UNITED STATES – CERTAIN TAX CREDITS UNDER THE INFLATION REDUCTION ACT

(DS623)

ORAL STATEMENT OF THE UNITED STATES OF AMERICA AT THE SECOND SUBSTANTIVE MEETING OF THE PANEL

August 26, 2025

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Brazil – Taxation (AB)	Appellate Body Report, *Brazil – Certain Measures Concerning Taxation and Charges*, WT/DS472/AB/R / WT/DS497/AB/R and Add. 1, adopted 11 January 2019
China – Autos (US)	Panel Report, *China – Anti-Dumping and Countervailing Duties on Certain Automobiles from the United States*, WT/DS440/R and Add.1, adopted 18 June 2014
China – Publications and Audiovisual Products (Panel)	Panel Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/R and Corr.1, adopted 19 January 2010, as modified by Appellate Body Report WT/DS363/AB/R
China – Raw Materials (Panel)	Panel Reports, *China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/R / WT/DS395/R / WT/DS398/R / Add. 1 and Corr.1, adopted 22 February 2012, as modified by Appellate Body Reports WT/DS394/AB/R / WT/DS395/AB/R / WT/DS398/AB/R
EC – Seal Products (AB)	Appellate Body Reports, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R / WT/DS401/AB/R, adopted 18 June 2014
Indonesia – Import Licensing Regimes (Panel)	Panel Report, *Indonesia – Importation of Horticultural Products, Animals and Animal Products*, WT/DS477/R, WT/DS478/R, and Add. 1, adopted 22 November 2017, as modified by Appellate Body Report WT/DS477/AB/R, WT/DS478/AB/R, and Add.1
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US – Tariff Measures (Panel)	Panel Report, *United States – Tariff Measures on Certain Goods from China*, WT/DS543/R, circulated 15 September 2020

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US-170	U.S. Department of Justice, "Chinese Telecommunications Device Manufacturer and its U.S. Affiliate Indicted for Theft of Trade Secrets, Wire Fraud, and Obstructions of Justice," Jan. 28, 2019
US-171	U.S. Department of Justice, "Chinese Telecommunications Conglomerate Huawei and Subsidiaries Charged in Racketeering Conspiracy and Conspiracy to Steal Trade Secrets," Feb. 13, 2020
US-172	BuzzFeed News, "Leaked Audio from 80 Internal TikTok Meetings Shows that US User Data Has Been Repeatedly Accessed from China," June 17, 2022
US-173	Fortune, "TikTok fined $600 million after the illegal transfer of EU personal data to China – one of the largest fines ever imposed," May 2, 2025
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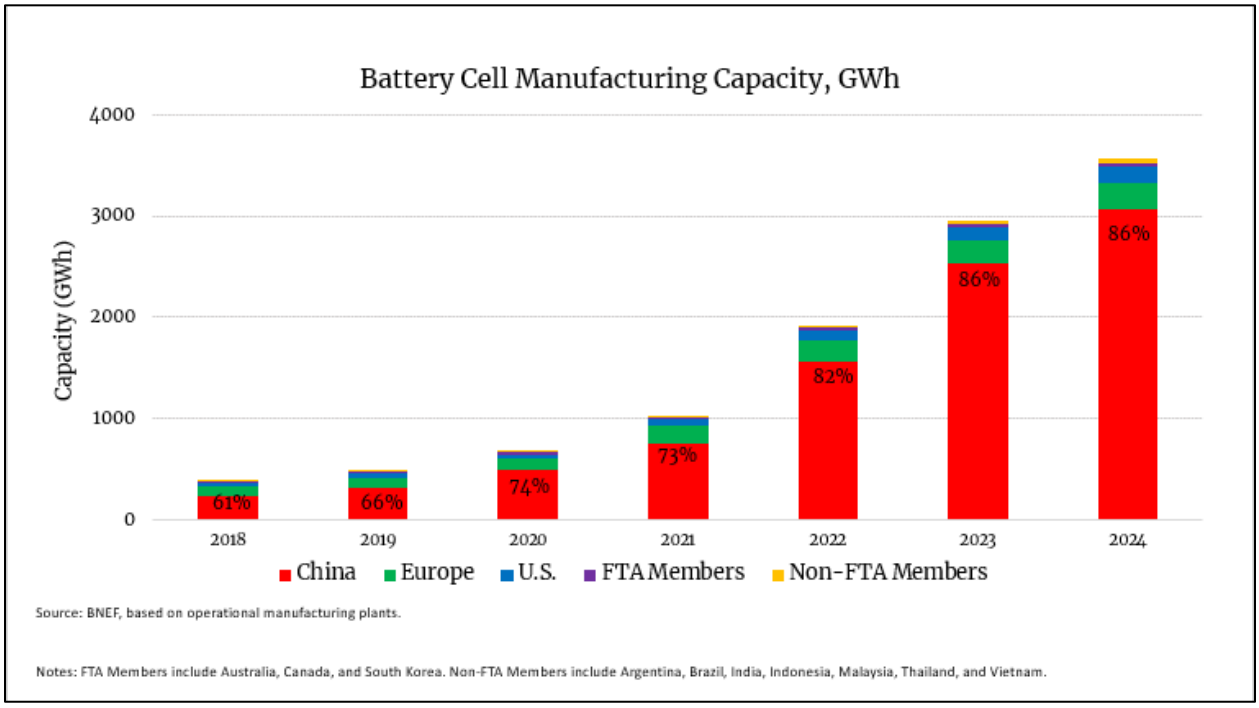
US-177	Excerpt of Bureau of Transportation Statistics, New and Used Passenger Car and Light Truck Sales and Leases

Ms. Chairperson, Members of the Panel,

1. It is a fact that China has attained global dominance in the clean vehicle and renewable energy sectors. China not only agrees on this point, but celebrates it.[1] It is a fact that China dominates the production and supply of the critical minerals that are key inputs for clean vehicle and renewable energy production and many other uses.[2] China has not refuted this, nor can it. It is a fact that China's manufacturing capacity in the solar energy supply chain and electric vehicle supply chain far exceed global demand.[3] China has not refuted this, nor can it. For EV battery cells, for example, Figure 1 demonstrates that China's capacity rose from less than 250 gWh in 2018 to more than 3000 gWh in 2024, with its share in global manufacturing capacity increasing from 61 percent to 86 percent over this time.

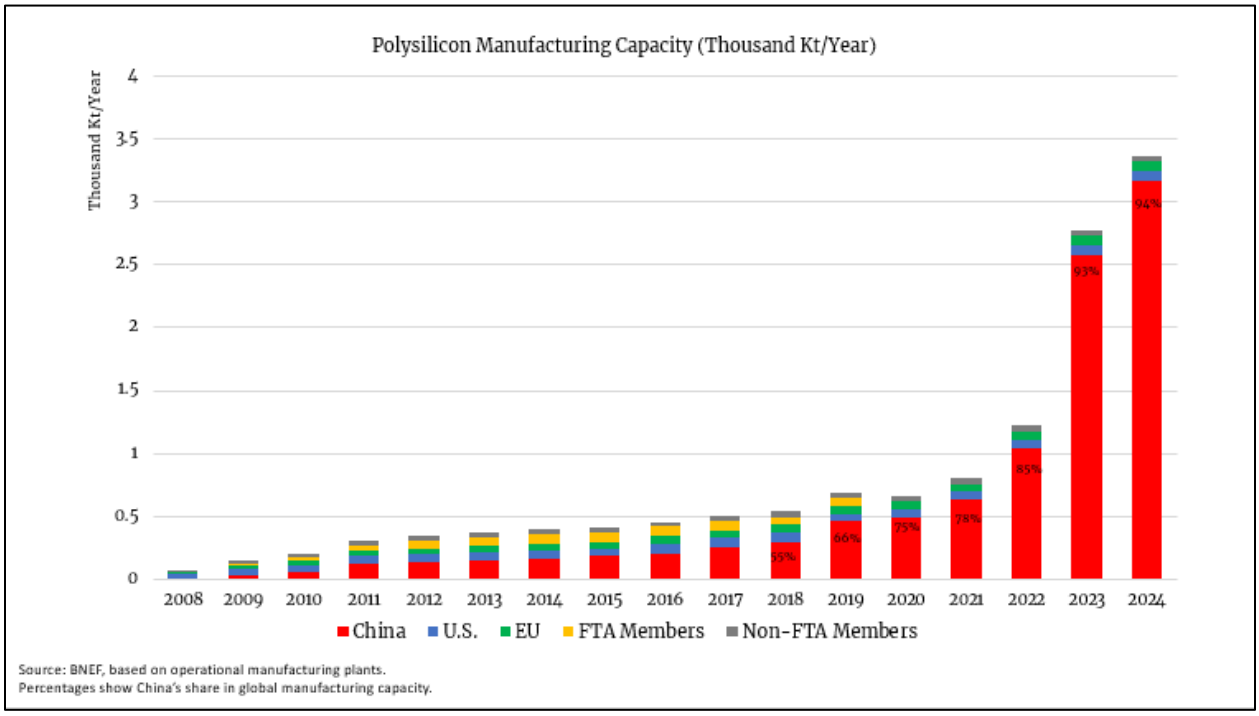
Figure 1:



[1] China's Response to First Set of Panel Questions, para. 17.
[2] U.S. First Written Submission, para. 88; U.S. Opening Statement at First Panel Meeting, para. 5.
[3] U.S. First Written Submission, paras. 85, 87; U.S. Opening Statement at First Panel Meeting, paras. 3-4.

2. For the renewable energy sectors, with respect to polysilicon—a key input for the solar sector—as demonstrated in Figure 2, China's manufacturing capacity was a mere 8 Kt per year in 2008, although by 2018 this number had reached some almost 300 Kt per year, and China accounted for 55 percent of global capacity. China's share continued increasing, and in 2022 it accounted for 85 percent of global polysilicon manufacturing capacity. By 2024, China had come to hold 94 percent of global capacity for polysilicon, with capacity of 3,168 Kt per year, more than triple its capacity just two years earlier.

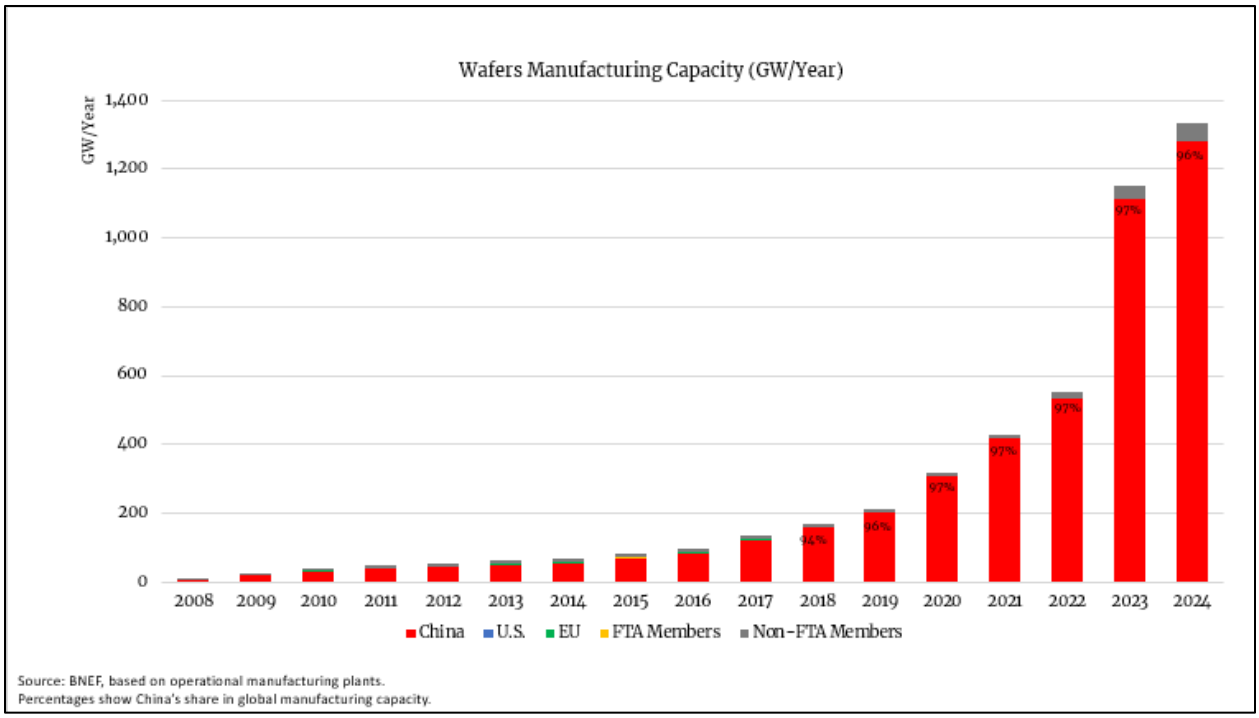
Figure 2:



3. And for wafers, shown in Figure 3, the picture is even more stark with respect to China's dominance. In 2008, China had under 6 GW/year of manufacturing capacity, though by 2018 China's manufacturing capacity rose to almost 160 GW/year accounting for 94 percent of global manufacturing capacity. In 2022, China's share of global wafer manufacturing capacity reached to 97 percent, and it remains at 96 percent in 2024. China cannot refute these obvious facts, nor

does it attempt to do so.

Figure 3:



4. It is also a fact that China has used non-market policies and practices to attain this global dominance in the clean vehicle and renewable energy sectors. China's targeted dominance – that is, effective monopolization – and other non-market policies are contrary to U.S. core, societal values. The United States has presented extensive evidence supporting the existence of these non-market policies and practices from both government and non-governmental sources, intergovernmental forums, international organizations, U.S. and other civil society organizations, and press reports from various news outlets.[4] China has not refuted this evidence, nor can it.

5. It is a fact that, since China secured dominance and effective monopolization of the clean vehicle and renewable energy sectors, no country has been able to maintain its capacity or

[4] *See, e.g.*, U.S. Responses to First Set of Panel Questions, para. 71, n. 97-99.

market share.[5] China cannot refute this.

6. And, it is a fact that having attained global dominance in the clean vehicle and renewable energy sectors, China has now weaponized its control of supply chains. China has banned exports of gallium and germanium—important components for EVs—to the United States, and restricts the export of seven critical rare earth metals and magnets, some of which are critical for the clean vehicle and renewable energy sectors.[6] China cannot refute this.

7. Simply put, China has attained global dominance and monopolized the clean vehicle and renewable energy sectors to the detriment of every other Member, including the United States.[7]

8. Yet, when a Member deems it necessary to address the threat to its core, societal values and national security, such as through the incentives that the Inflation Reduction Act (IRA) provides for alternative clean vehicle and renewable energy sources—China challenges the measures. Rather than seeking to prevent other Members from protecting against threats to their core, societal values and security, China should reflect upon its role in producing those threats and change its behavior.

9. Through this dispute, China takes the position that no Member may take action that would effectively address the threat from China's dominance of these key industries and supply chains. That China fails to reflect on its own responsibility in causing this crisis is also evident in the inconsistent positions it takes in this dispute. Over the course of this dispute, China has alleged that Chinese vehicles are being discriminated against and are effectively excluded from the U.S. market.[8] But China now appears to change course, readily admitting that through the

[5] U.S. Second Written Submission, paras. 62-66.
[6] U.S. Second Written Submission, para. 58.
[7] U.S. First Written Submission, paras. 76-83; U.S. Opening Statement at First Panel Meeting, para. 9; U.S. Second Written Submission, paras. 65-66.
[8] China's First Written Submission, para 31; China's Opening Statement at First Panel Meeting, para. 38; China's Responses to the Panel's First Set of Questions, para. 15.

IRA's 45W leasing credit, "Chinese-origin vehicles are beginning to enter the U.S. market," "the same amount of subsidy is available for leasing an electric vehicle," and "China does not perceive any real difference between purchasing an electric vehicle and leasing an electric vehicle".[9] China cannot have it both ways.

10. Most recently, China has argued that the Panel should assess the measures as they existed at the time of panel establishment.[10] The United States observes that this is not the position that China has taken in other disputes. Rather, in *China –Autos*, *China – Raw Materials*, and *China – Publications and Audiovisual Products*, China argued against panel findings on measures that were terminated after the date of panel establishment.[11]

11. To be clear, the U.S. position is that the Panel should examine the measures as they existed at the time of panel establishment.[12] Although the challenged measures have now changed, this does not change the Panel's inquiry pursuant to the DSU to assess the existence of the measures at a time when China targeted and attained global dominance in the clean vehicle and renewable energy sectors.

12. Indeed, a Member may have many tools at its disposal. A Member can use one means or many means. One U.S. administration imposed antidumping and countervailing duties on solar cells and modules from China. The first Trump Administration imposed safeguards on solar cells and modules. The prior U.S. Administration chose to use the IRA as one means to address China's targeting and dominance of the clean vehicle and renewable energy sectors.[13] The

[9] China's Second Written Submission, paras. 110-111.
[10] China's Responses to Questions Before Second Panel Meeting, para. 2.
[11] *China – Autos* (*Panel)*, paras. 6.27-6.28; *China – Raw Materials (Panel)*, paras. 7.5-7.6; *China –Publications and Audiovisual Products (Panel)*, para. 7.452.
[12] U.S. Responses to Questions Before Second Panel Meeting, paras. 2-4.
[13] *See, e.g.*, U.S. Department of Commerce, Remarks by U.S. Secretary of Commerce Gina Raimondo on the U.S. Competitiveness and the China Challenge (Nov. 30, 2022) (US-118).

current Administration may choose other means or adopt other measures to protect U.S. public morals. But that Members may have various tools to address an issue over time does not undermine the use of tax credits at one point in time to defend societal values.

13. As we have demonstrated and will discuss further today, the Panel should reject China's claims regarding the measures at issue. China has failed to rebut, and many times, failed to engage with, U.S. defenses.

14. As we will discuss, China has failed to established 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. We demonstrate that China errs in relying on the panel report in *Brazil – Taxation*.

15. China has failed to rebut the U.S. defense that the measures at issue are justified as necessary to protect U.S. public morals within the meaning of Article XX(a) of the GATT 1994. In particular, China fails to rebut the existence of the U.S. public morals against unfair competition and coercion, and relies upon arguments that are not based on the text of Article XX(a). China fails to rebut the necessity of the measures at issue, and even contradicts its own previous position in this dispute. Further, the United States will explain that Article XX(a) does not require a measure to protect public morals from morally offensive products. Lastly, we explain that in examining the chapeau of Article XX, the Panel should focus on assessing whether the measures at issue arbitrarily and unjustifiably discriminate between the United States and China, consistent with Article XXIII of the GATT 1994 and Article 3.3 of the DSU.

16. 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. Attempting to avoid the self-judging nature of Article XXI(b) as interpreted in accordance with customary rules of interpretation of public international law, China points to what it terms

"accepted principles of treaty interpretation" and selectively relies on a prior WTO report in arguing to the contrary. China's arguments are unpersuasive, however, and the Panel may make no finding but to note the U.S. invocation of the essential security exception.

17. Lastly, the United States has demonstrated that Article XX of the GATT 1994 applies to the SCM Agreement. China has not made new arguments on this issue, and thus, we will not address this issue in our statement.

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

18. China has failed to establish that the Clean Vehicle Tax Credit is inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement. Neither the critical mineral sourcing requirement nor the battery components sourcing requirement in the Clean Vehicle Tax Credit is *conditioned* on the use of domestic over imported goods.[14] Both requirements contain multiple options, and it is entirely possible to satisfy both requirements by the use of exclusively imported goods. Simply put, there is *no preference for domestic goods*.

19. Further, contrary to China's assertions, neither the text of Article 3.1(b) nor prior reports support China's interpretation. Under the ordinary meaning of the term, a subsidy is only "contingent" on the use of domestic over imported goods if the use of domestic goods is "a condition, in the sense of a requirement, for receiving the subsidy."[15] Third parties and prior reports agree.[16]

20. China also misrepresents the Appellate Body report in *Brazil – Taxation*, asserting that it

[14] U.S. First Written Submission, paras. 39-43.
[15] U.S. First Written Submission, para. 37.
[16] *See* European Union's Third-Party Submission, para. 98. *See also Brazil – Taxation (AB*), para. 5.337; *US – Tax Incentives (AB)*, para. 5.18.

upheld the panel's erroneous interpretation of Article 3.1(b).[17] China continues to ignore that a key finding on an Article 3.1(b) analysis is "whether such a measure reflects a condition *requiring* the use of domestic over imported goods".[18] China also errs in asserting that this report "refers to the panel's interpretative conclusion on several occasions without criticism or comment,"[19] as the citations China points to are contained in the "Panel's Findings" section, where the report summarizes the panel's findings,[20] and in the Appellate Body's *critique* of the Panel's findings.[21] Accordingly, the panel report in *Brazil – Taxation* is not persuasive.

21. The task before the Panel is to the apply the text of Article 3.1(b) to the facts at hand.[22] In doing so, the Panel should find that China has failed to establish that the Clean Vehicle Tax Credit *requires* the use of domestic over imported goods.[23]

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

22. China has failed to rebut the U.S. defense that the measures at issue protect the U.S. public morals of unfair competition, forced labor, theft, and coercion within the meaning of Article XX(a) of the GATT 1994. First, the United States has demonstrated that the measures at issue protect the U.S. public morals against unfair competition, forced labor, theft, and coercion. Second, the United States has demonstrated that the measures at issue are "necessary" to protect U.S. public morals. And third, the United States has demonstrated that the measures at issue do not apply "arbitrary or unjustifiable discrimination between countries where the same conditions prevail," nor are they a "disguised restriction on international trade," within the meaning of the

[17] China's Second Written Submission, para. 24 n. 4.
[18] *Brazil – Taxation (AB)*, para. 5.337.
[19] China's Second Written Submission, para. 24 n. 4.
[20] *Brazil – Taxation (AB)*, paras. 5.236, 5.313.
[21] *Brazil – Taxation (AB)*, para. 5.329.
[22] DSU, Article 3.2.
[23] *See Brazil – Taxation (AB)*, para. 5.279.

Article XX chapeau.

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

1. China has failed to rebut the existence of the U.S. public morals against unfair competition, forced labor, theft, and coercion

23. The United States has established the existence of the U.S. public morals against: (1) unfair competition, (2) forced labor, (3) theft, and (4) coercion, presenting extensive evidence in U.S. law and U.S. statements in other fora to demonstrate these fundamental U.S. norms.[24] China does not dispute the existence of the U.S. public morals against forced labor and theft.[25] With respect to unfair competition and coercion, China has failed to rebut the U.S. evidence, and instead now provides a range of arguments that are either not based on the text of Article XX(a), or refer to irrelevant information in an attempt to distract the Panel.

a. Unfair Competition

24. The United States has established the U.S. public moral against unfair competition, as reflected in various U.S. laws against anti-competitive behaviour, including the Sherman Act and the Federal Trade Commission Act.[26] China argues that U.S. competition laws concern enterprises, and not countries, and therefore the United States has failed to establish a U.S. public moral against a country attaining a significant percentage of global market share.[27] First, China's argument erroneously suggests that a Member must have a domestic law concerning the specific fact scenario to demonstrate a public moral. Rather, U.S. law prohibiting and criminalizing monopolization illustrates that the United States opposes such practices. Indeed, the United States does not simply view unfair competitive practices as merely a detriment to business and

[24] U.S. First Written Submission, paras. 68-74.
[25] China's Second Written Submission, paras. 54, 76, 78.
[26] U.S. First Written Submission, paras. 69-71.
[27] China's Second Written Submission, para. 69.

innovation. Ultimately, as expressed by the U.S. Supreme Court, these practices are viewed as a threat to the "preservation of our democratic political and social institutions".[28] U.S. law reflects that the marketplace should determine the winners and losers, and constrains behavior based on national concepts of right and wrong to ensure market-oriented outcomes.[29] U.S. law specifically prohibits the type of policies—like government-directed consolidation of state-owned enterprises—that China champions and has used to secure global dominance of the electric vehicle and renewable energy sectors.[30]

25. China attempts to distract the Panel by asserting that the United States also seeks to achieve "dominance" and "targets" certain other sectors.[31] China mischaracterizes U.S. actions, and in any event, China fails to explain how these arguments could be relevant to this dispute, which concerns the clean vehicle and renewable energy tax credits to counter China's practices. Nor has China explained how such evidence is akin to China's targeting and attaining dominance of sectors, and therefore relevant to its rebuttal.

26. As the United States has explained, China's targeting of the clean vehicle and renewable energy sectors for dominance, and then attainment of dominance, created the need for the measures at issue. Specifically, China has targeted the clean vehicle and renewable energy sectors for dominance by setting non-market-determined quantitative targets for the clean vehicle and renewable energy sectors,[32] leading Chinese economic actors to overinvest, to displace foreign companies in existing markets, and to take new markets as they develop.[33] China's

[28] U.S. First Written Submission, para. 71 (citing *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 4-5 (1958) (Justice Hugo Black) (US-28)).
[29] U.S. First Written Submission, paras. 69-75; U.S. Responses to First Set of Questions, para. 16.
[30] U.S. First Written Submission, paras. 69-75.
[31] China's Second Written Submission, paras. 59-64.
[32] U.S. First Written Submission, paras. 89, 91, 93; U.S. Second Written Submission, para. 21.
[33] U.S. Opening Statement at First Panel Meeting, para. 37; U.S. Second Written Submission, para. 21.

policy of global dominance is effectively an effort towards monopolization – contrary to the U.S. public moral against unfair competition, as reflected in the U.S. prohibition and criminalization of monopolization in any aspect of interstate trade or commerce.[34]

b. Coercion

27. The United States has also established the U.S. public moral against coercion.[35] China attempts to distract the Panel by alleging that the United States has engaged in coercive tactics towards Huawei, TikTok, and Nippon Steel.[36] But the varied U.S. actions in fact refute China's argument by illustrating egregious behavior by Chinese companies that are counter to U.S. principles, and U.S. efforts to protect its own national security. For example, in both 2019 and 2020, Huawei was indicted for theft of trade secrets, including by offering bonuses to employees who stole confidential information from U.S. companies, and for misappropriation of intellectual property from U.S. companies by violating confidentiality agreements.[37] TikTok infringes upon consumer data protection policies, as demonstrated by reports showing engineers in China accessing U.S. data, contrary to the company's representations,[38] and TikTok's illegal transfer of EU personal data to China, which resulted in a $600 million fine by Ireland.[39] As for Nippon Steel, a Japanese firm, China admits that U.S. actions are based on national security concerns,

[34] U.S. Opening Statement at First Panel Meeting, para. 41; U.S. Second Written Submission, para. 21.
[35] 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)).
[36] China's Second Written Submission, para. 74.
[37] U.S. Department of Justice, "Chinese Telecommunications Device Manufacturer and its U.S. Affiliate Indicted for Theft of Trade Secrets, Wire Fraud, and Obstructions of Justice," Jan. 28, 2019 (US-170): U.S. Department of Justice, "Chinese Telecommunications Conglomerate Huawei and Subsidiaries Charged in Racketeering Conspiracy and Conspiracy to Steal Trade Secrets," Feb. 13, 2020 (US-171).
[38] BuzzFeed News, "Leaked Audio from 80 Internal TikTok Meetings Shows that US User Data Has Been Repeatedly Accessed from China," June 17, 2022 (US-172).
[39] Fortune, "TikTok fined $600 million after the illegal transfer of EU personal data to China – one of the largest fines ever imposed," May 2, 2025 (US-173).

demonstrating the lack of any basis for its argument.[40]

c. Forced Labor and Theft

28. Although we welcome China's agreement that the United States has a public moral against forced labor,[41] China's dismissive comments regarding its arbitrary and decades-long detention of more than one million Uyghurs and other mostly Muslim minorities are concerning and revealing. China is attempting to repress Uyghurs and erase their cultures, separating them from their families and placing them in internment camps with harsh conditions, including physical and sexual assault.[42] China has dedicated significant resources to moving raw materials processing—including those used in the clean vehicle and renewable energy sectors—into the Uyghur Region, sometimes requiring companies to incorporate state-sponsored forced labor programs.[43] Such conduct, which China has not denied, violates the U.S. public moral against forced labor.

29. We also welcome China's acknowledgment that theft is a genuine public morals concern,[44] although note this appears to be a recent development in China's views.[45]

d. China's additional arguments are unpersuasive

30. China argues that a public moral cannot be "purely economic in nature",[46] though fails to

[40] China's Second Written Submission, para. 74.
[41] China's Second Written Submission, paras. 76-78.
[42] *See, e.g.*, Sheffield Hallam University, "Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region," Dec. 2022 (US-84); Virtual Hearing before the Subcommittee on Environment and Climate Change of the Committee on Energy and Commerce, House of Representatives, Serial No. 117-21 (Apr. 15, 2021) (excerpts) (US-107); G7 Leaders' Communique (2022) (US-37); U.S. Department of Labor, "Traced to Forced Labor: Solar Supply Chains Dependent on Polysilicon from Xinjiang, 2020 (US-62).
[43] *See, e.g.*, Sheffield Hallam University, "Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region," Dec. 2022 (US-84); Virtual Hearing before the Subcommittee on Environment and Climate Change of the Committee on Energy and Commerce, House of Representatives, Serial No. 117-21 (Apr. 15, 2021) (excerpts) (US-107); G7 Leaders' Communique (2022) (US-37); U.S. Department of Labor, "Traced to Forced Labor: Solar Supply Chains Dependent on Polysilicon from Xinjiang, 2020 (US-62).
[44] China's Second Written Submission, para. 47.
[45] *United States – Tariff Measures (Panel)*, para. 7.114.
[46] China's Second Written Submission, para. 47.

make clear which U.S. public moral China considers "purely economic" and even admits that theft is a public moral that encompasses an economic concern.[47]

31. China's position is not based on the text of Article XX(a),[48] as the ordinary meaning of the term "public morals" does not suggest limits on a Member's community or national standards of right or wrong, and that public morals cannot (or must not) relate to issues of economic concern.[49] The context provided by other paragraphs of Article XX affirmatively rebuts the view that the phrase "public morals" could be read to exclude any concerns that are "economic" in nature.[50] Specifically, Article XX(a) does not include a proviso that could be understood to narrow the scope of the core operative text. Economic and moral concerns may overlap; some types of conduct or behaviour would appear to be immoral precisely because of the economic harms that result from such conduct or behavior.[51] Accordingly, the Panel should reject China's unfounded assertions.

32. China asserts that because certain of China's practices are covered by other WTO Agreements, such practices cannot implicate another Member's public moral concerns.[52] However, China's argument comes to nothing, as exceptions exist to exclude matters or permit actions that would otherwise be covered.

33. Lastly, China attempts to confuse the Panel by incorrectly suggesting the United States has asserted that it has public morals against "targeting" and "dominance". However, the United States has not asserted that "targeting" and "dominance" are by themselves distinct U.S. public morals; rather, they are violative of U.S. norms against unfair competition, forced labor, theft,

[47] China's Second Written Submission, para. 47.
[48] U.S. Responses to First Set of Panel Questions, paras. 32-37.
[49] U.S. Responses to First Set of Panel Questions, para. 32.
[50] U.S. Responses to First Set of Panel Questions, para. 33.
[51] U.S. Response to First Set of Panel Questions, paras. 34-36.
[52] China's Second Written Submission, para. 45.

and coercion.[53]

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

34. China's targeting for dominance of the clean vehicle and renewable energy sectors and other non-market policies and practices through which it pursues that dominance violate the U.S. public morals against unfair competition, forced labor, theft, and coercion.[54]

35. Notably, China continues to avoid engaging with U.S. arguments and evidence concerning China's attainment of global dominance in the clean vehicle and renewable energy sectors through the use of non-market policies and practices. The United States has provided overwhelming evidence demonstrating longstanding concerns with China's non-market policies and practices and their detrimental effects on the United States and other countries.[55] China cannot refute this evidence, nor does it.

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

36. The United States has demonstrated that the clean vehicle and renewable energy tax credits protect U.S. public morals. Article XX(a) does not require any showing that a measure is "designed to" protect or "not incapable" of protecting public morals.[56] Although China portrays the design test as the first step of the Article XX(a) inquiry,[57] it now presents the same arguments for both the "design" and the "necessary" steps,[58] thereby demonstrating the inutile nature of the exercise.

37. However, if the Panel opts to consider a "design step", the evidence and arguments clearly show that the measures at issue are designed to or not incapable of protecting U.S. public

[53] *See* U.S. Second Written Submission, para. 24.
[54] *See* U.S. Second Written Submission, para. 24.
[55] U.S. Second Written Submission, para. 25.
[56] U.S. Responses to First Set of Panel Questions, paras. 38-40; U.S. Second Written Submission, para. 29.
[57] China's Responses to First Set of Panel Questions, para. 18.
[58] China's Second Written Submission, para. 124.

morals. The design, content, structure, and operations of the measures protect U.S. public morals.

a. Clean Vehicle Tax Credit

38. The North American assembly requirement, the battery components sourcing requirement, and the critical minerals sourcing requirement of the Clean Vehicle Tax Credit all are designed to protect or are not incapable of protecting U.S. public morals because they all involve sourcing from either the United States or countries that are a party to a U.S. free trade agreement (FTA). As the United States has explained, U.S. FTAs protect U.S. public morals because they contain provisions that help maintain fair competition and discourage forced labor, theft, and coercion—such as provisions prohibiting anti-competitive conduct,[59] reaffirming labor obligations,[60] providing for the protection and enforcement of IP rights,[61] regulating state-owned enterprises,[62] protecting source code,[63] and prohibiting technology transfer requirements in connection with covered transactions.[64]

39. As an example, the United States-Japan Critical Minerals Agreement aims "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

[59] *See* U.S. Opening Statement at First Panel Meeting, para. 49 (citing 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)).
[60] *See* U.S. Opening Statement at First Panel Meeting, para. 49 (citing 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)).
[61] *See* U.S. Opening Statement at First Panel Meeting, para. 49 (citing 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)).
[62] *See* U.S. Opening Statement at First Panel Meeting, para. 49 (citing 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)).
[63] *E.g.*, United States-Mexico-Canada Agreement, Article 19.16 (US-87).
[64] United States-Mexico-Canada Agreement, Article 14.10 (US-174); United States-Korea Free Trade Agreement, Article 11.8 (US-175); United States-Peru Free Trade Agreement, Article 10.9 (US-176).

competition and market-oriented conditions for trade in critical minerals, ensure robust labor and environment standards . . . ."[65] The Agreement contains provisions to facilitate trade in critical minerals, and to build a supply chain that adopts and maintains labor rights, among other commitments.[66] Contrary to China's argument that the agreement lacks obligations concerning intellectual property, theft, coercion, forced technology transfer, or regulating state-owned enterprise,[67] Article 3.4 of the Agreement reflects that the parties will cooperate on non-market policies and practices of non-parties, affecting trade in critical minerals.[68] This would include all of the aforementioned issues.

40. The United States also has provided numerous statements from Members of Congress and Biden Administration officials contemporaneous with or following the passage of the IRA, demonstrating that the expected operation of the Clean Vehicle Tax Credit was to counter China's non-market policies and practices and dominance in the clean vehicle and renewable energy sectors.[69] China's own evidence likewise demonstrates this point.[70]

41. Lastly, although unnecessary to demonstrate, the United States has shown—and China has failed to rebut—that the Clean Vehicle Tax Credit has shown meaningful results,

[65] U.S. Opening Statement at First Panel Meeting, para. 50 (citing 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)).
[66] U.S. Opening Statement at First Panel Meeting, para. 50 (citing 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)). *See also* U.S. Internal Revenue Service, "Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations," 89 Fed. Reg. 37706, 37725 (May 6, 2024) (CHN-18).
[67] China's Second Written Submission, para. 90.
[68] Article 3.4, 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-42).
[69] U.S. Responses to First Set of Panel Questions, paras. 68-81; U.S. Second Written Submission, paras. 35-37.
[70] U.S. Second Written Submission, para. 37 (citing Peterson Institute for International Economics, "Working Paper 23-1, Industrial policy for electric vehicle supply chains and the US-EU fight over the Inflation Reduction Act" (May 2023), p. 8 (CHN-19)).

demonstrating the fruition of the expected operation of the measure.[71] The Clean Vehicle Tax Credit incentivized use of critical minerals sourced from U.S. FTA partners, including Chile and Mexico.[72] Likewise, EV investments and manufacturing capacity have also increased in the United States.[73]

42. Thus, fundamentally, the Clean Vehicle Tax Credit has resulted in investments in the United States and in other Members that have made commitments that align with U.S. public morals. The Clean Vehicle Tax Credit therefore protects U.S. public morals.

43. China's arguments to the contrary are not persuasive. For instance, China alleges that the United States has made up an "FTA partner story", despite recognizing that the U.S. Department of the Treasury has explicitly defined the term "free trade agreement" in its regulations, providing for the content of the FTA to be considered.[74] This includes establishing high-standard disciplines in key areas affecting trade (such as labor and environmental protections), reducing or eliminating trade barriers and restrictions on exports, and commitments to refrain from new trade barriers or from imposing export restrictions.[75] As further evidence, Treasury, in explaining the definition of "free trade agreement", stated that the purpose of the Clean Vehicle Tax Credit was to "expand the incentives for taxpayers to purchase new clean vehicles and for vehicle manufacturers *to increase their reliance on supply chains in the United States and in countries with which the United States has reliable and trusted economic relationships*."[76]

44. In an attempt to distract the Panel, China points to recent trade actions by the United

[71] US. First Written Submission, paras. 110-112; U.S. Second Written Submission, paras. 38-40.
[72] U.S. First Written Submission, para. 110.
[73] U.S. First Written Submission, para. 111.
[74] China's Second Written Submission, para. 88; U.S. Second Written Submission, paras. 87-90.
[75] U.S. Second Written Submission, para. 88 (citing Treas. Reg. § 1.30D-2(b)(13)(i) (CHN-24)).
[76] U.S. Second Written Submission, para. 89 (citing U.S. Internal Revenue Service, "Section 30D New Clean Vehicle Credit, Proposed Rule," 88 Fed. Reg. 23370, 23376-23377 (Apr. 17, 2023) (CHN-20) (emphasis added)).

States and erroneously suggests these actions undermine U.S. arguments in this dispute. Tariffs on steel, aluminum, and automobiles under a different statute do not negate the availability of the Clean Vehicle Tax Credit, however, and vehicles that meet those requirements still receive the credit.

45. China also repeatedly asserts that the FEOC exclusion by itself "directly and comprehensively" advances the U.S. public morals at issue,[77] but this argument ignores that the FEOC exclusion does only just that – it excludes FEOC content. Other aspects of the Clean Vehicle Tax Credit *incentivize* production in countries that align with U.S. public morals.

46. China also attempts to have it both ways in arguing (erroneously) that the 45W leasing provisions demonstrate that the Clean Vehicle Tax Credit was not designed for the purpose of protecting U.S. public morals.[78] In fact, China's assertions regarding the 45W leasing provisions undermine its own argument that Chinese clean vehicle products are effectively excluded from the U.S. market,[79] and China now acknowledges that Chinese-origin vehicles are in the U.S. market.[80]

47. Further, in 2021, prior to the IRA's passage, consumer leasing of passenger vehicles was only 23.8 percent,[81] and for the much smaller EV market, leasing of EVs was only 31 percent of the U.S. market.[82] Therefore, it would have been logical at that time to focus on incentivizing car purchases—the majority of the EV market—to align with U.S. public morals through the Clean Vehicle Tax Credit.

48. Lastly, if the Panel were to consider the 45W leasing credit as evidence, then the Panel

[77] China's Second Written Submission, paras. 99-106.
[78] China's Second Written Submission, paras. 107-113.
[79] China's First Written Submission, para 31; China's Opening Statement at First Panel Meeting, para. 38.
[80] China's Second Written Submission, para. 110.
[81] Bureau of Transportation Statistics, New and Used Passenger Car and Light Truck Sales and Leases (US-177).
[82] China's Second Written Submission, para. 109.

should recognize that China's arguments actually undermine its claims under Articles I:1 and III:4 of the GATT 1994, as well as Article 2.1 of the TRIMs Agreement. That is, if the Panel agrees that Chinese vehicles have access to the U.S. market through the 45W leasing provision, and are also able to obtain a $7500 credit,[83] Chinese clean vehicles are not being accorded treatment "less favorable" than domestic products under Article III:4 of the GATT 1994, and Article 2.1 of the TRIMS Agreement, and Chinese vehicles are not being denied an "advantage" under Article I:1 of the GATT 1994. Indeed, China readily admits that because of the eligibility restrictions in the Clean Vehicle Tax Credit, "many consumers prefer to lease an electric vehicle of their choice and still obtain the benefit of the tax credit"[84] and Chinese-origin vehicles are in the U.S. market.[85] Simply put, China cannot have it both ways.

b. Renewable Energy Tax Credits

49. The design, content, structure, and operation of the renewable energy tax credits demonstrate that they protect U.S. public morals. These credits seek to restore fair competition and opportunities to market-oriented businesses and workers who, consistent with U.S. laws, operate in a manner that reflects U.S. standards of right and wrong. For example, the renewable energy tax credits protect U.S. public morals against unfair competition and forced labor through the prevailing wage requirement, which requires companies to satisfy certain wage requirements.[86]

50. The domestic content bonus provisions protect U.S. public morals against unfair competition, forced labor, theft, and coercion. Given the profound effects of China's non-market policies and practices in the steel sector and the persistence of this problem despite other

[83] China's Second Written Submission, para. 110.
[84] China's Second Written Submission, para. 109.
[85] China's Second Written Submission, para. 110.
[86] U.S. Opening Statement at First Panel Meeting, para. 48; U.S. Second Written Submission, para. 42.

attempts to address it,[87] the domestic content bonus provisions protect U.S. public morals by counteracting the effects of China's non-market policies and practices, which in these areas are global in nature and particularly acute.[88]

51. Further, the United States also has provided numerous statements from Members of Congress and Biden Administration officials contemporaneous with or following the passage of the IRA, demonstrating that the expected operation of the domestic content bonus provisions was to boost the U.S. steel sector and U.S. manufacturing, and counter China's non-market policies and practices and dominance in the steel sector.[89]

52. China feigns confusion that the domestic content requirements apply only to bonus amounts under the renewable tax credits, and quibbles that the United States has not suggested China has targeted the steel sector for dominance.[90] These arguments fail, as China does not even attempt to refute that it is the principal driver of the global steel excess capacity crisis when this Panel was established (and remains so today).[91] Nor does China deny that global excess capacity in the steel sector has significant effects on downstream manufacturing sectors.[92]

53. Lastly, although unnecessary to demonstrate, the United States has shown, and China has failed to rebut, that the renewable energy tax credits produced meaningful results and expanded manufacturing capacity, demonstrating the fruition of the expected operation of the measure.[93]

54. Therefore, the renewable energy tax credits are designed to or are not incapable of

[87] *See* U.S. Responses to First Set of Panel Questions, paras. 55-65.
[88] *See* U.S. Responses to First Set of Panel Questions, paras. 55-65.
[89] U.S. Second Written Submission, paras. 45-49.
[90] China's Second Written Submission, para. 121.
[91] *See, e.g.*, Global Forum on Steel Excess Capacity, Global excess capacity and employment in steel and downstream activities (March 2025), pp. 9, 20 (US-104).
[92] *See, e.g.*, Global Forum on Steel Excess Capacity, Global excess capacity and employment in steel and downstream activities (March 2025), pp. 9, 20 (US-104).
[93] US. First Written Submission, paras. 109; U.S. Opening Statement at First Panel Meeting, para. 54; U.S. Second Written Submission, para. 50.

protecting U.S. public morals.

B. The measures at issue were necessary to protect U.S. public morals

55. The clean vehicle and renewable energy tax credits were necessary to protect U.S. public morals when China had already attained global dominance of the clean vehicle and renewable energy sectors.

56. The Panel's assessment—based on the text of Article XX(a) of the GATT 1994— should be to determine whether a measure is indispensable, essential, or requisite to protect public morals.[94] In making this determination, prior adjudicators have considered whether the measure is apt to contribute to the objective.[95]

57. First, the measures are apt to contribute to U.S. public morals by promoting U.S. and other investments, thereby reducing dependence on China.[96]

58. Second, the United States has established the deeply held and enduring nature of the U.S. public morals against unfair competition, forced labor, theft, and coercion, therefore demonstrating the fundamental importance to the United States of ensuring that such public morals are upheld.[97]

59. The measures are also necessary in light of China's attainment of global dominance and weaponization of that dominance in the clean vehicle and renewable energy sectors. China has threatened and now has actually taken action to choke off the supply of critical minerals and supplies that are necessary for production in the clean vehicle and renewable energy sectors in other countries, including the United States.[98]

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[94] U.S. First Written Submission, para. 115 (citing *The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 1895 (US-15)).
[95] *See US – Tariff Measures* (Panel), paras. 7.178-7.179; *EC – Seal Products* (AB), para. 5.213.
[96] *See, e.g.*, U.S. First Written Submission, para. 120; U.S. Opening Statement at First Panel Meeting, para. 60.
[97] U.S. First Written Submission, paras. 68-83.
[98] U.S. Second Written Submission, para. 58.

60. Prior versions of the clean vehicle and renewable energy tax credit were also not successful in protecting U.S. public morals. 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 non-market policies and practices targeting the clean vehicle and renewable energy sectors. Figures 1 to 3 discussed earlier today make evident that no other countries have been able to maintain or restore its manufacturing capacity or market share since China's monopolization of the clean vehicle and renewable energy sectors.

61. Similarly, the United States has also detailed that previous U.S. measures attempting to address the effects of global non-market excess capacity on the U.S. steel sector and U.S. manufacturing have likewise been unsuccessful in protecting U.S. public morals.[99] For years, global excess capacity has menaced the U.S. steel sector and related manufacturing sectors.[100] And this global steel excess capacity crisis has worsened despite numerous and varied trade actions and extensive international engagement,[101] with China accounting for over half of global steel output in 2020.[102]

62. China also argues, without foundation, that a measure for which justification is sought under Article XX(a) must concern imported goods that offend public morals or because of the manner in which the imported product was produced.[103] By its terms, however, Article XX(a) refers to measures that are "necessary to protect public morals," *not* measures necessary to protect public morals from morally offensive products. Nothing in the text of Article XX(a)

[99] *See* U.S. Responses to First Set of Panel Questions, paras. 62-63; U.S. Second Written Submission, paras. 45-49.
[100] *See, e.g.*, News Release, Sen. Rob Portman of Pennsylvania, Portman, Brown, Braun, Casey Urge USTR to Prioritize Extension of the Global Forum on Steel Excess Capacity (Oct. 2019) (US-144).
[101] *See, e.g.*, Global Forum on Steel Excess Capacity, Impacts of global excess capacity on the health of the GFSEC steel industries (March 2024), para. 39 (US-86); Global Forum on Steel Excess Capacity, Steel Exports, trade remedy actions and sources of excess capacity (May 2024), paras. 34-35 (US-85).
[102] Christopher D. Watson, Domestic Steel Manufacturing: Overview and Prospects (May 17, 2022) (US-146).
[103] China's Second Written Submission, paras. 48, 132-133.

indicates that a measure justified under that provision "must" apply to any particular product, much less products that are themselves inherently morally offensive. A measure may therefore be necessary to protect public morals without being applied only to products that are inherently morally offensive.

63. But regardless, the measures at issue *are* directed to reduced dependencies on products that are themselves offensive to U.S. public morals—that is the measures are directed to reduce U.S. reliance on the products impacted by the measures at issue because they are a result of China's targeting and dominance of the clean vehicle and renewable energy sectors, including through the use of other non-market policies and practices.

64. Upon an objective review of the evidence, the Panel should find that the measures at issue were indispensable, essential, or requisite to ensure the protection of U.S. public morals against unfair competition, forced labor, theft, and coercion.

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

65. The United States has demonstrated that the measures at issue do not apply "arbitrary or unjustifiable discrimination between countries where the same conditions prevail," nor are they a "disguised restriction on international trade," within the meaning of the Article XX chapeau.

1. The measures at issue do not discriminate because the same conditions do not prevail between China and the United States

66. The United States has not applied the measures in a manner that constitutes "arbitrary or unjustifiable discrimination between countries where the same conditions prevail" because the United States and China very clearly do not have the same conditions.[104] China has targeted the clean vehicle and renewable energy sectors for global dominance, and has attained global

[104] U.S. First Written Submission, paras. 128-129.

dominance of those sectors, including through the use of other non-market policies and practices.

67. The United States and other Members have also long expressed concerns regarding the non-market conditions that prevail in China.[105] For instance, *Canada* has noted that "China's intentional, state-directed policy of overcapacity and lack of rigorous labour and environmental standards threaten workers and businesses in the EV industry around the world and undermine Canada's long term economic prosperity."[106] U.S. submissions are replete with further examples of other Members—not just the United States—that have expressed concerns over the non-market conditions in China.[107]

68. Next, neither the Economic and Free Trade Agreement between the Government of the United States and the Government of the People's Republic of China (otherwise known as the "Phase One Agreement"), nor China's WTO Protocol of Accession rise to the level of an FTA within the meaning of the Clean Vehicle Tax Credit, and fail to demonstrate that the United States has discriminated where the same conditions prevail.[108]

69. As China knows, the Phase One Agreement "did not meaningfully address the more fundamental concerns that the United States has with China's state-led, non-market policies and practices and their harmful impact on the U.S. economy and U.S. workers and businesses."[109]

70. Further, as China is also well aware, China's lack of compliance with the Phase One Agreement is a serious concern to the United States, as China has failed to live up to its

[105] U.S. Opening Statement at First Panel Meeting, para. 9; U.S. Second Written Submission, paras. 77-81.
[106] U.S. Second Written Submission, para. 78 (citing Department of Finance Canada, Canada implementing measures to protect Canadian workers and key economic sectors from unfair Chinese trade practices (Aug. 26, 2024) (US-152)).
[107] *E.g.*, U.S. Opening Statement at First Panel Meeting, para. 9; U.S. Second Written Submission, paras. 77-81.
[108] *See* China's Second Written Submission, paras. 91-94, 140.
[109] U.S. Second Written Submission, para. 72 (Office of the U.S. Trade Representative, 2024 Report to Congress on China's WTO Compliance, p. 27 (US-153)).

commitments in numerous areas.[110] For instance:

- China has not abandoned its use of state-directed and supported outbound foreign direct investment as a tool to acquire technology.[111]
- 2022 and 2023 surveys by the European Chamber of Commerce in China reported that technology transfer was ongoing in China.[112]
- China has not ceased its practice of conducting and supporting unauthorized cyber intrusions into the networks of U.S. companies in order to steal their IP, including trade secrets, and confidential business information.[113]

71. With respect to China's Protocol of Accession, "China has a poor record when it comes to complying with WTO rules and observing the fundamental principles on which the WTO agreements are based . . . . Too often, China flouts the rules to achieve industrial domination objectives."[114] Indeed, in numerous WTO Trade Policy Reviews of China, the United States and other Members have expressed significant concerns with the conditions that prevail in China.[115]

72. China's domestic competition and anti-monopoly laws also do not provide any meaningful assurances regarding the conditions that prevail in China. Contrary to China's assertions,[116] U.S. companies have cited selective enforcement of the Anti-Monopoly Law

[110] U.S. Second Written Submission, para. 73.
[111] U.S. Second Written Submission, para. 73 (citing 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, p. 45 (footnotes omitted) (US-64)).
[112] U.S. Second Written Submission, para. 73 (citing Office of the U.S. Trade Representative, "Four-Year Review," May 14, 2024, p. 50 (footnotes omitted) (US-64)).
[113] U.S. Second Written Submission, para. 73 (citing Office of the U.S. Trade Representative, "Four-Year Review," May 14, 2024, pp. 232-24 (footnotes omitted) (US-64)).
[114] U.S. Second Written Submission, para. 81 (citing Office of the U.S. Trade Representative, 2024 Report to Congress on China's WTO Compliance, p. 18 (US-153)).
[115] *See* U.S. Second Written Submission, para. 81 n. 148.
[116] China's Responses to the First Set of Panel Questions, para. 32; China's Second Written Submission, para. 93.

against foreign companies seeking to do business in China as a major concern.[117] Accordingly, the same conditions do not prevail between the United States and China.

73. Contrary to China's suggestion that its challenge should serve as a catalyst to review the measure on behalf of all other countries,[118] the Panel should focus on whether the same conditions prevail between the United States and China and whether the measures at issue arbitrarily or unjustifiably discriminate between the United States and China. The answer to that inquiry is plainly no. China's request for the Panel to examine the relevant conditions between the United States and other countries beyond China essentially invites the Panel to use a dispute brought by one Member as a basis to exercise global review of a measure on behalf of all Members. Such a review is not consistent with WTO dispute settlement, which is concerned with situations in which "any [Member] should consider that any benefit accruing *to it* directly or indirectly under this Agreement is being nullified or impaired,"[119] and "the prompt settlement of situations in which a Member considers that any benefits accruing *to it* are being impaired by measures taken by another Member."[120] Therefore, it would not be an appropriate exercise for WTO dispute settlement to review a claim by China that "benefits accruing [not] to it"—but to *another* Member—are being nullified or impaired.

74. Prior adjudicators have also supported this view. For instance, the panel in *Indonesia – Import Licensing Regime* explained that "the type or cause of the violation that has been found to exist may inform the determination of which countries should be compared with respect to the conditions that prevail within those countries."[121] Here, where China has raised claims under

[117] Office of the U.S. Trade Representative, 2024 Report to Congress on China's WTO Compliance, pp. 53-54 (US-153).
[118] China's Second Written Submission, para. 139.
[119] GATT 1994, Article XXIII:1 (italics added).
[120] DSU, Article 3.3 (italics added).
[121] *Indonesia – Import Licensing Regimes (Panel)*, para. 7.825.

Article I:1 concerning the Clean Vehicle Tax Credit not according advantages to Chinese products, and Article III:4 concerning the clean vehicle and renewable energy tax credits failing to accord treatment no less favorable to Chinese products,[122] the analysis under the chapeau is properly limited to the United States and China.

a. The Clean Vehicle Tax Credit does not discriminate between countries where the same conditions prevail

75. For completeness, the United States also demonstrates that the Clean Vehicle Tax Credit does not discriminate where the same conditions prevail—that is, China is not arbitrarily or unjustifiably discriminated against because the same conditions do not prevail between it and the FTA partners. None of these partners have targeted and attained global dominance in the clean vehicle and renewable energy sectors through non-market policies and practices. Further U.S. FTAs contain provisions that help maintain U.S. public morals.

76. China's attempts to undermine the U.S. distinction by asserting that U.S. FTAs are heterogenous.[123] However, logically, it makes sense for FTAs to be heterogenous since they are commitments undertaken to address issues between two or more countries, and each country has individual trade concerns. And for purposes of this dispute, it is the *commonality* of provisions across U.S. FTAs that is important, namely provisions that discourage unfair competition, forced labor, theft, and coercion.[124]

b. The renewable energy tax credits do not discriminate between countries where the same conditions prevail

77. Nor do the domestic content requirements of the renewable energy tax credits discriminate where the same conditions prevail. China complains about differences between the

[122] Panel Request, WT/DS623/3, paras. 21-22.
[123] China's Second Written Submission, para. 140.
[124] *See* U.S. Opening Statement at First Panel Meeting, para. 49.

eligibility criteria for the renewable energy tax credits, as opposed to the Clean Vehicle Tax Credit, but these merely reflect differences in the sectors to which these criteria apply.

78. China does not dispute the steel excess capacity crisis or that this crisis has affected steel markets globally, such as through trade distortion, trade diversion, and non-market investments by Chinese SOEs.[125] Nor does China dispute that the steel excess capacity crisis has affected downstream manufacturing in the United States,[126] or that the United States has imposed trade remedies and other measures on steel imports in response to concerns regarding excess steelmaking capacity.[127]

79. The situation differs for critical minerals and batteries, for example, where the United States seeks to work with U.S. allies that have significant mining experience to balance China's dominance.[128] Thus, given the undisputed facts surrounding the steel and manufacturing sectors and the conditions that prevail with respect to those sectors, it is entirely logical that the renewable energy bonus credits would require use of domestic content.

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

80. Lastly, as the United States has explained, the requirements to fulfil the tax credits are not a disguised restriction.[129] The United States has taken no steps to conceal the requirements of the measures at issue.

81. Accordingly, the Panel should find that the measures at issue are justified because they are

[125] *See* U.S. Responses to First Set of Panel Questions, paras. 55-65.
[126] *See, e.g.*, Testimony as prepared for Congresswoman Marcy Kaptur, U.S. Department of Commerce Hearing on National Security Investigation on Steel Imports (May 24, 2017) (US-142); News Release, Sen. Rob Portman of Pennsylvania, Portman, Brown, Braun, Casey Urge USTR to Prioritize Extension of the Global Forum on Steel Excess Capacity (Oct. 2019) (US-144).
[127] *See generally* Christopher D. Watson, Domestic Steel Manufacturing: Overview and Prospects (May 17, 2022) (US-146).
[128] *See, e.g.*, U.S. Responses to Panel Questions, paras. 72-73, 76.
[129] U.S. First Written Submission, paras. 133-135.

necessary to protect U.S. public morals within the meaning of Article XX(a). Furthermore, they are not being applied in manner inconsistent with the chapeau of Article XX.

III. THE FEOC EXCLUSION IS COVERED BY ARTICLE XXI(B)

82. China has also failed to rebut U.S. arguments that the FEOC exclusion to the Clean Vehicle Tax Credit is covered by the essential security exception at Article XXI(b), and that Article XXI(b) is self-judging by its terms. Instead, China asks this Panel to ignore that—despite the self-judging nature of Article XXI(b)—the United States has pointed to publicly available information to support its invocation. China also asks this Panel to read Article XXI(b) in a manner that, as even China appears to acknowledge, finds no support in the customary rules of interpretation of public international law, and attempts to hide this lack of support by citing erroneous statements by prior WTO panels. The Panel should not close its eyes to the evidence presented, nor should this Panel adopt erroneous statements of prior panels or interpret Article XXI(b) contrary to the ordinary meaning of its terms.

A. Although Article XXI(b) is self-judging by its terms, the United States has pointed to publicly available information to support its invocation

83. Article XXI(b) is self-judging by its terms.[130] Notwithstanding the self-judging nature of Article XXI(b), from the beginning of this dispute the United States has made available information regarding the U.S. invocation of Article XXI.[131] Perhaps recognizing the self-evident national security basis for the FEOC exclusion, China suggests—incorrectly—that it is "incumbent" on the United States to meet some "burden of proof" under Article XXI(b) and

[130] *See* U.S. First Written Submission, para. 47 & footnote 89; U.S. First Written Submission in *United States – Origin Marking (Hong Kong, China)* (Panel) (US-71).
[131] U.S. Second Written Submission, paras. 99-100; U.S. Statement, Minutes of Meeting of Dispute Settlement Body (September 23, 2024) (WT/DSB/M/493), para. 3.6; U.S. First Written Submission, paras. 48-49 & footnote 90; U.S. Opening Statement at First Panel Meeting, paras. 79-81.

feigns disappointment that the United States has not "discharged" this burden.[132] China's arguments come to nothing because Article XXI(b) is self-judging, as interpreted in accordance with the customary rules of interpretation of public international law, and even if the Panel were to adopt China's incorrect reading of Article XXI(b) the United States has discharged China's invented "burden".

84. The self-judging nature of Article XXI(b) is established by the text of that provision—particularly the clause that begins with "which it considers"—in its context, and in the light of the treaty's object and purpose.[133] This interpretation of Article XXI is confirmed by supplementary means of interpretation, including Uruguay Round negotiating history.[134] Thus, the text of Article XXI assigns no burden of proof to the United States other than invocation.

85. Notably, the views China expresses in this dispute differ from China's previous view that the WTO should exercise "extreme caution" regarding a Member's invocation of Article XXI(b) and China's belief that each Member has "sole discretion" relating to its own essential security interests.[135] Unfortunately, China's interpretation of Article XXI would appear to differ depending on whether it is the complaining party.

86. Even under the incorrect reading of Article XXI(b) that China posits here, however, the United States has discharged China's invented "burden" by invoking Article XXI clearly, and also referring to its national security legislation.[136] China's contrary protestations ignore the self-

[132] *See* China's Second Written Submission, paras. 152, 213, 223-226.
[133] *See* U.S. First Written Submission in *United States – Origin Marking (Hong Kong, China)* (Panel), paras. 27-78 (US-71).
[134] *See* U.S. First Written Submission in *United States – Origin Marking (Hong Kong, China)* (Panel), paras. 79-135 (US-71).
[135] *See Russia - Traffic in Transit*, Annex D-4, Executive Summary of the Arguments of China, WT/DS512/R/Add/1, para. 9; *Russia – Traffic in Transit*, para. 7.41.
[136] *See* U.S. Statement, Minutes of Meeting of Dispute Settlement Body (September 23, 2024) (WT/DSB/M/493), para. 3.6; U.S. First Written Submission, para. 48 & footnote 90; U.S. First Written Submission, paras. 8, 23-27, 49-51; U.S. Opening Statement at First Panel Meeting, paras. 79-81; U.S. Second Written Submission, paras. 99-101.

evident national security basis for excluding from tax benefits foreign terrorist organizations; those convicted of espionage; or entities owned by, controlled by, or subject to the jurisdiction of non-allied foreign nations. The Panel should decline China's invitation to ignore the obvious.

B. China's arguments regarding Article XXI(b) stray from the ordinary rules of interpretation of public international law

87. Perhaps acknowledging that Article XXI(b) is self-judging as interpreted in accordance with customary rules of interpretation of public international law, in arguing to the contrary China grasps for what it terms "accepted principles of treaty interpretation".[137] China does not explain, however, what "principles" it is referring to, how they might have been "accepted," and how these principles compare with the customary rules of interpretation of public international law.[138] Later, China purports to apply the customary rules of interpretation of public international law,[139] but in fact strays from them significantly by importing into Article XXI(b) an "obligation of good faith" of China's own invention,[140] relying on what China terms the "structural element[s]" of Article XXI(b),[141] and ultimately pointing to an effectiveness principle that China declines to define.[142] China's arguments fail on all counts.

88. Structural or visual aspects of Article XXI(b) do not alter the ordinary meaning of its terms,[143] and have no basis in interpretation under the customary rules of interpretation of public international law. China offers no explanation for a contrary understanding. China's assertions regarding good faith amount to an attempt to rewrite Article XXI(b) to insert the text, and impose the requirements of the Article XX chapeau. Even aside from this error, China makes no

[137] China's Second Written Submission, para. 147.
[138] DSU, Article 3.2.
[139] China's Second Written Submission, para. 162.
[140] China's Second Written Submission, para. 165.
[141] China's Second Written Submission, paras. 166, 168.
[142] China's Second Written Submission, para. 165, 172, 209.
[143] U.S. Opening Statement at First Panel Meeting, para. 83.

allegation of bad faith by the United States. Nor could it as the FEOC exclusion incorporates longstanding U.S. national security laws.

89. China's vague arguments regarding effectiveness also fail.[144] The International Law Commission (ILC) rejected the approach that China appears to suggests here by declining to include a separate rule on effectiveness in the VCLT, as such a separate rule "might encourage attempts to extend the meaning of treaties illegitimately on the basis of the so-called principle of 'effective interpretation'."[145] The Panel should decline to do here what the ILC chose *not* to do in VCLT Article 31. And in any event, interpreting Article XXI(b) as self-judging is consistent with the principle of effective treaty interpretation.[146]

C. China's reliance on the *Hong Kong Origin Marking* report is misplaced

90. Perhaps acknowledging the lack of support for its position in the ordinary meaning of the terms of Article XXI(b) itself, China repeatedly points to the WTO report in *United States – Hong Kong Origin Marking*.[147] That report is not persuasive, however, and this Panel should not repeat its errors.

91. For example, although that panel paid lip service to "the 'primacy of the text as the basis for interpretation'" in a footnote, the report in fact focused on the "structure" of Article XXI(b) and the "visual" separation of the subparagraphs, which the report attempted to "illustrate" with invented diagrams.[148] Here, China simply adopts that panel's erroneous analysis and its invented diagrams, stating that it "considers that the subparagraphs of Article XXI(b) form their own

[144] China's Second Written Submission, paras. 165, 172, 209.
[145] Draft Articles on the Law of Treaties with Commentaries (1966), YEARBOOK OF THE INTERNATIONAL LAW COMMISSION, 1966, vol. II, at 219 (CHN-113).
[146] U.S. Opening Statement at First Panel Meeting, para. 84.
[147] *See, e.g.* China's Second Written Submission, paras. 149, 151, 166, 169-172, 175, 176, 182, 186, 190, 198, 202, 206-207, 210, 212, 219.
[148] *US – Origin Marking (Hong Kong China)*, paras. 7.43-7.46, 7.53, 7.57, 7.88.

structural element".[149]

92. That panel's discussion of context is equally erroneous, for example suggesting that the specific, textual reference to a panel determination in Article 26.2 of the DSU "serves a similar function of restricting a Member's judgment".[150] To recall, DSU Article 26.2 provides in relevant part that "Where and to the extent that such party considers *and a panel determines* that the matter is covered by this paragraph, the procedures of this understanding shall apply . . .".[151] Neither China nor this prior report explains how, under the customary rules of interpretation of public international law, the existence of subparagraphs can serve a similar function to explicit terms calling for a panel determination.

93. Notably, in its discussion of object and purpose, China does *not* appear to agree with that panel's reasoning, implicitly rejecting the statement that "the political nature of essential security interests does not *in itself* warrant the exclusion of any evaluation thereof by a panel" [152] and making contrary representations to the DSB.[153] China's convenient side-stepping of this particular erroneous statement in the report is telling, and it is unfortunate that China asks this Panel to examine political matters in this dispute.

94. In sum, finding no support for its (current) interpretation of Article XXI(b) in the ordinary meaning of the terms of that provision, China attempts to hide behind the erroneous analysis of a prior WTO panel report—though only when that panel's errors are convenient for China. This panel should decline to repeat the errors of prior panels and instead should find that Article XXI(b), as interpreted according to the customary rules of interpretation of public

[149] China's Second Written Submission, para. 166.
[150] *US – Origin Marking (Hong Kong Chin)*, para. 7.131; China's Second Written Submission, para. 189.
[151] DSU Article 26.2 (emphasis added).
[152] *US – Origin Marking (Hong Kong Chin)*, paras. 7.147; China's Second Written Submission, paras. 191-194.
[153] *See, e.g.*, China's Statement, Minutes of Meeting of Dispute Settlement Body (May 13, 2025) (WT/DSB/M/500), para. 2.4.

international law, is self-judging; and accordingly, the sole finding that this Panel may make with respect to FEOC, consistent with its terms of reference under Article 7.1 of the DSU, is to note the U.S. invocation of Article XXI.

IV. CONCLUSION

95. For these reasons, and those previously developed in U.S. submissions, the Panel should reject China's claims in their entirety.

96. 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. Thank you.