

***UNITED STATES – CERTAIN TAX CREDITS UNDER
THE INFLATION REDUCTION ACT***

(DS623)

**RESPONSES OF THE UNITED STATES OF AMERICA
TO QUESTIONS FROM THE PANEL TO THE PARTIES
BEFORE THE SECOND SUBSTANTIVE MEETING**

August 7, 2025

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US-2	Washington Post, “How China pulled ahead to become the world leader in electric vehicles”, March 3, 2025
US-3	U.S. Geological Survey, Mineral Commodities Summaries 2024, January 2024
US-4	U.S. Geological Survey, 2020-2021 Minerals Yearbook: China, May 2024
US-5	International Energy Agency, Global Critical Minerals Outlook 2024, May 2024
US-6	19 Code of Federal Regulations part 182 (United States-Mexico-Canada Agreement), Appendix A (Rules of Origin Regulations)
US-7	49 Code of Federal Regulations part 565 (Vehicle Identification Number requirements)
US-8	Infrastructure Investment and Jobs Act, P.L. 117-58, 135 Stat. 429 (November 15, 2021)
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US-10	Internal Revenue Service, Transfer of Clean Vehicle Credits Under Section 25E and Section 30D, Proposed Rule, 88 FR 70310 (October 10, 2023)
US-11	Internal Revenue Service, Definition of Energy Property and Rules Applicable to the Energy Credit, Proposed Rule (<i>Correction</i>), 89 FR 2182 (January 12, 2024)
US-12	Internal Revenue Service, Definition of Energy Property and Rules Applicable to the Energy Credit, Proposed Rule (<i>Second Correction</i>), 89 FR 13293 (February 22, 2024)
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US-51	Information Technology & Innovation Foundation, “The Impact of China’s Production Surge on Innovation in the Global Solar Photovoltaics Industry,” October 2020
US-52	Council on Foreign Relations, “Is ‘Made in China 2025’ a Threat to Global Trade?” (2019)
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US-55	CSIS, “The Chinese EV Dilemma: Subsidized Yet Striking,” June 28, 2024
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US-57	European Commission, Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations, Oct. 4, 2024
US-58	Financial Times, “China outbound investment surges to record levels on clean energy ‘tsunami,’” Oct. 2, 2024
US-59	U.S. Chamber of Commerce, Made in China 2025: Global Ambitions Built on Local Protections (2017)
US-60	PC Magazine, “Corning, Suniva, Heliene to produce first fully US-made solar module,” Mar. 7, 2025

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US-63	U.S. Customs and Border Protection, “The Department of Homeland Security Issues Withhold Release order on Silica-Based Products Made by Forced Labor in Xinjiang,” June 24, 2021
US-64	Office of the U.S. Trade Representative, “Four-Year Review of Actions Taken in the Section 301 Investigation: China’s Acts, Policies, and Practice Related to Technology Transfer, Intellectual Property, and Innovation” (“Four-Year Review”), May 14, 2024
US-65	Forbes, “China Scores Big Win in Solar Trade Battle as REC Silicon Shuttles US Polysilicon Production,” Feb. 8, 2016
US-66	U.S. Department of Justice, “U.S. Charges Five Chinese Military Hackers for Cyber Espionage Against U.S. Corporations and a Labor Organization for Commercial Advantage,” May 19, 2014
US-67	CBS News, “Chinese hackers took trillions in intellectual property from about 30 multinational companies,” May 4, 2022
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US-78	GM Authority, “GM EV Sales Up 19 Percent Moving 19k Units this Quarter, 75k Units for the year during Q4 2023,” Mar. 23, 2024
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US-114	Press Release, Rep. Shontel Brown (Ohio’s 11th district), Rep. Brown Votes for Inflation Reduction Act to Lower Health Care Costs and Create Jobs for Ohioans (Aug. 14, 2022)
US-115	Press Release, Rep. Josh Harder (California’s 9th District) Harder Statement on House Passage of the Inflation Reduction Act (Aug. 12, 2022)
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US-121	GATT Council, Minutes of Meeting of May 29, 1985, C/M/188 (June 28, 1985)
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US-123	Multilateral Trade Negotiations, Group 3(b) – Export Subsidies and Countervailing Duties, Note by the Secretariat on the Meeting of May 1974, MTN/3B/19 (June 28 1974)
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US-139	Transcript, United States International Trade Commission, <i>Certain Oil Country Tubular Goods (OCTG) from China</i> , Inv. Nos. 701-TA-463 and 731-TA-1159 (Final) (excerpt)
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US-165	Department of Commerce, Securing the Information and Communications Technology and Services Supply Chain: Connected Vehicles, 90 Fed. Reg. 5360 (Jan. 16, 2025)
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US-167	Department of Commerce, Securing the Information and Communications Technology and Services Supply Chain, 89 Fed. Reg. 96872 (Dec. 6, 2024)
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US-169	Public Law 119-21, One Big Beautiful Bill Act

Question 28. The Panel understands that the United States' One Big Beautiful Bill Act (OBBBA), as signed into law on 4 July 2025, terminates the Clean Vehicle Tax Credit in respect of electric vehicles acquired after 30 September 2025

a. Please clarify whether this understanding is correct, with reference to the text of the relevant statutory provision(s).

Response:

1. The Panel's understanding is correct. Section 70502(a) of Public Law 119-21, commonly referred to as the One Big Beautiful Bill Act or OBBBA, amended section 30D(h) of the Internal Revenue Code to terminate the clean vehicle tax credit for vehicles acquired after September 30, 2025.¹

b. If this understanding is correct, please provide your views on what impact, if any, this has on the Panel's assessment of the matter before it.

Response:

2. Pursuant to the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), the Panel's assessment of the matter before it must be based on the situation that existed at the time of the Panel's establishment by the DSB. The DSB established the Panel on September 23, 2024,² and set the Panel's terms of reference to examine the matter referred by China to the DSB in its panel request.³ The relevant legal issue put by China to the DSB is whether the United States was acting inconsistently with its WTO commitments as of that date, and not whether the United States had acted inconsistently in the past or would act inconsistently in the future.

3. Articles 7.1 and 6.2 of the DSU operate to define a panel's terms of reference. When the DSB establishes a panel, the panel's terms of reference under Article 7.1 are (unless the parties to the dispute agree otherwise) "[t]o 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 [the complaining Party in its panel request] and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements."⁴ In its panel request, a complaining party is asserting that the responding party is acting inconsistently with its WTO commitments; the matter is therefore the factual and legal situation existing as of the date the DSB considers the panel request.

4. Pursuant to Article 6.2 of the DSU, "the matter" referred to the DSB consists of "the specific measures at issue" and "a brief summary of the legal basis of the complaint" as set out in the panel request.⁵ The term "specific measures at issue" makes clear that the measures cited in

¹ See Public Law 119-21, Section 70502(a) (US-169).

² WT/DSB/M/493, para. 3.9.

³ WT/DS623/3.

⁴ DSU, Art. 7.1.

⁵ DSU, Art. 6.2.

a panel request must be measures that are identifiable at the time of panel establishment. Thus, the claim is made with respect to a specific measure at that specific point in time.⁶ By establishing a legal link between the panel request and the panel’s terms of reference, DSU Article 7.1 tasks a panel with examining the measure and the claim as of the point in time when the DSB establishes the panel. From the text of these DSU provisions, it follows that a panel is to examine the matter and facts as they existed on the date the panel was established.

Question 29. The Panel understands that the OBBBA amends the Investment Tax Credits (ITCs) and Production Tax Credits (PTCs).

a. Please explain the nature of the amendments, with reference to the text of the relevant statutory provisions(s).

Response:

5. The United States understands that, for purposes of this question, the Panel seeks an explanation of the nature of the changes made by the OBBBA to the measures at issue in this dispute, specifically, section 45Y, section 48, and section 48E of the Internal Revenue Code (Code). The OBBBA did not make any changes to section 45 of the Code.

6. With respect to sections 45Y and 48E of the Code: sections 70512 and 70513 of the OBBBA amended the section 45Y production tax credit (PTC) and section 48E investment tax credit (ITC) in several ways.

7. In general, solar and wind projects must commence by July 4, 2026, to claim the section 45Y or 48E tax credits.⁷ A solar or wind project commencing construction after that date must be placed in service by December 31, 2027, to be eligible for generation tax credits under sections 45Y or 48E.⁸ Other generation technologies and energy storage (including energy storage at a wind or solar facility) must commence before the end of 2033 to obtain the full value of the section 45Y or 48E credits, or by 2035 for partial value.⁹

8. The OBBBA includes new prohibited foreign entity (“PFE”) rules that apply beginning in 2026 (for calendar year taxpayers).¹⁰ The section 48E ITC and section 45Y PTC are disallowed if the taxpayer is itself a PFE or if the manufactured products comprising a facility or energy

⁶ *EC – Selected Customs Matters (AB)*, para. 187 (finding that the panel’s review of the consistency of the challenged measure with the covered agreements properly “focused on these legal instruments as they existed and were administered *at the time of establishment of the Panel*”) (italics added); *id.*, para. 259 (finding the panel had not erred in declining to consider three exhibits, which concerned a regulation enacted after panel establishment, because although they “might have arguably supported the view that uniform administration had been achieved by the time the Panel Report was issued, we fail to see how [they] showed uniform administration *at the time of the establishment of the Panel*”) (italics added).

⁷ See Public Law 119-21, Section 70512(l)(4); Section 70513(g)(5) (US-169).

⁸ See Public Law 119-21, Section 70512(a)(2) (adding new section 45Y(d)(4) of the Code); Section 70513(a)(2) (adding new section 48E(e)(4) of the Code) (US-169).

⁹ Public Law 119-21, Section 70512(a)(2) (amending Section 45Y(d)(3) of the Code); Section 48E(e)(3) of the Code.

¹⁰ See Public Law 119-21, Section 70512(b); Section 70513(b) (US-169).

storage technology derive excessively from PFEs.¹¹ By 2030, facilities beginning construction may have no more than 40 percent of the cost of their manufactured products mined, produced, or manufactured by a PFE, and no more than 25 percent for energy storage technologies.¹²

9. The OBBBA made a number of other changes to section 45Y PTC and section 48E ITC. Relevant to this dispute, leased or rented solar water heaters and small wind property are made ineligible for the section 48E ITC.¹³ Further, the OBBBA raises the threshold percentages of domestic manufactured products required to claim the domestic content bonus for the section 48E ITC to generally match those for the section 45Y PTC.¹⁴

10. With respect to Section 48, section 70513 of the OBBBA amended section 48 of the Code. Relevant to this dispute, under the OBBBA, energy property that is not specifically listed in the statute is no longer eligible for a 2 percent tax credit.¹⁵

b. Please provide your views on what impact, if any, these amendments have on the Panel's assessment of the matter before it.

Response:

11. With respect to subpart b of Question 29, the United States refers the Panel to its response to subpart b of Question 28.

¹¹ See Public Law 119-21, Section 70512(b)(1) (adding new section 45Y(g)(13) of the code); Section 70513(b)(1)(A) (adding new section 48E(b)(6) of the Code), (b)(1)(B) (adding new section 48E(c)(3) of the Code), (b)(2) (adding new section 48E(d)(6) of the Code) (US-169).

¹² See Public Law 119-21, Section 70512(c) (adding new section 7701(a)(52) of the Code); Section 70513(c) (US-169).

¹³ See Public Law 119-21, Section 70512(d) (adding new section 45Y(h) of the Code); Section 70513(c) (adding new section 48E(i) of the Code) (US-169).

¹⁴ See Public Law 119-21, Section 70513(d) (amending section 48E(a)(3) of the Code) (US-169).

¹⁵ See Public Law 119-21, Section 70513(e) (amending section 48(a)(2) of the Code) (US-169).