

***TÜRKİYE — MEASURES CONCERNING ELECTRIC VEHICLES
AND OTHER TYPES OF VEHICLES FROM CHINA***

(DS629)

**ORAL STATEMENT OF THE UNITED STATES OF AMERICA
AT THE THIRD-PARTY SESSION OF
THE FIRST SUBSTANTIVE MEETING OF THE PANEL**

September 24, 2025

TABLE OF EXHIBITS

EXHIBIT	DESCRIPTION
US-1	New Shorter Oxford English Dictionary (4th Edition) (1993)
US-2	China’s EV supply chain dominance graphic from <i>Financial Times</i> , “Foreign carmakers confront ‘moment of truth’ in China,” Apr. 21, 2023
US-3	Battery Cell Manufacturing Capacity, GWh (2018-2024) based on BNEF data

Mr. Chairperson, Members of the Panel,

1. The United States appreciates the opportunity to appear before you today and provide our views as a third party in this dispute.
2. This dispute concerns certain trade-related actions Türkiye has taken to support the development of its own electric vehicle (“EV”) industry “in pursuance of its long-term climate and other environmental goals”¹ in response to challenges such as “high costs, limited consumer awareness, and the dominance of traditional internal combustion engine vehicles,”² and “an influx of imports that stifle its ability to pursue a green transition”.³
3. China argues that these measures are inconsistent with Türkiye’s WTO obligations under the GATT 1994 and the Agreement on Trade-Related Investment Measures. Türkiye disagrees and argues that its additional duties are justified under GATT Article XX(b) and (g), and the import permit licensing scheme (the “IPLS”) is justified under GATT Article XX(d).
4. Today, we will first provide our view of the proper legal interpretation of the chapeau of Article XX as it relates to the justifications raised by Türkiye concerning the additional duties. We will then address the proper legal interpretation of subparagraphs (b) and (d) of Article XX, specifically with respect to the “necessity” element.

I. Chapeau of Article XX of the GATT 1994

5. Türkiye argues that the additional duties are justified under GATT Article XX(b) and

¹ Türkiye’s First Written Submission, para. 1.1.

² Türkiye’s First Written Submission, para. 1.5.

³ Türkiye’s First Written Submission, para. 1.1.

(g),⁴ and they are applied in a manner that is consistent with the chapeau of Article XX because they do not constitute arbitrary or unjustifiable discrimination between countries *where the same conditions prevail*.

6. According to Türkiye, China cannot be considered a country “where the same conditions prevail” as compared to Türkiye or other WTO Members with EV production, given China’s dominance of the global EV market and supply chain in terms of EV production and market share as well as battery production.⁵

7. Furthermore, Türkiye observes that China’s “state-led economic system puts it in the unique position to take over the entire global market for electrical and hybrid cars,”⁶ and points to China’s “consistent” use of “notable industrial policy efforts that target EV production, including for export,”⁷ such as massive subsidies that have created excess capacity and distortions in global markets.⁸ The resulting “excessive import dependence on Chinese EVs” potentially creates vulnerabilities in supply chains and technological advancement and undermines Türkiye’s energy security and other strategic priorities.⁹

8. If there are differences in the conditions that prevail in China, as Türkiye argues, it may be entirely logical for Türkiye to exercise distinction with respect to China in the application of the measures at issue. As a general matter, the United States recognizes that it may be necessary

⁴ Türkiye’s First Written Submission, paras. 2.27, 2.68.

⁵ Türkiye’s First Written Submission, para. 2.127.

⁶ Türkiye’s First Written Submission, para. 2.128.

⁷ Türkiye’s First Written Submission, para. 2.128.

⁸ Türkiye’s First Written Submission, para. 1.6.

⁹ Türkiye’s First Written Submission, para. 2.129.

for a Member to take into account another Member’s adoption of anti-competitive, non-market-oriented policies and dominance of sectors critical to all Members’ economic futures. This may include, for example, that China’s non-market industrial policy measures have created excess capacity and distortions in global markets and resulted in China’s global dominance of the clean vehicle sector, creating dependencies and supply chain vulnerabilities.¹⁰ Publicly available data such as the China EV Supply Chain Dominance graphic shown in Exhibit US-2 and the Battery Cell Manufacturing Capacity chart shown in Exhibit US-3 support a conclusion that such a distinction does not appear to be arbitrary.¹¹

9. Based on the ordinary meanings of the terms “arbitrary”, “unjustifiable”, “discrimination”, and “conditions”, the text of GATT Article XX may be understood as prohibiting an exercise of discernment or distinction as between countries that have the same state, mode of being, or nature when such exercise of discernment or distinction is unpredictable or indefensible.¹²

10. Accordingly, relevant in this dispute is whether distinctions that Türkiye has exercised with respect to China in the measures at issue are between countries that have the same state, mode of being, or nature, and whether those distinctions are unpredictable or indefensible. If there are differences in the state, mode of being, or nature that prevails in China—such as China’s uniquely dominant position in the EV market and supply chain and the extensive government support and other non-market-oriented, trade-distortive policies and practices

¹⁰ Türkiye’s First Written Submission, para. 1.6.

¹¹ See China’s EV supply chain dominance graphic from Financial Times, “Foreign carmakers confront ‘moment of truth’ in China,” Apr. 21, 2023 (Exhibit US-2) and Battery Cell Manufacturing Capacity, GWh (2018-2024) based on BNEF data (Exhibit US-3).

¹² See U.S. Third Party Submission, para. 15.

enabling such dominance—it may be entirely logical, and not inconsistent with the Article XX chapeau requirements, for Türkiye’s measures to take that into account.

II. “Necessary” within the Meaning of Article XX(b) and (d) of the GATT 1994

11. Türkiye argues that the additional duties are justified under, *inter alia*, GATT Article XX(b), which covers measures “necessary to protect human, animal or plant life or health”¹³; and that the IPLS is justified under Article XX(d), which applies to measures “necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of [the GATT 1994]”.¹⁴

12. As explained in the U.S. third party submission, with respect to whether the measures at issue are “necessary” to achieve the relevant objective, the ordinary meaning of “necessary” includes “[t]hat which is indispensable, an essential, a requisite”, and “[t]hat cannot be dispensed with or done without; requisite, essential, needful”.¹⁵ Therefore, for the purpose of Article XX(b) and (d), a measure must be indispensable, essential, or requisite to serve the relevant objective.

13. In assessing the “necessity” element under Article XX(b) and (d), certain third parties argue that the Panel should apply a balancing test, citing the Appellate Body report in *Brazil – Retreaded Tyres*.¹⁶ However, these arguments rely on statements by the Appellate Body and not

¹³ Türkiye’s First Written Submission, para. 2.27.

¹⁴ Türkiye’s First Written Submission, para. 3.197.

¹⁵ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 2, p. 1895 (Exhibit US-1).

¹⁶ European Union’s Third Party Submission, para. 27.

on the text of the Agreement.

14. Under the customary rules of interpretation of public international law, as referenced in Article 3.2 of the DSU, “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”¹⁷ The United States therefore disagrees with the introduction of a balancing test approach which is not only unnecessary (and unhelpful) but also *not* found in the text of GATT Article XX(b) or (d).

15. As explained above, the ordinary meaning of “necessary” includes “[t]hat which is indispensable, an essential, a requisite”, and “[t]hat cannot be dispensed with or done without; requisite, essential, needful”.¹⁸

16. Rather than applying a balancing test that strays from the actual text, the Panel’s task is to evaluate, based on the ordinary meaning of the terms of GATT Article XX(b) and (d), whether the measures at issue are “necessary” for the relevant objectives.

III. CONCLUSION

17. This concludes the U.S. oral statement. The United States would like to thank the Panel for its consideration of our views and looks forward to responding to the Panel’s questions.

¹⁷ Vienna Convention on the Law of Treaties, Article 31.

¹⁸ *New Shorter Oxford English Dictionary* (4th Edition) (1993), vol. 2, p. 1895 (Exhibit US-1).