

An Unhappy United States, A Rising China: EU Imposes Obstacles to Imports of Made in China Electric Vehicles (EVs)

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Context

On June 12, 2024, the European Commission determined provisionally that subsidies within China's battery electric vehicle (BEV) value chain are inflicting economic damage on EU manufacturers.[1] According to the official website, the Commission has publicly announced the specific amount of preliminary countervailing duties on imports of battery electric vehicles from China. The obligations for three selected Chinese manufacturers will be 17.4% for BYD, 20% for Geely, and 38.1% for SAIC. Additional Chinese battery electric vehicle manufacturers will face a combined duty rate consisting of a weighted average duty of 21% and a residual duty of 38.1%.

In the official document[2], Brussels conveniently defended its decision based on a piece of unilateral legislation[3] without stating its compatibility with WTO rules. U.S. Secretary of the Treasury Janet L. Yellen's pressure was largely invisible in the document. However, the pressure did exist. In the remark by Janet Yellen in Germany on May 21, 2024, she made it clear that the export crackdown on Chinese battery electric vehicles will be "a focus at the G7 meetings in Italy." Protectionist tariffs are thus the homework to do before the meetings.

This likely explains the submission of the homework on June 12, 2024, a day prior to the G7 meetings. There are, however, three obstacles ahead.

An Unhappy United States

In the eyes of Washington, half-done homework should not be regarded as serious homework. A pre-disclosure of envisaged tariff punishment is "for information purposes

only” to reuse the formulation in the EU’s document. It produces, at best, lip service but does not exert the actual effects. The US is not pleased about it.

More seriously, the pre-disclosure placed a bid to the US, asking for rewards from US in return for pushing back China. Results-oriented people in Washington may have reasonable doubts about the sincerity of the EU in this alliance. Months ago, the EU high officials made black-and-white commitments towards the US on October 20, 2023, that “economic resilience requires de-risking and diversifying” with regard to China and that critical dependencies and vulnerabilities in supply chains are to be reduced, also with regard to China.[4] When the US-led world order is in turbulence and the US is making serious commitments on several fronts, the allies benefiting from such a world order are counting gains and losses in their account. This is not gestures of loyalty.

A Rising China

By taking this legal action, the EU made a bid to China because the pre-disclosure suggests that nothing has been decided yet and everything is subject to negotiation. The legal action does not enhance the negotiating power of the EU. Because EU regulations do not have the force of international law, On the contrary, they are subject to international legal scrutiny. By international law, we refer to the international agreements that the EU has firmly entered into, to which its partners have also given their consent. The rules of the World Trade Organization are particularly relevant to this case. By using unilateral regulations, the EU is simply hiding the fact that its actions lack a legal basis in international law. Every now and then, the EU could have legislated that the sun revolves around the earth, but the legislation cannot change the objectively existent world. The EU’s lawmakers understand it. However, for practical reasons, it is much easier for some in Brussels to just legislate than to promote a competitive industry.

This legal action is just void card-making. The China-EU trade and investment relationship, as an international relationship, should be based on international rules, not on EU rules nor on Chinese rules. Countries around the world adopt the common practice of using industrial subsidies to guide industrial development and adjust industrial structure. China’s industrial subsidy policy is mainly guiding; the relevant subsidy policy has been timely and comprehensively notified to the WTO, and there are no subsidies prohibited under the WTO. China, in its negotiations with the EU, will continue without regard to the prerequisites set up by the EU’s unilateral legal actions. The EU’s lawmakers also understand this.

Void card-making has not enhanced the EU’s reputation. In a long period after the end of the Cold War, the EU was the flagbearer of free trade and a market economy. Then, the so-called enforcement actions taken by the EU against China today are very similar to the to the brutal actions that the EU criticized some decades ago regarding some third-world countries. This has had a significant impact on the EU’s reputation and prestige in the global economic order, as well as dampened the confidence of Chinese investors in the EU. This situation is not beneficial for Europe’s economic development, nor is it beneficial for the stability and health of the global supply chain. Ultimately, “de-risking” will become “de-opportunity,” “de-cooperation,” and “de-development.”

Clocks Are Ticking

There is one clock ticking for industrial development. History suggests that it was just a matter of time for Napoleon’s Continental blockade to fail. It won’t be forever for the EU to

use legislative tools to hold on to external competitiveness. It will be even sooner for the EU to lose its international market. More importantly, some allies soon realized that huge gains could be made by not fully implementing the blockade.

The US electoral clock is also ticking for the EU. The US presidential election will take place on November 5, 2024. By a happy coincidence, the EU's definitive conclusion is set to be delivered on November 2, 2024. Obviously, the spectre of Donald Trump looms over the EU since Donald Trump is never a big fan of transatlantic relations. What the EU is doing now cannot gain scores from Trump. Everything is unpredictable after November 5, 2024.

The Way Forward

November 2nd, 2024, is a self-imposed deadline in which EU investigation comes to a conclusion. If we look further, it is also a deadline imposed by the US. The EU can secure an agreement before the deadline. This agreement-making should be swift, WTO-compatible, mutually beneficial, and forward-looking. A marathon of agreement-making is never easy, given the past experiences of negotiation on similar subjects.

That said, China is much less concerned about the US election. Neither Trump nor Biden will change the course of the Sino-US relationship. China will continue to develop its technological advances, no matter what policy change the US election makes. Moreover, the Chinese battery electric vehicle sector does not depend on the European market or US directives for its development. The Chinese internal market and the markets of One Belt, One Road partners are vast enough to nurture pioneer enterprises. Moreover, China is taking the high ground of low carbon economy and economic liberalization. The frontline is on the European side, not on the Chinese side.

The EU must decide, and it still has 5 months to implement. By adopting a continental blockade, the EU is set to lose its international market in the short term and its internal market in the long run. If US election goes south for the EU as well, it will be a less distinguished guest for the US. There isn't "four more years", the author is afraid, for the European policy to turn around. European legal practitioners well informed of geopolitics won't make such mistakes.

On the contrary, the EU can share the profits from an integrated Eurasia value chain of the electric vehicle industry with China, both domestically and internationally. It can also continue the non-sense investigations as it pleases, knowing that such an investigation has no weight on the negotiation nor on the cooperation later. The negotiation is about candid discussion rather than playing tricks. China is looking for the best partner based on its observation of players' choice.

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Notes

[1] https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3231

[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.

[3] Regulation (EU) 2016/1037 of the European Parliament and the Council of 8 June 2016 on protection against subsidized imports from countries not members of the European Union

[4] U.S.-EU Summit Joint Statement, Washington DC, 20 October 2023.

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