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TÜRKİYE – MEASURES CONCERNING ELECTRIC VEHICLES AND OTHER TYPES OF VEHICLES FROM CHINA

REPORT OF THE PANEL

TABLE OF CONTENTS

1 INTRODUCTION 17
1.1 Complaint by China 17
1.2 Panel establishment and composition 17
1.3 Panel proceedings 18
2 MEASURES AT ISSUE 18
2.1 Additional duties 18
2.2 Import Permit Licensing Scheme 19
3 PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS 20
4 ARGUMENTS OF THE PARTIES 20
5 ARGUMENTS OF THE THIRD PARTIES 20
6 INTERIM REVIEW 20
6.1 Additional Duties 21
6.2 IPLS 23
7 FINDINGS 26
7.1 Introduction 26
7.2 Additional duties 26
7.2.1 Decision on which version(s) of the additional duties to review 26
7.2.2 Order of analysis 28
7.2.3 China's claims under Article II of the GATT 1994 28
7.2.3.1 Legal standard 28
7.2.3.2 Whether the additional duties are "ordinary customs duties" or "other duties or charges" 29
7.2.3.3 Whether Türkiye has tariff bindings for tariff lines covered by the additional duties 30
7.2.3.3.1 Whether China has made a *prima facie* case on tariff bindings in respect of internal combustion engine vehicles 30
7.2.3.3.2 Existence of tariff bindings on EVs and hybrid vehicles 31
7.2.3.3.2.1 Tariff bindings for EVs 32
7.2.3.3.2.2 Tariff bindings for hybrid vehicles 33
7.2.3.3.2.3 Türkiye's argument on technological and commercial developments regarding EVs and hybrid vehicles 35
7.2.3.3.2.4 Türkiye's arguments on the role of the transposition process 37
7.2.3.3.3 Conclusion on tariff bindings 38
7.2.3.4 Whether the additional duties are "in excess" of the tariff bindings 38
7.2.3.5 Conclusion on Article II:1(b) 39
7.2.3.6 Consequential finding under Article II:1(a) 39
7.2.3.7 Conclusion and scope of findings 39
7.2.4 Whether the inconsistency with Article II is justified under Articles XX(b) and (g) of the GATT 1994 41
7.2.4.1 Introduction 41

7.2.4.2 Article XX(b) 41
7.2.4.2.1 Introduction 41
7.2.4.2.2 Whether the objective to reduce CO_2 emissions in the transport sector falls under Article XX(b) 43
7.2.4.2.3 Whether the additional duties are designed/taken to protect human, animal, plant life or health in respect of CO_2 emissions 44
7.2.4.2.3.1 Legal standard – whether the responding party has to demonstrate the existence of a risk for animal, plant life or health as part of the first step in the analysis under Article XX(b) 45
7.2.4.2.3.2 Whether Türkiye has demonstrated the existence of a risk 47
Risk related to charging infrastructure 48
Risks related to import-dependence 52
7.2.4.2.3.3 Conclusion on Article XX(b) 53
7.2.4.3 Article XX(g) 53
7.2.4.3.1 Legal standard 54
7.2.4.3.2 Relating to the conservation of natural resources 54
7.2.4.3.3 Made effective in conjunction with restrictions on domestic production or consumption 55
7.2.4.3.4 Conclusion on Article XX(g) 55
7.2.4.4 Conclusion 55
7.2.5 China's claim under Article I:1 of the GATT 1994 56
7.2.5.1 Permissibility of the parties' arguments 56
7.2.5.2 Whether the additional duties are inconsistent with Article I:1 57
7.2.5.3 Conclusion 57
7.2.6 Whether the inconsistency with Article I:1 is justified 58
7.2.6.1 Whether the inconsistency with Article I:1 of the GATT 1994 is justified under Article XXIV 58
7.2.6.1.1 Introduction 58
7.2.6.1.2 Legal standard 58
7.2.6.1.3 Whether Türkiye has demonstrated that the exemption from the additional duties granted to its RTA partners is justified under Article XXIV 62
7.2.6.2 Whether any remaining inconsistency with Article I is justified under the Enabling Clause 64
7.2.6.3 Whether any remaining inconsistency with Article I is justified under Articles XX(b) and (g) 65
7.2.6.4 Conclusion 65
7.3 IPLS 66
7.3.1 Order of analysis 66
7.3.2 China's claim under Article III:4 of the GATT 1994 67
7.3.2.1 Legal standard 67
7.3.2.2 Like products 67
7.3.2.3 Law, regulation, or requirement affecting their internal sale, offering for sale, purchase, transportation, distribution, or use 67
7.3.2.4 Less favourable treatment 68

7.3.2.4.1 Introduction 68
7.3.2.4.2 Service Stations Requirement 69
7.3.2.4.2.1 Relevant provisions 69
7.3.2.4.2.2 Whether the treatment accorded to imported EVs and ERHVs is different from that accorded to the like domestic EVs and ERHVs 70
Arguments of the parties 70
Panel's assessment 70
7.3.2.4.2.3 Whether any differences in treatment modify the conditions of competition to the detriment of imported EVs and ERHVs 71
Arguments of the parties 71
Panel's assessment 72
7.3.2.4.2.4 EVs and ERHVs falling outside the scope of the ASSR 73
7.3.2.4.3 Certificate of Competence Requirement 73
7.3.2.4.3.1 Relevant provisions 73
7.3.2.4.3.2 Whether the treatment accorded to imported EVs and ERHVs is different from that accorded to the like domestic EVs and ERHVs 75
Arguments of the parties 75
Panel's assessment 75
7.3.2.4.3.3 Whether any differences in treatment modify the conditions of competition to the detriment of imported EVs and ERHVs 76
Arguments of the parties 76
Panel's assessment 77
7.3.2.4.3.4 EVs and ERHVs falling outside the scope of the ASSR 78
7.3.2.4.4 Call Centre Requirement 78
7.3.2.4.4.1 Relevant provisions 78
7.3.2.4.4.2 Whether the treatment accorded to imported EVs and ERHVs is different from that accorded to the like domestic EVs and ERHVs 78
Arguments of the parties 78
Panel's assessment 79
7.3.2.4.4.3 Whether any differences in treatment modify the conditions of competition to the detriment of imported EVs and ERHVs 80
Arguments of the parties 80
Panel's assessment 80
7.3.2.4.4.4 EVs and ERHVs falling outside the scope of the ASSR 80
7.3.2.4.5 Authorized Representative Requirement 81
7.3.2.4.5.1 Relevant provisions 81
7.3.2.4.5.2 Whether the treatment accorded to imported EVs and ERHVs is different from that accorded to the like domestic EVs and ERHVs 81
Arguments of the parties 81
Panel's assessment 81
7.3.2.4.5.3 Whether any differences in treatment modify the conditions of competition to the detriment of imported EVs and ERHVs 81
Arguments of the parties 81

Panel's assessment 82
7.3.2.4.6 Battery Commitment Requirement 84
7.3.2.4.6.1 Relevant provisions 84
7.3.2.4.6.2 Whether the treatment accorded to imported EVs and ERHVs is different from that accorded to the like domestic EVs and ERHVs 85
Arguments of the parties 85
Panel's assessment 85
7.3.2.4.6.3 Whether any differences in treatment modify the conditions of competition to the detriment of imported EVs and ERHVs 87
Arguments of the parties 87
Panel's assessment 87
7.3.2.4.7 Enforcement of the requirements 88
7.3.2.4.7.1 Relevant provisions 89
7.3.2.4.7.2 Whether the treatment accorded to imported EVs and ERHVs is different from that accorded to the like domestic EVs and ERHVs 90
Arguments of the parties 90
Panel's assessment 90
7.3.2.4.7.3 Whether any differences in treatment modify the conditions of competition to the detriment of imported products 91
Arguments of the parties 91
Panel's assessment 92
7.3.2.4.7.4 Concluding remarks on the enforcement of the requirements 94
7.3.2.5 Conclusion on Article III:4 94
7.3.3 Whether the inconsistency with Article III:4 is justified under Article XX(d) of the GATT 1994 94
7.3.3.1 Introduction 94
7.3.3.2 Whether the IPLS is a measure designed/taken "to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement" 95
7.3.3.2.1 Laws or regulations which are not inconsistent with the GATT 1994 95
7.3.3.2.2 Measures "to secure compliance" with the laws or regulations 96
7.3.3.2.2.1 Arguments of the parties 96
7.3.3.2.2.2 Panel's assessment 97
Legal standard 97
Meaning of "to secure compliance with" 97
Relationship between the measure and securing compliance 99
Level of examination 100
Whether the Service Stations Requirement is designed to secure compliance with Article 58 of the LCP 101
Arguments of the parties 101
Panel's assessment 102
Whether the Certificate of Competence Requirement is designed to secure compliance with Article 58 of the LCP 106
Arguments of the parties 106

Panel's assessment 106
Whether the Call Centre Requirement is designed to secure compliance with Article 58 of the LCP.....108
Arguments of the parties 108
Panel's assessment 108
Whether the Authorized Representative Requirement is designed to secure compliance with the LCP and the TAR.....109
Arguments of the parties 109
Panel's assessment 110
Whether the Battery Commitment Requirement is designed to secure compliance with the LCP and the TAR.....111
Arguments of the parties 111
Panel's assessment 111
Whether the IPLS enforcement mechanism is designed to secure compliance with Article 58 of the LCP.....113
Arguments of the parties 113
Panel's assessment 113
7.3.3.2.3 Conclusion 115
7.3.3.3 Remaining elements of the test under Article XX(d).....115
7.3.4 China's remaining claims 115
7.3.4.1 Introduction 115
7.3.4.2 China's claim under Article XI:1 of the GATT 1994 115
7.3.4.3 China's claim under Article 2.1 of the TRIMs Agreement.....116
7.3.4.4 China's claim under Article I:1 of the GATT 1994 117
7.3.4.4.1 Whether China's claim under Article I:1 is within the Panel's terms of reference.....117
7.3.4.4.2 Whether a finding of inconsistency with Article I:1 would be necessary to resolve the dispute.....120
7.3.4.5 China's claim under Article X:3(a) of the GATT 1994 121
8 CONCLUSIONS AND RECOMMENDATION(S) 121

LIST OF ANNEXES

ANNEX A

WORKING PROCEDURES OF THE PANEL

Contents		Page
Annex A-1	Working Procedures of the Panel	4
Annex A-2	Additional Working Procedures of the Panel concerning Business Confidential Information	11

ANNEX B

ARGUMENTS OF THE PARTIES

Contents		Page
Annex B-1	Integrated executive summary of the arguments of China	14
Annex B-2	Integrated executive summary of the arguments of Türkiye	40

ANNEX C

ARGUMENTS OF THE THIRD PARTIES

Contents		Page
Annex C-1	Integrated executive summary of the arguments of Australia	69
Annex C-2	Integrated executive summary of the arguments of Canada	72
Annex C-3	Integrated executive summary of the arguments of the European Union	77
Annex C-4	Integrated executive summary of the arguments of Japan	80
Annex C-5	Integrated executive summary of the arguments of Norway	84
Annex C-6	Integrated executive summary of the arguments of the Russian Federation	86
Annex C-7	Integrated executive summary of the arguments of Singapore	90
Annex C-8	Integrated executive summary of the arguments of Switzerland	93
Annex C-9	Integrated executive summary of the arguments of the United States	97

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Indonesia – Iron or Steel Products	Appellate Body Report, *Indonesia – Safeguard on Certain Iron or Steel Products*, WT/DS490/AB/R, WT/DS496/AB/R, and Add.1, adopted 27 August 2018, DSR 2018:VII, p. 3393
Indonesia – Raw Materials	Panel Report, *Indonesia – Measures Relating to Raw Materials*, WT/DS592/R and Add.1, circulated to WTO Members 30 November 2022, appealed 8 December 2022
Japan – Alcoholic Beverages II	Appellate Body Report, *Japan – Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, DSR 1996:I, p. 97
Korea – Various Measures on Beef	Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, DSR 2001:I, p. 5
Korea – Various Measures on Beef	Panel Report, *Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/R, WT/DS169/R, adopted 10 January 2001, as modified by Appellate Body Report WT/DS161/AB/R, WT/DS169/AB/R, DSR 2001:I, p. 59
Mexico – Taxes on Soft Drinks	Appellate Body Report, *Mexico – Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/AB/R, adopted 24 March 2006, DSR 2006:I, p. 3
Mexico – Taxes on Soft Drinks	Panel Report, *Mexico – Tax Measures on Soft Drinks and Other Beverages*, WT/DS308/R, adopted 24 March 2006, as modified by Appellate Body Report WT/DS308/AB/R, DSR 2006:I, p. 43
Peru – Agricultural Products	Appellate Body Report, *Peru – Additional Duty on Imports of Certain Agricultural Products*, WT/DS457/AB/R and Add.1, adopted 31 July 2015, DSR 2015:VI, p. 3403
Peru – Agricultural Products	Panel Report, *Peru – Additional Duty on Imports of Certain Agricultural Products*, WT/DS457/R and Add.1, adopted 31 July 2015, as modified by Appellate Body Report WT/DS457/AB/R, DSR 2015:VII, p. 3567
Russia – Pigs (EU)	Panel Report, *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union*, WT/DS475/R and Add.1, adopted 21 March 2017, as modified by Appellate Body Report WT/DS475/AB/R, DSR 2017:II, p. 361
Russia – Railway Equipment	Panel Report, *Russia – Measures Affecting the Importation of Railway Equipment and Parts Thereof*, WT/DS499/R and Add.1, adopted 5 March 2020, as modified by Appellate Body Report WT/DS499/AB/R DSR 2020:II, p. 685
Russia – Tariff Treatment	Panel Report, *Russia – Tariff Treatment of Certain Agricultural and Manufacturing Products*, WT/DS485/R, Add.1, Corr.1, and Corr.2, adopted 26 September 2016, DSR 2016:IV, p. 1547
Russia – Traffic in Transit	Panel Report, *Russia – Measures Concerning Traffic in Transit*, WT/DS512/R and Add.1, adopted 26 April 2019, DSR 2019:VIII, p. 4301
Thailand – Cigarettes (Philippines)	Appellate Body Report, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines*, WT/DS371/AB/R, adopted 15 July 2011, DSR 2011:IV, p. 2203
Thailand – Cigarettes (Philippines)	Panel Report, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines*, WT/DS371/R, adopted 15 July 2011, as modified by Appellate Body Report WT/DS371/AB/R, DSR 2011:IV, p. 2299
Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines)	Panel Report, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines – Recourse to Article 21.5 of the DSU by the Philippines*, WT/DS371/RW and Add.1, circulated to WTO Members 12 November 2018, appealed 9 January 2019
Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II)	Panel Report, *Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines – Second Recourse to Article 21.5 of the DSU by the Philippines*,

Short Title	Full Case Title and Citation
	WT/DS371/RW2 and Add.1, circulated to WTO Members 12 July 2019, appealed 9 September 2019
Turkey – Additional Duties (US)	Panel Report, *Turkey – Additional Duties on Certain Products from the United States*, WT/DS561/R and Add.1, circulated to WTO Members 19 December 2023, appealed 26 January 2024
Turkey – Pharmaceutical Products (EU)	Final Panel Report as issued to the parties in *Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products*, attached to Türkiye's notice of recourse to arbitration (WT/DS583/12 and Add.1)
Turkey – Pharmaceutical Products (EU) (Article 25)	Award of the Arbitrators, *Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products – Arbitration under Article 25 of the DSU*, WT/DS583/ARB25 and Add.1, 25 July 2022, DSR 2022:III, p. 1731
Turkey – Rice	Panel Report, *Turkey – Measures Affecting the Importation of Rice*, WT/DS334/R, adopted 22 October 2007, DSR 2007:VI, p. 2151
Turkey – Textiles	Appellate Body Report, *Turkey – Restrictions on Imports of Textile and Clothing Products*, WT/DS34/AB/R, adopted 19 November 1999, DSR 1999:VI, p. 2345
US – Clove Cigarettes	Appellate Body Report, *United States – Measures Affecting the Production and Sale of Clove Cigarettes*, WT/DS406/AB/R, adopted 24 April 2012, DSR 2012:XI, p. 5751
US – Corrosion-Resistant Steel Sunset Review	Appellate Body Report, *United States – Sunset Review of Anti-Dumping Duties on Corrosion-Resistant Carbon Steel Flat Products from Japan*, WT/DS244/AB/R, adopted 9 January 2004, DSR 2004:I, p. 3
US – Customs Bond Directive	Panel Report, *United States – Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties*, WT/DS345/R, adopted 1 August 2008, as modified by Appellate Body Report WT/DS343/AB/R / WT/DS345/AB/R, DSR 2008:VIII, p. 2925
US – FSC (Article 21.5 – EC)	Appellate Body Report, *United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/AB/RW, adopted 29 January 2002, DSR 2002:I, p. 55
US – Gambling	Appellate Body Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/AB/R, adopted 20 April 2005, DSR 2005:XII, p. 5663 (and Corr.1, DSR 2006:XII, p. 5475)
US – Gambling	Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/R, adopted 20 April 2005, as modified by Appellate Body Report WT/DS285/AB/R, DSR 2005:XII, p. 5797
US – Gasoline	Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, adopted 20 May 1996, DSR 1996:I, p. 3
US – Gasoline	Panel Report, *United States – Standards for Reformulated and Conventional Gasoline*, WT/DS2/R, adopted 20 May 1996, as modified by Appellate Body Report WT/DS2/AB/R, DSR 1996:I, p. 29
US – IRA (China)	Panel Report, *United States – Certain Tax Credits Under the Inflation Reduction Act*, WT/DS623/R and Add.1, circulated to WTO Members 30 January 2026, appealed 23 February 2026
US – Large Civil Aircraft (2nd complaint)	Appellate Body Report, *United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)*, WT/DS353/AB/R, adopted 23 March 2012, DSR 2012:I, p. 7
US – Line Pipe	Panel Report, *United States – Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, WT/DS202/R, adopted 8 March 2002, as modified by Appellate Body Report WT/DS202/AB/, DSR 2002:IV, p. 1473
US – Offset Act (Byrd Amendment)	Appellate Body Report, *United States – Continued Dumping and Subsidy Offset Act of 2000*, WT/DS217/AB/R, WT/DS234/AB/R, adopted 27 January 2003, DSR 2003:I, p. 375
US – Renewable Energy	Panel Report, *United States – Certain Measures Relating to the Renewable Energy Sector*, WT/DS510/R and Add.1, 27 June 2019, mutually agreed solution reported
US – Shrimp	Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, adopted 6 November 1998, DSR 1998:VII, p. 2755
US – Shrimp (Thailand)	Panel Report, *United States – Measures Relating to Shrimp from Thailand*, WT/DS343/R, adopted 1 August 2008, as modified by Appellate Body Report WT/DS343/AB/R / WT/DS345/AB/R, DSR 2008:VII, p. 2539
US – Section 337 Tariff Act	GATT Panel Report, *United States Section 337 of the Tariff Act of 1930*, L/6439, adopted 7 November 1989, BISD 36S/345
US – Softwood Lumber IV	Appellate Body Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/AB/R, adopted 17 February 2004, DSR 2004:II, p. 571

Short Title	Full Case Title and Citation
US – Tariff Measures (China)	Panel Report, *United States – Tariff Measures on Certain Goods from China*, WT/DS543/R and Add.1, circulated to WTO Members 15 September 2020, appealed 26 October 2020
US – Tuna II (Mexico)	Appellate Body Report, *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products*, WT/DS381/AB/R, adopted 13 June 2012, DSR 2012:IV, p. 1837
US – Upland Cotton	Appellate Body Report, *United States – Subsidies on Upland Cotton*, WT/DS267/AB/R, adopted 21 March 2005, DSR 2005:I, p. 3
US – Wool Shirts and Blouses	Appellate Body Report, *United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India*, WT/DS33/AB/R, adopted 23 May 1997, and Corr.1, DSR 1997:I, p. 323

EXHIBITS REFERRED TO IN THIS REPORT

Exhibit	Short Title (if any)	Description/Long title
CHN-3		Türkiye's applied tariff schedule, Chapter 8703 (versions 2025-2002)
CHN-5		Decision on Amendments to the Import Regime Decision, Presidential Decision No. 9391, Official Gazette No. 32769 (31 December 2024)
CHN-6		Decision on the Imposition of Additional Customs Duty on Imports, Presidential Decision No. 3351, Official Gazette No. 31351 (31 December 2020)
CHN-12		Decision on Amendments to the Decision on the Imposition of Additional Customs Duty on Imports, Presidential Decision No. 9392, Official Gazette No. 32769 (31 December 2024)
CHN-13		Notification on the Import of Certain Electric Vehicles (Import: 2023/22), Official Gazette No. 32384 (29 November 2023)
CHN-16	Notification 2025/7	Notification on the Import of Certain Electric and Externally Rechargeable Hybrid Vehicles (Import: 2025/7) (31 December 2024)
CHN-20		CTS file of Türkiye (Excel)
CHN-21		World Customs Organization, Table I – Correlating the 2017 version to the 2012 version of the Harmonized System (October 2016)
CHN-26	Implementation Directive	Turkish Standards Institution, Notification on the Import of Certain Electric and Externally Rechargeable Hybrid Vehicles (Import: 2025/7), Implementation Directive (10 January 2025)
CHN-28	ASSR	Türkiye's After Sales Services Regulation
CHN-29	LCP	Law on Consumer Protection, No. 6502, Official Gazette No. 28835 (28 November 2013)
CHN-35		Table bound rates (Excel)
CHN-46		Michaela Merz, "Turkey: Only a Turkish resident entity can act as importer" (17 June 2019)
CHN-58 / TUR-79		Free Trade Agreement between Türkiye and the Bolivarian Republic of Venezuela
CHN-60		ICAT blog, "How earthquakes impact the supply chain" (23 March 2023)
TUR-13	TSE K 646	Certification Criteria TSE K 646, Authorized auto repair shops – Electric Vehicles – Requirements, August 2024, ICS 03.080.30
TUR-23		World bank, Türkiye E-mobility Program, Deployment of Electric Vehicle Charging Infrastructure and Incentives to Support the Scale-Up of Electromobility Technologies in Türkiye (23 February 2023)
TUR-27		Government of Türkiye, 12th Development Plan for the period 2024-2028
TUR-29		Deloitte, 2024 Global Automotive Consumer Study, Key Findings: Türkiye (March 2024)
TUR-30	Regulation on Charging Services	Regulation on Charging Services, Official Gazette No. 32701 (23 October 2024) (last amendment)
TUR-34		Ministry of Industry and Technology, About the Technological Product Investment Support Program, Amendments to the Regulation, Circular Regulation, Official Gazette No. 32701 (23 October 2024) (last amendment)
TUR-35	TS 12047	Turkish Standard TS 12047, Authorized Auto Repair Shops – Motor Vehicles – Requirements, December 2013, ICS 03.080.30
TUR-38		Screenshot from the internet site of Chery
TUR-39		Screenshot from the internet site of Ford
TUR-40		Screenshot from the internet site of Renault
TUR-41		Screenshot from the internet site of TOGG
TUR-47		Exro Industry Insights, "Barriers to Electric Vehicle Adoption in 2022"
TUR-48		McKinsey & Company, ACES 2019 survey: Can established auto manufacturers meet customer expectations for ACES? (February 2020)
TUR-54	TAR	Regulation on Type Approval and Market Surveillance and Inspection of Motor Vehicles and Trailers and their Components, Systems and Separate Technical Units (EU/2018/858)
TUR-58		EC – Turkey Association Council Decision No. 1 /95 of 22 December 1995 on implementing the final phase of the Customs Union (96/142/EC)
TUR-59		Free Trade Agreement between Türkiye and Tunisia
TUR-60		Free Trade Agreement between Türkiye and Singapore
TUR-61		Free Trade Agreement between Türkiye and the EFTA States
TUR-62		Free Trade Agreement between Türkiye and the United Kingdom
TUR-63		Free Trade Agreement between Türkiye and Bosnia and Herzegovina
TUR-64		Free Trade Agreement between Türkiye and Albania
TUR-65		Free Trade Agreement between Türkiye and Morocco
TUR-66		Free Trade Agreement between Türkiye and Faroe Islands

Exhibit	Short Title (if any)	Description/Long title
TUR-67		Free Trade Agreement between Türkiye and Palestine
TUR-68		Free Trade Agreement between Türkiye and Georgia
TUR-69		Free Trade Agreement between Türkiye and Korea
TUR-70		Free Trade Agreement between Türkiye and Israel
TUR-71		Free Trade Agreement between Türkiye and Montenegro
TUR-72		Free Trade Agreement between Türkiye and Kosovo[1]
TUR-73		Free Trade Agreement between Türkiye and North Macedonia
TUR-74		Free Trade Agreement between Türkiye and Malaysia
TUR-75		Free Trade Agreement between Türkiye and Egypt
TUR-76		Free Trade Agreement between Türkiye and Mauritius
TUR-77		Free Trade Agreement between Türkiye and Moldova
TUR-78		Free Trade Agreement between Türkiye and Serbia
TUR-80		Free Trade Agreement between Türkiye and Chile
TUR-83	RWBA	Ministry of Environment and Forestry, Regulation on Control of Waste Batteries and Accumulators
TUR-88	Presidential Decision No. 10436	Decision on Amendments to the Decision on the Import Regime and the Decision on the Imposition of Additional Customs Duty on Imports, Presidential Decision No. 10436, Official Gazette No. 33025 (22 September 2025)
TUR-95		Energy Market Regulation Authority, Statistical data on charging network capacity (August 2025)
TUR-98		Website of the members of the Automotive Distributors' and Mobility Association in Türkiye
TUR-102	Turkish Energy Market Regulation Authority Report	EMRA, Electric Vehicles and Charging Infrastructure Projection (April 2024)
TUR-104		Annual Passenger Car Sales in Türkiye by Powertrain Type (2022-2024)
TUR-108		Retail sales data for automobiles (2022-2025) (BCI)
TUR-109		Regulation on the Technological Product Investment Support Programme, Official Gazette No. 31786, 22 March 2022 (last amendment)
TUR-111		International Trade Council, "The Rise of Regional Supply Chains: How Geopolitical Tensions and Economic Pressures Are Shifting Global Production in 2024"
TUR-112		Deloitte Insights, "Restructuring the supply base: Prioritizing a resilient, yet efficient supply chain" (23 May 2024)
TUR-113	OECD Background Note	OECD Secretariat, Directorate for Financial and Enterprise Affairs, Competition Committee, "Barriers to Exit – Background Note", DAF/COMP(2019)15 (3-4 December 2019)
TUR-114		Indeed, "Definitive Guide to Exit Barriers (With Examples)" (11 December 2025)
TUR-115		Ministry of Industry and Technology, Market Surveillance and Inspection Regulation, Official Gazette No. 31541 (14 July 2021)

[1] Reference to Kosovo shall be understood to be in the context of the United Nations Security Council resolution 1244 (1999).

ABBREVIATIONS USED IN THIS REPORT

Abbreviation	Description
ASSR	After Sales Services Regulation
BCI	Business confidential information
CO_2	Carbon dioxide
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
Enabling Clause	Decision on Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries, Decision of 28 November 1979
ERHVs	Externally rechargeable hybrid vehicles
EVs	Electric vehicles
EVMRT	Electric Vehicle Maintenance and Repair Technician
FTA	Free trade agreement
GATT 1994	General Agreement on Tariffs and Trade 1994
GC	General Council
GHG	Greenhouse gas
GTIP	Customs tariff statistical position (12-digit product identification code) in Türkiye's Tariff Nomenclature
GTP	Customs tariff position in Türkiye's Tariff Nomenclature
HS	Harmonized System
ILC	International Law Commission
IPLS	Import Permit Licensing Scheme
LCP	Law on Consumer Protection
MFN	Most favoured nation
OECD	Organisation for Economic Co-operation and Development
RTA	Regional trade agreement
RWBA	Regulation on Waste Batteries and Accumulators
TAR	Type Approval Regulation
TRIM	Trade-related investment measure
TRIMs Agreement	Agreement on Trade-Related Investment Measures
TSE	Turkish Standards Institution
VCLT	Vienna Convention on the Law of Treaties, Done at Vienna, 23 May 1969, 1155 UNTS 331; 8 International Legal Materials 679
WCO	World Customs Organization
WTO	World Trade Organization

1 INTRODUCTION

1.1 Complaint by China

1.1. On 8 October 2024, China requested consultations with Türkiye pursuant to Article 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 8 of the Agreement on Trade-Related Investment Measures (TRIMs Agreement) with respect to the measures and claims set out below.[2]

1.2. Consultations were held on 20-21 November 2024 but failed to resolve the dispute.

1.2 Panel establishment and composition

1.3. On 16 January 2025, China requested the establishment of a panel pursuant to Articles 4.7 and 6 of the DSU, Article XXIII:2 of the GATT 1994, and Article 8 of the TRIMs Agreement with standard terms of reference.[3] At its meeting on 24 February 2025, the Dispute Settlement Body (DSB) established a panel pursuant to the request of China in document WT/DS629/2, in accordance with Article 6 of the DSU.[4]

1.4. The Panel's terms of reference are the following:

> To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by China in document WT/DS629/2 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.[5]

1.5. While the parties agreed on the nomination of Mr Esteban Conejos as the Chairperson of the Panel, they did not agree on the two members of the Panel. On 14 April 2025, China requested the Director-General to determine the composition of the panel, pursuant to Article 8.7 of the DSU. On 22 April 2025, the Director-General accordingly composed the Panel as follows[6]:

Chairperson:	Mr Esteban CONEJOS
Members:	Ms Pauline MCHARO Ms Sarah PATERSON

1.6. Following the resignation of Mr Conejos on 29 July 2025, and further to a request by China on 30 July 2025, the Director-General on 13 August 2025 appointed Mr Felipe Lopeandía as the Chairperson of the Panel. Accordingly, the composition of the Panel is as follows[7]:

Chairperson:	Mr Felipe LOPEANDÍA
Members:	Ms Pauline MCHARO Ms Sarah PATERSON

1.7. Australia, Brazil, Canada, the European Union, India, Indonesia, Japan, Kazakhstan, the Republic of Korea, Norway, the Russian Federation, Singapore, Switzerland, Thailand, the United Kingdom, and the United States notified their interest in participating in the Panel proceedings as third parties.

[2] Request for consultations by China, WT/DS629/1.
[3] Request for the establishment of a panel by China, WT/DS629/2 (China's panel request).
[4] DSB, Minutes of the meeting held on 24 February 2025, WT/DSB/M/498, para. 3.4.
[5] WT/DS629/3.
[6] WT/DS629/3.
[7] WT/DS629/3/Add.1.

1.3 Panel proceedings

1.8. After consultation with the parties, the Panel adopted its Working Procedures[8], Additional Working Procedures concerning Business Confidential Information (BCI)[9], and timetable on 9 May 2025. Following the resignation of Mr Conejos, the Panel modified the timetable on 19 August 2025. China and Türkiye submitted their first written submissions on 3 June 2025 and 17 July 2025, respectively. On 31 July 2025, the Panel received third-party submissions from Australia, the European Union, Japan, and the United States.

1.9. The Panel held a first substantive meeting with the parties on 24 and 25 September 2025. A session with the third parties took place on 24 September 2025, during which Australia, Canada, the European Union, Japan, Norway, the Russian Federation, Singapore, Switzerland, and the United States made oral statements. Following the meeting, the Panel sent the parties written questions on 26 September 2025 and received their responses to those questions on 13 October 2025. On 26 September 2025, the Panel also sent written questions to the third parties. On 13 October 2025, the Panel received responses to questions from Australia, Canada, the European Union, Japan, Norway, the Russian Federation, Singapore, Switzerland, and the United States. The Panel held a second substantive meeting with the parties on 11 and 12 December 2025. The Panel sent the parties a second set of written questions on 15 December 2025 and received their responses to those questions on 12 January 2026. On 26 January 2026, the Panel also received each party's comments on the other party's responses to the second set of questions. On 2 March 2026, the Panel issued the descriptive part of its Report to the parties. The Panel issued its Interim Report to the parties on 13 April 2026. The Panel issued its Final Report to the parties on 21 May 2026.

2 MEASURES AT ISSUE

2.1. This dispute concerns measures that apply to electric vehicles (EVs) and certain other vehicles originating in China. The measures are additional duties on the one hand and an import permit licensing scheme on the other.

2.1 Additional duties

2.2. China challenges additional duties that Türkiye imposes on EVs and on certain other vehicles. Based on Türkiye's Tariff Nomenclature, which is based on the 2022 edition of the Harmonized System (HS), these duties apply to 12-digit tariff lines (GTIP) under the HS 2022 subheading for EVs (8703.80) and under HS 2022 subheadings for internal combustion engine vehicles and hybrid vehicles (8703.21 through 8703.70). In total, the additional duties cover 33 tariff lines. The duties apply separately from, and in addition to, the 10% *ad valorem* duty which is Türkiye's applied most-favoured nation (MFN) rate for all the vehicles at issue.

2.3. At the time of panel establishment, the additional duties were enacted through Presidential Decision No. 3351[10], as (then) last amended by Presidential Decision No. 9392[11], in the following manner: (i) a 40% *ad valorem* duty on EVs; (ii) a mixed duty of 50% *ad valorem* or minimum USD 9,500 per unit, whichever is higher, on internal combustion engine vehicles and non-plug-in hybrids; and (iii) a mixed duty of 40% *ad valorem* or minimum 7,000 USD per unit, whichever is higher, on plug-in hybrids. These additional duties only applied to imports originating from China.

2.4. On 22 September 2025, that is, following panel establishment and prior to the first substantive meeting of the Panel, Türkiye enacted Presidential Decision No. 10436[12], pursuant to which the additional duties now apply in the following manner: (1) a mixed duty of 30% *ad valorem* or minimum USD 8,500/unit, whichever is higher, for EVs; (2) a mixed duty of 25% *ad valorem* or

[8] Working Procedures of the Panel (Annex A-1).
[9] Additional Working Procedures of the Panel concerning Business Confidential Information (Annex A-2).
[10] Decision on the Imposition of Additional Customs Duty on Imports, Presidential Decision No. 3351, Official Gazette No. 31351 (31 December 2020) (Exhibit CHN-6).
[11] Decision on Amendments to the Decision on the Imposition of Additional Customs Duty on Imports, Presidential Decision No. 9392, Official Gazette No. 32769 (31 December 2024) (Exhibit CHN-12).
[12] Decision on Amendments to the Decision on the Import Regime and the Decision on the Imposition of Additional Customs Duty on Imports, Presidential Decision No. 10436, Official Gazette No. 33025 (22 September 2025) (Presidential Decision No. 10436) (Exhibit TUR-88).

minimum 6,000 USD/unit, whichever is higher for internal combustion engine vehicles and non-plug-in hybrids; and (3) a mixed duty of 30% *ad valorem* or minimum USD 7,000/unit, whichever is higher, on plug-in hybrids.[13] These additional duties apply to imports originating from all countries that do not have a regional trade agreement (RTA) with Türkiye.[14]

2.2 Import Permit Licensing Scheme

2.5. China also challenges Türkiye's import permit licensing scheme (IPLS).[15] The IPLS is currently contained in Notification 2025/7.[16] It requires a "Permit Certificate" to be presented at customs clearance for the importation of certain vehicles originating from "countries other than the European Union and countries with Free Trade Agreements". Notification 2025/7 applies to "electric only or externally rechargeable hybrid" vehicles falling into eight categories identified by their customs tariff position and corresponding descriptions.[17]

2.6. Notification 2025/7 lists five requirements that must be met simultaneously to obtain a Permit Certificate. These are described in detail in section 7 of this Report. They can be summarized as follows:

a. the importer must establish itself 20 authorized service stations in 7 geographical regions (Service Stations Requirement);

b. persons responsible for the maintenance and repair of EVs and ERHVs must have a specific certificate of competence (Certificate of Competence Requirement);

c. a Turkish call centre with at least 40 personnel must be established in Türkiye providing service for each brand to be imported (Call Centre Requirement);

d. the manufacturer must have an authorized representative resident in Türkiye (Authorized Representative Requirement); and

e. the importer must provide a written commitment that it accepts "procedures to be carried out regarding the monitoring, control and supervision of the battery systems" (Battery Commitment Requirement).

[13] As set out in Presidential Decision No. 10436, however, these duties do not apply to "imports subject to customs duty exemption within the scope of an investment incentive certificate".

[14] In this report, we use the term Regional Trade Agreement (RTA) to refer collectively to free trade agreements and customs unions.

[15] China refers to this scheme as an "import permit certificate scheme". Türkiye refers to it as an "import permit licensing scheme". We note this difference, as well as China's use of the abbreviation "IPLS". (China's second written submission, fn 174). We will refer to the scheme as the Import Permit Licensing Scheme (IPLS).

[16] Notification on the Import of Certain Electric and Externally Rechargeable Hybrid Vehicles (Import: 2025/7) (31 December 2024) (Notification 2025/7) (Exhibit CHN-16). Since its introduction in 2023, the IPLS has undergone several iterations, amending the list of goods subject to the requirement and, as a consequence, certain details of the conditions to be met for obtaining an import permit certificate.

[17] These categories are: tractors for semi-trailers (GTP 8701.21, 8701.22, 8701.23, 8701.24, and 8701.29); wheeled agricultural tractors and wheeled tractors used in forestry (GTP 8701.91.10, 8701.92.10, 8701.93.10, 8701.94.10, and 8701.95.10); motor vehicles designed to carry 10 or more persons (including the driver) (GTP 87.02); passenger cars and other motor vehicles manufactured primarily for the transport of persons (excluding those falling within heading 87.02) (excluding go-karts) (excluding search and rescue/emergency intervention tracked vehicles under GTIP 8703.10.11.00.00) (including station wagons and racing cars) (GTP 87.03); motor vehicles for the transport of goods (GTP 87.04); special purpose motor vehicles (excluding those specially constructed for the transport of people or goods) (e.g. rescue vehicles, crane vehicles, fire trucks, concrete mixer-equipped vehicles, road sweeping vehicles, spraying vehicles, mobile workshops, mobile radiology units) (GTP 87.05); motorcycles (including mopeds) and those with an auxiliary engine wheeled vehicles (with or without baskets), baskets (GTP 87.11); and trailers and semi-trailers; vehicles without driving gear; parts and accessories thereof (except 8716.80; 8716.90) (GTP 87.16).

2.7. An Implementation Directive issued by the Turkish Standards Institution (Implementation Directive) "covers the procedures and principles" related to the Permit Certificate to be obtained within the scope of Notification 2025/7.[18]

3 PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

3.1. China requests that the Panel find that the additional duties are inconsistent with Türkiye's obligations under Articles I:1 and II:1(a) and (b) of the GATT 1994. China also requests that the Panel find that the IPLS is inconsistent with Articles I:1, III:4, X:3(a), and XI:1 of the GATT 1994 and with Article 2.1 of the TRIMs Agreement. China further requests, pursuant to Article 19.1 of the DSU, that the Panel recommend that Türkiye bring its measures into conformity with its WTO obligations.[19]

3.2. Türkiye requests that the Panel reject China's claims in this dispute in their entirety. Türkiye submits that the additional duties are not inconsistent with Article I:1 or Articles II:1(a) and (b) of the GATT 1994, and that the IPLS is not inconsistent with Articles III:4, X:3(a), or XI:1 nor with Article 2.1 of the TRIMs Agreement. Türkiye also argues that, in any event, the additional duties are justified under Articles XX(b) and (g) as well as under Article XXIV and under the Enabling Clause, and that the IPLS is justified under Article XX(d) as well as under Article XXIV and under the Enabling Clause.[20]

4 ARGUMENTS OF THE PARTIES

4.1. The arguments of the parties are reflected in their executive summaries, provided to the Panel in accordance with paragraph 23 of the Working Procedures adopted by the Panel (see Annexes B-1 and B-2).

5 ARGUMENTS OF THE THIRD PARTIES

5.1. The arguments of Australia, Canada, the European Union, Japan, Norway, the Russian Federation, Singapore, Switzerland, and the United States are reflected in their executive summaries, provided in accordance with paragraph 25 of the Working Procedures adopted by the Panel (see Annexes C-1, C-2, C-3, C-4, C-5, C-6, C-7, C-8, and C-9). Brazil, India, Indonesia, Kazakhstan, the Republic of Korea, Thailand, and the United Kingdom did not submit written or oral arguments to the Panel.

6 INTERIM REVIEW

6.1. On 13 April 2026, the Panel issued its Interim Report to the parties. On 28 April 2026, China and Türkiye submitted written requests for the Panel to review aspects of the Interim Report. On 5 May 2026, China and Türkiye submitted comments on each other's requests for review. Neither party requested an interim review meeting.

6.2. In accordance with Article 15.3 of the DSU, this section of the Report sets out the Panel's response to the parties' requests made at the interim review stage. The numbering of some paragraphs and footnotes in the Final Report has changed from the numbering in the Interim Report. The discussion below refers to the numbering in the Interim Report and, where it differs, includes the corresponding numbering in the Final Report.

6.3. We discuss the parties' requests for substantive modifications. We do not discuss requests that neither the other party nor we disagree with and that we have accordingly implemented.[21] In addition we have made corrections for typographical and other non-substantive errors, including those identified by the parties.

[18] Turkish Standards Institution, Notification on the Import of Certain Electric and Externally Rechargeable Hybrid Vehicles (Import: 2025/7), Implementation Directive (10 January 2025) (Implementation Directive) (Exhibit CHN-26).

[19] China's first written submission, paras. 302 and 304.

[20] Türkiye's first written submission, para. 4.1; comments on the draft descriptive part.

[21] There is one such request by Türkiye concerning a change to the wording of **paragraph 7.334** (paragraph 7.322 of the Final Report).

6.4. To provide context, the discussion below is structured following the two main headings of this Report which concern the two measures at issue: the additional duties and the IPLS. We address the parties' requests in the order of the paragraphs which they concern.

6.1 Additional Duties

6.5. Regarding **paragraph 7.8**, China requests that a new paragraph be inserted and what is currently contained in paragraph 7.8 be renumbered as paragraph 7.9. The new paragraph 7.8 is to contain a summary of the reasons China provided to support its request that the Panel also make findings on the additional duties as they existed at the time the Panel was established.[22]

6.6. Türkiye opposes China's request on two grounds, namely (i) that the parties' detailed arguments are set out in the executive summaries attached to this Report, and (ii) that the current paragraph 7.8 already briefly summarizes the parties' arguments.[23]

6.7. Paragraph 7.8 in its current version contains a summary description of China's arguments other than the terms of reference argument which is already addressed in paragraph 7.6. We, therefore, see no need to add a new paragraph preceding this one, to provide a summary of the same arguments. However, in the light of China's request, we have revised the description of China's arguments in the current paragraph 7.8 to more exhaustively reflect the points China makes.

6.8. Türkiye requests that **paragraphs 7.20-7.23** be deleted. In their place, Türkiye requests that there be a reference to Türkiye's explanation that the additional duties constitute ordinary customs duties under Turkish law as well as to the fact that China agrees that they are ordinary customs duties.[24]

6.9. China opposes Türkiye's request on the grounds that it would be inconsistent with the Panel's duty under Article 11 of the DSU to proceed in the manner suggested by Türkiye.[25]

6.10. As we point out in paragraph 7.22, the fact that the additional duties are considered ordinary customs duties in Turkish law does not mean that their legal characterization must be the same under the covered agreements. Nor does the fact that the parties are in agreement on qualifying them as ordinary customs duties mean that we are bound by that assessment.[26] This said, in the light of Türkiye's comments, we have slightly revised our position and adjusted the text in paragraphs 7.22 and 7.69 accordingly. We take the view that, for purposes of deciding this case and given the parties' agreement on this issue, we can accept their position and qualify the additional duties as ordinary customs duties, if and when it is established that the overall outcome of the analysis would not be different depending on whether they are qualified as ordinary customs duties or other duties or charges.

6.11. Regarding **paragraph 7.26**, China requests that additional language be inserted after the sentence ending with "other vehicles" to expressly indicate that China submitted Exhibit CHN-3 (an excel table showing Chapter 8703 in Türkiye's applied tariff schedule in the relevant versions between 2002 and 2025), and also submitted Exhibit CHN-20 (which contains Türkiye's consolidated tariff schedule (CTS) from the WTO CTS database).[27]

6.12. Türkiye submits that the language proposed by China goes beyond a simple description and appears to imply a characterization of the probative value of Exhibit CHN-3 that the Panel has not made. Türkiye therefore suggests a different, "more neutral", version of the additional language requested by China.[28]

6.13. Paragraph 7.26 describes how China sets out its *prima facie* case on tariff bindings for hybrid and internal combustion engine vehicles (i.e. "other vehicles") in the relevant part of its first written submission. We note that in that context, China refers neither to Exhibit CHN-3 nor to Exhibit CHN-

[22] China's request for interim review, para. 4.
[23] Türkiye's comments on China's request for interim review, paras. 3.1 and 3.2.
[24] Türkiye's request for interim review, paras. 3.1-3.3.
[25] China's comments on Türkiye's request for interim review, paras. 2 and 3.
[26] As China rightly points out, this would be contrary to our duty in Article 11 of the DSU.
[27] China's request for interim review, para. 5.
[28] Türkiye's comments on China's request for interim review, para.4.1.

20. There is, thus, no description of the relevant tariff lines based on these exhibits, let alone a description which would have a probative value in terms of linking relevant tariff lines to tariff bindings in Türkiye's schedule. China, instead, only refers to Exhibit-35. What is more, as described in paragraph 7.30, when asked specifically whether the list of 12-digit tariff lines in the column "Correlation with Turkish Schedule of Concessions" in the table contained in Exhibit CHN-35 encompasses *all* bound tariffs that China claims to have been exceeded, China confirms that this is the case "insofar as other vehicles are concerned".[29] Given these circumstances, we see no need to add a reference to China's submission of Exhibits CHN-3 and CHN-20 to paragraph 7.26. However, in light of China's comments, we have revised paragraph 7.30 to make clearer why we consider China's *prima facie* case to be limited in scope. Furthermore, we have added a reference to Exhibit CHN-3 in footnote 64 to paragraph 7.15.[30]

6.14. In **paragraph 7.74**, and consequently also in **paragraph 8.1(a)(ii) and (iii)**, China requests that the Panel expressly refer to the tariff lines for hybrid vehicles in the version of the measure on which the Panel decided to rule, in order to further clarify its conclusion regarding the inconsistency of additional duties on hybrid vehicles with Article II:1(b) and II:1(a) of GATT 1994.[31]

6.15. Türkiye does not oppose the inclusion of a reference to the six tariff lines but opposes the removal of a reference to the 34 specific HS 2002 tariff lines in paragraph 7.74, as proposed by China. Türkiye considers this reference to be essential to convey clearly that not all additional duties that apply to hybrid vehicles falling under the six tariff lines, are inconsistent with Articles II:1(b) and II:1(a), but rather only those additional duties that apply to vehicles that used to be classified under these 34 tariff lines prior to HS 2017.[32]

6.16. We agree with China that a reference to the relevant tariff lines in Türkiye's additional duties measure may be useful for purposes of clarity. However, the complexity of the finding in respect of hybrid vehicles does not stem from their identifiability in terms of currently applicable tariff lines, that is, in the measure itself. The complexity stems from the fact that the inconsistency with Articles II:1(b) and (a) of the GATT 1994 is only partial and depends on how the hybrid vehicles would have been classified *prior* to the introduction of the current subheadings for hybrid vehicles through HS 2017. Based on these considerations, we have done the following: (i) added references to the relevant tariff lines for all products covered by the additional duties (not just hybrid vehicles); for readability reasons we have done so in footnotes instead of in the main text and not done so in paragraph 8; and (ii) made other changes in paragraphs 7.72, 7.73 and 7.74, as well as in paragraph 8.1(a)(ii) and (iii) to further clarify the limited nature of the finding in respect of hybrid vehicles.

6.17. Regarding **paragraphs 7.155-7.165**, Türkiye requests that we delete the entirety of our analysis on the grounds that it never raised a jurisdictional argument about China's obligation to "raise" the Enabling Clause and Article XXIV in the context of the additional duties, but solely in the context of China's claim pertaining to the IPLS.[33]

6.18. China considers that we should reject Türkiye's request because these paragraphs contain the Panel's reasoning. According to China, we are not bound to limit our reasoning in the manner suggested by Türkiye, and Türkiye fails to demonstrate why this reasoning is incorrect.[34]

6.19. In its second written submission, Türkiye explains that it incorporates by reference "its arguments concerning its RTAs and their compatibility with the Enabling Clause and Article XXIV made in the context of China's claim concerning the IPLS".[35] In the corresponding footnote, Türkiye refers to section 3.3 of its first written submission which includes also its argument that China's Article I claim is not properly within the Panel's terms of reference. Paragraphs 7.155-7.165 therefore address and reject what we understood to be a jurisdictional objection raised by Türkiye that China's claim that the additional duties are inconsistent with Article I:1 is not properly within our terms of reference. Given Türkiye's explanation that it has not raised the jurisdictional objection

[29] China's response to Panel question No. 17, para. 21.
[30] We note that footnote 152 already contains a reference to Exhibit CHN-20.
[31] China's request for interim review, para. 3.
[32] Türkiye's comments on China's request for interim review, paras. 2.1-2.3.
[33] Türkiye's request for interim review, paras. 3.4-3.10.
[34] China's comments on Türkiye's request for interim review, paras. 4-6.
[35] Türkiye's second written submission, para. 2.29.

in the context of China's claim pertaining to the additional duties, we have deleted paragraphs 7.155-7.165.[36] We have also adjusted paragraphs 7.2, 7.147, and 7.148 to take account of this deletion.

6.20. However, most of the analysis we undertook in these paragraphs is relevant to the jurisdictional objection raised by Türkiye with respect to China's claim that the *IPLS* is inconsistent with Article I:1. Paragraph 7.521, which addresses this jurisdictional objection, contained a cross-reference to the analysis carried out in paragraphs 7.155-7.165. Given the deletion of these paragraphs, we have moved all relevant parts of the analysis to Section 7.3.4.4 which concerns China's claim that the IPLS is inconsistent with Article I:1 (paragraphs 7.510- 7.521 in the Final Report).[37]

6.21. Regarding **paragraphs 7.189** and **7.190** (paragraph 7.178 in the Final Report), China requests us to reconsider our decision on what China describes as the "allocation of burden of proof" in the context of the question whether the respondent must demonstrate that a specific RTA requires the relevant preferential treatment, and if so, how. China requests the Panel "to place the initial burden on Türkiye to establish that the relevant RTAs require the liberalization of the tariff lines on vehicles under the measures at issue, and continue its analysis to reach a conclusion on the issues in dispute."[38]

6.22. Türkiye considers that we should reject China's request. Türkiye understands these paragraphs to explain that the burden of proof under Article XXIV always rests on the responding party, and that, once a respondent has established its *prima facie* case, the complainant can make arguments to rebut this *prima facie* case. In Türkiye's view, the Panel's analysis under Article XXIV is "entirely correct".[39]

6.23. Section 7.2.6.1.2 sets out our views on the legal standard required for the respondent to rely on the exception in Article XXIV to justify an inconsistency with Article I:1. We agree with the parties that the burden of demonstrating that the conditions contained in Article XXIV are met rests on the respondent. In particular, the respondent must demonstrate that an RTA requires the preferential treatment in question. In our view, it is sufficient, for the purposes of a *prima facie* showing, for the respondent to assert that an RTA requires this specific preferential tariff treatment and to make available the text of that RTA. We have adjusted the text in paragraphs 7.189 and 7.190 to clarify this point. We have also modified the wording of paragraphs 7.196-7.198 (paragraphs 7.184 and 7.185 in the Final Report) which apply the legal standard to the facts before us.

6.2 IPLS

6.24. Regarding **paragraph 7.313** (paragraph 7.301 in the Final Report), Türkiye requests us to modify our reasoning with respect to the relationship between Notification 2025/7 and the Implementation Directive within the context of our analysis of the Authorized Representative Requirement. Türkiye argues that, as a matter of Turkish law, Notification 2025/7 prevails over the Implementation Directive, and that we failed to accord appropriate deference to Türkiye's interpretation of its own law.[40] Türkiye also argues that its explanations cited in paragraph 7.313 do not support our finding.[41] At a minimum, Türkiye requests us to delete the references to these explanations.

6.25. China considers that Türkiye's request should be rejected. China argues that Türkiye is putting forward arguments that it has already raised before, and is attempting to re-argue an issue that the

[36] While we may examine issues pertaining to our terms of reference also on our own motion, i.e. even in the absence of any objection raised by a party, given the conclusion we reach in our analysis, we see no reason to do so here.

[37] China requests the addition in **paragraph 7.155** of language to reflect its arguments rejecting Türkiye's invocation of Article XXIV and the Enabling Clause in respect of the additional duties (China's request for interim review, para. 6). In the light of our decision to delete this paragraph, we consider China's request to be moot. As the additional language suggested by China concerns specifically its Article I:1 claim pertaining to the additional duties and not to the IPLS, we also see no need to add this language to paragraph 7.510 of the Final Report.

[38] China's request for interim review, para. 9.

[39] Türkiye's comments on China's request for interim review, paras. 6.1-6.4.

[40] Türkiye's request for interim review, paras. 4.1-4.2.

[41] Türkiye's request for interim review, paras. 4.3-4.5.

Panel Report already has fully addressed. China considers that this is not a proper use of the interim review process.[42]

6.26. As China points out, in paragraph 7.313, we already acknowledge Türkiye's argument (made in its comments on China's response to Panel question No. 71) that Notification 2025/7 would prevail in case of conflict, as well as Türkiye's explanation of the meaning of its own domestic law. We also note there, however, that we see no apparent conflict between the two requirements contained in these two legal instruments, and that based on their text, an importer applying for a Permit Certificate can reasonably be expected to reach the conclusion that it is specifically the importer who must be appointed as representative. For these reasons, we reject Türkiye's request to modify the reasoning in paragraph 7.313. We have adjusted the language in this paragraph to clarify our analysis.

6.27. With respect to Türkiye's argument that its explanations cited in paragraph 7.313 do not support our finding, we note that our understanding that the Implementation Directive elaborates on the requirements set out in Notification 2025/7 is based on Section 1 of the Implementation Directive. We find confirmation that this is the intended role of the Implementation Directive in several explanations contained in Türkiye's written submissions, including the general explanation referred to above.[43] However, we agree with Türkiye that these explanations were made in contexts concerning issues different from the Authorized Representative Requirement. We have adjusted the text of paragraph 7.313.

6.28. Regarding **paragraph 7.407** (paragraph 7.395 in the Final Report), Türkiye requests that we add a reference to its argument that "'if a measure secures compliance with a law, it will in turn further the underlying objectives of that law', and vice versa".[44]

6.29. China considers that Türkiye's request should be rejected. China argues that Türkiye has failed to identify any inaccuracies in the paragraph, which is part of the Panel's reasoning and not merely intended to be a summary of Türkiye's argument.[45]

6.30. Paragraph 7.407 is part of the subsection setting out the legal standard under Article XX(d) and addressing certain arguments by the parties that we consider related to this legal standard. This subsection examines what we consider to be two separate issues: (i) the meaning of "to secure compliance with" (paragraphs 7.396-7.405); and (ii) the relationship between the challenged measure and the objective of securing compliance (paragraphs 7.406-7.407). In our view, the addition requested by Türkiye concerns the first rather that the second issue. Accordingly, we have partially accommodated Türkiye's request through the addition of a reference to Türkiye's argument in a new footnote to paragraph 7.396 (footnote 516 to paragraph 7.384 in the Final Report). In addition, we have adjusted paragraph 7.407 (paragraph 7.395 in the Final Report) to clarify that it reflects our understanding of Türkiye's argument.

6.31. Regarding **paragraph 7.433** (paragraph 7.421 in the Final Report), Türkiye requests us to delete the following sentence: "Türkiye has not provided any arguments or evidence to demonstrate why a requirement that may affect the ease of exit of an importer from the Turkish market is in any way related to consumer protection." Türkiye considers that it has provided multiple arguments explaining why the ease of exit of an importer might adversely affect its capacity to provide after-sales services in a way that contributes to consumer protection. Türkiye refers in particular to its arguments that because of the importers' ease of exit, they are "inherently less likely to be able to comply with" the IPLS requirements, and that these requirements are geared towards ensuring consumer protection.[46]

[42] China's comments on Türkiye's request for interim review, paras. 7-8.

[43] See also Türkiye's first written submission, fn 442 where Türkiye explains that the Implementation Directive specifies and operationalizes the requirements set out in Notification 2025/7; and second written submission, para. 3.145 where Türkiye explains that the Implementation Directive "provides guidance for the operation of the IPLS".

[44] Türkiye's request for interim review, para. 4.8.

[45] China's comments on Türkiye's request for interim review, para. 9.

[46] Türkiye's request for interim review, paras. 4.11-4.12.

6.32. China considers that we should dismiss Türkiye's request, because it fails to consider the context in which the sentence appears.[47]

6.33. In the sentence preceding the one that Türkiye requests us to delete, we call into question the relevance of the fact that the Service Stations Requirement may affect the ease of exit from the Turkish market to the objective of securing compliance with Article 58(1) of the LCP. In the sentence following the one that Türkiye requests us to delete, we acknowledge the risk that if an importer exits the market, this may affect the supply of maintenance and repair services to consumers, and we note that Article 58 of the LCP contains provisions which are specifically geared to address such situations. We thus agree with China that Türkiye's request fails to consider the context in which the sentence appears. Nevertheless, we do not consider that deleting this sentence would in any way affect the clarity of the analysis in paragraph 7.433. We have, therefore, deleted the sentence, as requested by Türkiye, and made some further minor adjustments to the text.

6.34. Regarding **paragraph 7.472** (paragraph 7.460 in the Final Report), Türkiye requests us to add the following language explaining why Türkiye had not submitted any argument how the requirement to appoint the importer as an IPLS representative is designed to secure compliance with the Type Approval Regulation (TAR): "because it disputed the factual premise that there is a requirement to appoint the importer as the authorized representative".

6.35. China considers this additional language to be unnecessary and inappropriate to include, because the reasons Türkiye chose not to present arguments are irrelevant to the point made by the Panel in that sentence.[48]

6.36. We agree that the reason why Türkiye did not provide these arguments is, indeed, because it disputed the factual premise that the Authorized Representative Requirement consists in requiring that the importer be appointed as an IPLS representative. We do not find it inappropriate to refer to this reason in paragraph 7.472. We have therefore added the language requested by Türkiye.

6.37. Regarding **paragraphs 7.474 and 7.487** (paragraphs 7.462 and 7.475 in the Final Report), Türkiye requests the addition of language indicating that Türkiye has argued that the Authorized Representative Requirement and the Battery Commitment Requirement secure compliance with "the general obligation to provide after-sales maintenance under Article 58(1) of the LCP".[49]

6.38. China considers that we should reject this additional language because Türkiye's reference to a "general" obligation is irrelevant to the point made in these sentences which is about Türkiye's failure to refer to a "specific" obligation in the LCP.[50]

6.39. We note that in its request for interim review, Türkiye does not include a reference to its submissions where it has argued that the Authorized Representative Requirement or the Battery Commitment Requirement secure compliance *specifically* with Article 58(1) of the LCP. In its response to Panel question No. 71, Türkiye argues that these two requirements "contribute to better consumer protection, which is the objective of the Law on Consumer Protection".[51] We, therefore, do not consider it entirely correct to note that Türkiye has argued that these requirements secure compliance *specifically* with Article 58(1) of the LCP. We have adjusted paragraphs 7.474 and 7.487 to refer to Türkiye's general argument.

[47] China's comments on Türkiye's request for interim review, para. 10.
[48] China's comments on Türkiye's request for interim review, para. 11.
[49] Türkiye's request for interim review, paras. 4.14 and 4.15.
[50] China's comments on Türkiye's request for interim review, para. 12.
[51] Türkiye's response to Panel question No. 71, para. 2.4.

7 FINDINGS

7.1 Introduction

7.1. This dispute concerns EVs, as well as hybrid vehicles and internal combustion engine vehicles, which China refers to as "other vehicles". As described above, there are two measures at issue, namely additional duties and an IPLS. Below we examine the claims and defences raised by the parties, starting with the additional duties, followed by the IPLS.

7.2 Additional duties

7.2. China raises claims under Articles I:1 and II:1(a) and (b) of the GATT 1994. Türkiye invokes Articles XX(b) and (g) of the GATT 1994 in respect of all claims. With regard to China's claim under Article I:1 concerning the current amended version of the additional duties, Türkiye also invokes Article XXIV of the GATT 1994 and paragraph 2(c) of the Enabling Clause.

7.3. As set out above, two versions of the additional duties exist: the original one as in force at panel establishment and the current, amended, one as enacted on 22 September 2025.[52] This raises the question which version(s) we should review. We begin by addressing this question. We then set out the order of analysis before turning to the claims and defences that the parties have put forward.

7.2.1 Decision on which version(s) of the additional duties to review

7.4. China requests us to make findings on both versions.[53] Türkiye submits that we should only review the current amended version and abstain from ruling on the now-expired version.[54]

7.5. A panel has a margin of discretion in the exercise of its inherent adjudicative powers under Article 11 of the DSU. Within this margin of discretion, it is for a panel to decide how it takes into account subsequent modifications to, or expiry or repeal of, the measure at issue.[55]

7.6. The parties do not dispute that *both* versions fall within the scope of our terms of reference, and we share the parties' assessment.[56] Specifically, as regards the current amended version, we note, as do the parties, that China's panel request explicitly refers to amendments to the additional duties as included in the scope of the request.[57] The request also directly lists the legal instrument (Presidential Decision No. 3351) that enacted the additional duties and that was modified by the new legal instrument currently in force (Presidential Decision No. 10436). Furthermore, while the amendment through Presidential Decision No. 10436 changed the level and, in some respects, the origin of the vehicles concerned by the additional duties, we agree with the parties that it did not change the essence of the measure itself – a further jurisdictional requirement developed in past cases with which we concur.[58] Finally, no due process concerns arise as this amendment occurred early in the proceedings, leaving enough opportunities for an exchange of arguments on it between the parties.

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[52] See section 2.1 above.

[53] China's response to Panel question No. 2, paras. 1 and 5; second written submission, paras. 16 and 21.

[54] Türkiye's response to Panel question No. 1, para. 1.3; second written submission, para. 2.10.

[55] Appellate Body Report, *EU – PET (Pakistan)*, para. 5.19. See also Appellate Body Report, *EU – Fatty Alcohols (Indonesia),* para. 5.180 (referring to Appellate Body Reports, *EC – Bananas III (Article 21.5 – Ecuador II) / EC – Bananas III (Article 21.5 – US)*, para. 270).

[56] This point is not only uncontested between the parties but not even discussed in respect of the original version. See China's second written submission, paras. 16 and 21; Türkiye's second written submission, paras. 2.4 and 2.11.

[57] China's panel request, p. 3 states:

> This request also covers any annexes or schedules thereto, amendments, supplements, replacements, renewals, extensions, successor, implementing measures or any other related measures.

[58] Appellate Body Reports, *Chile – Price Band*, paras. 136-139 and *EC – Selected Customs Matters*, para. 184; Panel Reports, *US – Tariff Measures (China)*, para. 7.35; *Russia – Pigs (EU)*, para. 7.130; *Colombia – Textiles*, para. 7.35; *EC – IT Products*, para. 7.139; *India – Additional Import Duties,* para. 7.56; and *US – Renewable Energy*, para. 7.10.

7.7. With both versions within our terms of reference, we therefore turn to the question of what to review. Starting with the current amended version, both parties request that we rule on this version. This fact, in and of itself, may already serve as an indication that ruling on this version is appropriate to secure a positive solution to the dispute. Furthermore, given that the new version was adopted early in the proceedings and given the limited nature of the changes it brings to the measure, it would seem not only feasible in terms of time, but also efficient for purposes of resolving the dispute, to rule on this version. We, therefore, decide to rule on the current amended version of the additional duties.

7.8. This leaves the question whether we should also review the original version of the additional duties. China requests this on two grounds: First, China argues that there is a remaining disagreement between the parties on whether this version of the additional duties was inconsistent with Türkiye's WTO obligations. China considers that the Panel has a sufficient basis to decide on this issue, given the extensive exchange of arguments between the parties. Second, China argues that there is a risk of further amendments in the future. China infers this from what it alleges to be frequent changes by Türkiye to the additional duties.[59] Türkiye considers the first ground insufficient, and the second ground unsubstantiated.[60]

7.9. Having considered the parties' arguments, we do not see any need to additionally rule on the original version. As noted above, the essence of the measure remains the same in both versions of the additional duties. By ruling on the current amended version, we address the parties' disagreement on whether that essence is consistent with Türkiye's WTO obligations and, therefore, resolve the matter that is in dispute. Furthermore, any findings and recommendations made on the current amended version, would also address the risk of further amendments (assuming such a risk exists) in that it would capture them as a matter of compliance. Separate findings on the original version are, therefore, not necessary.

7.10. In taking this approach, we see no contradiction with the cases that China has referred to in support of its position. In none of these cases did a panel rule on two versions of the same measure as is requested here.[61] Such requests have been made in other cases, but panels have only accepted them in very specific circumstances that are not present in this case.[62] Outside such circumstances, panels have considered that ruling on the amended measure was enough to resolve the matter in dispute.[63] As noted above, we take the same view.

7.11. In conclusion, our review of the additional duties in this case will be based only on the current amended version that was enacted on 22 September 2025.

[59] China's response to Panel question No. 2, paras. 5-6; second written submission, paras. 22-23; opening statement at the second meeting of the Panel, paras. 10-11.

[60] Türkiye's second written submission, paras. 2.12 and 2.16; opening statement at the second meeting of the Panel, paras. 2.1-2.2.

[61] In *India – Tariffs on ICT Goods* the panel decided to rule on an expired measure. However, this was the only measure the panel ruled on as both parties agreed that the new amended measure was WTO-consistent. (Panel Reports, *India – Tariffs on ICT Goods*, paras. 7.444-7.445). Similarly, in *EU – PET (Pakistan)* the panel decided to rule on an expired measure that had been neither amended nor replaced. (Panel Report, *EU – PET (Pakistan)*, para. 7.13). This decision was upheld on appeal. (Appellate Body Report, *EU – PET (Pakistan),* paras. 5.51-5.52). In *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II)*, the panel declined to rule on separate measures that had been terminated. The panel held, *inter alia*, that there was no reason to consider that the measures would be re-introduced and that additional findings would not provide any guidance beyond the findings already made (on another measure). (Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II)*, para. 7.505).

[62] In *Indonesia – Chicken (Article 21.5 – Brazil)*, the panel ruled on the original version of the implementation measure (in addition to the amended one) for systemic reasons relating to the fact that that measure had been adopted after the reasonable period of time for implementation had expired. (Panel Report, *Indonesia – Chicken (Article 21.5 – Brazil)*, para. 7.9). In *US – Renewable Energy*, the panel, in one of three instances, decided to rule on the original version of the measure in addition to the amended one on the grounds that the original measure continued to impair benefits. (Panel Report, *US – Renewable Energy*, paras. 7.37-7.41). See also Türkiye's second written submission, para. 2.19.

[63] Panel Reports, *Russia – Tariff Treatment*, paras. 7.168-7.169 and *Colombia – Textiles (Article 21.5 – Colombia) / Colombia – Textiles (Article 21.5 – Panama)*, paras. 7.111-7.114.

7.2.2 Order of analysis

7.12. China challenges the additional duties under Articles I:1 and II:1(a) and (b) of the GATT 1994 and it is in this order that it has presented the claims in its submissions. China also distinguishes between the additional duties on EVs, on the one hand, and those on internal combustion engine vehicles and hybrid vehicles, on the other hand, presenting them as two separate measures.

7.13. We note that panels are generally free to structure the order of their analysis as they see fit, provided that their analysis is consistent with the structure and logic of the provisions at issue in each dispute.[64] Based on this, we have decided to focus our analysis first on China's claims under Article II of the GATT 1994, which we consider to be the claims most directly relevant to the measure. Furthermore, we see no harm in addressing the additional duties for EVs and for other vehicles (which are set out in the same instrument) in the same analysis while fully respecting any differences between them.

7.14. Finally, we note that Türkiye raises a defence under Article XX of the GATT 1994 in respect of both claims (Article I and Article II) but also raises specific defences under Article XXIV of the GATT 1994 and under the Enabling Clause only in respect of the Article I claim. Given this, we will examine the relevant defences *per* claim.

7.2.3 China's claims under Article II of the GATT 1994

7.15. China claims that the additional duties are ordinary customs duties that exceed the bound duties in Türkiye's schedule and are, therefore, in violation of Article II:1(b), first sentence.[65] In the alternative, China claims that the additional duties are other duties or charges that are in excess of those recorded in Türkiye's schedule of concessions under Article II:1(b), second sentence. China also claims a consequential violation of Article II:1(a).[66]

7.16. Türkiye submits that China failed to adequately identify the relevant tariff headings for internal combustion engine vehicles and, therefore, has not established a *prima facie* case.[67] Türkiye, furthermore, submits that it has no tariff bindings in respect of either EVs or hybrid vehicles.[68]

7.2.3.1 Legal standard

7.17. Articles II:1(a) and (b) of the GATT 1994 states as follows:

> (a) Each Member shall accord to the commerce of the other Members treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to this Agreement.
>
> (b) The products described in Part I of the Schedule relating to any Member, which are the products of territories of other Members, shall, on their importation into the territory to which the Schedule relates, and subject to the terms, conditions or qualifications set forth in that Schedule, be exempt from ordinary customs duties in excess of those set forth and provided therein. Such products shall also be exempt from all other duties or charges of any kind imposed on or in connection with importation in excess of those imposed on the date of this Agreement or those directly and mandatorily required to be imposed thereafter by legislation in force in the importing territory on that date.

7.18. Thus, Article II:1(b) prohibits the imposition of both ordinary customs duties and other duties or charges that are in excess of what is provided for in a Member's schedule. In the case of ordinary customs duties, what is provided in the Member's schedule are tariff bindings for ordinary customs duties. In the case of other duties or charges, what is provided in the Member's schedule is a

[64] Appellate Body Reports, *Canada – Wheat Exports and Grain Imports*, paras. 126-127 and *Canada – Autos*, para. 151.

[65] In support of its factual description of the additional duties, China submits a table that shows the tariff lines in Heading 8703 in Türkiye's applied tariff schedule including changes made since 2002. (China's first written submission, para. 17, Exhibit CHN-3).

[66] China's first written submission, para. 119.

[67] Türkiye's first written submission, para. 2.22.

[68] Türkiye's first written submission, paras. 2.14, 2.26.

recording of such duties or charges.[69] Article II:1(a), in turn, prohibits less favourable treatment with respect to that provided for in the schedule. As past WTO adjudicators have stated, treatment inconsistent with Article II:1(b) necessarily means that there is "less favourable treatment" under Article II:1(a) such that a finding of inconsistency with Article II:1(a) in these circumstances is therefore consequential in nature.[70]

7.19. Below we elaborate on the different elements of the test where necessary. We begin our analysis under Article II:1(b). First, we assess whether the additional duties are ordinary customs duties within the meaning of Article II:1(b), first sentence, or other duties or charges within the meaning of Article II:1(b), second sentence. We then identify the commitments in Türkiye's schedule before assessing whether the additional duties are in excess of these commitments.

7.2.3.2 Whether the additional duties are "ordinary customs duties" or "other duties or charges"

7.20. Both parties take the view that the additional duties are ordinary customs duties. China submits that they are financial charges that are imposed on the importation of EVs and other vehicles and refers to the relevant decisions describing the additional duties as "customs duties".[71] Türkiye points out that they are ordinary customs duties for the purposes of Turkish law and that they have been adopted through the same legal instrument and process as Türkiye's MFN duties.[72]

7.21. Article II:1(b), while making a clear distinction between the two concepts, does not define "ordinary customs duties" or "other duties or charges". Panels and the Appellate Body, in past cases, have stated that "other duties or charges" is a residual category covering all duties or charges on or in connection with importation that are not ordinary customs duties, and which are not expressly provided for in Article II:2.[73] Furthermore, the panel in *Dominican Republic – Safeguard Measures*, in interpretating the term "ordinary customs duties" across the three authentic languages in the WTO, concluded that it was to be read *stricto sensu* and did not cover possible extraordinary or exceptional duties collected in customs.[74]

7.22. Keeping this guidance in mind, we turn to the parties' arguments. Starting with the parties' reference to how these duties have been qualified or adopted in Turkish law, we recall that the proper legal characterization of a measure under the covered agreements is a matter of its content and substance, not of the legal characterization or label it has been given in municipal law.[75] As to the ordinary or "extraordinary/exceptional" nature of a duty, in reply to a question on this point, Türkiye takes the view that there is nothing extraordinary or exceptional about the "mere additionality" of the additional duties to the MFN duties in this case and draws an analogy to the nature of compound tariffs.[76] To us, however, that analogy seems misplaced, as a compound tariff is not an additional duty in the same sense as the measures at issue in this dispute – but is instead

[69] See also the Understanding on the Interpretation of Article II:1(b) of the GATT 1994 which provides in relevant part:

> In order to ensure transparency of the legal rights and obligations deriving from paragraph 1(b) of Article II, the nature and level of any "other duties or charges" levied on bound tariff items, as referred to in that provision, shall be recorded in the Schedules of concessions annexed to GATT 1994 against the tariff item to which they apply. It is understood that such recording does not change the legal character of "other duties or charges".

[70] Appellate Body Report, *Argentina – Textiles and Apparel*, para. 47; Panel Reports, *EC – Chicken Cuts*, para. 7.65 and *EC – IT Products*, para. 7.747.

[71] China's first written submission, paras. 123-126 and 277-280.

[72] Türkiye's response to Panel question No. 19, paras. 1.50-1.51; first written submission, para. 2.8.

[73] Panel Reports, *Dominican Republic – Safeguard Measures*, para. 7.79 and *Dominican Republic – Import and Sale of Cigarettes*, para. 7.113; Appellate Body Report, *India – Additional Import Duties*, para. 151. We note that either type of duty (ordinary or other) accrues with the moment of importation, which can therefore not be used to distinguish the two types; but see China's first written submission, paras. 125-126 (referring to Panel Report, *Turkey – Additional Duties (US)*, para. 7.127).

[74] Panel Report, *Dominican Republic – Safeguard Measures*, para. 7.85.

[75] Appellate Body Report, *Indonesia – Iron or Steel Products*, para. 5.32 (referring to Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 593). See also Appellate Body Reports, *US – Large Civil Aircraft (2nd complaint),* para. 586; *US – Offset Act (Byrd Amendment)*, para. 259; *US – Softwood Lumber IV*, para. 56; *US – Corrosion-Resistant Steel Sunset Review*, fn 87; *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, para. 5.127.

[76] Türkiye's response to Panel question No. 19, para. 1.49.

the MFN duty itself with two components (one *ad valorem* and another specific) that have to be calculated and added.

7.23. Thus, we have some doubts about the parties' qualification of the additional duties as ordinary customs duties.[77] However, given the parties' agreement on this issue, we do not see a need to open this debate unless there is a difference in outcome depending on whether they qualify as one or the other. We note in this regard that if the additional duties were to be qualified as other duties or charges, it is uncontested that there is no relevant recording in Türkiye's schedule and, thus, the duties would be in violation of Article II:1(b).[78] Given this, our analysis below focuses on whether there would also be a violation if the duties were to be qualified as ordinary customs duties as suggested by the parties. If there is such a violation, we see no problem, for the purposes of deciding this case, in accepting the parties' contention that the additional duties qualify as ordinary customs duties, as the outcome would be the same. In proceeding on this basis, therefore, we turn next to the question whether there are tariff bindings in Türkiye's schedule.

7.2.3.3 Whether Türkiye has tariff bindings for tariff lines covered by the additional duties

7.24. China submits that Türkiye has bound tariffs on EVs and on other vehicles in its schedule.[79] Türkiye submits that China failed to adequately identify the relevant tariff headings for internal combustion engine vehicles and, therefore, has not established a *prima facie* case.[80] Türkiye, furthermore, considers that its schedule contains no tariff bindings on EVs or hybrid vehicles.[81]

7.25. We first address the issue of the *prima facie* case concerning internal combustion engine vehicles before turning to the question of relevant tariff bindings for EVs and hybrid vehicles in Türkiye's schedule.

7.2.3.3.1 Whether China has made a *prima facie* case on tariff bindings in respect of internal combustion engine vehicles

7.26. As noted in section 2.1 above, the additional duties apply to a total of 33 tariff lines at the 12-digit level (GTIP), of which three concern EVs, six concern hybrid vehicles, and 24 concern internal combustion engine vehicles. In its first written submission, China identifies the 30 tariff lines concerning hybrid vehicles and internal combustion engine vehicles when making its case under Article II:1(b) on what it collectively calls "other vehicles".[82] China then refers to the six specific tariff lines on hybrid vehicles to "illustrate" its assertion that Türkiye has bound its tariffs in respect of other vehicles. For these six tariff lines, China presents a table showing correlated subheadings at 12-digit-level which, it states, stem from Türkiye's WTO schedule of concessions.[83] Beyond this table, China, in its submissions, spells out the relevant subheadings in Türkiye's schedule and their specific correlation for one of these tariff lines, i.e. the tariff line concerning plug-in hybrids.[84] China refers to this table and to its arguments to submit that it has provided extensive arguments and evidence demonstrating *prima facie* that Türkiye has bound its tariffs for other vehicles.[85]

7.27. Türkiye submits that China failed to make a *prima facie* case in respect of the 24 tariff lines concerning internal combustion engine vehicles. According to Türkiye, China has not clearly identified the bound tariff subheadings corresponding to those vehicles.[86]

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[77] Among the third parties, Canada agrees with the parties on that the additional duties are ordinary customs duties. (Canada's third-party response to Panel question No. 6, para. 14).

[78] The parties refer to certain recordings in Türkiye's schedule which they do not consider to be applicable. (China's first written submission, para. 140; Türkiye's response to Panel question No. 19, para. 1.44).

[79] China's first written submission, paras. 127-130 and 281-292.

[80] Türkiye's first written submission, para. 2.22.

[81] Türkiye's first written submission, paras. 2.14 and 2.26.

[82] China's first written submission, paras. 274-275.

[83] Table bound rates (Excel), (Exhibit CHN-35).

[84] China's first written submission, para. 289; second written submission, para. 120.

[85] China's second written submission, para. 117.

[86] Türkiye's second written submission, para. 2.57; first written submission, paras. 2.20-2.23; opening statement at the first meeting of the Panel, para. 2.8.

7.28. A *prima facie* case is one which, in the absence of effective refutation by the defending party, requires a panel, as a matter of law, to rule in favour of the complaining party presenting the *prima facie* case.[87]

7.29. A complainant, therefore, must present arguments and evidence on all elements that make up a given claim.[88] In the case of a claim under Article II:1(b), first sentence, these elements are that there is an ordinary customs duty that is being applied in excess of bound rates in the schedule.[89] The identification of the bound rates is, thus, a necessary element of a complainant's *prima facie* case. Without it, a panel would not be in a position to establish whether a given duty has been applied "in excess".

7.30. As noted above, China presents a table showing bound tariffs only for the six tariff lines concerning hybrid vehicles, but not for the 24 tariff lines concerning internal combustion engine vehicles. In reply to a question, China confirmed that this table encompasses all bound tariff lines that it claims to have been exceeded for other vehicles.[90] Based on this, we consider that the scope of China's *prima facie* case is limited to these six tariff lines and the bound rates identified in the table. Thus, China has not made a *prima facie* case on the tariff lines concerning internal combustion engine vehicles. We note, in this context, that for these tariff lines there are no tariff bindings in Türkiye's schedule.

7.31. In conclusion, therefore, we find that China has not made a *prima facie* case in respect of the tariff lines concerning internal combustion engine vehicles. In continuing our analysis, we, therefore, focus on the question of the relevant tariff bindings for EVs and hybrid vehicles.

7.2.3.3.2 Existence of tariff bindings on EVs and hybrid vehicles

7.32. We note that Türkiye's current version of its schedule is based on the HS 2002 edition of the nomenclature. The specific six subheadings under which Türkiye applies additional duties to EVs and hybrid vehicles in its applied tariff schedule do not feature in it, as they were only introduced with the HS 2017 update (and have not been updated since).

7.33. China submits that Türkiye has a tariff binding on EVs under HS 2002 subheading 8703.90 in Türkiye's schedule.[91] As for hybrid vehicles, China contends that Türkiye has tariff bindings on these under HS 2002 subheadings 8703.21 to 8703.24, subheadings 8703.31 to 8703.33 and subheading 8703.90 in Türkiye's schedule.[92] In respect of all relevant subheadings, China refers to the World Customs Organization (WCO) Correlation Tables for the HS 2017 update, as well as to the Conversion and Correlation Tables of the United Nations' Statistical Division, which identify these subheadings as those under which EVs and hybrid vehicles were classified in the HS prior to 2017.[93]

7.34. Türkiye contests China's interpretation of its schedule. Its main arguments are that a Member cannot be considered to have bound itself at the end of the Uruguay Round, with respect to vehicles that incorporate a technology that barely existed at that time and had no commercial relevance.[94] Türkiye further submits that there is an ongoing transposition process in the WTO for Türkiye's schedule which is the appropriate setting to discuss and resolve issues relating to tariff bindings. As a matter of institutional balance, therefore, Türkiye considers that the Panel should decline to exercise its jurisdiction and not rule on the claim.[95]

7.35. Our task is to determine whether Türkiye has tariff bindings for EVs and hybrid vehicles in its schedule. Article II:7 of the GATT 1994 provides that Members' schedules are made an integral part of the GATT 1994. As such, pursuant to Article 3.2 of the DSU they are subject to interpretation under the customary rules of interpretation laid down in Articles 31 through 33 of the

[87] Appellate Body Report, *EC – Hormones*, para. 104.
[88] Appellate Body Report, *US – Gambling*, para. 140.
[89] See also para. 7.18 above.
[90] China's response to Panel question No. 17, para. 21.
[91] China's first written submission, para. 127.
[92] China's first written submission, paras. 282 and 292, referring to Exhibit CHN-35.
[93] China's first written submission, paras. 130, 286, and 291.
[94] Türkiye's first written submission, para. 2.15.
[95] Türkiye's first written submission, para. 2.16.

Vienna Convention on the Law of the Treaties (VCLT).[96] As is well established, the HS, on which Members' schedules are based, is relevant context for purposes of interpreting tariff commitments in these schedules.[97] As past cases demonstrate, this also includes HS documents and instruments relevant to the application and interpretation of the HS.[98] We do not understand the parties to disagree with this as a matter of principle.

7.2.3.3.2.1 Tariff bindings for EVs

7.36. We first turn to EVs. China identifies subheading 8703.90 in Türkiye's schedule, which covers the category "other" under the 8703 heading "motor cars and motor vehicles principally designed for the transport of persons […]" and remained unchanged with other HS amendments until HS 2017. More specifically, China points to the first of two 10-digit tariff lines, tariff line 8703.90.10.00, which covers the category "Other; with electric motors".[99] The schedule sets out a tariff binding of 20% for this tariff line.

7.37. On their face, the terms "with electric motor" cover EVs as the very essence of an EV is to have an electric motor as its sole means of propulsion. Indeed, we note that very similar terms are also used in the new subheading 8703.80, introduced with the HS 2017 update, to describe EVs, namely as "other vehicles with only electric motor for propulsion".

7.38. This interpretation is further confirmed by the WCO Correlation Tables and the UN Conversion Tables to which China refers. The purpose of these tables is to identify relevant subheadings (at the six-digit level) under which products were classified in the HS before a new subheading was created.[100] For the new subheading 8703.80 introduced by HS 2017, both tables identify 8703.90 as the only relevant subheading from which it originates. The table below shows the relevant extract from the WCO Correlation Tables.[101]

Table 1: Extract from the WCO Correlation Tables

2017 Version	2012 Version	Remarks
(…) 8703.80	(…) ex8703.90	The structure of heading 87.03 has been redrafted and renumbered to provide separately for hybrid electric vehicles, plug-in hybrid vehicles and for all-electric motor vehicles, respectively.

7.39. We note in this context that Türkiye's own classification practice in its applied tariff schedule prior to the HS 2017 amendment was to classify EVs under subheading 8703.90 and that several third parties have confirmed that this was also their practice.[102]

7.40. Based on this interpretation, we therefore preliminarily conclude that Türkiye's schedule has a tariff binding of 20% for EVs.

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[96] Appellate Body Reports, *EC – Computer Equipment*, para. 84 and *EC – Export Subsidies on Sugar*, paras. 166-167.

[97] Appellate Body Report, *EC – Chicken Cuts*, para. 199.

[98] Appellate Body Reports, *EC – Chicken Cuts*, paras. 224 and 233, and fn 431; *EC – Computer Equipment*, para. 89; Panel Report, *Turkey – Additional Duties (US)*, para. 7.139.

[99] The other 10-digit subheading is 8703.90.90.00 which covers the subcategory "other".

[100] The correlation tables establish the link in both "directions" in the relationship: (i) "forward", by showing how goods previously classified under a given subheading are now treated under a subsequent version of the HS; and (ii) "backward" by showing how goods now classified in a new tariff line have been classified in the past.

[101] World Customs Organization, Table I – Correlating the 2017 version to the 2012 version of the Harmonized System (October 2016) (Exhibit CHN-21). In WCO Correlation tables, "ex" means "partial coverage", i.e. only part of the scope of that HS subheading is being correlated.

[102] Türkiye's response to Panel question No. 9, para. 1.35; Australia's third-party response to Panel question No. 1, para. 1; Canada's third-party response to Panel question No. 1, para. 2; European Union's third-party response to Panel question No. 1, para. 1; Japan's third-party response to Panel question No. 1, para. 1; United States' third-party response to Panel question No. 1, para. 1.

7.2.3.3.2.2 Tariff bindings for hybrid vehicles

7.41. We next consider the subheadings that China refers to as relevant to hybrid vehicles. These HS 2002 subheadings in Türkiye's schedule refer to (i) vehicles with gasoline engine (8703.2 – "other vehicles, with spark-ignition internal combustion reciprocating piston engine"), further subdivided into different categories depending on cylinder capacity; (ii) vehicles with diesel or semi-diesel engines (8703.3 – "other vehicles, with compression-ignition internal combustion piston engine"), further subdivided into different categories depending on cylinder capacity; and (iii) "other" vehicles (8703.90), which is the same as the subheading discussed above for EVs. Within these subheadings, in Exhibit CHN-35 China identifies a total of 34 specific 12-digit tariff lines (GTIP) which are breakdowns of 18 10-digit tariff lines in Türkiye's schedule, 17 of which are bound at 19% and one at 20%.[103]

7.42. We note that the above subheadings in Türkiye's schedule do not refer to hybrid vehicles, because the schedule is expressed in the 2002 version of the HS nomenclature, well before the concept of hybrid vehicles was introduced by the HS 2017 update. For Türkiye, this means that none of the subheadings in its schedule cover hybrid vehicles.[104] At the same time, however, Türkiye, "in principle", agrees with the panel in *India – Tariffs on ICT Goods*[105] that:

> [P]ursuant to the rules of interpretation of the HS, any product at any moment in time must fall within the product scope of a tariff item in the HS [and that] [t]his necessarily includes new products that come into existence, for instance as a consequence of technological innovations, subsequent to a given HS nomenclature having been concluded.[106]

7.43. Based on this, and since Türkiye's schedule is based on the HS, hybrid vehicles, "in principle", must be classifiable somewhere in Türkiye's schedule even if its schedule does not contain a specific reference to them. Hybrid vehicles have both an electric motor and an internal combustion engine, and different types of hybrid vehicles combine them differently. Given this, they can be *prima facie* classified both under subheadings (i) and (ii) above, which are the subheadings for internal combustion engine vehicles, or under subheading (iii) which covers vehicles with electric motors. Under which exact subheading they would fall would depend on whether they have a gasoline or a diesel engine and on the dominant motor for propulsion.[107]

7.44. The WCO Correlation Tables as well as the UN Conversion Tables confirm this view. They identify the new subheadings for hybrid vehicles in HS 2017 (i.e. 8703.40, 8703.50, 8703.60 and 8703.70) and identify the above HS 2002 subheadings as the relevant subheadings under which hybrid vehicles were classified in the HS prior to the HS 2017 update. The table below shows the relevant extract from the WCO Correlation Tables between HS 2017 and HS 2012, which is identical to HS 2002 for the relevant codes.

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[103] Table bound rates (Excel), (Exhibit CHN-35).

[104] Türkiye's first written submission, para. 2.25; second written submission, para. 2.36; opening statement at the second substantive meeting of the Panel, para. 2.11.

[105] Türkiye's response to Panel question No. 16, para. 1.37.

[106] Panel Report, *India – Tariffs on ICT Goods*, para. 7.64.

[107] Note also Rule 3 of the General Rules for the Interpretation of the Harmonized System which states the following:

> When by application of Rule 2 (b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:
> (a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.
> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3 (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.
> (c) When goods cannot be classified by reference to 3 (a) or 3 (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.

Table 2: Extract from the WCO Correlation Tables

2017 Version	2012 Version	Remarks
8703.40	ex8703.21 ex8703.22 ex8703.23 ex8703.24 ex8703.90	The structure of heading 87.03 has been redrafted and renumbered to provide separately for hybrid electric vehicles, plug-in hybrid vehicles and for all-electric motor vehicles, respectively.
8703.50	ex8703.31 ex8703.32 ex8703.33 ex8703.90	
8703.60	ex8703.21 ex8703.22 ex8703.23 ex8703.24 ex8703.90	
8703.70	ex8703.31 ex8703.32 ex8703.33 ex8703.90	

7.45. We also note in this context that Türkiye's own classification practice in its applied tariff schedule prior to the HS 2017 was to classify hybrid vehicles under these subheadings depending on the predominant motor type.[108] Furthermore, several third parties confirmed that their practice was also to classify hybrid vehicles under these subheadings.[109]

7.46. Türkiye generally calls into question the interpretive weight of the WCO Correlation Tables pointing out that they are not legally binding and that they "may reflect multiple interpretations where consensus was not reached among Members".[110] However, we note that the Correlation Tables only confirm our interpretive result and that this result would not change even if they were ignored.[111] Furthermore, we observe that no absence of consensus is noted in the Correlation Tables in this specific case, so that the question of how such lack of consensus would affect the interpretation can be left open.[112]

7.47. Based on the above interpretation, we therefore preliminarily conclude that HS 2002 subheadings 8703.2, 8703.3 and 8703.90 in Türkiye's schedule cover hybrid vehicles. Tariff bindings

[108] Türkiye's response to Panel question No. 9, para. 1.35.

[109] Australia's third-party response to Panel question No. 1, para. 1; Canada's third-party response to Panel question No. 1, para. 2; European Union's third-party response to Panel question No. 1, para. 1; Japan's third-party response to Panel question No. 1, para. 1; United States' third-party response to Panel question No. 1, para. 1. We note that only Australia and Japan, in this regard, also mention subheading 8703.90.

[110] Türkiye's response to Panel question No. 12, paras. 1.29-1.32, in particular para. 1.30; second written submission paras. 2.41-2.46.

[111] In reply to a question from the Panel, several third parties also commented on the legal relevance in WTO law of the WCO Correlation Tables, generally confirming and emphasizing the importance of these tables as a guidance tool for transposition. (Japan's third-party response to Panel question No. 2, para. 5; United States' third-party response to Panel question No. 2, para. 3). Australia considers that it may be appropriate to give less weight to the correlation tables where a Member can prove it held a differing view with respect to a specific classification. (Australia's third-party response to Panel question No. 2, para. 4). Canada considers the correlation tables to be relevant context within the meaning of the VCLT. (Canada's third-party response to Panel question No. 2, para. 7).

[112] Where there is an absence of consensus, WCO Correlation Tables specifically list the specific subheading in question with an asterisk and a note saying there was "no consensus" on that correlation pair. We note that one such instance was relevant in the case *EC – IT Products.* The panel in that case faced a situation where, for one of the products at issue in the dispute (multifunctional machines) the correlation tables in G/MA/W/76 linking HS 2007 subheading 8443 31 with HS 2002 listed subheadings ex8443.51*, ex8471.60, ex8517.21, ex9009.11*, ex9009.12* with a note saying there was "no consensus" on the subheadings with the asterisk. The panel in that case left the Correlation Tables out of its analysis, see Panel Reports, *EC – IT Products,* para. 7.1242.

of 19% and (in one case of) 20%, exist for a total of 34 tariff lines at the 12-digit level (GTIP), which are breakdowns of 18 10-digit tariff lines in Türkiye's schedule.[113]

7.48. We now turn to Türkiye's main arguments, which call into question this interpretive result.

7.2.3.3.2.3 Türkiye's argument on technological and commercial developments regarding EVs and hybrid vehicles

7.49. While Türkiye, as seen above, agrees in principle that all products must always be classifiable in a Member's schedule, it considers that "this principle must be adjusted"[114] in the specific case of EVs and hybrid vehicles.[115]

7.50. Türkiye submits in this regard that a Member cannot be considered to have bound itself at the end of the Uruguay Round with respect to "vehicles that incorporate a technology that barely existed at the time and had no commercial relevance".[116] Türkiye explains that at the time of the Uruguay Round the EV industry was still in its infancy, and the few EVs that existed then were prototypes, small-scale fleet trials or demonstration projects and were not produced at commercial scale. For that reason, Türkiye argues, they were classified under the residual category "other".[117] The subsequent technological and commercial development leading to mass production, according to Türkiye, could not have been reasonably anticipated.[118] Türkiye, thus, submits that its tariff commitments were made in a context that was fundamentally different from, and did not reflect, the conditions of the current EV market.[119] Türkiye considers that schedules must be interpreted in a manner that preserves their intended legal and commercial meaning within the negotiated multilateral framework.[120] In this respect, we understand Türkiye to argue that subheading 8703.90 should be read as still only extending to prototypes and other residual categories, but not to commercially available vehicles. Türkiye does not offer an alternative reading of where modern EVs should be classified in its current schedule *in lieu* of under HS 2002 subheading 8703.90. Instead, it suggests that this question should be left to the transposition process.[121]

7.51. We accept Türkiye's submission that important technological and commercial developments for EVs have occurred since the conclusion of the Uruguay Round. We also do not see China disagreeing with this point.[122] However, even if there have been such developments, the question is on what basis this could and would need to be taken into account in the interpretation of the above subheadings in Türkiye's schedule.[123]

7.52. We recall that under Article 31(1) of the VCLT the meaning of a given treaty term is to be determined "in accordance with the ordinary meaning to be given to the terms of the treaty in their

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[113] These specific subheadings, with the exception of HS 2002 subheading 8703.90, do not cover passenger cars (referred to as "motor cars" in the schedule). Türkiye's schedule, therefore, has no tariff bindings for hybrid vehicles that are passenger cars (with the exception of hybrid vehicles that fall under 8703.90). As noted in para. 7.30 above, the same is true for passenger cars with conventional internal combustion engines, since these fall under the same subheadings.

[114] Türkiye's response to Panel question No. 16, para. 1.38.

[115] See Türkiye's opening statement at the second meeting of the Panel, where Türkiye states the following:

> This does not mean that, for any product, Türkiye makes the argument that "tariff bindings do not apply to products that have undergone technological innovation since the tariff binding was negotiated". Nor would Türkiye's approach mean that "any innovation would risk excluding" products from bindings. Rather, EVs are a rare and exceptional case of a technology that, due to unexpected technical and commercial development, has far exceeded any meaning that the drafters could have conceivably attributed to the term "electric motor[] vehicles" back in 1994. Thus, the Panel can limit its findings entirely and exclusively to the unique case of EVs (and also hybrid vehicles), without prejudicing any other products in any future dispute.

(Türkiye's opening statement at the second meeting of the Panel, para. 2.7) (fns omitted)

[116] Türkiye's first written submission, para. 2.15.

[117] Türkiye's response to Panel question No. 8, para. 1.31.

[118] Türkiye's response to Panel question No. 8, paras. 1.32-1.34.

[119] Türkiye's response to Panel question No. 8, para. 1.34.

[120] Türkiye's opening statement at the first substantive meeting of the Panel, para. 2.3.

[121] Türkiye's second written submission, paras. 2.34, 2.36, and 2.44.

[122] China's second written submission, para. 34.

[123] See also China's second written submission, para. 34.

context and in the light of its object and purpose." As the International Law Commission (ILC) explained:

> [T]he text must be presumed to be an authentic expression of the intention of the parties; in consequence, the starting point of interpretation is the elucidation of the meaning of the text, not an investigation *ab initio* into the intention of the parties.[124]

7.53. Thus, the task of a treaty interpreter is to examine the words of the treaty to determine the intentions of the parties rather than to examine an alleged common intention with a view to determining the meaning of such words. It is the words that reflect the intention and the inquiry only needs to go beyond those words, pursuant to Article 32, where the interpretation "leaves the meaning ambiguous or obscure" or "leads to a result that is manifestly absurd or unreasonable".[125]

7.54. Türkiye's suggestion, therefore, that we discern a common intention[126] of the parties on the meaning of the relevant subheadings from the technological and commercial circumstances regarding EVs and hybrid vehicles at the time of the conclusion of the Uruguay Round, is misplaced. We discern that common intention from the ordinary meaning of the terms in those HS codes.[127] Those terms determine what technological and commercial developments may be covered by the concession. Indeed, we see no point in discussing, as Türkiye does, whether treaty terms generally are technologically neutral or whether an evolutionary interpretation is recognized as a principle.[128] What developments they may or may not cover is a question of determining the ordinary meaning of the individual terms at issue.

7.55. We find support for this view in the Appellate Body statements in *China – Publications and Audiovisual Products*. In that case, the Appellate Body, in the context of interpreting China's Schedule of Specific Commitments for services (GATS schedule), rejected the view that treaty terms should only be given the meaning they had at the time the schedule was concluded. The Appellate Body noted that such an interpretation:

> [W]ould undermine the predictability, security, and clarity of GATS specific commitments, which are undertaken through successive rounds of negotiations, and which must be interpreted in accordance with customary rules of interpretation of public international law.[129]

7.56. Focusing on the meaning of the specific commitment at issue, the Appellate Body considered that those terms were "sufficiently generic that what they apply to may change over time".[130] As seen above, this is the case here as well. Indeed, the meaning of "electric motor" is such that it covers EVs both as they were at the time of conclusion of the treaty and as they are today.

7.57. In sum, we consider that Türkiye's argument has no basis in the VCLT. Our preliminary interpretive result, reached above, therefore stands. In fact, as noted above, Türkiye has not suggested an alternative reading on where to classify EVs and hybrid vehicles and suggests instead that this question should be left to the transposition process. We turn to this issue next.

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[124] Yearbook of the International Law Commission, 1966, vol. II, p. 220, para. (11).

[125] In that sense, the ILC noted that the word "supplementary" in Article 32 emphasizes that this Article "does not provide for alternative, autonomous, means of interpretation but only for means to aid an interpretation governed by the principles contained in article [31]." (Yearbook of the International Law Commission, 1966, vol. II, p. 223, para. (19)).

[126] We note that Türkiye also refers to "common expectations" (Türkiye's opening statement at the second meeting of the Panel, para. 2.6) and "legitimate expectations" (Türkiye's opening statement at the first meeting of the Panel, para. 2.5). We do not consider that "legitimate expectations" as such have a separate place in the interpretation of treaty provisions under the rules of the Vienna Convention. (See Appellate Body Reports, *EC – Computer Equipment*, para. 83 and *India – Patents (US)*, para. 45).

[127] We also point out that the drafters chose to use the HS to express their concessions in the schedules, which is a classification system where all products can be classified at all times.

[128] Türkiye's second written submission, paras. 2.49 and 2.50.

[129] Appellate Body Report, *China – Publications and Audiovisual Products*, para. 397.

[130] Appellate Body Report, *China – Publications and Audiovisual Products*, para. 396.

7.2.3.3.2.4 Türkiye's arguments on the role of the transposition process

7.58. Türkiye submits that the question of its bound rates on EVs and hybrid vehicles should be left to the transposition process, through which WTO Members implement the HS amendments in their schedules, and that the Panel should, therefore, refrain from ruling on them.[131] For Türkiye the HS transposition process offers an opportunity and a platform for WTO Members to address not only the technical aspects of the HS transposition itself, but also a range of additional concerns. As Türkiye contends, these concerns can include precisely technological developments such as those at issue in this dispute.[132] Türkiye sees this process as separate from and preceding eventual negotiations on modifications of schedules under Article XXVIII.[133] Türkiye's argument that the Panel should respect the ongoing transposition process is based on the view that there is an "institutional balance" between different WTO bodies that the Panel should not interfere with.[134]

7.59. China rejects Türkiye's reading of the transposition process.[135] For China, even if the current transposition process were relevant, which China contends it is not, it would not change the fact that Türkiye's current certified schedule in HS 2002 includes bindings on EVs. China submits that the fact that Article XXVIII provides specific procedures to modify tariff schedules further confirms that the transposition process is not the appropriate vehicle for such purposes.[136] Finally, in China's view, the Panel has a duty to rule on the issue.[137]

7.60. We consider that Türkiye's reading of the transposition process is incorrect. In particular, we understand the process (as set out in the relevant Decision of the General Council regarding the 2007 transposition process, which Türkiye refers to as an example)[138] to narrowly define the circumstances in which a concession may need to be modified.[139] Furthermore, in these circumstances, we understand it to specifically refer negotiations to the Article XXVIII process (and that this process thus may well take place before the transposition is concluded).[140]

7.61. But even if Türkiye were correct in its reading, we agree with China that this would not change the fact that Türkiye's current certified schedule in HS 2002 includes tariff bindings. These tariff bindings apply until any negotiations on modified tariff bindings have been concluded.[141]

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[131] Türkiye's first written submission, paras. 2.16 and 2.17; second written submission, para. 2.53.
[132] Türkiye's response to Panel question No. 10, para. 1.37; second written submission, para. 2.44.
[133] Türkiye's response to Panel question No. 11, para. 1.28.
[134] Türkiye's first written submission, paras. 2.16 and 2.17; opening statement at the first substantive meeting of the Panel, paras. 2.6-2.7; responses to Panel question No. 15, para. 1.36, and No. 16, para. 1.40; second written submission, para. 2.54; and opening statement at the second substantive meeting of the Panel, para. 2.8.
[135] China's opening statement at the first substantive meeting of the Panel, para. 12; second written submission, para. 45; and opening statement at the second substantive meeting of the Panel, para. 17.
[136] China's response to Panel question No. 11, para. 8.
[137] China's opening statement at the first substantive meeting of the Panel, para. 12; second written submission, paras. 45 and 46; and opening statement at the second substantive meeting of the Panel, para. 17.
[138] General Council Decision on "A Procedure for the Introduction of Harmonized System 2007 Changes to Schedules of Concessions Using the CTS Database", Decision of the General Council of 15 December 2006, document WT/L/673 (2007 GC Decision).
[139] We note that the Decision firmly bases the transposition on the WCO Correlation Tables (referred to in the Decision as "concordance tables"). It is through these tables that any changes from HS 2002 to HS 2007 are identified and the transposition implemented by Members and the Secretariat. Nothing suggests that this process of identification of changes, itself, is open to discussion. Furthermore, as the 2007 GC Decision states "to the extent possible, the scope of the concessions […] shall remain unchanged" and also states that "[i]f the concessions of the original HS 2002 tariff lines are different, the concession elements of the new HS 2007 subheading/tariff line should reflect this." (Paragraph 4 of the 2007 GC Decision). There is only one scenario, where this may not be possible, namely where a new subheading refers back to several different tariff bindings. For this scenario Paragraph 5 of Annex 2 of the 2007 GC Decision sets out four different, closely defined, methodologies how to determine the applicable tariff binding.
[140] Paragraph 15 of the 2007 GC Decision and Paragraph 5 of Annex 2 of the same Decision. We also note that China and several third parties describe the transposition process as "mechanistic/technical" in nature. (See China's second written submission, para. 47 agreeing with Canada's third-party statement, paras. 11 and 12; Australia's third-party response to Panel question No. 5, paras. 10-11; European Union's third-party response to Panel question No. 5, paras. 7-9; Japan's third-party response to Panel question No. 5, para. 7; United States' third-party response to Panel question No. 5, paras. 5-6).
[141] See also Panel Report, *EU – Poultry Meat (China)*, paras. 7.512-7.514.

7.62. This brings us to the issue of "institutional balance". We can agree with the notion that the covered agreements set out different tasks for different WTO bodies and that this results in some form of "institutional balance" that must be preserved. However, we disagree with Türkiye's description of the tasks at issue regarding Members' tariff concessions. Tariff concessions, as set out in Members' schedules, are the currently applicable treaty provisions as negotiated and concluded by Members. These tariff concessions can be re-negotiated, and the covered agreements assign this task to the Article XXVIII process (which is why the 2007 General Council (GC) Decision refers to that process). On the dispute settlement side, and to the extent that a dispute arises between Members, we consider that Article 11 of the DSU requires a panel to clarify what the existing tariff concessions are as part of its task to make an objective assessment of the matter before it. As noted above, these existing tariff concessions apply until any tariff negotiations under Article XXVIII have resulted in modified concessions.

7.63. Based on this understanding of the division of tasks, and like the panel in *Turkey – Additional Duties (US)*, we consider that we must make an objective assessment and a finding on what Türkiye's existing tariff concessions are.[142] It is, of course, correct, as Türkiye argues, that Article 11 does not require us to make findings where these are not necessary to resolve the dispute.[143] However, absent a finding on what Türkiye's existing tariff concessions are, we would not be able to make a finding under Article II of the GATT 1994, the DSB would not be able to discharge its responsibilities and the dispute here would remain unresolved.[144] Türkiye's analogy to the exercise of judicial economy, therefore, is misplaced.

7.64. In conclusion, we find that Türkiye's arguments on the role of the transposition process are both factually and legally inapposite. The interpretive result that we have reached above, thus, applies.

7.2.3.3.3 Conclusion on tariff bindings

7.65. Summing up on the question whether Türkiye's schedule contains tariff bindings in respect of the tariff lines covered by the additional duties, we recall that we have only examined this question in respect of EVs and hybrid vehicles, as we have found that China has not made a *prima facie* case in respect of the internal combustion engine vehicles concerned. We find the following: (i) for EVs, Türkiye has a tariff binding of 20% under tariff line 8703.90.10; (ii) for hybrid vehicles, Türkiye has tariff bindings of 19% and 20% respectively for hybrid vehicles that fall under any of the specific 34 tariff lines (GTIP), which China has identified and which are breakdowns of 18 10-digit tariff lines under HS 2002 subheadings 8703.21 to 8703.24, subheadings 8703.31 to 8703.33, and subheading 8703.90 in Türkiye's schedule.

7.2.3.4 Whether the additional duties are "in excess" of the tariff bindings

7.66. We now turn to the question whether the additional duties are in excess of the above tariff bindings. We recall that the additional duties as they currently apply are as follows: (i) a mixed duty of 30% or minimum USD 8,500/unit, whichever is higher, for EVs; (ii) a mixed duty of 25% or minimum USD 6,000/unit, whichever is higher, for non-plug-in hybrids; and (iii) a mixed duty of 30% or minimum USD 7,000/unit, whichever is higher, for plug-in hybrids.[145] Furthermore, the duties apply separately from, and in addition to, the 10% *ad valorem* duty, which is Türkiye's MFN rate for all vehicles at issue.

7.67. Clearly, these duties are, by definition, in excess of the above tariff bindings of 20% for EVs and 19% or 20% for hybrid vehicles. Even only taking into account the *ad valorem* components of these additional duties, they are in excess of these bindings (i.e. 19% and 20%). Türkiye has not contested this.

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[142] Panel Report, *Turkey – Additional Duties (US)*, para. 6.26.
[143] Türkiye's response to Panel question No. 15, para. 1.34.
[144] See also China's second written submission, para. 44.
[145] See section 2.1 above. Omitted from the description here are the additional duties on internal combustion engine vehicles. As noted above, we have excluded them from the scope of our review under Article II, because China has failed to make a *prima facie* case on relevant tariff bindings, see section 7.2.3.3.1 above.

7.68. We therefore find that the additional duties on EVs are in excess of Türkiye's tariff bindings. Furthermore, the additional duties on hybrid vehicles are in excess of Türkiye's tariff bindings to the extent these vehicles fall under the scope of the above specific 34 tariff lines (GTIP), which are a breakdown of 18 10-digit tariff lines in Türkiye's schedule in HS 2002.

7.2.3.5 Conclusion on Article II:1(b)

7.69. We find that the additional duties are inconsistent with Article II:1(b) because, and to the extent that, they exceed certain tariff bindings in Türkiye's schedule. We recall that at the beginning of this analysis, we left open whether the additional duties are ordinary customs duties, as the parties contend, or whether they are other duties and charges. As we pointed out, the difference would only matter, if there were a difference in outcome under Article II:1(b). As the above analysis demonstrates that there is no difference in outcome, we accept the parties' contention that the additional duties are ordinary customs duties.

7.2.3.6 Consequential finding under Article II:1(a)

7.70. As noted above, in line with past WTO adjudicators, we consider that a finding of inconsistency with Article II:1(b) necessarily leads to a finding of inconsistency with Article II:1(a).[146]

7.71. Within the scope of the above finding under Article II:1(b), (see Table 3 below), therefore, we also find that the additional duties are inconsistent with Article II:1(a).

7.2.3.7 Conclusion and scope of findings

7.72. As there are mixed findings at different levels of the analysis, we find it appropriate in this section to circumscribe the precise scope of our finding of inconsistency under Articles II:1(b) and II:1(a). We recall that the additional duties apply to 33 tariff lines in Türkiye's applied tariff schedule which cover three different categories of vehicles, namely internal combustion engine vehicles,[147] EVs,[148] and hybrid vehicles.[149] In terms of these three categories, there is (i) no violation of Article II:1(b) with regard to internal combustion engine vehicles; (ii) a full finding of violation with regard to all EVs, and (iii) a limited finding of violation with regard to hybrid vehicles.

7.73. With respect to the limited finding of violation regarding hybrid vehicles, the finding covers only those hybrid vehicles that are classified under the 34 specific HS 2002 12-digit tariff lines (GTIP) listed in the table below as identified by China. These 34 tariff lines are breakdowns of 18 10-digit tariff lines in Türkiye's schedule, 17 of which are bound at 19% and one at 20%. We recall in this respect that all hybrid vehicles are subject to the additional duties. Thus, for those hybrid vehicles that are *not* classified under the 34 specific tariff lines, there is no tariff binding, and, therefore, no inconsistency with Articles II:1(b) and II:1(a). Therefore, in practice, that is, under Türkiye's applied tariff schedule, whether the finding of inconsistency applies to a specific hybrid vehicle, depends on whether this vehicle would have been classified under one of the 34 specific tariff lines prior to the introduction of the specific subheadings for hybrid vehicles (and EVs) through HS 2017.[150] For maximum clarity, we list the 34 tariff lines in the table below.

[146] See para. 7.18 above.
[147] Applied tariff lines 8703.21.10.10.00 through 8703.33.90.10.12.
[148] Applied tariff lines 8703.80.10.00.21, 8703.80.10.00.29, 8703.80.10.00.39.
[149] Applied tariff lines 8703.40.10.00.00; 8703.40.90.00.00, 8703.50.00.00.00, 8703.60.10.00.00, 8703.60.90.00.00, 8703.70.00.00.
[150] We note in this context that in Türkiye's classification practice prior to the HS 2017 edition, hybrid vehicles were classified based on the predominant motor type (fuel based or electric) providing propulsion to the vehicle. If the fuel-based motor was the primary source of propulsion, the vehicle would be classified under HS 8703.21-24 or 8703.31-33, depending on the fuel type (gasoline or diesel). (Türkiye's response to Panel question No. 9, para. 1.35).

Table 3: Scope of findings in respect of hybrid vehicles

No.	HS 2002 12-digit tariff lines (GTIP) as identified by China[151]	10-digit tariff lines as contained in Türkiye's HS 2002 CTS [152]	Türkiye's bound duty (%)
1	8703.21.10.90.11	8703.21.10.90	19
2	8703.21.10.90.19		
3	8703.21.90.90.11	8703.21.90.90	19
4	8703.21.90.90.19		
5	8703.22.10.90.11	8703.22.10.90	19
6	8703.22.10.90.12		
7	8703.22.10.90.19		
8	8703.22.90.90.11	8703.22.90.90	19
9	8703.22.90.90.12		
10	8703.22.90.90.19		
11	8703.23.11.00.00	8703.23.11.00	19
12	8703.23.19.90.11	8703.23.19.90	19
13	8703.23.19.90.19		
14	8703.23.90.90.11	8703.23.90.90	19
15	8703.23.90.90.19		
16	8703.24.10.90.11	8703.24.10.90	19
17	8703.24.10.90.19		
18	8703.24.90.90.11	8703.24.90.90	19
19	8703.24.90.90.19		
20	8703.31.10.90.11	8703.31.10.90	19
21	8703.31.10.90.19		
22	8703.31.90.90.11	8703.31.90.90	19
23	8703.31.90.90.19		
24	8703.32.11.00.00	8703.32.11.00	19
25	8703.32.19.90.11	8703.32.19.90	19
26	8703.32.19.90.19		
27	8703.32.90.90.11	8703.32.90.90	19
28	8703.32.90.90.19		
29	8703.33.11.00.00	8703.33.11.00	19
30	8703.33.19.90.11	8703.33.19.90	19
31	8703.33.19.90.19		
32	8703.33.90.90.11	8703.33.90.90	19
33	8703.33.90.90.19		
34	8703.90.10.00.00	8703.90.10.00	20

7.74. In conclusion, therefore, we find that the additional duties are inconsistent with Articles II:1(b) and II:1(a) in respect of EVs. Furthermore, in respect of hybrid vehicles, the additional duties are inconsistent with Articles II:1(b) and II:1(a) for those hybrid vehicles that would have been classified under the specific 34 12-digit tariff lines (GTIP), as identified in this

[151] Based on 2002 GTIP (Exhibit CHN-35).
[152] Based on HS 2002 (CTS file of Türkiye (Excel) (Exhibit CHN-20)).

Report, prior to the introduction of HS 2017. Finally, we find that China has not demonstrated that the additional duties are inconsistent with Articles II:1(b) and II:1(a) in respect of internal combustion engine vehicles.

7.2.4 Whether the inconsistency with Article II is justified under Articles XX(b) and (g) of the GATT 1994

7.2.4.1 Introduction

7.75. We now turn to the question whether the inconsistency that we have found above is justified under Articles XX(b) and (g), as Türkiye contends. As set out in more detail below, Türkiye argues that the additional duties are necessary for it to achieve its carbon dioxide (CO_2) emissions reduction objectives in the transport sector by developing domestic EV manufacturing capacity.[153] China submits that Türkiye fails to substantiate its defences and that the Panel should therefore dismiss them.[154]

7.76. Article XX provides in relevant parts as follows:

> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:
>
> …
>
> *(b)* necessary to protect human, animal or plant life or health;
>
> …
>
> *(g)* relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
>
> …

7.77. As is well established, the analysis of a measure under Article XX of the GATT 1994 is two-tiered. First, a panel must examine whether the measure falls under one of the exceptions listed under Article XX, that is, whether it is provisionally justified. Secondly, a panel must consider whether the measure at issue satisfies the requirements of the *chapeau* of Article XX.[155] Furthermore, the burden of proof rests on the party invoking the defence.[156]

7.78. The parties have submitted arguments on all elements, and we examine these arguments as and when we address each step of this two-tiered analysis. We begin with the provisional justification under the subparagraphs and examine separately the two exceptions that Türkiye has invoked.

7.2.4.2 Article XX(b)

7.2.4.2.1 Introduction

7.79. Türkiye submits that the additional duties have the objective of protecting the environment, and specifically, fostering the development and use of EVs and hybrid vehicles in Türkiye and thus reducing the overall CO_2 emissions in the transport sector.[157] Türkiye recalls its long-standing policy

[153] Türkiye's first written submission, para. 2.68; opening statement at the first meeting of the Panel, para. 1.7.
[154] China's opening statement at the first meeting of the Panel, para. 14.
[155] Appellate Body Report, *Brazil – Retreaded Tyres*, para. 139.
[156] Appellate Body Report, *US – Wool Shirts and Blouses*, p. 14, DSR 1997:I, 323, at p. 335.
[157] Türkiye's first written submission, para. 2.68.

commitment to climate change mitigation and the international obligations it has undertaken under the United Nations Framework Convention on Climate Change, in particular in the Kyoto Protocol and the Paris Agreement.[158] The additional duties, according to Türkiye, as part of a multi-pronged strategy to meet Türkiye's climate targets and to decarbonize key sectors, including transport.[159] Türkiye emphasizes that support for its domestic industry is not an end in itself, but rather a means to achieving the environmental goal of a net greater EV uptake.[160] Türkiye thus describes a "causal chain" or "causal pathway" that links the "transitional, intermediate step" of ensuring a viable EV-producing industry to the goal of protecting the environment.[161] For Türkiye, the objective of reducing CO_2 emissions is "of the highest importance", and the additional duties' contribution to the stated objective is "significant"[162], and its trade-restrictiveness is "not excessive".[163] Türkiye, therefore, considers that the additional duties meet the necessity test.

7.80. China submits that the additional duties are not designed to reduce CO_2 emissions or fight climate change.[164] China contends that Türkiye has failed to demonstrate that the additional duties are designed to achieve this objective as it has neither demonstrated that imported EVs create a risk that CO_2 emissions in the transportation sector will increase[165], nor substantiated a positive link between the additional duties and the stated objective.[166] Addressing necessity in the alternative, China agrees with the importance of the objective of reducing CO_2 emissions, but considers that the additional duties do not contribute to this objective and that they are highly trade-restrictive.[167] China also submits that there are less trade-restrictive alternative measures, namely the elimination of duties on all EVs regardless of their origin and tax incentives for building charging stations.[168]

7.81. Article XX(b) refers to measures "necessary to protect human, animal or plant life or health". To assess whether a measure is provisionally justified under Article XX(b), past adjudicators have examined whether the measure is (i) taken/designed to protect human, animal or plant life or health and (ii) necessary to achieve this objective.[169]

7.82. There seems to be little disagreement between the parties that the *second step*, i.e. the necessity test, entails a weighing and balancing of different factors, namely (i) the importance of the objective that the measure seeks to achieve, (ii) the degree of trade-restrictiveness of the measure, and (iii) the degree of contribution that the measure makes to achieving the objective.[170] Both parties also accept that the necessity test further involves an assessment of whether there are less trade-restrictive alternative measures, which the responding party, here China, has the burden to put forward. We agree with these elements, which past adjudicators have consistently assessed in this manner.[171]

7.83. The parties also agree that the *first step* of the examination i.e. the question whether the measure is taken/designed to protect human, animal or plant life or health, requires establishing that there is a link or relationship between the measure and the protected interest. However, the parties disagree on what is required to establish that such a link or relationship exists. Türkiye, referring to the Appellate Body statement in *Colombia – Textiles*, understands this step to be satisfied when it is established that the measure is "not incapable" of achieving the stated objective.[172]

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[158] Türkiye's first written submission, paras. 2.57-2.59.
[159] Türkiye's first written submission, para. 2.61.
[160] Türkiye's opening statement at the second substantive meeting of the Panel, para. 2.14.
[161] Türkiye's responses to Panel questions No. 24, para. 1.110, and Nos. 25 and 26, para. 1.115.
[162] Türkiye's first written submission, para. 2.86.
[163] Türkiye's first written submission, para. 2.98.
[164] China's opening statement at the first substantive meeting of the Panel, para. 15.
[165] China's opening statement at the first substantive meeting of the Panel, para. 17.
[166] China's second written submission, para. 131.
[167] China's opening statement at the first substantive meeting of the Panel, para. 19.
[168] China's opening statement at the first meeting of the Panel, paras. 29-30; second written submission, paras. 95 and 97.
[169] Panel Reports, *US – Gasoline*, para. 6.20; *EC – Asbestos*, para. 8.169; *EC – Tariff Preferences*, paras. 7.195-7.197 (referring to Appellate Body Report, *Korea – Various Measures on Beef*, para. 157, where the Appellate Body had adopted the same approach under Article XX(d)); *Brazil – Retreaded Tyres*, para. 7.40; *China – Raw Materials*, para. 7.479; *Indonesia – Chicken*, para. 7.209.
[170] Türkiye's first written submission, paras. 2.40-2.43; China's second written submission, para. 89.
[171] See e.g. Appellate Body Report, *China – Publications and Audiovisual Products*, paras. 239 and 242.
[172] Türkiye's second written submission, para. 2.80.

7.84. China submits that a responding party is required to establish the existence of a risk and that this is the starting point of an analysis under the first step.[173] Furthermore, for China, the "design" test requires that Türkiye must demonstrate a "positive relationship" between the measure (i.e. the additional duties) and the objective (i.e. reducing CO_2 emissions), i.e. that the measure is "capable" of reducing the risk that is purportedly being addressed.[174]

7.85. The disagreement between the parties is centred on a statement the Appellate Body made in *Colombia – Textiles*. This case concerned a defence under Article XX(a) that refers to measures "necessary to protect public morals". The Appellate Body, in the context of describing the first step of the analysis in that provision, stated the following:

> With respect to the analysis of the "design" of the measure, the phrase "to protect public morals" calls for an initial, threshold examination in order to determine whether there is a relationship between an otherwise GATT-inconsistent measure and the protection of public morals. If this initial, threshold examination reveals that the measure is incapable of protecting public morals, there is not a relationship between the measure and the protection of public morals that meets the requirements of the "design" step. In this situation, further examination with regard to whether this measure is "necessary" to protect such public morals would not be required. This is because there can be no justification under Article XX(a) for a measure that is not "designed" to protect public morals. However, if the measure is not incapable of protecting public morals, this indicates the existence of a relationship between the measure and the protection of public morals. In this situation, further examination of whether the measure is "necessary" is required under Article XX(a).[175]

7.86. Based on the discussion that has evolved between the parties in this proceeding, we see two separate but related questions. The first is whether the responding party has to demonstrate the existence of a risk as part of this first step in the analysis of Article XX(b). The second concerns the relevant standard to establish that a measure is designed/taken to protect the stated interest. Both these questions relate to what must be demonstrated in the first step of the analysis of Article XX(b). We address them as and when we proceed in the analysis.

7.87. We now turn to and begin our analysis under Article XX(b) with the question whether the objective to reduce CO_2 emissions falls under the objective to protect human, animal, plant life or health.

7.2.4.2.2 Whether the objective to reduce CO_2 emissions in the transport sector falls under Article XX(b)

7.88. As noted above, Türkiye's objective is to foster the development and use of EVs and hybrid vehicles in Türkiye and so reduce the overall CO_2 emissions in the transport sector. Türkiye explains that this objective is inscribed in Türkiye's broader policy and international commitments to climate change mitigation. Furthermoe, Türkiye refers to the panels in *EU – Palm Oil* to argue that the objective of limiting the risk posed by greenhouse gas (GHG) emissions relates to the protection of human, animal or plant life or health.[176]

7.89. The parties do not disagree that the objective of protecting human, animal or plant life or health may also concern the protection of the environment including protection against climate change.[177] Prior adjudicators have consistently stated this view[178], which some of the third parties

[173] China's comments on Türkiye's response to Panel question No. 54, para. 1.
[174] China's response to Panel question No. 55, para. 4.
[175] Appellate Body Report, *Colombia – Textiles*, para. 5.68.
[176] Türkiye's first written submission, para. 2.82 (referring to Panel Report, *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.281). We use the terms CO_2 emissions and GHG emissions interchangeably.
[177] Türkiye's first written submission, para. 2.35; China's opening statement at the first meeting of the Panel, para. 19.
[178] Appellate Body Report, *Brazil – Retreaded Tyres*, para. 151; Panel Reports, *Brazil – Taxation*, para. 7.880; *EU – Palm Oil (Indonesia)*, paras. 7.290 and 7.1093; *EU and Certain Member States – Palm Oil (Malaysia)*, paras. 7.281 and 7.1085.

in this proceeding also share.[179] We refer to the panels' observation in the recent cases *EU – Palm Oil* that "global warming and climate change pose one of the greatest threats to life and health on the planet".[180] The multilateral efforts to combat climate change, which Türkiye refers to and in which it actively participates, confirm the threat that climate change presents to human, animal, life or health and also show the importance that the international community attaches to addressing this threat.[181]

7.90. Both parties also agree that the objective of reducing CO_2 emissions in the transport sector is the only relevant objective for purposes of establishing that the additional duties are (provisionally) justified under Article XX(b). We note, in this regard, Türkiye's proposition that the link between the additional duties and the objective of reducing CO_2 emissions is built via a series of what Türkiye calls "intermediate steps" in a causal chain.[182] Türkiye emphasizes that the "intermediate steps" in this causal chain are not objectives within the meaning of Article XX(b).[183] Türkiye also accepts that it has the burden of proof for each step in this causal chain.[184] China does not accept the validity of the causal chain and submits that Türkiye has not substantiated the causal chain.[185]

7.91. We do not reject *per se* the idea that the link or relationship between the measure and the stated objective which Türkiye has the burden to demonstrate, could be established through a series of intermediate steps. We agree with Türkiye that it has the burden of proving *each link* between those intermediate steps. Whether it has done so, is the subject of our examination below.

7.2.4.2.3 Whether the additional duties are designed/taken to protect human, animal, plant life or health in respect of CO_2 emissions

7.92. We have established that the objective of reducing CO_2 emissions in the transport sector falls under Article XX(b). Consequently, we next turn to the question whether the additional duties are designed/taken to achieve this objective.

7.93. Türkiye explains that the additional duties are part of a comprehensive policy to achieve green transition in the transport sector. According to Türkiye, the additional duties are intended to reduce the country's dependence on imports, thereby fostering the establishment and development of a domestic clean vehicle industry.[186] Türkiye emphasizes that support for the industry is not an end in itself.[187] According to Türkiye, the primary reason a robust domestic clean vehicle industry is needed to achieve CO_2 emission reduction in the transport sector, relates to the charging infrastructure for electric vehicles and the risk that the lack of such infrastructure will prevent

[179] Australia's third-party submission, para. 12; European Union's third-party submission, para. 22; Japan's third-party submission, para. 8; Switzerland third-party statement para. 9; Canada's third-party statement, para. 13; and Singapore's third-party statement, para. 13.

[180] Panel Reports, *EU – Palm Oil (Indonesia)*, paras. 7.290 and 7.1093; *EU and Certain Member States – Palm Oil (Malaysia)*, paras. 7.281 and 7.1085.

[181] See also Australia's third-party response to Panel question No. 9, para. 18; Canada's third-party response to Panel question No. 9, paras. 25-27; European Union's third-party response to Panel question No. 9, para. 25; Japan's third-party response to Panel question No. 9, paras. 16, 17; Singapore's third-party statement, para. 13; United States' third-party response to Panel question No. 9, para. 15.

[182] Türkiye's response to Panel question No. 24, paras. 1.109-1.113.

[183] Türkiye's response to Panel question No. 24, para. 1.110. In that, Türkiye disagrees with Switzerland which describes the intermediate steps as "cascading objectives" in the following way:

> When examining the relationship between the challenged measures, considering their design (including their content, structure, and expected operation) and the proclaimed objective, it will be relevant for the Panel to take into account the existence of such "cascading" objectives and to assess the relationship of the immediate objective with the broader goal of reducing GHG emissions.

(Switzerland's third-party statement, para. 12) (fn omitted)

[184] Türkiye's response to Panel question No. 24, paras. 1.109-1.113.

[185] China's opening statement at the second meeting of the Panel, para. 27.

[186] Türkiye's response to Panel question No. 24, para. 1.111.

[187] Türkiye's response to Panel question No. 24, para. 1.110; opening statement at the second meeting of the Panel, para. 2.14.

consumer uptake of EVs.[188] Türkiye also mentions a further reason which relates to import-dependence.[189]

7.94. China submits that the additional duties are not designed to reduce CO_2 emissions. China contends that Türkiye has not substantiated its assertion that imports of EVs create a risk that CO_2 emissions in the transport sector will increase.[190] China also takes the view that the additional duties create barriers to EV adoption and, therefore, do the exact opposite of what Türkiye claims to be trying to accomplish.[191] Furthermore, according to China, Türkiye has not demonstrated why imports of EVs subject to the additional duties would not be substituted by imports from other countries rather than domestic production.[192]

7.95. As noted above, in the parties' discussions two separate but related questions have arisen. The first is whether the legal standard includes a requirement that the responding party demonstrate the existence of a risk as part of this first step in the analysis under Article XX(b). The second is what is required to establish that a measure is designed/taken to achieve the stated objective, and, therefore, has a sufficient link or relationship with the protected interest.

7.96. We turn to the first of these questions. If we find that the answer is in the affirmative, we proceed with applying this standard to the facts of the case before turning, if necessary, to the second question.

7.2.4.2.3.1 Legal standard – whether the responding party has to demonstrate the existence of a risk for animal, plant life or health as part of the first step in the analysis under Article XX(b)

7.97. Turning to the first issue, the parties disagree on whether Türkiye is required to demonstrate the existence of a risk as part of this first step of the analysis under Article XX(b). Türkiye relies on the Appellate Body statement in *Colombia – Textiles* referenced in paragraph 7.85 above to submit that an analysis or determination of the existence of a risk is not a separate analytical element of the design test and cautions us against adding new analytical steps into the analysis.[193] Türkiye also states that the design test does not imply a detailed assessment of the risk in the particular circumstances of the case at hand, nor some in-depth assessment of how the contribution of the measure mitigates that risk.[194] For Türkiye, the evaluation of a risk is part of the necessity test[195] and more specifically, of the contribution analysis.[196]

7.98. China's position is that the demonstration of a risk is the starting point of the analysis and should also be the end of that analysis where the party invoking Article XX fails to establish the existence of a risk.[197]

7.99. As the panel in *EC – Asbestos* noted, the term "to protect" and "the notion of 'protection' … imply the existence of a health risk".[198] The panel, accordingly, as part of establishing that the measure fell within the range of policies designed to protect human life or health, examined whether risk to human life or health alleged by the respondent existed – a point that was partially disputed

[188] Türkiye's first written submission, paras. 2.74, 2.75, and 2.87; opening statement at the first meeting of the Panel, paras. 2.11-2.13; responses to Panel question No. 23, paras. 1.101, 1.102, No. 24, para. 1.111, and Nos. 25 and 26, paras. 1.120 and 1.122; second written submission, para. 2.85; and opening statement at the second meeting of the Panel, para. 2.14.
[189] Türkiye's first written submission, paras. 2.74, 2.88, and 2.94; opening statement at the first meeting of the panel, para. 1.7; and response to Panel question No. 23, paras. 1.99 and 1.100.
[190] China's opening statement at the first meeting of the Panel, para. 15; response to Panel question No. 26, para. 36; second written submission, para. 70; and opening statement at the second substantive meeting of the Panel, para. 25.
[191] China's second written submission, para. 65; opening statement at the second meeting of the Panel, para. 29.
[192] China's opening statement at the first meeting of the Panel, para. 16; second written submission, para. 83; and opening statement at the second meeting of the Panel, para. 29.
[193] Türkiye's response to Panel question No. 54, para. 1.2.
[194] Türkiye's response to Panel question No. 54, para. 1.3.
[195] Türkiye's response to Panel question No. 54, para. 1.3.
[196] Türkiye's response to Panel questions Nos. 25 and 26, para.1.116.
[197] China's comments on Türkiye's response to Panel question No. 54, paras. 1-3.
[198] Panel Report, *EC – Asbestos*, para. 8.170.

between the parties in that case.[199] Subsequent panels, similarly, examined this risk in detail wherever the issue was disputed between the parties.[200] There is, thus, a textual root for examining the existence of risk in the first step of the analysis under Article XX(b), namely the verb "protect"; and there is a consistent line of cases where past adjudicators carried out this examination as part of the first step in the analysis under Article XX(b).

7.100. Other than referring to the above Appellate Body statement in *Colombia – Textiles*, Türkiye has not put forward any arguments why we should not read the word "protect" to imply the demonstration of a risk as was done in this line of cases. We have two observations in this respect. First, *Colombia – Textiles* concerned a defence under Article XX(a), which covers measures necessary to protect public morals. As the Appellate Body had pointed out in *EC – Seal Products*, the notion of risk as used in the context of Article XX(b) is difficult to reconcile with the subject matter of protection under Article XX(a). On this basis, the Appellate Body in *EC – Seal Products* concluded that the term "to protect", when used in relation to "public morals" under Article XX(a), did not require a panel to identify the existence of a risk to public moral concerns in the same manner as Article XX(b) required the identification of a risk to human, animal or plant life or health.[201] Consistent with this reading of Article XX(a), therefore, the Appellate Body's description of the "design" test in *Colombia – Textiles*, does not refer to the existence of a risk. Nothing in that statement, however, suggests that such a demonstration of risk is no longer necessary in the context of Article XX(b). To the contrary, the Appellate Body stated in its discussion that it "may be that the protection of human, animal, or plant life or health implies a particular focus on the protection from or against certain dangers or risks".[202]

7.101. Second, we understand Türkiye to suggest that the reference in the Appellate Body statement to a measure being "not incapable" implies that the respondent does not need to demonstrate the existence of a risk as part of the first step in the analysis under Article XX(b). We note that the issue of risk is not the same as whether a measure is "capable" or "not incapable" of protecting the stated interest. Risk is what needs to be addressed to protect human, animal or plant life or health from harm. It is the factual justification why this measure concerns these *specific products*.[203] In contrast, whether a measure is "capable" or "not incapable" is about the ability of the *measure* to achieve such protection. In other words, the "capable" or "not incapable" standard does not speak to the issue of risk and is therefore not relevant to establishing whether such a risk exists.

7.102. Turning to Türkiye's argument that the evaluation of risk is part of the necessity test, and more specifically, is about contribution, we note that Türkiye has not pointed to any case where past adjudicators have made the existence of a risk part of the necessity test in Article XX(b). We observe that, whether a risk exists or not, is a factual question. Risk is ascertained and its likelihood is specified – there is no weighing and balancing in this process as there is in the necessity test. Furthermore, what degree of likelihood of the risk a Member is prepared to accept is that Member's prerogative to decide and, therefore, is also not subject to weighing and balancing.[204] In contrast, what is subject to weighing and balancing is the degree of contribution that the measure makes to address this risk (and that degree is weighed and balanced against the degree of trade-restrictiveness and the importance of the objective). Logically, therefore, the existence of a risk needs to be ascertained *before* that exercise of weighing and balancing can take place. We, thus, disagree with Türkiye's contention that establishing the existence of a risk logically implies establishing the measure's contribution as well.[205] It does not. By way of example, whether the

[199] Panel Report, *EC – Asbestos*, para. 8.173.

[200] Panel Reports, *Brazil – Retreaded Tyres*, paras. 7.42-7.43; *Indonesia – Chicken*, paras. 7.210-7.211; and *Turkey – Pharmaceutical Products (EU)*, para. 7.134.

[201] Appellate Body Report, *EC – Seal Products*, para. 5.198.

[202] Appellate Body Report, *EC – Seal Products*, para. 5.197.

[203] Türkiye itself (discussing risk in the context of the contribution analysis) describes this link as follows:

> It is, of course axiomatic that, where a measure seeks to address the risk for the protected legal interest (for instance public health) and imposes a trade restriction on a particular product, that particular product must have a causal connection to the risk.

(Türkiye's response to Panel questions Nos. 25 and 26, para. 1.116)

[204] Appellate Body Report, *EC – Asbestos*, para. 168.

[205] Türkiye's comments to China's response to Panel question No. 55, para. 1.6: "Thus, China would require the respondent to demonstrate in detail the existence of a risk and, by logical implication, also the measure's contribution to it, but would deprive the responding Member of an opportunity to rely on a

handling of or exposure to asbestos carries a risk of causing cancer is a factual/scientific question. If it is answered in the affirmative, one can then examine what contribution the prohibition of the importation of asbestos makes to preventing that cancer risk; and weigh that contribution against the degree of trade-restrictiveness of such a prohibition and the importance of the objective of protecting people against the risk of cancer. In other words, whether a given measure contributes to protecting against a risk – let alone what the degree of such a contribution is – is a question that, in our view, only arises if it has been factually established that a risk exists.

7.103. In our view, therefore, whether a risk exists is the very first assessment a panel has to make in this first step of the analysis under Article XX(b). For if the respondent does not demonstrate the risk that the measure is alleged to protect against, then there is nothing a measure can or needs to protect. There is no factual basis for the measure explaining its *raison d'être* and, therefore, there cannot be a link or relationship between the measure and the protected interest.

7.104. Having established that the existence of a risk is part of the demonstration in the first step of the analysis under Article XX(b) we have one more observation regarding the evidentiary standard applying to the demonstration of the existence of a risk. We note that the panel in *Turkey – Pharmaceutical Products (EU)*, referring to a line of cases identifying such a standard for the purposes of other subparagraphs in Article XX, considered that the demonstration of a risk in Article XX(b) requires that the respondent "must identify some degree of probability that the alleged risk exists."[206] That panel, thus, took the view that where:

> [A] responding party asserts the existence of a risk without establishing any substantial degree of probability, such that the risk appears to be theoretical, abstract or otherwise hypothetical, it will be more difficult for the responding party to discharge its burden of proving that the challenged measure was taken to protect against that risk.[207]

7.105. We agree with this view. What arguments and evidence are required to establish the risk will of course depend on the specific facts of the case.

7.106. To conclude, we find that a responding party has to demonstrate the existence of a risk in the first step of the analysis under Article XX(b). In terms of the evidentiary standard, the responding party must identify with some degree of probability that the alleged risk exists. We now turn to applying this standard to the facts of the case.

7.2.4.2.3.2 Whether Türkiye has demonstrated the existence of a risk

7.107. Given its stated objective of reducing CO_2 emissions in the transport sector, Türkiye has to demonstrate that there exists a risk which links the products covered/affected by the measure to the objective of reducing CO_2 emissions.

7.108. Türkiye acknowledges that EVs and hybrid vehicles do not by virtue of their physical characteristics, contribute to greater GHG emissions.[208] However, as Türkiye argues, it is their excessive importation that creates the risk for higher CO_2/GHG emissions. Türkiye explains that this

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measure's limited level of trade restrictiveness and the relative significance of the policy objective pursued as offsetting factors."

[206] Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.170.

[207] Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.171. We note that the finding was appealed on the grounds that it sets an erroneous legal standard requiring a "substantial degree of probability." The Article 25 Arbitrator upheld the finding stating the following:

> [W]e do not consider that the Panel set out a legal standard requiring a substantial degree of probability of risk for assessing whether a measure has been taken to protect human, animal, or plant life or health, in accordance with Article XX(b). The reference to a "substantial degree of probability" of the existence of the risk alleged by the responding party was made by the Panel, not as a proposed legal standard, but rather as an indicator of the existence of a risk that is not merely theoretical, abstract, or hypothetical. The Panel did not foreclose the possibility that a responding party might still be able, despite the lack of a "substantial degree of probability" of the existence of the alleged risk, to show that a challenged measure was taken to protect human life or health under Article XX(b).

(Award of the Arbitrators, *Turkey – Pharmaceutical Products (EU)*, para. 6.110)

[208] Türkiye's response to Panel questions Nos. 25 and 26, para. 1.120; second written submission, para. 2.85.

risk arises from the economic and social dynamics surrounding the development of charging infrastructure.[209] Elsewhere and in much less detail, Türkiye refers to risks related to import-dependence.[210] We address these two risks in turn.

Risk related to charging infrastructure

7.109. Türkiye submits that the availability of charging infrastructure is a key factor influencing consumer decisions and that its absence remains a major barrier to EV adoption in Türkiye.[211] Türkiye explains that consumers hesitate to purchase EVs without adequate charging infrastructure, while infrastructure investors delay deployment without sufficient EV demand.[212] According to Türkiye, due to economic reality and the economic and social incentives underlying the development of the charging infrastructure, an excessive reliance on imported hybrid vehicles and EVs constitutes and contributes to a risk that Türkiye's charging infrastructure may not develop in a sufficient manner, which would in turn lead to insufficient purchases and use of this type of vehicle.[213] Türkiye submits that the development of a domestic EV industry is key for fostering the development of an adequate charging infrastructure[214], that domestic manufacturers are the primary investors in Türkiye's charging infrastructure[215] and that they have special localized incentives to make such investments, which foreign manufacturers do not have.[216]

7.110. China submits that Türkiye has not substantiated the existence of a risk, much less established the existence of a risk with "any substantial degree of probability".[217] In China's view, while the evidence cited by Türkiye at most notes the importance of a sufficient charging network, it does not support a negative link between imports of EVs and incentives to expand the charging network.[218] China also contends that there is no risk of insufficient uptake by consumers and no risk of inadequate charging infrastructure in Türkiye.[219] Finally, China disputes that domestic manufacturers are the main investors in the charging infrastructure and points out that incentives to invest in infrastructure are available to all types of investors.[220]

7.111. As we understand Türkiye's argument, there is a risk of higher (or non-reduced) CO_2 emissions because of an insufficient uptake by consumers of EVs and hybrid vehicles. The causal chain that links this risk to the importation of EVs and hybrid vehicles is built on the following logic: consumers buy less EVs and hybrid vehicles if there is a lack of charging infrastructure. Domestic EV manufacturers are key in developing charging infrastructure and, therefore, need to be protected from the importation of EVs and hybrid vehicles.

7.112. We begin by setting out some facts on the Turkish market for EVs and hybrid vehicles, as well as on the charging infrastructure, as drawn from the evidence submitted by the parties. We also point out here that charging infrastructure is only relevant to vehicles that have a battery that can be re-charged. In addition to EVs, therefore, this argument only applies to plug-in hybrid

[209] Türkiye's response to Panel questions No. 25 and 26, para. 1.120; second written submission, para. 2.85.
[210] Türkiye's response to Panel question No. 23, para. 1.100; first written submission, paras. 2.74, 2.88, and 2.94; and opening statement at the first meeting of the Panel, para. 1.7.
[211] Türkiye's response to Panel question No. 23, para. 1.101.
[212] Türkiye's first written submission, para. 2.87.
[213] Türkiye's response to Panel questions Nos. 25 and 26, para. 1.120.
[214] Türkiye's first written submission, para. 2.74.
[215] Türkiye's opening statement at the first substantive meeting of the Panel, para. 2.13; response to Panel question No. 23, paras. 1.101-1.102; and second written submission, para. 2.85.
[216] Türkiye's first written submission, para. 2.87; response to Panel question No. 23, paras. 1.101-1.102; and second written submission, para. 2.85.
[217] China's opening statement at the first meeting of the Panel, para. 17; second written submission, para. 71.
[218] China's second written submission, para. 72.
[219] China's comments on Türkiye's response to Panel question No. 54, paras. 6-9.
[220] China's opening statement at the first meeting of the Panel, para. 23; opening statement at the second meeting of the Panel, para. 28; and comments on Türkiye's response to Panel question No. 58, paras. 19-21.

vehicles.[221] First, there has been a significant increase in sales of EVs and different types of hybrid vehicles in the Turkish market over the last three years.[222] As Türkiye explains:

> Between 2022 and 2024, the number of Battery Electric Vehicles sold in Türkiye increased by a factor of 37, increasing their share among total sales of passenger cars from 0.53 per cent in 2022 to 10.74 per cent; current 2025 data suggests a further increase to almost 18 per cent. Similarly, the number of hybrid vehicles sold has almost quadrupled, increasing its share of new sales from 9 per cent to almost 19 per cent; current 2025 data suggest a further increase to 26 per cent. In contrast, the number of combustion engine vehicles has stagnated. As a percentage of total sales of passenger cars, the share of combustion engine vehicles has declined from 90.24 per cent in 2022 to 70 per cent in 2024 and even further to 55 per cent based on current 2025 data.[223]

7.113. Second, the charging infrastructure in Türkiye, currently, is not insufficient or inadequate, i.e. there is no infrastructure bottleneck.[224] Indeed, as the Turkish Energy Market Regulatory Authority reports, Türkiye has a much higher ratio of electric cars per socket than the average in other European countries.[225]

7.114. Third, investment in charging infrastructure is open to all (including foreign) companies except electricity companies as the law does not permit them to operate a charging network.[226] The "Charging Service Regulation" adopted in 2022 sets out a licence requirement for charging network operators.[227] There are several government incentive programmes that support investments in this sector.[228] Chief among them is the Fast Charging Stations Grant Program, which provides non-repayable grants to investors for the establishment of fast-charging stations, with specific budgetary allocations intended to deploy these stations at numerous points across all 81 provinces.[229] All investment programmes are open to domestic and foreign companies.[230]

7.115. Fourth, currently there is a total of 176 investors in charging infrastructure across a wide spectrum of commercial entities.[231] The top three investors in terms of total socket count have market shares of 13.8, 7.3 and 6.2%.[232] Of these three investors, one (Trugo, 7.3% market share) is a fully owned subsidiary of the Turkish car manufacturer TOGG; another (Zes, 13.8% market share) is a subsidiary of a holding company, which, in turn, owns 19% of TOGG; and the third (Eşarj,

[221] Whether plug-in hybrid passenger cars are covered by the finding of inconsistency under Article II, depends on whether Türkiye would classify them under 8703.90 under the pre-2017 HS update classification practice, see para. 7.73 above.

[222] Annual Passenger Car Sales in Türkiye by Powertrain Type (2022-2024) (Exhibit TUR-104).

[223] Türkiye's opening statement at the second meeting of the Panel, para. 2.16.

[224] Türkiye's response to Panel question No. 61, para. 1.25.

[225] EMRA, Electric Vehicles and Charging Infrastructure Projection (April 2024) (Turkish Energy Market Regulation Authority Report) (Exhibit TUR-102), p. 2: "The number of electric vehicles per socket in our country is 5.4. This ratio averages 13.75 in European countries, indicating that our country is in a favourable position in terms of the number of electric vehicles per socket." See also China's comments on Türkiye's response to Panel question No. 60, para. 22.

[226] Türkiye's opening statement at the second meeting of the Panel, para. 2.20 (referring to Article 4.4 of Regulation on Charging Services, Official Gazette No. 32701 (23 October 2024) (last amendment) (Regulation on Charging Services) (Exhibit TUR-30)).

[227] Regulation on Charging Services (Exhibit TUR-30).

[228] Türkiye's responses to Panel question No. 60, para. 1.24 and No. 64, para. 1.33.

[229] Türkiye's response to Panel question No. 64, para. 1.32; Regulation on the Technological Product Investment Support Programme, Official Gazette No. 31786, 22 March 2022 (last amendment) (Exhibit TUR-109); Ministry of Industry and Technology, About the Technological Product Investment Support Program, Amendments to the Regulation, Circular Regulation, Official Gazette No. 32701 (23 October 2024) (last amendment) (Exhibit TUR-34).

[230] Türkiye's response to Panel question No. 64, paras. 1.32 and 1.34.

[231] Turkish Energy Market Regulation Authority Report, p. 1:
> An examination of the profile of licensed companies reveals that vehicle manufacturers or automotive distributors, nationwide holding companies, companies in the fuel distribution sector, supermarket and restaurant chains, and numerous start-up companies that will bring development and dynamism in automation and software have taken their place in the market. In the coming period, our Institution will continue to issue charging network operator licences to companies that apply for a licence and meet the licensing requirements.

[232] Türkiye's response to Panel question No. 58, para. 1.19.

6.2% market share) is owned 100% by an energy company, which, in turn, is owned by a holding company that has ownership in TEMSA, a company producing electric buses.[233]

7.116. Against this factual background, we start at the end of the causal chain suggested by Türkiye and first turn to Türkiye's assertion that there is a risk that Turkish consumers will not buy EVs and hybrid vehicles because of a lack of charging infrastructure in the country. We note, first of all, that there currently is no such lack in Türkiye, as stated in paragraph 7.113 above. Türkiye's assertion that the absence of charging infrastructure "remains a major barrier to EV adoption in Türkiye", is, therefore, unfounded.[234]

7.117. Of course, infrastructure will have to expand with further increases in sales of EVs and hybrid vehicles in Türkiye. However, in our view, Türkiye has not demonstrated that "the risk of an 'infrastructure bottleneck' – in particular, the risk of an inadequately developed charging infrastructure – that would impede further EV uptake is ever-present".[235] This statement is based on two premises: (i) that consumers would not buy EVs or hybrid vehicles because of an infrastructure bottleneck and (ii) that there would be such an infrastructure bottleneck in the future. We already have some doubts with regard to the first premise, i.e. Türkiye's contention that the "availability of charging infrastructure is a key factor influencing consumer buying decisions".[236] The evidence that Türkiye has submitted suggests that other factors may be equally important, amongst them, importantly, the availability and price of EVs and hybrid vehicles.[237] In any event, we do not see any indication for the second premise, namely, the risk that charging infrastructure would *no*t be built in Türkiye, going forward. We note, in this regard, Türkiye's reference to market failure in the charging infrastructure sector.[238] Such market failure may well have existed in the past. Indeed, a 2023 World Bank Report on "Development of Electric Vehicle Charging Infrastructure and Incentives to support the scale-up of Electro-mobility technologies in Türkiye" states the following:

> The charging industry in Türkiye presently faces a chicken-or-egg dilemma. On the one hand, few private companies are scaling up the public charging network, due to low EV ownership and an uncertain policy environment. On the other hand, few customers are purchasing EVs owing to high prices, a lack of basic charging infrastructure, and concern about not having enough power to complete a journey. In addition to policy measures, a public investment or incentive program can serve as an initial program to break the cycle and send a strong signal of the government's commitment to the development of the EV market.[239]

7.118. As we see it, Türkiye has exactly done what was suggested in this 2023 Report to address potential market failure. It has put government incentives programmes in place and has created a more certain policy environment for investors by adopting the Charging Service Regulation, as well as other legislation.[240] The fact that there are now 176 investors in the charging infrastructure sector,

[233] Energy Market Regulation Authority, Statistical data on charging network capacity (August 2025) (Exhibit TUR-95).

[234] Türkiye's response to Panel question No. 23, para. 1.101.

[235] Türkiye's response to Panel question No. 61, para. 1.25.

[236] Türkiye's response to Panel question No. 23, para. 1.101.

[237] See Deloitte, 2024 Global Automotive Consumer Study, Key Findings: Türkiye (March 2024) (Exhibit TUR-29). This study names cost as a factor at least equal to concern directly related to charging (slide 10). See also Exro Industry Insights, "Barriers to Electric Vehicle Adoption in 2022" (Exhibit TUR-47), which seems to be a study about the United States' market while identifying charging infrastructure as the top concern, and also lists performance, availability and affordability as concerns. See also McKinsey & Company, ACES 2019 survey: Can established auto manufacturers meet customer expectations for ACES? (February 2020) (Exhibit TUR-48). This study analyses the market from a point of view of Original Equipment Manufacturers and finds, amongst other things, that most consumers are not willing to pay a premium for EVs and that rural consumers are the most reluctant to pay such a premium (pp. 4 and 7).

[238] Türkiye's first written submission, para. 2.87.

[239] World bank, Türkiye E-mobility Program, Deployment of Electric Vehicle Charging Infrastructure and Incentives to Support the Scale-Up of Electromobility Technologies in Türkiye (23 February 2023) (Exhibit TUR-23), p. 96.

[240] The Turkish Energy Market Regulation Authority points to a regulation implemented to enable all electric vehicles with a socket structure compatible with the charging units located at charging stations to receive charging services and provides the following assessment:

> In our country, the provision of charging services to all vehicles, regardless of make and model, provided they have a socket structure compatible with the charging units at charging stations, has contributed both to the efficient use of charging stations and to the effective use of national resources in the investments to be made.

and that sales of EVs and hybrid vehicles have significantly increased, in our view, demonstrates the success of these measures.[241] Indeed, as the Turkish Energy Market Regulation Authority observes:

> Following the implementation of secondary legislation by our institution, licence applications have begun to be accepted. Investors are showing considerable interest in this area. In this regard, while only five companies were providing charging services in the market prior to the establishment of the legal framework for charging service activities, there are now 176 companies operating in the market.[242]

7.119. Based on this, we consider that Türkiye has not demonstrated that there is a risk of an infrastructure bottleneck in the future. Such risk is, thus, merely hypothetical.

7.120. We next turn to Türkiye's assertion that domestic EV manufacturers are key in developing the charging infrastructure. We recall that we are looking at the risk that CO_2 emissions in the transport sector increase or cannot be reduced due to insufficient uptake by consumers on account of a lack of charging infrastructure. From the risk perspective, the inquiry into the next step of Türkiye's causal chain argument is about the risk that charging infrastructure would *not* be built because of the "key" role of the domestic EV industry as investor in charging infrastructure.

7.121. Türkiye submits that domestic EV manufacturers are the primary investors in Türkiye's charging infrastructure, referring to the top three investors in charging infrastructure described above. Accepting, for the sake of argument, that all three represent the Turkish automotive industry[243], we acknowledge that the three companies are "primary" insofar as they are the top three in terms of market share. However, the market appears to be quite competitive and fragmented, and the collective market share of the three companies is less than 30%. More than 70% of the investment stems from other companies that currently number 173 (not counting the top three). Furthermore, Türkiye submits that the domestic EV manufacturers have special incentives to invest, which foreign manufacturers do not have. We observe that demand for EVs presents the same market incentives for all, foreign and domestic, investors alike. Similarly, the government incentives offered in Türkiye, are also the same for domestic and foreign companies. Finally, to the extent "localized" incentives exist at all[244], they would at least be the same for all domestic economic operators. Nothing sets domestic EV manufacturers apart. In the light of this,

(See Turkish Energy Market Regulation Authority Report, p. 2)

[241] Türkiye contends that this success is due, *inter alia*, to the additional duties (see Türkiye's response to Panel question No. 61, para. 1.26: "These developments also provide observable evidence that the Additional Duties, in combination with the wide array of incentives to EV uptake already described in previous submissions, are already contributing to the transition toward a Turkish green vehicle industry."). We see no support for this contention. In Türkiye's logic, the first "intermediate step" for the additional duties to achieve the objective of reducing CO_2 emissions is that they have a protective effect for the domestic industry. If there were such an effect, one would expect to observe that domestic production and sales are growing faster than imports. This would be reflected in the ratio of imports vs. domestic sales. As far as we can see, however, this ratio has consistently remained above 80%, looking at all EVs and hybrid vehicles, and 73% looking only at EVs and plug-in hybrids, for imports since the additional duties were put in place in 2023, and has even increased significantly in 2025 (partial data until September) to 84.6% and 85.2% respectively.(See Retail sales data for automobiles (2022-2025) (BCI) (Exhibit TUR-108)). We note in this regard that to the extent the share of vehicles imported from China has decreased, imports from Türkiye's RTA partners appear to have taken their place. In the absence of any protective effect for the domestic industry, however, the additional duties, cannot explain the success described above.

[242] Turkish Energy Market Regulation Authority Report, p. 2.

[243] We agree with China that Türkiye has not provided any evidence that Eşarj or Zes are controlled by domestic automobile manufacturers and that there is therefore no reason to assume that investment decisions will mirror those of a domestic vehicle producer. (China's comments on Türkiye's response to Panel question No. 58, para. 20).

[244] Türkiye describes such incentives as follows:

> Domestic EV production connects industrial capacity with mobility needs, promotes technological self-sufficiency, and strengthens national climate resilience, providing the foundation for a sustainable transportation ecosystem. Domestic EV producers also have a better and more comprehensive understanding of the broader economic and environmental goals developed by the government, encouraging comprehensive strategies that include infrastructure rollout. Domestic manufacturers are also in a better position than foreign-based manufacturers to tailor vehicles to local electrical grids and urban designs.

(Türkiye's response to Panel question No. 60, para. 1.22)

We consider these factors rather to be comparative advantages that domestic EV manufacturers may or may not have in the Turkish market.

the risk that charging infrastructure would not be built because of the role of the domestic EV industry as an investor in charging infrastructure, is merely hypothetical.

7.122. Based on the above considerations, we find that Türkiye has not demonstrated the existence of a risk that CO_2 emissions increase or cannot be reduced based on the causal chain argument it has put forward.

7.123. While we end the analysis here, we wish to note a systemic concern that we have with the very first link in this causal chain, i.e. the importation of EVs and hybrid vehicles. The role that these vehicles play in Türkiye's causal chain reasoning is that they compete with the domestic EV manufacturing industry, which Türkiye argues, needs to be protected from foreign competition in order to be able to invest in charging infrastructure. We find it problematic that these are the very same products that Türkiye wants its consumers to buy to reduce CO_2 emissions and that the only "risk" they present is that they compete with domestic products. We have systemic concerns with accepting that import competition enters a causal chain logic of "risk" as suggested by Türkiye.[245] We note that this is not the first case in which a Member seeks to justify measures protecting domestic industry on the grounds that building adequate domestic manufacturing capacity is necessary to achieve a legitimate objective such as protection of the environment or social and economic development.[246] In all these cases panels examined the merits of such an argument, and we are not aware of any case in which such a justification was accepted. Consistent with these past panels' approaches, we have examined Türkiye's causal chain argument. We have found that Türkiye has not been able to prove other links in its causal chain. We can, therefore, leave open, whether the very first link of import competition is a valid basis for a causal chain of risk.

7.124. For the above reasons we find that Türkiye has not demonstrated that the importation of EVs and hybrid vehicles creates a risk of higher (or non-reduced) CO_2 emissions related to charging infrastructure.

Risks related to import-dependence

7.125. We now turn to the risks that Türkiye describes as arising out of import-dependence in respect of EVs and hybrid vehicles.

7.126. In its first written submission, Türkiye states that the climate emergency requires all available policy tools, and no country should have to rely exclusively on imports to meet its environmental goals.[247] Referring to the original version of the additional duties (which, as noted above, only applied to EVs and hybrid vehicles of Chinese origin), Türkiye also submits that excessive import-dependence on Chinese EVs undermines national capacity to control this strategic sector, potentially creating vulnerabilities in supply chains and technological advancement. In reply to a Panel question, Türkiye confirms that this issue is distinct from Türkiye's argument on the importance of infrastructure development, but, like the latter, relates to the broader objective pursued by Türkiye of developing the national green vehicle industry by promoting domestic production and consumption of electric and hybrid vehicles.[248] Türkiye goes on to explain that the reference to supply chain vulnerabilities illustrates one of the risks associated with excessive reliance on imports in pursuing development goals; and that it has consistently argued that exclusive dependence on foreign EV technology may lead to production-related challenges, including price volatility, limited access to technology, and supply chain disruptions within Türkiye.[249]

7.127. China submits that Türkiye's argument is entirely speculative since it provides no substantiation of the existence of such risks. China, furthermore, considers that in any case, these alleged risks would not fall within the scope of subparagraph (b).[250]

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[245] From our perspective, the covered agreements provide for specific remedies addressing injury arising from import competition, where such competition is unfair or where it causes or threatens to cause serious injury.

[246] See, in particular, *Turkey – Pharmaceutical Products (EU)*, *EU – Energy Package, Brazil – Taxation*, *India – Solar Cells*, *China – Rare Earths*, and *China – Raw Materials*; most recently *US – IRA (China)*.

[247] Türkiye's first written submission, para. 2.88.

[248] Türkiye's response to Panel question No. 23, para. 1.99.

[249] Türkiye's response to Panel question No. 23, para. 1.100.

[250] China's second written submission, para. 74.

7.128. We understand Türkiye to have made these arguments as a defence under Article XX(b) and, therefore, examine whether Türkiye has demonstrated the existence of a risk of increase or non-reduction of CO_2 emissions linked to the importation of the EVs and hybrid vehicles covered by the additional duties.

7.129. We note that Türkiye has not substantiated its reference to any of the alleged risks much less presented any evidence. These risks, thus, are merely hypothetical. Furthermore, and similarly to our concern with qualifying import competition as a valid factor in a causal chain of risk, we have doubts whether import-dependence and potential consequences from it should qualify as such a risk. We note that the panel in *Turkey – Pharmaceutical Products (EU)* had similar doubts. In that case, Türkiye invoked Article XX(b) to justify a localisation requirement for pharmaceutical products on the grounds that there was a risk of long-term shortage of supply of safe, effective and affordable products of this kind. The panel found that this risk was merely hypothetical.[251] It then added the following comment:

> In addition to being merely hypothetical, the situation described by Turkey in this dispute is characterized by a level of temporal and sectoral generality that is at odds with the concept of risk under Article XX(b). The generality of Turkey's argument is in fact such that the risk identified by Turkey could be present in any sector and concern any market. Indeed, Turkey refers to general economic circumstances that are not specific to the pharmaceutical sector, and not specific to Turkey (such as exchange rate fluctuations). The generality of Turkey's underlying argument would lead to the conclusion that there is a permanent risk of shortage of products concerning each and every sector of any WTO Member's economy. Following the logic of Turkey's argument, international trade liberalization in products and sectors that are necessary for the protection of human life or health creates a permanent risk to human life or health under Article XX(b).[252]

7.130. We share this panel's view and for the above reasons we find that Türkiye has not demonstrated that the importation of EVs and hybrid vehicles creates a risk of higher (or non-reduced) CO_2 emissions related to import-dependence.

7.131. In conclusion, we find that Türkiye has not demonstrated the existence of a risk of increase or non-reduction of CO_2 emissions arising from the importation of EVs and hybrid vehicles. As we noted above, if a respondent does not demonstrate the risk against which it alleges that the measure protects, there is nothing a measure can and needs to protect against and, therefore, there cannot be a link or relationship between the measure and the protected interest. For this reason, we see no need to continue with the analysis in this first step under Article XX(b). Given this, we also do not need to address the second question concerning the legal standard in this first step in the analysis of Article XX(b) which concerns the relevant standard to establish that a measure is designed/taken to protect a stated interest.

7.132. Furthermore, as there is no link or relationship between the measure and the protected interest, there is no need to move on to the necessity test.

7.2.4.2.3.3 Conclusion on Article XX(b)

7.133. As Türkiye has not demonstrated the existence of a risk to human, animal or plant life or health, we find that the additional duties' inconsistency with Articles II:1(b) and II:1(a) is not provisionally justified under Article XX(b).

7.2.4.3 Article XX(g)

7.134. As noted above, based on the same reasoning, i.e. that the additional duties serve the objective of reducing CO_2 emissions in the transport sector, Türkiye also invokes a defence under Article XX(g).

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[251] Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.177.
[252] Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.178. (fns omitted)

7.2.4.3.1 Legal standard

7.135. We recall that subparagraph (g) covers measures (i) relating to the conservation of natural resources (ii) if such measures are made effective in conjunction with restrictions on domestic production or consumption.

7.136. The legal standard is uncontroversial between the parties. In respect of the first element, both accept in particular that the examination whether a measure can be considered as "relating" to the conservation of natural resources will require establishing that there is a "close and genuine relationship of ends and means".[253] In respect of the second element, both parties acknowledge that restrictions on domestic production or consumption must be "even-handed",[254] with China emphasizing that the restrictions must be "current".[255]

7.137. We see no reason to disagree with this legal standard and address the two elements in turn.

7.2.4.3.2 Relating to the conservation of natural resources

7.138. Türkiye submits that the objective of reducing CO_2 emissions in the transport sector falls within the range of policies that relate to the conservation of natural resources. Türkiye in this regard refers to prior adjudicators that have recognized a broad range of policies to fall within the scope of measures relating to the conservation of natural resources, and in particular to the panels in *EU – Palm Oil* which specifically recognized the objective of limiting the risk of certain GHG emissions as falling within that scope.[256] China does not contest Türkiye's argument.

7.139. We agree with Türkiye that the reduction of CO_2 emissions can be considered an objective that aims at the conservation of natural resources. It is well established in prior cases that the preservation of the environment falls within the scope of Article XX(g).[257] Furthermore, the Appellate Body has held that the terms "exhaustible natural resources" must be read "in light of contemporary concerns of the community of nations about the protection and conservation of the environment".[258] Consistent with this line of cases, the panels in *EU – Palm Oil* recognized that the objective of limiting the risk of certain GHG emissions falls within the scope of Article XX(g). As noted above, these panels considered that "global warming and climate change pose one of the greatest threats to life and health on the planet".[259] As also noted above, the multilateral efforts to combat climate change, which Türkiye refers to and in which it actively participates, confirm the threat that climate change presents to the environment and also show the importance that the international community attaches to addressing this threat.[260]

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[253] Appellate Body Report, *China – Rare Earths*, para. 5.90; Türkiye's first written submission, para. 2.44. We note that Türkiye and some third parties have compared this to the necessity test required under Article XX(b), see Türkiye's first written submission, paras. 2.46 and 2.115; Canada's third-party submission, para. 19; European Union's third-party submission, para. 39. We point out that we are required to apply each test on its own terms. We therefore do not see a need for us to comment on such comparison. (See also Canada's third-party statement, para. 14; Norway's third-party statement, para. 11).

[254] Appellate Body Report, *US – Gasoline*, p. 21; Türkiye's first written submission, para. 2.45; and China's second written submission, para. 107.

[255] China's opening statement at the first substantive meeting of the Panel, para. 34. See also Switzerland's third-party statement, para. 16 (referring to Appellate Body Report, *China – Rare Earths*, para. 5.92):

> [] it would not be sufficient for domestic production or consumption to be subject to a possible limitation at some undefined point in the future"; it must be "a 'real' restriction on domestic production or consumption". In other words, "[s]uch restrictions must place effective limitations on domestic production or consumption and thus operate so as to reinforce and complement the restrictions imposed on international trade".

(fns omitted)

[256] Türkiye's first written submission, paras. 2.109 and 2.110.

[257] Appellate Body Reports, *China – Raw Materials*, para. 355; Panel Reports, *EU – Palm Oil (Indonesia)*, para. 7.1083 and *EU and Certain Member States – Palm Oil (Malaysia),* para. 7.1075.

[258] Appellate Body Report, *US – Shrimp*, para. 129.

[259] Panel Reports, *EU – Palm Oil (Indonesia)*, paras. 7.290 and 7.1093; *EU and Certain Member States – Palm Oil (Malaysia)*, paras. 7.281 and 7.1085.

[260] See also Australia's third-party response to Panel question No. 9, para. 18; Canada's third-party response to Panel question No. 9, paras. 25-27; European Union's third-party response to Panel question

7.140. In terms of whether the additional duties can be considered as "relating" to that objective, both parties refer to their arguments submitted under the design or necessity test in Article XX(b). For Türkiye, these arguments necessarily satisfy the standard of demonstrating a "close and genuine relationship of ends and means".[261] China considers that its rebuttal of Türkiye's arguments under Article XX(b) also applies here.[262]

7.141. We agree with the parties that the same arguments that we have discussed above in Article XX(b) are relevant to the question whether there is a close and genuine relationship of ends and means, and therefore, whether the measure can be considered as "relating" to the conservation of natural resources within the meaning of Article XX(g). As we have stated above, we do not see a link or relationship between the additional duties and Türkiye's objective of reducing CO_2 emissions in the transport sector. This is because Türkiye has not demonstrated that there exists any risk that CO_2 emissions will increase or not be reduced that can be linked to the importation of EVs and hybrid vehicles. We acknowledge that the legal standard in Article XX(g) does not require the demonstration of the existence of a risk. However, as we noted above, where there is no factual basis for a measure explaining its *raison d'être,* there cannot be a link or relationship between the measure and the stated interest, much less a "close and genuine relationship of ends and means". In the context of Article XX(g), therefore, a measure cannot be "relating" to the conservation of natural resources, if there is no factual explanation why this measure concerns the *specific products* at issue. We, therefore, find that the additional duties cannot be considered as "relating" to the objective of reducing CO_2 emissions.

7.2.4.3.3 Made effective in conjunction with restrictions on domestic production or consumption

7.142. As we have already concluded that the additional duties are not "relating" to the conservation of natural resources, there is no need to go to the second step of the analysis, which requires us to establish that the measure is made effective in conjunction with restrictions on domestic production or consumption.

7.143. This said, we note, that Türkiye has not pointed to any restrictions on the domestic production or consumption of EVs and hybrid vehicles. Indeed, as Türkiye rightly points out, such restrictions would make no sense since the "use of electric and hybrid vehicles has to be encouraged."[263] To us, this demonstrates that measures seeking to achieve a legitimate objective by restricting the importation of a product in order to protect domestic producers of that product, contradict the fundamental logic of, and, therefore, cannot be justified under Article XX(g).

7.2.4.3.4 Conclusion on Article XX(g)

7.144. Based on the above, we find that Türkiye has not demonstrated that the additional duties' inconsistency with Articles II:1(b) and II:1(a) is justified under Article XX(g).

7.2.4.4 Conclusion

7.145. We have examined whether the inconsistency with Articles II:1(b) and II:1(a) is justified under Articles XX(b) or (g) and have concluded that this is not the case. In respect of the products covered by that finding of inconsistency, therefore, there would be no need to move on to examining the claim under Article I:1 as the dispute is already resolved. However, as noted above, internal combustion engine vehicles are not covered by this finding nor are those hybrid vehicles that would not have been classified under the 34 specific 2002 tariff lines listed in Table 3 above. In respect of these products, therefore, a finding under Article I:1 is necessary to resolve the dispute. Accordingly, we now turn to examining China's claim under Article I:1.

No. 9, para. 25; Japan's third-party response to Panel question No. 9, paras. 16, 17; Singapore's third-party statement, para. 13; and United States' third-party response to Panel question No. 9, para. 15.

[261] Türkiye's first written submission, para. 2.115.

[262] China's opening statement at the first meeting of the Panel, para. 33.

[263] Türkiye's second written submission, para. 2.97. (emphasis omitted)

7.2.5 China's claim under Article I:1 of the GATT 1994

7.146. China submits that the additional duties are inconsistent with Article I:1 of the GATT 1994 because they do not apply to imports from all Members.[264] China's presentation of its claim under Article I initially related to the original version of the additional duties. China reformulated the presentation of its claim after the amended version, which is the one we are reviewing, came into force.

7.147. Türkiye does not contest that the additional duties are inconsistent with Article I:1. It invokes the same defence under Articles XX(b) and (g) as discussed above and also incorporates by reference its arguments under Article XXIV and the Enabling Clause previously submitted in respect of the IPLS.[265]

7.148. Before turning to the substance of the claim and the defences, we address a threshold issue related the timeliness and evolution of the parties' arguments following the adoption of the current version of the additional duties.

7.2.5.1 Permissibility of the parties' arguments

7.149. Türkiye submits that China's argument under Article I with respect to the current version of the additional duties represents an entirely new thrust and rationale of China's Article I claim.[266] Türkiye also suggests that China is too late in making this argument as it could have made it already in respect of the original version of the measure, which also exempted RTA partners.[267]

7.150. China, for its part, considers that it is insufficient, for burden of proof purposes, to incorporate arguments by reference, as Türkiye does, for Article XXIV and the Enabling Clause.[268] China also submits that Türkiye's defence in this respect is untimely as it should have raised the defence in its first written submission and should have provided a full defence in its second written submission.[269]

7.151. We turn first to the issue of the timeliness/changed nature of the parties' arguments. We recall that the current amended version of the additional duties came into force only shortly before the first meeting of the Panel. It differs from the original version, *inter alia*, in terms of scope: while the additional duties used to apply only to vehicles originating in China, they now also apply to vehicles of other origin. Only Türkiye's RTA partners are exempted from the additional duties.

7.152. We recall, furthermore, that neither the parties nor we consider that the essence of the measure has changed since panel establishment, which is why the current amended version of the additional duties is within our terms of reference. Given this, it would make little sense for us, within the boundaries of our terms of reference, to proceed with the review of the measure (as requested by the parties) but not to allow the parties to adjust their arguments to the changes in the measure.

7.153. We, therefore, consider that to fully discharge our functions under the DSU, we are not only allowed, but required to examine both China's new arguments and Türkiye's new defences insofar as they relate to aspects of the measure that only emerged through its amendment. We observe in this context that there would have been no reason for either party to raise these specific arguments/defences before the new measure was introduced because they relate to aspects of the measure that only crystallized through its amendment.

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[264] China's response to Panel question No. 2, para. 4.
[265] Türkiye's second written submission, paras. 2.29 and 2.64.
[266] Türkiye's second written submission, para. 2.25.
[267] Türkiye's second written submission, para. 2.26. See also Türkiye's response to Panel question No. 2, para. 1.20. We understand, furthermore, that Türkiye may be raising its concerns on China's argument with a view to pre-emptively justifying the changed nature and timing of its own arguments, through which it adds new defences under Article XXIV and the Enabling Clause against this claim. However, we do not understand China to be challenging Türkiye's invocation of these new defences *per se*, rather the sufficiency of the *prima facie* case that Türkiye has set out in this regard. On this, see para. 7.154 below.
[268] China's opening statement at the second meeting of the Panel, para. 45.
[269] China's opening statement at the second meeting of the Panel, paras. 45-46.

7.154. We turn next to China's argument concerning Türkiye's incorporation by reference of the defence under Article XXIV and the Enabling Clause that it submits in the context of the IPLS. We do not understand China to exclude, as a matter of principle, the possibility for a party to incorporate arguments by reference. Rather, we understand China's point to be that, given that the IPLS and the additional duties are different measures, these arguments cannot just be the same but must be tailored to the specific measure at issue. In our view, whether China is correct on this point, depends on what the legal standard in Article XXIV and the Enabling Clause requires Türkiye to show. This is a debate between the parties which we address in section 7.2.6.1.2 below. We, therefore, see no reason, to exclude Türkiye's arguments from consideration as a matter of principle.

7.2.5.2 Whether the additional duties are inconsistent with Article I:1

7.155. We now turn to the substance of China's claim.

7.156. Article I:1 provides as follows:

> With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

7.157. Thus, what China has to show in this case is that customs duties or charges are imposed, with respect to which an advantage (favour, privilege or immunity) is granted to any other country, that is not immediately and unconditionally accorded to like products from China.

7.158. China submits that: (i) the additional duties imposed by Türkiye on the importation of EVs and other vehicles from China are "customs duties and charges of any kind imposed on or in connection with importation"; (ii) likeness can be presumed because the distinction between EVs and other vehicles subject, or not, to additional duties, is exclusively based on origin; and (iii) not being subject to additional duties is an advantage that Türkiye denies to imports of EVs and other vehicles from China.[270]

7.159. As noted in section 7.2.3.2 above, we consider that these are ordinary customs duties. They are, therefore, "customs duties and charges" within the meaning of Article I:1. Furthermore, they only apply to products from countries that are not Türkiye's RTA partners. We therefore also agree with China that the only distinction applying here is based on the origin of the products, and therefore EVs and other vehicles from Türkiye's RTA partners can be presumed to be like EVs and other vehicles from other origins, including China. Third, we note that EVs and other vehicles from Türkiye's RTA partners are exempted from the additional duties. We agree that this exemption constitutes an advantage that is not immediately and unconditionally accorded to like products from all other countries, including China. Finally, we note that Türkiye states that it "does not dispute the (technical) violation of Article I".[271] Based on the above, we consider that China has demonstrated that the additional duties are inconsistent with Article I:1.

7.2.5.3 Conclusion

7.160. In conclusion, we find that the additional duties are inconsistent with Article I:1.

[270] China's second written submission, para. 26; response to Panel question No. 2, para. 4.
[271] Türkiye's second written submission, para. 3.1.

7.2.6 Whether the inconsistency with Article I:1 is justified

7.161. We have found that the additional duties are inconsistent with Article I:1 of the GATT 1994. Türkiye argues that this inconsistency is justified under Article XXIV of the GATT 1994, the Enabling Clause, and Articles XX(b) and (g).[272] We begin with Türkiye's defence under Article XXIV because Türkiye raises this defence with respect to the exemption from the additional duties of vehicles from *all* of Türkiye's RTA partners, including developing countries.[273] We will address Türkiye's defence under the Enabling Clause only if, and to the extent that, we find that Article XXIV does not justify the exemption of Türkiye's RTA partners from the additional duties. Furthermore, we will turn to Türkiye's defence under Articles XX(b) and (g) only if, and to the extent that, we find that Article XXIV and the Enabling Clause do not justify the exemption of Türkiye's RTA partners from the additional duties.

7.2.6.1 Whether the inconsistency with Article I:1 of the GATT 1994 is justified under Article XXIV

7.2.6.1.1 Introduction

7.162. Türkiye argues that the "preferential treatment of its RTA partners"[274] is justified pursuant to Article XXIV of the GATT 1994. As noted above, Türkiye incorporates by reference its arguments developed in the context of China's Article I:1 claim concerning the IPLS.[275] Türkiye, thus, argues that the exemption of RTA partners from the scope of the additional duties is justified because all of its RTAs fall within the scope of Article XXIV.[276]

7.163. China relies on a statement by the Appellate Body in *Turkey – Textiles* to argue that Türkiye has not demonstrated that the measure at issue was introduced upon the formation of a customs union or a free trade agreement (FTA) that fully meets the requirements of Article XXIV and that the formation of that RTA would have been prevented if it were not allowed to introduce the measure at issue.[277]

7.164. We set out the legal standard before assessing whether Türkiye has demonstrated that the exemption from the additional duties granted to its RTA partners is justified under Article XXIV.

7.2.6.1.2 Legal standard

7.165. Article XXIV reads, in relevant part, as follows:

> 5. Accordingly, the provisions of this Agreement shall not prevent, as between the territories of Members, the formation of a customs union or of a free-trade area or the adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; *Provided* that:
>
> (a) with respect to a customs union, or an interim agreement leading to the formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with Members not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce

[272] Türkiye's second written submission, para. 2.29 and fn 39.
[273] Türkiye raises the defence under the Enabling Clause only with respect to the exemption of vehicles from Türkiye's RTA partners which are developing countries. Türkiye argues, however, that all of Türkiye's RTAs with developing countries – despite their eligibility for the less demanding standards of the Enabling Clause – also satisfy the requirements of Article XXIV. (Türkiye's first written submission, para. 3.33).
[274] Türkiye's closing statement at the second meeting of the Panel, para. 2.6.
[275] Türkiye's second written submission, para. 2.29.
[276] Türkiye's first written submission, paras. 3.10 and 3.39-3.60.
[277] China's second written submission, para. 155. As noted and discussed above, China also expresses concerns with the timeliness of Türkiye's arguments and with the incorporation "by reference" of Türkiye's arguments developed in the context of the IPLS. (China's opening statement at the second meeting of the Panel, para. 45). We already addressed these arguments in section 7.2.5.1 above.

applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

(b) with respect to a free-trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of Members not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement, as the case may be; and

(c) any interim agreement referred to in sub-paragraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time.

…

8. For the purposes of this Agreement:

(a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that:

(i) duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories, and,

(ii) subject to the provisions of paragraph 9, substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union;

(b) A free-trade area shall be understood to mean a group of two or more customs territories in which the duties and other restrictive regulations of commerce (except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX) are eliminated on substantially all the trade between the constituent territories in products originating in such territories.

7.166. The parties and third parties have discussed what the respondent must demonstrate to rely on the exception in Article XXIV. We see three different elements to this discussion.

7.167. The *first element* concerns the RTAs that are invoked as the basis for the justification. There does not appear to be much disagreement between the parties that, to justify a departure from the provisions of the GATT 1994 pursuant to Article XXIV, the respondent must demonstrate that the RTA meets the relevant requirements of the above paragraphs and subparagraphs in Articles XXIV:8(a) and (b) and XXIV:5(a) and (b).[278] We agree with this and note that it is also the approach followed by prior adjudicators.[279]

7.168. Therefore, in line with the text of Article XXIV:8 set out above, a respondent must make a *prima facie* showing that a given RTA creates either a customs union or a free trade area where duties and other restrictive regulations of commerce are eliminated on substantially all the trade between the constituent territories in products originating in such territories. Furthermore, in the case of a customs union, the respondent must show, in addition, that substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union. And, finally, the respondent must also make a *prima facie*

[278] Türkiye's first written submission, para. 3.38; China's second written submission, para. 294.
[279] Panel Report, *US – Line Pipe*, para. 7.141; Appellate Body Report, *Turkey – Textiles*, para. 58.

showing that the customs union or free trade area meets the requirements in Article XXIV:5(a) or (b).

7.169. The *second element* of the discussion concerns the measure at issue in respect of which the justification is invoked. China takes the view that a respondent must, in addition to the above requirements related to the RTAs, demonstrate that the measure at issue was introduced upon the formation of an RTA, and that the formation of that RTA would have been prevented if the respondent were not allowed to introduce the measure.[280] China refers to a statement by the Appellate Body in *Turkey – Textiles*, which describes the following test (hereinafter "*Turkey – Textiles* test"):

> Accordingly, on the basis of this analysis of the text and the context of the chapeau of paragraph 5 of Article XXIV, we are of the view that Article XXIV may justify a measure which is inconsistent with certain other GATT provisions. However, in a case involving the formation of a customs union, this "defence" is available only when two conditions are fulfilled. First, the party claiming the benefit of this defence must demonstrate that the measure at issue is introduced *upon the formation* of a customs union that fully meets the requirements of sub-paragraphs 8(a) and 5(a) of Article XXIV. And, second, that party must demonstrate that *the formation of that customs union would be prevented* if it were not allowed to introduce the measure at issue. Again, both these conditions must be met to have the benefit of the defence under Article XXIV.[281]

7.170. China argues that the *Turkey – Textiles* test properly reflects the text of the *chapeau* of Article XXIV:5 and takes account of its context.[282] For China, Article XXIV was never intended to justify new barriers against non-RTA partners.[283]

7.171. Türkiye argues that the *Turkey – Textiles* test is not applicable in the present circumstances.[284] According to Türkiye, this test was developed to determine which measures are necessary when the parties to a customs union establish a joint customs regime and seek to apply measures *vis-à-vis* third parties. Türkiye, therefore, takes the view that the test does not apply to the relationship between RTA parties and to measures taken as part of the trade liberalization between them.[285]

7.172. A similar disagreement is also reflected amongst the third parties. Canada invites us to determine whether the test established by the Appellate Body in *Turkey – Textiles* can be applied in the same manner in this dispute.[286] The European Union, Japan, and Australia, for their part, submit arguments (in the context of the IPLS) that imply the application of the test to the case at hand.[287]

7.173. We begin by recalling that the Appellate Body developed the *Turkey – Textiles* test in a case concerning quantitative restrictions on imports of textiles and clothing that Türkiye imposed in order to apply what it considered to be "substantially the same commercial policy" as the European Communities in the context of implementing the final phase of the customs union between the two. It was in the context of assessing whether these quantitative restrictions, which had been found to be inconsistent with Articles XI and XIII of the GATT 1994, were justified under Article XXIV, that the Appellate Body developed the above test.

7.174. That case, thus, concerned a trade-restrictive measure taken *vis-à-vis* third parties. The novel question before the adjudicators was whether such a measure, which breached obligations *other* than Article I:1 of the GATT 1994, could be justified under Article XXIV. The Appellate Body's answer was that it could be justified if and when it was necessary for the formation of a customs union.[288]

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[280] China's second written submission, para. 155.
[281] Appellate Body Report, *Turkey – Textiles*, para. 58. (emphasis added)
[282] China's second written submission, paras. 296-300.
[283] China's second written submission, para. 288.
[284] Türkiye's response to Panel question No. 50, para. 2.83.
[285] Türkiye's response to Panel question No. 50, para. 2.84.
[286] Canada's third-party statement, paras. 31-33.
[287] European Union's third-party submission, paras. 99-105 and third-party statement, paras. 33-36; Japan's third-party submission, paras. 31-32 and third-party statement, para. 10.
[288] In a subsequent case, *Peru – Agricultural Products*, the Appellate Body reiterated this test also with respect to FTAs. (Appellate Body Report, *Peru – Agricultural Products*, para. 5.115).

7.175. The case before us is fundamentally different. We are not called upon to assess the potential justification of a trade-restrictive measure taken *vis-à-vis* third parties. At issue instead is the exemption of RTA partners from such a measure. Put differently, what Türkiye seeks to justify under Article XXIV are not the additional duties themselves, but their non-application to Türkiye's RTA partners.[289] Furthermore, the only breach we need to consider under Article XXIV is that of the MFN obligation in Article I:1. While the justification of violations of *other* GATT provisions under Article XXIV may be novel, the justification of MFN violations under that provision is not.[290] The very *raison d'être* of Article XXIV is to allow for preferential trade in deviation of the MFN principle (under certain conditions).

7.176. Given these differences, it would make little sense to apply the *Turkey – Textiles* test in the circumstances of this case.[291] As noted above, this test requires that the trade-restrictive measure that is to be justified must be introduced upon the formation of an RTA and must be necessary insofar as the respondent has to demonstrate that the formation of that RTA would be prevented if it were not allowed to introduce this measure. However, as also noted above, what Türkiye seeks to justify under Article XXIV is not a trade-restrictive measure *vis-à-vis* third parties, i.e. the additional duties themselves, but a preferential treatment, i.e. their non-application to Türkiye's RTA partners. Pursuant to Article XXIV:8, preferential tariff treatment, whether it consists in the elimination of existing duties or the non-introduction of additional ones, is a *defining* feature of RTAs. Furthermore, applying the *Turkey – Textiles* test to assess whether a measure which accords preferential tariff treatment to RTA partners is justified pursuant to Article XXIV, would yield absurd results. The only preferential tariff measures (exempting RTA partners from duties) justifiable pursuant to this test would be the ones existing or introduced at the time of formation of the RTA.[292] As the United States notes, "if the shield or exemption of Article XXIV only applied to changes 'at the institution' or 'at the formation', then a party would not be permitted to exempt its agreement partners from new duties or other new restrictive regulations of commerce post-dating the formation of the partnership. This, in turn, could lead to the customs union or free-trade area no longer satisfying the requirements of Article XXIV:8."[293] This would also be difficult to reconcile with the language of Article XXIV:4. For this reason, we agree with Türkiye, that the *Turkey – Textiles* test is not applicable in the circumstances of this case.

7.177. This brings us to the *third* and last *element* of the discussion, which concerns the question whether the respondent must demonstrate that the RTA in question *requires* the relevant preferential treatment, and if so, *how*. For Türkiye, the relevant test is whether the measure (in respect of which the preferential treatment is applied) falls within the category of measures that an RTA, by its design or by an explicit legal provision in the RTA text, is meant to remove.[294] China, for its part, submits that a respondent is required to show that the relevant customs union or FTA prohibits the application of the measure between the parties to the RTA.[295] The third parties that have taken a view seem to mostly consider that the respondent must demonstrate that the RTA in question requires the relevant

[289] As Türkiye points out, "the tariff applied to non-RTA parties must be otherwise WTO-consistent (e.g. within the tariff binding), but that is not material for the ability of the regulating Member to exempt its RTA partners *ab initio*." (Türkiye opening statement at the second meeting of the Panel, para. 3.32).

[290] See, in that sense, Appellate Body Report, *EC – Bananas III*, para. 191:

> Non-discrimination obligations apply to all imports of like products, except when these obligations are specifically waived or are otherwise not applicable as a result of the operation of specific provisions of the GATT 1994, such as Article XXIV.

[291] We agree with the panel in *US – Line Pipe* that the Appellate Body's findings in *Turkey – Textiles* were conditioned by the facts of that case. (Panel Report, *US – Line Pipe*, para. 7.148).

[292] Some third parties have made similar arguments in the context of expressing their views regarding the potential justification under Article XXIV of the IPLS. (See European Union's third-party response to Panel question No. 20, para. 64; United States' third-party response to Panel question No. 20, para. 36). The European Union has suggested that what must be introduced upon the formation could be the "non-applicability" of the challenged measure to the RTA partners. (European Union's third-party response to Panel question No. 20, para. 66). To the extent that this refers to the obligation, in the relevant RTA, to exempt RTA partners from future tariff measures, we note that this obligation is not the measure at issue that requires justification.

[293] United States' third-party response to Panel question No. 20, para. 36.

[294] Türkiye's response to Panel question No. 51, para. 2.106.

[295] China's second written submission, para. 308.

preferential treatment, although their views as to what is required to make this demonstration differ.[296]

7.178. It seems logical to us that in order to allow the respondent to invoke the exception under Article XXIV to justify a violation of Article I:1, an RTA must require the treatment that results in this violation.[297] As to the question of what the respondent must show to establish that an RTA requires this treatment, we do not consider it appropriate to provide a general answer to this question in the abstract. In the specific case of the imposition of duties that is at issue here, we note that Article XXIV:8 specifically requires the elimination of duties between RTA partners with respect to substantially all the trade between the constituent territories. Tariff preferences, whether they concern the elimination of existing duties or the non-introduction of additional ones, are, thus, a defining feature of any RTA.[298] It is true, of course, that such tariff elimination only needs to cover "substantially all the trade". This leaves the possibility that the particular product in question is not covered by the elimination of duties required by a particular RTA. Whether this is the case must be established for each RTA individually based on its text. In our view, for purposes of a *prima facie* showing it is enough for the respondent to assert that an RTA requires the specific preferential tariff treatment that results in the violation of Article 1:1 and to make available at least the relevant parts of the text of that RTA. This allows a panel as well as the complaining party to verify whether the assertion is correct. If the evidence on the record shows that a particular RTA does not require the respondent not to apply duties on the relevant products, Article XXIV would not justify the violation of Article I:1.

7.179. This concludes our discussion on the legal standard. We now turn to the application of this standard to the facts of the case.

7.2.6.1.3 Whether Türkiye has demonstrated that the exemption from the additional duties granted to its RTA partners is justified under Article XXIV

7.180. Türkiye's Presidential Decision No. 10436 sets out the duties applicable to imports in seven columns depending on the origin of the products. The additional duties do not apply to imports from the first three columns which read as follows[299]:

1	EU Member States, EFTA Member States, Free Trade Agreement Countries: Albania, United Kingdom of Great Britain and Northern Ireland, Bosnia and Herzegovina, Morocco, Faroe Islands, Palestine, Georgia, South Korea, Israel, Montenegro, Kosovo, North Macedonia, Malaysia, Arab Republic of Egypt, Mauritius, Moldova, Serbia, Republic of Singapore, Chile, Tunisia
2	Bolivarian Republic of Venezuela
3	United Arab Emirates

[296] Australia considers that "to justify an MFN violation under Article XXIV, the respondent has to refer to specific provisions in all relevant existing free trade agreements". (Australia's third-party response to Panel question No. 21, paras. 30 and 32). Canada considers that "the specific provisions that form the basis for the challenged measure in each FTA must be specifically referred to by the respondent". (Canada's third-party response to Panel question No. 21, para. 56). The European Union considers that the respondent should refer to provisions that "are applicable to the goods at stake in the contested measures". (European Union's third-party response to Panel question No. 21, para. 69). The United States considers that it is not necessary to cite a specific provision in an existing FTA. (United States' third-party response to Panel question No. 21, para. 38).

[297] We see similarities with what was discussed in *Brazil – Taxation*, where the panel and the Appellate Body considered that for a differential and more favourable treatment to be justified under paragraph 2(c) of the Enabling Clause, there must exist a link or a connection between this treatment and the RTA in question. The panel considered that the link must be "close and genuine", whereas the Appellate Body was of the view that it is sufficient for the link to be "genuine". (Appellate Body Reports, *Brazil – Taxation*, para. 5.423; Panel Reports, *Brazil – Taxation*, para. 7.1117).

[298] The parties and third parties have discussed the relevance of the fact that some RTAs may contain exceptions. We are not in a position, and do not consider it appropriate, to assess the availability of such defences or to second-guess a WTO Member's choice to invoke them. (See, in that sense, Panel Report, *Brazil – Retreaded* Tyres, para. 7.276 and Appellate Body Report, *Brazil – Retreaded Tyres*, para. 234). In our view, the only relevant consideration is that the elimination of duties between the parties is a defining feature of RTAs.

[299] This table is taken from Türkiye's response to Panel question No. 3, para. 1.23 in which Türkiye refers to Decision No 9391, which China has submitted as exhibit (Decision on Amendments to the Import Regime Decision, Presidential Decision No. 9391, Official Gazette No. 32769 (31 December 2024) (Exhibit CHN-5)).

7.181. In its arguments related to its Article XXIV defence, Türkiye explicitly identifies as its RTA partners all of the territories listed in these three columns.[300] Türkiye also explains that all of these RTAs have been notified to the WTO.[301] Furthermore, Türkiye has provided as exhibits the texts of its Customs Union with the European Union[302] and of most of the FTAs concluded with the other partners.[303]

7.182. Türkiye argues that these RTAs satisfy the requirements of Articles XXIV:5 and XXIV:8 because: (i) their scope is sufficiently wide and encompasses a sufficient volume of trade[304]; (ii) they have been notified to the WTO pursuant to Article XXIV of the GATT 1994 or the Enabling Clause and none have been declared incompatible with these provisions by any WTO body[305]; (iii) they state explicitly that they are intended to comply with the standard of "substantially all trade";[306] (iv) they do not envisage any increase in duties[307]; (v) neither Türkiye nor its partners have "unilaterally systematically" increased their applied duties following their conclusion[308]; and (vi) the Customs Union with the European Union constitutes not just a customs union with a harmonized tariff schedule, but an integrated economic space, including harmonization of internal legislation, commercial and competition policy and intellectual property rights.[309]

7.183. China has not indicated that it disagrees with these arguments submitted by Türkiye, nor has it provided any arguments or evidence to refute them.

[300] Türkiye's first written submission, fn 279 and response to Panel question No. 50, fn 256.

[301] Türkiye's first written submission, paras. 3.46 and 3.53; second written submission, para. 3.35. All these RTAs have been notified pursuant to Article XXIV, except for the Türkiye – Egypt FTA which was notified pursuant to the Enabling Clause. In respect of the latter, we observe that Article 1 of this FTA refers to the establishment of a free trade area "in conformity with Article XXIV of the GATT 1994 and the other multilateral agreements on trade in goods annexes to the Agreement establishing the WTO". The question, thus, arises whether Türkiye, in respect of this FTA, can invoke the exception under Article XXIV or is confined to invoking the Enabling Clause under which it has notified it. However, we do not consider it necessary to answer this question. In this section, we examine Türkiye's defence under Article XXIV, which it has presented collectively with respect to all its FTAs, including the Türkiye – Egypt FTA. We agree with Türkiye that the standards of paragraph 2(c) of the Enabling Clause are "less demanding" than those of Article XXIV. (Türkiye's first written submission, para. 3.33). Based on this view, we consider that if the exemption from the additional duties is justified under Article XXIV of the GATT, it will also and *a fortiori* be justified under the Enabling Clause. Therefore, the exemption from the additional duties applied to vehicles from Egypt, would be justified even if Türkiye could not invoke the defence under Article XXIV with respect to the Türkiye – Egypt FTA.

[302] EC – Turkey Association Council Decision No. 1 /95 of 22 December 1995 on implementing the final phase of the Customs Union (96/142/EC) (Exhibit TUR-58).

[303] Türkiye has provided as exhibits the texts of the following FTAs: Albania (Exhibit TUR-64), Bosnia and Herzegovina (Exhibit TUR-63), Chile (Exhibit TUR-80), the EFTA States (Exhibit TUR-61), Egypt (Exhibit TUR-75), Faroe Islands (Exhibit TUR-66), Georgia (Exhibit TUR-68), Israel (Exhibit TUR-70), Kosovo (Exhibit TUR-72), Morocco (Exhibit TUR-65), Malaysia (Exhibit TUR-74), Mauritius (Exhibit TUR-76), Moldova (Exhibit TUR-77), Montenegro (Exhibit TUR-71), North Macedonia (Exhibit TUR-73), Palestine (Exhibit TUR-67), Serbia (Exhibit TUR-78), Singapore (Exhibit TUR-60), Korea (Exhibit TUR-69 and TUR-69bis), Tunisia (Exhibit TUR-59), the United Kingdom (Exhibit TUR-62), and Venezuela (Exhibit TUR-79). We note that Türkiye has not provided as exhibit its FTA with the United Arab Emirates. We note that this FTA was notified to the WTO on 18 March 2025 (see document WT/REG492/N/1, S/C/N/1181).

[304] Türkiye's first written submission, paras. 3.45 and 3.53; response to Panel question No. 50, fn 256.

[305] Türkiye's first written submission, paras. 3.46 and 3.53.

[306] Türkiye's first written submission, paras. 3.47 and 3.53.

[307] Türkiye's first written submission, para. 3.51.

[308] Türkiye's first written submission, para. 3.51.

[309] Türkiye's first written submission, para. 3.56. Türkiye also argues that its RTAs should be presumed to be consistent with Article XXIV absent any proof to the contrary by China. (Türkiye's first written submission, paras. 3.48 and 3.53). We have concerns accepting this argument. We agree with Türkiye that, "in principle, a WTO Member's measures enjoy a presumption of consistency with WTO standards and legal requirements". RTAs, however, are not "a WTO Member's measures". Rather, Article XXIV operates as a "defence" allowing to justify, *under certain conditions*, the inconsistency of a measure with certain other GATT provisions. (See in that sense, Appellate Body Report, *Turkey – Textiles*, para. 45 and fn 13). As the party seeking to rely on this defence, the onus is on the respondent to demonstrate compliance with these conditions. (Panel Report, *US – Line Pipe*, para. 7.142). We cannot accept Türkiye's suggestion that compliance with these conditions should be presumed absent any proof to the contrary by the complainant. This, in our view, would result in an unacceptable reversal of the burden of proof with respect to the defence available under Article XXIV.

7.184. In our view, the arguments and information provided by Türkiye and the absence of any refutation by China establish a *prima facie* case that the RTAs satisfy the requirements of Articles XXIV:5 and XXIV:8 of the GATT 1994.[310]

7.185. Furthermore, Türkiye has asserted that these RTAs require preferential tariff treatment with regard to EVs and other vehicles and has made their texts available. We note with China, however, that the FTA between Türkiye and Venezuela excludes "several relevant vehicle subheadings from tariff liberalization".[311] As a result, this particular FTA does not require Türkiye to exempt vehicles from Venezuela from the additional duties.

7.186. Accordingly, we find that Türkiye has overall demonstrated that the exemption from the additional duties of vehicles from Türkiye's RTA partners listed in columns 1-3 of Presidential Decision No. 10436 is justified pursuant to Article XXIV of the GATT 1994, but that the exemption from the additional duties of vehicles from Venezuela is not justified pursuant to Article XXIV.

7.187. As we noted above, we address Türkiye's defence under the Enabling Clause only if, and to the extent that, we find that Article XXIV does not justify the exemption of Türkiye's RTA partners from the additional duties. As we have found that this is the case for the exemption from the additional duties applied to vehicles from Venezuela, we now turn to Türkiye's invocation of the Enabling Clause solely with respect to that exemption.[312]

7.2.6.2 Whether any remaining inconsistency with Article I is justified under the Enabling Clause

7.188. The Enabling Clause reads, in relevant parts:

> 1. Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties.
>
> 2. The provisions of paragraph 1 apply to the following: (…)
>
> (c) Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the CONTRACTING PARTIES, for the mutual reduction or elimination of nontariff measures, on products imported from one another[.]

7.189. As the Appellate Body has observed, paragraph 2(c) of the Enabling Clause does not exclude the possibility that developing country Members that are parties to regional or global arrangements may adopt such instruments that they may deem appropriate for the mutual reduction or elimination of tariffs. However, to be justified under paragraph 2(c) for the differential and more favourable treatment it accords, the instrument adopted that way must have a genuine link or a rational connection with the regional or global arrangement adopted and notified to the WTO.[313]

7.190. As noted above, we consider that this genuine link or connection is about whether the RTA requires the preferential treatment at issue.[314] In the circumstances of this dispute, the existence of this link hinges on the same factual element, i.e. whether the relevant RTA requires Türkiye to

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[310] We note that the panel in *US – Line Pipe* similarly accepted a *prima facie* case in the absence of effective refutation by the complainant. (See Panel Report, *US – Line Pipe*, para. 7.144).

[311] China's response to Panel question No. 68, para. 33. China refers to the case of this FTA as an example, and does not provide any further examples.

[312] We note that the Türkiye – Venezuela FTA was notified pursuant to Article XXIV:7(a) of the GATT 1994 and not pursuant to the Enabling Clause. Similar to the issue discussed in footnote 301, this raises the question, whether Türkiye, in respect of this FTA, can invoke the exception under the Enabling Clause or is confined to its defence under Article XXIV. We consider that this question only needs to be decided if and when a defence under the Enabling Clause would yield a different result from the defence under Article XXIV with respect to this FTA.

[313] Appellate Body Reports, *Brazil – Taxation*, paras. 5.423.

[314] See above, para. 7.178, fn 297.

exempt vehicles from this RTA partner from the additional duties. We found above that this is not the case for the FTA between Türkiye and Venezuela.

7.191. We therefore conclude that the exemption from the additional duties of vehicles from Venezuela is not justified pursuant to the Enabling Clause.[315] We now turn to assess whether this exemption is justified pursuant to Articles XX(b) and (g) of the GATT 1994.

7.2.6.3 Whether any remaining inconsistency with Article I is justified under Articles XX(b) and (g)

7.192. Türkiye argues that the departure from Article I due to the distinction between RTA partners and non-RTA partners is also justified under Articles XX(b) and XX(g).[316] Türkiye submits that this differential treatment "does not interfere with the environmental and public health rationale" of the additional duties, because all of Türkiye's RTAs include "extensive consultation and coordination mechanisms that permit the parties to address any environmental and health-related regulatory concerns".[317] China argues that the criterion used by Türkiye to exempt certain imports from the additional duties, i.e. "FTA status", is not rationally related to the purported objective of reducing CO_2 emissions in Türkiye.[318]

7.193. We note that Türkiye's general arguments under Articles XX(b) and (g) vary depending on the vehicles at issue.

7.194. As noted in section 7.2.4.2.3.2 above, Türkiye refers to a risk related to charging infrastructure relevant to EVs and (certain) hybrid vehicles as well as to a risk related to import-dependence. We recall our finding that Türkiye has not demonstrated the existence of these risks. Moreover, even assuming that Türkiye had demonstrated the existence of these risks, Türkiye has not provided arguments or evidence to demonstrate that the exemption of imports of EVs and hybrid vehicles from any of its RTA partners (including Venezuela) is designed to address such a risk. Furthermore, even accepting *arguendo* that some consultation and coordination mechanisms in Türkiye's RTAs (including the one with Venezuela) permit to address environmental and health-related concerns, we fail to see how this demonstrates that the exemption from the additional duties of EVs and hybrid vehicles from these RTA partners is designed to address risks related to charging infrastructure or import-dependence.

7.195. With respect to internal combustion engine vehicles, Türkiye argues that additional duties on these vehicles support the environmental objective by discouraging the use of fossil fuel-powered cars.[319] Even accepting *arguendo* that this may be the case, we note that Türkiye does not provide any arguments or evidence to demonstrate that the exemption of imports of internal combustion engine vehicles from these additional duties is designed to pursue this alleged environmental objective.

7.196. We therefore conclude that the exemption from the additional duties of vehicles from Venezuela is not justified pursuant to Articles XX(b) and (g) of the GATT 1994.

7.2.6.4 Conclusion

7.197. In conclusion, we find that Türkiye has overall demonstrated that the exemption from the additional duties of vehicles from Türkiye's RTA partners listed in columns 1-3 of Presidential Decision No. 10436 is justified under Article XXIV of the GATT 1994, except for vehicles from Venezuela. The exemption of vehicles from Venezuela is not justified under Article XXIV, under the Enabling Clause, or under Articles XX(b) and (g).

[315] Accordingly, as discussed in fn 312 above, we do not consider it necessary to determine whether Türkiye can rely on the Enabling Clause with respect to the Türkiye – Venezuela FTA.

[316] Türkiye's second written submission, fn 39.

[317] Türkiye's second written submission, para. 2.108; opening statement at the second meeting of the Panel, para. 2.18.

[318] China's opening statement at the second meeting of the Panel, para. 42.

[319] Türkiye's opening statement at the first meeting of the Panel, para. 2.18.

7.3 IPLS

7.198. As set out in section 2.2 above, Türkiye's IPLS requires a Permit Certificate to be presented at customs clearance for the importation of EVs or externally rechargeable hybrid vehicles (ERHVs[320]) originating from countries other than Türkiye's RTA partners. To obtain a Permit Certificate, five requirements must be met simultaneously: the Service Stations, Certificate of Competence, Call Centre, Authorized Representative, and Battery Commitment Requirements. We describe each of these requirements in detail below.

7.199. China challenges the consistency of the IPLS with Articles I:1, III:4, X:3(a), and XI:1 of the GATT 1994, and Article 2.1 of the TRIMs Agreement. Türkiye submits that the Panel should reject all of China's claims. With respect to China's claim under Article I:1, Türkiye also argues, first, that this claim is not properly within the Panel's terms of reference, and, second, that the exemption of vehicles originating from Türkiye's RTA partners from the IPLS is justified on the basis of Article XXIV of the GATT 1994 and paragraph 2(c) of the Enabling Clause. Finally, Türkiye argues that any violation of the GATT 1994 (including – in the alternative – of Article I:1) or of the TRIMs Agreement is justified under Article XX(d) of the GATT 1994.

7.200. We first set out the order of analysis that we consider most appropriate. We then turn to the claims and defences that the parties have put forward.

7.3.1 Order of analysis

7.201. In its submissions, China presents its claims in the following order: Article I:1, Article XI:1, Article III:4, Article 2.1 of the TRIMs Agreement, and Article X:3(a). In its submissions, Türkiye addresses China's claims in almost the same order, only inverting the order between the claims under Article III:4 and Article XI:1.

7.202. We recall that panels are generally free to structure the order of their analysis as they see fit, provided that their analysis is consistent with the structure and logic of the provisions at issue in each dispute.[321] We will adopt an economical approach and only address those of China's claims concerning the IPLS that we consider necessary to secure a positive solution to this dispute.

7.203. We consider it most appropriate to begin our analysis with China's claim under Article III:4 of the GATT 1994. As presented by China, this claim concerns both the requirements that must be met to obtain a Permit Certificate (IPLS requirements) and the enforcement of these requirements through the use of import licensing (what China refers to as the "penalty" associated with not meeting the requirements).[322] We consider that examining this claim will provide a basis for the most comprehensive factual analysis of the IPLS allowing us to elucidate elements which may also be relevant for addressing China's other claims.

7.204. For these reasons, we start our analysis with China's claim under Article III:4. To fully address the parties' disagreement concerning this claim, we then immediately address the Article XX(d) defence raised by Türkiye with respect to the claim. We consider this to be in line with our economical approach, given the number of claims raised by China and the breadth of the Article XX defence raised by Türkiye. We only examine China's other claims concerning the IPLS if we determine that it is necessary to do so.

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[320] We understand ERHVs to be the same as plug-in hybrids. We referred to plug-in hybrids in the context of classification. Because the IPLS uses the term ERHV, we also use this term for the purposes of this analysis.

[321] Appellate Body Reports, *Canada – Wheat Exports and Grain Imports*, paras. 126-127 and *Canada – Autos*, para. 151. We note that the main difference between the parties' approaches consists in the order in which they address China's claims under Articles III:4 and XI:1 of the GATT 1994. While there may be situations where the nature of the relationship between certain provisions may determine the existence of a mandatory sequence of analysis, which, if not followed, might constitute an error of law, we do not consider this to be the case with respect to Articles III:4 and XI:1. (See Panel Reports, *Argentina – Import Measures*, para. 6.149 and *India – Autos*, para. 7.168).

[322] China's first written submission, para. 220; second written submission, paras. 202-204; response to Panel question No. 37, para. 47.

7.3.2 China's claim under Article III:4 of the GATT 1994

7.3.2.1 Legal standard

7.205. Article III:4 provides in relevant part as follows:

> The products of the territory of any Member imported into the territory of any other Member shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

7.206. Based on the text of this provision, three elements must be satisfied: (i) that the imported and domestic products at issue are "like products"; (ii) that the measure at issue is a "law, regulation, or requirement affecting their internal sale, offering for sale, purchase, transportation, distribution, or use"; and (iii) that the imported products are accorded "less favourable" treatment than that accorded to the like domestic products. Below we address these elements in turn. We elaborate further on the legal standard as necessary in the course of our assessment of the issues in dispute.

7.3.2.2 Like products

7.207. China submits that Notification 2025/7 "expressly distinguishes based on the origin of the vehicles and thus a presumption of 'likeness' applies".[323]

7.208. Türkiye does not dispute that domestic and imported EVs and ERHVs are "like" products within the meaning of Article III:4.[324]

7.209. We note that the IPLS applies to the importation of certain EVs and ERHVs "originating from countries other than the European Union and countries with Free Trade Agreements".[325] Thus, the only factor of distinction on which the IPLS is premised is the country from which the relevant vehicle originates. We agree with prior panels that when origin is the only criterion distinguishing between imported and domestic products, there is no need to conduct a likeness analysis, and imported and domestic products can be presumed to be "like" within the meaning of Article III:4.[326]

7.210. We therefore find that EVs and ERHVs imported from countries other than Türkiye's RTA partners (imported EVs and ERHVs)[327] and the like EVs and ERHVs produced in Türkiye (domestic EVs and ERHVs) can be considered "like products" within the meaning of Article III:4 of the GATT 1994.

7.3.2.3 Law, regulation, or requirement affecting their internal sale, offering for sale, purchase, transportation, distribution, or use

7.211. China submits that Notification 2025/7 is a "law" or "regulation", and the specific requirements set out therein are "requirements" within the meaning of Article III:4 as they affect the internal sale, offering for sale, purchase, distribution or use of Chinese EVs and ERHVs.[328]

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[323] China's first written submission, para. 204.

[324] Türkiye's first written submission, para. 3.72.

[325] Article 3 of Notification 2025/7.

[326] See, *inter alia*, Panel Reports, *Argentina – Import Measures*, paras. 6.274-6.275; *India – Autos*, paras. 7.174-7.176; *Turkey – Pharmaceutical Products (EU)*, para. 7.123; *Canada – Autos*, para. 10.74; *Canada – Wheat Exports and Grain Imports*, para. 6.164; *China – Publications and Audiovisual Products*, paras. 7.1446-7.1447; *Thailand – Cigarettes (Philippines)*, para. 7.661; and *Turkey – Rice*, paras. 7.214-7.216. The rationale behind this presumption of likeness is that where a measure provides for a distinction based solely on origin, there will or can be products that are the same in all respects except for origin. (Appellate Body Report, *Argentina – Financial Services*, para. 6.38).

[327] We emphasize that the IPLS does not apply to *all* imported EVs and ERHVs but only to those originating in countries other than Türkiye's RTA partners. For the purposes of our analysis under Article III:4, we refer to the vehicles to which the IPLS applies (EVs and ERHVs imported from countries other than Türkiye's RTA partners) as "imported EVs and ERHVs". This reference does not cover EVs and ERHVs imported from Türkiye's RTA partners.

[328] China's first written submission, para. 212.

7.212. Türkiye does not dispute that the criteria of the IPLS fall within the scope of Article III:4[329], and insists that the "core features" of the IPLS are "those of an internal measure within the meaning of Article III:4".[330]

7.213. We observe that the IPLS requirements essentially pertain to after-sales processes for imported EVs and ERHVs, i.e. to services and activities occurring after an EV or an ERHV is sold on the Turkish market. In our view, even if they do not regulate directly the characteristics of EVs and ERHVs, but are rather directed to importers or manufacturers, these requirements by their nature affect the internal sale, offering for sale, purchase, transportation, distribution, or use of EVs and ERHVs.[331]

7.214. We therefore find that the IPLS is a "law, regulation, or requirement" affecting the "internal sale, offering for sale, purchase, transportation, distribution, or use" of EVs and ERHVs within the meaning of Article III:4 of the GATT 1994.

7.3.2.4 Less favourable treatment

7.3.2.4.1 Introduction

7.215. The parties disagree as to whether the IPLS accords imported EVs and ERHVs less favourable treatment than that accorded to the domestic like EVs and ERHVs. China argues that compliance with the IPLS requirements entails financial costs and administrative burdens that only concern imported vehicles.[332] Türkiye accepts that Notification 2025/7 applies only to EVs and ERHVs imported from countries other than Türkiye's RTA partners, but argues that domestic manufacturers of the like vehicles are subject to "very much the same obligations, which are simply set out in different legal instruments".[333]

7.216. The obligation to accord imported products treatment no less favourable than that accorded to the like domestic products requires effective equality of competitive opportunities for imported and domestic products on the internal market.[334] As both parties agree, the IPLS requirements only apply to EVs and ERHVs imported from countries other than Türkiye's RTA partners. However, the mere fact that imported EVs and ERHVs are subject to a regulatory regime that may differ from the one imposed on the like domestic EVs and ERHVs is, in itself, not determinative of whether they are treated less favourably within the meaning of Article III:4.[335] To establish an inconsistency with Article III:4, China must show that any such regulatory differences distort the conditions of competition to the detriment of imported EVs and ERHVs.[336]

7.217. In the light of Türkiye's responses to China's initial argument that the IPLS only applies to imported EVs and ERHVs, the question before us is now whether domestic EVs and ERHVs are subject to the same or different requirements, and if it is the latter – whether this difference affects the conditions of competition to the detriment of imported EVs and ERHVs. We will follow the parties' approach and address this question with respect to each of the IPLS requirements and the enforcement of these requirements through the use of import licensing (what the parties refer to as the "penalties" or "regulatory consequences" associated with not complying with the requirements).

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[329] Türkiye's first written submission, para. 3.72.

[330] Türkiye's second written submission, section 3.2.2.

[331] We agree with prior adjudicators that effects on those who sell, purchase, transport, distribute, or use products are not beyond scrutiny under Article III:4. (Appellate Body Report, *China – Publications and Audiovisual Products*, para. 305; GATT Panel Report, *US – Section 337*, para. 5.10; Panel Reports, *Brazil – Taxation*, paras. 7.63-7.66).

[332] China's first written submission, para. 217.

[333] Türkiye's first written submission, para. 3.76. See also ibid. para. 3.70.

[334] Appellate Body Reports, *Japan – Alcoholic Beverages II*, p. 16 and *EC – Seal Products*, para. 5.101; Panel Reports, *EU – Palm Oil (Indonesia)*, para. 7.1012 and *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.996. In other words, a measure accords less favourable treatment to imported products if it gives domestic like products a competitive advantage in the market over imported like products. (Appellate Body Report, *Dominican Republic – Import and Sale of Cigarettes*, para. 93).

[335] Appellate Body Reports, *Thailand – Cigarettes (Philippines)*, para. 128 and *EC – Seal Products*, para. 5.108.

[336] Appellate Body Reports, *Korea – Various Measures on Beef*, para. 137 and *Thailand – Cigarettes (Philippines)*, para. 128.

7.3.2.4.2 Service Stations Requirement

7.3.2.4.2.1 Relevant provisions

7.218. We recall that Notification 2025/7 applies to eight categories of imported EVs and ERHVs which are identified by their customs tariff position (GTP) and corresponding descriptions.[337]

7.219. Notification 2025/7 requires:

> a) Certification by the Turkish Standards Institution (TSE) that at least 20 authorized service stations have been established by the importer itself in 7 geographical regions in TS 12047 and TSE K 646 standards for M, N and T class (including L6 and L7 class with M class vehicle equipment) motor vehicles defined in the Road Traffic Regulation published in the Official Gazette No. 23053 of 18/7/1997 regarding the after-sales assembly, maintenance and repair of the goods to be imported, TS 11921 standard for L class motor vehicles,

7.220. Domestic manufacturers of EVs and ERHVs (as well as importers of EVs and ERHVs from the European Union and Türkiye's RTA partners) are also subject to a requirement related to service stations. This requirement is set out in Türkiye's After Sales Services Regulation (ASSR).[338]

7.221. Article 5 of the ASSR reads as follows:

> **Establishment of authorized service stations**
>
> **ARTICLE 5** – (1) Manufacturers or importers are obliged to establish an authorized service station with sufficient technical staff in the location, number and characteristics specified in the attached list in order to provide after-sales services for the specified lifetime of each product group in the attached list.
>
> (2) Manufacturers or importers may establish authorized service stations themselves or benefit from established service stations or service organizations, provided that they are responsible for the services provided.

7.222. The ASSR contains an Annex titled "Additional List of Consumer Products for Which After Sales Services Are Required in Accordance with the Law No. 6502 on Consumer Protection". Pursuant to Article 2 of the ASSR, this Annex lists the goods covered by the scope of the ASSR. In accordance with Article 5(1), the list in the Annex indicates the lifetime, number and geographical area covered of the required service stations, and a maximum repair time for each product category.

7.223. Heading 10 of the Annex is titled "Vehicles" and contains 13 subheadings for vehicles and two subheadings for vehicle spare parts and vehicle conversion kits. Türkiye has confirmed that the ASSR applies to vehicles irrespective of whether they have an internal combustion engine, electric, or hybrid motor.[339]

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[337] These categories are: tractors for semi-trailers; wheeled agricultural tractors and wheeled tractors used in forestry; motor vehicles designed to carry 10 or more persons (including the driver); passenger cars and other motor vehicles manufactured primarily for the transport of persons (excluding those falling within heading 87.02) (excluding go-karts) (excluding search and rescue/emergency intervention tracked vehicles under GTIP 8703.10.11.00.00) (including station wagons and racing cars); motor vehicles for the transport of goods; special purpose motor vehicles (excluding those specially constructed for the transport of people or goods) (e.g. rescue vehicles, crane vehicles, fire trucks, concrete mixer-equipped vehicles, road sweeping vehicles, spraying vehicles, mobile workshops, mobile radiology units); motorcycles (including mopeds) and those with an auxiliary engine wheeled vehicles (with or without baskets), baskets; and trailers and semi-trailers; vehicles without driving gear; parts and accessories thereof (except 8716.80; 8716.90).

[338] After Sales Services Regulation (ASSR) (Exhibit CHN-28).

[339] Türkiye's response to Panel question No. 29, para. 2.10.

7.224. For the 13 subheadings referring to vehicles, Heading 10 reads as follows:

Sector / Product		Lifetime	Number of services and geographical area condition	Maximum repair time
10.1	Passenger cars	10 years	Total 20 services in 7 geographical regions	45 working days
10.2	Pickup trucks	10 years	Total 20 services in 7 geographical regions	45 working days
10.3	Motorcycles	10 years	Total 10 services in 7 geographical regions	45 working days
10.4	ATV vehicles	10 years	Total 10 services in 7 geographical regions	45 working days
10.5	Motorized bikes	10 years	Total 10 services in 7 geographical regions	45 working days
10.6	Motorized scooters	10 years	Total 10 services in 7 geographical regions	45 working days
10.7	Sea motorcycles	10 years	1 service	45 working days
10.8	Yachts	10 years	1 service	45 working days
10.9	Snowmobiles	10 years	1 service	45 working days
10.10	Bikes	10 years	Total 10 services in 7 geographical regions	20 working days
10.11	Electric skateboards	10 years	Total 10 services in 7 geographical regions	20 working days
10.12	Battery vehicles for children	10 years	1 service	20 working days
10.13	Caravans	10 years	1 service	45 working days

7.3.2.4.2.2 Whether the treatment accorded to imported EVs and ERHVs is different from that accorded to the like domestic EVs and ERHVs

Arguments of the parties

7.225. China argues that the ASSR affords "more flexibility" to domestic manufacturers by allowing them to establish service stations themselves or to benefit from established service stations or service organizations, whereas importers must establish the requisite number of service stations themselves.[340]

7.226. Türkiye argues that the requirement to operate 20 service stations in 7 geographical regions applies also to vehicles manufactured by domestic manufacturers.[341] For Türkiye, the "proper comparator" to domestic manufacturers is not importers, but foreign manufacturers, because the ASSR applies to domestic manufacturers and because two manufacturers are "at the same level of trade".[342] Türkiye submits that domestic manufacturers and foreign manufacturers are accorded the same flexibility: they must put at the consumer's disposal 20 service stations in 7 geographical regions and can do so either by establishing these service stations themselves, or by using a third party to do so.[343] In the case of foreign manufacturers, Türkiye argues, this third party is the importer.[344]

Panel's assessment

7.227. We begin by noting several facts that appear undisputed. Vehicles can only be imported into Türkiye by entities established in Türkiye.[345] Pursuant to Notification 2025/7, to obtain a Permit Certificate for the importation of EVs and ERHVs, an importer must establish itself the requisite number of service stations, which comply with the relevant Turkish standards for EVs and ERHVs. The parties appear to agree that to establish a service station means to own it.[346] Pursuant to the ASSR, a domestic manufacturer of EVs and ERHVs must ensure that a certain number of service stations in certain geographical regions, which comply with the relevant Turkish standards for EVs

[340] China's first written submission, para. 218.
[341] Türkiye's first written submission, para. 3.76.
[342] Türkiye's second written submission, paras. 3.56-3.57. See also Türkiye's first written submission, para. 3.83.
[343] Türkiye's first written submission, para. 3.84.
[344] Türkiye's first written submission, para. 3.85.
[345] Michaela Merz, "Turkey: Only a Turkish resident entity can act as importer" (17 June 2019) (Exhibit CHN-46). See China's opening statement at the first meeting of the Panel, para. 82; Türkiye's response to Panel question No. 27, para. 2.1. Some foreign manufacturers collaborate exclusively with one importer. Several foreign manufacturers collaborate with more than one importer. Conversely, several importers collaborate with more than one foreign manufacturer. (Website of the members of the Automotive Distributors' and Mobility Association in Türkiye (Exhibit TUR-98); China's response to Panel question No. 28, para. 39; Türkiye's response to Panel question No. 28, para. 2.8).
[346] Türkiye's response to Panel question No. 74(b), paras. 2.9, 2.12, and 2.13; second written submission, para. 3.55 (using the word "have"); China's second written submission, para. 187.

and ERHVs, are available to service its vehicles. These service stations can be owned by the domestic manufacturer or by a third party.[347]

7.228. With these facts in mind, we turn to assessing whether the treatment accorded to imported EVs and ERHVs is different from the one accorded to the like domestic vehicles.

7.229. Article III:4 refers to the treatment accorded to "products". In our view, the only relevant comparator for our assessment under this provision is the treatment accorded to the imported and domestic products in question. This treatment may be affected by measures directed at economic operators rather than at the products themselves. What we consider relevant is whether and how these measures affect the conditions of competition between imported and like domestic products.[348]

7.230. From this perspective, we observe that imported EVs and ERHVs must be serviced by at least 20 service stations in 7 geographical regions which are owned exclusively by their importer.[349] Domestic like EVs and ERHVs must be serviced by service stations which are owned by any economic operator.[350] For imported EVs and ERHVs, none of the requisite service stations may be owned by an economic operator other than the importer (including economic operators with which the manufacturer or the importer may contract to provide after-sales services). By contrast, for domestic EVs and ERHVs the requisite service stations may be owned by any economic operator.

7.231. We find that this difference in the availability of economic operators who can own the requisite service stations translates in a difference between the treatment accorded to imported EVs and ERHVs and the treatment accorded to the like domestic EVs and ERHVs.[351]

7.232. We now turn to assessing whether this difference in treatment distorts the conditions of competition to the detriment of imported vehicles.

7.3.2.4.2.3 Whether any differences in treatment modify the conditions of competition to the detriment of imported EVs and ERHVs

Arguments of the parties

7.233. China argues that importers must expend financial resources to establish the requisite number of service stations[352] and need to recoup these costs through the price of the imported EVs and ERHVs, modifying the conditions of competition to their detriment.[353] China also submits that

[347] China's second written submission, para. 187; Türkiye's second written submission, paras. 3.55-3.56.

[348] When assessing the consistency with Article III:4 of measures directed at economic operators (rather than products), prior adjudicators have examined whether these measures resulted in less favourable treatment of the products themselves. For instance, in *Korea – Various Measures on Beef*, the challenged "dual retail" system contained requirements for small retailers (to only sell imported beef or domestic beef), for large-scale distributors, i.e. department stores and supermarkets (to provide a separate sales area for imported beef), and for stores selling imported beef (to bear a certain sign distinguishing them from domestic meat sellers). Rather than comparing the treatments accorded to economic operators at different levels of trade, the adjudicators assessed whether and how the dual retail system altered the conditions of competition between imported and like domestic beef in the Korean market. (Appellate Body Report, *Korea – Various Measures on Beef*, paras. 139-145). In *Thailand – Cigarettes (Philippines)*, the challenged measure subjected resellers of imported cigarettes to VAT when they did not satisfy prescribed conditions for obtaining input tax credits necessary to achieve zero VAT liability. The adjudicators examined whether, by imposing additional administrative requirements, connected to VAT liabilities, on imported cigarette resellers, the measure affected the competitive position of imported and domestic cigarettes. (Appellate Body Report, *Thailand – Cigarettes (Philippines)*, paras. 131-138).

[349] We note that it is the importer (rather than foreign manufacturers) who must obtain a Permit Certificate and – for that purpose – own service stations. We understand that an importer may own 20 service stations in 7 geographical regions and import vehicles produced by multiple foreign manufacturers. This does not, however, change the fact that EVs or ERHVs can only be sold on the Turkish market if *their* importer (rather than any other economic operator) has established the requisite service stations.

[350] Türkiye's first written submission, para. 3.82.

[351] In addition, we also note that domestic EVs and ERHVs other than passenger cars and pickup trucks are subject to the same requirement to operate service stations, but the number of required service stations is lower than 20.

[352] China's first written submission, paras. 212 and 217.

[353] China's first written submission, para. 212.

the need to make this significant investment constitutes a disincentive to import Chinese EVs and ERHVs.[354] In China's view, the flexibility to contract with third parties gives domestic manufacturers a competitive advantage since they have lower initial costs to incur.[355] This flexibility is denied to importers, thereby adversely modifying the conditions of competition.[356]

7.234. Türkiye argues that importers can use the same service stations for different brands they may import, and that they can use the service stations they already have in place for vehicles that they are currently importing (such as internal combustion vehicles) provided that these stations comply with the relevant Turkish standards for EVs and ERHVs. In Türkiye's view, this significantly reduces the costs of complying with Notification 2025/7, "thereby demonstrating that there is no detrimental impact".[357] Finally, Türkiye argues that China has not demonstrated "any effective deterioration of competitive opportunities".[358]

Panel's assessment

7.235. We first assess whether China has shown *prima facie* that the difference in treatment we have identified modifies the conditions of competition to the detriment of imported EVs and ERHVs. We then turn to Türkiye's rebuttal.

7.236. Looking at the text, design, and structure of the IPLS, we begin by noting that through the Service Stations Requirement, Türkiye effectively creates a limitation on who may own the requisite number of stations servicing imported EVs and ERHVs. This limitation does not exist for the domestic like vehicles. As a result, domestic EVs and ERHVs benefit from a wider range of possible economic operators who can own the requisite number of service stations than their imported counterparts. The Service Stations Requirement imposes additional costs associated with the sale of imported vehicles, requiring the establishment of new service stations or the adjustment of existing ones to comply with the relevant standards for EVs and ERHVs. Whether the importer chooses to reflect the cost of the required investment in the price of the vehicles sold on the Turkish market (as China suggests) or to absorb this cost, this would inevitably put imported EVs and ERHVs in a position of competitive disadvantage compared to the "like" domestic vehicles (i.e. it leads either to a higher sales price or to a lower profit margin). In our view, this results in a modification of the conditions of competition in the marketplace between imported and domestic EVs and ERHVs.[359]

7.237. In addition, under normal circumstances, an economic operator focusing on the sale of EVs and ERHVs would prefer to avoid the burden of establishing 20 service stations in 7 geographical regions and, instead, would choose to sell like EVs and ERHVs for which it can contract with third parties to provide after-sales services. We thus agree with China that the Service Stations Requirement creates a disincentive to import EVs and ERHVs from countries other than Türkiye's RTA partners.

7.238. We consider that China has shown *prima facie* that the difference in the availability of economic operators who can own the requisite service stations modifies the conditions of competition to the detriment of imported EVs and ERHVs. We now turn to the two rebuttal arguments raised by Türkiye.

7.239. First, Türkiye argues that importers which collaborate with different foreign manufacturers may use the same service stations for these different brands.[360] We understand this to mean that once an importer has established 20 service stations in 7 geographical regions, it can import EVs and ERHVs produced by different foreign manufacturers. We fail to see how this possibility would mitigate the fact that the requirement to own the requisite number of service stations puts importers in a position of competitive disadvantage compared to those selling like domestic vehicles, and thus

[354] China's second written submission, para. 189.
[355] China's first written submission, para. 219.
[356] China's first written submission, para. 218.
[357] Türkiye's second written submission, para. 3.58.
[358] Türkiye's first written submission, para. 3.86.
[359] Prior panels have similarly found that measures which allowed domestic products to have a wider range of possible economic operators to rely on compared to their imported counterparts could modify the conditions of competition in the marketplace between imported and domestic like products (Panel Reports, *China – Publications and Audiovisual Products*, para. 7.1545 and *Korea – Various Measures on Beef*, para. 634).
[360] Türkiye's second written submission, para. 3.58.

modifies the conditions of competition in the marketplace between imported and domestic EVs and ERHVs.

7.240. Second, Türkiye argues that importers who already own service stations for internal combustion engine vehicles may use them for importing EVs and ERHVs if they comply with the Turkish standards for EVs and ERHVs.[361] China considers this argument to be speculative and unsubstantiated.[362] We do not consider it necessary to make a factual finding on this point. Even if some importers could rely on some of the service stations they own to meet the Service Stations Requirement, the fact remains that for imported EVs and ERHVs, the importers must *own* the requisite number of service stations which comply with the Turkish standards for EVs and ERHVs, whereas for domestic EVs and ERHVs it is irrelevant who owns the requisite number of service stations. This conclusion is not nullified by the fact that the Service Stations Requirement may not give rise to less favourable treatment for imported products in each and every case, because some importers who already own service stations for internal combustion engine vehicles complying with the standards for EVs and ERHVs may incur lower or no costs.[363]

7.241. Finally, we also note that Türkiye raises the two arguments above to demonstrate that the costs for complying with the Service Stations Requirement are significantly reduced by certain mitigating factors. However, we cannot agree with Türkiye that such a reduction of the costs for complying with the Service Stations Requirement demonstrates that there is no detrimental impact.[364] We note, as prior adjudicators have, that the phrase "treatment no less favourable" is not qualified by a *de minimis* standard.[365]

7.242. We thus conclude that the difference in treatment we identified modifies the conditions of competition to the detriment of imported EVs and ERHVs.

7.3.2.4.2.4 EVs and ERHVs falling outside the scope of the ASSR

7.243. We note that domestic EVs and ERHVs other than those listed in Heading 10 of the Annex of the ASSR are not subject to *any* requirement set out in the ASSR with respect to service stations.

7.244. For the categories of EVs and ERHVs that fall within the scope of the IPLS but outside the scope of the ASSR, the IPLS thus creates an additional requirement for imported EVs and ERHVs, for which no equivalent exists for the like domestic vehicles. China has demonstrated that the requirement that importers own 20 service stations in 7 geographical regions (compared to the possibility for domestic manufacturers to contract with third parties to provide after-sales services) modifies the conditions of competition in the Turkish market to the detriment of imported EVs and ERHVs. In our view, this would *a fortiori* be true also for the requirement that importers own 20 service stations in 7 geographical regions compared to the lack of any requirement regarding service stations for domestic manufacturers. Therefore, we consider that China has met its burden of proof with respect to the less favourable treatment of imported EVs and ERHVs compared to the like domestic EVs and ERHVs which fall outside of the scope of the ASSR.

7.3.2.4.3 Certificate of Competence Requirement

7.3.2.4.3.1 Relevant provisions

7.245. Notification 2025/7 requires:

> b) Persons who will be responsible for the maintenance and repair of electric or externally rechargeable hybrid vehicles must have a certificate of competence exclusively for the maintenance and repair of electric or externally rechargeable hybrid vehicles issued by TSE or the Vocational Qualifications Authority

[361] Türkiye's second written submission, para. 3.58; response to Panel question No. 31, para. 2.19.
[362] China's second written submission, para. 191.
[363] Appellate Body Report, *US – FSC (Article 21.5 – EC)*, para. 221.
[364] Türkiye's second written submission, para. 3.58.
[365] Panel Reports, *China – Publications and Audiovisual Products*, para. 7.1537; *Canada – Wheat Exports and Grain Imports*, fn 281; *Thailand – Cigarettes (Philippines)*, para. 7.731; and *India – Solar Cells*, para. 7.97.

7.246. The Implementation Directive clarifies that:

> For each authorized service station in the 7 geographical regions, at least 2 people responsible for the maintenance and repair of electric and externally rechargeable hybrid vehicles must hold a qualification certificate issued by TSE or the Vocational Qualifications Authority.[366]

7.247. Annex 3 of the Implementation Directive, titled "Electric Vehicle Maintenance and Repair Training and Examination Application Procedures", contains the "processes (which) will be used for candidates applying to be certified as 'Electric Vehicle Maintenance and Repair Technicians' and to undergo training and exams". The certificate delivered following these processes is valid for three years. To receive it, an applicant must satisfy certain requirements related to their skills and knowledge level and to their educational background; complete a training provided by the TSE and the manufacturer or main importer; and successfully pass theoretical and practical exams. A price must be paid, determined according to the Training Department Pricing Guidelines.

7.248. Domestic manufacturers of EVs and ERHVs (as well as importers of EVs and ERHVs from Türkiye's RTA partners) are also subject to requirements related to the competence of the personnel working in service stations. These requirements are set out in standards issued by the TSE and made compulsory through Article 9(1) of the ASSR which requires service stations to have "the features included in the regulations or standards determined by the Ministry or the Turkish Standards Institution according to their service subjects." Türkiye refers to two such standards: TS 12047[367] and TSE K 646.[368]

7.249. Standard TS 12047 sets out general requirements for the sales services of all motor vehicles, including requirements for personnel.[369] Section 4.4 of TS 12047 requires repair shops to have personnel with minimum qualifications and numbers depending on the serviced vehicle class.[370] The technical personnel must have "basic and professional knowledge and skills", as provided for in other standards depending on the job titles.[371]

7.250. Standard TSE K 646 sets out requirements specifically for EVs and ERHVs.[372] Section 5.4 of TSE K 646 concerns requirements for the personnel of service stations. Paragraph 5.4.2 reads as follows:

> Technical supervisor and electric vehicle technical personnel of the repair shop must have at least industrial vocational high school degree in mechanics, motor vehicles and electric-electronic technology, or legal mastery certificate or Professional Qualification Certificate in the relevant field of profession, and also trained and authorized by parent company/companies, for aftersales services defined in Appendix A. Other technical personnel of the repair shop must have at least industrial vocational high school degree in relevant departments, or legal mastery or journeyman's certificate or training certificate in relevant field, or Professional Qualification Certificate.

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[366] Türkiye has confirmed that the "qualification certificate" referred to in this provision of the Implementation Directive is the same as the "certificate of competence" referred to in Notification 2025/7, and both certificates have the same name in the original Turkish versions of the exhibits. (Türkiye's response to Panel question No. 32(a), para. 2.20).

[367] Turkish Standard TS 12047, Authorized Auto Repair Shops – Motor Vehicles – Requirements, December 2013, ICS 03.080.30 (TS 12047) (Exhibit TUR-35).

[368] Certification Criteria TSE K 646, Authorized auto repair shops – Electric Vehicles – Requirements, August 2024, ICS 03.080.30 (TSE K 646) (Exhibit TUR-13).

[369] Türkiye explains that this standard covers EVs and ERHVs. (Türkiye's second written submission, para. 3.59).

[370] The classes are: heavy-duty commercial vehicles, light-duty commercial vehicles, passenger cars, and agricultural and forestry tractors.

[371] The titles are: auto mechanic, auto body mechanic, and auto painting technician.

[372] Türkiye explains that this standard covers both EVs and ERHVs. (Türkiye's response to Panel question No. 34, para. 2.28). Certification under TSE K 646 appears to be more specific and additional to certification under TS 12047. A Note under Section 1 (Scope) of TSE K 646 clarifies that "Authorized repair shops which are awarded Service Competence Certificate (TSE-HYB) under TS 12047 shall be certified under this criteria document. Authorized repair shop which does not have TSE-HYB certificate under TS 12047 may apply for certifications under both TS 12047 and this criteria document. However, compliance with TS 12047 is first required during certification".

7.251. Paragraph 5.4.3 further requires repair shops to have, in addition to the number of personnel defined in TS 12047, personnel with minimum qualifications and numbers depending on the serviced vehicle class.[373] The technical personnel "must have basic and professional knowledge and skills defined by following standards as per their job titles, and must have received electric vehicle specialization trainings from the TSE or the Vocational Qualifications Authority, or at the levels defined by the auto makers".[374]

7.3.2.4.3.2 Whether the treatment accorded to imported EVs and ERHVs is different from that accorded to the like domestic EVs and ERHVs

Arguments of the parties

7.252. China argues that the certificate of competence required from personnel in the service stations established by an importer is not equivalent to the competency requirements for personnel in service stations for domestic EVs and ERHVs.[375] According to China, the IPLS always requires a specific certificate of competence "exclusively for the maintenance and repair of electric or externally rechargeable hybrid vehicles", whereas TSE K 646 requires a Professional Qualification Certificate "in the relevant field of the profession" only as one of the available options.[376] China thus argues that "the certificate of competence options available to domestic manufacturers are not available to importers of Chinese EVs and HVs, thereby confirming the less favourable treatment."[377]

7.253. Türkiye argues that the required qualifications under TS 12047 and TSE K 646 are "(i)f not identical, […] at a minimum equivalent to the 'certificate of competence' required under Notification 2025/7".[378] Specifically, Türkiye explains that an industrial vocational high school degree in mechanics, motor vehicles and electric-electronic technology, is "as demanding and as specific as the one in Notification 2025/7, because it covers specifically 'mechanics, motor vehicles and electric-electronic technology'", and a legal mastery certificate or a Professional Qualification Certificate in the relevant field of profession "logically relate(s)" to EVs and ERHVs.[379] Türkiye further argues that the specialization requirements in TSE K 646 are "effectively the same in terms of substance and terminology as the 'Electric Vehicle Maintenance and Repair Technician' certificate required in Notification 2025/7."[380]

Panel's assessment

7.254. We begin by noting several facts that appear undisputed. First, the IPLS requires personnel working in the service stations owned by the importer to hold an Electric Vehicle Maintenance and Repair Technician (EVMRT) certificate of competence.[381] Second, this certificate is delivered following the process described in Annex 3 of the Implementation Directive.[382] Third, the EVMRT certificate is different from the legal mastery certificate and the Professional Qualification Certificate, and each of these certificates is obtained separately.[383]

7.255. Before proceeding, we consider it important to clarify what is contested before us. Türkiye considers China to argue that the EVMRT certificate is "more specialized or demanding than the certificate required for personnel that services domestic cars under the relevant Turkish standards".[384] Türkiye then proceeds to provide arguments and evidence in support of its position

[373] The classes are the same as those in Turkish Standard TS 12047 but concern EVs.
[374] The titles are: EV maintenance technician, EV repair technician, EV vehicle expert, auto mechanic, auto body mechanic, and auto paint technician. Paragraph 5.4.4 refers to other standards only with respect to the job titles "auto mechanic", "auto body mechanic", and "auto paint technician".
[375] China's second written submission, para. 192.
[376] China's opening statement at the first meeting of the Panel, para. 73.
[377] China's second written submission, para. 192.
[378] Türkiye's second written submission, para. 3.61.
[379] Türkiye's second written submission, para. 3.63.
[380] Türkiye's second written submission, para. 3.65.
[381] China's second written submission, para. 192; Türkiye's response to Panel question No. 32(a), para. 2.22; second written submission, para. 3.60.
[382] China's first written submission, para. 215; Türkiye's response to Panel question No. 32, paras. 2.21 and 2.23; second written submission, para. 3.60.
[383] Türkiye's response to Panel question No. 70, para. 2.1.
[384] Türkiye's second written submission, para. 3.61 (referring to China's opening statement at the first meeting of the Panel, para. 73).

that the requirements for the personnel in service stations for domestic EVs and ERHVs are demanding and highly specialized and thus fully equivalent to the requirements set out in the IPLS.[385] China appears to focus its challenge of the Certificate of Competence Requirement on the argument that the only possibility under the IPLS for importers to ascertain the competence of personnel in their service stations is through an EVMRT certificate, while domestic manufacturers have a range of options to do the same under the relevant standards.[386]

7.256. In the light of China's arguments, we proceed to compare the treatment of imported EVs and ERHVs and the treatment of like domestic EVs and ERHVs with respect to the available methods to ascertain the competence of the personnel in charge of servicing these vehicles. We do not believe that, in the circumstances of this dispute, this analysis involves a comparison of the underlying competence requirements which must be satisfied for the required certificate or degree to be delivered, i.e. whether they are equally demanding and specialized.

7.257. The personnel working in the 20 service stations owned by the importer must hold an EVMRT certificate. By contrast, the personnel working in the service stations servicing domestic EVs and ERHVs must hold either a "vocational high school degree in mechanics, motor vehicles and electric-electronic technology, or legal mastery certificate or Professional Qualification Certificate in the relevant field of profession". In other words, whereas the competence of the personnel servicing imported EVs and ERHVs can only be ascertained through an EVMRT certificate, the competence of the personnel servicing like domestic EVs and ERHVs can be ascertained through three different methods. The difference between these methods and the EVMRT certificate does not appear to reside solely in the name of the required certification. An EVMRT certificate is delivered through the process described in Annex 3 of the Implementation Directive. While the Turkish standards on the record do not elaborate on the processes through which a high school diploma, a legal mastery certificate or a Professional Qualification Certificate are delivered, the mere fact that these methods are alternative, and therefore different, suggests that they may be delivered through different processes.

7.258. Accordingly, we find that the difference in the available methods to ascertain the competence of the personnel working in service stations depending on whether these service stations are owned by the importer or by another economic operator in and of itself constitutes a difference in the treatment accorded to imported EVs and ERHVs and that accorded to like domestic EVs and ERHVs.

7.259. We now turn to assessing whether this difference in treatment distorts the conditions of competition to the detriment of imported vehicles.

7.3.2.4.3.3 Whether any differences in treatment modify the conditions of competition to the detriment of imported EVs and ERHVs

Arguments of the parties

7.260. China argues, without specifically referring to the Certificate of Competence Requirement, that compliance with all the IPLS requirements entails additional financial costs and administrative burdens that only concern imported vehicles.[387] In China's view, the requirements modify the conditions of competition by increasing the costs for sale and distribution of the imported EVs and ERHVs, "ultimately affecting their price".[388] According to China, the financial costs and administrative burden that must be borne by imported vehicles are not imposed on like Turkish vehicles, and – as a result – these requirements modify the conditions of competition to the detriment of imported vehicles.[389]

7.261. Türkiye argues that, assuming that there are any differences, China has not explained how they affect negatively the conditions of competition for foreign EVs and ERHVs.[390] According to Türkiye, since domestic EVs and ERHVs are subject to equivalent requirements in this area, "there

[385] Türkiye's second written submission, para. 3.68.
[386] China's second written submission, para. 192.
[387] China's first written submission, para. 217.
[388] China's first written submission, para. 212.
[389] China's first written submission, para. 217.
[390] Türkiye's second written submission, para. 3.69.

is no less favourable treatment imposed on imported vehicles, and therefore no violation of Article III:4".[391]

Panel's assessment

7.262. In line with prior adjudicators, we focus our examination on the design, structure, and expected operation of the Certificate of Competence Requirement to assess whether it adversely affects the equality of competitive opportunities of imported EVs and ERHVs in relation to like domestic vehicles.[392]

7.263. We observe that individuals with a set of specialized competences can count towards the requisite number of personnel responsible for the maintenance and repair of domestic EVs and ERHVs if they can certify these competences through three different methods. By contrast, individuals with the same set of specialized competences, certified through the same three methods, cannot count towards the requisite number of personnel responsible for the maintenance and repair of imported EVs and ERHVs unless they (also) hold an EVMRT certificate.

7.264. In our view, obtaining an EVMRT certificate necessarily entails costs.[393] These costs include the application for an EVMRT certificate, training that the candidates must complete before they can take the exam, and the price of the certificate itself (including its renewal every three years).

7.265. We understand Türkiye to argue that, with respect to domestic EVs and ERHVs, compliance with the relevant Turkish standards would entail equivalent costs because obtaining an EVMRT certificate is equivalent to obtaining the high school diploma, legal mastery certificate or Professional Qualification Certificate required under these standards.[394]

7.266. Even assuming, as Türkiye appears to suggest, that these methods to ascertain the competence of the personnel working in service stations entail equivalent costs, we nevertheless note that an EVMRT certificate is the only such method available with respect to imported EVs and ERHVs, and that the three alternative methods are only available with respect to domestic like EVs and ERHVs. Economic operators selling domestic EVs and ERHVs thus have an option that economic operators selling imported EVs and ERHVs do not, i.e. the option to certify the competence of the requisite number of specialized personnel responsible for the maintenance and repair through three different methods, and without the relevant individual holding an EVMRT certificate.[395]

7.267. As a result, we consider that economic operators selling domestic EVs and ERHVs have access to a larger pool of specialists with the relevant specialized competences required for servicing EVs and ERHVs.[396]

7.268. The Certificate of Competence Requirement would thus have implications for the equality of competitive conditions between imported and domestic EVs and ERHVs. This arises by necessary

[391] Türkiye's first written submission, para. 3.96.

[392] See Appellate Body Report, *Thailand – Cigarettes (Philippines)*, para. 130; Panel Report, *US – Renewable Energy*, para. 7.247.

[393] See in that sense China's comments on Türkiye's response to Panel question No. 70, para. 62.

[394] Türkiye's response to Panel question No. 70, para. 2.2.

[395] As China points out, "in the case of domestic vehicles, service centers have the flexibility to seek staff holding one of three possible certificates. The flexibility is not available to service centers for imported vehicles subject to the IPLS." (China's comment on Türkiye's response to Panel question No. 75(a), para. 84).

[396] Given the recent introduction of the requirement that the personnel in stations servicing imported EVs and ERHVs hold specifically EVMRT certificate, we also consider it pertinent to examine the situation today as compared to what it was prior to the introduction of the IPLS. It is our understanding that before the introduction of the IPLS, the personnel of stations servicing imported EVs and ERHVs was only subject to the competence requirements set out in TS 12047 and TSE K 646, just as personnel of stations servicing domestic EVs and ERHVs. Holding a high school diploma, a legal mastery certificate or a Professional Qualification Certificate sufficed for individuals to be counted towards the requisite number of qualified personnel necessary for the operation of the service station. After the introduction of the IPLS, we understand that the same individuals, with the same competences ascertained through the same three methods, can no longer count towards the requisite number of qualified personnel necessary for the operation of the service station. Instead, they must go through the process set out in Annex 3 of the Implementation Directive and receive an EVMRT certificate. Insofar as this would result in a limitation of the workforce available for stations servicing imported EVs and ERHVs, in our view, the requirement to obtain an EVMRT certificate could give domestic EVs and ERHVs a competitive advantage in the market over imported like vehicles.

implication from the text of the requirement which refers to the EVMRT certificate as the *only* available method to ascertain the competence of the personnel servicing imported EVs and ERHVs.

7.269. We thus conclude that the difference in treatment we identified modifies the conditions of competition to the detriment of imported EVs and ERHVs.

7.3.2.4.3.4 EVs and ERHVs falling outside the scope of the ASSR

7.270. We finally note that, as discussed above, there may be categories of EVs and ERHVs that fall within the scope of the IPLS but outside the scope of the ASSR. For these categories of EVs and ERHVs, we observe that the personnel working in the stations servicing imported EVs and ERHVs must hold an EVMRT certificate. By contrast, there are *no* requirements that the personnel working in the stations servicing the like domestic EVs and ERHVs hold any specific competence. The IPLS thus creates an additional requirement for imported EVs and ERHVs, for which no equivalent exists for the like domestic vehicles. In our view, this is already a strong indication that the conditions of competition are adversely modified to the detriment of imported EVs and ERHVs.[397] In addition, we consider that the lack of *any* requirement to certify the competences of the individuals working in the stations servicing domestic EVs and ERHVs compared to a requirement to obtain an EVMRT certificate for the individuals working in stations servicing imported EVs and ERHVs could give domestic vehicles a competitive advantage in the market over imported like vehicles.

7.271. Consequently, for the same reasons described above, we consider that this difference in treatment modifies the conditions of competition to the detriment of imported EVs and ERHVs.

7.3.2.4.4 Call Centre Requirement

7.3.2.4.4.1 Relevant provisions

7.272. Notification 2025/7 requires:

> c) Providing service for each brand to be imported with a Turkish call centre established in Turkey with at least 40 personnel

7.273. The Implementation Directive clarifies in an Explanatory Note that:

> The importer is responsible for ensuring that the call centre for each brand employs no fewer than 40 people.

7.274. Domestic manufacturers of EVs and ERHVs (as well as importers of EVs and ERHVs from the European Union and Türkiye's FTA partners) are subject to a requirement set out in Article 10(4) of the ASSR which reads, in relevant parts, as follows:

> … The consumer can notify the malfunction by telephone, fax, e-mail, registered letter with return receipt and similar means. In case of disagreement, the burden of proof regarding the notification belongs to the consumer. In the event that a telephone line is allocated by the manufacturer or importer for consumers to contact regarding after-sales services, the manufacturer or importer cannot choose a tariff higher than the regular fee tariff for this line.

7.3.2.4.4.2 Whether the treatment accorded to imported EVs and ERHVs is different from that accorded to the like domestic EVs and ERHVs

Arguments of the parties

7.275. China argues that Article 10 of the ASSR does not require the establishment of a call centre or impose a minimum personnel requirement.[398] China also submits that Türkiye has not provided

[397] See, in that sense, Appellate Body Report, *Thailand – Cigarettes (Philippines)*, paras. 133 and 138; Panel Report, *Canada – Wheat Exports and Gran Imports*, para. 6.185 (referring to Appellate Body Report, *US – Section 211 Appropriations Act* and GATT Panel Report, *US – Malt Beverages*, paras. 5.32 and 5.35).

[398] China's second written submission, para. 193.

evidence to substantiate its allegation that domestic manufacturers already fulfil the Call Centre Requirement. Even if this were the case, China argues that domestic manufacturers would still have the flexibility to "reduce the number of personnel or outsource the service depending on needs or other considerations", and that such flexibility is not afforded to importers of Chinese EVs and ERHVs.[399]

7.276. Türkiye argues that the Call Centre Requirement is "already, as a matter of fact, fulfilled by domestic manufacturers" and that domestic manufacturers are also required to be reachable by consumers.[400] In support, Türkiye submits four exhibits containing images from the internet sites of four domestic manufacturers referring to the ways in which these manufacturers can be reached.[401] Türkiye adds that its authorities "routinely monitor whether, and ensure that, all economic operators, including domestic manufacturers, provide consumers with sufficient and effective (communication) tools to raise their concerns, including via adequately-staffed call centres".[402]

Panel's assessment

7.277. The IPLS requires importers to operate at least one call centre in Türkiye servicing each imported brand and employing 40 personnel. By contrast, the ASSR provides for a right for consumers to notify manufacturers of any malfunctions of domestic EVs and ERHVs. Even assuming that this right translates in an implied obligation for domestic manufacturers to be reachable by consumers, there is clearly a difference between the requirements applicable to imported EVs and ERHVs compared to those concerning like domestic EVs and ERHVs.[403]

7.278. We note Türkiye's general argument that the IPLS and the ASSR both seek to ensure that consumers can reach the economic operators responsible for the after-sales service of the EVs and ERHVs sold on the Turkish market.[404] Nevertheless, the ways in which the IPLS and the ASSR pursue this objective differ substantially depending on whether the after-sales service concerns imported or domestic EVs and ERHVs. Importers are required to be reachable by operating a call centre with 40 personnel in Türkiye. Domestic manufacturers, assuming they are required to be reachable by consumers, are free to choose the most appropriate way to do so. They may, but are not required to, do so by operating a call centre. In fact, the ASSR envisages the possibility that a manufacturer allocates a telephone line for consumers to contact regarding after-sales services only as one of the available methods for the manufacturer to be reachable by consumers (using the words "in the event that").

7.279. Türkiye also argues that, as a matter of fact, domestic manufacturers fulfil the Call Centre Requirement.[405] We agree with China that the exhibits submitted by Türkiye do not unequivocally show that domestic manufacturers fulfil the same requirement that importers must fulfil.[406] Even assuming, on an *arguendo* basis, that domestic manufacturers do operate call centres in Türkiye employing 40 personnel, we fail to see the relevance of this fact for our analysis. We emphasize that domestic manufacturers are not required to operate such call centres, whereas importers are. Moreover, if the EVs and ERHVs of the same brand are imported by more than one importer, we understand that each importer must obtain a Permit Certificate and therefore must operate a call centre for the relevant brand.

7.280. We thus conclude that the requirement for importers to operate a call centre with 40 personnel for each brand imported, and the lack of such a requirement for domestic manufacturers,

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[399] China's second written submission, para. 194.
[400] Türkiye's second written submission, para. 3.70.
[401] Screenshots from the internet sites of Chery (Exhibit TUR-38), Ford (Exhibit TUR-39), Renault (Exhibit TUR-40), and TOGG (Exhibit TUR-41).
[402] Türkiye's second written submission, para. 3.72.
[403] In our view, the flexibility that China refers to (allowing domestic manufacturers who have opted for operating a call centre to reduce the number of personnel or outsource the service) is merely one consequence of this difference. (China's second written submission, para. 194).
[404] Türkiye's first written submission, para. 3.97.
[405] Türkiye's second written submission, paras. 3.70 and 3.71.
[406] China's second written submission, para. 194. At best, the evidence before us shows that certain domestic manufacturers in Türkiye have chosen to allocate telephone lines for consumers to contact them regarding after-sales services. It remains unclear (i) whether any of these domestic manufacturers operate call centres in Türkiye employing 40 personnel; and (ii) how other domestic manufacturers have chosen to make themselves be reachable by consumers.

result in a difference in the treatment accorded to imported EVs and ERHVs and the like domestic EVs and ERHVs.

7.281. We now turn to assessing whether this difference in treatment distorts the conditions of competition to the detriment of imported vehicles.

7.3.2.4.4.3 Whether any differences in treatment modify the conditions of competition to the detriment of imported EVs and ERHVs

Arguments of the parties

7.282. China argues that, to comply with the Call Centre Requirement (similarly to the Service Stations Requirement), importers must expend financial resources to establish and maintain a call centre[407] and need to recoup these costs through the price of the imported EVs and ERHVs, modifying the conditions of competition to their detriment.[408] China generally refers to the same concerns as the ones it raises with respect to the Service Stations Requirement: operating a call centre with 40 personnel requires substantial expenditure and investments which will have to be reflected in the cost and price of imported vehicles sold on the Turkish market affecting their competitive opportunities and disincentivizing their importation.[409]

7.283. Türkiye argues that China has not demonstrated "that there is an imbalance in the conditions of competition"[410], or that the flexibility China refers to results in less favourable treatment.[411]

Panel's assessment

7.284. We note that an importer must operate a call centre employing 40 personnel in Türkiye. By contrast, to the extent that any requirement for domestic manufacturers to operate a call centre may be inferred from the consumers' right described in the ASSR, domestic manufacturers may use any method to ensure that consumers can reach them. The Call Centre Requirement thus imposes more costs associated with the sale of imported EVs and ERHVs, requiring the establishment and continued operation of a call centre which employs at least 40 personnel. Whether the importer chooses to reflect the cost of the required investment in the price of the vehicles sold on the Turkish market (as China suggests) or to absorb this cost, this would inevitably put imported EVs and ERHVs in a position of competitive disadvantage compared to domestic EVs and ERHVs (i.e. either through a higher sales price or lower profit margin). In our view, this modifies the conditions of competition in the marketplace between imported and domestic EVs and ERHVs.

7.285. We agree with China that the Call Centre Requirement creates a disincentive for economic operators to import EVs and ERHVs from countries other than Türkiye's RTA partners. We consider that, under normal circumstances, an economic operator focusing on the sale of EVs and ERHVs would prefer to avoid the burden of operating a call centre with 40 personnel and, instead, would choose to sell like EVs and ERHVs for which it is not required to establish and operate a call centre.

7.286. We thus conclude that the difference in treatment we identified modifies the conditions of competition to the detriment of imported EVs and ERHVs.

7.3.2.4.4.4 EVs and ERHVs falling outside the scope of the ASSR

7.287. We finally note that, as discussed above, there may be categories of EVs and ERHVs that fall within the scope of the IPLS but outside the scope of the ASSR. For these categories of EVs and ERHVs, we observe that for EVs and ERHVs imported from countries other than Türkiye's RTA partners, there must be at least one call centre in Türkiye servicing the brand and employing 40 personnel. By contrast, for domestically produced like EVs and ERHVs, there is *no* requirement, of any kind, that their manufacturer can be reached by consumers through such a call centre. The IPLS

[407] China's first written submission, paras. 212 and 217.
[408] China's first written submission, para. 212.
[409] China's first written submission, paras. 212, 217, and 219; second written submission, para. 172; opening statement at the second meeting of the Panel, para. 61.
[410] Türkiye's first written submission, para. 3.98.
[411] Türkiye's second written submission, para. 3.72.

thus also creates an additional requirement for these imported EVs and ERHVs, for which no equivalent exists for the like domestic vehicles.

7.288. Consequently, for the reasons described above, we consider that this difference in treatment modifies the conditions of competition to the detriment of imported EVs and ERHVs.

7.3.2.4.5 Authorized Representative Requirement

7.3.2.4.5.1 Relevant provisions

7.289. Notification 2025/7 requires that to obtain a Permit Certificate:

> ç) The manufacturer of the goods to be imported must have an authorized representative resident in the country

7.290. The Implementation Directive refers to a "consular-certified document proving that the manufacturer has authorized the applicant importer" and contains the following Explanatory Note: "This is a consular-certified document that authorizes the importer, based in Turkey, for the specific brand and type". Annex 1 of the Implementation Directive contains a sample Authorized Representative Agreement for Imported Products.

7.291. There is no requirement for domestic manufacturers of EVs and ERHVs to have an authorized representative resident in Türkiye.

7.3.2.4.5.2 Whether the treatment accorded to imported EVs and ERHVs is different from that accorded to the like domestic EVs and ERHVs

Arguments of the parties

7.292. The parties agree that the requirement to appoint an authorized representative concerns only imported EVs and ERHVs and there is no such requirement for domestic EVs and ERHVs.[412]

Panel's assessment

7.293. Imported EVs and ERHVs are subject to an additional requirement which is not applicable with respect to like domestic vehicles.

7.294. We find that this additional requirement constitutes a difference between the treatment accorded to EVs and ERHVs imported from countries other than Türkiye's RTA partners and the treatment accorded to the like domestically produced EVs and ERHVs. We now turn to assessing whether this difference in treatment distorts the conditions of competition to the detriment of imported vehicles.

7.3.2.4.5.3 Whether any differences in treatment modify the conditions of competition to the detriment of imported EVs and ERHVs

Arguments of the parties

7.295. China refers to the fact that foreign manufacturers are already required to have an authorized representative on Turkish territory for purposes unrelated to the IPLS, notably under Türkiye's Type Approval Regulation (TAR).[413] However, China argues that a person other than the importer may not be an authorized representative for purposes of the IPLS. China argues that by also requiring the appointment of an authorized representative, the IPLS imposes a "double burden" on foreign manufacturers which does not apply to domestic manufacturers.[414] According to China, this double burden constitutes less favourable treatment for purposes of Article III:4.

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[412] China's second written submission, para. 205; Türkiye's first written submission, para. 3.101.

[413] Regulation on Type Approval and Market Surveillance and Inspection of Motor Vehicles and Trailers and their Components, Systems and Separate Technical Units (EU/2018/858) (TAR) (Exhibit TUR-54).

[414] China's second written submission, para. 206.

7.296. Türkiye also refers to the fact that foreign manufacturers are already required to have an authorized representative under the TAR. According to Türkiye, this means that, "in practice, by the time the IPLS becomes relevant to foreign-produced cars, foreign manufacturers will already have established authorized representatives" and the Authorized Representative Requirement "will thus never lead to any additional burden for foreign manufacturers".[415] Türkiye also argues that the Authorized Representative Requirement does not amount to less favourable treatment, and that China has provided no evidence that it entails any administrative or logistical burden for foreign manufacturers.[416] According to Türkiye, the administrative effort related to complying with the requirement is "minimal".[417] Finally, Türkiye argues that the requirement does not entail less favourable treatment for imported products because it "neutralizes an advantage that a foreign manufacturer would otherwise enjoy over the domestic manufacturer" and "re-establishes the playing field" between domestic manufacturers who are established in Türkiye and can be easily reached by consumers and the Turkish authorities, and foreign manufacturers who are abroad and are not easily reachable by consumers and the authorities.[418]

Panel's assessment

7.297. We begin by noting several facts that appear undisputed. All manufacturers (foreign or domestic) are responsible for securing type approval from the competent authorities before a vehicle can be sold on the Turkish market.[419] To seek type approval, foreign manufacturers that are not established in the European Union must appoint a representative established in Türkiye to represent them before the relevant approval body (TAR representative).[420] This can be either the importer or another legal entity.[421] The requirement stems from the TAR and existed before the introduction of the IPLS.[422] To obtain a Permit Certificate under the IPLS, manufacturers of imported EVs and ERHVs must also appoint an authorized representative established in Türkiye (IPLS representative).[423]

7.298. The parties disagree whether a foreign manufacturer can always appoint as IPLS representative the legal entity serving as its TAR representative. China considers that this is only possible if this legal entity is the importer. In China's view, if a legal entity other than the importer serves as a TAR representative, the IPLS requires appointing a separate entity (the importer) as IPLS representative. Türkiye considers that the same legal entity (which may, or may not, be the importer) can serve as both TAR and IPLS representative.

7.299. To address the parties' disagreement, we first examine the requirement to designate a representative under the TAR, which pre-existed the IPLS. The TAR clearly refers to two separate functions: that of a "manufacturer's representative"[424], whose obligations are set out in Article 15, and that of an "importer"[425] whose obligations are set out in Article 16. We see nothing in the TAR that prevents foreign manufacturers from appointing an importer as their TAR representative. In that sense, we agree with Türkiye that the importer may act as TAR representative.[426] In this

[415] Türkiye's response to Panel question No. 27, para. 2.7; comments on China's response to Panel question No. 71, para. 2.5

[416] Türkiye's second written submission, para. 3.75.

[417] Türkiye's first written submission, para. 3.100.

[418] Türkiye's first written submission, para. 3.101.

[419] Articles 5 and 13(1) of the TAR. Türkiye explains that type approval is a process where a national authority certifies that a vehicle model, system, or component meets all specified safety, environmental, and production requirements before it can be sold or used within a specific region (Türkiye's first written submission, para. 3.102).

[420] Article 13(4) of the TAR; China's response to Panel question No. 71, para. 37; Türkiye's first written submission, para. 3.102.

[421] China's response to Panel question No. 71, para. 44; Türkiye's comments on China's response to Panel question No. 71, para. 2.6.

[422] The TAR was published in Türkiye's Official Gazette on 19 April 2020. In its first iteration, the IPLS was introduced in November 2023. (Notification on the Import of Certain Electric Vehicles (Import: 2023/22), Official Gazette No. 32384 (29 November 2023) (Exhibit CHN-13).

[423] China's response to Panel question No. 71, para. 37; Türkiye's first written submission, para. 3.100.

[424] Article 3(u) of the TAR defines the term "manufacturer's representative" as a natural or legal person "duly appointed by the manufacturer to represent the manufacturer before an approval authority or a market surveillance authority and to act on behalf of the manufacturer in matters covered by this Regulation".

[425] Article 3(ü) of the TAR defines the term "importer" as a natural or legal person established in Türkiye who "imports vehicles, systems, components, separate technical units, parts or equipment in accordance with national foreign trade and customs legislation and places them on the domestic market". We note that, contrary to TAR representatives, importers do not need to be "duly appointed by the manufacturer".

[426] Türkiye's second written submission, para. 3.75.

scenario, the same operator will perform two sets of functions: that of an importer (with the responsibilities under Article 16) and that of a TAR representative (with the responsibilities under Article 15). We also agree with China that nothing in the TAR prevents foreign manufacturers from appointing two different operators as importer and TAR representative. In this scenario, each operator will perform one set of functions.

7.300. We now turn to the Authorized Representative Requirement in the IPLS. We note that the text of Notification 2025/7 only refers to an "authorized representative" that a foreign manufacturer must have in Türkiye. The Implementation Directive, however, refers to a document proving that the manufacturer has authorized "the applicant importer". An Explanatory Note further reads that this document must authorize "the importer, based in Turkey" for the specific brand and type. Annex 1 of the Implementation Directive contains a sample Authorized Representative Agreement for Imported Products. Through this Agreement, a "manufacturer company" authorizes a representative to sign commitments on behalf of the company, to represent it in front of an approval body or a market surveillance and inspection body for specific brands and types, and to "act on behalf of the manufacturer".

7.301. While Notification 2025/7 only refers to the IPLS representative in general terms, the Implementation Directive refers to "the importer" or "the applicant importer" as the entity being authorized to serve as IPLS representative.[427] Section 1 of the Implementation Directive describes this Directive as a "guideline" covering the "procedures and principles related to the Permit Certificate that will be obtained for vehicles under customs supervision within the scope of" Notification 2025/7.[428] From the perspective of an importer applying for a Permit Certificate, the texts of Notification 2025/7 and the Implementation Directive suggest that to obtain a Permit Certificate, the importer must present a document authorizing it to serve as IPLS representative of the foreign manufacturer. In our view, this perspective has important implications for the conditions of competition because it immediately and directly affects an importer's behaviour. We acknowledge Türkiye's explanations that the reference in the Implementation Directive to importers "should not be read as a requirement that only importers can be appointed as authorized representatives", and that the text of Notification 2025/7, which does not restrict authorized representatives to importers, would prevail in case of a conflict with that of the Implementation Directive.[429] However, we see no apparent conflict between the requirements contained in these two legal instruments. By their very terms, Notification 2025/7 requires the foreign manufacturer to appoint an "authorized representative", and the Implementation Directive, which, in our understanding, elaborates on the requirements set out in Notification 2025/7, specifies that the manufacturer must appoint as such an "authorized representative" the importer. These instruments contain the only currently available guidance for importers applying for a Permit Certificate. In our view, therefore, an importer applying for a Permit Certificate can reasonably be expected to reach the conclusion that it is specifically the importer who must be appointed as IPLS representative, whether or not that importer serves as a TAR representative.[430] We thus agree with China.

7.302. As a result, the Authorized Representative Requirement may, in some situations, require foreign manufacturers to appoint two different entities as TAR and IPLS representatives. This is what we understand China to refer to as the "double burden" which modifies the conditions of competition to the detriment of imported EVs and ERHVs.

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[427] With respect to the second reference, we note that Notification 2025/7 applies to importers, and the parties do not appear to disagree that importers are the ones who apply for and must obtain a Permit Certificate to import EVs and ERHVs.

[428] Türkiye has also explained that the Implementation Directive "elaborates" upon, "specifies" or "operationalizes" the requirements set out in Notification 2025/7 and "provides guidance for the operation of the IPLS". (Türkiye's first written submission, para. 3.79 and fn 442; second written submission, para. 3.145).

[429] Türkiye's comments on China's response to Panel question No. 71, para. 2.7.

[430] As noted above, some foreign manufacturers may have appointed the importer to act as their TAR representative. With respect to the EVs and ERHVs produced by these foreign manufacturers, Notification 2025/7 would require the importer to act as both TAR representative and IPLS representative. However, other foreign manufacturers may have appointed as TAR representative an economic operator that is not the importer. With respect to the EVs and ERHVs produced by these manufacturers, Notification 2025/7 would require either two different entities to serve as TAR and IPLS representatives, or the foreign manufacturer to remove its TAR representative and appoint the importer as both TAR and IPLS representative. We recall, in that respect, that we agree with prior adjudicators that a requirement may be inconsistent with Article III:4 of the GATT 1994 even if it does not give rise to less favourable treatment for imported products in each and every case. (See Appellate Body Report, *US – FSC (Article 21.5 – EC)*, para. 221).

7.303. We consider that China has thus shown *prima facie* that the Authorized Representative Requirement modifies the conditions of competition to the detriment of imported vehicles. We now turn to the two rebuttal arguments raised by Türkiye.

7.304. First, Türkiye argues that the administrative effort related to complying with the Authorized Representative Requirement is "minimal".[431] We note that China's challenge of the Authorized Representative Requirement does not concern the administrative effort related to appointing an IPLS representative, but the additional costs that may arise in situations where the TAR representative is not the importer. In our view, whether the administrative effort of appointing an IPLS representative is minimal has no bearing on the existence, in some situations, of this "double burden".

7.305. Second, Türkiye argues that the objective pursued by the Authorized Representative Requirement is to "re-establish an equal playing field" between imported and domestic EVs and ERHVs by creating "a bridge between manufacturers and the competent Turkish authorities that … naturally already exists for domestic manufacturers".[432] We note that a determination whether a measure is inconsistent with Article III:4 does not require an enquiry into the regulatory objectives of the measure.[433] We will address Türkiye's arguments pertaining to the regulatory objectives of the Authorized Representative Requirement in our analysis of Türkiye's defence under Article XX(d). At the current stage of the analysis, Türkiye's argument does not alter our conclusion that the Authorized Representative Requirement modifies the conditions of competition to the detriment of imported EVs and ERHVs.[434]

7.306. We thus conclude that the difference in treatment we identified modifies the conditions of competition to the detriment of imported EVs and ERHVs.

7.3.2.4.6 Battery Commitment Requirement

7.3.2.4.6.1 Relevant provisions

7.307. Notification 2025/7 states that to obtain a Permit Certificate:

> d) It is necessary to provide a written commitment that the procedures to be carried out regarding the monitoring, control and supervision of the battery systems are accepted by the importer.

7.308. An Explanatory Note in the Implementation Directive clarifies that:

> The importer agrees to accept all work and processes related to each battery in every imported vehicle, including the fees and charges for these processes.

7.309. Annex 4 of the Implementation Directive contains a sample of this commitment which reads as follows:

> For the vehicles and batteries of the … Brand and … Type included in the application under the Notification on the Import of Certain Electric and Externally Rechargeable Hybrid Vehicles (Import: 2025/7); we accept the application, monitoring, inspection, and control to be carried out by the authorized organization of the Ministry of Industry and Technology of the Republic of Turkey, and we commit to covering any fees and costs that arise from these processes. We also declare and commit to being open to any information exchange and data sharing with the relevant organization during the after-sales process.

7.310. There is no requirement for domestic manufacturers of EVs and ERHVs to provide a similar written commitment. Türkiye refers to rules pertaining to monitoring, control and supervision of battery systems which apply to both importers and domestic manufacturers and are set out in the

[431] Türkiye's first written submission, para. 3.100; second written submission, para. 3.77.
[432] Türkiye's first written submission, para. 3.101; second written submission, para. 3.73.
[433] Appellate Body Reports, *EC – Seal Products*, para. 5.117; *US – Clove Cigarettes*, para. 179 and fn 372; and *Thailand – Cigarettes (Philippines)*, para. 128.
[434] See, in a similar vein regarding an argument that the ultimate goal of the challenged measure was to achieve "greater" equality of competitive opportunities, Panel Report, *EU – Energy Package*, para. 7.1322.

Regulation on Waste Batteries and Accumulators (RWBA)[435], as well as to requirements covering the safety of rechargeable vehicle batteries set out in the TAR.[436] However, we do not understand Türkiye to argue that either of these instruments includes a requirement for domestic manufacturers to provide a commitment similar to the one required under the IPLS. Rather, Türkiye refers to these instruments as sources of obligations concerning both domestic and imported EVs and ERHVs.

7.3.2.4.6.2 Whether the treatment accorded to imported EVs and ERHVs is different from that accorded to the like domestic EVs and ERHVs

Arguments of the parties

7.311. China argues that "imported vehicles subject to the IPLS are subject to monitoring, inspection, control, and data sharing requirements and fees that do not apply to like domestic vehicles."[437] China also submits that Türkiye has not identified any specific provisions in the RWBA that allegedly contain obligations equivalent to those in the written commitment required under Notification 2025/7.[438] According to China, the RWBA does not appear to apply to vehicle manufacturers, is primarily concerned with battery recycling, and does not appear to impose obligations relating to the monitoring, control or inspection of vehicle battery systems, nor information sharing obligations.[439] Finally, China disagrees with Türkiye that the inspections foreseen in the Battery Commitment are the same as the inspections in the TAR.[440]

7.312. Türkiye argues that domestic manufacturers are also subject to the rules pertaining to monitoring, control and supervision of battery systems set out in the RWBA.[441] Türkiye explains that, as a matter of domestic law, the RWBA applies to vehicle battery systems and to vehicle manufacturers.[442] In addition, domestic manufacturers need to ensure that vehicles comply with the requirements pertaining to the safety of rechargeable batteries set out in the TAR.[443] According to Türkiye, the Battery Commitment Requirement is not a source of new obligations for the importer, but rather only a "transparency tool" to remind importers of the existing requirements.[444]

Panel's assessment

7.313. The parties appear to agree that the requirement to sign the written document in Annex 4 of the Implementation Directive applies only to importers and that domestic manufacturers are not required to sign an equivalent document.[445] The parties do not, however, agree on many other factual elements. They raise arguments on a range of different points. Before proceeding, we consider it important to clarify what we believe to be the question before us. We will then focus on those of the parties' arguments which are directly related to this question.

7.314. We begin by observing that for imported EVs and ERHVs from countries other than Türkiye's RTA partners, the importer must provide a signed written document.[446] In this document, the importer must: (i) accept the application, monitoring, inspection, and control to be carried out by Turkish authorities with respect to each battery in every imported vehicle; (ii) commit to covering any fees and costs arising from these processes; and (iii) commit to being open to any information exchange and data sharing with the authorities during the after-sales process.

7.315. The Battery Commitment Requirement thus consists in requiring importers to make a commitment for future purposes. Conversely, it does *not* consist in requiring compliance of imported EVs and ERHVs with any rules pertaining to the safety of rechargeable batteries which may be set

[435] Ministry of Environment and Forestry, Regulation on Control of Waste Batteries and Accumulators (RWBA) (Exhibit TUR-83).
[436] Türkiye's second written submission, para. 3.78.
[437] China's response to Panel question No. 72, para. 55.
[438] China's second written submission, para. 199.
[439] China's second written submission, para. 200.
[440] China's response to Panel question No. 72, para. 55.
[441] Türkiye's first written submission, para. 3.105.
[442] Türkiye's second written submission, para. 3.81.
[443] Türkiye's second written submission, para. 3.78.
[444] Türkiye's first written submission, para. 3.107; second written submission, para. 3.78.
[445] China's first written submission, para. 215; Türkiye's first written submission, para. 3.107.
[446] Türkiye refers to this document alternatively as a "commitment" or "declaration". We use the word "commitment", following the text of Notification 2025/7 and Annex 4 of the Implementation Directive.

out in the TAR. Neither does it consist in requiring importers to respect any rules pertaining to monitoring, control and supervision of battery systems which may be set out in the RWBA.[447] Therefore, we consider that the question before us is *not* whether imported and domestic EVs and ERHVs are subject to the same rules pertaining to the safety of rechargeable batteries, nor whether importers and domestic manufacturers are subject to the same rules pertaining to monitoring, control and supervision of battery systems. Rather, the question is whether domestic manufacturers are subject to any requirement to accept all future application, monitoring, inspection and control processes to be carried out by Turkish authorities and commit to covering associated fees and costs and to being open to information exchange and data sharing as required by the authorities.

7.316. The fact that Türkiye has not pointed to any provision in the RWBA or the TAR requiring domestic manufacturers to accept all future processes and to commit to covering fees and costs and to being open to information exchange and data sharing, is, in our view, a significant indication that imported EVs and ERHVs are accorded different treatment compared to the like domestic vehicles.[448] However, mindful of our duty to make an objective assessment of the matter before us, we have also examined the texts of the RWBA and the TAR to determine whether they contain an equivalent requirement for domestic manufacturers to accept all future processes, and to commit to covering fees and costs and being open to all information exchange.

7.317. We have not found any provision in the RWBA relevant in this respect. The TAR requires manufacturers to make certain vehicles available for testing to verify that they meet the type-approval requirements; allow access to their facilities for periodic inspections of the suitability of the control methods used; provide information and data related to these verifications, and for third-party testing regarding possible non-conformity, subject to the protection of commercial secrets and personal data; and authorize representatives to provide, upon request, information pertaining to the conformity of products with the type-approval requirements.[449]

7.318. We observe several differences between the requirements in the TAR and the Battery Commitment Requirement under the IPLS. The TAR refers to two very specific inspection processes carried out to test if vehicles meet the type-approval requirements, and to inspect the suitability of control methods used in the manufacturer's facilities. By contrast, the Battery Commitment Requirement refers broadly to any type of inspection by any authority.[450] Moreover, importers must commit to covering any fees and costs that arise from the "application, monitoring, inspection and control" processes. No such requirement exists even with respect to the limited scope of the inspections referred to in the TAR.[451] Finally, in the limited scope of the inspections referred to in the TAR, the information exchange and data sharing requirements are circumscribed to the information and data associated with the specific inspection process (compared to the broad

[447] We observe that both regulations contain provisions that address potential violations of the substantive obligations contained therein. (See Article 35 of the RWBA and Articles 84 and 85 of the TAR).

[448] We agree with prior adjudicators that the uncontested fact that operators selling imported products are subject to certain administrative requirements, whereas operators selling like domestic products are not, itself provides a significant indication that imported products are accorded less favourable treatment. (See, in that sense, Appellate Body Report, *Thailand – Cigarettes (Philippines)*, paras. 133 and 138; Panel Report, *Canada – Wheat Exports and Gran Imports*, para. 6.185 (referring to Appellate Body Report, *US – Section 211 Appropriations Act* and GATT Panel Report, *US – Malt Beverages*, paras. 5.32 and 5.35)).

[449] Articles 9(1), 9(2), 9(5), 13(10), and 15 of the TAR.

[450] Referring to some of these differences, China argues that the inspections foreseen in the Battery Commitment are not the same as the inspections in the TAR. (China's response to Panel question No. 72, para. 55). Türkiye also argues that Article 9 of the TAR concerns "a completely distinct conformity verification process". (Türkiye's comments on China's response to Panel question No. 72, para. 2.10). In our view, the broad language of the Battery Commitment Requirement is such that it may also include the inspections referred to in the TAR. What we consider significant is that this broad language is clearly not limited to the inspections referred to in the TAR.

[451] To the contrary, Article 9(1) specifically refers to the European Commission organizing and carrying out tests and inspections "at its own expense". In its comments on China's responses to questions after the second meeting of the Panel, Türkiye has referred to a Market Surveillance and Inspection Regulation, in support of its argument that "if, as a result of the battery inspection relevant to this issue, the product is found to be non-compliant, the costs of inspection must be borne by the domestic manufacturer or the importer." (Türkiye's comments on China's response to Panel question No. 72, para. 2.10, referring to Article 8 of Ministry of Industry and Technology, Market Surveillance and Inspection Regulation, Official Gazette No. 31541 of 14 July 2021 (Exhibit TUR-115)). We note that China has not had an opportunity to comment on Türkiye's reliance on this Regulation. Nevertheless, we note that the relevant provision requires domestic manufacturers to only cover the costs of an inspection if the product is found to be non-compliant. No such limitation exists in the Battery Commitment.

reference of the entire "after-sales process"), and are further qualified by a reference "subject to the protection of trade secrets and the protection of personal data". No such guardrails limit the commitment required from importers to "being open to any information exchange and data sharing with the relevant organization during the after-sales process".

7.319. We conclude that the requirements imposed on domestic manufacturers to which Türkiye has pointed are limited and specific in their scope. By contrast, the Battery Commitment imposes much broader requirements beyond specific inspections, fees or information. In our view, these differences result in a difference in the treatment accorded to imported EVs and ERHVs and the like domestic EVs and ERHVs.

7.320. We now turn to assessing whether this difference in treatment distorts the conditions of competition to the detriment of imported vehicles.

7.3.2.4.6.3 Whether any differences in treatment modify the conditions of competition to the detriment of imported EVs and ERHVs

Arguments of the parties

7.321. China argues that the detrimental impact of the requirement is "the breadth and intrusiveness of the undertaking to which foreign manufacturers must commit".[452] According to China, importers are required to submit to different interventions by the Turkish authorities, including monitoring (which requires additional infrastructure involving reporting systems, dedicated compliance teams, and frequent audits), inspections and controls (which can slow down production schedules).[453] In addition, China argues that importers take on the obligation to pay fees and costs arising from these interventions which "will add to the cost of imported vehicles".[454] Importers are also required to submit "undefined data" to the Turkish authorities, which creates a risk of leaks or misuse and could undermine competitive advantages.[455]

7.322. In line with its arguments that the Battery Commitment Requirement is "essentially a transparency tool" that does not create any additional substantive obligations for importers[456], Türkiye argues that filling out the sample commitment implies minimal efforts and "can hardly be said to constitute a heavy administrative burden".[457]

Panel's assessment

7.323. We have found that the Battery Commitment Requirement imposes requirements on importers that are much broader than any requirements imposed on domestic manufacturers.

7.324. Requiring importers to actively accept an indefinite array of application, monitoring, inspection and control processes, while imposing on domestic manufacturers certain specific processes, has implications for the competitive opportunities of imported EVs and ERHVs on the Turkish market. We agree with China to the extent that it argues that the Battery Commitment Requirement entails needs for additional infrastructure, such as specialized reporting systems, dedicated compliance teams, and frequent audits.[458]

7.325. In addition, a blank acceptance of any and all future inspection processes potentially deprives importers of the possibility of declining or challenging any inspection process that may be excessive, inconsistent with due process, or unjustifiably onerous in the light of the applicable legislation and practice. This possibility remains, however, available to domestic manufacturers. In that sense, we also agree with China to the extent that it argues that such inspections can unduly slow down

[452] China's opening statement at the second meeting of the Panel, para. 63.
[453] China's response to Panel question No. 72, para. 51.
[454] China's response to Panel question No. 72, para. 52.
[455] China's response to Panel question No. 72, para. 52.
[456] Türkiye's first written submission, paras. 3.106-3.107.
[457] Türkiye's second written submission, paras. 3.79-3.80.
[458] China's response to Panel question No. 72, para. 51.

production schedules and limit flexibilities to implement new technologies or processes, thus modifying the conditions of competition between domestic and imported EVs and ERHVs.[459]

7.326. We also consider that the breadth of the Battery Commitment puts importers in a state of uncertainty regarding the number, frequency and nature of the potential inspection processes which may be organized and which the importer has accepted in advance by virtue of the Battery Commitment. Insofar as inspections can slow down production schedules and limit flexibilities to implement new technologies or processes, this breadth creates a risk for the importer that domestic manufacturers of EVs and ERHVs, who do not commit in advance to accepting any and all inspection processes, do not face. In our view, this additional risk further modifies the conditions of competition to the detriment of imported EVs and ERHVs.[460]

7.327. The commitment to covering any fees and costs that arise from application, monitoring, inspection and control processes is also much broader than any requirement imposed on domestic manufacturers. It may well be that domestic manufacturers may be required to cover the fees or costs of some inspection processes. And where such fees or costs must be borne by both domestic manufacturers and importers, they do not modify the conditions of competition to the detriment of imported vehicles. However, as noted above, the breadth of the Battery Commitment is such that it appears to cover inspection processes beyond those provided for in the legislation and, which, therefore, do not concern domestic manufacturers. Any fees or costs in respect of such inspection processes, thus, would only arise for importers. In addition, importers are put in a state of uncertainty regarding any future costs and other liabilities which they have accepted in advance by virtue of the Battery Commitment. Whether an importer chooses to reflect the risk of such costs in the price of the vehicles sold on the Turkish market (as China suggests) or to absorb them (i.e. forcing a higher sales price or a lower profit margin), it would inevitably be in a position of competitive disadvantage compared to domestic manufacturers.

7.328. Finally, through a commitment to being open to "any information exchange and data sharing with the relevant organization during the after-sales process", importers commit to sharing information and data which may not necessarily be associated with a specific inspection process or a specific production requirement. This commitment is also all-encompassing with respect to the types of information and data to be shared and may include trade secrets and personal data. We agree with China that this can expose sensitive information and lead to leaks or misuses which could affect the competitive opportunities of imported EVs and ERHVs on the Turkish market.

7.329. We thus conclude that the difference in treatment we identified modifies the conditions of competition to the detriment of imported EVs and ERHVs.

7.3.2.4.7 Enforcement of the requirements

7.330. China challenges the consistency of the IPLS with Article III:4 in respect of what it refers to as the "penalty" associated with non-compliance with the IPLS requirements. This "penalty" consists, in essence, in the impossibility for the importer to obtain a Permit Certificate, and – as a result – an impossibility for the EVs and ERHVs to be imported and sold on the Turkish market. China argues that this "penalty" is much stricter than the fines incurred by domestic manufacturers under the Turkish legislation.[461] While occasionally referring to "penalties", Türkiye also uses the term "regulatory consequences in case of non-compliance".[462]

7.331. We understand China's challenge to concern the way in which after-sales service requirements are enforced with respect to EVs and ERHVs imported from countries other than Türkiye's RTA partners, compared to the way they are enforced with respect to the like domestic EVs and ERHVs. We consider it most appropriate to assess the consistency of this characteristic of the IPLS with Article III:4 from the perspective of enforcement mechanisms.[463]

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[459] China's response to Panel question No. 72, para. 51.

[460] For a similar discussion of the risks associated with the uncertainty to which importers may be subject, see Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines)*, para. 7.964.

[461] China's first written submission, para. 220.

[462] Türkiye's first written submission, para. 3.109.

[463] Pursuant to Note Ad Article III, "(a)ny internal tax or other internal charge, or any law, regulation or requirement of the kind referred to in paragraph 1 which applies to an imported product and to the like

7.3.2.4.7.1 Relevant provisions

7.332. Notification 2025/7 requires a Permit Certificate to be presented at customs clearance for the import of the EVs and ERHVs listed in the Notification. To obtain a Permit Certificate, all of the IPLS requirements (i.e. the Service Stations, the Certificate of Competence, the Call Centre, the Authorized Representative and the Battery Commitment Requirements) "must be met simultaneously".[464]

7.333. Article 77 of Türkiye's Law on Consumer Protection (LCP)[465] contains "Sanctions provisions" associated with the non-compliance with different provisions of the LCP. Article 77(10)(b) refers to sanctions specifically with respect to non-compliance with Article 58.

7.334. Article 58 of the LCP is titled "After sales services". Article 58(1) sets out the following general obligation:

> Manufacturers or importers are obliged to provide after-sales maintenance and repair services for the goods they produce or import, for the lifetime determined by the Ministry.

7.335. Several other paragraphs of Article 58 refer specifically to service stations. In particular, Article 58(2) requires manufacturers and importers to obtain an "after-sales service qualification certificate". Türkiye has explained that this is an aggregate certification attesting that a company satisfies the full range of requirements pertaining to after-sales services, including competence certifications of individual staff and existence of the requisite number of service stations.[466]

7.336. Article 77(10)(b) envisages three different sanctions depending on whether the non-compliance consists in (i) a failure to obtain an after-sales service qualification certificate; (ii) a failure to use the phrase "private service" in a visible and readable way in media and other activities; or (iii) a failure to operate a service station. With respect to the first and third failures, Article 77(10)(b) reads:

> (1) For manufacturers and importers who act contrary to the second paragraph; one million one hundred and fifteen thousand Turkish Lira in case of failure to obtain an after-sales service qualification certificate, eighteen thousand Turkish Lira for each service station in case of failure to register in the system established by the Ministry or failure to update the registration,
>
> …
>
> (3) One hundred and twenty-four thousand Turkish Liras for each missing service station for manufacturers and importers who fail to provide the minimum number of service stations during the validity period of the after-sales service qualification certificate in violation of the eighth paragraph,

7.337. Article 77(10)(b) does not refer specifically to sanctions for non-compliance with the first paragraph of Article 58. However, a provision at the end of Article 77(10)(b) reads, without reference to a specific paragraph of Article 58, that "administrative fines are applied".

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domestic product and is collected or enforced in the case of the imported product at the time or point of importation, is nevertheless to be regarded as an internal tax or other internal charge, or a law, regulation or requirement of the kind referred to in paragraph 1, and is accordingly subject to the provisions of article III." In our view, the "penalties" or "regulatory consequences" associated with non-compliance with certain requirements are the direct consequence of the mechanisms used to enforce, in the sense of "compel the observance of", such requirements. (The Oxford English Dictionary defines "enforce" as "to compel the observance of (a law)".). We note that prior panels have also assessed the consistency of enforcement mechanisms with Article III:4. (See, for instance, Panel Report, *Indonesia – Chicken*, paras. 7.321-7.331 and GATT Panel Report, *US – Section 337*, paras. 5.10-5.20).

[464] The Implementation Directive clarifies that all the relevant documents "should be uploaded to the system".

[465] Law on Consumer Protection, No. 6502, Official Gazette No. 28835, 28 November 2013 (LCP) (Exhibit CHN-29).

[466] Türkiye's response to Panel question No. 33(b), para. 2.25.

7.3.2.4.7.2 Whether the treatment accorded to imported EVs and ERHVs is different from that accorded to the like domestic EVs and ERHVs

Arguments of the parties

7.338. China argues that importers who do not establish 20 service stations in 7 geographical regions "will not be able to offer their vehicles in the Turkish market given that they will not be able to clear customs".[467] By contrast, China argues, domestic manufacturers who do not operate the requisite number of service stations face a monetary penalty, but "will be allowed to continue offering their vehicles for sale in Türkiye".[468]

7.339. Türkiye argues that this "difference in the regulatory consequences of non-compliance" is "perfectly justified" because of the greater regulatory risk of non-compliance associated with EVs and ERHVs imported from countries other than Türkiye's RTA partners and because of the "more limited regulatory oversight" that the Turkish government can exercise over those vehicles.[469] According to Türkiye, there is no less favourable treatment because "the greater risk that importers represent must be addressed differently".[470] Thus, responding differently to non-compliance by importers and domestic manufacturers "restores an inherent asymmetry in the conditions of competition".[471]

Panel's assessment

7.340. We note several salient characteristics of the enforcement mechanism applicable with respect to imported EVs and ERHVs, which we then compare with the corresponding characteristics of the enforcement mechanism applicable with respect to the like domestic EVs and ERHVs.

7.341. First, the enforcement mechanism applicable with respect to imported EVs and ERHVs is *prohibitive* as regards the products concerned. If the IPLS requirements are not met, none of the EVs and ERHVs concerned by the relevant application for a Permit Certificate can be sold on the Turkish market. Thus, the delivery of a Permit Certificate upon compliance with the IPLS requirements operates as an authorization or prohibition of selling imported EVs and ERHVs on the Turkish market.

7.342. Second, and related to the previous characteristic, this enforcement mechanism directly concerns the relevant *products*. We observed above that the IPLS requirements do not regulate directly the characteristics of EVs and ERHVs, but are directed to importers or manufacturers and concern the after-sales services associated with these vehicles. The enforcement mechanism set out in the IPLS operates at the level of the products themselves (allowing or not their importation and subsequent sale on the Turkish market).

7.343. Third, this enforcement mechanism operates *ex ante*. Importers are required to demonstrate that the IPLS requirements have been met before the EVs and ERHVs concerned by the relevant application for a Permit Certificate can be sold on the Turkish market.[472]

7.344. Fourth, this enforcement mechanism is *comprehensive*, in the sense that all requirements must be met simultaneously before the relevant EVs and ERHVs can be sold on the Turkish market. If one of the requirements is not met, the enforcement mechanism prohibits the sale of the relevant EVs and ERHVs even if all other requirements are met.

[467] China's first written submission, para. 220.
[468] China's first written submission, para. 220.
[469] Türkiye's first written submission, para. 3.109; second written submission, para. 3.85.
[470] Türkiye's second written submission, para. 3.86.
[471] Türkiye's second written submission, para. 3.86.
[472] In that respect, we note a difference between the enforcement mechanism before us and the corresponding enforcement provisions in measures challenged in other cases. For instance, in *Indonesia – Chicken*, the panel assessed the consistency of an "intended use requirement" with Article III:4 with respect to its "enforcement provisions" which – for the imported products – consisted in *ex post* sanctions if the importers deviated from the limitation on the allowed uses. (Panel Report, *Indonesia – Chicken*, para. 7.326).

7.345. In comparison, we note the following characteristics of the enforcement mechanism with respect to domestic EVs and ERHVs.

7.346. First, this enforcement mechanism is not prohibitive in nature. It does not operate as an authorization or a prohibition of the sale of EVs and ERHVs on the Turkish market. As China points out, in case of non-compliance with the relevant requirements, domestic EVs and ERHVs can continue to be sold on the Turkish market.[473]

7.347. Second, and related to the previous characteristic, this enforcement mechanism directly concerns economic operators rather than products. The fines are imposed on the economic operators who are also the subject of the obligations pertaining to after-sales services. Insofar as the fines may affect the price or availability of domestic EVs and ERHVs on the Turkish market, this effect would be indirect.

7.348. Third, this enforcement mechanism operates *ex post*. We understand that Article 58(2) of the LCP requires domestic manufacturers to obtain an "after-sales service qualification certificate" certifying that they satisfy the requirements pertaining to after-sales services. Yet, the delivery of such a certificate does not appear to operate as a prerequisite which authorizes the manufacturer to sell EVs and ERHVs on the Turkish market. Rather, pursuant to Article 77(10)(b)(1), if the manufacturer does not obtain this certificate, it is subject to a fine.

7.349. Fourth, this enforcement mechanism is fragmented, in the sense that non-compliance with each of the after-sales services requirements is subject to a separate, and different, fine. If one of the requirements is not met, the enforcement mechanism only operates with respect to this specific requirement.

7.350. Finally, we note that the IPLS is also enforced with respect to requirements which apply only to imported EVs and ERHVs, and for which no corresponding obligation, subject to enforcement mechanisms, applies to the like domestic EVs and ERHVs. These are, at least: (i) the Authorized Representative Requirement and Battery Commitment Requirement with respect to all imported EVs and ERHVs[474]; and (ii) all five IPLS requirements with respect to EVs and ERHVs that fall within the scope of the IPLS but outside the scope of the ASSR.

7.351. We find that this results in a difference between the treatment accorded to imported EVs and ERHVs and the treatment accorded to the like domestic EVs and ERHVs.

7.352. We now turn to assessing whether this difference in treatment distorts the conditions of competition to the detriment of imported vehicles.

7.3.2.4.7.3 Whether any differences in treatment modify the conditions of competition to the detriment of imported products

Arguments of the parties

7.353. According to China, the difference between the enforcement mechanisms is economically significant because domestic manufacturers are able to generate revenue from sales while they gradually expand their network of service stations, while importers are precluded from making any sales until they meet the requirements in full.[475] China thus argues that the risk of being subject to harsher penalties modifies the conditions of competition to the detriment of imported EVs and ERHVs.[476] Finally, China submits that any alleged difference in the regulatory risk between foreign and domestic manufacturers is irrelevant for the assessment under Article III:4.[477]

[473] China's first written submission, para. 220.
[474] This would also include the Call Centre Requirement to the extent that the consumers' right described in the TAR would not directly result in an obligation for domestic manufacturers.
[475] China's first written submission, para. 220.
[476] China's opening statement at the second meeting of the Panel, para. 64.
[477] China's second written submission, para. 203.

7.354. Türkiye submits that the sanctions envisaged in Article 77(10)(b) of the LCP may entail serious consequences for domestic manufacturers in terms of the actual sale of the products.[478]

Panel's assessment

7.355. We assess the implications of the differences we have identified from the perspective of the characteristics of the enforcement mechanisms we highlighted above.

7.356. With reference to the prohibitive nature of the enforcement mechanism applicable with respect to imported EVs and ERHVs, we consider that conditioning market access upon compliance with the IPLS requirements is less favourable than the LCP enforcement mechanism which does not have any direct bearing on market access.

7.357. In addition, we observed that the IPLS enforcement mechanism is focused on the products themselves rather than on economic operators. One of the distinguishing features of after-sales service requirements is that they entail investments that are not directly related to the products at issue. We note Türkiye's argument that the LCP enforcement mechanism, even if focused on economic operators, may have a significant effect on the sale of domestic EVs and ERHVs on the Turkish market.[479] This effect is, however, indirect compared to the direct implications of the possibility for imported EVs and ERHVs to even be sold on the Turkish market. Thus, as China points out, importers are precluded from selling EVs and ERHVs on the Turkish market, while domestic manufacturers may be able to generate revenue from sales "while they work towards meeting the requirements".[480]

7.358. We also refer to the *ex ante* nature of the enforcement mechanism applicable with respect to imported EVs and ERHVs, compared to the *ex post* nature of the one applicable with respect to domestic EVs and ERHVs. The need to obtain a Permit Certificate before importing and selling EVs and ERHVs on the Turkish market, combined with the nature of the IPLS requirements (in particular, the Service Stations and the Call Centre Requirements), means that importers and foreign manufacturers are expected to make significant and costly investments on the Turkish market before they can import EVs and ERHVs. Additionally, we understand that prior to the introduction of the IPLS, importers and foreign manufacturers were subject only to the requirements set out in the ASSR, and that compliance with these requirements was enforced through the fines set out in Article 77(10)(b) of the LCP. The IPLS introduced an additional *ex ante* enforcement mechanism whereby compliance with after-sales requirements must also be demonstrated in advance of importing the products. We also understand that the ASSR does not cease to apply with respect to imported EVs and ERHVs. As a result, the sale of imported EVs and ERHVs is subject to both the *ex ante* enforcement mechanism of import licensing, and – potentially – the *ex post* enforcement mechanism of fines. Furthermore, we have found above that the IPLS requirements differ in several respects from the ASSR requirements. Therefore, even if an importer or a foreign manufacturer may have complied with the ASSR requirements prior to the introduction of the IPLS, this would not mean that it also complies with the IPLS requirements and it would immediately obtain a Permit Certificate allowing an uninterrupted process of importation.

7.359. Finally, we refer to the comprehensive nature of the enforcement mechanism applicable with respect to imported EVs and ERHVs, compared to the fragmented nature of the one applicable with respect to domestic EVs and ERHVs. In our view, this comparison highlights the flexibility that is only available to domestic manufacturers to satisfy some, but not all, of the ASSR requirements and still sell EVs and ERHVs on the Turkish market. By contrast, all of the IPLS requirements must be met simultaneously for imported EVs and ERHVs to be sold on the Turkish market.

7.360. For all these reasons, we thus find that the differences in the enforcement mechanisms applicable to imported and to the like domestic EVs and ERHVs modify the conditions of competition to the detriment of imported EVs and ERHVs.

7.361. Türkiye argues that there is no less favourable treatment because, in essence, Türkiye manages differently the different risk that importers represent compared to domestic manufacturers.

[478] Türkiye's first written submission, fn 324.
[479] Türkiye's first written submission, fn 324. Türkiye has explained that the fines can be applied repeatedly within the limits of Article 77(19).
[480] China's first written submission, para. 220.

We address Türkiye's rebuttal argument from two perspectives: it could be understood that Türkiye argues that a measure which treats differently different situations does not result in less favourable treatment; and it could be understood that Türkiye argues that the different consequences in case of non-compliance restore an asymmetry in the conditions of competition and are "justified" because of the greater regulatory risk of non-compliance associated with EVs and ERHVs imported from countries other than Türkiye's RTA partners and because of the "more limited regulatory oversight" that the Turkish government can exercise over those vehicles.[481]

7.362. To the extent that Türkiye suggests that a measure which treats differently different situations does not result in less favourable treatment, we recall that a measure is inconsistent with Article III:4 if it modifies the conditions of competition in the relevant market to the detriment of imported products. We agree with the GATT panel in *US – Section 337* that:

> On the one hand, contracting parties may apply to imported products different formal legal requirements if doing so would accord imported products more favourable treatment. On the other hand, it also has to be recognised that there may be cases where application of formally identical legal provisions would in practice accord less favourable treatment to imported products and a contracting party might thus have to apply different legal provisions to imported products to ensure that the treatment accorded them is in fact no less favourable.[482]

7.363. We thus do not exclude the possibility that to comply with the national treatment obligation in Article III:4, a Member may have to apply different legal provisions to imported products to ensure that the treatment accorded to them is not less favourable than the one accorded to the like domestic products. However, we do not understand Türkiye to argue that it has introduced, through the IPLS, a different way to address the consequences in case of non-compliance with respect to imported EVs and ERHVs in order to ensure that these imported vehicles are not accorded treatment less favourable than that accorded to the like domestic vehicles. Nor do we understand China to argue that an alignment between the regulatory consequences in case of non-compliance with respect to imported and domestic EVs and ERHVs would itself result in less favourable treatment accorded to the domestic vehicles. To the contrary.

7.364. Therefore, we do not agree with Türkiye to the extent that it argues that there is no less favourable treatment in responding differently to non-compliance by importers and domestic manufacturers, because these operators are in different situations.

7.365. To the extent that Türkiye argues that the different consequences in case of non-compliance restore "an inherent asymmetry in the conditions of competition"[483], and to the extent that Türkiye argues that these different consequences are "justified" because of the different regulatory risks of non-compliance[484], we consider these arguments to echo Türkiye's argument that the objective pursued by the Authorized Representative Requirement is to "re-establish an equal playing field" between imported and domestic EVs and ERHVs. We recall our view that a determination that a measure modifies the conditions of competition to the detriment of imported products is sufficient to find a violation of Article III:4, without further enquiry into the regulatory objectives of the measure.[485] We will address Türkiye's arguments pertaining to the regulatory objectives of the penalties in our analysis of Türkiye's defence under Article XX(d).

7.366. We thus conclude that the differences in the enforcement mechanisms applicable to imported and to the like domestic EVs and ERHVs result in less favourable treatment of imported EVs and ERHVs.

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[481] Türkiye's first written submission, para. 3.109; second written submission, para. 3.85.
[482] GATT Panel, *US – Section 337*, para. 5.11.
[483] Türkiye's second written submission, para. 3.86.
[484] Türkiye's first written submission, para. 3.109; second written submission, para. 3.85.
[485] Appellate Body Reports, *EC – Seal Products*, para. 5.117; *US – Clove Cigarettes*, para. 179 and fn 372; and *Thailand – Cigarettes (Philippines)*, para. 128.

7.3.2.4.7.4 Concluding remarks on the enforcement of the requirements

7.367. We would like to express some additional views emphasizing the specificity of this dispute and China's challenge of the IPLS.

7.368. The enforcement mechanism of the IPLS consists in conditioning the importation of EVs and ERHVs upon compliance with the IPLS requirements. China has challenged this also under Article XI:1. China has explained that its claims under Articles III:4 and XI:1 concern different aspects of the IPLS: its Article III:4 claim is "concerned with the discriminatory aspects of the requirements" and "penalties", and its Article XI:1 claim is "focused on the limiting effects that the measure has on importation of the subject products".[486] Accordingly, in our analysis under Article III:4, we have assessed if any differences in the enforcement mechanisms used with respect to imported EVs and ERHVs compared to those used with respect to the like domestic EVs and ERHVs modify the conditions of competition to the detriment of imported EVs and ERHVs.

7.369. In our view, laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products (such as, for instance, requirements pertaining to after-sales services for the products sold) may also impact the quantity of imported products, to the extent that imported products must comply with such laws, regulations or requirements. Pursuant to Note *Ad* Article III[487], when these laws, regulations or requirements are enforced, in the case of the imported products, at the time or point of importation, they are nevertheless subject to the provisions of Article III.

7.370. We recall that the fundamental purpose of Article III is to avoid protectionism and ensure the equality of competitive conditions between imported and domestic products.[488] We agree with prior adjudicators that WTO Members are "free to pursue their own domestic goals through internal taxation or regulation so long as they do not do so in a way that violates Article III or any other commitments they have made in the WTO Agreement".[489]

7.371. We have found that the enforcement mechanism set out in the IPLS, i.e. conditioning the importation of EVs and ERHVs upon the simultaneous compliance with the IPLS requirements, is inconsistent with Article III:4 because it accords imported EVs and ERHVs treatment that is less favourable than the one accorded to the like domestic EVs and ERHVs which are subject to a different enforcement mechanism, i.e. fines. We are conscious that this finding concerns the same characteristic of the IPLS that China challenges under Article XI:1. We consider this to be the inevitable consequence of the nature of the IPLS, which conditions the importation of EVs and ERHVs upon compliance with requirements that pertain to after-sales services in Türkiye.

7.3.2.5 Conclusion on Article III:4

7.372. For the reasons set out above, we conclude that China has demonstrated that the IPLS is inconsistent with Article III:4 with respect to the Service Stations, Certificate of Competence, Call Centre, Authorized Representative, and Battery Commitment Requirements, and with respect to the mechanism to enforce these requirements.

7.3.3 Whether the inconsistency with Article III:4 is justified under Article XX(d) of the GATT 1994

7.3.3.1 Introduction

7.373. Türkiye argues that any inconsistency with Article III:4 of the GATT 1994 is justified under Article XX(d) because the IPLS is a measure necessary to secure compliance with Türkiye's LCP and TAR.[490] China argues that Türkiye fails to establish that the IPLS satisfies the requirements of

[486] China's responses to Panel question No. 35, paras. 41 and 42; and No. 37, para. 47.
[487] For the text, see fn 463.
[488] Appellate Body Reports, *Japan – Alcoholic Beverages II*, p. 16 and *Canada – Periodicals*, p. 18.
[489] Appellate Body Report, *Japan – Alcoholic Beverages II*, p. 16. In the context of Article III:2, see also Panel Reports, *Argentina – Hides and Leather*, para. 11.144 and *Brazil – Taxation,* para. 7.153.
[490] Türkiye's second written submission, para. 3.204.

Article XX(d), and that the evidence on the record does not support Türkiye's contention that the IPLS is necessary to secure compliance with the LCP or the TAR.[491]

7.374. Article XX provides, in relevant part, as follows:

> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:
>
> …
>
> (d) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the enforcement of monopolies operated under paragraph 4 of Article II and Article XVII, the protection of patents, trade marks and copyrights, and the prevention of deceptive practices.

7.375. The parties appear to generally agree with the legal test applied by prior adjudicators.[492] A respondent will successfully establish its Article XX(d) defence upon demonstration that the measure at issue: (i) is taken/designed "to secure compliance with laws or regulations that are not inconsistent with the GATT 1994"; (ii) is necessary to secure such compliance; and (iii) meets the requirements set out in the *chapeau* of Article XX.[493] The parties express divergent views with respect to the first element of this test, i.e. what Türkiye must show to establish a link between the IPLS and the LCP and the TAR such that the IPLS can be considered a measure "to secure compliance with" the LCP and the TAR. We begin with this first element of the test, and discuss these divergent views below.

7.3.3.2 Whether the IPLS is a measure designed/taken "to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement"

7.376. As the first step of the analysis under Article XX(d), we are called upon to assess the relationship between the challenged measure and the objective of securing compliance with relevant provisions of laws or regulations that are not inconsistent with the GATT 1994. Importantly, recourse to Article XX(d) requires the identification of laws or regulations that are not inconsistent with the GATT 1994.[494] We thus agree with prior adjudicators that demonstrating that the challenged measure is one "to secure compliance with laws or regulations which are not inconsistent with the GATT 1994" entails demonstrating that: (i) there are "laws or regulations" which are "not inconsistent with the provisions of" the GATT 1994, and (ii) the measure at issue is taken/designed "to secure compliance" with those laws and regulations.[495] We examine each of these elements in turn.

7.3.3.2.1 Laws or regulations which are not inconsistent with the GATT 1994

7.377. Türkiye argues that the IPLS and its requirements are necessary to secure compliance with the LCP, in particular its Articles 1 and 58.[496] We do not understand China to argue that the LCP is inconsistent with the GATT 1994, nor that Article 58 does not qualify as a "law or regulation" for the purposes of Article XX(d).[497] China challenges Türkiye's reference to Article 1 because this provision sets out the purpose of the LCP and does not contain any obligations or requirements.[498] In our

[491] China's second written submission, para. 246.
[492] Türkiye's first written submission, para. 3.202 and China's second written submission, para. 247.
[493] Appellate Body Reports, *Korea – Various Measures on Beef*, para. 157; *Mexico – Taxes on Soft Drinks*, para. 67; *Thailand – Cigarettes (Philippines)*, para. 177.
[494] Appellate Body Report, *Colombia – Textiles*, para. 5.126.
[495] Panel Reports, *India – Solar Cells*, para. 7.267 and fn 633; *Colombia – Ports of Entry*, para. 7.514; *US – Shrimp (Thailand)*, para. 7.174; and *US – Customs Bond Directive*, para. 7.295. See also Appellate Body Report, *India – Solar Cells*, para. 5.58.
[496] Türkiye's first written submission, para. 3.210.
[497] China only raises concerns with respect to the qualification of Article 1 of the LCP as a "law or regulation" for the purposes of Article XX(d). (China's second written submission, para. 250).
[498] China's second written submission, para. 250.

view, China's concern is related to the existence of specific obligations contained in the LCP with which the IPLS would be designed to secure compliance. We address this concern, also with respect to Türkiye's reference to Article 1 of the LCP, in section 7.3.3.2.2.2 below.

7.378. Türkiye also argues that some IPLS requirements are necessary to secure compliance with the TAR, in particular its Articles 13, 15, and 51-56. We do not understand China to argue that the TAR does not qualify as a "law or regulation" for the purposes of Article XX(d), nor that it is inconsistent with the GATT 1994.[499] We also do not understand China to raise due process concerns with respect to Türkiye's invocation of the TAR only in its second written submission. China argues, rather, that the late invocation of the TAR by Türkiye undermines the credibility of its argument, because if the IPLS had been enacted to secure compliance with the TAR, "Türkiye would have been aware of it and it would have clearly indicated so at the beginning of the proceedings".[500] In our view, this argument pertains to the existence of a link between the IPLS and the invoked provisions of the TAR. We address it in section 7.3.3.2.2.2 below.

7.379. We thus conclude that the LCP and the TAR are "laws or regulations" for the purposes of Article XX(d).

7.3.3.2.2 Measures "to secure compliance" with the laws or regulations

7.3.3.2.2.1 Arguments of the parties

7.380. Türkiye submits that while Notification 2025/7 does not state explicitly that its purpose is to enforce the LCP[501], this purpose is obvious from its content because of the "manifest link and near-total overlap" between the IPLS requirements and the requirements set out in the ASSR, which is explicitly a measure taken in relation to the implementation of the LCP.[502] Türkiye adds that by requiring importers to fulfil conditions linked to the protection of consumers, the IPLS is not incapable of securing compliance with the LCP.[503] Türkiye also refers to an overlap between the subject matter of the IPLS and the TAR.[504] According to Türkiye, it cannot be ruled out that the IPLS may have a positive impact on consumer protection, and this overlap with the subject matter of the LCP is "more than sufficient" to establish that the IPLS is designed to secure compliance with the LCP.[505] Specifically focusing on the claimed Article III:4 violation, Türkiye argues, in general terms, that any alleged higher standards applicable to foreign EVs and ERHVs by way of the IPLS seek to ensure the protection and safety of Turkish consumers because "the government has less oversight over foreign manufacturers than over domestic ones".[506] In response to questions by the Panel, Türkiye has developed these arguments further with respect to each of the requirements. We summarize and assess these arguments in the relevant sections below.

7.381. China argues that Türkiye fails to establish a link between the IPLS and the LCP or the TAR.[507] China also points out that the IPLS does not refer to either of these instruments.[508] For China, a "mere 'link'" between the IPLS and the LCP, in particular through establishing that the objectives of the IPLS are consistent with or further the objectives of the LCP, is insufficient to establish that the IPLS is designed to secure compliance with the LCP.[509] China submits that Article XX(d) "does not provide cover for measures that simply have a connection with a general objective, which may also be reflected in other laws and regulations".[510] According to China, Türkiye

[499] China only raises the general argument that Türkiye's reliance on the TAR lacks credibility. (China's opening statement at the second meeting of the Panel, para. 76).
[500] China's opening statement at the second meeting of the Panel, para. 76.
[501] Türkiye's first written submission, para. 3.216; second written submission, paras. 3.209-3.210.
[502] Türkiye's first written submission, paras. 3.216-3.219.
[503] Türkiye's response to Panel question No. 53, para. 2.116.
[504] Türkiye's second written submission, para. 3.207.
[505] Türkiye's opening statement at the second meeting of the Panel, para. 3.25.
[506] Türkiye's opening statement at the first meeting of the Panel, para. 2.41; response to Panel question No. 20, para. 1.83.
[507] China's response to Panel question No. 53, para. 83; opening statement at the second meeting of the Panel, para. 76.
[508] China's response to Panel question No. 53, para. 83; opening statement at the second meeting of the Panel, para. 76.
[509] China's response to Panel question No. 53, para. 84.
[510] China's second written submission, para. 255.

has to identify specific rules, obligations or requirements that are enforced by the IPLS.[511] China further argues that since the IPLS requirements are not specific obligations in Article 58 of the LCP, the IPLS cannot be said to prevent actions that are inconsistent with Article 58 of the LCP, and therefore to secure compliance with this law.[512] China also disagrees with Türkiye's argument that the IPLS is designed to secure compliance with the LCP because the IPLS requirements "mirror" requirements set out in the ASSR.[513] China points out that Türkiye must demonstrate that the inconsistent aspects of the IPLS are necessary to secure compliance "with a law or regulation, not its objectives".[514] Finally, China disagrees with Türkiye's arguments developed with respect to each of the requirements. We summarize and assess China's arguments in the relevant sections.

7.3.3.2.2.2 Panel's assessment

7.382. We begin by setting out the legal standard under Article XX(d). We then set out our approach to the appropriate level of examination of Türkiye's defence before proceeding with this examination.

Legal standard

7.383. Similarly to a defence under other subparagraphs of Article XX, the examination of a defence under Article XX(d) requires an initial, threshold examination of the relationship between the challenged measure and the "laws or regulations" that are not GATT-inconsistent so as to determine whether the former is taken/designed "to secure compliance" with specific rules, obligations, or requirements under the relevant provisions of such "laws or regulations".[515] In our view, this examination raises two separate issues: one pertains to the meaning of "to secure compliance with", the other – to the relationship between the challenged measure and the objective of securing compliance. We focus on each of them in turn.

Meaning of "to secure compliance with"

7.384. The parties express divergent views as to what Türkiye must show to establish that the IPLS is a measure "to secure compliance with" the LCP and the TAR. Türkiye argues that it is sufficient to demonstrate that the IPLS requirements are directly aimed at protecting consumer interests and further the objectives of the LCP and the TAR.[516] China argues that Türkiye has not identified specific substantive obligations in the LCP which the IPLS is designed to secure compliance with.[517]

7.385. We begin by noting the view consistently expressed by prior adjudicators that "measures that may be consistent with or further the objectives of a law or regulation, but which do not enforce any obligations contained therein, do not fall within the scope of Article XX(d)".[518] Prior panels have thus found demonstrations that challenged measures may allow the attainment of the objectives of

[511] China's second written submission, para. 255.

[512] China's opening statement at the first meeting of the Panel, para. 111; response to Panel question No. 53, para. 85; and second written submission, para. 251. China clarifies that it is not necessary for the IPLS and the LCP to have the exact same language, but rather that Türkiye must identify specific obligations in the LCP for which the IPLS seeks compliance and demonstrate the relationship between these obligations and the IPLS. (China's second written submission, para. 257).

[513] China's second written submission, para. 256.

[514] China's opening statement at the second meeting of the Panel, para. 72.

[515] Appellate Body Report, *India – Solar Cells*, para. 5.58 (referring to Appellate Body Report, *Colombia – Textiles*, paras. 5.68-5.69, and 5.126).

[516] In Türkiye's view, "(c)onceptually, if a measure secures compliance with a law, it will in turn further the underlying objectives of that law. Conversely, if a measure furthers the objective of a law and either prevents conduct inconsistent with that law, or ensures conduct required with the law, it will also serve to secure compliance with that law." (Türkiye's second written submission, para. 3.211).

[517] We note that China makes this statement only with respect to Türkiye's reference to the LCP. In addition to the general argument that Türkiye's allegation that the IPLS secures compliance with the TAR lacks credibility, China has presented specific arguments as to why some requirements are not designed to secure compliance with the TAR. We examine these specific arguments in the respective sections.

[518] Panel Report, *India – Solar Cells*, para. 7.330 (referring to GATT Panel Report, *EEC – Parts and Components*, para. 5.17); Panel Reports, *Canada – Periodicals*, para. 5.9; *Canada – Wheat Exports and Grain Imports*, para. 6.248; *EC – Trademarks and Geographical Indications*, para. 7.447; *Mexico – Taxes on Soft Drinks*, para. 8.175; and *Colombia – Ports of Entry*, para. 7.538.

a law or regulation[519], or even share the same policy objective with a law or regulation[520], insufficient to establish that they are designed to "secure compliance" with these laws or regulations.

7.386. In our view, this is confirmed by an interpretation of the text of Article XX(d) following the rules set out in the VCLT. One of the fundamental tenets of treaty interpretation, flowing from the general rule in Article 31(1) of the VCLT, is the principle of effectiveness. Interpretation must give meaning and effect to *all* the terms of a treaty. An interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility.[521]

7.387. With this in mind, we focus, in particular, on the terms "secure" and "compliance". The dictionary definition of the verb "secure" refers to "make certain of obtaining (a particular end or result); to ensure".[522] The dictionary definition of the noun "compliance" refers to "the acting in accordance with" or "a consenting to act in conformity with".[523] The ordinary meaning of the term "compliance" already indicates the need to identify rules, obligations or requirements which it would be possible to act in accordance or in conformity with.

7.388. The immediate context of the terms "secure compliance", namely their association with the preposition "to", indicating aim, purpose, intention or design[524], refers to the objective of the challenged measure. This objective can thus be described as ensuring that action is in accordance with the relevant laws or regulations.

7.389. In the broader context of Article XX, the term "secure compliance" only appears in subparagraph (d). Other subparagraphs, such as subparagraphs (a), (b), or (g), describe the objective of the challenged measures with a direct reference to the societal interest or value at stake. The interests and values reflected in the "laws or regulations" under Article XX(d) are not limited in a similar way.[525] This confirms our view that the term "secure compliance" in Article XX(d) should be given due meaning and effect. In other words, the objective of a measure sought to be justified under Article XX(d) must be *to secure compliance with* laws or regulations, for instance those relating to consumer protection, rather than *to protect consumers*.

7.390. We thus cannot accept Türkiye's argument that since the IPLS "seeks to ensure proper after-sales services and safe battery handling"[526], this, in and of itself, demonstrates that the IPLS requirements and the IPLS enforcement mechanism are designed to secure compliance with the LCP.[527]

7.391. However, we also cannot accept China's argument that since Türkiye has not identified specific obligations in Article 58 of the LCP with which the IPLS requirements seek to secure compliance, its defence under Article XX(d) "must fail" automatically.[528]

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[519] Panel Report, *Canada – Wheat Exports and Grain Imports*, para. 6.248.

[520] Panel Report, *Canada – Periodicals*, para. 5.10.

[521] Appellate Body Reports, *US – Gasoline*, p. 23 and *Japan – Alcoholic Beverages II*, p. 12. Panel Reports, *US – Gambling*, para. 6.49; *EC – Export Subsidies on Sugar (Australia)*, para. 7.151; and *Canada – Periodicals*, para. 5.17.

[522] Oxford English Dictionary Online, https://www.oed.com/dictionary/secure_v?tab=meaning_and_use#23684242. We note that the provision corresponding to Article XX(d) in the 1946 Suggested Charter for an International Trade Organization used the terms "to induce compliance with" while Article XX(d) uses what a GATT Panel defined as "the stricter language 'to secure compliance with'". (GATT Panel Report, *EEC – Parts and Components*, para. 5.16).

[523] Oxford English Dictionary Online, https://www.oed.com/dictionary/compliance_n?tab=meaning_and_use#8837100.

[524] Oxford English Dictionary Online, https://www.oed.com/dictionary/to_prep?tab=meaning_and_use#18199897.

[525] Appellate Body Report, *Colombia – Textiles*, para. 5.126.

[526] Türkiye's second written submission, para. 3.215.

[527] See, for instance, Appellate Body Report, *Argentina – Financial Services*, para. 6.210. The Appellate Body noted that the panel did not base its analysis *only* on whether the measures secured compliance with the objectives of the law but also examined whether they secured compliance with specific obligations. In a similar vein, the panel in *Korea – Various Measures on Beef* considered that the challenged measure (a dual retail system) was, "at least in part", designed to secure compliance with Korea's legislation against deceptive practices "to the extent that it serves to prevent acts inconsistent with the Unfair Competition Act". (Panel Report, *Korea – Various Measures on Beef*, para. 658).

[528] China's comments on Türkiye's response to Panel question No. 73, para. 69.

7.392. Türkiye has consistently referred to Articles 1 and 58 of the LCP. Article 1 of the LCP is titled "Objectives" and is phrased as a single sentence which starts with outlining "the purpose of this Law".[529] This introductory language, confirmed by the title of the provision and by the immediate context of Chapter 1, suggests that Article 1 *only* sets the purpose and objective of the LCP.[530] We thus agree with China that Article 1 does not contain any obligation or requirement which can be complied with.[531] However, Article 58 of the LCP contains several obligations for manufacturers and importers, including a general obligation in its paragraph 1 that they provide after-sales maintenance and repair services. In the context of its general line of argumentation, we understand Türkiye to have referred to this obligation in Article 58(1). In addition, in response to a question by the Panel, Türkiye specifically referred also to obligations "to establish service stations" in Article 58(4) and "to hold a qualification certificate" in Article 58(2).[532] We examine Türkiye's description of these obligations in the relevant sections below.

7.393. We recall that it is incumbent upon the respondent to demonstrate that the challenged measure is one "to secure compliance with laws or regulations". The more precisely the respondent identifies specific rules, obligations or requirements contained in the relevant laws or regulations, the more likely it will be able to elucidate how and why the inconsistent measure secures compliance with such laws or regulations.[533] In our view, the general nature of the obligations contained in Article 58 of the LCP does not preclude the possibility that the IPLS requirements and the IPLS enforcement mechanism may be designed to secure compliance with Article 58.[534] Nevertheless, this general nature is such that it requires Türkiye to present substantial evidence and arguments sufficient to discharge its burden of proving that the more specific IPLS requirements and enforcement mechanism are taken to secure compliance with this obligation.

Relationship between the measure and securing compliance

7.394. We agree with prior adjudicators that a defence under Article XX(d) requires an examination of the relationship between the measure and securing compliance with the relevant provisions of laws or regulations that are not GATT-inconsistent. If the assessment of the content, structure, and expected operation of the measure reveals that the measure is incapable of securing compliance with the relevant provisions of laws of regulations, there is no relationship that meets the requirement of the "design" step.[535]

7.395. This assessment concerns the nexus between the challenged measure and the objective of securing compliance. We understand Türkiye to argue that since the "not incapable" standard is "not … particularly demanding'", it would be sufficient for Türkiye to demonstrate that the IPLS furthers the objective of consumer protection.[536] However, as we discussed above, the objective of a measure sought to be justified under Article XX(d) must be to secure compliance with laws or regulations, for

[529] Article 1 reads as follows:
(1) The purpose of this Law is to regulate the matters relating to protecting the health and safety and economic interests of consumers, compensating their losses, ensuring their protection from environmental hazards, taking measures to enlighten and raise awareness of consumers, encouraging consumers to take initiatives to protect themselves and encouraging voluntary organisations in the formulation of policies on these matters in accordance with the public interest.

[530] Türkiye also explains that this is the role of Article 1. (Türkiye's opening statement at the second meeting of the Panel, para. 3.22).

[531] Nevertheless, we do not consider Article 1 to be without relevance for our analysis. This provision is important to the extent that it elucidates and clarifies the meaning of Article 58. As the Appellate Body has pointed out, the objectives of laws and regulations may assist in elucidating the content of specific rules, obligations, or requirement of these laws and regulations. (Appellate Body Report, *India – Solar Cells*, para. 5.110). Türkiye also submits that, at a minimum, Article 1 "informs the reading of Article 58 and is part of the norms compliance with which is being secured". (Türkiye's opening statement at the second meeting of the Panel, para. 3.22).

[532] Türkiye's response to Panel question No. 73, para. 2.5.

[533] Appellate Body Reports, *Argentina – Financial Services*, para. 6.203 and *India – Solar Cells*, para. 5.110; Panel Reports, *Indonesia – Import Licensing Regimes*, para. 7.572.

[534] We agree with Türkiye's general position that a measure designed to secure compliance with an obligation contained in a law or regulation may be more detailed than the obligation it secures compliance with. (Türkiye's second written submission, para. 3.219).

[535] Appellate Body Reports, *Colombia – Textiles*, para. 5.126 and *India – Solar Cells*, para. 5.58. See also para. 7.83 above for Article XX(b).

[536] Türkiye's second written submission, paras. 3.211-3.215.

instance those relating to consumer protection. We will therefore focus on assessing whether the measure is "not incapable" of achieving *this* objective rather than that of consumer protection.

7.396. In sum, we will examine the content, structure and expected operation of the challenged measure to determine whether it is taken/designed to achieve the objective of securing compliance with the obligations and requirements contained in the relevant provisions of the LCP and the TAR. In this analysis, we will give due consideration to Türkiye's argument that the measure furthers the objective of consumer protection, but we do not consider this argument sufficient in and of itself.

Level of examination

7.397. At the outset, we note, in agreement with both parties, that neither Notification 2025/7, nor the Implementation Directive state explicitly that the purpose of the IPLS is to secure compliance with the LCP.[537] We agree with Türkiye that the absence (or the existence) of such an express reference is not dispositive.[538] A measure may be designed to secure compliance with a law or regulation even if the legal instruments implementing the measure do not expressly mention this objective.[539] We will therefore focus our examination exclusively on the content, structure and expected operation of the challenged measure.

7.398. Before proceeding, we outline what we consider to be the appropriate level of this examination.

7.399. The aspects of a measure to be justified under the subparagraphs of Article XX are those that give rise to the finding of inconsistency under the GATT 1994.[540] The relevant aspects are typically those that specify the treatment that a measure gives to imported goods, often including in comparison to the treatment accorded to domestic goods.[541] We will thus focus our examination under Article XX(d) on the aspects of the IPLS providing for the treatment of imported EVs and ERHVs that we have found to be less favourable than that accorded to the like domestic EVs and ERHVs. This approach streamlines our analysis in two ways.

7.400. First, the different elements of the IPLS that form the basis of China's Article III:4 claim are the IPLS requirements and the IPLS enforcement mechanism. We have structured our analysis under Article III:4 to assess if each of these elements modifies the conditions of competition to the detriment of imported EVs and ERHVs. Similarly, we will assess whether the inconsistencies with Article III:4 we found with respect to each of these elements are justified under Article XX(d). We note that Türkiye initially presented its defence under Article XX(d) focusing on the IPLS in general, rather than on each IPLS requirement and the IPLS enforcement mechanism.[542] In response to questions from the Panel, Türkiye provided arguments and evidence specific to each IPLS requirement and the IPLS enforcement mechanism. In our assessment, we will consider both these specific arguments, and – where relevant – Türkiye's general arguments.

7.401. Second, we will not assess the IPLS requirements and enforcement mechanism in the abstract.[543] Rather, we will focus on the *discriminatory aspects* that we have found to exist with respect to each IPLS requirement and the enforcement mechanism. These aspects are the ones that formed the basis of our finding of inconsistency with Article III:4, and they are the ones that must be justified. In this context, we note Türkiye's argument that the IPLS requirements are designed to

[537] Türkiye's first written submission, paras. 3.216 and 3.220; China's response to Panel question No. 53, para. 83.

[538] Türkiye's second written submission, paras. 3.208-3.210.

[539] See Panel Reports, *US – IRA (China)*, para. 7.140; *US – Tariff Measures (China)*, para. 7.125; and *Indonesia – Raw Materials*, para. 7.226.

[540] Appellate Body Reports, *EC – Seal Products*, para. 5.185 and *Argentina – Financial Services*, para. 6.168.

[541] Appellate Body Reports, *Argentina – Financial Services*, para. 6.168 and *Thailand – Cigarettes (Philippines)*, para. 177.

[542] We do not understand Türkiye to argue that the IPLS requirements and the IPLS enforcement mechanism are necessary to secure compliance with the LCP and the TAR *only* when taken collectively in their combined operation. (As a comparison, see Panel Report, *Colombia – Ports of Entry*, para. 7.503).

[543] As the Appellate Body observed, "a respondent may not justify the inconsistency of a measure by basing its defence on aspects of that measure different from those that were found by the panel to be inconsistent with a provision" of the GATT. (Appellate Body Report, *Argentina – Financial Services*, para. 6.169).

secure compliance with Article 58 of the LCP because they mirror the requirements of the ASSR, and because the ASSR expressly refers to Article 58.[544] We cannot accept the premise of this argument precisely because our focus under Article XX(d) is on the discriminatory aspects which stem from the differences we found between the treatment accorded to imported EVs and ERHVs and that accorded by the ASSR to like domestic EVs and ERHVs.

7.402. In sum, we do not consider it relevant or warranted to assess whether the IPLS, in general and in the abstract, is necessary to secure compliance with the LCP or the TAR. We will rather assess whether each of the IPLS requirements and the IPLS enforcement mechanism, when compared to the treatment accorded to domestic EVs and ERHVs, are necessary to secure compliance with the LCP and TAR.

Whether the Service Stations Requirement is designed to secure compliance with Article 58 of the LCP

Arguments of the parties

7.403. Türkiye argues that the Service Stations Requirement is necessary to secure compliance with the obligation in Article 58(1) to provide after-sales maintenance and repair services and the obligation in Article 58(4) to establish service stations.[545] According to Türkiye, domestic manufacturers are more likely to rely on domestic and regional suppliers for spare parts. They are thus less exposed to cross-border supply disruptions than importers and can provide "a better emergency response and address consumer needs more efficiently".[546] By contrast, Türkiye argues that importers are typically dependent on offshore-based manufacturers, are significantly more exposed to constraints surrounding international supply chains, and are significantly more likely to face supply disruptions, including with respect to spare parts.[547] Türkiye argues that the Service Stations Requirement seeks to address such risks associated with international supply chains by ensuring that importers are responsible to supply service stations with spare parts and "maintain and monitor adequate stocks", rather than outsourcing this "crucial task" to third parties.[548] According to Türkiye, the IPLS requires importers to *own* service stations rather than rely on third parties because importers are "more likely to expend effort to ensure an adequate supply of spare parts when they are directly invested in service stations".[549]

7.404. China considers Türkiye's arguments to be unsubstantiated and speculative.[550] According to China, domestic supply chains are exposed to myriad risks, and having localized supply chains "exacerbates supply chain risk".[551] China submits that Turkish manufacturers rely on a significant share of imported parts and components, and thus any risk associated with their foreign origin would also apply to domestic manufacturers.[552] China further disagrees that there is any basis to assume importers would not be reliable suppliers, or would not comply with requirements set out in the Turkish standards.[553] According to China, Türkiye must also "provide a substantiated explanation" why the supply chain risks it refers to do not apply equally to importers of EVs and ERHVs from Türkiye's RTA partners.[554] With respect to Türkiye's reference to Article 58(4) of the LCP, China points out that this provision does not contain a requirement that importers themselves establish service stations.[555]

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[544] Türkiye's first written submission, paras. 3.216-3.219; second written submission, para. 3.207.
[545] Türkiye's response to Panel question No. 73, para. 2.5.
[546] Türkiye's response to Panel question No. 74(a), para. 2.7.
[547] Türkiye's response to Panel question No. 74(a), para. 2.7.
[548] Türkiye's second written submission, para. 3.236.
[549] Türkiye's response to Panel question No. 74(b), para. 2.9.
[550] China's comments on Türkiye's responses to Panel question No. 74(a), paras. 70 and 72 and No. 74(b), para. 78.
[551] China's comments on Türkiye's response to Panel question No. 74(a), para. 74.
[552] China's comments on Türkiye's response to Panel question No. 74(a), para. 75.
[553] China's comments on Türkiye's response to Panel question No. 74(b), para. 78.
[554] China's comments on Türkiye's response to Panel question No. 74(a), para. 73. See also China's comments on Türkiye's response to Panel question No. 74(b), para. 79.
[555] China's opening statement at the first meeting of the Panel, para. 108; comments on Türkiye's response to Panel question No. 73, para. 66.

Panel's assessment

7.405. We found that the Service Stations Requirement is inconsistent with Article III:4 of the GATT 1994 because it requires imported EVs and ERHVs to be serviced by stations owned exclusively by the importer, while domestic like EVs and ERHVs may be serviced by stations which may be owned by any economic operator, and because this difference in the availability of economic operators who can own the requisite service stations modifies the conditions of competition to the detriment of imported EVs and ERHVs. In line with our approach described above, we now turn to assess whether the requirement that imported EVs and ERHVs be serviced by stations owned by the importer rather than owned by any economic operator with which the importer may contract to provide after-sales services, is designed to secure compliance, as argued by Türkiye, with obligations set out in Article 58(1) and Article 58(4) of the LCP.

Article 58(1) of the LCP

7.406. Article 58(1) reads as follows:

> Manufacturers or importers are obliged to provide after-sales maintenance and repair services for the goods they produce or import during the lifetime determined by the Ministry.

7.407. We recall our observation that the general nature of this obligation is such that it requires Türkiye to present substantial evidence and arguments sufficient to discharge its burden of proving that the Service Stations Requirement is designed to secure compliance with this obligation.

7.408. Türkiye argues that this is the case because importers are more exposed to cross-border supply disruptions and to constraints surrounding international supply chains compared to domestic manufacturers. Requiring importers to own the service stations ensures that they are responsible to supply these stations with spare parts and maintain and monitor adequate stocks. This, in turn, secures compliance with Article 58 of the LCP because it ensures the uninterrupted access of Turkish consumers who purchase imported EVs and ERHVs to spare parts.

7.409. We first address the factual premise underlying Türkiye's argument: that importers are more exposed to cross-border supply disruptions than domestic manufacturers. This premise is based on two assertions: (i) importers rely on "foreign supply chains" for spare parts, whereas domestic manufacturers rely on localized domestic or regional supply chains; and (ii) foreign supply chains are more exposed to constraints and likely to face disruptions compared to domestic or regional supply chains.[556] China disagrees with both these assertions and argues that Türkiye has provided no evidentiary support for them.

7.410. With respect to the first assertion, we note that Türkiye does not submit any evidence pertaining to the supply chains for spare parts on which domestic manufacturers and importers of EVs and ERHVs rely. Rather, Türkiye presents this assertion in general terms, arguing that domestic manufacturers "are more likely" to rely on domestic or regional suppliers, and importers "typically" rely on foreign suppliers.[557] China disagrees and argues that Turkish manufacturers also rely on foreign suppliers, either for parts and components or for the materials used to produce them.[558] China does not submit any evidence in support of its statement either. We recall, however, that the burden of proof rests upon Türkiye who asserts a defence under Article XX(d).[559]

7.411. With respect to its second assertion, Türkiye explains that domestic or regional supply chains involve shorter transportation distances, no or fewer customs barriers, better communication with the supplier, and less risk of being exposed to geopolitical instability and global events. Türkiye refers to a 2024 publication by the International Trade Council reporting a shift from traditional global supply chains to regional supply chains.[560] This publication lists several drivers for this shift: geopolitical tensions, supply chain disruptions and vulnerabilities, environmental and sustainability

[556] Türkiye's response to Panel question No. 74(a), para. 2.7.
[557] Türkiye's response to Panel question No. 74(a), para. 2.7.
[558] China's comments on Türkiye's response to Panel question No. 74(a), para. 75.
[559] Appellate Body Report, *US – Wool Shirts and Blouses*, p. 14, DSR 1997:I, 323, at p. 335.
[560] International Trade Council, "The Rise of Regional Supply Chains: How Geopolitical Tensions and Economic Pressures Are Shifting Global Production in 2024" (Exhibit TUR-111).

concerns, and advances in automation and technology. It explains that regional supply chains reduce dependency on distant suppliers and diversify production across multiple regions. Türkiye also refers to a 2024 Deloitte Insights article.[561] This article reports that, following the normalization of global supply chains after the COVID-19 pandemic, industrial manufacturing and construction companies in the United States are restructuring their supply chains to include locations in the United States or its RTA partners and locations closer to end-users. The article explains that companies appear to be motivated to restructure their supply chains to optimize logistics and delivery performance, reduce costs, and take advantage of industrial policy. It also refers to growing concerns over the indirect impacts of geopolitical instabilities on supply chains.

7.412. China disagrees also with Türkiye's second assertion. China argues that domestic supply chains are exposed to risks such as natural disasters, regulatory interventions, political instability, transportation disruptions, or labour mobilization.[562] China refers to a 2023 article reporting on the impact of earthquakes on supply chains.[563] This article refers to a recent earthquake in Türkiye and suggests that business prepare for future earthquakes by diversifying their supplier bases rather than relying on suppliers in one localized region.

7.413. We are not convinced that the parties' arguments are necessarily contradictory and mutually exclusive. From the evidence before us, we understand that: (i) there are risks associated with global supply chains which motivate some businesses to shift to at least regional supply chains; and (ii) there are risks associated with domestic supply chains which may motivate some business to diversify their supplier base by relying on suppliers in different geographical areas, including international supply chains. Based on this evidence, we agree with Türkiye that there are certain risks which affect foreign supply chains more than domestic or regional supply chains. We also agree with China that there are other risks which affect localized supply chains more than diversified foreign supply chains. We are, however, not convinced that the evidence before us supports Türkiye's argument that foreign supply is "inherently", and inevitably, less reliable than local supply.[564] As the little evidence before us shows, the reliability of each supply chain depends on many factors, and not exclusively on its foreign or domestic nature.

7.414. We thus consider that Türkiye's first assertion is not supported by any evidence on the record, and its second assertion is only partially supported by the evidence, which paints a more complex picture. This casts doubt on the factual premise underlying Türkiye's arguments.

7.415. We continue our analysis to assess whether, even assuming that importers are more exposed to cross-border supply disruptions than domestic manufacturers, the requirement that they *own* service stations is designed to secure compliance with Article 58 of the LCP.

7.416. Türkiye argues that if an importer owns a service station: (i) it is more likely to expend efforts to ensure that this station is adequately supplied with spare parts instead of exiting the market;[565] and (ii) it maintains direct control over after-sales services and spare parts availability and is less dependent on intermediaries, thus mitigating risks caused by supply chain vulnerabilities.[566] This, Türkiye argues, "is perfectly in line with the IPLS's consumer protection objective".[567]

7.417. Türkiye's statements rely on several assumptions, few of which are substantiated by the evidence submitted by Türkiye.

7.418. First, Türkiye states that an importer is more likely to expend efforts to ensure that a service station is adequately supplied with spare parts if it owns this service station. Türkiye has provided no evidence to substantiate this statement. We observe that paragraph 5.2.3 of Standard TSE K 646 reads as follows:

[561] Deloitte Insights, "Restructuring the supply base: Prioritizing a resilient, yet efficient supply chain" (23 May 2024) (Exhibit TUR-112).
[562] China's comments on Türkiye's response to Panel question No. 74(a), para. 74.
[563] ICAT blog, "How earthquakes impact the supply chain" (23 March 2023) (Exhibit CHN-60).
[564] Türkiye's second written submission, para. 3.236.
[565] Türkiye's response to Panel question No. 74(b), paras. 2.9 and 2.11.
[566] Türkiye's response to Panel question No. 74(b), para. 2.12.
[567] Türkiye's response to Panel question No. 74(b), para. 2.13.

> Repair shop must have a system which will meet the spare part needs. As part of this system, manufacturers or importers must provide the authorized repair shop with a written commitment stating that all spare parts will be fully stocked either at the company's main office or at a service station designated by them. In addition, said written commitment will specify the spare parts, along with the quantities, which will be stored at the authorized repair shop, and such quantities will ensure an uninterrupted service to the consumers. Repair shop must identify spare parts appropriately.

7.419. We understand that all service stations are required to have a system which will meet spare part needs. Importers, just as domestic manufacturers, must commit to stock fully all spare parts and to store certain quantities of spare parts at service stations, ensuring "an uninterrupted service to the consumer". Nothing in the text of TSE K 646 suggests that this requirement varies depending on who owns the service stations. This suggests that importers must ensure the same "uninterrupted service" to consumers as domestic manufacturers, whether they own a service station or make use of a service station owned by another economic operator.[568] This casts doubt on Türkiye's assertion that importers are more likely to ensure that a service station is adequately supplied if they own it.[569]

7.420. Second, Türkiye states that importers are more likely to exit the Turkish market than domestic manufacturers "due to lower local investment and higher exposure to external risks".[570] Türkiye refers to two documents discussing "barriers to exit". The first – prepared by the Indeed Editorial Team – contains a general presentation of the factors that prevent a business from exiting a market.[571] The second – prepared by the Secretariat of the Organisation for Economic Co-operation and Development (OECD) – describes "barriers to exit" as obstacles or impediments that may prevent a firm from exiting the market when it otherwise would.[572] While these documents describe factors that may facilitate or complicate ease of exit from a market, we do not understand either of them to directly support Türkiye's assertion that importers are more likely to exit the Turkish market than domestic manufacturers. We recall, in this respect, that, just like domestic manufacturers, importers are entities established in Türkiye.[573]

7.421. The OECD Background Note may, however, be seen as supporting Türkiye's suggestion that requiring importers to own service stations may have an impact on the likelihood that they exit the Turkish market. Among the "indirect opportunity costs of exit", this document lists "sunk costs", i.e. investments that are fully committed to the market once they are made, which include specific assets such as manufacturing plants.[574] We understand that the ownership of a specialized service station may be perceived as such a "sunk cost". The Service Stations Requirement may thus affect the ease of exit from the Turkish market. Even so, we fail to see how this relates to the objective of securing compliance with Article 58(1) of the LCP. Insofar as Türkiye suggests that if an importer exits the market, this may affect the supply of maintenance and repair services to consumers, we observe that Article 58 of the LCP contains provisions which are specifically geared to address such situations and ensure the continuity of maintenance and repair services.[575]

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[568] Indeed, Türkiye explains that the requirement in TSE K 646 serves to minimize the risk of supply chain disruptions both for domestic and imported vehicles. (Türkiye's response to Panel question No. 74(b), para. 2.10).

[569] Türkiye argues that despite the contribution of paragraph 5.2.3 to the availability of spare parts, importers remain "less likely to be able to comply with the relevant requirements at all times than domestic manufacturers". (Türkiye's response to Panel question No. 74(b), para. 2.11). To the extent that Türkiye suggests that importers are more likely to violate the requirements under Turkish law than domestic manufacturers, we struggle to accept such a sweeping statement in the absence of any evidence supporting it. Moreover, we fail to see how requiring an importer to own a service station would mitigate the risk of this importer violating the requirements under Turkish law.

[570] Türkiye's response to Panel question No. 74(b), para. 2.11.

[571] Indeed, "Definitive Guide to Exit Barriers (With Examples)" (11 December 2025) (Exhibit TUR-114).

[572] OECD Secretariat, Directorate for Financial and Enterprise Affairs, Competition Committee, "Barriers to Exit – Background Note", DAF/COMP(2019)15 (3-4 December 2019) (OECD Background Note) (Exhibit TUR-113).

[573] Michaela Merz, "Turkey: Only a Turkish resident entity can act as importer" (17 June 2019) (Exhibit CHN-46).

[574] OECD Background Note, para. 23.

[575] Article 58(6) reads:

> In the event that the importer ceases its commercial activity in any way, the seller, manufacturer and new importer are jointly and severally responsible for the provision of maintenance and

7.422. Third, Türkiye states that an importer is less dependent on supply chain vulnerabilities if it owns a service station, because it depends on fewer intermediaries. Türkiye does not submit any evidence in support of this statement. We understand that owning a service station rather than relying on the service station owned by another economic operator necessarily dispenses with at least one intermediary. However, we do not see how this relates to Türkiye's expressed concern regarding foreign supply chains, to the objective of securing compliance with Article 58(1) of the LCP, or, for that matter, to consumer protection.

7.423. Finally, we also note that some of Türkiye's statements appear to be contradicted by the content, structure and expected operation of the Service Stations Requirement. We recall that importers of EVs and ERHVs from Türkiye's RTA partners are exempt from the Service Stations Requirement. As China points out, Türkiye has not explained why the risks it associates with foreign supply chains and barriers to exit do not apply equally to those importers.[576]

7.424. We thus consider that, even assuming that importers are more exposed to cross-border supply disruptions, Türkiye's arguments that the Service Stations Requirement is designed to secure compliance with the general obligation in Article 58(1) of the LCP rely on several unsubstantiated assertions and appear to be contradicted by the content, structure and expected operation of the Service Stations Requirement.

7.425. We conclude that Türkiye has not demonstrated that the Service Stations Requirement is designed to secure compliance with the obligation contained in Article 58(1) of the LCP.

Article 58(4) of the LCP

7.426. Türkiye also argues that the Service Stations Requirement is necessary to secure compliance with "the obligation to establish service stations" contained in Article 58(4) of the LCP.[577]

7.427. We first observe that this provision does not contain the obligation that Türkiye describes. Article 58(4) reads:

> Producers or importers may establish authorised service stations themselves or may make use of existing service stations or service organisations provided that they are responsible for the services provided by the service stations.

7.428. We see nothing in the text of this provision that contains an "obligation to establish service stations". In addition, we note that the text is almost identical to the one of Article 5(2) of the ASSR.[578] We recall our finding that the Service Stations Requirement, by requiring that importers *own* the requisite service stations, results in a difference in treatment compared to the possibility allowed exactly by Article 5(2) of the ASSR for domestic manufacturers to rely on other economic operators who own the requisite service stations. Due to the Service Stations Requirement, this possibility is currently not available to importers of EVs and ERHVs from countries other than Türkiye's RTA partners. It is this difference that gives rise to the inconsistency with Article III:4 that Türkiye seeks to justify.

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repair services during the warranty period. After the warranty period has expired, the manufacturer or the new importer must provide maintenance and repair services during its lifetime.

Article 58(7) reads:

After the end of the warranty period, if the aftersales service related to the goods is not provided by the manufacturer or importer during the lifetime determined by the Ministry, the consumer may claim compensation for the damage.

[576] China's comments on Türkiye's response to Panel question No. 74(a), para. 73.

[577] Türkiye's response to Panel question No. 73, para. 2.5.

[578] We recall that Article 5 of the ASSR reads as follows:

(1) Manufacturers or importers are obliged to establish an authorized service station with sufficient technical staff in the location, number and characteristics specified in the attached list in order to provide after-sales services for the specified lifetime of each product group in the attached list.

(2) Manufacturers or importers may establish authorized service stations themselves or benefit from established service stations or service organizations, provided that they are responsible for the services provided.

7.429. In our view, a requirement that is less favourable than the one contained in a specific provision in a law or a regulation, and is as a result inconsistent with Article III:4, cannot be said to be designed to secure compliance with this specific provision. The *discriminatory aspect* of the Service Stations Requirement directly contradicts the possibility offered in Article 58(4) for importers to "make use of existing stations or service organisations".

7.430. We thus conclude that Türkiye has not demonstrated that the Service Stations Requirement is designed to secure compliance with any obligation contained in Article 58(4) of the LCP.

Whether the Certificate of Competence Requirement is designed to secure compliance with Article 58 of the LCP

Arguments of the parties

7.431. Türkiye argues that the Certificate of Competence Requirement is necessary to secure compliance with the obligation in Article 58(1) to provide after-sales maintenance and repair services and the obligation in Article 58(2) to hold a qualification certificate.[579] Türkiye explains that the intention behind the Certificate of Competence Requirement is not to address any differences in regulatory risks, but to "simplify and restate, for purposes of administrative ease, the requirements that exist in the relevant Turkish standards and provide guidance to importers, especially those that may be seeking first-time entry into the Turkish market".[580] According to Türkiye, first-time importers "will find it useful to have to complete only one single type certificate rather than having to make choices between a range of certificates".[581]

7.432. China argues that Article 58 of the LCP does not address certificates of competence of people responsible for the maintenance of vehicles.[582] According to China, Türkiye does not explain why the limited flexibility under the IPLS is necessary to secure compliance with the LCP.[583] China also argues that "there is no logical basis to assume that a first-time importer would prefer to have less choice".[584]

Panel's assessment

7.433. We found that the Certificate of Competence Requirement is inconsistent with Article III:4 of the GATT 1994 because it requires competence of the personnel servicing imported EVs and ERHVs to be ascertained only through an EVMRT certificate, while the competence of the personnel servicing like domestic EVs and ERHVs can be ascertained through three different methods, and because this difference in the available methods to ascertain the competence of the personnel working in service stations modifies the conditions of competition to the detriment of imported EVs and ERHVs. In line with our approach described above, we now turn to assess whether the requirement that the competence of personnel servicing imported EVs and ERHVs be certified only through an EVMRT certificate is designed to secure compliance, as argued by Türkiye, with obligations set out in Article 58(1) and Article 58(2) of the LCP.

Article 58(1) of the LCP

7.434. We recall our observation that the general nature of the obligation contained in Article 58(1) is such that it requires Türkiye to present substantial evidence and arguments sufficient to discharge its burden of proving that the Certificate of Competence Requirement is designed to secure compliance with this obligation.

7.435. We understand Türkiye to argue that this is the case because the Certificate of Competence Requirement simplifies the competence requirements and provides guidance to importers. To the extent that Türkiye's argument is based on its assertion that the Certificate of Competence Requirement restates the competence certification requirements applicable with respect to domestic

[579] Türkiye's response to Panel question No. 73, para. 2.5.
[580] Türkiye's response to Panel question No. 75(a), para. 2.15.
[581] Türkiye's response to Panel question No. 75(a), para. 2.15.
[582] China's opening statement at the first meeting of the Panel, para. 109; comments on Türkiye's response to Panel question No. 73, para. 67; and second written submission, para. 253.
[583] China's comments on Türkiye's response to Panel question No. 75(a), para. 85.
[584] China's comments on Türkiye's response to Panel question No. 75(a), para. 86.

EVs and ERHVs, we recall that we have found this not to be the case because of the difference in the available methods to ascertain these competences. It is precisely this difference that gives rise to the inconsistency with Article III:4 that Türkiye seeks to justify.

7.436. With respect to this difference, Türkiye argues that first-time importers would find it "useful to have to complete only one single type certificate rather than having to make choices between a range of certificates".[585] We do not consider this argument convincing for four reasons.

7.437. First, Türkiye bases this assertion on "experience", but – as China points out – provides no evidence to substantiate it.[586]

7.438. Second, Türkiye refers to first-time importers. Yet, the Certificate of Competence Requirement applies to all importers, including those that may own or rely on service stations employing personnel that hold a high school degree in mechanics, motor vehicles and electric-electronic technology, or a legal mastery certificate or a Professional Qualification Certificate in the relevant field of profession instead of an EVMRT certificate.

7.439. Third, it is our understanding that it is not the importers who "complete" the EVMRT certificate, as suggested by Türkiye. Rather, it is the relevant technician who applies for, and must obtain, an EVMRT certificate through the process described in Annex 3 of the Implementation Directive.[587] The Certificate of Competence Requirement requires importers to demonstrate that the personnel servicing imported EVs and ERHVs holds an EVMRT certificate. As discussed in section 7.3.2.4.3.3 above, what Türkiye refers to as the "range of certificates" compared to the "one single type certificate" means that economic operators selling domestic EVs and ERHVs have access to a larger pool of specialists with the relevant specialized competences required for servicing EVs and ERHVs.

7.440. Finally, even assuming that the Certificate of Competence Requirement simplifies the existing requirements and provides guidance to importers, Türkiye does not provide any argument explaining how this relates to the objective of securing compliance with Article 58(1) of the LCP.

7.441. We thus conclude that Türkiye has not demonstrated that the Certificate of Competence Requirement is designed to secure compliance with the obligation contained in Article 58(1) of the LCP.

Article 58(2) of the LCP

7.442. Article 58(2) of the LCP reads as follows:

> Manufacturers or importers are obliged to obtain an after-sales service qualification certificate approved by the Ministry for the goods specified by the regulation and to register the information on all authorised service stations in the system established by the Ministry.

7.443. As described in para. 7.335 above, Türkiye has explained that the "qualification certificate" is an aggregate certification attesting that a company satisfies the full range of requirements pertaining to after-sales services, including competence certifications of individual staff and existence of the requisite number of service stations. We thus understand Article 58(2) to contain an obligation for an importer to obtain a "qualification certificate" once it has satisfied the applicable requirements, including those pertaining to the certification of the competences of the personnel in its service stations. We fail to see how one of these requirements can be designed to secure compliance with the obligation to certify that this same requirement has been satisfied. Türkiye has not provided further arguments to support this assertion.

[585] Türkiye's response to Panel question No. 75(a), para. 2.15.
[586] China's comments on Türkiye's response to Panel question No. 75(a), para. 86.
[587] We note that the introductory part of Annex 3 explains that this Annex sets out processes used "for candidates applying to be certified". The processes themselves refer to the candidate on numerous occasions, clearly indicating that this candidate is the technician seeking to be certified, rather than the importer.

7.444. We thus conclude that Türkiye has not demonstrated that the Certificate of Competence Requirement is designed to secure compliance with the obligation contained in Article 58(2) of the LCP.

Whether the Call Centre Requirement is designed to secure compliance with Article 58 of the LCP

Arguments of the parties

7.445. Türkiye argues that the Call Centre Requirement is necessary to secure compliance with the obligation in Article 58(1) to provide after-sales maintenance and repair services.[588] According to Türkiye, importers introducing new foreign brands on the Turkish market might not operate "adequately staffed" call centres and might not provide adequate information infrastructure to Turkish consumers. By contrast, domestic manufacturers have a "more stable commercial presence", are "more reliable", and already operate adequately-staffed call centres.[589] Thus, Türkiye argues, the Call Centre Requirement is necessary to ensure that consumers receive adequate and "properly staffed" after-sales customer service, in line with the objective to protect consumers.[590]

7.446. China points out that Türkiye's explanations, which China considers speculative, only concerns new brands, whereas the Call Centre Requirement applies to all foreign brands, including those that operated in Türkiye prior to the enactment of the IPLS.[591] China also submits that Türkiye has provided no explanation for the requirement that call centres have a minimum of 40 personnel which China considers "entirely arbitrary".[592] Finally, China disagrees that the evidence on the record supports Türkiye's assertion that domestic manufacturers already operate adequately-staffed call centres.

Panel's assessment

7.447. We found that the Call Centre Requirement is inconsistent with Article III:4 of the GATT 1994 because it requires importers to operate a call centre in Türkiye with 40 personnel, whereas no such requirement exists for domestic manufacturers, and because as a result it modifies the conditions of competition to the detriment of imported EVs and ERHVs. In line with our approach described above, we now turn to assess whether this requirement, compared to the lack of a requirement related to call centres for domestic manufacturers, is designed to secure compliance with the general obligation in Article 58(1).

7.448. We understand Türkiye to argue that this is the case because importers introducing new foreign brands on the Turkish market might not operate adequately-staffed call centres, compared to the "more reliable" domestic manufacturers. Requiring that the importer operates a call centre in Türkiye with at least 40 personnel for each brand it imports guarantees that Turkish consumers will receive adequate after-sales customers service for imported EVs and ERHVs.

7.449. Türkiye's argument is based on two factual assertions: (i) importers are likely to not provide an adequate information infrastructure, and (ii) domestic manufacturers provide an adequate information infrastructure, including by operating adequately-staffed call centres. We understand Türkiye to argue that because of this factual difference, the requirement applicable only to importers to operate call centres in Türkiye with 40 personnel is designed to secure compliance with Article 58 of the LCP. Presumably, applying a similar requirement to domestic manufacturers is not necessary to secure compliance with Article 58 of the LCP, because this compliance is secured by their more stable commercial presence in Türkiye and by the fact that they, *de facto*, already operate call centres.

7.450. We first address the factual assertions underlying Türkiye's argument. As China points out, Türkiye has provided no evidence to substantiate the first of its assertions. Moreover, this assertion only concerns importers introducing *new* foreign brands. The Call Centre Requirement applies to all importers, including those that have already introduced foreign brands on the Turkish market.

[588] Türkiye's response to Panel question No. 73, para. 2.5.
[589] Türkiye's response to Panel question No. 75(b), para. 2.16.
[590] Türkiye's response to Panel question No. 75(b), para. 2.17.
[591] China's comments on Türkiye's response to Panel question No. 74(b), para. 88.
[592] China's comments on Türkiye's response to Panel question No. 74(b), para. 89.

Türkiye does not appear to assert that these importers who are already established on the Turkish market are likely to not operate adequately-staffed call centres.

7.451. With respect to the second assertion, we noted in para. 7.279 above that the exhibits submitted by Türkiye do not unequivocally show that domestic manufacturers operate call centres in Türkiye with 40 personnel for each brand. At best, the evidence before us shows that four domestic manufacturers have allocated telephone lines for consumers to contact them regarding after-sales services. It remains unclear whether any of these four domestic manufacturers operates call centres, let alone call centres employing 40 personnel, and how other domestic manufacturers have chosen to make themselves be reachable by consumers.

7.452. We thus consider that Türkiye's assertions are not supported by the evidence on the record. This casts doubt on the factual premise underlying Türkiye's argument.

7.453. We continue our analysis to assess whether, even assuming that importers are less likely than domestic manufacturers to provide adequate information infrastructure, the requirement that they operate call centres *in Türkiye* with *at least 40 personnel* for *each brand* is designed to secure compliance with Article 58 of the LCP.

7.454. We understand, in the abstract, that a requirement to provide adequate information infrastructure to consumers may be seen as designed to secure compliance with the general obligation in Article 58(1) to provide after-sales maintenance. However, this is not the question before us. Rather, Türkiye must explain how the discriminatory aspects of the Call Centre Requirement, which include, in particular, requiring that this information infrastructure consist, only with respect to imported EVs and ERHVs, in a call centre (i) in Türkiye with (ii) at least 40 personnel (iii) for each brand (compared to a potentially implied obligation for domestic manufacturers to be reachable by consumers), are designed to secure compliance with this general obligation. Türkiye does not provide any arguments related to these aspects which constitute the essence of the Call Centre Requirement.

7.455. We thus conclude that Türkiye has not demonstrated that the Call Centre Requirement is designed to secure compliance with the obligation contained in Article 58(1) of the LCP.

Whether the Authorized Representative Requirement is designed to secure compliance with the LCP and the TAR

Arguments of the parties

7.456. Türkiye argues that the Authorized Representative Requirement is necessary to secure compliance with the TAR because it "ensures that foreign manufacturers establish an authorized representative, as required by Article 13(3) [*sic*] of the Type Approval Regulation".[593] According to Türkiye, absent an authorized representative, there is "no direct bridge" between a foreign manufacturer and the Turkish government, whereas such a bridge "naturally exists" for domestic manufacturers located in Turkish territory.[594] Türkiye also argues that the Authorized Representative Requirement is necessary to secure compliance with the ASSR "more generally", as they "both contribute to better consumer protection, which is the objective of the Law on Consumer Protection".[595] Türkiye submits that authorized representatives represent foreign manufacturers for purposes of cooperating with the government on matters involving product safety and consumer protection.[596]

7.457. China argues that since the Authorized Representative Requirement concerns the appointment of an authorized representative that may not be the same as the TAR representative, this requirement is not designed to secure compliance with the TAR.[597] According to China, the additional burden imposed by the Authorized Representative Requirement has "no justification".[598] China also argues that the late invocation of the TAR by Türkiye lacks credibility, because if the IPLS

[593] Türkiye's second written submission, para. 3.223.
[594] Türkiye's response to Panel question No. 75(c), para. 2.18.
[595] Türkiye's response to Panel question No. 73, para. 2.4.
[596] Türkiye's response to Panel question No. 75(c), para. 2.18.
[597] China's comments on Türkiye's response to Panel question No. 73, para. 64.
[598] China's comments on Türkiye's response to Panel question No. 75(c), para. 90.

had been enacted to secure compliance with the TAR, "Türkiye would have been aware of it and it would have clearly indicated so at the beginning of the proceedings".[599]

Panel's assessment

7.458. We emphasize that the subject of our finding of inconsistency under Article III:4 is the Authorized Representative Requirement *contained in the IPLS* (the IPLS representative) and *not* the requirement contained in the TAR to appoint a representative. Therefore, what Türkiye must justify is not the requirement to appoint an authorized representative to represent foreign manufacturers before the approval body (TAR representative), but the aspect of the requirement to appoint an IPLS representative that is inconsistent with Article III:4. We found that the IPLS appears to require foreign manufacturers to appoint the importer applying for a Permit Certificate as their IPLS representative, whether or not that importer serves as a TAR representative, and that this, in some situations, may lead to appointing two different entities as TAR and IPLS representatives.

TAR

7.459. We understand Türkiye to refer, in particular, to the obligation in Article 13(4) of the TAR that foreign manufacturers which are not established in the European Union "appoint a representative established in Türkiye to represent them before the approval body" (TAR representative).

7.460. Türkiye argues that the requirement to have an "authorized representative" creates a bridge between foreign manufacturers and the Turkish government. We do not understand China to disagree that this may be the case in the abstract, or even with respect to the requirement to appoint a TAR representative. However, Türkiye has not provided any argument how the requirement to appoint the importer as an IPLS representative (even if a different entity serves as TAR representative) is designed to secure compliance with the TAR, because it disputed the factual premise that there is a requirement to appoint the importer as the authorized representative.[600] Absent such arguments, we conclude that Türkiye has not demonstrated that the Authorized Representative Requirement is designed to secure compliance with the obligation in Article 13(4) of the TAR to appoint a TAR representative.

LCP

7.461. Türkiye argues that, since authorized representatives cooperate with the Turkish government on matters involving product safety and consumer protection, the Authorized Representative Requirement is linked to ensuring better consumer protection.

7.462. We begin by noting that, beyond its general argument that the Authorized Representative Requirement contributes to better consumer protection, Türkiye has not referred to any specific obligation in the LCP with which it argues that this requirement secures compliance. This already casts doubt on Türkiye's argument that this requirement is designed to secure compliance with the LCP. Even with reference to the general obligation contained in Article 58(1) of the LCP, and to Türkiye's argument that the IPLS requirements ensure better consumer protection, we note that Türkiye does not explain how requiring the importer to be designated as a representative (even if another representative may already exist for the purposes of the TAR) is linked to ensuring better consumer protection. We note in this respect that Article 58 refers jointly to manufacturers and importers and contains identical obligations for both.

7.463. We conclude that Türkiye has not demonstrated that the Authorized Representative Requirement is designed to secure compliance with any obligation in Article 58 of the LCP.[601]

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[599] China's opening statement at the second meeting of the Panel, para. 76.

[600] Türkiye's comments on China's response to Panel question No. 71.

[601] We finally note that in its response to the second set of Panel questions, Türkiye argues that the Authorized Representative Requirement is necessary to secure compliance with the ASSR because they "both contribute to better consumer protection, which is the objective of the Law on Consumer Protection". (Türkiye's response to Panel question No. 73, para. 2.4). China has not commented on this late invocation of the ASSR as a "law or regulation" for the purposes of Article XX(d). We note that Türkiye's only argument on this point relates to the objective of the LCP. In the light of our finding, we also conclude that Türkiye has not

Whether the Battery Commitment Requirement is designed to secure compliance with the LCP and the TAR

Arguments of the parties

7.464. Türkiye argues that the Battery Commitment Requirement is necessary to secure compliance with the TAR because it ensures battery safety as required by Articles 51-56 of the TAR, and in particular Article 52(1).[602] According to Türkiye, the Battery Commitment Requirement addresses a risk that "importers may not be aware of the full regulatory framework in Türkiye relating to battery safety and battery handling".[603] By contrast, Türkiye submits, domestic manufacturers are much more likely to be aware of battery-specific regulations. Türkiye also argues, that, just as the Authorized Representative Requirement, the Battery Commitment Requirement is necessary to secure compliance with the ASSR "more generally", as they "both contribute to better consumer protection, which is the objective of the Law on Consumer Protection".[604] According to Türkiye, ensuring that importers understand that they are subject to certain battery safety-related obligations in turn "ensures better consumer protection in terms of battery safety."[605]

7.465. China argues that Türkiye has not provided any details of the existence of a potential overlap between the subject matters of the Battery Commitment Requirement and the TAR, nor explained how the requirement secures compliance with the regulation.[606] China also insists that the Battery Commitment is not framed as a "boilerplate paragraph", but contains obligations that the importer must accept.[607]

Panel's assessment

7.466. We found that the Battery Commitment Requirement is inconsistent with Article III:4 of the GATT 1994 because it imposes requirements on importers (to accept all future processes and to commit to covering fees and costs and to being open to information exchange and data sharing) which are much broader than any requirements imposed on domestic manufacturers, and because as a result it modifies the conditions of competition to the detriment of imported EVs and ERHVs. In line with our approach described above, we now turn to assess whether this requirement, compared to the much narrower requirement for domestic manufacturers, is designed to secure compliance, as argued by Türkiye, with the TAR and the LCP.

TAR

7.467. Türkiye refers to Articles 51-56 of the TAR. These provisions concern market surveillance activities for vehicles and components posing a serious risk of non-compliance, and corrective and restrictive measures. Türkiye refers in particular to Article 52(1) which concerns situations where a market surveillance authority has determined, after an assessment, that a vehicle or a component poses a serious risk to the health or safety of persons or to other aspects of public interests. In such situations, Article 52(1) requires the authority to ensure that economic operators take appropriate corrective measures to ensure that vehicles or components do not present health or safety risks when placed on the market, registered or put into service. Türkiye explains, and we do not understand China to disagree, that the economic operators mentioned in this provision include importers, and the components include batteries.[608]

7.468. We recall that what Türkiye must justify are the aspects of the Battery Commitment Requirement that are inconsistent with Article III:4. We found three such aspects. First, the Battery Commitment Requirement requires importers to actively accept an indefinite array of application, monitoring, inspection and control processes, while domestic manufacturers are only required to accept certain specific processes. Second, it requires importers to commit to covering any fees and

demonstrated that the Authorized Representative Requirement is designed to secure compliance with any obligation in the ASSR.

[602] Türkiye's second written submission, para. 3.223.
[603] Türkiye's response to Panel question No. 75(d), para. 2.20.
[604] Türkiye's response to Panel question No. 73, para. 2.4.
[605] Türkiye's response to Panel question No. 75(d), para. 2.21.
[606] China's comments on Türkiye's response to Panel question No. 73, para. 65.
[607] China's comments on Türkiye's response to Panel question No. 75(d), para. 91.
[608] Türkiye's second written submission, para. 3.205.

costs that arise from these processes, while domestic manufacturers are not required to assume such a commitment. Third, it requires importers to commit to sharing information and data that domestic manufacturers may not be required to share.

7.469. We understand Türkiye to argue that these discriminatory aspects are designed to secure compliance with Articles 51-56, and in particular Article 52(1) of the TAR because importers may not be aware of the Turkish regulatory framework relating to battery safety and battery handling.

7.470. Türkiye's argument is based on the assertion that importers are less aware than domestic manufacturers of the existing legal framework. Türkiye has provided no evidence to substantiate this assertion. This already casts doubt on the factual premise underlying Türkiye's argument.

7.471. Even assuming that importers are less likely to be aware of the existing legal framework, we are not convinced that the discriminatory aspects of the Battery Commitment Requirement are designed to secure compliance with the relevant provisions of the TAR. We recall that these discriminatory aspects consist in requiring importers to commit, in advance, to accepting a much broader range of inspection and monitoring processes than domestic manufacturers, to covering all associated fees, and to sharing a broader range of information and data than domestic manufacturers.

7.472. Türkiye has not provided any arguments related to the link between the discriminatory aspects of the Battery Commitment Requirement and any of the provisions of the TAR. Insofar as we understand Türkiye to argue that these discriminatory aspects ensure compliance with Article 52(1) of the TAR because they facilitate the task of the Turkish market surveillance authority to ensure that importers take the necessary corrective measures in case a battery placed on the market is found to pose a serious risk to the health or safety of persons, we see no such link between the Battery Commitment Requirement and Article 52(1) of the TAR. As China points out, this provision only applies where there is a determination by the market surveillance authority that a battery poses a serious risk to the health or safety of persons or to other aspects of public interest.[609] The Battery Commitment Requirement concerns accepting inspection processes, paying fees, and sharing data. We see nothing in this requirement that concerns corrective measures.

7.473. We thus conclude that Türkiye has not demonstrated that the Battery Commitment Requirement is designed to secure compliance with Articles 51-56 of the TAR.

LCP

7.474. Türkiye argues that, by ensuring that importers understand that they are subject to certain battery safety obligations, the Battery Commitment Requirement ensures better consumer protection in terms of battery safety.[610]

7.475. We begin by noting that, beyond its general argument that the Battery Commitment Requirement contributes to better consumer protection, Türkiye has not referred to any specific obligation in the LCP with which it argues that this requirement secures compliance. This already casts doubt on Türkiye's argument that this requirement is designed to secure compliance with the LCP. Even with reference to the general obligation contained in Article 58(1) of the LCP and to Türkiye's position that the IPLS requirements ensure better consumer protection, we observe that Türkiye's argument is also based on the premise that the Battery Commitment Requirement restates existing obligations, which we consider to be contradicted by the content, structure and expected operation of this Requirement. Moreover, even assuming that the Battery Commitment Requirement could further the objective of consumer protection, we recall our position that this, in and of itself, would be insufficient to establish that this Requirement is designed to "secure compliance" with Article 58 of the LCP.

7.476. We thus conclude that Türkiye has not demonstrated that the Battery Commitment Requirement is designed to secure compliance with Article 58 of the LCP.[611]

[609] China's opening statement at the second meeting of the Panel, para. 79.
[610] Türkiye's response to Panel question No. 75(d), para. 2.21.
[611] We finally note that in its response to the second set of Panel questions, Türkiye argues that the Battery Commitment Requirement is necessary to secure compliance with the ASSR because they "both

Whether the IPLS enforcement mechanism is designed to secure compliance with Article 58 of the LCP

Arguments of the parties

7.477. Türkiye makes the general argument that importers and imported products are subject to a lesser degree of regulatory scrutiny than domestic manufacturers and domestic products.[612] According to Türkiye, importers pose a greater regulatory risk, deficiencies in product safety for imported products carry potentially much graver consequences for domestic consumers, and imported vehicles may have less guaranteed access to certified parts or repair services.[613] Türkiye argues that the differences in enforcement mechanisms are linked to inherent differences in the manner in which importers and domestic manufacturers conduct their business. According to Türkiye, importers are less invested in the domestic market, dispose of limited funds to satisfy liability demands, and are inherently less reliable than domestic manufacturers in ensuring adequate supply of spare parts and repair services.[614] In addition, Türkiye argues that the government has less guarantees that it can collect penalties imposed on importers because they can easily exit the market.[615]

7.478. China considers these arguments speculative and lacking in evidentiary support.[616] China further points out that Türkiye's assertion about the more limited oversight over importers is contradicted by the fact that importers must be established in Türkiye and foreign manufacturers must appoint a TAR representative.[617]

Panel's assessment

7.479. We found that the IPLS enforcement mechanism is inconsistent with Article III:4 of the GATT 1994 because of its prohibitive, product-focused, *ex ante* and fragmented nature differing from the enforcement mechanism applicable to like domestic EVs and ERHVs (fines), and because as a result it modifies the conditions of competition to the detriment of imported EVs and ERHVs. We now turn to assess whether, in the light of these characteristics, Türkiye has demonstrated that the IPLS enforcement mechanism is designed to secure compliance with Article 58 of the LCP.

7.480. Türkiye raises two series of arguments in that respect.

7.481. First, Türkiye argues that importers are subject to more limited oversight by the Turkish authorities compared to domestic manufacturers who are "under constant regulatory supervision of (their) home government".[618]

7.482. Türkiye appears to suggest that, because of this difference in oversight, conditioning market access upon compliance with the IPLS requirements guarantees that these requirements will be met before the imported EVs and ERHVs are sold on the Turkish market, and this in turn ensures that importers provide after-sales maintenance and repair services as required by Article 58(1) of the LCP.

7.483. We acknowledge the underlying logic of Türkiye's argument that, in the abstract, a requirement that EVs and ERHVs be sold on the Turkish market only if there exist service stations employing specialized staff to service these vehicles and an adequate information infrastructure to

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contribute to better consumer protection, which is the objective of the Law on Consumer Protection". (Türkiye's response to Panel question No. 73, para. 2.4). China has not commented on this late invocation of the ASSR as a "law or regulation" for the purposes of Article XX(d). We note that Türkiye's only argument on this point relates to the objective of the LCP. In the light of our finding, we also conclude that Türkiye has not demonstrated that the Battery Commitment Requirement is designed to secure compliance with any obligation in the ASSR.

[612] Türkiye's first written submission, para. 3.238.

[613] Türkiye's first written submission, para. 3.246; second written submission, para. 3.229; response to Panel question No. 20, para. 1.84.

[614] Türkiye's response to Panel question No. 75(e), para. 2.23.

[615] Türkiye's response to Panel question No. 75(e), para. 2.24.

[616] China's opening statement at the second meeting of the Panel, para. 64; comments on Türkiye's response to Panel question No. 75(d), paras. 93-96.

[617] China's comments on Türkiye's response to Panel question No. 75(d), para. 97.

[618] Türkiye's second written submission, para. 3.234.

provide consumer support, may be seen as designed to secure compliance with the general obligation in Article 58(1) to provide after-sales maintenance and repair services. However, this is not the question before us. Rather, Türkiye must explain how, in situations where maintenance and repair infrastructure does not exist, prohibiting the sale of imported EVs and ERHVs while allowing the sale of domestic like EVs and ERHVs is designed to secure compliance with Article 58(1).

7.484. We understand Türkiye to argue that concerns related to the lack of maintenance and repair infrastructure vary depending on whether the EVs and ERHVs are imported or domestically manufactured. According to Türkiye, deficiencies in product safety for imported products carry potentially much graver consequences for consumers compared to the same deficiencies for domestic products. Türkiye provides two arguments in support of this statement. It argues that imported EVs and ERHVs may have less guaranteed access to certified parts or repair services. We have found above that the evidence on the record does not support this assertion. Türkiye also argues that domestic manufacturers are subject to constant regulatory supervision while importers are not. Even assuming that this is the case, this difference in regulatory supervision concerns the manufacturing process rather than the supply of after-sales services *in Türkiye*.

7.485. We fail to see how the sale or offering for sale on the market of an EV or an ERHV without service stations employing specialized staff to service this vehicle or without an adequate information infrastructure to provide consumer support, carries different consequences for consumers depending on whether the vehicle is imported or domestic. Rather, allowing the sale of domestic EVs and ERHVs in this situation of lacking after-sales services infrastructure may even run counter to the objective of securing compliance with Article 58 of the LCP, or, for that matter, to the broader objective of consumer protection.

7.486. In the context of its argument related to the difference in oversight, Türkiye also appears to suggest that its authorities exercise continuous regulatory oversight over domestic manufacturers, allowing them to address concerns related to service stations, staff competence requirements, or information infrastructure, as they arise. However, the evidence on the record appears to contradict the suggestion that the Turkish government exercises stronger oversight over domestic manufacturers. Rather, as Türkiye explains, strengthening "the testing and certification system in the automotive industry" is one of the objectives of the Twelfth Development Plan (2024-2028).[619] Even assuming that these capacity limitations, are, as Türkiye argues, "more pressing when it comes to verifying compliance when production takes place abroad"[620], we do not see how they affect regulatory oversight over after-sales services, which are entirely located in Türkiye.

7.487. Türkiye's second line of argumentation is related to the existence of inherent differences between importers and domestic manufacturers. According to Türkiye, importers are less invested in the domestic market and inherently less reliable than domestic manufacturers. Türkiye also argues that the government has less guarantees that it can collect penalties imposed on importers because they can easily exit the market.

7.488. We agree with China that Türkiye does not provide any evidence in support of any of these assertions. Türkiye has provided no evidence to demonstrate that importers have more limited funds than domestic manufacturers. As discussed above, Türkiye has provided general evidence in support of its assertion that importers can easily exit the Turkish market. We have found above that this evidence paints a more nuanced picture than the one described by Türkiye. Türkiye has provided no evidence of any importer of EVs or ERHVs having withdrawn from Türkiye's market. This lack of evidentiary support casts doubt on the premise underlying Türkiye's arguments. Moreover, to the extent that the *ex ante* nature of the IPLS mechanism is related to concerns that imported EVs and ERHVs be sold, and continue to be sold, on the Turkish market absent the necessary after-sales services infrastructure, we recall our earlier finding that these concerns exist also for domestic EVs and ERHVs.

7.489. We thus conclude that Türkiye has not demonstrated how the discriminatory aspects of the IPLS enforcement mechanism are designed to secure compliance with Article 58 of the LCP.

[619] Government of Türkiye, 12th Development Plan for the period 2024-2028 (Exhibit TUR-27).
[620] Türkiye's first written submission, para. 3.240.

7.3.3.2.3 Conclusion

7.490. For the reasons above, we consider that Türkiye has not demonstrated that each of the IPLS requirements and the IPLS enforcement mechanism are taken "to secure compliance with" the LCP and the TAR.

7.3.3.3 Remaining elements of the test under Article XX(d)

7.491. We have concluded that Türkiye has not demonstrated that the IPLS requirements and the IPLS enforcement mechanism are taken/designed "to secure compliance with" the LCP and the TAR. We do not consider it necessary to assess the remaining elements of the "necessity" test under Article XX(d). As the IPLS is not provisionally justified under Article XX(d), we also do not consider it necessary to assess the conformity with the *chapeau* of Article XX.

7.3.4 China's remaining claims

7.3.4.1 Introduction

7.492. As discussed above, we will examine each of the remaining claims by first determining whether there is any need to address it given our finding that the IPLS is inconsistent with Article III:4.

7.493. We approach this question from the perspective of our function under the DSU to address those claims on which a finding is necessary in order to enable the DSB to make sufficiently precise recommendations and rulings.[621] The established practice of judicial economy allows us to refrain from making multiple findings that the IPLS is inconsistent with various provisions when the finding or findings of inconsistency we have already made would suffice to resolve the dispute.[622]

7.494. We emphasize that we do not take any decision to exercise or not judicial economy lightly. On the one hand, we attribute utmost importance to the principle of "prompt settlement" of disputes which is essential to the effective functioning of the WTO. We recall that we have adopted an economical approach. We consider it imperative to avoid making superfluous findings or engaging in an academic exercise.[623] On the other hand, we are cognizant of the risk that refraining from ruling on any of China's claims could lead to a partial resolution of the matter at issue and result in "false judicial economy".[624] For this reason, we will only decide to exercise judicial economy if we are convinced that our finding under Article III:4 will not leave any aspect of China's challenge unaddressed.

7.495. With these considerations in mind, we now turn to examine China's remaining claims.

7.496. We begin this assessment with China's claim under Article XI:1, in the light of the interconnections and potential overlaps of this claim with the claim under Article III:4. We then address China's claim under Article 2.1 of the TRIMs Agreement, followed by the claims under Articles I:1 and X:3(a) of the GATT 1994.

7.3.4.2 China's claim under Article XI:1 of the GATT 1994

7.497. China claims that the IPLS is a restriction that is inconsistent with Article XI:1 of the GATT 1994. China argues that the IPLS is a measure "on importation" which has a limiting effect on imports of EVs and ERHVs into Türkiye, because it imposes additional costs and burdens on importers and reduces their flexibility to respond to market conditions.[625] China explains that its claims under Articles III:4 and XI:1 concern "different aspects" of the IPLS: the claim under Article XI:1 concerns

[621] Appellate Body Reports, *Australia – Salmon*, para. 223 and *Argentina – Import Measures*, para. 5.190.

[622] Appellate Body Reports, *Canada – Wheat Exports and Grain Imports*, para. 133 and *Argentina – Import Measures*, para. 5.190.

[623] We recall that we have adopted the same approach with respect to the question whether to review the expired version of the additional duties measure.

[624] Appellate Body Reports, *US – Upland Cotton*, para. 732; *US – Tuna II (Mexico)*, para. 404; and *Australia – Salmon*, para. 223.

[625] China's first written submission, paras. 179-193; second written submission, paras. 159-182.

"Türkiye's decision to condition the importation of products on the delivery of an import permit", and the claim under Article III:4 concerns "the discriminatory aspects of the requirements" and "penalties".[626]

7.498. This is not the first case in which a complainant has challenged a measure under Article III:4 and Article XI:1. In some prior case, panels have exercised judicial economy over one or the other of these claims.[627] What appears to have guided these panels in their decision to exercise judicial economy is the determining factor that also guides us – ensuring that a finding under one of the claims would suffice to resolve the dispute.[628]

7.499. We first recall the focus of our finding under Article III:4. We found, in particular, that the enforcement mechanism of the IPLS, which consists in conditioning the importation of EVs and ERHVs upon compliance with the IPLS requirements, is inconsistent with Article III:4. The focus of China's claim under Article XI:1 is this same enforcement mechanism, i.e. the requirement to obtain a Permit Certificate upon compliance with all the IPLS requirements, and the impossibility to import EVs and ERHVs absent such Permit Certificate.

7.500. We further recall our analysis that led us to find that the IPLS enforcement mechanism is inconsistent with Article III:4. In the context of this analysis, we highlighted and expressed our concerns with several characteristics of the IPLS enforcement mechanism, in particular its prohibitive and *ex ante* nature and its immediate effect on market access. These characteristics also appear to be at the heart of China's Article XI:1 claim. Our analysis under Article III:4 addresses, albeit from a different angle, all of these characteristics.

7.501. We consider that our finding under Article III:4 also addresses all of China's concerns expressed through its claim under Article XI:1, and that it would thus suffice to resolve the dispute between the parties.[629]

7.502. Accordingly, we do not consider it necessary to make findings under Article XI:1 that are additional to our findings under Article III:4. We therefore exercise judicial economy over China's claim under Article XI:1 of the GATT 1994.

7.3.4.3 China's claim under Article 2.1 of the TRIMs Agreement

7.503. China claims that the IPLS is inconsistent with Article 2.1 of the TRIMs Agreement because it is a trade-related investment measure (TRIM) "that is inconsistent with the provisions of Articles III and XI of the GATT 1994".[630]

7.504. China's claim under Article 2.1 of the TRIMs Agreement is directly related to its claims under Articles III:4 and XI:1. This direct link is in the nature of claims under Article 2.1 of the TRIMs Agreement, which prohibits the application of any TRIM that is inconsistent with Articles III or XI of the GATT 1994.

7.505. Assessing China's claim under Article 2.1 of the TRIMs Agreement would entail examining whether the IPLS is a TRIM and whether it is inconsistent with Article III or Article XI of the

[626] China's response to Panel question No. 35, paras. 41 and 42; response to Panel question No. 37, para. 47.

[627] See Panel Reports, *India – Autos*, para. 7.208 and *Indonesia – Import Licensing Regimes*, paras. 7.839, 7.845, and 7.850.

[628] In that respect, we consider informative the approach followed by the panel in *India – Autos* with respect to the "trade balancing condition". Having found this condition to be inconsistent with Article XI:1, the panel exercised judicial economy and refrained from considering "the broader application of Article III:4 to the same features dealt with in the Article XI analysis". The panel considered the claim under Article III:4 only with respect to one distinct element of the trade balancing condition which it had not considered in its examination under Article XI:1. (Panel Report, *India – Autos*, para. 7.297).

[629] We are conscious that the scope and content of our analysis of these characteristics under Article III:4 differ from the scope and content of Article XI:1. Nevertheless, we recall that such a difference does not, in and of itself, imply that we must address each and every claim under these provisions. (Appellate Body Reports, *Argentina – Import Measures*, para. 5.194).

[630] China's first written submission, paras. 224-228; second written submission, paras. 208-218.

GATT 1994.[631] We have already examined the second element and concluded that the IPLS is inconsistent with Article III:4. With regard to the first element, we note that the parties have differing views as to whether the IPLS is a TRIM.[632]

7.506. We agree with prior panels that the relationship between Article 2.1 of the TRIMs Agreement and Article III:4 of the GATT 1994 is such that, where a panel has already found a violation of Article III:4 of the GATT 1994, it is in principle not necessary to make additional findings on the consistency of the same measure(s) under the parallel obligation in the TRIMs Agreement. The steps taken by the responding Member to bring the measures at issue into compliance with Article III:4 of the GATT 1994 would also, by definition, eliminate the alleged non-conformity of the same measures with obligations under Article 2 of the TRIMs Agreement.[633] For this reason, we do not consider it necessary to make an additional finding with respect to China's claim under Article 2.1 of the TRIMs Agreement.[634]

7.507. Accordingly, we do not consider it necessary to make findings under Article 2.1 of the TRIMs Agreement in addition to our findings under Article III:4 of the GATT 1994. We therefore exercise judicial economy over China's claim under Article 2.1 of the TRIMs Agreement.

7.3.4.4 China's claim under Article I:1 of the GATT 1994

7.508. China argues that the IPLS is inconsistent with Article I:1 of the GATT 1994 because imports of EVs and ERHVs from China are subject to a requirement that the importer apply for and obtain a Permit Certificate prior to importation, while EVs and ERHVs from Türkiye's RTA partners are exempt from this requirement.[635] In addition to addressing China's claim and raising defences under Articles XX(d) and XXIV:5 of the GATT 1994 and paragraph 2(c) of the Enabling Clause, Türkiye also argues that we should dismiss this claim because it is outside of our terms of reference.

7.509. We first determine whether China's claim under Article I:1 is within our terms of reference before assessing if a finding of inconsistency with Article I:1 would be necessary to resolve the dispute.

7.3.4.4.1 Whether China's claim under Article I:1 is within the Panel's terms of reference

7.510. Türkiye argues that China was required to "raise" the Enabling Clause and Article XXIV in its panel request and that, due to the failure to do so, the Article I:1 claim is not properly within the Panel's terms of reference.[636] Türkiye's argument is based on the findings in two past cases, namely *EC – Tariff Preferences* and *Brazil – Taxation*.

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[631] The Annex to the TRIMs Agreement contains an Illustrative List of TRIMs that are inconsistent with Articles III:4 and XI:1 of the GATT 1994. China has not claimed that the IPLS falls into the categories of measures included in this Illustrative List.

[632] China's first written submission, paras. 224-226; second written submission, paras. 209-217; Türkiye's first written submission, paras. 3.143-3.148; second written submission, paras. 3.132-3.138.

[633] Panel Reports, *US – Renewable Energy*, para. 7.348 and *Turkey – Pharmaceutical Products (EU)*, para. 7.239. Confronted with parallel claims under Articles III:4 or XI:1 of the GATT 1994 and Article 2.1 of the TRIMS Agreement, prior panels have thus often only addressed the GATT claim (or claims) and exercised judicial economy over the claim under Article 2.1 of the TRIMS Agreement. (Panel Reports, *EC – Bananas III*, para. 7.186; *Turkey – Rice*, para. 7.184; *Canada – Autos*, paras. 10.91 and 10.131; *India – Autos*, para. 324; *China – Auto Parts*, para. 7.368; *US – Renewable Energy*, para. 7.353; and *Turkey – Pharmaceutical Products (EU)*, para. 7.245). We note that in one recent case, a panel made findings under both Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement. However, contrary to the issue before us, in that case it was uncontested that the challenged measures were TRIMS and that they were inconsistent with Article III:4 and, by extension, with Article 2.1. (Panel Report, *US – IRA (China)*, paras. 7.24 and 7.39).

[634] We note that, in response to a question from the Panel, China argues that "(i)f the Panel finds that the IPLS or the underlying requirements are inconsistent with Türkiye's obligations under Articles III:4 and Article XI:1 [*sic*], the Panel may exercise judicial economy in respect of the China's claim that the IPLS is inconsistent with Article 2.1 of the TRIMS Agreement". (China's response to Panel question No. 39, para. 48. (emphasis added)). We see no reason that our decision to exercise judicial economy over China's claim under Article XI:1 would alter our conclusion that a finding under Article 2.1 of the TRIMs Agreement in addition to our finding under Article III:4 would not be necessary.

[635] China's first written submission, paras. 147-166; second written submission, paras. 157-158.

[636] Türkiye's first written submission, paras. 3.11-3.29; second written submission, paras. 3.32-3.36.

7.511. China considers that the *EC – Tariff Preferences* case is distinguishable from the present case, and that, in any event, China was not on notice that Türkiye would raise the Enabling Clause as a defence.[637] Furthermore, China takes the view that there is no basis for Türkiye's jurisdictional objection in respect of Article XXIV.[638]

7.512. We recall that the Decision on "Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries" (Enabling Clause) was adopted by the GATT Contracting Parties in 1979, and was incorporated into the GATT 1994 as one of the "other decisions of the Contracting Parties to GATT 1947".[639] It provides that "notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties" and then lists various preferential arrangements and agreements that fall under this provision. Relevant to the case here is paragraph 2(c) of the Enabling Clause, which lists "(r)egional or global arrangements entered into *amongst less-developed contracting parties* for the mutual reduction or elimination of tariffs […]" as falling under this provision.[640] The Enabling Clause, thus, covers such arrangements between developing Members, but not between developing and developed Members.

7.513. Article XXIV of the GATT 1994, for its part, does not distinguish between developing and developed Members. We recall that it refers to the formation of customs unions or free-trade areas amongst Members and, provided certain conditions are met, constitutes an exception to Article I:1.

7.514. With this, we start by briefly recalling *EC – Tariff Preferences* which is the basis for Türkiye's argument. At issue in *EC – Tariff Preferences* was the European Communities' preferential tariff system, and more specifically, the special conditions this system required for obtaining tariff preferences. The European Communities had explicitly referred to the Enabling Clause in adopting this measure. In its defence, the European Communities raised questions about the nature of the Enabling Clause and its relationship with Article I:1, in particular with regard to the burden of proof in respect of the Enabling Clause. The panel considered the Enabling Clause to be an exception which meant it was for the respondent, i.e. the European Communities, to raise it and make a *prima facie* case. The Appellate Body, however, stated the following:

> In the light of the extensive requirements set forth in the Enabling Clause, we are of the view that, when a complaining party considers that a preference scheme of another Member does not meet one or more of those requirements, the specific provisions of the Enabling Clause with which the scheme allegedly falls afoul, form critical components of the "legal basis of the complaint" and, therefore, of the "matter" in dispute. Accordingly, a complaining party cannot, in good faith, ignore those provisions and must, in its request for the establishment of a panel, identify them and thereby "notif[y] the parties and third parties of the nature of [its] case". For the failure of such a complaining party to raise the relevant provisions of the Enabling Clause would place an unwarranted burden on the responding party. This due process consideration applies equally to the elaboration of a complaining party's case in its written submissions, which must "explicitly" articulate a claim so that the panel and all parties to a dispute "understand that a specific claim has been made, [are] aware of its dimensions, and have an adequate opportunity to address and respond to it".[641]

7.515. Türkiye relies on this statement to argue that since China failed to "raise" the Enabling Clause and Article XXIV in its panel request, the claim it made in respect of Article I:1 is not properly within the Panel's terms of reference.

7.516. We generally have doubts whether the logic underlying the above statement by the Appellate Body can apply outside the context of a unilateral preference scheme adopted under paragraph 2(a) of the Enabling Clause. We question, in particular, whether it can and should apply in the context of a preference granted according to the terms of an arrangement concluded under

[637] China's second written submission, paras. 326-332.
[638] China's opening statement at the first meeting of the Panel, paras. 42-52.
[639] Paragraph 1(b)(iv) of the GATT 1994. For the origins and history of the Enabling Clause, see Appellate Body Report, *EC – Tariff Preferences*, paras. 107-109.
[640] Emphasis added.
[641] Appellate Body Report, *EC – Tariff Preferences*, para. 113. (fns omitted)

paragraph 2(c) – as would be the case here.[642] We acknowledge that the panel in *Brazil – Taxation* answered this question in the affirmative.[643] Furthermore, we acknowledge that the Appellate Body on appeal in that case, while emphasizing the specific context of *EC – Tariff Preferences*[644], did not call into question the panel's decision to consider the possibility of the Article I:1 claim being outside of its terms of reference, and to do so in the context of the alleged application of an arrangement concluded under paragraph 2(c).

7.517. However, we do not see a need to address and resolve these doubts in the present case for the following reasons.

7.518. First, we see no basis for ever requiring a complaining party to "raise" Article XXIV of the GATT 1994 in its panel request, as Türkiye argues. As noted above, Article XXIV is an exception that applies to RTAs between Members, whether developing or developed. It does not pursue a specific development objective, but rather the general objective of further trade liberalization. Applying the underlying logic of the argument also to Article XXIV would negate the "special status" that the Appellate Body considered the Enabling Clause to have, which is rooted in the "special and differential treatment" nature of the Enabling Clause and the development objective it pursues.[645] By contrast, Article XXIV operates as a normal exception to the obligations of the GATT 1994. As the European Union points out, its relevance in dispute settlement is not different from that of Article XX.[646] Therefore, even accepting on an *arguendo* basis that the Appellate Body's logic in *EC – Tariff Preferences* applies with respect to any provision of the Enabling Clause, the same logic would not apply with respect to Article XXIV.[647]

7.519. Second, Türkiye also raises a defence against China's Article I:1 claim under Article XX(d) and does not claim, in respect of this defence, that China's Article I:1 claim is outside of the Panel's terms of reference because China should have referred to Article XX in its panel request.

7.520. We have, thus, a situation where Türkiye raises defences under Article XXIV and the Enabling Clause, as well as under Article XX(d). Furthermore, Türkiye presents arguments under Article XXIV not only in respect of its RTAs with developed Members, but also in respect of its RTAs with developing Members. In these circumstances, even if we were to accept on an *arguendo* basis Türkiye's admissibility argument with respect to its defence under the Enabling Clause[648], this would

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[642] See also Australia's third-party submission, paras. 22-28, pointing to the specific circumstances in *EC – Tariff Preferences*.

[643] Panel Reports, *Brazil – Taxation*, paras. 7.1062-7.1068.

[644] Appellate Body Reports, *Brazil – Taxation*, para. 5.362:

> [T]he Appellate Body's statements in *EC – Tariff Preferences* concerning the burden on the complaining party to raise the Enabling Clause and identify the relevant provision(s) thereof in its panel request should be read in the context of the challenged measure at issue in that dispute, i.e. the tariff preference scheme, which as the Appellate Body itself indicated, was "plainly taken pursuant to the Enabling Clause". The Appellate Body further noted that the challenged measure in that dispute was "unmistakably a preferential tariff scheme, granted by a developed-country Member in favour of developing countries, and proclaiming to be in accordance with the GSP". Thus, the Appellate Body found it "clear, on the face of the Regulation and from official, publicly-available explanatory documentation", that the "Drug Arrangements" at issue in that dispute were "part of a preferential tariff scheme implemented by the European Communities pursuant to the authorization in paragraph 2(a) of the Enabling Clause.

(fns omitted)

[645] Appellate Body Report, *EC – Tariff Preferences*, paras. 109-110.

[646] European Union's third-party submission, para. 92 (referring to Appellate Body Report, *Turkey – Textiles*, paras. 9.57-9.58).

[647] Similarly, see Canada's third-party statement, paras. 22-29. Canada states in particular:

> [I]f a complainant was required to raise Article XXIV at the beginning of the dispute, along with an explanation as to why the requirements of that provision are not fulfilled, this would effectively reverse the burden of proof so that the complainant would have the *prima facie* burden to show that the measure in question cannot be justified under Article XXIV. This is contradicted by *Turkey – Textiles*, where the Appellate Body held that the burden rests with the Member that invokes Article XXIV as a defence to its measure.

(ibid., para. 28)

[648] In addition to our doubts expressed above, we also do not see any merit in Türkiye's argument with respect to the Enabling Clause. In *Brazil – Taxation*, the Appellate Body elaborated under what circumstances a complaining party "cannot in good faith ignore" that a measure was adopted under the Enabling Clause and therefore was required to refer to relevant provisions of the Enabling Clause in its panel request:

have no bearing on Türkiye's defence under Article XXIV let alone under Article XX(d). The claim under Article I:1, however, cannot be both outside and within our terms of reference.

7.521. We, therefore, reject Türkiye's argument that China's claim under Article I is not properly before us. We consider this claim to be within the Panel's terms of reference. We now turn to assessing if a finding of inconsistency with Article I:1 would be necessary to resolve the dispute.

7.3.4.4.2 Whether a finding of inconsistency with Article I:1 would be necessary to resolve the dispute

7.522. We recall our finding that the IPLS is inconsistent with Article III:4 because it accords to EVs and ERHVs from countries other than Türkiye's RTA partners treatment that is less favourable than that accorded to the like domestic EVs and ERHVs.

7.523. We observe that China's claims under Article III:4 and Article I:1 are non-discrimination claims which concern, in essence, a comparison between the treatments of two groups of EVs and ERHVs: (i) EVs and ERHVs that are subject to the IPLS (originating from countries other than Türkiye's RTA partners); and (ii) EVs and ERHVs that are not subject to the IPLS (originating from Türkiye or from Türkiye's RTA partners). In the context of Article III:4, China argues that the differences between these treatments result in less favourable treatment accorded to EVs and ERHVs of the first group compared to the treatment accorded to EVs and ERHVs of the second group (in particular, domestic EVs and ERHVs). In the context of Article I:1, China claims that the differences between these treatments result in not extending to EVs and ERHVs of the first group an advantage conferred to EVs and ERHVs of the second group (in particular, EVs and ERHVs from Türkiye's RTA partners).

7.524. While the scope and content of Articles I:1 and III:4 differ, this does not, in and of itself, imply that we must address each and every claim under these provisions.[649] In fact, prior panels have refrained from making additional findings on claims under Article I:1 when they considered that their findings under Article III:4 made unnecessary any further examination or conclusion under Article I:1 and would provide no additional positive contribution to a solution to the dispute.[650] What guided these panels is also what guides us – whether an additional finding is necessary to resolve this dispute.

7.525. In the context of our analysis under Article III:4, we examined in detail the IPLS requirements and the IPLS enforcement mechanism. We found that each of these elements modifies the conditions of competition to the detriment of EVs and ERHVs imported from countries other than Türkiye's RTA partners. Since the treatment accorded to EVs and ERHVs from Türkiye's RTA partners is identical to the treatment accorded to domestic EVs and ERHVs, we consider that our finding under Article III:4 covers the aspects of the IPLS that China also challenges under Article I:1, and that it would thus suffice to resolve the dispute between the parties.

7.526. Accordingly, we do not consider it necessary to make findings under Article I:1 of the GATT 1994 in addition to our findings under Article III:4. We therefore exercise judicial economy over China's claim under Article I:1.

> [a] complaining party is […] required to raise the Enabling Clause and identify the relevant provisions thereof in its panel request when a measure according differential and more favourable treatment is: (i) plainly taken pursuant to the Enabling Clause, or when it is clear from the face of the measure itself that it has been adopted pursuant to the Enabling Clause; and/or (ii) notified pursuant to paragraph 4(a) of the Enabling Clause.

(Appellate Body Reports, *Brazil – Taxation*, para. 5.365)

[649] Appellate Body Reports, *Argentina – Import Measures*, para. 5.194. As the Appellate Body explains, if this were so, "then only in the rarest of circumstances would a panel be able to exercise judicial economy on a claim". (Ibid, para. 5. 194).

[650] Panel Reports, *US – Gasoline*, para. 6.19 and *EC – Trademarks and Geographical Indications*, para. 7.716.

7.3.4.5 China's claim under Article X:3(a) of the GATT 1994

7.527. China claims that Türkiye has acted inconsistently with Article X:3(a) of the GATT 1994 because it has not administered the IPLS in a uniform, impartial and reasonable manner.[651]

7.528. As adjudicators have pointed out in prior cases, the obligations in Article X of the GATT 1994 govern the publication and administration of measures, rather than the substantive content of measures.[652] Where the substantive content of a measure has been found to be inconsistent with obligations in the GATT 1994, additional findings relating to the administration of that measure will in principle be superfluous and findings under Article X are unlikely to be necessary or useful in resolving the matter.[653]

7.529. Having found that the IPLS is inconsistent with Article III:4, we do not believe that an additional finding whether the manner in which Türkiye has administered the IPLS is inconsistent with Article X:3(a) would be necessary to resolve the dispute before us.

7.530. Accordingly, we do not consider it necessary to make findings under Article X:3(a) of the GATT 1994 in addition to our findings under Article III:4. We therefore exercise judicial economy over China's claim under Article X:3(a).

8 CONCLUSIONS AND RECOMMENDATION(S)

8.1. For the reasons set forth in this Report, the Panel concludes as follows:

a. With regard to the additional duties in their current amended version enacted through Presidential Decision No. 10436 of 22 September 2025:

i. China has not made a *prima facie* case that the additional duties on internal combustion engine vehicles are inconsistent with Article II:1(b) of the GATT 1994;

ii. the additional duties on electric vehicles and on those hybrid vehicles that would have been classified under the 34 tariff lines listed in Table 3 in paragraph 7.73 above, prior to the introduction of HS 2017, are inconsistent with Article II:1(b) of the GATT 1994, because they exceed tariff bindings in Türkiye's schedule;

iii. the additional duties on electric vehicles and on those hybrid vehicles that would have been classified under the 34 tariff lines listed in Table 3 in paragraph 7.73 above, prior to the introduction of HS 2017, are inconsistent with Article II:1(a) of the GATT 1994, because they accord less favourable treatment than that provided for in Türkiye's schedule;

iv. the additional duties on those hybrid vehicles that would not have been classified under the 34 tariff lines listed in Table 3 in paragraph 7.73 above, prior to the introduction of HS 2017, are not inconsistent with Articles II:1(b) and II:1(a) of the GATT 1994;

v. the inconsistency with Articles II:1(b) and II:1(a) of the GATT 1994 is not justified under Article XX(b), because Türkiye has not demonstrated the existence of a risk to human, animal or plant life or health;

vi. the inconsistency with Articles II:1(b) and II:1(a) of the GATT 1994 is not justified under Article XX(g), because Türkiye has not demonstrated that the additional duties relate to the conservation of natural resources;

vii. the additional duties are inconsistent with Article I:1 of the GATT 1994 because by exempting EVs and other vehicles from Türkiye's RTA partners from these duties,

[651] China's first written submission, paras. 230-251; second written submission, paras. 219-245.
[652] Appellate Body Report, *EC – Poultry*, para. 115.
[653] Panel Reports, *Argentina – Import Measures*, para. 6.305; *Turkey – Pharmaceutical Products (EU)*, para. 7.251; *Russia – Traffic in Transit*, paras. 7.200-7.201; *Peru – Agricultural Products,* para. 7.501; and *Russia – Railway Equipment,* para. 7.939.

Türkiye fails to accord to products from China an advantage accorded to the like product originating from Türkiye's RTA partners;

viii. the inconsistency with Article I:1 of the GATT 1994 is justified under Article XXIV with respect to the exemption from the additional duties of vehicles from Türkiye's RTA partners listed in Presidential Decision No. 10436 except for vehicles from Venezuela; and

ix. the inconsistency with Article I:1 of the GATT 1994 with respect to the exemption from the additional duties of vehicles from Venezuela is not justified under Article XXIV, under the Enabling Clause, or under Articles XX(b) and (g).

b. With regard to the IPLS:

i. the IPLS is inconsistent with Article III:4 of the GATT 1994 because it accords less favourable treatment to EVs and ERHVs from China than the treatment accorded to the like products from Türkiye with respect to the Service Stations, Certificate of Competence, Call Centre, Authorized Representative, and Battery Commitment Requirements, and with respect to the mechanism to enforce these requirements;

ii. the inconsistency with Article III:4 of the GATT 1994 is not justified under Article XX(d) because Türkiye has not demonstrated that each of the IPLS requirements and the IPLS enforcement mechanism are taken "to secure compliance with" the Law on Consumer Protection and the Type Approval Regulation;

iii. we exercise judicial economy over China's claims that the IPLS is inconsistent with Articles I:1, X:3(a), and XI:1 of the GATT 1994, and with Article 2.1 of the TRIMs Agreement.

8.2. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. We conclude that, to the extent that the measures at issue are inconsistent with the GATT 1994, they have nullified or impaired benefits accruing to China under that agreement.

8.3. Pursuant to Article 19.1 of the DSU, we recommend that Türkiye bring its measures into conformity with its obligations under the GATT 1994.