

***UNITED STATES – CERTAIN TAX CREDITS UNDER
THE INFLATION REDUCTION ACT
(DS623)***

**ORAL STATEMENT OF THE UNITED STATES OF AMERICA
AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL**

May 6, 2025

TABLE OF EXHIBITS

EXHIBIT	DESCRIPTION
U.S. First Written Submission	
US-1	International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022
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)
US-9	William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, P.L. 116-283, 134 Stat. 3388 (January 1, 2021) (definition of “covered nation” codified at 10 U.S.C. Section 4872(d)(2) (renumbered from 10 U.S.C. Section 2533c))
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)
US-13	Wall Street Journal, “U.S. Car Makers’ EV Plans Hinge on Made-in-American Batteries,” Feb. 6, 2023

EXHIBIT	DESCRIPTION
US-14	H.R.5376 - Inflation Reduction Act of 2022: Summary
US-15	Definitions Set 1, <i>The New Shorter Oxford English Dictionary</i> (4 th Edition) (1993)
US-16	Federal Trade Commission Act, Section 5 U.S.C § 45
US-17	Sherman Act, Section 15 U.S.C. § 1
US-18	Restatement (Second) of Contracts, § 205 (Duty of Good Faith and Fair Dealing)
US-19	Restatement (Second) of Torts § 766A
US-20	35 U.S.C. § 200 (Patents Policy and objective)
US-21	U.S. Constitution (excerpts of Fifth Amendment and Thirteenth Amendment)
US-22	Trafficking Victim’s Protection Act of 2000, as amended, 22 U.S.C. § 7101, <i>et. seq.</i>
US-23	Section 307 of the Tariff Act of 1930, 19 U.S.C. § 1307
US-24	Uyghur Forced Labor Prevention Act, P.L. 117-78
US-25	Computer Fraud and Abuse Act (18 U.S.C. § 1030)
US-26	Economic Espionage Act of 1996 (18 U.S.C. § 1831-1832)
US-27	Uniform Trade Secrets Act (1985), with documentation of U.S. state-level adoption
US-28	<i>Northern Pacific Railway Co. v. United States</i> , 356 U.S. 1, 4-5 (1958) (Justice Hugo Black)
US-29	Executive Order 13923, “Establishment of the Forced Labor Enforcement Task Force Under Section 741 of the United States-Mexico-Canada Agreement Implementation Act”, May 15, 2020
US-30	California Code, Penal Code § 484 (General Theft Statute)

EXHIBIT	DESCRIPTION
US-31	Texas Penal Code, Title 7, Chapter 31 (Offenses against Property – Theft)
US-32	18 U.S.C. Ch. 31 (Embezzlement and Theft)
US-33	The White House, America First Trade Policy Presidential Memorandum, Jan. 20, 2025
US-34	The White House, Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties Presidential Memorandum, Feb. 21, 2025
US-35	The President’s 2025 Trade Policy Agenda
US-36	G7 Trade Ministers’ Statement (2024)
US-37	G7 Leaders’ Communique (2022)
US-38	G7 Trade Ministers’ Statement (2022)
US-39	G7 Leaders’ Statement on Economic Resilience and Economic Security (2023)
US-40	G7 Trade Ministers’ Statement (2023)
US-41	Office of the U.S. Trade Representative, Readout of the Fifth Round of Meetings under the U.S.-Japan Partnership on Trade, July 31, 2024
US-42	Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chains (March 28, 2023)
US-43	Joint Declaration Against Trade-Related Economic Coercion and Non-Market Policies and Practices, June 9, 2023
US-44	Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union, Sept. 25, 2018
US-45	National Renewable Energy Laboratory, Winter 2024 Solar Industry Update, Jan. 25, 2024
US-46	Cipher News, “Chinese solar panel manufacturing outpaces global demand,” Feb. 28, 2024

EXHIBIT	DESCRIPTION
US-47	Remarks by President Trump at Signing of Section 201 Actions, Jan. 23, 2018
US-48	2023 State of the Union Address by EU President von der Leyen at Strasbourg, Sept. 13, 2023
US-49	International Energy Agency, Global EV Outlook 2024, April 2024
US-50	China Daily, “‘New three’ paves way for high-quality growth,” Feb. 21, 2024
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)
US-53	European Chamber of Commerce, “China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces” (2017)
US-54	CSIS, “Electric Shock: Interpreting China’s Electric Vehicle Export Boom,” Sept. 2023
US-55	CSIS, “The Chinese EV Dilemma: Subsidized Yet Striking,” June 28, 2024
US-56	Office of the U.S. Trade Representative, “Findings of the Investigation into China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974 (“Section 301 Report”), Mar. 22, 2018
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

EXHIBIT	DESCRIPTION
US-61	U.S. Department of Energy, Solar Photovoltaics: Supply Chain Deep Dive Assessment, Feb. 24, 2022
US-62	U.S. Department of Labor, “Traced to Forced Labor: Solar Supply Chains Dependent on Polysilicon from Xinjiang, 2020
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
US-68	Fact Sheet: Biden-Harris Administration Takes Action to Strengthen American Solar Manufacturing and Protect Manufacturers and Workers from China’s Unfair Trade Practices, May 16, 2024
US-69	Congressional Research Service, Inflation Reduction Act of 2022: Incentives for Clean Transportation, Sept. 6, 2022
US-70	Office of the U.S. Trade Representative, “Adapting Trade Policy for Supply Chain Resilience: Responding to Today’s Global Economic Challenges” (“Supply Chain Resilience Report”), January 2025
US-71	U.S. First Written Submission in <i>United States – Origin Marking (Hong Kong, China) (Panel)</i>
US-72	Financial Times, “Foreign carmakers confront ‘moment of truth’ in China,” Apr. 21, 2023
US-73	Solar Energy Industries Association, US Solar Market Insight: Executive Summary, 2024 Year in Review, March 2025

EXHIBIT	DESCRIPTION
US-74	U.S. Department of Justice, “Two Chinese Hackers Working with the Ministry of State security charged with global computer intrusion campaign targeting intellectual property and confidential business information, including COVID-19 research,” July 21, 2020
US-75	TechCrunch, “Tracking the EV battery factory construction boom across North America,” Feb. 6, 2025
US-76	Inside EVs, “The U.S. is about to nearly double its battery production capacity,” Feb. 23, 2025.
US-77	U.S.-EU Trade and Technology Council Inaugural Joint Statement, Sept. 29, 2021
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
US-79	Environmental Defense Fund, U.S. Electric Vehicle Manufacturing Investments and Jobs, August 2024
Opening Statement at First Panel Meeting	
US-80	PV Magazine, “China expected to dominate solar manufacturing through 2026,” Nov. 7, 2023
US-81	Rhodium Group, “How China’s Overcapacity Holds Back Emerging Economies,” June 13, 2024
US-82	<i>United States v. Google</i> , Case 1:23-cv-108 (LMB/JFA) (E.D, Va Apr. 17, 2025) (Excerpt)
US-83	Rhodium Group, “Far From Normal: An Augmented Assessment of China’s State Support,” March 17, 2025
US-84	Sheffield Hallam University, “Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region,” Dec. 2022
US-85	Global Forum on Steel Excess Capacity, <i>Steel Exports, trade remedy actions and sources of excess capacity</i> (May 2024)
US-86	Global Forum on Steel Excess Capacity, <i>Impacts of global excess capacity on the health of the GFSEC steel industries</i> (May 2024)
US-87	Excerpts of United States-Mexico-Canada Agreement (USMCA)

EXHIBIT	DESCRIPTION
US-88	Excerpts of United States-Korea Free Trade Agreement (KORUS)
US-89	Excerpts of United States-Peru Free Trade Promotion Agreement (PTPA)
US-90	8 U.S.C. § 1189 (excerpt)
US-91	8 U.S.C. § 1182
US-92	America First Investment Policy Presidential Memorandum (Feb. 21, 2025)
US-93	Washington Post, “How China came to dominate the world in renewable energy,” March 3, 2025
US-94	OECD, “Government Support in the Solar and Wind Value Chains,” January 2025
US-95	Excerpts of United States-Singapore Free Trade Agreement
US-96	Definitions Set 2, <i>The New Shorter Oxford English Dictionary</i> (4 th Edition) (1993)
US-97	China Daily, “Solar industry is reined in,” Oct. 10, 2009
US-98	Office of the U.S. Trade Representative, <i>The World Trade Organization at Thirty and U.S. Interests</i> , February 2025
US-99	European Council on Foreign Relations, “High-voltage trade: How Europe should fight the electric vehicle wars,” December 15, 2023
US-100	The Economist, “Western firms are quaking as China’s electric-car industry speeds up,” January 11, 2024
US-101	Financial Times, “Japan warns over threat from China’s chip material export controls,” February 21, 2025
US-102	Rhodium Group, “Ain’t No Duty High Enough,” April 29, 2024
US-103	Rhodium Group, “Was Made in China 2025 Successful,” May 5, 2025

Ms. Chairperson, Members of the Panel,

1. We are here today because China has brought a dispute that is of China's own making.

One Member has adopted anti-competitive and non-market policies and practices to secure global dominance in sectors that are critical not only to U.S. economic security, but to all Members' economic futures. And in sector after sector, and throughout their supply chains, China has largely achieved its dominance goals.

2. China has targeted and achieved global dominance in the clean vehicle and renewable energy sectors through its non-market policies and practices, violating fundamental U.S. values. By targeting and achieving predominant market shares and market power in those sectors, China has deprived market-oriented businesses and their workers of commercial opportunities, and stifled market-oriented competition. China has ensured that the clean vehicle and renewable energy sectors are effectively dependent upon China. This dominance by and dependence on China means that China's non-market policies and practices infiltrate and influence market-oriented economies, including the United States. U.S. purchasers in effect reward these objectionable Chinese policies and practices through the purchase of Chinese goods. In this context, it is critical for the United States to take effective action to defend the values that define its society.

3. The datapoints on China's global dominance in the clean vehicle and renewable energy sectors are stark. We invite the Panel to turn its attention to exhibit US-93, a press report that includes an analysis of data from the International Energy Agency, the World Bank, and other sources, and illustrates the following points. In the solar industry:

- China’s share of the global solar energy supply chain – that is, global polysilicon, ingot, and wafer production – soon will reach almost 95 percent of actual production.¹
 - China dominates manufacturing capacity across all segments of the solar supply chain worldwide, with its share exceeding 80% at every distinct stage (i.e., polysilicon, ingots, wafers, cells, and modules).²
 - Global solar manufacturing capacity has grown by 2-3 times in the past five years, but 90% of that growth occurred in China.³ Estimates are that China’s existing solar manufacturing capacity in 2023 already meets the projected *global* demand for 2032.⁴
4. Likewise, in the electric vehicle supply chain:
- China produces approximately 60% of electric vehicles sold globally and approximately 80% of global EV batteries.⁵
 - China also dominates in the upstream stages of the battery supply chain. China accounts for almost 90% of global installed cathode active material manufacturing capacity, over 97% of global anode material manufacturing capacity, almost 100% of lithium-iron-phosphate (LFP) production capacity, and more than 75% of the global production of installed nickel manganese cobalt oxide.⁶
 - In 2023, China’s cathode and anode active material installed manufacturing capacity massively exceeded global EV cell demand – by four times for cathode, and by nine times for anode.⁷

¹ International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 9 (US-1).

² International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 7 (US-1).

³ National Renewable Energy Laboratory, Winter 2024 Solar Industry Update, Jan. 25, 2024, p. 3 (US-45).

⁴ PV Magazine, “China expected to dominate solar manufacturing through 2026,” Nov. 7, 2023 (US-80).

⁵ Washington Post, “How China pulled ahead to become the world leader in electric vehicles,” March 3, 2025 (US-2).

⁶ International Energy Agency, Global EV Outlook 2024, p. 80 (US-49).

⁷ International Energy Agency, Global EV Outlook 2024, p. 81 (US-49).

5. China also dominates the production and supply of many critical minerals that are key inputs for clean energy production.

- According to the International Energy Agency (IEA), China’s share of global production of graphite is at 77%,⁸ gallium is at 98%,⁹ germanium is at 68%,¹⁰ and tungsten is at 84%.¹¹
- The IEA projects that by 2030 over 90% of battery-grade graphite and 77% of refined rare earths will come from China.¹²

6. These figures are alarming. The Panel cannot be unaware of the increasing concerns generated worldwide from China’s dominance. Every day, the news carries warnings of China’s EVs threatening to wipe out competing sectors; of China’s renewable energy dominance wiping out Europe’s industry and threatening the same for other countries; or China’s threats, and now its actions, to choke off the supply of critical minerals and supplies that are necessary for the production of essential products, such as EV or stationary batteries.¹³

7. And what is even more concerning is that China has achieved global dominance of the clean vehicle and renewable energy sectors through its targeting of these sectors and other non-market policies and practices that come at the expense of other Members’ economies.¹⁴

⁸ U.S. Geological Survey, Mineral Commodities Summaries 2024, p. 84 (US-3).

⁹ U.S. Geological Survey, Mineral Commodities Summaries 2024, p. 74 (US-3).

¹⁰ U.S. Geological Survey, 2020-2021 Minerals Yearbook: China, May 2024, p. 9.1 (US-4).

¹¹ U.S. Geological Survey, 2020-2021 Minerals Yearbook: China, May 2024, p. 9.1 (US-4).

¹² International Energy Agency, Global Critical Minerals Outlook 2024, p. 8 (US-5).

¹³ Washington Post, “How China pulled ahead to become the world leader in electric vehicles”, March 3, 2025 (US-2); Washington Post, “How China came to dominate the world in renewable energy,” March 3, 2025 (US-93); European Council on Foreign Relations, “High-voltage trade: How Europe should fight the electric vehicle wars,” December 15, 2023 (US-99); The Economist, Western firms are quaking as China’s electric-car industry speeds up,” January 11, 2024 (US-100); Financial Times, “Japan warns over threat from China’s chip material export controls,” February 21, 2025 (US-101); Rhodium Group, “Ain’t No Duty High Enough,” April 29, 2024 (US-102); Rhodium Group, “Was Made in China 2025 Successful,” May 5, 2025 (US-103).

¹⁴ U.S. First Written Submission, para. 86; Rhodium Group, “How China’s Overcapacity Holds Back Emerging Economies,” June 13, 2024 (US-81).

8. WTO Members have raised concerns with China’s non-market excess capacity and its impact on market-oriented economies, including in the clean vehicle and renewable energy sectors. Such concerns have been raised by the United States and others in the WTO, the G7, the OECD, the Global Forum on Steel Excess Capacity, the G20, the United States-European Union (EU) Trade and Technology Council, and other fora.¹⁵

9. Overcapacity has routinely been discussed at the SCM Committee meetings. For instance, at the October 2024 SCM Committee meeting, several Members commented on the issue. For example:

- Australia “shared concerns about the rise of unfair competition and non-market trade practices This was distorting trade and driving overcapacity in . . . critical minerals . . . solar cells, batteries. . . in both developed and developing countries alike.”¹⁶
- Canada similarly raised concerns that “overcapacity could impact global supply, prices, and profitability; and according to a recent Rhodium Group report, overcapacity could also create overreliance on a limited number of suppliers, leaving countries vulnerable to monopolistic practices such as withholding supply, price collusion, and potential economic coercion.”¹⁷
- Chinese Taipei also expressed concern that certain government actions “had caused distortive trade effects by flooding international markets with immense quantities of low-priced products, disrupting fair competition and exerting great downward pressure on relevant industries of other Members at different levels of development, including those

¹⁵ See U.S. First Written Submission, paras. 76 -83.

¹⁶ G/SCM/M/129, para. 211.

¹⁷ G/SCM/M/129, para. 222 (citing Rhodium Group, *How China’s Overcapacity Holds Back Emerging Economies*, June 13, 2024 (US-81)).

seeking to diversify their economies.”¹⁸

10. In short, WTO Members are facing a serious threat. China has created an untenable situation for governments that hold core, societal values promoting fair competition, fostering innovation, enhancing supply chain security, and prohibiting practices such as forced labor, theft of trade secrets, and economic coercion. China remains the biggest challenge to a fair, competitive, and mutually beneficial international trading system.

11. Fundamentally then, this dispute is about whether the WTO Agreements will be misinterpreted as precluding a Member from responding when one Member specifically targets key sectors that are vital to all Members’ economic futures, and in fact achieves dominance in those sectors at the expense of the economies, businesses, and workers, of other Members.

12. Such a perilous situation – threatening core, societal values – requires a reaction. And the WTO Agreements do not prevent a Member from reacting. For example, Article XX(a) of GATT 1994 recognizes every Member’s right to take measures necessary to protect its public morals, including from the overwhelming and unprecedented market distortions created by China.

13. Finding to the contrary would further undermine U.S. society’s confidence in the WTO and an international trading system that creates the conditions for, but then fails to address – and even exacerbates – a fundamentally uneven playing field.¹⁹

14. As the United States has demonstrated in its first written submission, and as we will discuss during our opening statement today, the Panel should reject China’s claims regarding the measures at issue.

¹⁸ G/SCM/M/129, para. 241.

¹⁹ Office of the U.S. Trade Representative, *The World Trade Organization at Thirty and U.S. Interests*, February 2025 (US-98).

15. First, China has failed to establish that the Clean Vehicle Tax Credit is a prohibited import substitution subsidy and inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement.

16. Second, the measures at issue are justified because they are “necessary to protect public morals” of the United States within the meaning of Article XX(a) of the GATT 1994.

17. Finally, with respect to China’s challenge to the “foreign entity of concern” (FEOC) rule in the Clean Vehicle Tax Credit, the United States invokes Article XXI(b) of the GATT 1994.

Therefore, the Panel may make no finding with respect to this issue but to note the U.S. invocation of the essential security exception.

I. CHINA FAILS TO ESTABLISH THAT THE SECTION 30D CLEAN VEHICLE TAX CREDIT IS INCONSISTENT WITH ARTICLES 3.1(B) AND 3.2 OF THE SCM AGREEMENT

18. Turning first to China’s claims under Articles 3.1(b) and 3.2 of the SCM Agreement, China fails to demonstrate that the Clean Vehicle Tax Credit is inconsistent with Articles 3.1(b) and 3.2. In its first written submission, China mischaracterizes the requirements to obtain the tax credit in an attempt to show that the credit is contingent on the use of domestic over imported goods.²⁰ Properly understood, however, the Clean Vehicle Tax Credit clearly is not a prohibited import substitution subsidy.

19. Article 3.1(b) prohibits subsidies that are “contingent” upon the use of domestic over imported goods. The United States and China agree that the term “contingent” means “conditional”, and a subsidy would be “contingent” if the use of domestic goods were “a condition, in the sense of a requirement, for receiving the subsidy”.²¹ The EU in its third-party submission further noted that “[i]f the [] subsidy can be obtained by using some imported goods,

²⁰ China First Written Submission, paras. 151-165.

²¹ See China First Written Submission, para. 149; see also U.S. First Written Submission, para. 37 (quoting *US – Tax Incentives (AB)*, para. 5.7; *Canada – Autos (AB)*, para. 130).

such a subsidy does not fall within the scope of this provision, which refers to a factual situation in which the subsidy can only be obtained by using domestic goods.”²² The United States agrees.

20. China’s related arguments concern two conditions (*i.e.*, requirements) under the Clean Vehicle Tax Credit: the critical minerals sourcing requirement and the battery components sourcing requirement.²³ Both requirements contain multiple options to satisfy the requirement; yet, China inappropriately characterizes these *options* as stand-alone “alternative conditions”.

21. First, the critical minerals sourcing requirement may be met through any one of the three enumerated options. Critical minerals in a clean vehicle battery must have been: (i) extracted or processed in the United States; (ii) extracted or processed in any country with which the United States has a free trade agreement in effect; or (iii) recycled in North America. These are not “alternative conditions” as China argues, but rather they are options to satisfy a single condition. As such, critical minerals extracted, processed, or recycled *outside* of the United States may be used to satisfy the critical minerals sourcing requirement.²⁴ The critical minerals sourcing requirement does not require the use of domestic over imported goods.

22. Second, the battery components sourcing requirement may be met where the clean vehicle’s battery components have been manufactured or assembled in North America, *i.e.*, in the territory of the United States, Canada, or Mexico. Thus, the battery components sourcing requirement – a single condition – may be satisfied by use of battery components sourced in the territories of any of the three countries listed in the definition of North America. Therefore, the battery components sourcing requirement also does not require the use of domestic over

²² European Union Third-Party Submission, para. 98.

²³ China First Written Submission, para. 161.

²⁴ U.S. First Written Submission, para. 40.

imported goods.

23. Accordingly, neither the critical minerals sourcing requirement nor the battery components sourcing requirement is conditioned on the use of domestic over imported goods because it is possible to satisfy both requirements by the use of exclusively imported goods – that is, without the use of *any* U.S. domestic goods.²⁵

24. Therefore, the Panel should reject China’s claims under Articles 3.1(b) and 3.2 of the SCM Agreement as it pertains to the Clean Vehicle Tax Credit.

II. THE MEASURES ARE JUSTIFIED UNDER ARTICLE XX(A) OF THE GATT 1994

25. The clean vehicle and renewable energy tax credits are justified because they are “necessary to protect public morals” within the meaning of Article XX(a) of the GATT 1994.

26. Article XX(a) of the GATT 1994 provides, in relevant part, “Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures ... necessary to protect public morals”.

27. As we will explain, the challenged measures protect U.S. public morals within the meaning of Article XX(a) because they counteract China’s non-market policies and practices, which violate the U.S. public morals against unfair competition, forced labor, theft, and coercion.

28. Second, we will explain that the measures at issue are necessary within the meaning of Article XX(a) due to China’s global dominance of the clean vehicle and renewable energy sectors and the demonstrated importance in U.S. law of the U.S. public morals against unfair competition, forced labor, theft, and coercion. In the present circumstances, the challenged tax

²⁵ U.S. First Written Submission, paras. 35-44.

credits are apt to promote investments and supply chain alternatives to China, and therefore protect those public morals.

29. Lastly, we will explain that the measures at issue do not constitute arbitrary or unjustifiable discrimination where the same conditions prevail, nor are they a disguised restriction on international trade, because the conditions between China, the source of global market distortions in these sectors, and the United States are not the same. What is more, the measures promote investments in, and the supply chain resilience of, the United States and other market economy partners that do not contribute to or that seek to effectively address China's non-market distortions.

A. The measures at issue “protect public morals” within the meaning of Article XX(a) of the GATT 1994

30. The challenged measures protect public morals within the meaning of Article XX(a).

1. The United States has public morals against unfair competition, forced labor, theft, and coercion

31. The ordinary meaning of the term “public morals” refers to community or national standards of right and wrong,²⁶ and the public morals of each Member may vary “in their respective territories, according to their own systems and scales of values.”²⁷ Nothing in the ordinary meaning of the term “public morals” limits the community or national standards of right and wrong that a Member may have.²⁸ Relevant to this dispute, the panel in *US – Tariff Measures* found that the U.S. norms against theft, misappropriation, and unfair competition could be covered by the term “public morals” within the meaning of Article XX(a).²⁹

²⁶ See *Brazil – Taxation (Panel)*, para. 7.520; *EC – Seal Products (Panel)*, para. 7.380; *US – Gambling (Panel)*, paras. 6.461-6.468; *Colombia – Textiles (Appellate Body)*, footnote 155.

²⁷ See *Brazil – Taxation (Panel)*, para. 7.520.

²⁸ See *US – Tariff Measures (Panel)*, para. 7.131.

²⁹ *US – Tariff Measures (Panel)*, para. 7.140.

32. The U.S. first written submission demonstrates: (1) the relevant U.S. standards of right and wrong; (2) that China’s actions violate these standards of right and wrong; and, (3) that the challenged measures protect the identified standards of right and wrong (i.e., public morals) within the meaning of Article XX(a). We next briefly recap each element.

33. The United States has provided extensive evidence to demonstrate the fundamental U.S. norms against unfair competition, forced labor, theft, and coercion.³⁰ The U.S. first written submission details U.S. civil and criminal laws³¹ that constrain behavior based on national concepts of right and wrong to ensure market-oriented outcomes. U.S. law explicitly prohibits the type of anti-competitive behavior that determines winners and losers in the marketplace – behavior that China champions. U.S. law similarly explicitly prohibits forced labor, theft, or coercion. That these values have long been – and continue to be – broadly embodied in U.S. civil and criminal laws establishes that these are U.S. public morals.

34. The United States has also determined these standards of right and wrong to be of such fundamental importance that it has promoted these values through international cooperation.³² This engagement is reflected, in part, through multiple joint statements since at least 2018, such as the United States and EU Inaugural Trade and Technology Council Joint Statement, which recognized the concern of non-market policies and practices, highlighting unfair competition, forced labor, theft, and coercion. The United States and EU stated: “[w]e stand together in continuing to protect our businesses, consumers, and workers from unfair trade practices, in particular those posed by non-market economies, that are undermining the world trading

³⁰ U.S. First Written Submission, paras. 68-74.

³¹ U.S. First Written Submission, paras. 68-74.

³² U.S. First Written Submission, paras. 76-83.

system.”³³ Likewise, in October 2020, the United States, Brazil, and Japan issued a joint statement recognizing the importance of market-oriented conditions to the world trading system and expressing serious concerns with non-market policies and practices that had resulted in damage to the world trading system.³⁴

35. In sum, these U.S. laws, as well as statements and actions over the years, make clear that the United States has public morals against unfair competition, forced labor, theft, and coercion.

2. China’s non-market policies and practices violate U.S. public morals

36. China’s non-market policies and practices in the clean vehicle and renewable energy sectors violate the established U.S. standards of right and wrong. Specifically, China’s non-market policies and practices include: targeting of sectors for dominance; non-market excess capacity; state-directed investment; forced labor; forced technology transfer; and theft of trade secrets. As we detail below, these non-market policies and practices of China violate the U.S. public morals against unfair competition, forced labor, theft, and coercion.

37. **China’s targeting of the clean vehicle and renewable energy sectors for dominance is contrary to the U.S. public morals against unfair competition, forced labor, theft, and coercion.** For example, central and sub-central government industrial plans in China set quantitative targets for the clean vehicle and renewable energy sectors.³⁵ These market share targets mean securing significantly larger market shares abroad for Chinese companies, leading

³³ U.S.-EU Trade and Technology Council Inaugural Joint Statement, Sept. 29, 2021 (US-77). *See also* Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union, Sept. 25, 2018 (US-44).

³⁴ Importance of Market-Oriented Conditions to the World Trading System, Statement from Brazil, Japan, and the United States, WT/GC/W/803/Rev.1, Oct. 2, 2020.

³⁵ U.S. First Written Submission, paras. 89, 91, 93 (citing European Chamber of Commerce, *China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces* (2017), pp. 74-77 (US-53); CSIS, “Electric Shock: Interpreting China’s Electric Vehicle Export Boom,” Sept. 2023, p. 2 (US-54); U.S. Chamber of Commerce, *Made in China 2025: Global Ambitions Built on Local Protections* (2017), p. 13 (US-59)).

Chinese companies to displace foreign companies in existing markets and take new markets as they develop. The targeting of sectors for dominance does not occur in isolation. Rather, China’s targeted sectors align with China’s use of state-directed investment, forced labor, theft of trade secrets, and forced technology transfer to achieve dominance. Such targeting is in stark contrast with, for example, the U.S. Sherman Act, which aims for “free and unfettered competition as the rule of trade”³⁶ and the U.S. civil and criminal laws against forced labor, theft, and coercion. In fact, China’s *global* market share in these sectors meets or exceeds levels at which U.S. courts will find that monopoly power exists in the U.S. market.³⁷

38. China’s non-market excess capacity violates U.S. norms against unfair competition, forced labor, theft, and coercion. Non-market excess capacity is deliberately created by China through investments and capacity expansion far in excess of what market-oriented actors, operating under market economy constraints would create.³⁸ In turn, non-market excess capacity drives Chinese firms to export to foreign markets at such low prices and in such quantities that does not allow market-oriented firms to compete.³⁹ Non-market excess capacity undermines fair competition by: (1) discouraging market-based investment, (2) hindering workers and businesses who operate in line with U.S. public morals and without the benefit of non-market policies and practices, and (3) enabling the country employing the non-market policies and practices (*i.e.*, China) to acquire and entrench control over the industries and supply chains that it chooses to target.⁴⁰ Non-market excess capacity is also achieved by the use of

³⁶ *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 4-5 (1958) (Justice Hugo Black) (US-28).

³⁷ *United States v. Google*, Case 1:23-cv-108 (LMB/JFA), at 71-72 (E.D. Va Apr. 17, 2025) (US-82).

³⁸ Rhodium Group, “Far From Normal: An Augmented Assessment of China’s State Support”, March 17, 2025, pp. 5, 33-34 (US-83).

³⁹ CSIS, “The Chinese EV Dilemma: Subsidized Yet Striking”, June 28, 2024, p. 7 (US-55).

⁴⁰ *See also* Rhodium Group, “How China’s Overcapacity Holds Back Emerging Economies,” June 13, 2024 (US-81); OECD, Government Support in the Solar and Wind Value Chains, January 2025, p. 4 (US-94).

state-directed investment, forced labor, forced technology transfer, and theft of trade secrets.

Such conduct is inconsistent with U.S. public morals, as evidenced by U.S. law which prohibits unfair methods of competition, forced labor, theft, and coercion.⁴¹

39. **China’s use of state-directed investment is contrary to the U.S. public moral against unfair competition.** China’s investment policy seeks to create dominance in specific sectors through non-market based funding and investment strategies, including by subsidizing sectors with excess capacity, as well as unfairly acquiring U.S. technology.⁴² The absence of a market-basis for funding is evident, for example, in China’s investment of an estimated \$50 billion into solar production facilities between 2000 and 2010,⁴³ despite its recognition that overcapacity was occurring.⁴⁴ One estimate of China’s support to its EV sector is \$230.9 billion between 2009 and 2023,⁴⁵ even though its manufacturing capacity for cathodes – a key component for EV cells – was *four times* greater than global EV cell demand in 2023, while its manufacturing capacity for anodes – another key component for EV cells – was *nine times* greater than global demand.⁴⁶ Such funding is clearly not market-based.

40. China also directs and encourages outbound investment by Chinese economic entities in areas it deems strategic, including in the renewable energy sector.⁴⁷ Chinese economic entities are not subject to market disciplines in making investments for state-desired technologies through state-provided or state-directed financing.⁴⁸

⁴¹ Sherman Act, Section 15 U.S.C. § 1 (US-1); Federal Trade Commission Act, Section 15 U.S.C § 45 (US-16).

⁴² See Section 301 Report (US-56), p. 65; Financial Times, “China outbound investment surges to record levels on clean energy ‘tsunami’”, Oct. 2, 2024 (US-58).

⁴³ U.S. Department of Energy, Solar Photovoltaics: Supply Chain Deep Dive Assessment, Feb. 24, 2022 (US-61).

⁴⁴ China Daily, “Solar industry is reined in,” Oct. 10, 2009 (US-97).

⁴⁵ CSIS, “The Chinese EV Dilemma: Subsidized Yet Striking”, June 28, 2024, p. 3 (US-55).

⁴⁶ International Energy Agency, Global EV Outlook 2024, p. 81 (US-49).

⁴⁷ See Section 301 Report (US-56), pp. 135-138.

⁴⁸ See Section 301 Report (US-56), pp. 63-65.

41. And when Chinese investment results in acquisition of a foreign company, the Chinese entity then has access to foreign technology that the Chinese entity appropriates for use in its own products.⁴⁹ This conduct is in contradiction with the U.S. prohibition and criminalization of monopolization – or even attempts at monopolization – in any aspect of interstate trade or commerce.⁵⁰

42. **The use of forced labor by China in the clean vehicle and renewable energy supply chains also undermines the U.S. public morals against forced labor and unfair competition.**

The promotion and use of forced labor in China is well-documented, including for the sectors covered by the challenged measures. The use of polysilicon is a key component in the production of solar panels. Nearly half of the world’s polysilicon comes from the Xinjiang Uyghur Autonomous Region, a region of China where members of ethnic and religious minority groups are forced by the Chinese government to work against their will, under guard and constant threats, in mines and factories producing polysilicon.⁵¹ Likewise, in the clean vehicle sector, lithium is a key component for EV batteries – and several lithium-ion battery manufacturers that feed into the EV supply chain are located in the Xinjiang region, using forced labor.⁵² The United States, by contrast, prohibits forced labor in its Constitution and has enacted criminal and civil laws against the use of forced labor.⁵³

43. **China also uses forced technology transfer, undermining the U.S. public morals against unfair competition and coercion.** China imposes foreign ownership restrictions, such

⁴⁹ See Section 301 Report (US-56), pp. 135-138.

⁵⁰ Sherman Act, 15 U.S.C. § 2 (US-17).

⁵¹ U.S. Department of Labor, “Traced to Forced Labor: Solar Supply Chains Dependent on Polysilicon from Xinjiang, 2020 (US-62).

⁵² Sheffield Hallam University, “Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region”, Dec. 2022, pp. 34-38 (US-84).

⁵³ See, e.g., U.S. Constitution, Thirteenth Amendment (US-21); 22 U.S.C. § 7101 (US-22); 19 U.S.C. § 1307 (US-23); Uyghur Forced Labor Prevention Act (US-24).

as joint venture requirements and foreign equity limitations, and various administrative review and licensing processes, to require or pressure technology transfer from foreign companies.⁵⁴ In contrast, the United States prohibits unfair competition and coercion.⁵⁵

44. **China also conducts and supports unauthorized intrusions into, and theft from, the computer networks of foreign companies to access their sensitive commercial information and trade secrets, in violation of the U.S. public morals against theft.**⁵⁶ These intrusions allow China access to a wide range of commercially valuable business information, including trade secrets, technical data, negotiating positions, and sensitive and proprietary internal communications.⁵⁷ Indeed, China has stolen IP technology from the solar sector, and then used such technology in its solar products.⁵⁸ In the United States, by contrast, the act of “theft” is a criminal offense, and U.S. laws also criminalize the specific acts of cyber-enabled theft,⁵⁹ economic espionage,⁶⁰ and the misappropriation of trade secrets.⁶¹

45. In sum, China’s non-market policies and practices violate U.S. public morals relating to unfair competition, forced labor, theft, and coercion. China’s targeting for dominance, and actual dominance, of the clean vehicle and renewable energy sectors, and the resulting dependence on China means those non-market policies and practices infiltrate and influence the U.S. market. U.S. purchasers in effect reward these non-market policies and practices through

⁵⁴ U.S. First Written Submission, para. 98.

⁵⁵ U.S. First Written Submission, paras. 68-69 (citing Restatement (Second) of Contracts, § 205 (US-18); Restatement (Second) of Torts § 766A (US-19); U.S. Constitution, Fifth Amendment (US-21); Sherman Act, Section 15 U.S.C. § 1 (US-17); Federal Trade Commission Act, Section 15 U.S.C. § 45 (US-16)).

⁵⁶ U.S. First Written Submission, paras. 100-102.

⁵⁷ See Four-Year Review, Table 1, p. 25 (US-64).

⁵⁸ U.S. First Written Submission, paras. 100-101.

⁵⁹ See, e.g., California Code, Penal Code § 484 (General Theft Statute) (US-30); Texas Penal Code, Title 7, Chapter 31 (Offenses against Property – Theft) (US-31); 18 U.S.C. Ch. 31 (Embezzlement and Theft) (US-32); 18 U.S.C. § 1832 (Theft of Trade Secrets) (US-27).

⁶⁰ See Economic Espionage Act of 1996 (18 U.S. Code § 1831-1832) (US-26).

⁶¹ See Computer Fraud and Abuse Act (18 U.S.C. § 1030) (US-25).

the purchase of Chinese goods, and thereby undermine U.S. norms against unfair competition, forced labor, theft, and coercion.

3. The measures at issue protect U.S. public morals

46. The measures at issue “protect public morals” within the meaning of Article XX(a) by incentivizing production in the United States and in other countries that align with the U.S. public morals against unfair competition, forced labor, theft, and coercion.

47. The measures seek to restore fair competition and opportunities to market-oriented businesses and workers who, consistent with the U.S. laws that we have highlighted, operate in a manner that reflects U.S. standards of right and wrong. For some aspects of the measures at issue – such as the domestic content bonus available for the renewable energy tax credits – use of U.S. products (such as steel) is required. Such requirements reflect the fundamental global challenge of non-market excess capacity in the steel sector.⁶² China’s non-market excess capacity is of such an extent that it causes *global* distortions, negatively affecting steel prices, market share, and profitability of *all* steel producers globally.⁶³ Providing bonus tax credits for projects that use American steel helps to counteract these global trends caused by non-market excess capacity and to protect U.S. public morals.

48. Notably, the measures at issue also impose requirements on *U.S.* production that protect U.S. public morals. Specifically, to qualify for increased credits under the renewable energy tax credits, U.S. companies must pay laborers and mechanics wages that are sufficiently high under standards set by the Secretary of Labor.⁶⁴ If a company fails to satisfy these wage requirements,

⁶² See, e.g., Global Forum on Steel Excess Capacity, *Steel Exports, trade remedy actions and sources of excess capacity* (May 2024), pp. 4-5 (US-85).

⁶³ See, e.g., Global Forum on Steel Excess Capacity, *Impacts of global excess capacity on the health of the GFSEC steel industries* (May 2024), p. 9 (US-86).

⁶⁴ 26 U.S.C. § 48(a)(9)(B), (10)(A), and (11), 26 U.S.C. § 48E(d)(3) and (4), 6 U.S.C. § 45(b)(6) and (7), 26 U.S.C. § 45Y(g)(9) and (10) (CHN-17).

the renewable energy tax credits also provide for correction payments to the laborers and mechanics, and penalties for the company.⁶⁵ Such requirements help ensure that U.S. companies uphold U.S. public morals related to unfair competition and forced labor.

49. Other aspects of the measures at issue protect U.S. public morals while permitting the use of non-U.S. inputs. For example, a vehicle may qualify for part of the Clean Vehicle Tax Credit if it contains a battery with critical minerals extracted or processed in any country with which the United States has a free trade agreement in effect.⁶⁶ U.S. free trade agreements contain provisions that help maintain fair competition and discourage forced labor, theft, and coercion – such as provisions prohibiting anti-competitive conduct,⁶⁷ reaffirming labor obligations,⁶⁸ providing for the protection and enforcement of IP rights,⁶⁹ and regulating state-owned enterprises.⁷⁰

50. The United States-Japan Critical Minerals Agreement, which qualifies as such a free trade agreement, demonstrates the contribution of such an agreement to achieving U.S. public morals. The objective of the agreement is “to strengthen and diversify critical minerals supply chains and promote the adoption of electric vehicle battery technologies by formalizing the shared commitment of the Parties to facilitate trade, promote fair competition and market-

⁶⁵ 26 U.S.C. § 48(a)(10)(B), 26 U.S.C. § 48E(d)(3) and (4), 6 U.S.C. § 45(b)(7)(B), 26 U.S.C. § 45Y(g)(9) and (10) (CHN-17).

⁶⁶ U.S. First Written Submission, para. 21.

⁶⁷ *See, e.g.*, United States-Mexico-Canada Agreement, Chapter 21 (US-87); United States-Korea Free Trade Agreement, Chapter 16 (US-88); United States-Singapore Free Trade Agreement, Chapter 12 (US-95); United States-Peru Free Trade Agreement, Chapter 13 (US-89).

⁶⁸ *See, e.g.*, United States-Mexico-Canada Agreement, Chapter 23 (US-87); United States-Korea Free Trade Agreement, Chapter 19 (US-88); United States-Singapore Free Trade Agreement, Chapter 17 (US-95); United States-Peru Free Trade Agreement, Chapter 17 (US-89).

⁶⁹ *See, e.g.*, United States-Mexico-Canada Agreement, Chapter 20 (US-87); United States-Korea Free Trade Agreement, Chapter 18 (US-88); United States-Singapore Free Trade Agreement, Chapter 16 (US-95); United States-Peru Free Trade Agreement, Chapter 16 (US-89).

⁷⁰ *See, e.g.*, United States-Mexico-Canada Agreement, Chapter 22 (US-87); United States-Korea Free Trade Agreement, Chapter 16 (US-88); United States-Singapore Free Trade Agreement, Chapter 12 (US-95); United States-Peru Free Trade Agreement, Chapter 13 (US-89).

oriented conditions for trade in critical minerals, ensure robust labor and environment standards .

...”⁷¹ The agreement contains provisions for the Parties to facilitate trade in critical minerals, to confer concerning ways to address non-market policies and practices affecting trade in critical minerals and the global critical minerals supply chain, and to build a supply chain that adopts and maintains labor rights, among other commitments.⁷²

51. The U.S. free trade agreement with Canada and Mexico (USMCA) contains, among other commitments, the strongest labor provisions in any trade agreement, including agreeing to eliminate all forms of forced labor and prohibiting the importation of goods from sources produced by forced labor,⁷³ provisions that protect source code and algorithms and prohibit forced technology transfer,⁷⁴ and the protection of trade secrets.⁷⁵ Such provisions help ensure that the North American assembly requirement for the Clean Vehicle Tax Credit, for example, protects U.S. public morals against unfair competition, forced labor, theft, and coercion. Further, by incentivizing extraction or processing of critical minerals for clean vehicle batteries in countries that have undertaken such commitments, the Clean Vehicle Tax Credit also helps protect the identified U.S. public morals.

52. Notably, the measures at issue do not – as China suggests – “effectively exclude Chinese entities from participating in the U.S. electric vehicle market.”⁷⁶ Rather, the measures ensure that U.S. support – through tax credits – do not reward China’s non-market policies and practices, but instead incentivize production in the United States and other countries that align

⁷¹ Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chains (March 28, 2023), Article 1 (US-42).

⁷² Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chains (March 28, 2023), Articles 3, 5 (US-42).

⁷³ USMCA, Arts. 23.3, 23.6 (US-87).

⁷⁴ USMCA, Art. 19.16 (US-87).

⁷⁵ USMCA, Art. 20.69 (US-87).

⁷⁶ China’s First Written Submission, para. 31.

with the U.S. public morals against unfair competition, forced labor, theft and coercion. And, as China's own examples demonstrate, significant proportions of required manufacturing can take place outside the United States and still qualify for the renewable energy investment and production tax credits in the Inflation Reduction Act (IRA).⁷⁷

53. In sum, the challenged measures are apt to promote U.S. and other investments, and reduce reliance on China. By encouraging the use of products from the U.S. and other markets that discourage unfair competition, forced labor, theft, and coercion, the United States protects its public morals within the meaning of Article XX(a).

54. And, the measures are showing signs of being successful. For the solar industry, from 2022 to 2023, the United States increased its installed battery cell manufacturing capacity by more than 45%.⁷⁸ In 2024, U.S. module manufacturing capacity grew 190%.⁷⁹ The U.S. solar industry also installed record breaking capacity, 50 gw of capacity, in 2024.⁸⁰ In the same year, cell manufacturing restarted in the United States for the first time in five years as Suniva revived its 1 GW factory in Georgia.⁸¹ In March 2025, despite China's dominance, U.S. firms announced the first solar module to be made with polysilicon, wafers, and cells manufactured in the United States."⁸²

55. For the EV industry, as a result of the measures at issue, companies are exploring new opportunities in the EV supply chain that diversify and are outside of China. For instance,

⁷⁷ China's First Written Submission, paras. 80, 83.

⁷⁸ International Energy Agency, *Global EV Outlook 2024*, p. 81 (US-49).

⁷⁹ Solar Energy Industries Association, *US Solar Market Insight: Executive Summary, 2024 Year in Review*, March 2025, p. 4 (US-73).

⁸⁰ Solar Energy Industries Association, *US Solar Market Insight: Executive Summary, 2024 Year in Review*, March 2025, p. 5 (US-73).

⁸¹ Solar Energy Industries Association, *US Solar Market Insight: Executive Summary, 2024 Year in Review*, March 2025, p. 4 (US-73).

⁸² PC Magazine, "Corning, Suniva, Heliene to produce first fully US-made solar module," Mar. 7, 2025 (US-60).

because the Clean Vehicle Tax Credit permits the critical minerals contained in the EV's battery to be sourced from either the United States or a country with which the United States has a free trade agreement in effect, companies have met with Chilean government agencies regarding lithium supply.⁸³ Likewise, EV supply chains have been developing in Mexico as a result of access to financial support from the IRA.⁸⁴

56. EV investments have also increased in the United States. Automakers and battery manufacturers have collectively invested and promised to make substantial investments in U.S. cell and module manufacturing, with the potential to deliver an annual capacity of close to 1,200 gigawatt-hours before 2030.⁸⁵ Further, it is projected that the United States will have a total EV manufacturing capacity of 5.8 million new light-, medium-, and heavy-duty EVs each year by 2027.⁸⁶

57. Thus, fundamentally, the clean vehicle and renewable energy tax credits at issue have as their goal—and have resulted in—investments in the United States, and in other Members that have made commitments that align with U.S. public morals. The measures therefore protect and reinforce U.S. public morals within the meaning of Article XX(a) of the GATT 1994.

B. The measures at issue are “necessary” within the meaning of Article XX(a) of the GATT 1994

58. The measures at issue are “necessary” within the meaning of Article XX(a) of the GATT 1994. The evaluation the Panel is called to make is as of the panel's establishment by the DSB, that is, at a time when China has already achieved global dominance of the clean vehicle and renewable energy sectors, and in light of the importance demonstrated in U.S. law of the U.S.

⁸³ International Energy Agency, *Global EV Outlook 2024*, p. 89 (US-49).

⁸⁴ International Energy Agency, *Global EV Outlook 2024*, p. 82 (US-49).

⁸⁵ TechCrunch, “Tracking the EV battery factory construction boom across North America,” Feb. 6, 2025 (US-75).

⁸⁶ Environmental Defense Fund, *U.S. Electric Vehicle Manufacturing Investments and Jobs*, August 2024 (US-79).

public morals against unfair competition, forced labor, theft, and coercion. Whether the challenged measures could be necessary in the future, or in a changed situation in which China has not targeted and achieved its dominance in these sectors and supply chains, is not the question before the Panel.

59. The ordinary meaning of “necessary” means “[t]hat which is indispensable, an essential, a requisite”; “[t]hat cannot be dispensed with or done without; requisite, essential, needful”.⁸⁷ “Requisite”, in turn, means “Required by circumstances; appropriate; necessary for a purpose, indispensable.”⁸⁸ Therefore, for Article XX(a), a measure must be indispensable, essential, or requisite to serve the objective—in this case, to protect public morals.

60. That the challenged measures are essential or requisite to protect U.S. public morals is revealed through an examination of the totality of the circumstances. First, the measures are apt to contribute to the asserted public morals by promoting U.S. and other investments, and thereby reducing dependence on China. By creating financial incentives for alternative supply, the measures are structured so as to avoid U.S. purchasers rewarding China’s non-market policies and practices that violate norms against unfair competition, forced labor, theft, and coercion.

61. Second, as noted, the fundamental nature of U.S. public morals against unfair competition, forced labor, theft, and coercion is clear from the longstanding, widespread, and continually developing nature of the U.S. laws setting out U.S. norms prohibiting such conduct. For example, the Sherman Act—which criminalizes monopolization, or even attempts at monopolization—was passed in 1890. The Thirteenth Amendment to the U.S. constitution—which prohibits involuntary servitude—was ratified in 1865. The act of “theft” is a criminal

⁸⁷ See Definitions Set 1, *The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 1895 (US-15).

⁸⁸ See Definitions Set 2, *The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 2557 (US-96).

offense throughout the United States,⁸⁹ and the United States criminalizes a variety of different kinds of theft.⁹⁰ U.S. law also continues to develop and reiterate these fundamental U.S. public morals, such as through the enactment of the Uyghur Forced Labor Prevention Act in 2021.

62. Third, the measures are taken in a context in which China has achieved global dominance in the clean vehicle and renewable energy sectors. In the solar sector, China's share of the global solar energy supply chain soon will reach almost 95 percent.⁹¹ In the EV sector, China produces approximately 80% of the world's EV batteries,⁹² and dominates the upstream stages of the battery supply chain (for example, 90% of global cathode active material manufacturing capacity, 97% of global anode material manufacturing capacity, 100% of global LFP production capacity).⁹³ Such figures are almost too extreme to be believed – but they are real, and affect the action that may be necessary by the United States to protect its public morals.

63. Fourth, previous U.S. attempts to counter China's policies have not effectively addressed the issue, further demonstrating that the measures at issue are necessary to protect public morals. Prior versions of the measures – without the challenged portions – existed prior to the IRA. The Clean Vehicle Tax Credit was added to the Internal Revenue Code in 2008. The provisions at issue – the North American assembly requirement, the critical minerals requirement, the battery components sourcing requirement – were added by the IRA.

64. There has been a renewable energy investment tax credit since at least 1990, and a renewable energy production tax credit since 1992.⁹⁴ The portion challenged by China – the

⁸⁹ See, e.g., California Code, Penal Code § 484 (US-30); Texas Penal Code, Title 7, Chapter (US-31); 18 U.S.C. Ch. 31 (US-32); 18 U.S.C. § 1832 (US-27).

⁹⁰ See, e.g., Economic Espionage Act of 1996 (18 U.S. Code § 1831-1832) (US-26).

⁹¹ International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 9 (US-1).

⁹² Washington Post, "How China pulled ahead to become the world leader in electric vehicles," March 3, 2025 (US-2).

⁹³ International Energy Agency, Global EV Outlook 2024, p. 80 (US-49).

⁹⁴ See China's First Written Submission, paras. 47, 59-60.

domestic content bonus credit – was added by the IRA. Therefore, the tax credits were in existence prior to the IRA, yet, despite their existence, China was able to achieve global dominance in the clean vehicle and renewable energy sectors. In other words, the pre-IRA versions of the measures at issue were devoid of the sourcing and value-based eligibility criteria standards necessary to address China’s coercive economic behavior and other unfair trade practices. The IRA fills that gap.

65. Further, as stated earlier, the United States has engaged extensively in international fora to seek to remedy these concerns. The statistics cited above make clear that these efforts have had minimal to no impact. Thus, other measures have proven ineffective as China continues to strive for global dominance in the clean vehicle and renewable energy sectors.

66. Therefore, given China’s global dominance in the clean vehicle and renewable energy sectors, and as demonstrated by the expansion of U.S. (and other market economies’) investments under the measures at issue, the challenged measures are needed, essential, appropriate, and requisite to accomplish the U.S. objective. For these reasons, the measures at issue are necessary to protect U.S. public morals within the meaning of Article XX(a).

C. The measures at issue are not inconsistent with the chapeau of Article XX

67. Finally, we will explain why the United States has not applied the measures at issue in a manner inconsistent with the chapeau of Article XX. That is, the United States has not applied the measures at issue in a manner that constitutes “arbitrary or unjustifiable discrimination between countries where the same condition prevail” or as a “disguised restriction on international trade”.

1. The measures at issue do not constitute “arbitrary or unjustifiable discrimination between countries where the same conditions prevail”

68. First, the United States has not applied the measures in a manner that constitutes “arbitrary or unjustifiable discrimination between countries where the same conditions prevail,” within the meaning of the chapeau of Article XX. Relevant to this dispute is whether distinctions that the United States has drawn between *itself and 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.⁹⁵

69. As we have described, the United States and China are not the same. China – unlike the United States – targets and has achieved global dominance of the clean vehicle and renewable energy sectors, including through the use of non-market policies and practices that encourage unfair competition, forced labor, theft, and coercion. Not only does the United States not use such policies and practices, but they are antithetical to the U.S. public morals as reflected in U.S. laws. Therefore, the same conditions do not prevail in the United States and China.

70. The EU erroneously suggests that the Panel should examine whether discrimination occurs between the United States and Members other than China.⁹⁶ This proposed academic exercise is not appropriate for a WTO dispute and not before the Panel. China is the Member that has brought the dispute against the United States, not other Members. Therefore, the Panel should focus its inquiry on whether the measures at issue present distinctions where the same conditions prevail between the United States and China.

71. Due to the significant differences in the conditions that prevail between the United States and China—that is, the use of non-market policies and practices by China that resulted in its global dominance of the clean vehicle and renewable energy sectors—it is entirely logical that

⁹⁵ See U.S. First Written Submission, paras. 124-125.

⁹⁶ EU’s Third Party Submission, para. 52.

the United States would seek to extricate the U.S. clean vehicle and renewable energy sectors from the influence of China. The measures at issue are simply a continuation of longstanding U.S. measures promoting fair competition, prohibiting forced labor, theft and coercion, and an effort to counter—and correct for—China’s behavior, and to restore market-oriented conditions in the U.S. clean vehicle and renewable energy sectors. Had the measures at issue not distinguished China, the measures would be incapable of achieving those goals and protecting U.S. public morals.

72. For the sake of completeness, and while China has presented no argument on this issue, the United States also notes it has not discriminated among partners with the “same conditions,” as the EU and Brazil suggest,⁹⁷ and therefore has not arbitrarily or unjustifiably discriminated. Other countries that are eligible to contribute to a qualified vehicle for purposes of the Clean Vehicle Tax Credit are partners that have agreed to commitments with the United States in a free trade agreement, including agreements with enforceable provisions aimed at ensuring labor rights, IP protections, and fair competition norms. As recognized by Article XXIV:5 of the GATT 1994, “the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade-area”. Thus, the “same conditions” do not prevail between those Members with which the United States has a free trade agreement and those with which it does not.

73. Moreover, as we have previously described, agreements qualifying as free trade agreements under the IRA contain provisions that help maintain fair competition and discourage forced labor, theft, and coercion – such as provisions prohibiting anti-competitive conduct,⁹⁸

⁹⁷ EU’s Third Party Submission, para. 52; Brazil’s Third Party Submission, para. 38.

⁹⁸ See, e.g., United States-Mexico-Canada Agreement, Chapter 21 (US-87); United States-Korea Free Trade Agreement, Chapter 16 (US-88); United States-Singapore Free Trade Agreement, Chapter 12 (US-95); United States-Peru Free Trade Agreement, Chapter 13 (US-89).

reaffirming labor obligations,⁹⁹ providing for the protection and enforcement of IP rights,¹⁰⁰ and regulating state-owned enterprises.¹⁰¹ Therefore, countries that have such agreements with the United States have undertaken commitments that are consistent with and contribute to the U.S. public morals against unfair competition, forced labor, theft, and coercion.

74. Accordingly, the measures at issue do not constitute “arbitrary or unjustifiable discrimination between countries where the same conditions prevail” within the meaning of the chapeau of Article XX.

2. The measures at issue are not a “disguised restriction on international trade”

75. The measures at issue also are not being applied in a manner that constitutes a “disguised restriction on international trade”.¹⁰² The United States has taken no steps to conceal the requirements of the measures at issue. That is, the text and effect of the law is plain and undisguised.

D. Conclusion

76. In sum, the Panel should find that the measures at issue are justified because they protect U.S. public morals and are necessary within the meaning of Article XX(a) of the GATT 1994. Furthermore, they are not being applied in manner inconsistent with the chapeau of Article XX of the GATT 1994.

⁹⁹ See, e.g., United States-Mexico-Canada Agreement, Chapter 23 (US-87); United States-Korea Free Trade Agreement, Chapter 19 (US-88); United States-Singapore Free Trade Agreement, Chapter 17 (US-95); United States-Peru Free Trade Agreement, Chapter 17 (US-89).

¹⁰⁰ See, e.g., United States-Mexico-Canada Agreement, Chapter 20 (US-87); United States-Korea Free Trade Agreement, Chapter 18 (US-88); United States-Singapore Free Trade Agreement, Chapter 16 (US-95); United States-Peru Free Trade Agreement, Chapter 16 (US-89).

¹⁰¹ See, e.g., United States-Mexico-Canada Agreement, Chapter 22 (US-87); United States-Korea Free Trade Agreement, Chapter 16 (US-88); United States-Singapore Free Trade Agreement, Chapter 12 (US-95); United States-Peru Free Trade Agreement, Chapter 13 (US-89).

¹⁰² U.S. First Written Submission, paras. 133-135.

III. THE FEOC EXCLUSIONARY RULE UNDER THE SECTION 30D CLEAN VEHICLE CREDIT IS COVERED BY ARTICLE XXI(B) OF THE GATT 1994

77. China also challenged a provision of the IRA that is expressly a matter of U.S. national security, namely the “foreign entity of concern” (FEOC) exclusion from the Clean Vehicle Tax Credit. As explained in the U.S. First Written Submission, the FEOC exclusion is covered by Article XXI(b) of the GATT 1994.¹⁰³ In light of the self-judging nature of Article XXI(b), the sole finding that the Panel may make with respect to the FEOC exclusionary rule under the Clean Vehicle Tax Credit—consistent with its terms of reference and the DSU—is to note in the Panel’s report that the United States has invoked its essential security interests.¹⁰⁴

78. Although Article XXI(b) does not require an invoking Member to furnish reasons for its invocation of Article XXI(b), we will point to publicly available information demonstrating the self-evident national security basis for the FEOC exclusion.

A. The FEOC rule is self-evidently a matter of national security for the United States

79. The five statutory grounds on which a foreign entity may be considered an FEOC are self-evidently matters of national security for the United States.

80. For example, the first ground for the FEOC exclusion from the Clean Vehicle Tax Credit relates to designation as a “foreign terrorist organization.”¹⁰⁵ For purposes of this designation, U.S. law defines “terrorist activity” to include hijacking or sabotage of aircraft; seizing or detaining, and threatening to kill or injure another individual in order to compel a third person to do or abstain from any act; or an assassination.¹⁰⁶ Moreover, designation as a foreign terrorist organization requires a finding that, among other things, “the terrorist activity or terrorism of the

¹⁰³ U.S. First Written Submission, paras. 45-58.

¹⁰⁴ U.S. First Written Submission, paras. 45-58.

¹⁰⁵ Section 40207(a)(5)(A) of the Infrastructure Investment and Jobs Act (US-8).

¹⁰⁶ See 8 U.S.C. § 1189 (US-90); 8 U.S.C. § 1182(a)(3)(B)(iii) (US-91).

organization threatens the security of United States nationals or the national security of the United States.”¹⁰⁷ Such statutory provisions – which explicitly refer to activity that “threatens . . . the national security of the United States” demonstrate the clear national security basis for the FEOC definition.

81. China’s challenge focuses on the third FEOC ground, foreign entities “owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation.”¹⁰⁸ This definition of “covered nation” was incorporated into the FEOC provision from U.S. defense procurement law, which defines a “covered nation” to mean North Korea, China, Russia, and Iran, and characterizes these countries as “*non-allied* foreign nations.”¹⁰⁹ Numerous other U.S. instruments similarly identify these four nations as “foreign adversaries,” including the America First Investment Policy Presidential Memorandum.¹¹⁰ That Memorandum points to China’s Military-Civil Fusion strategy, and states that China “is increasingly exploiting United States capital to develop and modernize its military, intelligence, and other security apparatuses, which pose significant risk to the United States homeland and Armed Forces of the United States around the world.”¹¹¹ Again, the inclusion of China in lists of “non-allied” foreign nations and “foreign adversaries”, and a Presidential Memorandum stating that China “pose[s] significant risk to the United States homeland” make clear that China’s inclusion as a “covered nation” for purposes of the FEOC exclusionary rule is a matter of national security for the United States.

¹⁰⁷ See 8 U.S.C. § 1189 (US-90).

¹⁰⁸ Section 40207(a)(5)(C) of the Infrastructure Investment and Jobs Act (US-8). See China’s First Written Submission, para. 29.

¹⁰⁹ 10 U.S.C. § 4872(d)(2) (emphasis added) (US-9).

¹¹⁰ America First Investment Policy (Feb. 21, 2025), Sec. 4 (US-92).

¹¹¹ See, e.g., America First Investment Policy (Feb. 21, 2025), Sec. 4 (US-92).

B. Recent WTO panels have erred in interpreting Article XXI(b)

82. The United States is aware of recent WTO reports suggesting – erroneously – that panels have authority to review a responding party’s invocation of Article XXI(b). The DSU does not assign precedential value to panel or appellate reports, though this Panel may take them into account in its own objective assessment to the extent the Panel finds them persuasive or helpful.

83. Those reports are not persuasive, however, because they fail to interpret the ordinary meaning of the terms of Article XXI(b).¹¹² For example, some reports point to structural or visual aspects of Article XXI(b) in concluding that subparagraphs (i) to (iii) limit a Member’s discretion to take measures it considers necessary to protect its essential security interests.¹¹³ These reports fail to explain how structural or visual aspects of Article XXI(b) can alter the ordinary meaning of its terms, which those reports acknowledge could be understood to be self-judging.¹¹⁴

84. Other reports purport to rely on the principle of effective treaty interpretation in finding that Article XXI(b) is not self-judging¹¹⁵ – but fail to account for the U.S. argument that the subparagraph endings (i) to (iii) serve to guide a Member’s exercise of its rights under Article XXI(b).¹¹⁶ Fundamentally, Article XXI(b) is about a Member taking an action “which it considers necessary”. The relative clause that follows “action” describes the circumstances which the Member “considers” to be present when it takes such an “action”. The clause begins

¹¹² See U.S. First Written Submission in *United States – Origin Marking (Hong Kong, China)* (Panel), paras. 215-265 (US-71).

¹¹³ *Russia – Traffic in Transit*, para. 7.65; *United States – Hong Kong Origin Marking*, paras. 7.53, 7.57.

¹¹⁴ *Russia – Traffic in Transit*, para. 7.63; *United States – Hong Kong Origin Marking*, para. 7.53.

¹¹⁵ *US – Steel and Aluminum Products (China)*, para. 7.121; *US – Steel and Aluminum Products (Norway)*, para. 7.109; *US – Steel and Aluminum Products (Switzerland)*, para. 7.139; *US – Steel and Aluminum Products (Turkey)*, para. 7.136.

¹¹⁶ See U.S. First Written Submission in *United States – Origin Marking (Hong Kong, China)* (Panel), paras. 46, 89 (US-71).

with “which it considers necessary” and ends at the end of each subparagraph ending. Thus, a Member invoking Article XXI(b)(iii), for example, would consider the measures to be both “necessary for the protection of its essential security interests” and “taken in time of war or other emergency in international relations” – in this way, interpreting Article XXI(b) as self-judging is consistent with the principle of effective treaty interpretation.

85. Recent prior reports also interpreted “emergency in international relations” erroneously, suggesting for example that it “must represent a situation of breakdown or near-breakdown in the relations between states or other participants in international relations”, and that “we would expect defence and military interests to normally be implicated.”¹¹⁷ But these reports fail to acknowledge that the ordinary meaning of the term “emergency” is broad – *i.e.*, “[a] situation, esp. of danger or conflict, that arises unexpectedly and requires urgent action”¹¹⁸ – and that the existence of an emergency is a subjective determination by nature.

86. These reports’ erroneous approaches to what constitutes an “emergency in international relations” – with panels substituting their judgment for the judgment of a Member – demonstrate the U.S. concern with, and the error in, their approaches to Article XXI(b). It not appropriate for a WTO panel to purport to determine whether, for example, an organization seizes or hijacks aircraft or detains individuals in order to compel a third person to do or abstain from any act, or that an organization threatens the security of a Member’s nationals or the national security of a Member.¹¹⁹ It is likewise not appropriate for a WTO panel to determine whether certain countries are “non-allied” foreign nations¹²⁰ with respect to a Member, or whether certain

¹¹⁷ *United States - Hong Kong Origin Marking*, paras. 7.289-7.290, 7.301.

¹¹⁸ See Definitions Set 2, *The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 806 (US-96).

¹¹⁹ See 8 U.S.C. § 1189 (US-90); 8 U.S.C. § 1182(a)(3)(B)(iii) (US-91).

¹²⁰ 10 U.S.C. § 4872(d)(2) (US-9).

countries are “foreign adversaries” to a Member.¹²¹ The WTO was created with a focus on economic and trade issues, and not to seek to resolve sensitive issues of national security and foreign policy which are fundamental to a sovereign State’s rights and responsibilities. An attempt by a WTO panel to insert itself into such sovereign considerations could only serve to diminish the credibility of the WTO.¹²²

IV. CONCLUSION

87. In sum, the Panel should reject China’s claims brought against the clean vehicle and renewable energy tax credits.

88. Ms. Chairperson and members of the Panel, this concludes the U.S. opening statement. We welcome the opportunity to answer any questions you may have on this matter. Thank you.

¹²¹ America First Investment Policy (Feb. 21, 2025), Sec. 4 (US-92).

¹²² Office of the U.S. Trade Representative, *The World Trade Organization at Thirty and U.S. Interests*, February 2025, p. 4 (US-98).