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

REQUEST FOR CONSULTATIONS BY CHINA

The following communication, dated 9 August 2024, from the delegation of China to the delegation of the European Union, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

1 My authorities have instructed me to request consultations with the European Union (the "EU" or "Union") pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXIII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Article 30 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement").

2 This request concerns the anti-subsidy investigation and the provisional countervailing duty measures imposed by the EU in its investigation titled '*AS-689 - New battery electric vehicles designed for the transport of persons*'. These measures affect certain new battery electric vehicles ("BEV" or "BEVs") imported into the EU from the People's Republic of China ("China"). The reasons for this request, including the identification of the measures at issue and an indication of the legal basis for the request, are given below.

I. Background

3 The BEVs industry is an important part of China-EU trade and investment relations. Many EU BEV producers have invested in China and then exported products to the EU. These EU BEV producers have shared the benefits of the development of China's BEVs industry. The cooperation between Chinese and EU BEV producers demonstrates the healthy economic and trade relationship between China and the EU, as well as the openness and dynamism of the BEVs industry in China.

4 However, on 4 October 2023, the EU launched an anti-subsidy investigation on BEVs designed for passengers imported from China. The launching of this investigation is protectionist in nature. The protectionist motives of the EU become evident from the various irregularities in the initiation, the conduct of the Commission, as well as the absence of any concrete evidence regarding alleged subsidization in China.

5 China considers that during the initiation, conduct and decision-making process of the investigation – particularly in the context of the provisional measures imposed on 3 July 2024 – the EU acted inconsistently with the WTO Agreements, in both procedural and substantive aspects. The Commission's actions and omissions demonstrate a clear bias in the acceptance, use and assessment of evidence upon which its provisional measure is based.

6 The transition in the vehicle industry from traditional passenger cars to BEVs is an inevitable historical trend, in keeping with the twin goals of industrial upgrading and achieving carbon emission reduction. This transition also aligns with the interests of global consumers. The provisional measures imposed by the EU on Chinese BEVs will obstruct the development of an industry that benefits global stakeholders and consumers. China submits that the measures adopted by the EU violate its obligations under several provisions of the covered WTO agreements.

II. The Measures at Issue

7 The measures at issue concern the provisional countervailing duty measures imposed by the EU as the result of its investigation into BEVs from China. The anti-subsidy investigation was initiated by the Commission *vide* the 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 (C/2023/160), dated 4 October 2023. The Commission imposed provisional countervailing duty measures through Commission Implementing Regulation (EU) 2024/1866 of 3 July 2024¹ 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.

8 The measures at issue include the determination by the Commission to initiate the investigation at issue, the consultations for the investigation, the conduct of the investigation, the preliminary affirmative determination on the alleged subsidization, injury and threat of material injury and causation, and the imposition of provisional countervailing duty measures. This request also covers any future action or measures the EU may take in connection with these measures.

III. Legal Basis of China's Request

9 China considers that the measures at issue, as described above, are inconsistent with the EU's obligations under, *inter alia*, Article VI of the GATT 1994, and Articles 1, 2, 10, 11, 12, 13, 14, 15, 16, 17, 19, 22, and 32 of the SCM Agreement. China is concerned that the measures at issue are inconsistent with the provisions of the WTO Agreements for reasons including but not limited to the following:

A. Procedural Inconsistencies

10 Articles 11.2, 11.3 and 11.6 of the SCM Agreement, because the Commission failed to demonstrate that there are special circumstances and sufficient evidence of the existence of alleged subsidization, injury and causal link, to justify the *ex officio* initiation of the investigation;

11 Articles 13.1 and 13.4 of the SCM Agreement, because at the consultations stage the Commission failed to provide evidence on the existence, amount and nature of the alleged subsidies, the injury or the threat of material injury, the complete description of the allegedly subsidized product, and the necessary information concerning the Union industry. This impaired China's right to effective consultation;

12 Article 15.1 of the SCM Agreement, because the Commission failed to select a sample of the Chinese exporting producers which is statistically valid on the basis of available information, or on the basis of the largest percentage of the volume of the exports which can be reasonably investigated,² and consequently failed to establish positive evidence for an objective examination of the volume and price effect of the investigated imports;

13 Article 12.1 of the SCM Agreement, because the Commission failed to give notice to the Government of China ("GOC") and the interested parties, and failed to provide them an ample opportunity to present all evidence considered relevant by them. As illustrative examples of this inconsistency, which are not meant to be exhaustive, the Commission: (i) unreasonably, and without

¹ As corrected by 2024/90468, Corrigendum to 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 (Official Journal of the European Union L, 2024/1866, 4 July 2024), 30 July 2024.

² China considers that the sampling of Chinese exporting producers is inconsistent with the EU's obligation to select a sample of exporters or producers and determine the injury based on examination on a reasonable number of exporting producers, either by using statistically valid samples on the basis of information available to the Commission at the time of selecting the sample, or on the basis of the largest percentage of the volume of the exports from China which can reasonable be investigated. China refers in this regard to Article 6.10 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("ADA"). China notes that, pursuant to the *Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Part V of the Agreement on Subsidies and Countervailing Measures*, disputes arising from anti-dumping and countervailing duty measures need consistent resolution.

justification, required the GOC to forward the questionnaires to Chinese financial institutions; and (ii) did not notify the GOC of the requirement for providing information for certain alleged subsidies;

14 Articles 12.3 and 12.4 of the SCM Agreement, because the Commission improperly refused to provide opportunities for the GOC and interested parties to see certain relevant information that was not provided on a confidential basis and was not confidential by nature. As an illustrative example of this inconsistency, which is not meant to be exhaustive, the Commission improperly anonymized the Union producers without a demonstration of good cause;

15 Article 12.5 of the SCM Agreement, because the Commission failed to ensure the accuracy of the information upon which its determinations are based. As an illustrative example of this inconsistency, which is not meant to be exhaustive, the Commission based its findings with regard to alleged subsidization on incorrect interpretations of the laws and regulations of China, despite and in disregard of the GOC's multiple explanations;

16 Articles 12.3, 22.3 and 22.4 of the SCM Agreement, because during the investigation and in the public notice of the provisional measures, the Commission failed to provide sufficiently detailed explanations for the preliminary determinations concerning alleged subsidies, threat of material injury, and causation. Furthermore, the Commission failed to provide sufficient details on various factual and legal issues in its determinations. As illustrative examples of this inconsistency, which are not meant to be exhaustive, the Commission refused to disclose (i) factual details and analysis in relation to the PCNs used by the Commission when determining the existence of alleged injury and threat of material injury, and (ii) the detailed criteria and process for selecting the sample of Chinese exporting producers.

B. Inconsistencies in Connection with the Determination of Alleged Subsidization

17 In connection with alleged subsidization through preferential financing:

- Article 1.1(a)(1) of the SCM Agreement, because the Commission failed to demonstrate that financial institutions that allegedly provided the preferential financing are governments, public bodies or private bodies entrusted or directed by the government;
- Article 1.1(a)(1)(i) of the SCM Agreement, because, with respect to the alleged subsidy concerning bank acceptance drafts, the Commission failed to demonstrate the existence of a financial contribution;
- Articles 2.1 and 2.4 of the SCM Agreement, because the Commission failed to demonstrate the alleged specificity of preferential financing programmes on the basis of positive evidence, and failed to conduct an objective examination of evidence provided by GOC and interested parties in the course of the investigation;
- Articles 1.1(b) and 14 of the SCM Agreement, because the Commission failed to demonstrate that a benefit was conferred and the Commission failed to properly calculate the amount of alleged benefit. As illustrative examples, which are not meant to be exhaustive, the Commission (i) rejected the transaction price in China as the benchmark; (ii) wrongfully treated the bank acceptance draft as short-term financing and considered the benefit as the difference between the amount that a producer actually paid and the amount it should pay by applying a short-term financing interest rate; and (iii) when calculating the amount of alleged benefit conferred by support for capital investment, wrongfully treated the provision of capital as a loan financing at free interest and applied the calculation methodology for loans;

18 In connection with alleged grants and the fiscal subsidy policy for the promotion and application of BEVs:

- Articles 1.1(b) of the SCM Agreement, because the Commission failed to demonstrate that benefit was conferred to the BEV producers;
- Articles 17.5, 19.1 and 19.4 of the SCM Agreement, because the Commission imposed countervailing duty measures on an alleged subsidy that has been terminated;

- Article 14 of the SCM Agreement, because the Commission improperly calculated the amount of the alleged benefit;

19 In connection with the alleged governmental provision of goods and services for less than adequate remuneration ("LTAR"):

- Article 1.1(a)(1)(iii) of the SCM Agreement, because the Commission failed to demonstrate the existence of a financial contribution, supposedly provided in the form of inputs;
- Article 1.1(a)(1) of the SCM Agreement, because the Commission failed to demonstrate that the inputs were provided by any government, public body or private body entrusted or directed by the government;
- Article 1.1(b) of the SCM Agreement, because the Commission failed to demonstrate the existence of an alleged benefit;
- Articles 2.1 and 2.4 of the SCM Agreement, because the Commission failed to demonstrate the alleged specificity of LTAR programmes on the basis of positive evidence, and failed to undertake an objective examination of evidence provided by the GOC and interested parties in the course of the investigation;
- Article 14 of the SCM Agreement, because the Commission improperly calculated the amount of alleged benefit. As an illustrative example, which is not meant to be exhaustive, the Commission rejected the transaction price in China as the benchmark;

20 In connection with alleged revenue foregone through tax exemption and tax reduction programmes:

- Articles 1.1(ii) and 1.1(b) of the SCM Agreement, because the Commission failed to demonstrate the existence of alleged financial contribution, and failed to demonstrate the existence of alleged benefit based on positive evidence;
- Articles 2.1 and 2.4 of the SCM Agreement, because the Commission failed to demonstrate the alleged specificity of the tax programmes on the basis of positive evidence, and failed to conduct an objective examination of the evidence provided by the GOC and interested parties in the course of the investigation;

21 In connection with the instances in which the Commission used facts available:

- Article 12.7 of the SCM Agreement, *inter alia*, because the Commission: (i) failed to give notice to the interested parties of the information required; (ii) failed to demonstrate that the requested information is necessary and that the absence of the requested information for which facts available were applied would significantly impede the investigation; (iii) improperly disregarded the verifiable evidence provided by GOC and interested parties which is submitted in an appropriate and timely manner and used adverse facts available on the pretext of non-cooperation by GOC and interested parties³; (iv) improperly request the GOC and interested parties to submit information not in control of GOC and the interested parties and used adverse facts available on the pretext of non-cooperation;⁴ and (v) failed to use facts available from second resource

³ Pursuant to the *Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Part V of the Agreement on Subsidies and Countervailing Measures*, disputes arising from anti-dumping and countervailing duty measures need consistent resolution. China considers that the Commission acted inconsistently with the disciplines on facts available as required in paragraphs 3 and 7 of Annex II to the ADA.

⁴ Pursuant to the *Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Part V of the Agreement on Subsidies and Countervailing Measures*, disputes arising from anti-dumping and countervailing duty measures need consistent resolution. China considers that the Commission acted inconsistently with the disciplines on facts available as required in paragraph 5 of Annex II to the ADA.

with special circumspection and failed to adopt the facts from a second resource in an unbiased and objectively way;⁵

C. Inconsistencies in Connection with the Determination of Alleged Injury and the Causal Relationship

22 Article 16.1 of the SCM Agreement, because the Commission:(i) based its injury assessment on an unknown and unrepresentative sample of Union BEV producers, and (ii) failed to exclude from the definition of domestic industry Union BEV producers that imported significant volumes of BEVs from China;

23 Articles 15.1 and 15.2 of the SCM Agreement, because the Commission failed to conduct an objective examination, based on positive evidence, of the volume of the allegedly subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products. As an illustrative example of this inconsistency, which is not meant to be exhaustive, the Commission failed to assess the volume of imports and the effect on the prices based on product segments and comparable prices;

24 Articles 15.1, 15.4 and 15.5 of the SCM Agreement, because the Commission failed to conduct an objective examination, based on positive evidence, of the impact of the imports on the domestic producers of like products. As an illustrative example of this inconsistency, which is not meant to be exhaustive, the Commission failed to establish that the economic factors and indices upon which the Commission based its analysis, are determinative of injury;

25 Article 15.5 of the SCM Agreement, because the Commission failed to examine all known factors to demonstrate the existence of a causal relationship between the allegedly subsidized imports and the threat of material injury, and to avoid the attribution of injury caused by these other factors to Chinese imports;

26 Articles 15.1, 15.7, 15.8 of the SCM Agreement, among others, because the Commission failed to demonstrate, based on established facts and with special care, that the alleged threat of material injury is clearly foreseen and imminent;

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27 As a result of the foregoing, the measures at issue appear to nullify or impair benefits accruing to China directly or indirectly under the cited covered agreements. In particular, the measures at issue appear to be inconsistent with Article VI of the GATT 1994, and Articles 1, 2, 10, 11, 12, 13, 14, 15, 16, 17, 19, 22, and 32 of the SCM Agreement.

28 This consultations request relates to the measures at issue and to any amendments, extensions, related instruments, practices and/or re-opening related to such measures.

29 China reserves the right to address additional measures and claims (or any other factual or legal issue) under other provisions of the covered agreements regarding the above matter during the consultations, and in any future request for the establishment of a Panel, in light of the information that the EU may provide.

30 China looks forward to receiving the reply from the EU to this request and to setting a mutually convenient date for consultations.

⁵ Pursuant to the *Declaration on Dispute Settlement Pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 or Part V of the Agreement on Subsidies and Countervailing Measures*, disputes arising from anti-dumping and countervailing duty measures need consistent resolution. China considers that the Commission acted inconsistently with the disciplines on facts available as required in paragraph 7 of Annex II to the ADA