

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

(DS629)

**THIRD PARTY INTEGRATED EXECUTIVE SUMMARY
OF THE UNITED STATES**

October 23, 2025

EXECUTIVE SUMMARY OF THE U.S. THIRD PARTY SUBMISSION

1. In this dispute, China challenges three categories of Türkiye's measures: additional duties on electric vehicles ("EVs") from China, additional duties on certain other vehicles from China, and an import permit licensing scheme (the "IPLS") applying to the importation of EVs and externally rechargeable hybrid vehicles from certain countries, including China. China argues that these measures are inconsistent with Türkiye's WTO obligations under Articles I:1, II:1(a) and (b), III:4, X:3(a), and XI:1 of the GATT 1994 and Article 2.1 of the Agreement on Trade-Related Investment Measures (the "TRIMS Agreement").

2. Türkiye disagrees that the measures are inconsistent with Türkiye's WTO obligations, and argues that, with respect to Article I:1 and Article II:1(a) and (b) of the GATT 1994, Türkiye's additional duties are justified under GATT Article XX(b) and (g). Türkiye also disagrees that the IPLS is inconsistent with Articles I:1, III:4, X:3(a), or XI:1 of the GATT 1994 or Article 2.1 of the TRIMs Agreement, and argues in the alternative that the measure is justified under GATT Article XX(d).

Interpretation of Article XX(b) and (g) of the GATT 1994

3. Türkiye argues that the additional duties are justified under Article XX(b) and (g) of the GATT 1994 because "they have the objective to protect the environment, and specifically, to foster the development and use of EVs and hybrid vehicles in Türkiye and thus to reduce the overall CO₂ emissions in the transport sector".

4. Article XX of the GATT 1994 sets out the circumstances in which measures that have been found to be inconsistent with another provision of the GATT 1994 will nevertheless be justified and therefore not be found inconsistent with a Member's WTO obligations. The chapeau of Article XX provides that (1) any measure purportedly justified under an Article XX subparagraph must not be applied in a manner which would constitute "arbitrary or unjustifiable discrimination between countries where the same conditions prevail", and (2) the measure is not a "disguised restriction on trade".

5. Türkiye argues that the additional duties on Chinese EVs 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. According to Türkiye, "a perfectly reasonable 'rationale' [...] underpins Türkiye's different treatment of China." That rationale is that China cannot be considered a country "where the same conditions prevail" compared to Türkiye or other WTO Members 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.

6. 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," and points to China's "consistent" use of "notable industrial policy efforts that target EV production, including for export," such as massive subsidies that have created excess capacity and distortions in global markets. According to Türkiye, 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. Given these circumstances, Türkiye argues the additional duties reflect a “particular concern about China”.

7. If there are differences in the conditions that prevail in China, it may be entirely logical for Türkiye’s measures to take that into account. As a general matter, the United States recognizes that it may be necessary 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. Such a distinction does not appear to be arbitrary.

8. The ordinary meaning of the term “arbitrary” includes “capricious, unpredictable, [or] inconsistent” manner, while “unjustifiable” is defined as “[n]ot justifiable, indefensible.” The ordinary meaning of the word “discrimination” includes “[t]he action or an act of discriminating or distinguishing; the fact or condition of being discriminated or distinguished; a distinction made.” The ordinary meaning of “discriminate” includes “[m]ake or recognize a distinction, esp. a fine one; provide or serve as a distinction; exercise discernment.” The ordinary meaning of “conditions” includes “[s]tate, or mode of being”; and “[n]ature, character, quality; a characteristic, an attribute.”

9. Based on these ordinary meanings, the text in Article XX of the GATT 1994 may be understood as prohibiting an exercise of discernment or distinction as between countries that have the same state, mode of being, or nature; and only when exercise of discernment or distinction is unpredictable or indefensible. 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 conditions that prevail in China, it may be entirely logical for Türkiye to exercise discernment or distinction with respect to China in the application of the measures at issue.

10. Under subparagraph (b) of Article XX, the relevant question is whether the additional duties (1) were adopted or enforced to “protect human, animal or plant life or health”; and (2) are “necessary” to achieve that objective.

11. With respect to whether the additional duties are “necessary” to achieve the objective at issue (*i.e.*, to protect human, animal, or plant life or health), 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”. “Requisite”, in turn, means “[r]equired by circumstances; appropriate; necessary for a purpose, indispensable.” Therefore, for Article XX(b), a measure must be indispensable, essential, or requisite to serve the objective—in this case, to protect human, animal, or plant life or health.

12. Under subparagraph (g) of Article XX, the relevant question is whether the measures (1) “relat[e] to the conservation of exhaustible natural resources”, and (2) are “made effective in conjunction with restrictions on domestic production or consumption.”

Interpretation of Article XX(d) of the GATT 1994

13. Türkiye argues that the IPLS is justified under XX(d) of the GATT 1994 because it is “a measure that is necessary to enforce the Turkish Law on Consumer Protection”.

14. As explained above, the chapeau of Article XX provides (1) that any measure purportedly justified under an Article XX subparagraph must not be applied in a manner which would constitute “arbitrary or unjustifiable discrimination between countries where the same conditions prevail”, and (2) that the measure is not a “disguised restriction on trade”.

15. As explained above, based on the ordinary meanings of the terms “arbitrary”, “unjustifiable”, “discrimination”, and “conditions”, the text in Article XX of the GATT 1994 may be understood as prohibiting an exercise of discernment or distinction as between countries that have the same state, mode of being, or nature; and only when exercise of discernment or distinction is unpredictable or indefensible. Relevant in this dispute is whether Türkiye has exercised distinctions between countries with respect to the measures at issue; whether those distinctions are between countries that have the same state, mode of being or nature; and whether the distinctions are unpredictable or indefensible.

16. Under subparagraph (d) of Article XX, the relevant question is whether the IPLS (1) was adopted or enforced to “secure compliance with ‘laws or regulations’ that are themselves consistent with the GATT 1994”; and (2) is “necessary” to secure such compliance. Therefore, for Article XX(d), a measure must be indispensable, essential, or requisite to serve the objective—in this case, to secure compliance with Türkiye’s identified laws or regulations.

17. Türkiye asserts that the IPLS is designed to secure compliance with its consumer protection law, specifically Articles 1 and 58 of the Turkish Law on Consumer Protection, which are GATT-consistent. The text in Article XX(d) necessitates identifying what constitutes “compliance” with Türkiye’s identified laws or regulations and how the challenged measures “secure” such compliance. Understanding which aspect of the “laws or regulations” is implicated will allow the Panel to assess whether those laws or regulations are in fact GATT-inconsistent. Once that has been established, the Panel must assess the relationship between the challenged measures and the laws or regulations with which those measures are designed to secure compliance. In particular, the Panel must assess how the challenged measures are indispensable, essential, or requisite to secure compliance with the identified laws or regulations.

EXECUTIVE SUMMARY OF THE U.S. ORAL STATEMENT**Chapeau of Article XX of the GATT 1994**

18. 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.

19. 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 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.

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

20. 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”; 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]”.

21. 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”. Therefore, for the purpose of Article XX(b) and (d), a measure must be indispensable, essential, or requisite to serve the relevant objective.

22. 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*. However, these arguments rely on statements by the Appellate Body and not on the text of the Agreement.

23. 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.” 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).

24. 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”. 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.

EXECUTIVE SUMMARY OF U.S. RESPONSES TO PANEL QUESTIONS**U.S. Response to Question 16**

25. We understand that the EU’s rationale is that “the references to this provision [GATT Article XX] contained in the brackets of Article XXIV:8(a)(i) and (b) of the GATT confirm”¹ such a view. Article XXIV:8(a)(i) and (b) defines customs union and FTA for purposes of the GATT 1994, including that in a customs union and an FTA, “duties and other restrictive regulations of commerce” are eliminated with respect to substantially all the trade, with the exception of such regulations that are permitted under Articles XI, XII, XIII, XIV, XV and XX, as necessary. The text of Article XXIV:8 does not support the EU’s view that a measure that could be justified under Articles XI, XII, XIII, XIV, XV and XX is not permitted to be justified with reference to Article XXIV.

U.S. Response to Questions 19 and 20

26. The U.S. response addresses Questions 19 and 20 together, as they both relate to the Appellate Body’s approach in the report in *Turkey – Textiles* regarding GATT Article XXIV. While we agree with Canada’s note of caution, we consider it does not go far enough. In our view, the Panel should apply the actual text of Article XXIV, rather than a so-called test which appears susceptible to being applied in a way that takes the text of Article XXIV out of context.

27. Applying Article XXIV:5 to the customs union between Türkiye and the EU, for instance, would mean that the provisions of the GATT 1994—including Article I:1—shall not prevent the formation of that customs union, provided that the duties and other regulations of commerce imposed at the institution of the union in respect of trade with the other WTO Members shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in Türkiye and the EU prior to the formation of the union.

28. The proviso requires an assessment at a particular point in time: for a customs union, “the duties and other regulations of commerce imposed at the institution”, and for an FTA, “the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation”. However, Article XXIV does not apply only “at the institution” or “at the formation”. Rather, Article XXIV:5 establishes that the Agreement shall not prevent “the formation of a customs union or a free-trade area”. The GATT 1994 could be understood to prevent such a formation if the Agreement did not impose ongoing requirements and provide a commensurate ongoing exemption. For example, Article XXIV:8 sets out the definition of a customs union and a free-trade area as, in part, the elimination of duties and other restrictive regulations of commerce on substantially all the trade between the parties. 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

¹ EU’s Third-Party Submission, para. 97.

Article XXIV:8.

29. The better understanding, then, is Article XXIV applies to permit the elimination of duties and other restrictive regulations of commerce both at and after the formation of the customs union or free-trade area where the failure to eliminate such measure would undermine the existence of the union or area, and in that sense prevent its formation.

U.S. Response to Question 21

30. No, it is not necessary to cite to a specific provision in an existing FTA to seek to justify a measure under Article XXIV. A contrary interpretation would mean assuming that each restrictive regulation of commerce is subject to a specific FTA provision or commitment. However, Article XXIV:8 refers to the elimination of duties and other restrictive regulations of commerce, which may be accomplished without elaboration of a specific FTA provision or commitment. It may, however, aid the responding party in justifying the measure, including in light of rebuttal arguments, to identify specific provisions or commitments that demonstrate the need to apply the challenged measure. Given the very different subject matter covered by the Enabling Clause, a responding party should be able to indicate which provisions are capable of justifying the challenged measure.