Investigation period
<i>Index</i>	100	163	209	282
registered BEVs as a % of all passenger vehicle registrations ⁽²⁾	5,4%	9,1%	12,1%	14,6%
<i>Index</i>	100	169	224	270

(¹) https://www.acea.auto/files/20220202_PRPC-fuel_Q4-2021_FINAL.pdf, https://www.acea.auto/files/20230201_PRPC-fuel_Q4-2022_FINAL-1.pdf, https://www.acea.auto/files/Press_release_car_registrations_full_year_2023.pdf, https://www.acea.auto/files/Press_release_car_registrations_September_2023.pdf. To be noted that the data reported by ACEA slightly differs from one source to the other.

(²) <https://www.acea.auto/files/ACEA-Pocket-Guide-2023-2024.pdf>, https://www.acea.auto/files/20230201_PRPC-fuel_Q4-2022_FINAL-1.pdf, https://www.acea.auto/files/Press_release_car_registrations_September_2023.pdf, https://www.acea.auto/files/Press_release_car_registrations_September_2023.pdf.

Source: S&P Global Mobility, EEA, ACEA and Member States Customs data

- (1007) Apparent and actual consumption on the Union market increased by 200% and 182% respectively over the period considered. This increase reflects a progressive transition of the Union passenger car market from ICE vehicles to BEVs.
- (1008) The difference between the figures for actual and apparent consumption represents the extent of stocks on the Union market. Such stocks were not identified in meaningful quantities for Union producers as the Union producers are mainly producing based on orders as explained in recital (1084) and were therefore mainly attributed to the stocks of imported vehicles.
- (1009) The increase in the number of BEVs registered as a percentage of all passenger vehicle registrations shows a progressive transition of the Union market from ICE passenger vehicles to BEVs.

4.4. Imports from the country concerned

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

- (1010) The Commission established the volume of imports on the basis of Member State customs data as well as from the number of registrations of imported BEVs. Such imports were based on the country of origin. The market share of the imports was established on the basis of (a) the volume of actual imports or (b) the registration of imported vehicles as a percentage of respectively (a) the apparent consumption data or (b) actual consumption as shown above in Table 1.
- (1011) Imports into the Union from the country concerned on the basis of Member State customs data developed as follows:

Table 2a

Import volume in pieces and market share

	2020	2021	2022	Investigation period
Volume of imports from the country concerned (pieces)	21 243	134 952	256 712	412 425
<i>Index</i>	100	635	1 208	1 941
Market share	3,9%	15,0%	22,3%	25,0%
<i>Index</i>	100	390	579	648

Sources: Member States Customs data

- (1012) The actual volume of imports from China increased by 1 841% over the period considered.
- (1013) The market share of imports from China increased from 3,9% in 2020 to 25,0% in the investigation period, an increase of over 500% or roughly 21 percentage points.
- (1014) The volume of imports into the Union from the country concerned based on the number of registrations developed as follows:

Table 2b

Import volume in pieces and market share

	2020	2021	2022	Investigation period
Registrations following importation from the country concerned (pieces)	18 934	132 768	246 090	346 345
<i>Index</i>	100	701	1 300	1 829
Market share	3,5%	15,1%	21,9%	22,8%
<i>Index</i>	100	430	623	649

Sources: EEA and S&P Global Mobility

- (1015) The number of registrations following importation from the country concerned increased from less than 19 000 pieces in 2020 to over 340 000 pieces in the investigation period. This is an increase of 1 729% over the period considered.
- (1016) On this basis, the market share of imports from China increased from 3,5% in 2020 to 22,8% in the investigation period, an increase of over 500% or over 19 percentage points.
- (1017) The difference between the volume of actual imports and registration following importation from China (around 66 000 pieces) demonstrates substantial stocks on the Union market of BEVs of Chinese origin. Further evidence of stocks was provided by the sampled exporting producers, which reported stocks of around 63 000 pieces at the end of the investigation period. Taking into account non-sampled Chinese exporting producers, the Commission estimated that actual stocks, ready for sale on the Union market, likely reached 66 000 pieces. This would represent around 4,3% of consumption on the Union market (registrations) in the investigation period or around 19% of the volume of registrations following importation from China during the same period.

4.4.2. *Prices of the imports from the country concerned, price undercutting and price suppression*

- (1018) The Commission established the prices of imports on the basis of Member States' Customs data.
- (1019) The weighted average price of imports into the Union from the country concerned developed as follows:

Table 3

Import prices (EUR/ piece)

	2020	2021	2022	Investigation period
China	28 154	24 510	26 441	25 269
<i>Index</i>	100	87	94	90

Source: Member State Customs data

- (1020) The prices of Chinese imports on the Union market fell by 10% over the period considered.
- (1021) However, this development should be seen also in the context of a continuously changing mix of BEV models imported from China as imports increased over the period considered as shown in Tables 2a and 2b.
- (1022) For the purpose of making a fair comparison between the imported products and the like products produced by the Union industry, the Commission used a system of product categorisation based on product control numbers ('PCN') which took into account the key characteristics of the BEVs having an impact on the selling price by the Union industry, and in particular the length, range, power and type of wheel drive ⁽⁴²⁴⁾ ⁽⁴²⁵⁾. In this respect, whilst the BEVs are complex products, with a very large number of distinct attributes and features (even vehicles that are marketed under a single commercial model name, can be offered in a wide range of configurations, also depending on the choice by the customer of attributes that are offered as an option), this does not mean that all these distinct attributes have a significant impact on price and therefore should be taken into account when comparing prices. The Commission noted that the interested parties did not comment on the structure of the PCN.
- (1023) The Commission determined the price undercutting during the investigation period by comparing:
- (i) the weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market, adjusted, where necessary, to the price to a dealer; and
 - (ii) the corresponding weighted average prices per product type of the imports from the sampled cooperating Chinese producers to the first independent customer on the Union market, adjusted, where necessary, to the price to a dealer.
- (1024) The investigation revealed that in this specific case the sales channels of the Union producers and the Chinese exporting producers are very complex and can include numerous intermediaries between the producer and the first unrelated customer. The investigation showed that there are three different levels of trade (see recital (1025)) with at least four types of sales models (see recital (1027)). Consequently, the Commission decided, in view of the specific circumstances of this case, to determine the existence of price undercutting at dealer's level (price to the dealer). Indeed, the Commission established that this is the central point where competition takes place, and the majority of the sales transactions are realised. The sales to the dealer or via the agent or to key accounts represent around 95% of the total sales of the Union industry and around 78% sales of the Chinese exporting producers. Furthermore, no distinction between related and unrelated dealers was needed as the investigation confirmed that prices to all dealers were made at arm's length.
- (1025) The three main levels of trade are as follows:
- (i) the Producing Entity ('PE') or the importing entity of the Chinese exporter ('IE') which manufactures or imports BEVs and sells the BEVs to the next level of trade, i.e. related National Sales Company ('NSC') or unrelated General Distributor ('GD'). Some PEs have a 'home market' (typically country where the production happens or where the European headquarters of the IE are established) in which they also perform the functions of an NSC.
 - (ii) the NSCs related to the PE/IE which are focused on marketing and sales activities taking into account the specificities of the market in which they operate. NSCs typically exist in the major markets of the PE and distribute the BEVs via their related and unrelated distributor network (dealers and/or agents). In countries where there is no related NSC (typically countries where small quantities are sold) the sales are made through an unrelated GD (typically exclusive for the country). The GDs perform similar functions as NSCs and distribute the BEVs via their related and unrelated distributor network (dealers and/or agents).

⁽⁴²⁴⁾ Wherever multiple attributes were observed to be closely linked not only with price, but also with each other, the Commission considered keeping in the PCN only one of these attributes. For instance, having already included the range in the PCN, it was not considered meaningful to add also the battery capacity, given that the two are closely linked.

⁽⁴²⁵⁾ Notwithstanding the conclusion that a market segmentation is not appropriate in this case, the Commission noted that length is closely associated with the segments defined in the most commonly used car categories (i.e. based on letters A, B, C, etc).

- (iii) Distribution networks made of dealers and agents. Dealers are the entities buying BEVs from NSCs and GDs and selling them to the final customer. Agents are companies that perform the same functions as a dealer without however taking ownership of the vehicle at any point. These companies might act as dealers for other types of vehicles, such as ICE vehicles.
- (1026) In general, for each country, the PE/IE or NSC sets the Manufacturer's Suggested Retail Price ('MSRP'), which is the price that a manufacturer recommends for retailers to sell their BEVs. However, in countries where there is no sales entity related to the producer, the MSRP is set up by the unrelated GD which performs functions similar to the NSCs. The MSRP is set based on the price that the Union producer charges to the unrelated GD.
- (1027) The main sales models identified are the following:
- (i) Standard dealer model – the BEV is sold by the PE/IE or the NSC to the dealer and from the dealer to the final customer. The dealer often receives a discount from the PE. Therefore, there is no adjustment necessary to the dealer net price. The price paid by the final customer is typically unknown to the PE as the dealers negotiate that price making use of their margin (difference between MSRP and dealer price).
 - (ii) Agency model – the BEV is sold directly to the customer from the PE/IE or the NSC. The sale is intermediated by an entity which is called an agent who does not assume ownership of the vehicle but negotiates and closes the sale. For this work the agent receives a commission. These entities can be the same companies that normally act as dealers for other types of cars. They perform functions similar to those of the dealer. Therefore, a price comparable to a price to a dealer was obtained by adjusting the final end-user price with the commission of the agent.
 - (iii) Large fleet sales model which is specific for certain categories of large customers such as rental companies, governmental entities and large private companies. The PEs/IEs or the NSCs negotiate and sell the BEVs directly. These are volume sales for both Union producers and the Chinese exporting producers and are considered to be similar to a dealer level as a discount is applied for the volume of sales.
 - (iv) Unrelated GD model - in this case, in order to arrive at a dealer price, the Commission added to the unrelated distributors' price an estimate of their SG&A costs (using as a proxy the average SG&A of the Union producer's or exporting producer's NSCs in the other countries, which ranged from 0,5% to 3,6% for Union producers and from 2,1% to 8% for exporting producers). A notional profit of 3% was also added for sales to unrelated GDs by both Union producers and exporting producers. For the Union producers, such adjustment concerns around 5% of their sold quantity, while for the exporting producers, 22% of their sold quantity.
 - (v) Online sales – Certain exporting producers (and their NSC) have been selling online directly to final customers, including private individuals, without the intermediation of a dealer or agent. The prices of these sales could not be adjusted to a dealer level at this stage of the investigation, except for the allocation and deduction of monetary rewards for the achievement of specific sales volume targets, provided to companies performing marketing activities (e.g. operating showrooms and providing test drive services) in the area where such online sales originated.
- (1028) The price comparison was made on a type-by-type basis for transactions at the same level of trade (price to a dealer or equivalent), duly adjusted where necessary as explained above, and after deduction of rebates and discounts or other incentives for sales to companies operating at the level of a dealer or agent. The result of the comparison was expressed as a percentage of the sampled Union producers' theoretical turnover during the investigation period.
- (1029) It showed a weighted average undercutting margin of 12,7% by the imports from the country concerned on the Union market.
- (1030) Bearing in mind that competition is largely based on price, and that its prices are very transparent (i.e. known in the market), such a margin is considered significant.

- (1031) The matching between the Chinese PCNs and the Union PCNs was above 90% for each of the exporting producers. Two Chinese PCNs were each compared with one closely resembling Union PCN. In both cases, the used Union PCN corresponded to lower technical specifications compared to the Chinese PCN, therefore, the comparison was in favour of the Chinese exporting producer.
- (1032) Moreover, it should be noted that the prices of the BEVs of BYD and SAIC include a warranty for the BEV for 7 years while the warranty for the BEVs of the Union industry was of 2 years only. Therefore, the undercutting found in recital (1029) is understated.
- (1033) With regard to price suppression, the development of sales prices and unit production costs in the Union throughout the period considered in table 7 showed evidence of significant price suppression. The Union industry was unable to raise its prices to cover its costs. This meant that the Union industry made losses on sales of BEVs throughout the period considered.
- (1034) In particular, the Commission found that the selling price of the sampled Chinese exporting producers were 30% lower than the weighted average cost of production of the Union industry. This indicator was established on a type-by-type basis.
- (1035) A major factor in this price suppression was that the registrations following importation of Chinese subsidised imports were able to increase in volume by 1 729% and reach a 22,8% market share in the investigation period as compared to 2020 as shown at Table 2b. These sales were mainly at the expense of Union producers which were losing market share. Furthermore, the price suppression was also explained by the evidence that the Chinese imports compete with the Union sales regardless of the product type. Even if the Union would increase its sales of more expensive models, those too would compete with a type of Chinese BEV. This has contributed to the Union industry making double digit losses as shown in table 10.
- (1036) The CCCME claimed that in the price comparison, the Commission should take into account the brand of the BEV. The CCCME further argued that the brand value of the producer drives sales and resale prices of the BEV and the Union BEV producers can charge much higher prices for their BEVs in every segment on the basis of their brand value.
- (1037) The Commission noted that the CCCME did not explain how the Commission should take the brand into consideration for the price comparison. Furthermore, it also noted that any brand value that the Union producers might have, was built on their long and extensive experience in manufacturing ICE vehicles which cannot be presumed to be carried over to BEVs automatically. This is due to the fact that the electrification is a game changer as regards non-price competition by challenging the traditional features on which ICE car makers have built their competitive advantage. Common values used by carmakers include performance, fuel efficiency, technology, reliability, safety and design. However, these product attributes are being challenged by the adoption of electric technologies. For example, the BEVs are redefining performance because of the characteristics of electric engines. Of all characteristics, range is the most critical because of the low performance of BEVs vs ICE cars and the substantial gap between BEVs models as regards maximum range. Furthermore, the rapid growth of Tesla is a clear example that the brand value built on ICE cars, or lack thereof, is of marginal relevance when it comes to success and pricing power in the BEV market. Therefore, the claim was rejected.
- (1038) The CCCME also claimed that in the price comparison the Commission should consider the data of all sampled Chinese exporting producers and any other Chinese exporting producers that have submitted individual examination requests and in particular that of Tesla as it accounted for about 50% of the BEV exports to the Union in the investigation period.
- (1039) The undercutting margin as well as all the other microeconomic indicators are calculated based on the verified data reported by the sampled Chinese exporting producers and sampled Union producers. As it was explained in recital (49), Tesla was not sampled as a Chinese exporting producer. Consequently, the data of this exporting producer that requested individual examination was not included in the undercutting calculation. Therefore, the claim was rejected.

- (1040) Company 24 claimed that the BEV market was not a homogenous market because of two main reasons. Firstly, because there was no independent BEV market, as the BEV market was part of the passenger vehicle market, which included ICE vehicles and the BEVs were competing with the ICE vehicles. Secondly, because the BEV market was divided in several segments. Company 24 stated that market segmentation was relevant for an accurate assessment of the state of Union industry and therefore Company 24 claimed that the Commission should differentiate between different BEV market segments. Company 24 further specified that while the EU classifies cars in categories based on their size and features, other criteria such as price and brand image are key factors for determining the segmentation of the market. As concerns sales prices, Company 24 specified that the BEV market could be divided into “entry”, “mid”, “premium” and “luxury”. Company 24 also stated that there was a clear distinction within each segment between premium brands and base-level brands, based on aspects such as performance, functionalities, features, distributions networks and after sales services. Company 24 further stated that these factors effectively determine the degree of competition between market players and whether any two products are close alternatives. Company 24 also stated that most Union producers of BEV have so far focused on more premium vehicle models, which allowed for larger profit margins and as a result EU brands are not strongly present in entry-level segments which contrasts with the situation in the traditional ICE sector. It follows that according to Company 24, the imports from China and in particular the Chinese BEV brands have so far mostly targeted the base level across the cheaper segments of the market where EU alternatives are not yet strongly present. Therefore, Company 24 claimed that the Chinese imports mostly complement rather than compete with the Union industry on the Union BEV market.
- (1041) The Commission recalled that the passenger vehicles market included several powertrains: ICE, hybrids (non-pluggable), plug-in hybrids (‘PHEVs’), BEVs, and fuel-cell vehicle (‘FCV’). The FCV and BEVs are vehicles with zero-emissions while PHEVs, hybrids and ICE have a combustion engine. These types of vehicles may be competing with each other but only to a very limited extent. At the same time these types of vehicles are also very limitedly competing with motorcycles, electrical bicycles, scooters etc. However, the scope of the current investigation are the BEVs and not all passenger vehicles or mobility vehicles. To the extent that there is any competitive relationship with other vehicles, this element would not bring those vehicles within the scope of this investigation; nor such limited competition, if any, would put into question the findings made in this investigation as to the impact of the subsidised imports on the Union industry of the like product (BEVs).
- (1042) The Commission also recalled that there was no universally accepted segmentation for passenger cars and noted that the classification system referred to in the Initiation document was based on generic descriptions of what is traditionally referred to as segments in this industry, rather than on objective and measurable criteria provided by the Union industry. As a result, there was no clear dividing line between the alleged segments. In the Initiation document the Commission referred to such segments in the sense of product types of BEVs. This is all the more so the case for the segmentation proposed by Company 24, which did not provide even a description of the alleged segments, but only names (i.e. ‘entry’, ‘mid’, ‘premium’ and ‘luxury’) using common marketing terms which have a wide margin of interpretation.
- (1043) The Commission also noted that while BEVs encompass a variety of different types, they all share the same basic characteristics and the same main use, which is the transportation of a small number of persons from one point to another. They are also subject to the same regulations as regards for instance speed limits, licence requirements, and parts of the road network where they are allowed to circulate. In view of the above, the BEVs can be considered sufficiently interchangeable. Furthermore, as explained in recital (1022), the PCN took into account the key characteristics of the BEVs which had an impact the selling price by the Union industry, such as the length, range, power and type of wheel drive and, therefore, the like Union product type was compared with the similar Chinese product types meaning that the allegedly cheap or premium Chinese BEVs were compared to similar Union models respectively.
- (1044) As regards the types of BEVs sold by Chinese producers and the degree of competition with Union producers, the investigation revealed that the Chinese exporting producers compete in full with the BEVs sold by the Union industry (as explain in recital (1031) the matching between the Chinese PCNs and the Union PCN was very high (higher than 90%)) on average and this matching corresponds to 88% of total sales of the sampled Union producers). In fact, the types of BEVs sold on the Union market by both Union producers and Chinese exporting producers was one of the criteria for the selection of the sample of Union producers and exporting producers as explained in recitals (33), (36) and (49).

- (1045) In the investigation period, the Chinese exporting producers exported a wide range of BEV models at significantly varying prices, competing with the BEV models produced by Union producers and are planning to expand their portfolio for the Union market even further in the near future.
- (1046) For example, the sampled Chinese exporting producer BYD sold on the Union market models with a list price lower than EUR 30 000, such as the Dolphin, models with a list price at around EUR 40 000 such as the Atto 3, but also models which it considers as premium or luxury with a list price of more than EUR 70 000, such as the HAN and the TANG.⁽⁴²⁶⁾ Similarly, Geely group has marketed its Polestar BEVs as premium models,⁽⁴²⁷⁾ and exported them to the Union during the investigation period. Another Geely produced BEV, the Lotus Eletre, is marketed as a hyper-SUV⁽⁴²⁸⁾ and offered in the Union market at list prices as high as EUR 150 000.
- (1047) Further to the types of BEVs sold during the investigation period, the Commission noted that the Union BEV market is continuously evolving and Union producers and exporters, including the Chinese exporters, are expanding every year their portfolio of offered BEVs. As an example, Stellantis group, a Union group of BEV producers, announced in October 2023 its new low-cost BEV Citroën e-C3, starting at 23 300 EUR. Conversely, in March 2024 the sampled Chinese SAIC unveiled⁽⁴²⁹⁾ a number of new models, including the “*high-class intelligent*” IM L6, the “*medium-to-large-sized hatchback electric sedan*” MG9, and the “*medium-to-large-sized pure electric coupe*” SUV MGS9. Other announcements for launching new BEVs models have been also stated in recital (1127).
- (1048) Therefore, it was concluded that the Chinese exporting producers are not restricted to certain specific types of BEVs as Company 24 seems to suggest.
- (1049) For the reasons above, the Commission concluded that BEVs form a single and continuous market of interchangeable products, and that a segment analysis was not warranted nor appropriate in this case. Therefore, the claim was rejected.

4.5. Economic situation of the Union industry

4.5.1. General remarks

- (1050) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the subsidised imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (1051) As mentioned in recital (26), sampling was used for the determination of possible injury suffered by the Union industry.
- (1052) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data from Prodcom, EEA, S&P Global Mobility, sampling data and websites of Union producers. These data are related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.
- (1053) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, magnitude of the subsidy margin, and recovery from past subsidisation.
- (1054) The microeconomic indicators are: average unit prices, unit cost, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

⁽⁴²⁶⁾ <https://press.bydauto.be/byd-changes-the-price-of-the-atto-3-from-1-september-2023>

⁽⁴²⁷⁾ <https://media.polestar.com/be/nl/models/polestar-2/274707>

⁽⁴²⁸⁾ <https://lotusantwerp.be/lotus-eletre/>

⁽⁴²⁹⁾ https://www.saicmotor.com/english/latest_news/saic_motor/59418.shtml

4.5.2. Macroeconomic indicators

4.5.2.1. Production, production capacity and capacity utilisation

- (1055) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 4

Production, production capacity and capacity utilisation

	2020	2021	2022	Investigation period
Production volume (pieces)	545 142	900 000	1 200 000	1 626 263
<i>Index</i>	100	165	220	298
Production capacity (pieces)	1 642 953	2 640 341	3 701 476	4 712 037
<i>Index</i>	100	161	225	287
Capacity utilisation	33%	34%	32%	35%
<i>Index</i>	100	103	98	104

Source: Prodcom ⁽⁴³⁰⁾, sampling data and Union producers' websites

- (1056) Production of BEVs increased by around 200% over the period considered. The increase in production was substantial and relatively consistent over this period reflecting a progressive transition of the market from ICE vehicles to BEVs.
- (1057) There is no official data regarding the total production capacity of the Union industry. Therefore, the total production capacity of the Union industry was calculated based on the verified capacity utilisation rate of the sampled Union producers and the total production volume of the Union industry. On this basis, production capacity increased over the period considered by 187%.
- (1058) The investigation revealed that some Union producers were converting ICE vehicles production lines into BEVs production lines and therefore those production lines were dedicated entirely to the BEVs production, or they were producing BEVs in their assembly plants alongside ICE vehicles using essentially the same production process in order to leverage existing assets, processes and competencies and provide volume flexibility.
- (1059) Depending on how the sampled Union producers were producing BEVs as explained in recital (1058) their production capacity was calculated in several ways as follows (i) based on the maximum number of BEVs able to be produced per day multiplied by the productive working time, considering 2-3 shifts, including maintenance, for 46-48 weeks per year, or (ii) based on the total production capacity for all passenger cars after deducting the production of all the other passenger vehicles apart from BEVs.
- (1060) Capacity utilisation increased by 4% over the period considered. As the capacity utilisation was below 40% in the investigation period, it can be concluded that the Union industry has enough production capacity to satisfy the future increases in the demand for BEVs and in addition, more capacity can be allocated from ICE vehicle production to BEVs production.

⁽⁴³⁰⁾ https://ec.europa.eu/eurostat/databrowser/view/ds-056120__custom_10709623/default/table?lang=en To be noted that due to confidentiality Prodcom does not report the production volume for each Member State. The production data for 2023 will be publicly available on 1 July 2024.

4.5.2.2. Sales volume and market share

(1061) The Commission established the Union industry's sales volume on the Union market on the basis of EEA and S&P Global Mobility for registrations of BEVs manufactured in the Union.

(1062) On this basis the Union industry's sales volume and market share developed over the period considered as follows:

Table 5

Sales volume and market share

	2020	2021	2022	Investigation period
Sales volume on the Union market (registrations) in pieces	379 138	583 992	739 101	987 586
<i>Index</i>	100	154	195	260
Market share (of apparent consumption)	68,9%	65,1%	64,3%	59,9%
<i>Index</i>	100	94	93	87
Market share (of actual consumption - registrations)	70,4%	66,5%	65,8%	65,0%
<i>Index</i>	100	95	93	92

Source: EEA and S&P Global Mobility registration data

(1063) The sales of the Union producers increased by 160% over the period considered. This development was similar to the development in production over the same period. The BEVs were sold mainly through dealers. The main end users were consumers and key account companies which normally ordered the production of bespoke vehicles, rather than ordering from stock.

(1064) Despite the sharp increase in consumption, the market share based on apparent consumption by the Union industry decreased by 13% or 9 percentage points over the period considered or by 8% or more than 5 percentage points based on actual consumption. By contrast, the market share of imports from China increased more than fivefold in this booming market, at the expense of the Union industry.

4.5.2.3. Growth

(1065) The Union industry production and sales (registrations) of BEVs showed a continuous and substantial growth over the period considered, in line with the progressive transitioning of the market from ICE vehicles to BEVs.

(1066) The growth of the Union industry in terms of sales in such increasing market was substantially lower than the increase in the consumption.

(1067) In terms of market share the Union industry decreased by 9 percentage points based on apparent consumption or more than 5 percentage points based on registrations over the period considered. Imported BEVs (registrations) held a market share of almost 34,8% in the investigation period. The largest and fastest growing market share over the period considered being held by Chinese exporting producers as shown above in Table 2a and Table 2b.

4.5.2.4. Employment and productivity

(1068) Employment and productivity developed over the period considered as follows:

Table 6

Employment and productivity

	2020	2021	2022	Investigation period
Number of employees	39 995	66 053	99 939	115 835
<i>Index</i>	100	165	250	290
Productivity (piece/employee)	14	14	12	14
<i>Index</i>	100	100	88	103

Source: Procom and sampled Union producers

- (1069) Employment and productivity were calculated from the employment of the sampled Union producers extrapolated by the production volume of the entire Union industry.
- (1070) The number of employees increased from around 40 000 to around 116 000 over the period considered, an increase of 190%. This development broadly followed the trend in production.
- (1071) In general, the Union industry is transferring the employees from the production of ICE vehicles to the BEV production as the production of ICE vehicles is decreasing while the production of BEV is increasing. In this regard, the Union industry are safeguarding jobs by re-skilling (retooling and retraining) and providing opportunities to their employees to adapt to electric powertrains.
- (1072) Productivity was relatively stable over the period considered.

4.5.2.5. Magnitude of the subsidy amount and recovery from past subsidisation

- (1073) All subsidy amounts were significantly above the de minimis level. The impact of the magnitude of the actual amounts of subsidisation on the Union industry was not negligible, given the volume and prices of imports from the country concerned.
- (1074) This is the first anti-subsidy investigation regarding the product concerned. Therefore, no data were available to assess the effects of possible past subsidisation.

4.5.3. Microeconomic indicators

4.5.3.1. Prices and factors affecting prices

- (1075) The weighted average unit sales prices of the sampled Union producers to unrelated customers (including the sales of the related companies which were made on an arm's length basis) in the Union developed over the period considered as follows:

Table 7

Sales prices in the Union

	2020	2021	2022	Investigation period
Average unit sales price on the Union market (EUR/ piece)	24 404	27 557	31 244	33 560
<i>Index</i>	100	113	128	138

	2020	2021	2022	Investigation period
Unit cost of production (EUR/ piece)	30 683	32 029	35 079	38 140
<i>Index</i>	100	104	114	124

Source: Sampled Union producers

- (1076) The Union industry average sales prices per piece increased by 38%. This development was affected by changes in the mix of models sold by the sampled Union producers over the period considered, especially bearing in mind that the Union market is gradually transitioning from ICE vehicles to BEVs and new models were being launched and sold throughout the period considered ⁽⁴³¹⁾.
- (1077) The cost of production shown above is the full cost of production of the BEVs sold including components and raw materials, other manufacturing costs and selling general and administrative costs (SG&A) including research and development (R&D) expenses.
- (1078) The Union industry average cost of production per piece increased by 24%. This development was also affected by changes in the mix of models being produced. In addition, the unit cost was also driven by the increase in the cost of components, especially batteries due to rising costs for raw materials including cobalt, nickel and lithium. The cost of other components also increased especially those affected by the energy crisis such as steel and other metals. A factor which had a downward impact on unit costs was the increase in the volume of production and sales as shown in Table 4 and Table 5, as the Union producers were able to spread the fixed costs over higher quantities of BEVs. The Commission noted that the BEV industry is a capital-intensive industry with high fixed costs and therefore a high volume of production leads to decreases in the unit cost of production.
- (1079) The sampled Union producers set prices on the Union market according to the pricing of their major competitors for similar models. In general, the Union producers set up a list price for all the models or the MSRP, which is the price that a manufacturer recommends for retailers to sell their BEVs. The MSRP prices are regularly reviewed. However, even when MSRPs remain fixed, the final price that the customer pays can fluctuate due to the discounts offered by the seller to the consumer.
- (1080) The BEV market is a highly competitive and rapidly evolving market. Furthermore, it is very transparent as all sellers of BEVs make public the MSRPs. Due to the price transparency, the BEV market is very price sensitive. Therefore, increases in prices caused by increases in costs usually lead to a reduction in sales quantities.

4.5.3.2. Labour costs

- (1081) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 8

Average labour costs per employee

	2020	2021	2022	Investigation period
Average labour costs per employee (EUR)	70 981	74 904	78 348	88 198
<i>Index</i>	100	106	110	124

Source: Sampled Union producers

⁽⁴³¹⁾ <https://alternative-fuels-observatory.ec.europa.eu/consumer-portal/available-electric-vehicle-models>

- (1082) The average labour cost increased by 24% over the period considered. This development reflected the increases in salaries and other labour costs in a period of high inflation especially in 2022 and 2023.

4.5.3.3. Inventories

- (1083) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 9

Inventories

	2020	2021	2022	Investigation period
Closing stocks (pieces)	7 493	9 460	15 504	25 431
Index	100	126	207	339
Closing stocks as a percentage of production	4,5%	3,3%	4,4%	5,2%
Index	100	74	97	114

Source: Sampled Union producers

- (1084) The investigation revealed that the Union industry works mainly on orders and therefore the stocks, as a percentage of production, were in general low.
- (1085) Closing stocks of the sampled Union producers increased by 239% over the period considered reflecting the increase in production over this period. Closing stocks as a percentage of production increased by 14% over the period considered. This development was mainly due to the increase in the number of models offered to the market in the investigation period as compared to 2020.

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

- (1086) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 10

Profitability, cash flow, investments and return on investments

	2020	2021	2022	Investigation period
Profitability of sales in the Union to unrelated customers (% of sales turn-over)	- 22,3%	- 10,9%	- 8,9%	- 10,8%
Index	- 100	- 49	- 40	- 48
Cash flow (EUR)	- 583 165 193	- 361 393 404	- 718 123 415	- 835 344 631
Index	- 100	- 62	- 123	- 143
Investments (EUR)	2 060 595 337	1 996 456 058	1 810 025 676	2 058 540 935
Index	100	97	88	100
Return on investments	- 248%	- 132%	- 56%	- 72%
Index	- 100	- 53	- 22	- 29

Source: Sampled Union producers

- (1087) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales.
- (1088) The Union industry was loss-making throughout the period considered, although such losses overall decreased over that period. As shown in Table 7 the Union industry's unit prices increased over the period considered at a higher rate than the increases in its unit costs. The reasons for these developments are described in section 4.5.3.1. Between 2020 and 2022 the Union industry managed to decrease its losses because it increased its sales quantity on the Union market. In this period the Union industry was ramping up its production and sales quantities and efficiencies were achieved in the spread of fixed costs across increasing number of produced pieces. Although, this growth continued in the investigation period, increases in raw materials prices and in the volume of subsidised imports at low prices meant that losses increased as compared to 2022 to reach the level of – 10,8% at the end of the period considered.
- (1089) The Union market was in a progressive transition phase over the period considered. As some Union producers manufactured BEVs and ICE vehicles on the same production lines as explained in recital (1058), the production costs of BEVs were decreased to some extent as the fixed costs were shared between BEVs and ICE vehicles. However, as explained in recitals (1222) and (1223), the Union industry needs to reduce its production and sales of ICE in the Union. Therefore, in order to move to a profitable situation and secure its future, the Union BEV industry needs to increase its production, sales and market share of BEVs, and thus reach economies of scale and continue to reduce its unit costs in comparison to its price levels.
- (1090) The net cash flow is the ability of the sampled Union producers to self-finance their activities. The net cash flow was negative throughout the period considered. Net cash flow deteriorated over the period considered because of the increase in turnover and the increase in losses in absolute value. The cash flow situation described above has been supported by profits made by the Union industry on ICE passenger vehicles. However, as explained in recitals (1222) and (1223), the Union producers need to decrease their sales of ICE and therefore the profits that the Union industry obtains from the sales of ICE vehicles will decrease in the future.
- (1091) Investment in the product concerned related mainly to R&D expenditure, new investment on production lines for BEV production, including the production and installation of batteries, and purchase of specific tools for the assembly of BEVs. Although these investments relate only to the sampled production entities, they demonstrate the massive investment needed to switch from ICE to BEV production. An important part of new investments is needed prior to the sale of BEVs. Further investment has already been committed and the investment is ongoing as the production sites are being gradually transitioned.
- (1092) The investment of the entire Union industry for the transition to electrification has been estimated to about EUR 170 billion between 2022 and 2030 ⁽⁴³²⁾. This corresponds to an average investment of approximately EUR 19 billion in each year of the period. These investments are planned for all types of BEVs. In particular, Volkswagen group is investing approximately EUR 20 billion to build at least six battery plants in Europe in the next years. BMW group plans to invest approx. EUR 1 billion to develop and produce BEVs at its plant in Steyr, in Austria, as of 2025. It is also investing approximately EUR 400 million to upgrade its plant in Munich, in Germany, and it is building a new plant in Hungary to produce its model Neue Klasse EV as of 2025. Stellantis group invested in a joint venture with Mercedes-Benz and TotalEnergies, called ACC, for battery cells. Mercedes-Benz also expects to set up four battery plants in the EU in the near future. Renault group is investing EU 10 billion in electrification through 2025.
- (1093) The return on investments is the profit in percentage of the net book value of investments. It developed in a similar manner to the return on turnover in that it was negative throughout the period. The return on investment losses reduced over the period considered for the reasons described in section 4.5.3.4. It should also be borne in mind that the sampled Union producers did not all start investments in BEVs (and therefore did not start to obtain a return on those investments) in the same year. This clarification also had an impact on the return on investment trend stated in Table 10.

⁽⁴³²⁾ <https://www.reuters.com/graphics/AUTOS-INVESTMENT/ELECTRIC/akpegzqypr/>

- (1094) The sampled Union producers' ability to raise capital should be seen in the context that the sampled Union producers are part of large industrial groups which funded the transition from ICE vehicles to BEVs. However, each year of this inevitable transition has increased the extent of losses made and has reduced the ability of the industry to raise capital in the future.

4.5.4. *Conclusion on the situation of the industry*

- (1095) As explained at recital (996), the situation of the Union industry must be analysed in the context of the Union market transitioning from ICE vehicles to BEVs.
- (1096) In this context, apparent Union consumption increased during the period considered by 200% and actual Union consumption (based solely on registrations) increased during the period considered by 182%. These large increases reflect the scenario that the Union passenger vehicle market is transitioning from ICE vehicles to BEVs.
- (1097) At the same time, import quantities from China increased massively from around 21 000 pieces to over 412 000 (i.e. by more than 1 800 % over the period considered), that is substantially more than the increase in consumption. This is reflected in the Chinese imports' market share that also increased massively from 3.9% in 2020 to 25% in the investigation period. Similar increases are shown in respect of registrations of Chinese BEVs following importation from China.
- (1098) Production and sales of the Union industry increased by 198% and 150% respectively. Again, this apparent growth was not in line with the increase in consumption, meaning that the Union industry's market share fell from 68,9 % in 2020 to 59,9% in the investigation period.
- (1099) As explained, given the transitioning of the Union market several indicators were affected by the fact that the Union industry was gradually converting their production sites from ICE vehicles to BEVs. This conversion required large and steady investments in R&D and factory conversion costs, which stayed the same throughout the period considered. Capacity utilisation, profitability, return on investment and productivity showed slight positive trends due to the transition from ICE vehicles to BEVs, but they either remained negative or rather stable during the period considered.
- (1100) The profitability and return on investment of the Union industry, despite showing improving trends, remained poor throughout the period considered. This indicated that the Union industry was not able to pass on its full significant costs in the transitioning context to its customers and that it was prevented from setting prices to customers at profitable levels. The analysis in section 4.5.3.1 demonstrates that Union industry's prices were suppressed by the prices of the subsidised imports. The price undercutting of the subsidised imports from China at quantities which were continuously increasing, even in a market which was rapidly expanding, demonstrates that the main import competitor was China.
- (1101) Despite an increase of sales and production driven by increasing demand due to the transition from ICE vehicles to BEVs, in the investigation period, the Union industry was still far from making a profit on BEVs. The situation in the investigation period of losses over 10% and continuing price suppression jeopardised the entire transition of the Union industry from ICE vehicles to BEVs. This has involved many billions of EUR investments and the redeployment of the huge workforce it employs, while the Union market was only 14,5% into the transition from ICE vehicle to BEVs as shown in Table 1.
- (1102) The above indicators show that the transitioning from ICE to BEV started to be impeded towards the end of the period considered and in particular during the IP, when it can be observed the highest volumes of Chinese imports and the highest drop of market share by the Union industry. This is also shown by the fact that, despite the improving trends in some indicators during the period considered, most financial indicators were still negative and even started to deteriorate during the investigation period, including profitability, return on investment, and cash-flow. Even more tellingly, market shares consistently decreased throughout the period considered, achieving the lowest point at the end of the investigation period.

- (1103) On the basis of the above, the Commission decided to examine whether the likely future developments of subsidised imports from China would jeopardise the successful transitioning from ICE vehicles to BEVs, thereby causing material injury to the Union industry.

5. THREAT OF INJURY

5.1. Introduction

- (1104) In accordance with Article 8(8) of the basic Regulation, the Commission examined whether a further increase of subsidised imports from China is likely to have a negative impact on the Union industry's situation, and thus amount to a threat of material injury to the Union industry.

- (1105) In the analysis of a threat of material injury to the Union industry, in accordance with Article 8(8), second subparagraph of the basic Regulation, the Commission considered such factors as:

- the nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;
- a significant rate of increase of subsidised imports into the Union market indicating the likelihood of substantially increased imports;
- sufficient freely disposable capacity on the part of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased subsidised exports to the Union, account being taken of the availability of other export markets to absorb any additional exports;
- whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports; and
- the level of inventories.

5.2. The nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom

- (1106) In section 3.10, the Commission provisionally concluded on the existence of countervailable subsidies in accordance with the provisions of the basic Regulation.

- (1107) Those subsidies show that the imports of the product concerned benefit from governmental support.

- (1108) The significant undercutting and price suppression (preventing price increases which otherwise would have occurred) found during the investigation period is expected to affect the economic situation of the Union industry already observed during the investigation period even more negatively in the near future. The aggressive pricing behaviour of the Chinese imports and substantial market penetration are aided by the fact that the Union BEV market is very price sensitive and transparent.

- (1109) Moreover, as explained in section 3.2, the GOC's measures supporting its domestic BEV industry ensure that BEV exports remain very competitive at significantly lower prices than the Union industry's prices, because of the lower costs of obtaining financing, goods or inputs for less than adequate remuneration and other benefits (as opposed to Union producers who cannot benefit from such significant support).

- (1110) It is therefore foreseeable that the subsidised imports of the product concerned, because of the nature of the GOC's support measures, will continue to negatively affect the Union industry's economic situation.

5.3. **Significant rate of increase of subsidised imports into the Union market indicating the likelihood of substantially increased imports**

Rate of increase of imports from China and their market share

- (1111) The total imports of BEVs from the country concerned increased significantly from 21 243 pieces in 2020 to 412 425 pieces in the investigation period as showed in Table 2a and Table 2b.
- (1112) The market share of the imports from China increased as well from 3,9% in 2020 to 25,0% in the investigation period based on total imports or from 3,5% in 2020 to 22,8% in the investigation based on registrations as stated in Table 2a and table 2b respectively. The Chinese exporting producers have gained market share with low-priced imports at the expense of the Union producers and imports from third countries.

Measures indicating likelihood of further substantial increase in imports

- (1113) As shown above in section 3.2, there is evidence that the GOC's policies target production and specifically exports of BEVs.
- (1114) There are a number of elements showing that Chinese exporting producers are likely to continue exporting at high rates. Specifically, the GOC has implemented very recently a number of measures to target export markets and further increase exports also in light of significant overcapacities in the Chinese domestic market as explained in recitals (1140) to (1143).
- (1115) As explained in recital (1149) China exported worldwide 1 471 136 BEVs in the investigation period, an increase of 659% as compared to 2020. The NEVs (BEVs and PHEVs) are very important for the Chinese economy. Thus, in his 2024 New Year message, the President of China stated that the NEVs are “a new testimony of China's manufacturing prowess”⁽⁴³³⁾. However, the Chinese BEVs manufacturers are not merely restricted to their domestic market. In fact, the GOC is encouraging Chinese BEV producers to explore markets overseas and supports them in many ways in order to expand their export sales, including by developing sound legal consulting, testing, and certification systems. In this regard the Plan 2021–2035 sets five strategic tasks for China's NEV industry for the next 15 years: (1) to improve the capacity for technology innovation; (2) to build a NEV industry ecosystem; (3) to advance industrial integration and development; (4) to build a sound infrastructure system; and (5) to increase openness and deepen international cooperation. As concerns the international cooperation, domestic firms are encouraged to make international development strategic plans, exploit overseas markets, and establish warehouses and post-sale service platforms abroad. The Plan 2021-2035 also emphasized that supporting services for international cooperation such as corporate compliance and legal consulting and test and certification services are to be strengthened. Additionally, the Plan 2021-2035 also guides the Chinese authorities to proactively participate in making the relevant international rules and standards⁽⁴³⁴⁾.

⁽⁴³³⁾ https://www.mfa.gov.cn/eng/zxxx_662805/202312/t20231231_11215608.html#:~:text=New%20energy%20vehicles%2C%20lithium%20batteries,marched%20forward%20in%20high%20spirits

⁽⁴³⁴⁾ International Council on Clean Transportation (ICCT), *China's New Energy Vehicle Industrial Development Plan for 2021 to 2035*, Policy Update, June 2021, available at: <https://theicct.org/wp-content/uploads/2021/12/China-new-vehicle-industrial-dev-plan-jun2021.pdf>.

- (1116) In addition, on 18 February 2024 the Chinese city of Shenzhen has rolled out a plan to boost car exports ⁽⁴³⁵⁾, ⁽⁴³⁶⁾. This plan covers 24 measures including support for factory construction and opening new sea routes. The local officials stated that they would introduce services to support car exporters, including improving export insurance, speeding up tax refunds and encouraging Chinese banks to provide consumer financing for overseas car buyers. The plan also called for exporters to purchase more car-carrying ships to create a Chinese-owned fleet of roll-on, roll-off vessels as stated in recital (1117).
- (1117) The interest of the Chinese producers in exporting BEVs can be seen also from the fact that the Chinese BEV producers are ordering the manufacturing of a large number of “roll-on/roll-off” (‘ro-ro’) ships which are specifically designed to transport vehicles overseas ⁽⁴³⁷⁾, ⁽⁴³⁸⁾. It was reported that the Chinese shipyards may deliver upwards of 200 ro-ros between 2023 and 2026. That amounts to twice the number of ro-ros delivered from 2015 to 2022 ⁽⁴³⁹⁾, ⁽⁴⁴⁰⁾. Furthermore, BYD appeared to have ordered six ro-ros (with options for two more). The vessels are expected to feature a capacity of some 7 700 CEUs (car equivalent unit) each. BYD has already received its first vessel called “BYD Explorer No. 1” ⁽⁴⁴¹⁾, ⁽⁴⁴²⁾, ⁽⁴⁴³⁾ that is already being used to transport BEVs to the Union ⁽⁴⁴⁴⁾. Also other Chinese car manufacturers, like SAIC, Cherry Automobile ⁽⁴⁴⁵⁾, have ordered several of their own ro-ros ⁽⁴⁴⁶⁾, ⁽⁴⁴⁷⁾. Moreover, the state-owned automaker Chery is partnering with Wuhu Shipyard to re-develop an old shipyard into a car carrier construction base on the coast of Shandong Province destined for the exports of BEVs ⁽⁴⁴⁸⁾, ⁽⁴⁴⁹⁾.
- (1118) The above measures combined with the imminent plans of expansion of Chinese producers in major EU countries as described in recitals (1126) and (1127), as well as with the significant spare capacities in China as documented in recitals (1140) to (1143), show that China will continue to target aggressively export markets, indicating likelihood of substantially increased imports into the Union for the future.

Attractiveness and targeting the Union market

- (1119) Among the export markets targeted by China, the Union market was the main export destination for the Chinese exporting producers, representing 33,1% of total Chinese exports of BEVs due to the fact that the Union market is the most attractive region for the Chinese exporting producers given its size, easy access, price levels and the clear roadmap to electric vehicles, as explained in the following recitals (1120) to (1123).
- (1120) As concerns the size of the Union market, in 2023, 1 538 621 BEVs were registered on the Union market, representing 14,6% of total registered passenger cars ⁽⁴⁵⁰⁾. By contrast, the table below shows the size of the BEV market in other main countries and the proportion of BEVs in the total registered passenger cars.

⁽⁴³⁵⁾ <https://www.ft.com/content/efb4ceb4-6d46-4c2f-abf6-142b3bc5c3b6>

⁽⁴³⁶⁾ <https://finance.sina.com.cn/money/future/indu/2024-02-27/doc-inakmrzp1176024.shtml>

⁽⁴³⁷⁾ <https://chinapower.csis.org/analysis/china-construct-ro-ro-vessels-military-implications/#:~:text=In%202022%2C%20China%27s%20top%20electric,their%20own%20ships%20as%20well>

⁽⁴³⁸⁾ <http://en.people.cn/n3/2023/0721/c98649-20047617.html>

⁽⁴³⁹⁾ <https://chinapower.csis.org/analysis/china-construct-ro-ro-vessels-military-implications/#easy-footnote-bottom-2-9460>

⁽⁴⁴⁰⁾ <https://www.seatrade-maritime.com/shipyards/anjil-building-seven-car-carriers-jinling-and-jiangnan-shipyards>

⁽⁴⁴¹⁾ <https://www.marineinsight.com/shipping-news/chinas-byd-launches-first-chartered-car-carrier-to-ramp-up-exports/>

⁽⁴⁴²⁾ <https://www.bnnbloomberg.ca/byd-s-first-chartered-cargo-ship-for-evs-sets-sail-for-europe-1.2020585>

⁽⁴⁴³⁾ <https://www.carscoops.com/2024/01/the-first-chinese-built-ship-designed-to-export-cars-is-europe-bound-with-7000-byd-vehicles-aboard/>

⁽⁴⁴⁴⁾ <https://www.reuters.com/business/autos-transportation/byds-first-chartered-vessel-sets-sail-with-5000-evs-europe-xinhua-2024-01-16/>

⁽⁴⁴⁵⁾ <https://www.reuters.com/business/autos-transportation/byds-first-chartered-vessel-sets-sail-with-5000-evs-europe-xinhua-2024-01-16/>

⁽⁴⁴⁶⁾ <https://chinapower.csis.org/analysis/china-construct-ro-ro-vessels-military-implications/#easy-footnote-bottom-2-9460>

⁽⁴⁴⁷⁾ https://www.saicmotor.com/english/latest_news/saic_motor/58994.shtml

⁽⁴⁴⁸⁾ <https://chinapower.csis.org/analysis/china-construct-ro-ro-vessels-military-implications/#easy-footnote-bottom-2-9460>

⁽⁴⁴⁹⁾ <https://www.seatrade-maritime.com/shipyards/chery-shipyard-venture-build-its-own-car-carriers>

⁽⁴⁵⁰⁾ https://www.acea.auto/files/Press_release_car_registrations_full_year_2023.pdf

Table 11

BEV market in third countries

Country	BEV market 2023	% in total registered passenger cars
USA	1 118 286	7,2%
UK	314 684	16,5%
South Korea	156 767	9,0%
Norway	104 589	82,4%
Australia	87 217	7,25%
India	82 336	1,6%
Türkiye	64 515	6,7%
Switzerland	52 728	20,9%
Japan	43 991	1,7%
Brazil	19 309	0,9%
Indonesia	17 062	2,2%

Source: PwC - Strategy&, 'Electric Vehicle Sales Review Q4-2023' ⁽⁴⁵¹⁾

- (1121) As concern access to the Union market, the EU custom duty (most favoured nation duty - MFN duty) is 10%. By contrast, any other relevant markets are subject to high import barriers for imports of BEVs from China. In particular, the US market, while smaller than the Union market it represents still a substantial market size of over 1 million BEVs registered in 2023, is currently shielded by a total duty of 27,5% (2,5% MFN duty and 25% 'Section 301 duty' ⁽⁴⁵²⁾) applicable to imports of BEVs from China, with proposals published in May 2024 to increase the Section 301 duty to 100% as from August 2024 ⁽⁴⁵³⁾. Moreover, Türkiye introduced a 40% additional tariff rate on imports of EVs from China ⁽⁴⁵⁴⁾ in addition to the MFN duty of 10%, while India has 70% import tax on electric vehicles priced USD 40 000 or less ⁽⁴⁵⁵⁾, and 100% on those priced above USD 40 000 ⁽⁴⁵⁶⁾. In January 2024 Brazil reintroduced a 10% tax on imports of BEVs, which will increase to 18% in July 2024 and to 35% by July 2026 ⁽⁴⁵⁷⁾. This leaves the Union market as the only large, wealthy and mature automotive market open to the Chinese imports.

⁽⁴⁵¹⁾ <https://www.strategyand.pwc.com/de/en/industries/automotive/electric-vehicle-sales-review-2023-q4.html#:~:text=In%20Q4%202023%20BEV%20sales,increase%20from%20the%20previous%20year>

⁽⁴⁵²⁾ <https://crsreports.congress.gov/product/pdf/IF/IF11346#:~:text=Section%20301%20divides%20such%20actions,burdens%20or%20restricts%E2%80%9D%20U.S.%20commerce,https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/may/us-trade-representative-katherine-tai-take-further-action-china-tariffs-after-releasing-statutory>

⁽⁴⁵³⁾ <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/may/us-trade-representative-katherine-tai-take-further-action-china-tariffs-after-releasing-statutory>, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2024/may/ustr-issues-federal-register-notice-section-301-proposed-tariff-modifications-and-machinery>, <https://ustr.gov/sites/default/files/USTR%20FRN%20Four%20Year%20Review%20Proposed%20Modifications%205.22.pdf>

⁽⁴⁵⁴⁾ <https://www.reuters.com/business/autos-transportation/turkey-imposes-40-additional-tariff-electric-vehicles-imports-china-2023-03-03/>

⁽⁴⁵⁵⁾ <https://www.financialexpress.com/business/express-mobility-budget-2023-imported-evs-further-out-of-reach-as-custom-duty-hiked-to-70-2968326/>

⁽⁴⁵⁶⁾ <https://www.businesstoday.in/technology/news/story/tesla-in-india-soon-govt-close-to-finalising-tax-breaks-for-foreign-ev-makers-report-417772-2024-02-16>

⁽⁴⁵⁷⁾ <https://www.reuters.com/business/autos-transportation/brazil-imports-chinese-electric-vehicles-surge-ahead-new-tariff-2024-04-05/>

- (1122) In terms of prices, as regards the same product types, the prices of BEVs on the Union market are significantly higher than prices of BEVs on the Chinese market and therefore provide to the Chinese exporting producers the opportunity to realize higher profits. As an example, as of March 2024, one of the best-selling Chinese cars, the BYD Atto 3, had a starting retail price in China of EUR 15 358 (CNY 119 800), while in Germany, which is its main European export market, its starting retail price was more than double, at EUR 31 924 (EUR 37 990 with VAT ⁽⁴⁵⁸⁾) ⁽⁴⁵⁹⁾. Similarly, also as of March 2024, Geely's new Polestar 4 was offered in China with a starting price of EUR 38 331 (CNY 299 000) before discounts, while in Germany it had a starting price of EUR 53 109 (EUR 63 200 with VAT) ⁽⁴⁶⁰⁾. Furthermore, prices in China are declining as shown by recent examples where, the price of a Model 3 Tesla in China fell by more than USD 4 500 since January and NIO lowered its prices by USD 4 200 in June ⁽⁴⁶¹⁾. In March 2024 BYD also cut the price of its cheapest model, the Seagull, by 5%. In 2023 BYD cut the price of Yuan Plus (its best-selling car known as Atto 3 in the Union) by 12% on the Chinese market ⁽⁴⁶²⁾. This price decline in China provides a further incentive for companies to enhance its exports and gain a foothold in new markets with higher price levels such as the Union market.
- (1123) Concerning the clear road map for BEVs in the Union, in contrast to other third country markets, the EU has set a very high target for the number of BEVs registrations. Thus, by 2035, 100% of the newly registered cars in the Union (more than 9 million cars) should be zero emission vehicles, in particular BEVs, while in the USA the target is only set with 50%.
- (1124) As explained in recitals (1141) and (1142) China has already an overcapacity for NEVs (BEVs and PHEVs) that will be largely used for exports to the Union market, based on its attractiveness as compared to other third country markets.
- (1125) Furthermore, during the investigation at least 14 Chinese exporting producers were present on the Union market such as Aiways, BYD, Chery, Dongfeng (with brands Dongfeng and Voyah), Geely ⁽⁴⁶³⁾ (with brands Polestar, Zeeker and Lotus), Great Wall Motors (with brand Ora), Hongqi, JAC (with brands JAC and DR), SAIC (with brands MG and Maxus), NIO, Ora, Seres, Skywell, and Zhidou ⁽⁴⁶⁴⁾. The market share of these Chinese exporting producers all together increased from 1,9% in 2020 to 7,3% in the investigation period as explained in Table 12.
- (1126) After the investigation period, a large number of Chinese exporting producers announced that they intend to launch several new models of BEVs on the Union market, as well as to expand their presence on the Union market by entering the market of more EU Member States in the short term. These announcements clearly indicate the interest of the Chinese exporting producers in the Union market. For example, ⁽⁴⁶⁵⁾ Xpeng Inc who is already present in the Netherlands, intends to enter the German and French markets in 2024 ⁽⁴⁶⁶⁾. Dongfeng's luxury brand Voyah who is already present in Finland intends to enter the Spanish and Portuguese markets in 2024 and possibly also the German, French, and Italian markets ⁽⁴⁶⁷⁾. Great Wall Motor plans to expand its presence in the Union to seven additional countries apart from Germany, such as Italy, Spain, Portugal, the Netherlands, Belgium, Luxembourg, and Austria ⁽⁴⁶⁸⁾. Zeekr, the premium brand of Geely, also started to sell the brand Zeekr 001 in the Netherlands as of the end of 2023 ⁽⁴⁶⁹⁾.

⁽⁴⁵⁸⁾ Value added tax.

⁽⁴⁵⁹⁾ <https://carnewschina.com/2024/03/04/2024-byd-yuan-plus-launched-2200-usd-cheaper-than-before/> and <https://bydeurope.com/article/436>.

⁽⁴⁶⁰⁾ <https://cnevpost.com/2024/03/07/polestar-cuts-polestar-4-price-in-china-2/> and <https://media.polestar.com/global/en/media/pressreleases/677832>.

⁽⁴⁶¹⁾ <https://www.cnbc.com/2023/06/12/nio-cuts-prices-for-its-cars-and-delays-business-expansion-plans.html>

⁽⁴⁶²⁾ <https://www.reuters.com/business/autos-transportation/chinas-byd-lowers-starting-price-its-lowest-priced-ev-model-seagull-by-54-2024-03-06/>

⁽⁴⁶³⁾ The Volvo brand of Geely was not imported from China during the period considered.

⁽⁴⁶⁴⁾ The list is not exhaustive.

⁽⁴⁶⁵⁾ The list of examples is not exhaustive.

⁽⁴⁶⁶⁾ <https://www.reuters.com/business/autos-transportation/xpeng-says-it-plans-expand-into-more-european-markets-next-year-2023-09-04/>

⁽⁴⁶⁷⁾ <https://www.electrive.com/2024/02/05/voyah-plans-to-enter-core-european-markets-in-2024/>

⁽⁴⁶⁸⁾ <https://cnevpost.com/2023/11/27/great-wall-to-enter-more-european-countries-report/>

⁽⁴⁶⁹⁾ <https://cnevpost.com/2023/12/11/zeekr-begins-deliveries-europe/>

- (1127) Furthermore, BYD launched its sixth model of BEV on the Union market, the Seal U, in addition to Atto 3, the Dolphin, the Seal, the Han, the Tang ⁽⁴⁷⁰⁾. MG also intends to launch the model IM L6 in the Union in 2025 ⁽⁴⁷¹⁾. NIO intends to launch its cheaper sub-brand code-named Firefly in Europe in 2025 ⁽⁴⁷²⁾. The Chinese premium electric vehicle maker Human Horizons' HiPhi brand has announced the European pricing of its models and started accepting pre-orders in 2023 with prices of more than EUR 100 000 in Germany ⁽⁴⁷³⁾. Furthermore, BYD stated that it intended to significantly increase its market share on the Union market from currently 1,1% to 5% by 2025 ⁽⁴⁷⁴⁾.
- (1128) Furthermore, Transport & Environment ⁽⁴⁷⁵⁾ estimate that the market share of the Chinese brands and the European brands purchased by Chinese companies will reach a market share of 11% in 2024, 14% in 2025 and 20% by 2027 ⁽⁴⁷⁶⁾.
- (1129) In conclusion, in view of the GOC's policy to encourage the Chinese producers to export BEVs, the high attractiveness of Union market, the massive overcapacity in China and significantly high spare capacities, as well as the fact that the volume of BEVs imports from the PRC has increased significantly since 2020 indicates the likelihood that such imports will continue to increase significantly starting in the very short term and continuing over the following years. This increase will mainly come from the Chinese homegrown brands and European brands purchased by Chinese companies at the expense of the Union industry, which will likely continue losing its market share.

Likely evolution of market shares of Chinese imports on the Union market

- (1130) The CCCME claimed that in order to assess the Chinese BEV import volume and the likelihood of such imports to increase in the future, all BEVs imports from China and particularly the self-imports by the Union BEV industry should be assessed.
- (1131) All subsidized imports of BEV originating in China are subject to the current investigation, regardless of the ownership of a specific company. In response to the claim, the Commission broke down all the imports from China into imports made from Chinese exporters related to the Union ICE OEMs (Renault, BMW and Mercedes-Benz) that are transitioning to production of BEVs on the Union market, imports from Tesla, and imports from all other Chinese imports such as European brands acquired in the past by Chinese companies (Polestar and MG), Chinese ICE OEMs (BYD, Chery, Dongfeng etc.), and Chinese EVs start-ups (NIO, Xpeng etc.).
- (1132) The market share of imports of Chinese exporting producers related to the Union industry and of all other Chinese imports, based on registration, evolved as follows:

Table 12a

Breakdown of market share of Chinese imports

	2020	2021	2022	Investigation period
Market share of imports of Chinese exporting producers related to the Union ICE OEMs transitioning to production of BEVs	0,3%	4,4%	5,5%	[4,7 – 5,7]% ⁽¹⁾
Tesla	1,2%	8,2%	11,1%	[9,8 – 10,8] %

⁽⁴⁷⁰⁾ https://www.carmagazine.co.uk/car-news/first-official-pictures/byd/seal-u/?itm_source=Biblio&itm_campaign=Biblio-related&itm_medium=Biblio-footer-1

⁽⁴⁷¹⁾ <https://www.carmagazine.co.uk/car-news/first-official-pictures/mg/im-concept/>

⁽⁴⁷²⁾ <https://cnevpost.com/2023/12/15/nio-to-launch-firefly-brand-europe-2024/>

⁽⁴⁷³⁾ <https://cnevpost.com/2023/06/20/hiphi-accepting-pre-orders-hiphi-x-z-europe/>

⁽⁴⁷⁴⁾ <https://www.autonews.com/china/how-byd-aims-become-top-ev-player-europe>

⁽⁴⁷⁵⁾ Expert group campaigning for clean and sustainable transport for all.

⁽⁴⁷⁶⁾ <https://www.transportenvironment.org/wp-content/uploads/2024/03/TE-EV-tariffs-paper.pdf>

	2020	2021	2022	Investigation period
Market share of all other Chinese imports	1,9%	2,5%	5,1%	7,3%

(¹) Neither EEA nor S&P Global Mobility report the origin of the BEVs. Therefore, for differentiating the BEVs volume of Tesla group models imported from China from the ones produced in the Union, the Commission used the exporters' questionnaire reply submitted by Tesla for its request of individual examination as explained in recital (183). Furthermore, the respective data for the investigation period is not publicly available, therefore the Commission presented the information for the market share for Tesla in ranges. In order to protect the confidentiality of the data for Tesla, the Commission had to report the respective data for the imports of Chinese exporting producers related to the Union ICE OEMs transitioning to production of BEVs also in ranges, as otherwise Tesla data could be calculated by deduction. The Commission will provide the exact data in the definitive regulation once the necessary data become publicly available.

Source: EEA and S&P Global Mobility

(1133) The table above shows that out of the total imports from China, the market share of the imports of the Union ICE OEMs that are transitioning to production of BEVs, while increasing between 2020 and 2021, remained relatively stable since 2021 and the investigation period, amounting to [4,7 – 5,7]% during the investigation period and is thus below the market share of all other Chinese imports, which increased from 1,9% in 2020 to 7,3% in the investigation period.

(1134) The Commission also established Chinese imports on a quarterly basis during the investigation period, which is shown in the below table.

Table 12b

Breakdown of market share of Chinese imports

	Investigation period			
	October - December 2022	January - March 2023	April – June 2023	July – September 2023
Market share of imports of Chinese exporting producers related to the Union ICE OEMs transitioning to production of BEVs	[4,2 – 5,8]%	[4,3 – 5,9]%	[3,8 – 5,3]%	[5,6 – 6,8]%
Tesla	[10,6 – 12,2]%	[12,8 – 14,4]%	[8,9 – 10,4]%	[6,6 – 7,8]%
Market share of all other Chinese imports	6,8%	5,6%	7,8%	8,8%

Source: S&P Global Mobility

(1135) The above table shows that on a quarterly basis, the market share of all other Chinese imports increased in three out of the four quarters during the investigation period, from 6,8% in the first quarter to 8,8% in the fourth quarter and exceeded the market share of imports made by the Union ICE OEMs that are transitioning to the production of BEVs, that amounted to [5,6 – 6,8]% during the investigation period.

(1136) In contrast with the high number of announcements made by the Chinese exporting producers as explained in recitals (1126) and (1127), the Union ICE OEMs transitioning to production of BEVs did not announce any major plans to import BEVs from China. Most of them have one BEV model or brand that is imported from China in significant lower volumes as compared to their production in the Union. For example, BMW announced that its iX3 BEV model that was imported from China during the period considered would stop being imported from

China as of 2025 ⁽⁴⁷⁷⁾. The BMW group intends to import from China the brand MINI Cooper ⁽⁴⁷⁸⁾, the Mercedes-Benz group the brand Smart, the Volkswagen group the brand Cupra and the Renault group the model Dacia Spring. The market share of these imports has been relatively stable since 2021 and is not expected to significantly increase in the very short term and in the imminent future.

- (1137) Furthermore, the imports of Tesla from China are also not expected to increase significantly as the spare production capacity of Tesla is very low, if any. According to public information, Tesla intends to increase its production capacity in China. However, Tesla appears not to have received yet the necessary regulatory approvals and it is not clear whether it will receive them ⁽⁴⁷⁹⁾.
- (1138) The above therefore shows that it is likely that there will be an increase of market shares mainly from Chinese brands in the foreseeable future. Therefore, the claim was rejected.

5.4. Sufficient freely disposable capacity and absorption capacity of third country markets

- (1139) The GOC did not provide a list of the BEV manufacturers in China. Therefore, the Commission had to resort to publicly available information in this regard. It follows that according to Bloomberg, in 2023 there were around 100 Chinese electric car manufacturers in China, down from around 500 in 2019 ⁽⁴⁸⁰⁾.

(a) Capacity and spare capacity in China

- (1140) As explained in recital (49), 21 Chinese groups of exporting producers came forward in the investigation by submitting a sampling reply. Based on these replies, as showed in Table 13, in the period considered, these Chinese exporting producers had an increasing capacity and spare capacity. During the investigation period their spare capacity reached almost 2,3 million BEVs, which is 1,5 times the total actual consumption of BEVs in the Union during the same period amounting to 1 519 082 pieces as shown in Table 1.

Table 13

Production and capacity of the Chinese cooperating exporting producers

Units	2020	2021	2022	Investigation period
Production	504 068	1 610 665	3 274 332	3 991 030
Index	100	320	650	792
Capacity	2 179 815	3 153 783	4 945 495	6 278 576
Index	100	145	227	288
Spare Capacity	1 675 747	1 543 118	1 671 163	2 287 546
Index	100	92	100	137
Capacity utilisation rate	23%	51%	66%	64%
Index	100	221	286	275

Source: Sampling replies of the Chinese exporting producers

⁽⁴⁷⁷⁾ <https://www.bmwblog.com/2024/03/25/bmw-thinks-impact-chinese-imports-europe-exaggerated/>

⁽⁴⁷⁸⁾ <https://carnewschina.com/2023/10/14/made-in-china-mass-produced-electric-mini-cooper-rolled-off-assembly-line-market-entry-in-2024/>

⁽⁴⁷⁹⁾ <https://www.reuters.com/business/autos-transportation/teslas-china-made-ev-sales-jump-687-yy-december-2024-01-03/#:~:text=Tesla's%20ambitious%20plans%20to%20expand,the%20Reuters%20Auto%20File%20newsletter>

⁽⁴⁸⁰⁾ <https://www.bloomberg.com/features/2023-china-ev-graveyards/#:~:text=There%20are%20now%20around%20100,from%20roughly%20500%20in%202019>

- (1141) However, the production, capacity and spare capacity data based on the cooperating exporting producers is incomplete. Information published by the China Association of Automobile Manufacturers (‘CAAM’) shows that the total production of BEVs in China was of 5,8 million as stated in recital (1144). Therefore, assuming that the Chinese producers of BEVs that did not come forward in the investigation had the same capacity utilisation rate as the Chinese exporting producers that came forward, there was a total capacity in China of BEVs of 9,18 million units and a spare capacity of 3,34 million BEVs, which is 2,2 times the consumption of BEVs in the Union in the investigation period.
- (1142) Furthermore, as on the same production lines a car manufacturer can produce both ICE cars and BEVs, the Commission looked also at the total production capacity for passenger cars in China based on publicly available information. It follows that in an article published by China Daily, it is mentioned that according to the China Passenger Car Association the production capacity in China for NEVs and ICE passenger cars stood at 40,89 million units in 2021 ⁽⁴⁸¹⁾. Furthermore, the press agency Reuters mentioned in an article that according to the China Passenger Car Association the total production capacity for passenger vehicles (NEVs and ICE cars), was of 43 million at the end of 2022 with a plant utilisation rate of 54,5% ⁽⁴⁸²⁾. Therefore, that the spare capacity for passenger vehicles in China was therefore of 23,4 million units. This spare capacity can be used to manufacture BEVs for the Union market.
- (1143) Moreover, it has also been reported that the GOC is aware of the overcapacity for passenger vehicles and has implemented a stricter licensing regime for regulatory approvals that impact companies for establishing new production of EVs in China ⁽⁴⁸³⁾. Nevertheless, new BEV producers are still setting up in China such as the Chinese smart consumer electronics maker Xiaomi ⁽⁴⁸⁴⁾.

(b) Production in China

- (1144) According to the CAAM ⁽⁴⁸⁵⁾, the production of BEVs in China has been increasing significantly. Thus, as shown in Table 14, in the investigation period 5 836 000 BEVs were produced in China, an increase of 489% as compared to 2020 when 991 000 BEVs were produced.

Table 14

Total production of BEVs in China

units	2020	2021	2022	Investigation period
BEV production in China	991 000	2 761 000	5 132 000	5 836 000
Index	100	279	518	589

Source: CAAM

(c) Demand in China

- (1145) In 2023 total sales of passenger cars in China were of 26,06 million units ⁽⁴⁸⁶⁾. For 2024, the passenger vehicles sales are projected to rise by 3,1% to 26,8 million units as compared to 2023 ⁽⁴⁸⁷⁾.

⁽⁴⁸¹⁾ <http://epaper.chinadaily.com.cn/a/202303/29/WS64238227a310777689887b55.html>
⁽⁴⁸²⁾ <https://www.reuters.com/business/autos-transportation/chinas-auto-workers-bear-brunt-price-war-fallout-widens-2023-09-05/>
⁽⁴⁸³⁾ <https://www.ft.com/content/29d20e6c-29d0-4603-abe6-caf55f5dd9c3>
⁽⁴⁸⁴⁾ <https://edition.cnn.com/2024/03/28/business/chinas-xiaomi-ev-launch-intl-hnk/index.html>
⁽⁴⁸⁵⁾ <http://en.caam.org.cn/Index/show/catid/65/id/2030.html>
⁽⁴⁸⁶⁾ <http://en.caam.org.cn/Index/show/catid/64/id/2015.html>
⁽⁴⁸⁷⁾ https://auto.economictimes.indiatimes.com/news/passenger-vehicle/china-car-sales-expected-to-rise-3-in-2024-industry-association/105951270?utm_source=top_news&utm_medium=tagListing

- (1146) In 2023 the total sales of NEVs in China (BEVs and PHEV) for passengers was of 9,49 million ⁽⁴⁸⁸⁾. In 2024 the sales of NEVs are estimated to increase by 20% as compared to 2023 ⁽⁴⁸⁹⁾, thus reaching 11,4 million units.
- (1147) The sales of BEVs (registrations) amounted to more than 5 million in the investigation period as explained in the table below. Furthermore, based on the CAAM around 87% of the BEVs produced were sold and registered in China.

Table 15

Total demand in China

units	2020	2021	2022	Investigation period
BEV registrations in China	931 000	2 734 000	4 350 000	5 092 500
Index	100	294	467	547

Source: <https://www.iea.org/reports/global-ev-outlook-2022/trends-in-electric-light-duty-vehicles> and InsideEVs, 'China Plug-In Car Sales Hit A New 8 Million Record In 2023' ⁽⁴⁹⁰⁾

- (1148) A 20% increase in 2024 of the BEV market in China translated into 6.1 million BEVs, as compared to a capacity of more than 9 million BEVs. Therefore, the Commission provisionally concluded that the domestic market in China would not be able to absorb its large spare capacity.

(d) *Exports of China and availability of other exports markets*

- (1149) Based on official customs statistics from the Chinese authorities, in the investigation period China exported 1 471 136 BEVs (which corresponds to an increase of 659% as compared to 2020), out of which 486 550 BEVs were exported to the Union, an increase of 1 343% as compared to 2020.

Table 16

BEVs exports of China

	2020	2021	2022	Investigation period
Total Chinese exports	193 916	499 993	945 337	1 471 136
Index	100	258	487	759
Chinese exports to the Union	33 731	171 822	328 391	486 550
Index	100	509	974	1 443
% Chinese exports to the Union vs total exports	17,4%	34,5%	34,7%	33,1%

Source: GTA

- (1150) The table above shows that the Union market is the main export destination for the Chinese exporting producers, representing 33,1% of total Chinese exports of BEVs. Other destinations are the United Kingdom (10% of total Chinese exports) Thailand (9% of total Chinese exports), the Philippines (7% of total Chinese exports), and Australia (6% of total Chinese exports).

⁽⁴⁸⁸⁾ <http://en.caam.org.cn/Index/show/catid/66/id/2039.html>

⁽⁴⁸⁹⁾ https://auto.economictimes.indiatimes.com/news/passenger-vehicle/china-car-sales-expected-to-rise-3-in-2024-industry-association/105951270?utm_source=top_news&utm_medium=tagListing

⁽⁴⁹⁰⁾ [https://insideevs.com/news/707264/china-plugin-car-sales-2023/#:~:text=Plug%2Din%20car%20registrations%20in%202023%20\(YOY%20change\)%3A,%25\)%20and%2037%25%20market%20share](https://insideevs.com/news/707264/china-plugin-car-sales-2023/#:~:text=Plug%2Din%20car%20registrations%20in%202023%20(YOY%20change)%3A,%25)%20and%2037%25%20market%20share)

- (1151) The proportion of the BEVs exported to the Union in the total Chinese exports increased from 17,4% in 2020 to 33,1% in the investigation period. Although total Chinese exports of BEVs increased more than 6 times during the period considered, the exports to the Union increased with much steeper pace, that is by more than 10 times during the same period.
- (1152) Furthermore, as shown in recital (1120) and Table 11, the US and the Union markets are the largest markets for passenger cars after China while the US market is shielded from imports of Chinese BEVs by high import duties as explained in recital (1121). Other markets such as the UK, Japan, Korea are relatively small markets as compared to the Union market as shown in Table 11 and therefore the absorption capacity of these third countries market is limited. Finally, other third country markets, such as the US and Türkiye also have trade barriers in place against Chinese BEVs imports as explained in recital (1121).

(e) *Conclusion*

- (1153) Based on the above, the Commission concluded that significant volumes of the existing excess production capacity of BEVs will continue to be directed to the Union market over the next months and years. The present overcapacities and the insufficient absorption capacity of third country markets or the domestic market in China indicate the likelihood of further substantial increase of subsidized Chinese exports to the Union.

5.5. **Price level of subsidised imports**

- (1154) The BEVs from China that arrived in the Union market during the investigation period were imported at substantially lower prices than the prices charged by the Union industry. As explained in recital (1029), the Commission established weighted average undercutting margins for the investigation period of 12,7% based on a type for type analysis at the same level of trade. Furthermore, as explained in recital (1033) the selling price of the sampled Chinese exporting producers was 30% lower than the weighted average cost of production of the Union industry.
- (1155) Bearing in mind the nature of the Union market, being very transparent and price sensitive, the price level of the subsidised imports, at increasing volumes, is likely to further penetrate the Union market and continue to put considerable price pressure on the Union producers at a time when the Union industry is particularly vulnerable as the market is transitioning from the production of ICE vehicles to BEVs.
- (1156) Furthermore, the Commission established the existence of price suppression. Indeed, the Union industry was selling below cost of production during the period considered. Due to the significant price pressure caused by the low-priced subsidised imports from the PRC, the Union industry was prevented from increasing its sales prices to achieve a profitable situation, resulting in a loss.

5.6. **Level of inventories**

- (1157) The level of inventories of the sampled Chinese exporting producers is described in detail in recital (1017), which shows that at the end of the investigation period the Chinese exporting producers had significant stocks of BEVs in the Union (4,3% of consumption on the Union market (registrations) in the investigation period or around 19% of the number of registrations following importation from China). Such large quantities of readily available BEVs are clearly mainly intended for sale on the Union market.
- (1158) Furthermore, reports of congestion of BEVs imported from China and stocked in the Union ports, due to logistical difficulties in onward transportation ⁽⁴⁹¹⁾ have been reported in the press. Moreover, significant stocks of Chinese BEVs from SAIC, BYD, Nio, XPeng, Lynk & Co, Omoda, and Hongqi (130 000 BEVs) have been reported in May 2024 in the Belgian ports ⁽⁴⁹²⁾.

⁽⁴⁹¹⁾ Alim, A. N., Wright, R., Campbell, P. and Li, G., 'European ports turned into "car parks" as vehicle imports pile up', *Financial Times*, 9 April 2024, <https://on.ft.com/43OrRc7>.

⁽⁴⁹²⁾ <https://www.euronews.com/business/2024/05/15/european-ports-turned-into-car-parks-as-ev-makers-hunt-buyers>

(1159) The availability of these stocks underlines the imminent nature of the threat of injury to the Union producers.

5.7. **Foreseeability and imminence of the change in circumstances**

(1160) Article 8(8) of the basic Regulation provides that '[...] the change in circumstances which would create a situation in which the subsidy would cause injury must have been clearly foreseen and must be imminent.'

(1161) All the above-mentioned factors have been analysed and verified with respect to the investigation period.

(1162) During the period considered, the volume of Chinese imports increased exponentially, more than five times in comparison with the beginning of the period considered. Those imports exercised significant price pressure shown by the undercutting and the price suppression found. In the context of a booming consumption, the Union industry was consistently losing market shares throughout the period considered at the expense of the subsidised imports from China, achieving the lowest point during the investigation period. As a result, the progressive transitioning from ICE to BEVs started to be impeded especially during the investigation period. Profitability, return on investment, and cash-flow deteriorated in the investigation period.

(1163) If this trend continues, the Union industry will be unable to increase its production of BEVs as it is necessary under the transitioning of the Union market from ICE vehicles to BEVs, and its situation will be turned into a material injury immediately. Moreover, as explained in recitals (1126) and (1127) the Chinese spare capacity for BEV is at least 2,2 times the Union consumption which cannot be absorbed by domestic Chinese demand as explained in recital (1148) or by other major Chinese export markets given the high entry barriers and their size as explained in recitals (1120) and (1121). Moreover, evidence indicates that Chinese exporting producers intend to further increase their market presence in key EU countries in the very near future, including by placing new models on the market. Finally, the GOC's policy encourages further imminent increase in exports.

(1164) The above facts and elements show that the subsidised imports will further increase and as a consequence that injury for the Union industry is highly likely to materialise imminently.

5.8. **Claims from parties**

(1165) Company 24 claimed that several Union producers are expected to launch more affordable BEV models in the following years and therefore a stronger presence of the Union producers in the lower-priced segments will exert downward pressure on any potential market share increase of Chinese producers. Furthermore, Company 24 claimed that the Union producers will be aided in this process by the traditional competitive advantage that the industry has built over several decades of successful competition in the Union and the global passenger vehicle market. Company 24 also stated that the passenger vehicle industry was strongly influenced by factors such as brand and loyalty as well as resale value and that these factors have long been important barriers for Chinese entrants in the Union market and will continue to be so in the future. Company 24 also argued that in contrast to the Chinese exporting producers, the Union industry enjoyed a strong position in the Union market with respect to dealership networks and aftersales services which facilitates sales on the Union market.

(1166) While the Union industry intends to launch more models of BEVs for the Union market at different prices, the Chinese exporting producers are expected to adapt to these new BEV models and offer similar BEVs at even lower prices similarly to what occurred during the investigation period as explained in recital (1029). As explained in recital (1037), the Union industry had a traditional competitive advantage in the ICE vehicle market. In the past the Chinese producers of ICE vehicles were not successful on the Union market as the ICE vehicles manufactured by the Union producers were technologically more advanced and of a higher standard than the Chinese ICE vehicles, especially as concerns safety. However, the situation regarding the BEV industry is different as the Union producers are still in the early phases to build up BEV technology, while in China, the development of such technology started several years ago and is meanwhile well advanced. As concerns loyalty of the customers and brand, as explained in recital (1037) the rapid growth of Tesla is a clear example that the brand value built on ICE cars, or lack thereof, is of marginal relevance when it comes to success and pricing power in the BEV market. In particular, considering the EU target to replace ICE vehicles by BEVs by 2035 as explained in recital (1222), it is

very likely that consumers present in the middle and lower segment will switch to the lower priced Chinese BEVs. As concerns the dealership, the Chinese are in the process of building dealership networks as well as taking advantage of online sales which has already proven as a successful strategy for Tesla. Therefore, the claim was rejected.

5.9. Conclusion

- (1167) In view of the analysis of all facts and evidence listed above, the Commission concluded that there is a threat of material injury for the Union industry which is clearly foreseeable and imminent.
- (1168) The current situation of the Union industry, where the necessary sales to recover the high investments needed in the transitioning market cannot take place, is likely to be further aggravated by the continuing subsidised imports of BEVs from the PRC, which have been steadily increasing at a significant rate and at undercut and suppressed prices, as well as by the specific targeting of the Union market by the GOC given that the Union market is the only major open world market. This imminent materialisation of the material injury will further jeopardise the increase in production and sales of BEVs of the Union industry in line with the transitioning of the Union market from ICE vehicles to BEVs.
- (1169) Furthermore, the change in circumstances otherwise leading to such imminent materialisation of the injury for the Union industry are clear. As showed in recitals (1157) and (1158) the Chinese exporting producers have large quantities of stocks of readily available BEVs in the Union which are clearly intended for sale on the Union market. Furthermore, as explained in recital (1126) and (1127) a large number of Chinese exporting producers announced that they intend to launch several new models of BEVs on the Union market, as well as to expand their presence on the Union market by entering the market of more EU Member States in the short term. These announcements clearly indicate the interest of the Chinese exporting producers in the Union market. These elements are very likely to cause significant losses for the Union industry, absent the adoption of any countervailing measures. The imminence of such facts leading to material injury are clearly shown by the reversing trend in profitability which started to deteriorate for the Union industry at the end of the period considered, in addition to the constantly decreasing market shares through the period considered. All these elements support a provisional finding of threat of injury under Article 8(8) of the basic Regulation.

6. CAUSATION

6.1. Effects of the subsidised imports

- (1170) As shown in Tables 2a and 2b imports of Chinese BEVs and BEVs registrations following importation made large gains in Union market share over the period considered. Over that period the market share of imports increased from 3,9 % in 2020 to 25,0 % in the investigation period and the Chinese share of registrations increased from 3,5 % to 22,8 %.
- (1171) At recitals (1023) to (1032) the Commission demonstrated that the Chinese imports were undercutting the Union industry prices by at least 12,7% during the investigation period. The Commission also established that the Chinese imports were suppressing the Union industry prices during the period considered.
- (1172) Due to the substantial increase of the subsidised imports of Chinese BEVs, at prices below those of the Union industry, the Union industry lost market share in the investigation period and could not even sell at prices which would at least enable it to cover its costs. Therefore, the Commission concluded that those subsidised imports had a negative impact on the situation of the Union industry.

- (1173) Moreover, as described in Section 5 there are many factors which demonstrate that the Chinese BEV producers are a growing threat of injury to the Union industry. The Chinese BEV producers have significant stocks of BEVs in the Union which are ready to be sold on the Union market. In addition, there is substantial and growing spare capacity in China, which is available for export. As shown in recital (1121) the USA, the only other major export market for China, imposed measures which will clearly deter increases in imports. Thus, the Union has become the most attractive destination for Chinese exports.
- (1174) Furthermore, it is clear that the increase in exports to the Union will continue and increase further in the foreseeable future as explained in recitals (1111) to (1138). This imminent increase in exports to the Union will further damage the Union industry's ability to increase its sales levels, maintain its market share and safeguard its investments by allowing a fair return on its investments.
- (1175) Therefore, the Commission provisionally considered that the subsidised imports of Chinese BEVs are causing a threat of material injury to the Union industry.

6.2. Other known factors

- (1176) In accordance with Article 8(6) of the basic Regulation, the Commission also examined whether other known factors, individually or collectively, are capable of attenuating the causal link established between the subsidised imports and the threat of injury provisionally found to exist to the effect that such a link would no longer be genuine and substantial.

6.2.1. Imports from third countries

- (1177) Other than imports from China, imports from the South Korea, the United Kingdom, Mexico, Japan and the United States of America had a market share of over 1% in the investigation period. The quantity of imports and market shares, as well as average import prices from these third countries developed over the period considered as follows:

Table 17

Imports from third countries

Country		2020	2021	2022	Investigation period
South Korea	Quantity (pieces)	56 330	71 252	62 765	90 011
	Index	100	126	111	160
	Market share	10,2%	7,9%	5,5%	5,5%
	Index	100	78	53	53
	Average price (EUR/piece)	28 135	30 398	32 976	36 037
	Index	100	108	117	128
United Kingdom	Quantity (pieces)	19 555	38 442	47 686	77 325
	Index	100	197	244	395
	Market share	3,6%	4,3%	4,2%	4,7%
	Index	100	121	117	132
	Average price (EUR/piece)	27 307	26 417	26 423	26 275
	Index	100	97	97	96

Country		2020	2021	2022	Investigation period
Mexico	Quantity (pieces)	291	29 090	25 484	31 310
	<i>Index</i>	100	9 997	8 757	10 759
	Market share	0,1%	3,2%	2,2%	1,9%
	<i>Index</i>	100	6 132	4 196	3 591
	Average price (EUR/piece)	44 111	40 212	40 685	44 259
	<i>Index</i>	100	91	92	100
Japan	Quantity (pieces)	5 255	4 240	9 864	25 361
	<i>Index</i>	100	81	188	483
	Market share	1,0%	0,5%	0,9%	1,5%
	<i>Index</i>	100	49	90	161
	Average price (EUR/piece)	20 176	23 937	31 643	31 385
	<i>Index</i>	100	119	157	156
USA	Quantity (pieces)	67 799	34 084	5 031	23 904
	<i>Index</i>	100	50	7	35
	Market share	12,3%	3,8%	0,4%	1,4%
	<i>Index</i>	100	31	4	12
	Average price (EUR/piece)	31 130	28 915	68 114	59 791
	<i>Index</i>	100	93	219	192
Other countries	Quantity (pieces)	849	1 332	2 307	1 564
	<i>Index</i>	100	157	272	184
	Market share	0,2%	0,1%	0,2%	0,1%
	<i>Index</i>	100	96	130	61
	Average price (EUR/piece)	30 417	20 678	26 537	39 820
	<i>Index</i>	100	68	87	131
Total of all countries except the PRC	Quantity (pieces)	150 079	178 440	153 137	249 475
	<i>Index</i>	100	119	102	166
	Market share	27,3%	19,9%	13,3%	15,1%
	<i>Index</i>	100	73	49	55
	Average price (EUR/piece)	29 146	30 631	33 190	35 870
	<i>Index</i>	100	105	114	123

Source: Member States customs data

- (1178) Imports from South Korea increased from around 56 000 to around 90 000 over the period considered, but their market share fell from 10,2% in 2020 to 5,5% in the investigation period. In addition, the average import prices increased and were on average above the Chinese import price.
- (1179) Imports from the United Kingdom increased from around 20 000 to around 77 000 over the period considered. Although their average price fell slightly over this period, their market share remained relatively stable and did not rise above 5% over the period considered. Although the average import price from the United Kingdom was slightly below the imports price from China in 2020 and 2022 (3,0% and 0,1% respectively) it was above Chinese import prices in 2021 and the investigation period (7,8% and 4,0% respectively).
- (1180) Imports from Mexico, Japan and the USA were each less than 2% of the market share in the investigation period. In addition, except for Japan in 2020 and 2021, average import prices were largely above the average import price of the Chinese imports throughout the period considered.
- (1181) Imports from all other countries were negligible.
- (1182) Based on the above analysis, the Commission provisionally concluded that the imports from other third countries did not attenuate the causal link between the subsidised imports and the threat of injury to the Union industry during the investigation period.

6.2.2. *Export performance of the Union industry*

- (1183) The export performance of the Union industry developed as follows:

Table 18

Export performance of the Union industry

	2020	2021	2022	Investigation period
Export volume (pieces)	190 101	291 766	454 555	632 256
<i>Index</i>	100	153	239	333
Prices of exports	42 374	40 082	47 723	47 482
<i>Index</i>	100	95	113	112

Source: Eurostat (CN code 8703 80 10)

- (1184) The level of exports of BEVs of the Union industry increased by 233% over the period considered. This was a higher rate of increase in comparison to the sales of the Union industry on the Union market as shown at Table 5.
- (1185) The average export price of the Union industry was above the cost of production as shown in Table 7.
- (1186) Therefore, it was provisionally concluded that the export performance of the Union industry did not attenuate the causal link between the subsidised imports and the threat of injury established.

6.2.3. *Demand related factors*

- (1187) Key factors affecting demand of BEVs include charging time, availability of charging infrastructure, the related issue of range anxiety and the regulation on carbon emissions of vehicles stated in recital (1223).
- (1188) The BEVs sales and the BEV charging capacity are positively correlated, and the BEV charging capacity is a crucial element supporting the increase in BEV sales on the Union market.

- (1189) Company 24 claimed that the lack of sufficient public charging infrastructure remained a key impediment for increased consumer uptake of BEVs in the Union, and acted as an important constraint for consumer demand, causing adverse effect to the Union industry. Company 24 also claimed that the Union BEV market was expected to grow significantly in the coming years.
- (1190) The Commission noted that Company 24 provided contradicting arguments, on the one hand claiming that there were factors which acted as a significant constraint on demand for BEVs in the Union, such as the charging infrastructure, and on the other hand that demand was rapidly increasing, and the BEV Union market was expected to grow significantly. The Commission agreed that, in view of the ambitious targets set by the Union and the relevant EU regulations, it can be anticipated that the BEV Union market is going to grow rapidly in the next years. Taking into account the lack of other mature technologies for zero-emissions propulsion, by 2035 the BEV market can be expected to reach the levels of today's overall car passenger market.
- (1191) In addition, the Commission noted that there was rapid progress in addressing any bottlenecks related to charging, whether at home, in a private charging area (such as in a company or parking lot) or via access to a public charging point. In the Union, the amount of charging infrastructure, both publicly accessible and private, is surging whether analysed by installed capacity or number of charging points. By the end of 2022, there were 475 000 public charging points with an installed capacity of 5,1 kW per each BEV in the Union. The installed capacity for private charging infrastructure was of 8,0 kW per each BEV in the Union. The total stock of the charging infrastructure in the Union will increase to 35 million charging points by 2030 ⁽⁴⁹³⁾.
- (1192) Furthermore, the EU has adopted the Alternative Fuels Infrastructure Regulation ⁽⁴⁹⁴⁾ that will require all national roads and motorways across the Union to be fitted with public chargers by 2025 in line with the number of electric cars on the road by that time. According to this regulation, charging points should be available every 60 km along major EU highways (i) by 31 December 2025, each recharging pool offers a power output of at least 400 kW and includes at least one recharging point with an individual power output of at least 150 kW; (ii) by 31 December 2027, each recharging pool offers a power output of at least 600 kW and includes at least two recharging points with an individual power output of at least 150 kW. The regulation also stipulates mandatory national fleet-based targets, such as the requirement to provide through publicly accessible recharging stations a total power output of at least 1 kW for every battery electric light duty vehicle.
- (1193) Demand for BEVs on the Union market increased rapidly over the period considered. Table 1 demonstrates that both apparent and actual consumption increased by over 180% in that period. It is expected that advances in battery technologies will further increase range and reduce charging time, and that the availability of public and private charging infrastructure will continue to improve, gradually removing any related constraints on demand. Bearing in mind the mandatory targets for the emissions of new sales on the Union market (and substantial penalties for non-compliance) set by EU Regulations as explained in recitals (1222) and (1223), it is therefore expected that demand will continue to increase in the future.
- (1194) In the ongoing transition from ICE vehicles to BEVs it is essential that the Union industry is able to maintain its economies of scale by maintaining sufficient sales volumes and market shares. This will enable the Union industry to recover its cost and generate enough profitability for necessary investments. This is even more important in the current phase where the Union BEVs market is still developing and not mature yet.
- (1195) However, Tables 2a and 2b demonstrate that the Union BEV industry is losing market share at an unsustainable rate. The assessment made in section 5 further indicates that these market share losses will continue over the period up to the end of 2026. Therefore, although the factors limiting demand may have had an impact in the past, it is the recent and imminent market penetration of the Chinese subsidised imports as shown in section 6.1 which presents the greatest threat to the Union industry in the near future to the successful transition of the Union market to BEVs.

⁽⁴⁹³⁾ <https://www.chargeurope.eu/>

⁽⁴⁹⁴⁾ Regulation (EU) 2023/1804 of the European Parliament and of the Council of 13 September 2023 on the deployment of alternative fuels infrastructure, and repealing Directive 2014/94/EU, OJ L 234, 22.9.2023, p. 1.

- (1196) In view of the above, the Commission provisionally considered that any constraints on demand, related in particular to the availability of charging infrastructure, would not attenuate the causal link between the subsidised imports and the threat of injury provisionally found. Therefore, the claim was rejected.

6.2.4. *Competitiveness of the Union BEV industry*

- (1197) The CCCME claimed that the reliance of the Union BEV producers on the supply of batteries and other components on third countries affected their competitiveness in general. The CCCME and Company 24 claimed that the lack of vertical integration of the Union producers and their reliance on third country sources for batteries result in higher battery and other production costs. Furthermore, the CCCME and Company 24 stated that the negative effects, stemming from the lack of vertical integration, were exacerbated by other factors that are not related to the imports of BEVs from China such as (i) supply chain disruptions due to Covid-19 pandemic and the Russian-Ukraine war, (ii) increased raw material costs, (iii) shortages of critical components such as semi-conductors and (iv) high energy prices. Company 24 also claimed that the Union industry did not invest in time in the electric battery supply chain, and it focused on ICE cars where they had a competitive edge and only started to invest recently in the BEV market.
- (1198) The Commission noted that the advantages of vertical integration related mainly to BYD, rather than to all Chinese exporting producers. The Union industry is composed of companies which purchase batteries on the world market and others, which are investing in battery production. In fact, the Union industry is continuously increasing its battery production capacity.
- (1199) In addition, although the Chinese exporting producers have developed advantages in the supply of batteries and key raw materials for batteries, these advantages have been obtained largely through subsidisation as shown in section 3.7.2. Therefore, the alleged competitive advantages do not attenuate the causal link between the subsidies imports and the threat of injury.
- (1200) Supply chain disruptions and other factors increasing the prices of raw materials and energy were worldwide issues, not solely applicable to the Union industry and there is therefore no specific competitive disadvantage for the Union industry overall. Furthermore, these were issues mainly relating to the period considered and the CCCME and Company 24 did not claim or substantiate to what extent such factors would have an impact on the Union industry's situation in the coming years.
- (1201) Therefore, given the Commission's findings in the previous recitals, these claims were rejected.

6.2.5. *Competition between ICE cars and BEVs*

- (1202) Company 24 and the CCCME claimed that the competition between ICE vehicles and BEVs should be examined as a causation factor. Neither the CCCME or Company 24 did, however, further explain or elaborate on this claim.
- (1203) The Union emissions legislation targets will ensure that the Union industry rapidly transitions to BEVs as explained in recital (1223). Therefore, although there is currently competition between ICE and BEV vehicles in the Union market, production and sales of ICEs will gradually reduce, in parallel to the increase of the production and sales of BEVs in line with the EU emission targets. Therefore, the competition between ICEs and BEVs will also gradually reduce in favour of BEVs sales.
- (1204) In view of the above, the Commission provisionally considered that the impact of competition with the ICE sales, would not attenuate the causal link between the subsidised imports and the threat of injury provisionally found. Therefore, the claim was rejected.

6.2.6. *Lack of economies of scale and start-ups*

- (1205) The CCCME claimed that the lack of economies of scale of Union BEV producers results in likely higher costs. It was further claimed that certain Union producers such as e.Go relies on the micro factory concept and cannot achieve economies of scale as achieved with gigafactories and large production set-ups. Furthermore, the CCCME argued that certain Union producers such as Fisker and e.Go have just started BEV production and therefore the Commission should also consider the start-up situation of certain Union producers in its analysis.
- (1206) The Commission followed the methodology of considering causation factors in relation to their impact on the entire Union industry. The mere existence of factors relating to a small part of the Union industry, was not considered to be representative for the Union industry as a whole and it was therefore provisionally concluded that it did not attenuate the causal link between the subsidised imports and the threat of injury provisionally found. As regards the broader Union industry, the Commission considered that it is precisely the imports from China which are threatening the prospects of the Union industry to reach the necessary scale and become profitable in the near future. Those subsidised imports prevent the Union industry for achieving the necessary sales targets to increase production accordingly and achieve economies of scale. This claim was therefore rejected.

6.2.7. *Supply issues*

- (1207) Company 24 also claimed that the Union industry did not have the capacity to meet the rapidly increasing demand, which was linked to the green transition.
- (1208) Contrary to Company 24's claim, the investigation revealed that the Union industry has enough capacity to manufacture BEVs and meet the demand on the Union market. As explained in recital (1060) as the capacity utilisation was below 40% in the investigation period, it was provisionally concluded that the Union industry has enough production capacity to satisfy the future increases in the demand for BEVs and in addition, more capacity can be allocated from ICE vehicle production to BEVs production. Therefore, the claim was rejected.

6.2.8. *EU policy on Biofuels*

- (1209) The CCCME claimed that the EU has historically favoured biodiesel production over the production of BEVs which has led to low priority being given to BEV production.
- (1210) This claim was a very vague statement and did not contain any detail to explain the significance of the point being made. It is recalled that as explained in recital (1223) the Commission has introduced specific emission targets for all new passenger cars and light commercial vehicle fleets for brands and groups for 2020 and subsequent years. Therefore, the Commission did not agree that it gave low priority to the BEV production.
- (1211) Furthermore, the Commission concluded at section 5 above that the Union industry is imminently threatened with material injury from subsidised imports originating in China. The CCCME did not substantiate how EU biofuel policy would negatively impact the situation of the Union BEVs producer in the coming years. This claim was therefore rejected.

6.2.9. *Imports from China by the Union industry*

- (1212) The CCCME claimed that the imports from China of the Union industry could be a factor causing a threat of injury to the Union BEV industry.
- (1213) The Commission commented on the imports from China of the Union industry companies in recital (998). It was not clear what Union industry companies the CCCME was referring to in its assessment or how such imports would cause a threat of injury in the near future. Recitals (1130) to (1138) clearly explains the expected import quantity and price development from China in general, and imports from Chinese owned groups such as BYD, Geely and SAIC. As explained in table 12a the imports of Chinese brands increased their market share from 1,9 % in 2020 to 7,3% in the investigation period. It concluded that, the main threat of injury is from Chinese owned groups in the coming years.

- (1214) Bearing in mind the above assessment and the lack of clarity over the relevance of this claim, it was considered that this claim had not been substantiated and was therefore rejected.

6.3. Conclusion

- (1215) The Commission identified a link between the increasing imports of subsidised imports from the PRC and the threat of material injury.
- (1216) The Commission distinguished and separated the effects of all other known factors on the situation of the Union industry from the injurious effects of the subsidised imports from the PRC.
- (1217) The Commission found that the other identified factors such as imports from third countries, export performance of the Union industry, demand related factors, competitiveness of the Union industry, competition between ICE cars and BEVs, lack of economies of scales and start-ups, supply issues, EU policy on biofuels, and imports from China of the Union industry, did not attenuate the causal link, either individually or collectively. The Chinese exporting producers benefitted from certain advantages during the period considered, such as a secure supply of batteries and raw materials. However, the Commission did not conclude that material injury had been suffered during that period. In fact, for none of the other factors, was a convincing case made to demonstrate how such factors are an imminent threat to the Union industry or that they weaken the clear threat of the subsidised Chinese imports in the coming years.
- (1218) Therefore, the Commission provisionally concluded that the increasing imports of subsidised imports from the PRC were a threat of material injury to the Union BEV industry in the absence of measures.

7. UNION INTEREST

- (1219) In accordance with Article 31 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt countervailing measures corresponding to the total amount of countervailable subsidies in this case, despite the determination of injurious subsidisation. The Commission based the determination of the Union interest on an analysis of all the various interests involved, including those of the Union industry, importers, user, suppliers and consumers.
- (1220) Comments on Union interest were received from the GOC, the CCCME, the European Association of Automotive suppliers ('CLEPA'), the German Association of the Automotive Industry ('VDA'), the European Steel Association ('EUROFER'), Company 31, and Company 29.

7.1. Interest of the Union industry

- (1221) The automotive industry plays an important role in the Union's economy, providing direct and indirect jobs to 12,9 million people, representing 7% of total EU employment. Out of that, around 24% or 3,1 million are manufacturing jobs⁽⁴⁹⁵⁾. The automotive industry is a driver of Europe's economic value creation, competitive sovereignty, and societal wellbeing.
- (1222) In the European Green Deal⁽⁴⁹⁶⁾, the Commission defined the goal of achieving climate neutrality by 2050. This goal was put into law in 2021 with the publication of Regulation 2021/1119 (European Climate Law)⁽⁴⁹⁷⁾. All sectors of the economy are expected to contribute to achieving those emissions reductions, including the road transport sector where emissions have been on the rise since 1990. Therefore, BEVs are an important product for the Union to reach its climate goals.

⁽⁴⁹⁵⁾ <https://www.acea.auto/files/ACEA-Pocket-Guide-2023-2024.pdf>

⁽⁴⁹⁶⁾ https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en

⁽⁴⁹⁷⁾ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999, OJ L 243, 9.7.2021, p. 1.

- (1223) The EU has also introduced specific emission targets for all new passenger cars and light commercial vehicle fleets for manufacturers for 2020 and subsequent years in Regulation (EU) No 2019/631, which was later amended by Regulation (EU) 2023/851 ⁽⁴⁹⁸⁾. This regulation is a key component of the European climate protection policy. The regulation states that, from 2021 onwards, the average emissions of new passenger cars registered in the Union must be no higher than 95g CO₂/km EU fleet wide. The targets will be tightened as from 2025: for new passenger car fleets registered in the Union, a reduction of 15% in CO₂ emissions will therefore be required from 2025 and a reduction of 55% from 2030. For 2035, a CO₂ reduction target of 100% will apply to passenger car and light commercial vehicle fleets. If the respective fleet-wide target is not fulfilled, the Commission imposes an excess emissions premium, amounting to EUR 95 per excess gram of CO₂ per newly registered vehicle.
- (1224) These targets can in particular be achieved through a growing proportion of electric vehicles in the fleet. However, the targeted reduction in CO₂ in the Union represents a major challenge for the entire transport sector because the electrification goes far beyond the mere conversion of thermal to electric powertrains and covers the entire value chain of the electric vehicles. It is a complex transition which involves the entire chain of the automotive industry from mining, chemicals, to electric powertrain and battery pack manufacturing, energy, battery waste collection and recycling. It follows that the auto industry is undergoing a fundamental transformation process.
- (1225) Furthermore, electric batteries have a strategic importance for the development of BEVs. The location of the production of electric batteries is very important for the BEV manufacturers. While the electric cells can be transported and shipped with relative ease, once these are fitted in modules and then into battery packs those operations become significantly more difficult and costly. BEV producers thus benefit from being located near to battery suppliers for that stage of the process, or even carrying it out in-house. Proximity and close contact with battery suppliers is also important considering that batteries are not off-the-shelf products but are rather built according to the specifications of vehicle producers. For instance, size and functionalities of a BEV will dictate the type of battery it requires, which in turn affects the composition of the raw materials mix at the start of the process (again creating potential efficiencies for vertically integrated market players). While in the period considered the Union BEV producers were depending on imports of batteries, mainly from China, the car makers committed to invest heavily in their own battery production capacities, most of them through partnerships with specialised players. These investments amount to several billions of euros that will be made by 2030 ⁽⁴⁹⁹⁾.
- (1226) In the transition to electrification, it is highly risky for the Union car producers to lose profitability and market share to subsidised imports from China because it would mean that they would not be able to carry out the necessary investments in new battery technologies that will increase driving range, reduce charging time, cut costs and improve safety and thus to successfully achieve such transition. On the other hand, the Chinese companies were able to achieve economies of scale due to the large amounts of subsidies granted by the GOC and are exporting BEVs at unfair prices to the Union, taking over market share of the Union industry that is faced with substantial losses and the consequent inability for the required investments. If the Union industry is irrevocably injured by subsidised Chinese imports, the target of electrification will therefore not be met, and the European Union's climate goals could be compromised.
- (1227) The imposition of the countervailing measures would enable the Union industry to fairly compete on the market and manufacture and sell enough BEVs on the Union market that would allow it to become profitable in the future. As explained in recital (1078), the Union BEV industry is a capital-intensive industry and therefore it needs time to achieve economies of scale in order to cover its fixed costs and be profitable. Therefore, the imposition of measure would shield the Union industry from an intensive and unfair price pressure which would otherwise be exerted by the Chinese imports.

⁽⁴⁹⁸⁾ Regulation (EU) 2023/851 of the European Parliament and of the Council of 19 April 2023 amending Regulation (EU) 2019/631 as regards strengthening the CO₂ emission performance standards for new passenger cars and new light commercial vehicles in line with the Union's increased climate ambition, OJ L 110, 25.4.2023, p. 5.

⁽⁴⁹⁹⁾ <https://www.reuters.com/graphics/AUTOS-INVESTMENT/ELECTRIC/akpegzqypr/>

- (1228) If countervailing measures are not imposed, the investments committed by the Union BEV industry for the transition to electrification and the jobs in the auto sector mentioned in recital (1221) would be at risk because of the unfair trade. The Union industry would not be able to follow the transition of the Union market from the production of ICE cars to BEVs because of the subsidised Chinese imports prices undercutting the prices of the Union BEVs producers. Furthermore, the Union risks losing one of its most important manufacturing sectors and the Union as a region could fall behind in technology and innovation versus China and the USA and could risk missing its climate goals.
- (1229) VDA observed that the business activities of Chinese companies in China and abroad support achieving economies of scale and contribute to profitability in areas such as manufacturing, logistics and R&D world-wide. According to VDA, in the existing global world order and business model, these effects also support the development of the European automotive industry.
- (1230) Company 24 claimed that although in the past there were concerns about the entry and increasing market shares in the Union of the Japanese and the Korean car manufacturers from the 1980s onwards, the introduction of Japanese and Korean products spurred efforts in adaptation, innovation, and efficiency on the part of Union producers. Furthermore, the Japanese and Korean producers set up production in the Union, became part of the Union industry and thus contributed directly to its development and progress. Company 24 further argued that the same can be expected from the Chinese BEV producers.
- (1231) The Commission disagreed with this claim as there are fundamental differences between the rise of the Korean and Japanese car producers over the past years and the current Chinese OEMs. In particular, the Korean and Japanese OEMs were competing with ICE cars against Union OEMs which had a long-standing experience and supply chains. In contrast, China's dominance in the production of electrical batteries is a key factor in the competition between Chinese and Union BEV producers. The Union producers are currently building their battery clusters for the Union market with significant investments and cost and are therefore in a very different position in comparison to the time of increased imports of cars from Japan and Korea. Furthermore, in the past the Korean and Japanese producers had to access the Union market mainly via dealership presence which came at a high cost and took time to build. However, at present it is easier for the Chinese exporting producers to get in touch with the consumer directly without any intermediate dealer via online car purchasing and direct sales models which are increasing. Finally, in the past the Union producers had to compete with only a small number of Korean and Japanese producers, while during the investigation period, as explained in recital (1125) there are more than 14 Chinese BEV producers present on the Union market. Therefore, the claim was rejected.
- (1232) The GOC claimed that it was not in the Union interest to impose countervailing measures as the Union BEV industry did not have enough capacity to manufacture BEVs for the entire demand of BEVs in the Union.
- (1233) The investigation revealed that the Union industry has enough capacity to manufacture BEVs and satisfy the Union demand as explained in recital (1060). Therefore, the claim was rejected.
- (1234) The Commission found that the transitioning from production of ICE to BEVs would be jeopardised by the exponential increase of subsidised imports, thereby causing a threat of material injury to the Union industry. Exposure of the Union industry to a massive increase of unfairly priced Chinese imports undercutting the Union industry sales prices and their rapidly increasing market shares will have a significant negative effect on the Union industry situation in terms of loss of sales volume and market share as well as rapidly decreasing profitability leading to substantial losses and therefore also loss of investments. This will inevitably lead to closure of production sites in the Union and massive loss of employment. The Commission therefore provisionally concluded that the imposition of measures would be in the interest of the Union industry.

7.2. Interest of unrelated importers

- (1235) As referred to in recital (47), no unrelated importer cooperated in the investigation. Therefore, the Commission provisionally concluded that in view of the lack of cooperation of the unrelated importers, the imposition of countervailing measures would not have a disproportionate effect on the unrelated importers.

7.3. Interest of users

- (1236) The product under investigation is used by several types of users, notably car leasing companies, car rental companies, car sharing companies, taxi companies and end-users.
- (1237) Seven users belonging to two groups of companies came forward and submitted replies to the users' questionnaire, namely Company 32 and six companies belonging to the Leasys Group. These companies used the product under investigation to lease it to their customers.
- (1238) Company 32 submitted an incomplete questionnaire reply. The Commission sent a deficiency letter requesting additional information. The company did not reply to the deficiency letter claiming that it was too burdensome. Therefore, the Commission did not verify Company's 32 questionnaire reply. However, in the completed part of the questionnaire reply, Company 32 stated that if it was proven that Chinese subsidies caused artificially low pricing of BEVs in the Union, this could be harmful for the entire European supply chain. It considered that if unfair pricing practices via government support of Chinese produced vehicles harmed the viability of Union BEV suppliers, the reciprocal measures to protect European production would be fair and required to ensure supply certainty.
- (1239) The Leasys Group companies submitted complete questionnaire replies and the Commission verified two of them, as explained in recital (80), that also purchased BEVs from China.
- (1240) The Commission found that the cooperating users together purchased less than 0,1% of total imports from China as well as of the imports from other countries and 1% of total Union industry sales (based on registration). During the investigation period, they purchased less than 5% of the product under investigation from China, more than 95% from Union producers and the rest from other countries.
- (1241) The turnover and costs of the two verified users generated from BEVs originating in China accounted for less than 2% of their total turnover and total costs during the investigation period. The profitability margins of the verified users for the investigation period ranged between single digit to low double digits figures.
- (1242) The Commission found that the imposition of countervailing measures would have some impact on certain cost items related to the BEVs originating in China, notably depreciation, interest expenses and insurance. However, given the limited share of these cost items in the verified users' total costs (less than 2%) and the very small proportion of BEVs from China in their total fleets, the impact of countervailing duties on their total costs was found to be negligible. The analysis performed by the Commission based on data provided by the two verified users for the investigation period showed that possible cost increases caused by the imposition of countervailing measures would lead to only a marginal decrease of their profit margins and that both companies would remain profitable. This small effect on profitability would be further mitigated by the possibility for the users to pass on at least part of the cost increase to customers or to switch to alternative sources of supply. The two verified users also considered that the imposition of countervailing measures would not have a significant impact on their financial performance.
- (1243) Therefore, based on the information in the file and taking into account the views of interested parties, the Commission provisionally concluded that users would not be disproportionately affected by the imposition of the measures.

7.4. Interest of suppliers

- (1244) VDA and CLEPA observed that the Chinese market, as the largest automotive market worldwide, was crucial for automotive suppliers and manufacturers to compete and strengthen innovative capabilities. They claimed that any steps that could result in less market access for Union automotive suppliers and manufacturers in China could, in the long term, harm innovative capabilities and competitiveness of the respective industries.
- (1245) As explained in recital (1253), the purpose of the investigation is to restore the level playing field on the Union market. The investigation does not cover the access of the Union companies to the Chinese market and may not result, in itself, in less favourable market access for Union suppliers and producers in China. Therefore, the claim was rejected. In any case, if, by this claim, VDA and CLEPA referred to the possibility that China would engage in retaliatory actions in the form of reduced access to its market for Union companies, this is addressed in section 7.6 below.
- (1246) EUROFER supported the investigation. It pointed out that the automotive sector was a major steel-consuming sector; hence future health of Union BEV manufacturers was also crucial for the Union steel sector. EUROFER argued that the injurious imports of subsidised BEVs from China would have a negative impact on the Union steel industry. According to EUROFER there was a strategic interest in maintaining a healthy Union automotive sector, to preserve the Union steel sector and millions of related jobs. EUROFER claimed that the Commission should take swift measures to preserve the continued good health of the Union automotive sector and to prevent the threat of injury from materialising.
- (1247) Company 29 also expressed its support for the investigation claiming that countervailing measures would help to restore the level playing field and fair competition among the car producers and other interested parties. It argued that due to subsidised imports from China the market share of the Union BEV industry was expected to decline which would negatively affect sales and profits of companies producing input components and their ability to invest in the Union.
- (1248) Company 31 also expressed its support for the investigation hoping that it would lead to levelling of the automotive playing field in the Union. According to Company 31, the Union's green transition efforts and the associated investment and innovation undertaken by the automotive industry would be undermined and the Union companies would be unfairly disadvantaged.
- (1249) Based on the above, the Commission provisionally concluded that the imposition of countervailing measures was in the interest of the suppliers in the Union.

7.5. Impact on consumers and effects on climate objectives

- (1250) VDA argued that in order to achieve the EU CO₂-free mobility target by 2035, there must be sufficient supply of electric vehicles on the Union market. In its opinion the rise of prices of BEVs from China could make it more difficult to achieve this target. VDA, as well as the GOC, claimed that the Commission should consider the relevance that China has for the transformation of the whole European industry and the automotive industry, in particular, towards carbon neutrality. Company 24 claimed that the Union industry's production capacity, which was limited largely due to bottlenecks in the domestic and foreign battery supply, was insufficient to allow the EU to meet its climate objectives for the road transport sector, and therefore the EU depends on imports of BEVs to reach its goals while China will remain an important partner of the EU in this regard. Furthermore, Company 24 claimed that countervailing duties would threaten the supply of BEVs affordable for low- and middle-income Union consumers on the Union market, ultimately jeopardising the pursuit of the EU action to tackle the existential threat posed by climate change.
- (1251) The current investigation aims at ensuring that the Union and the Chinese BEV producers compete on a level playing field and allows to prevent the injury to the Union producers that subsidised imports are threatening to cause. Countervailing duties will therefore only compensate the distorting subsidisation; trade will, however, continue to flow. The potential price increase for consumers in the Union has to be balanced with the disastrous effect of the low-priced imports on the Union industry that will provide millions of jobs in the EU once the market has fully transitioned from ICE vehicles to BEVs. The disappearance of the Union car industry would have

an enormous negative impact on the Union market, having spillover effects to the supplier industry with the potential loss of millions of jobs in the Union. The investigation revealed that given the limited price increase, i.e. reflecting merely the unfair subsidisation established during this investigation, is not as such as to increase prices for consumer in an unproportionate manner, even if fully passed on to the final customer. However, it is expected that at least part of the price increase will be absorbed by the importers. Furthermore, the Commission noted that bilateral efforts to combat climate changes cannot be built upon unfair competition by low-priced subsidised BEVs but should be based upon a level-playing field where fair competition and innovation will drive the green transition. The Union BEV industry is indispensable in the EU's ambition to reduce net greenhouse gas emissions, for which the Union supply chain for zero-emission vehicles has to be secured to ensure that all new cars registered in Europe will be zero-emission by 2035.

- (1252) The CCCME submitted an economic analysis carried out by two professors from the Katholieke Universiteit Leuven and the Centre of Economic Policy Research (CEPR). The report concluded that the Chinese BEV imports are indispensable for the Union BEV market, the Union BEV producers and consumers, and the Union as a whole because these imports are necessary to maintain competition and innovation in the Union and accelerate the availability of affordable BEVs for average consumers and to ensure that the Union's climate goals are met.
- (1253) Regardless of the authoritative and objective value of this report, the Commission noted that the purpose of the countervailing duties is not to stop the imports of BEVs from China, but to restore the level playing field on the Union market distorted by the subsidized imports from China at low prices. The competition on the Union market must be fair competition. The efforts to combat climate changes cannot be built upon unfair competition by low-priced subsidised BEVs but should be based upon a level-playing field where fair competition and innovation will drive the green transition.
- (1254) Therefore, on balance, it is provisionally concluded that the climate objectives are not endangered by the imposition of countervailing measures, but to the contrary, they will contribute to reach such goals.

7.6. Risk of retaliation

- (1255) CLEPA, VDA and Company 24 claimed that the imposition of countervailing duties could lead to retaliation by China. CLEPA and VDA argued that the Commission should consider the retaliation risk and the impact that potential retaliation by China could have on the current trade with and investment in China.
- (1256) The current anti-subsidy investigation is a fact-based investigation in full compliance with the applicable WTO and EU rules. It is based on evidence on the existence of a large range of countervailable Chinese subsidies, as well as a threat of injury to the Union industry due to a massive increase in Chinese overcapacities, and rapidly growing low priced and subsidised imports of BEVs into the Union as explained in this regulation. The investigation is not meant to and cannot compensate for any competitive advantage that the Chinese industry would enjoy. Rather, it aims at ensuring that the Union and the Chinese exporting producers compete on a level playing field on the Union market.
- (1257) China and the Chinese exporting producers enjoyed extensive rights of defence and to participate in the investigation and to an impartial judicial review of the final decision, without the need to resort to retaliation.
- (1258) Therefore, the Commission provisionally concluded that the claimed risk of retaliation does not constitute an element that would speak against the imposition of countervailing measures.

7.7. Interdependency

- (1259) The GOC argued that, since the Union and the Chinese BEV supply chains are interdependent and deeply integrated throughout the value chain, any measures would undermine their stability and continuity, as well as the growth of the BEV industry in the Union, in China and across the globe.

- (1260) As explained in recital (1253), the purpose of the investigation is to restore the level playing field on the Union market. The GOC did not further explain to what extent countervailing measures would have an impact on the supply chains and how such measures could undermine the stability and continuity. Therefore, the claim was rejected.

7.8. Government incentives in the Union

- (1261) The GOC submitted that the Union itself grants subsidies to the Union producers and provided some examples of such subsidies. The GOC therefore implied that any subsidies granted to the Chinese BEVs producers should not be countervailed.
- (1262) The Commission noted that the GOC did not substantiate why the fact that the Union allegedly provides subsidies to Union producers would have an impact of the current investigation. Indeed, in accordance with the basic anti-subsidy Regulation, countervailing duties should be imposed in case subsidised imports from countries not members of the European Union cause material injury or in the present investigation threaten to cause material injury to the Union producers. In this context, it is irrelevant whether the Union producers receive financial support from the Member States or EU authorities for the manufacturing or sales of the product which is in any event not subject to this investigation. The investigation focuses on the threat of injury caused by subsidised Chinese imports into the Union. Furthermore, the GOC did not substantiate why such subsidies would be actionable or would cause adverse effects to the interest of China, which is not, in any case, the subject of this investigation. Furthermore, the fact that the EU itself has been providing subsidies to the Union BEV industry does not affect the Commission's provisional findings that the GOC has provided subsidies to the exporting producers of BEVs, which are countervailable according to the WTO SCM Agreement and the basic Regulation and cause a threat of injury to the Union industry. Contrary to the claim of the GOC, the Chinese countervailable subsidies create unfair competition on the Union market that would only hamper the development of Union BEV industry. Therefore, the claim was rejected.

7.9. Trade-distorting effects of subsidies

- (1263) Under Article 31(1) of the basic Regulation, special consideration shall be given to the need to eliminate the trade-distorting effects of injurious subsidisation and to restore effective competition.
- (1264) The investigation has established that the Chinese exporting producers sell significant volume of subsidised BEVs at artificially low prices to the Union market. If this situation continues, the Chinese exporting producers will maintain their unfair competitive advantage, further weakening the already vulnerable situation of the Union industry.
- (1265) As a result, the Commission provisionally concluded that the subsidised Chinese imports would increase their trade-distorting effects over time and continue to deny a level playing field to the Union industry.

7.10. Other claims

- (1266) Company 24 claimed that the imposition of countervailing measures was not in the Union interest as (i) the use of a trade defence measure was not an appropriate response to tackle a systemic supply issue faced by the Union industry deriving from insufficient battery production capacity in the Union, limited availability of semiconductors and lack of access to raw materials, factors which limit the development of the Union industry and which are unrelated to imports from China; (ii) the Union interest in this context calls for the pursuit of a world-leading industrial policy based on ensuring the market access that is vital to supporting the development of the Union industry, while the imposition of the countervailing measures would serve only to constrict this development; (iii) the Chinese producers will ultimately move their production of BEVs for the Union market in the Union; and (iv) the imposition of countervailing duties risks setting off a chain reaction that ultimately will harm the Union industry, as third country governments will react to increased (diverted) flows of BEVs by imposing their own trade restrictive measures targeting BEVs, which would not necessarily discern between Union and Chinese BEV imports.

- (1267) It is recalled that the purpose of the current investigation is only to restore the level playing field on the Union market. Countervailing measures are warranted if the conditions for the imposition of the countervailing measures stipulated in the basic Regulation are met. The imposition of countervailing measures does not exclude that the Union may take other policy initiatives to tackle different issues that the Union industry is confronted with. Thus, this claim as such does not imply that countervailing measures on BEVs are not in the Union interest. With respect to the access to the Union market, this investigation does not intend to stop the imports of BEVs from China. Furthermore, whether the Chinese exporting producers will start manufacturing BEVs in the Union is not relevant for the current investigation, which only looks into the injury or threat of injury to the Union BEVs industry caused by subsidized imports from China. Moreover, the claim regarding possible initiation of trade defence investigation resulting into trade restrictive measures against Chinese BEVs imports by other third countries is purely speculative. Finally, the Commission highlighted that such investigations, if any, have to be initiated based on their own merits and prima facie evidence necessary for the initiation of such investigations. Thus Company 24's claim that such investigations would not differentiate between imports from China and from the Union is without merit. Therefore, these claims were rejected.

7.11. **Conclusion on Union interest**

- (1268) On the basis of the above, the Commission provisionally concluded that there were no compelling reasons that it was not in the Union interest to impose countervailing measures corresponding to the total amount of countervailable subsidies on imports of BEV originating in the PRC.

8. **REGISTRATION**

- (1269) As mentioned in recital (8), the Commission, on its own initiative, made imports of BEVs, subject to registration by the registration Regulation. This was in view of the possible retroactive application of the countervailing measures under Article 16(4) of the basic Regulation. The registration of imports should cease. No decision on a possible retroactive application of countervailing measures can be taken at this stage of the proceeding.

8.1. **Comments on registration**

- (1270) Following the publication of the registration Regulation, comments on registration were received from Company 22, Company 24, CCCME, Asia Euro Automobile Manufacture (Taizhou) Company Limited ('Asia Euro Taizhou') and Tesla. The Commission does not consider it necessary at this stage to address those comments. According to Article 14(5) of the basic Regulation, registration is a tool available to the Commission to direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against those imports from the date of such registration. Article 14(5) also provides the Commission with discretion as to when such registration should take place, allowing registration on the Commission's own initiative. The Commission exercised such discretion in the registration Regulation.

9. **PROVISIONAL COUNTERVAILING MEASURES**

- (1271) Based on the conclusions reached by the Commission on subsidisation, injury, causation and Union interest, and in accordance with Article 15(1) of the basic Regulation, a provisional countervailing duty should be imposed on imports of battery electric vehicles originating in the People's Republic of China.

9.1. **Provisional measures**

- (1272) Provisional countervailing measures should be imposed on imports of battery electric vehicles originating in the People's Republic of China, in accordance with the rules in Article 12(1) of the basic Regulation which states that the provisional duty shall correspond to the total amount of countervailable subsidies as provisionally established.

- (1273) On the basis of the above, the provisional countervailing duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Company	Provisional countervailing duty
BYD Group:	17,4 %
— BYD Auto Company Limited	
— BYD Auto Industry Company Limited	
— Changsha BYD Auto Company Limited	
— Changsha Xingchao Auto Company Limited	
— Changzhou BYD Auto Company Limited	
— Fuzhou BYD Industrial Company Limited	
— Hefei BYD Auto Company Limited	
— Jinan BYD Auto Company Limited	
Geely Group:	19,9 %
— Asia Euro Automobile Manufacture (Taizhou) Company Limited	
— Chongqing Lifan Passenger Vehicle Co., Ltd.	
— Fengsheng Automobile (Jiangsu) Co., Ltd.	
— Shanxi New Energy Automobile Industry Co., Ltd.	
— Zhejiang Geely Automobile Company Limited	
— Zhejiang Haoqing Automobile Manufacturing Company Limited	
SAIC Group:	37,6 %
— SAIC MAXUS Automotive Company Limited	
— SAIC Motor Corporation Limited	
— Nanjing Automobile (Group) Corporation	
— SAIC Volkswagen Automotive Co., Ltd.	
— SAIC GM Wuling Automobile Co., Ltd.	
— SAIC General Motors Co., Ltd.	
Other cooperating companies (Annex)	20,8 %
All other companies	37,6 %

- (1274) The individual company countervailing duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the country concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual countervailing duty rates.

10. INFORMATION AT PROVISIONAL STAGE

- (1275) In accordance with Article 29a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (1276) The three sampled exporting producing groups commented on the accuracy of the calculation of the subsidy margins. Where justified, the Commission corrected the calculation and the relevant subsidy margins.
- (1277) Furthermore, the exporting producer Great Wall Motor commented on the inclusion of its name and the names of its related parties within the list of cooperating non-sampled parties in the Annex. This has been corrected.
- (1278) Also, several parties, related to the sampled groups or to producers whose name is mentioned in the Annex listing the non-sampled cooperating companies, requested the Commission to include their names in the Annex on the grounds that they were related to these companies and that they had started production and or export of BEV to the EU. As these related company did not produce nor export the product under investigation during the investigation period, these requests were rejected.
- (1279) All other comments received following the pre-disclosure will be addressed in the definitive stage.

11. FINAL PROVISIONS

- (1280) In the interests of sound administration, the Commission will invite the interested parties to submit written comments and/or to request a hearing with the Commission in trade proceedings within a fixed deadline.
- (1281) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional countervailing duty is imposed on imports of new battery electric vehicles, principally designed for the transport of nine or less persons, including the driver, excluding L6 and L7 categories vehicles according to Regulation (EU) No 168/2013 ⁽⁵⁰⁰⁾ and motorcycles, propelled (regardless of the number of wheels set in motion) solely by one or more electric motors, including those with an internal combustion range extender (an auxiliary power unit), currently falling under CN code ex 8703 80 10 (TARIC code 8703 80 10 10) and originating in the People's Republic of China.

2. The rates of the provisional countervailing duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Company	Provisional countervailing duty	TARIC additional code
BYD Group:	17,4 %	89BL
— BYD Auto Company Limited		
— BYD Auto Industry Company Limited		

⁽⁵⁰⁰⁾Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles, OJ L 60, 2.3.2013, p. 52.

Company	Provisional countervailing duty	TARIC additional code
— Changsha BYD Auto Company Limited		
— Changsha Xingchao Auto Company Limited		
— Changzhou BYD Auto Company Limited		
— Fuzhou BYD Industrial Company Limited		
— Hefei BYD Auto Company Limited		
— Jinan BYD Auto Company Limited		
Geely Group:	19,9 %	89BM
— Asia Euro Automobile Manufacture (Taizhou) Company Limited		
— Chongqing Lifan Passenger Vehicle Co., Ltd.		
— Fengsheng Automobile (Jiangsu) Co., Ltd.		
— Shanxi New Energy Automobile Industry Co., Ltd.		
— Zhejiang Geely Automobile Company Limited		
— Zhejiang Haoqing Automobile Manufacturing Company Limited		
SAIC Group:	37,6 %	89BN
— SAIC MAXUS Automotive Company Limited		
— SAIC Motor Corporation Limited		
— Nanjing Automobile (Group) Corporation		
— SAIC Volkswagen Automotive Co., Ltd.		
— SAIC GM Wuling Automobile Co., Ltd.		
— SAIC General Motors Co., Ltd.		
Other cooperating companies (Annex)	20,8 %	
All other companies	37,6 %	8999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by his/her name and function, drafted as follows: *'I, the undersigned, certify that the (volume) of new battery electric vehicles sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in the People's Republic of China. I declare that the information provided in this invoice is complete and correct.'* If no such invoice is presented, the duty applicable to all other companies shall apply.

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

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

Article 2

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

Article 3

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Commission Implementing Regulation (EU) 2024/785.
2. Data collected regarding products which entered the Union for consumption not more than 90 days prior to the date of entry into force of this Regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

Article 4

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

Article 1 shall apply for a period of four months.

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

Done at Brussels, 3 July 2024

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Cooperating Chinese exporting producers not sampled

Cooperating exporting producer	Related producers	TARIC additional code
Aiways Automobile Co., Ltd.	Aiways Automobile Co., Ltd.	89BO
	Jiangxi Yiwei Automobile Manufacturing Co., Ltd.	
Anhui Jianghuai Automobile Group Corp., Ltd.	Anhui Jianghuai Automobile Group Co., Ltd.	89BP
BMW Brilliance Automotive Ltd.	BMW Brilliance Automotive Ltd.	89BQ
	Brilliance Xinri New Energy Automobile Co., Ltd.	
Chery Automobile Co., Ltd.	Chery Automobile Co., Ltd.	89BR
	Chery New Energy Automobile Co., Ltd	
China FAW Corporation Limited	Audi FAW NEV Co., Ltd.	89BS
	Changan Mazda Automobile Corporation Ltd.	
	China FAW Corporation Limited	
	FAW Toyota Motor Co., Ltd.	
	FAW-Volkswagen Automotive Co., Ltd	
	Jiangsu Guoxin New Energy Passenger Car Co., Ltd.	
Chongqing Changan Automobile Company Limited	Chongqing Changan Automobile Company Limited	89BT
	Chongqing Lingyao Automobile Co., Ltd.	
	Hefei Chang 'an Automobile Co., Ltd.	
	Nanjing Chang 'an Automobile Co., Ltd.	
Dongfeng Motor Group Co., Ltd.	Dfsk Motor Co., Ltd.	89BU
	Dongfeng Honda Automobile Co., Ltd.	
	Dongfeng Liuzhou Motor Co., Ltd.	
	Dongfeng Motor Company Ltd.	
	Dongfeng Motor Group Co., Ltd.	
	Dongfeng Peugeot Citroen Automobile Company Ltd.	
	eGT New Energy Automotive Co., Ltd.	
	Seres Auto Co., Ltd.	
	Voyah Automobile Technology Co., Ltd.	
Great Wall Motor Company Limited	Great Wall Motor Company Limited, Taizhou Branch	89BV
	Hebei Changzheng Automobile Manufacturing Co. LTD	

Cooperating exporting producer	Related producers	TARIC additional code
Leapmotor Automobile Co., Ltd.	Leapmotor Automobile Co., Ltd.	89BW
Nanjing Golden Dragon Bus Co., Ltd.	Nanjing Golden Dragon Bus Co., Ltd.	89BO
NIO Holding Co., Ltd.	NIO (Anhui) Co., Ltd.	89BP
	NIO Co., Ltd.	
Tesla (Shanghai) Co., Ltd	Tesla (Shanghai) Co., Ltd	89BQ
XPeng Inc.	XPeng Inc.	89BR
	Zhaoqing Xiaopeng New Energy Investment Co., Ltd.	
	Zhaoqing Xiaopeng New Energy Investment Co., Ltd. Guangzhou Branch	