

Guidance document on submission of price undertaking offers

This document is intended to provide guidance to Chinese exporters that may consider price undertaking offers (UT offers) for exports of battery electric vehicles for passengers (BEVs) to the EU, which are currently subject to countervailing duties.

Each UT offer is assessed against the same legal criteria laid down in the EU basic anti-subsidy Regulation according to WTO rules, in an objective and non-discriminatory manner: the UT offer must be adequate to eliminate the injurious effects of the subsidies and provide equivalent effect to duties; be practicable; mitigate the risk of cross-compensation; and be in accordance with general policy considerations.

By following the points outlined in this guidance, exporters can identify and address, in practical terms and customised for this particular case, relevant issues, when considering possible undertaking offers.

I. Individually or jointly submitted offers

UTs submitted by an individual company must address the specific situation of this company in relation the above-mentioned criteria. In case of a UT submitted jointly by several companies, the UT must take into account each individual company's specifics.

II. Product Coverage

Exporters will decide on the product coverage of their UT offer.

Companies that export to the EU one or few BEV models would present a lower risk of cross-compensation in a possible UT offer. An UT offer covering all products subject to the measures exported to the EU would limit the risk of cross-compensation within the product concerned.

Similarly, companies that do not export any other products (for example hybrid vehicles) to the same customers in the EU would limit the risk of cross compensation with products that are outside the scope of the measures.

On the contrary, a broad range of BEV models, or exports of products not under measures to the same customers, would increase the risk of cross-compensation.

III. Minimum Import Price

The Minimum Import Price (MIP) must be set at a level appropriate to remove the injurious effects of the subsidisation.

Given the large variations of the product (models, configuration options) significantly impacting the sales prices, specific MIPs are required for each model and configuration option.

Two possible pathways to determine the MIP are:

- Based on the CIF prices of the exporter in question in the investigation period of the proceeding leading to the imposition of the measures, increased by the relevant margin of the countervailing duties imposed.
- Basing the MIP on the non-subsidised EU-produced BEV's sales price in the Union of the same product type (or closely resembling, appropriately adjusted for physical differences), which includes Selling, General and Administrative expenses (SG&A) and a reasonable margin of profit.

The more limited the variety in models and configuration options, the more practicable the UT.

IV. Annual Volumes

Exporters may decide to include a commitment of an annual volume as an element that could mitigate concerns on the risk of cross-compensation. Also, such a commitment could reinforce the offer aiming at adequately addressing the injurious subsidisation.

V. Validity Period

A limited duration of the application of the UT (e.g. a fixed time or conditional upon the life cycle of a particular model) is a further possibility to mitigate the risk of cross-compensation in time.

VI. Sales Price in the EU

It relates to the sales prices when sold to the first independent customer in the EU. This is the sales price of each individual transaction that must respect the relevant MIP.

If exported products are resold in the EU market by an importer related to the exporter, the sales price to the first independent customer would need to have as a deduction all cost incurred after the import clearance, for the proper comparability to the MIP. To this end, the related importer would be required to demonstrate the actual SG&A and provide a reasonable profit margin.

What follows is that in view of the practicability of an UT offer, direct sales to unrelated importers allow a simpler approach to establishing the sales price for comparison with the MIP. The more complex the sales channels, with one or more related distribution companies, the less practicable, in view of the deductions to the sales prices required, as well as the regular monitoring and verification of all data concerned.

VII. Complexity of Sales Channels

A comparatively simple corporate structure and simple organisation of the sales channels greatly simplifies determining the net sales price. This is required for comparison with the

MIP. It also facilitates monitoring and verification of the exporter's compliance with the UT terms.

The degree of complexity of the distribution organisation is measured by factors such as the number of representatives in the Union market, the presence of intermediaries in the distribution chain and the variety of distribution channels (e.g. b2c sales on the internet, agency sales models, fleet sales), as well as the number of intermediaries in the sales chain between the exporter and the first independent customer in the Union.

Complex structures in distribution channels result in increased effort due to more complicated net sales price calculations, as well as the need for verifiable documentation. Additionally, the risk of cross-compensation is significantly higher.

VIII. Commitment on Future EU Investments

Any commitment to invest in the BEV-related industries within the EU will be considered and assessed as part of the UT offer. The investment commitments in the UT must be clearly defined in terms of nature, scope, schedule and financial magnitude. Furthermore, clear, verifiable milestones should be set.

It should be borne in mind that non-compliance with such an investment commitment may constitute a breach of the UT, leading to the withdrawal of the acceptance of the UT and to the retroactive collection of duties.

IX. Technical Feasibility of UT

The Commission must be able to monitor and verify the company's compliance with the UT effectively. When assessing whether this is possible with reasonable administrative effort, the factors to be taken into account include:

- Product complexity: number of BEV models and equipment options/trims requiring the setting of individual MIPs;
- Company structure;
- Sales channel complexity;
- Sale of other products and/or rendering of services to the same customer (or companies related to the customer) in the Union;
- Accessibility and transparency of the accounting system and business documentation of the company offering the UT for purposes of subsequent verification of information reported under UT terms.

X. Further commitments to mitigate risk of cross-compensation

When submitting a UT offer, careful consideration should be given to whether it is possible to commit to additional measures that mitigate the risk of cross-compensation. These

measures should be proportionate to the company's individual risk profile, as determined by the aforementioned circumstances.

Such measures may include:

- Standardising the organisation of distribution channels;
- Simplifying an existing system of sales incentives for distributors;
- Creating internal workflows and documentation schemes to facilitate vehicle-specific tracking from export to sale, including any subsequent reductions in the net sales price;
- Arranging for external audit of the above-mentioned organisational processes, including BEV pricing policy.

XI. Process

The submission of a formal UT offer to the Commission triggers a procedure for the assessment of the acceptability and practicability of the offer, which will be carried out expeditiously. The Commission will disclose its preliminary assessment to the interested parties for comments. On this basis, the Commission will conclude on the acceptance or not of the offer.

If the Commission decides to accept the UT offer, there would be an Implementing Decision that forms the basis for the conclusion, and an amendment of the regulation imposing the existing measures. If the Commission decides not to accept the UT, there would only be an Implementing Decision stating the reasons. In all cases, the decision making involves the voting of Member States according to comitology rules.