UNITED STATES – CERTAIN TAX CREDITS UNDER THE INFLATION REDUCTION ACT

(DS623)

SECOND WRITTEN SUBMISSION
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I. INTRODUCTION

1. It is a matter of fact that China has targeted and attained global dominance in the clean vehicle and renewable energy sectors through its non-market policies and practices, violating fundamental U.S. values.[1] The United States has presented a plethora of evidence demonstrating the existence of China's targeting of the clean vehicle and renewable energy sectors for dominance and these non-market policies and practices, as well as the concerns voiced by the U.S. government, U.S. Congress, foreign governments, international and non-governmental organizations, and press reports from various sources. China cannot refute these facts.

2. Indeed, China has not denied that the United States has public morals against unfair competition, forced labor, theft, and coercion. China has also not denied that it engages in the non-market policies and practices that violate U.S. public morals. Nor does China deny that it has attained market domination of the clean vehicle and renewable energy sectors. In fact, China celebrates in its success,[2] and concerningly, China continues to engage in these practices.[3]

3. With respect to the U.S. invocation of Article XXI(b) for the foreign entity of concern (FEOC) exclusion in the Clean Vehicle Tax Credit, China does not dispute that the underlying statute explicitly refers to U.S. national security, nor does China deny that it is a non-allied foreign nation to the United States within the meaning of the underlying U.S. defense procurement statute.

4. Because it cannot rebut these facts, China attempts to distract the Panel with a variety of unfounded arguments, and suggests that the Panel analyze the U.S. arguments in this dispute in various ways that are not supported by the ordinary meaning of the terms of the covered agreements. The Panel should decline to engage in this exercise, and instead should apply the terms of the covered agreements in accordance with customary rules of interpretation of public international law.

5. As discussed further in this submission, when the relevant WTO provisions are interpreted and applied correctly, (1) China has failed to establish that the Clean Vehicle Tax Credit is inconsistent Articles 3.1(b) and 3.2 of the SCM Agreement; (2) the measures at issue are justified by Article XX(a) of the GATT 1994; and (3) the FEOC exclusion in the Clean Vehicle Tax Credit is justified by Article XXI(b) of the GATT 1994.

6. Indeed, WTO Members are facing a serious threat with China creating an untenable situation for governments and societies that value fair competition and prohibit practices such as forced labor, the theft of trade secrets, and economic coercion. As the United States has explained, the WTO Agreement allows for a Member to respond to another Member that

[1] U.S. First Written Submission, paras. 85-88; U.S. Opening Statement at First Panel Meeting, paras. 3-5.
[2] China's Responses to the Panel's First Set of Questions, para. 17.
[3] *See, e.g.*, Financial Times, "Japan warns over threat from China's chip material export controls," February 21, 2025 (US-101); Financial Times, "China demands sensitive information for rare earth exports, companies warn: Extensive licensing requirements raise concerns about intellectual property theft," (June 12, 2025) (US-137).

specifically targets key sectors that are vital to all Members' economic futures, and in fact, successfully monopolizes those sectors at the expense of all others.

II. 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

7. China has failed to establish that the Clean Vehicle Tax Credit of the Inflation Reduction Act (IRA) is inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement. Without support, China falsely asserts that both the battery components sourcing requirement and the critical minerals sourcing requirement "give preference to U.S.-origin goods over goods of other origins".[4]

8. As the United States has explained, neither the critical mineral sourcing requirement nor the battery components sourcing requirement is conditioned on the use of domestic over imported goods.[5] Both requirements contain multiple options, and it is entirely possible to satisfy both requirements by the use of exclusively imported goods—that is, without the use of any U.S. domestic goods.

9. China, however, asserts that a subsidy is prohibited under Article 3.1(b) of the SCM Agreement so long as import substitution is *one* means of obtaining a subsidy, in particular relying not on the text of the agreement, but on past, unpersuasive reports.[6] First, China's argument is incorrect. As the United States has explained, 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 were "a condition, in the sense of a requirement, for receiving the subsidy."[7] Third parties and prior reports agree.[8]

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[4] China's Responses to the Panel's First Set of Questions, para. 54.

[5] U.S. First Written Submission, paras. 39-43. As the United States has explained, 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. Likewise, 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.,* Canada, Mexico or the United States).

[6] China's Responses to the Panel's First Set of Questions, paras. 56-63 (referring to *Brazil – Taxation* and *US – FSC (Article 21.5 – EC)*).

[7] U.S. First Written Submission, para. 37.

[8] *See* European Union's Third-Party Submission, para. 98 ("If the [] subsidy can be obtained by using some imported goods, 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."). *See also Brazil – Taxation (AB*), para. 5.337 ("We recall that the legal standard under Article 3.1(b) of the SCM Agreement requires that *a condition requiring* the use of domestic over imported goods be discerned from the terms of the measure itself, or inferred from its design, structure, modalities of operation, and the relevant factual circumstances constituting and surrounding the granting of the subsidy that provide context for understanding the operation of these factors."); *US – Tax Incentives (AB),* para. 5.18 ("In other words, the relevant question in determining the existence of contingency under Article 3.1(b) is not whether the eligibility requirements under a subsidy may result in the use of more domestic and fewer imported goods. Rather, the question is whether a condition requiring the use of domestic over imported goods can be discerned from the terms of the measure itself, or inferred from its design, structure, modalities of operation, and the

10. Second, China's reliance on prior reports is also misplaced. As the United States previously explained,[9] the DSU does not assign precedential value to Appellate Body or panel reports, or otherwise require a panel to apply the provisions of the covered agreements consistently with the adopted findings of prior reports.[10] Rather, a panel must apply the text of a covered agreement as understood through application of customary rules of interpretation.[11] A panel may choose to take prior reports into account in its own objective assessment, however, to the extent it finds them persuasive.

11. Neither *Brazil – Taxation* nor *US – FSC (Article 21.5 – EC)* are persuasive or relevant in this regard. With respect to *Brazil – Taxation*, China relies upon the panel report to argue that a subsidy is a prohibited subsidy within the meaning of Article 3.1(b) to the extent that one means of obtaining the subsidy is through the use of domestic over imported goods, even if there are alternative means of obtaining the subsidy.[12] Despite acknowledging that the panel finding that it relies upon was reversed by the Appellate Body on appeal,[13] China argues that "the finding of the Appellate Body does not detract from the panel's interpretative conclusion that a subsidy is a prohibited subsidy under Article 3.1(b) to the extent that one means of obtaining the subsidy is the use of domestic over goods."[14]

12. The United States disagrees. The panel interpretation is unconvincing, and China fails to acknowledge that the Appellate Body reversed certain findings of inconsistency because the "mere possibility" of taking production steps in Brazil did not in and of itself give rise to the use of domestic over imported goods under Article 3.1(b) of the SCM Agreement.[15] Instead, the key

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relevant factual circumstances constituting and surrounding the granting of the subsidy that provide context for understanding the operation of these factors.").

[9] U.S. Responses to the Panel's First Set of Questions, paras. 38-39, 111.

[10] DSU, Article 3.9 ("The provisions of this Understanding are without prejudice to the rights of Members to seek authoritative interpretation of provisions of a covered agreement through decision-making under the WTO Agreement or a covered agreement which is a Plurilateral Trade Agreement.").

[11] DSU, Article 3.2 ("The Members recognize that [the dispute settlement system] serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law.").

[12] China's First Written Submission, para. 150.

[13] China's First Written Submission, para. 150 n. 197; China's Responses to the Panel's First Set of Questions, para. 61.

[14] China's Responses to the Panel's First Set of Questions, para. 61.

[15] *Brazil – Taxation (AB)*, para. 5.278. *See also id.*, para. 5.283 ("Although compliance with the production steps set out in the PPBs is likely to result in the use of domestic components and subassemblies, this is not sufficient for a *de jure* finding of inconsistency to be made under Article 3.1(b) of the SCM Agreement."). Specifically, *Brazil - Taxation* concerned four information and communication technology programs, which contained production-step requirements in the basic productive processes (referred within the reports as "PPBs"). *Brazil – Taxation (AB)*, para. 5.261 (The panel explained that "a PPB is essentially a set of product-specific production steps that must be performed in Brazil, in order or a company to benefit from the tax incentives in respect of that product under the relevant programme(s)."). The challenged measures involved both PPBs that did not contain PPBs, and also involved "PPBs within nested PPBs," that is, measures with PPBs that themselves also had separate PPBs. *Id.* at para. 5.268 (explaining that the panel noted a "PPB within a PPB" in Article 2 of the PPB, which "provides that at least 90% of the GSM modules used to produce any of the products for speed alarms, tracking and control must be produced in compliance with their own PPB . . . this means that a separate PPB exists for GSM modules, and that this separate PPB must be complied with for at least 90% of the GSM modules used in production of speed alarms, tracking and control products listed in the Annex."). While the Appellate Body affirmed the panel's finding that

question is whether "'*a condition requiring* the use of domestic over imported goods' can be discerned from [a measure's] very words or by necessary implication therefrom."[16]

13. *US – FSC (Article 21.5 – EC)* also does not support China's position.[17] The tax exemption in the dispute was found to be export contingent under Article 3.1(a) of the SCM Agreement because the measure provided a separate set of conditions relating to property produced inside the United States from property produced outside of the United States.[18] Therefore, for property produced within the United States, the condition required that the property had to be exported to qualify for the tax exemption. This condition was separate from the conditions related to property produced outside of the United States.[19]

14. Such a factual scenario is not relevant to the dispute at hand. As previously described,[20] the battery components sourcing requirement and the critical minerals sourcing requirement are each a condition which contains multiple options. China attempts to mischaracterize the options within the battery components sourcing requirement and the critical minerals sourcing requirement as individual conditions separate and distinct from each other. Properly understood, however, these options together satisfy a single condition and determine eligibility for the Clean Vehicle Tax Credit.

15. Accordingly, neither *Brazil – Taxation* nor *US – FSC (Article 21.5 – EC)* is persuasive or relevant. To the extent China relies upon other WTO disputes,[21] the United States recalls that the task before the Panel is not to determine whether this dispute has similar facts with other prior WTO disputes.[22] Rather, the Panel's task is to the apply the text of Article 3.1(b) to the facts at hand.[23] China has failed to establish that the Clean Vehicle Tax Credit *requires* the use of domestic over imported goods.[24]

PPBs with nested PPBs contained a condition requiring the use of domestic over imported goods, it reversed the panel's finding of inconsistency concerning the PPBs that did not contain nested PPBs.

[16] *Brazil – Taxation (AB)*, para. 5.282. In its responses to the Panel's first set of questions, China erroneously minimizes the Appellate Body's reversal of the panel report. China's Responses to the Panel's First Set of Questions, para. 61 ("Appellate Body reversed the panel's findings, but only insofar as those findings could be understood to exclude the in-house scenario from the conclusion that the subsidy was prohibited under Article 3.1(b)."). China fails to acknowledge the aforementioned discussion by the Appellate Body concerning the errors of the panel's analysis under Article 3.1(b) of the SCM Agreement, including in regards to the PPBs that did not contain nested PPBs. Further, in the section of the Appellate Body report referenced by China, the Appellate Body again reiterated that a *de jure* finding of inconsistency under Article 3.1(b) requires a condition requiring the use of domestic over imported goods to be discerned from the terms of the measure itself. *Brazil – Taxation (AB*), para. 5.337. As discussed, the critical minerals sourcing requirement and battery components sourcing requirement do not require the use of domestic over imported goods.

[17] China's Responses to the Panel's First Set of Questions, para. 62.

[18] *US – FSC (Article 21.5) (AB)*, para. 114.

[19] *US – FSC (Article 21.5) (AB)*, para. 119.

[20] U.S. First Written Submission, paras. 40-42; U.S. Opening Statement at First Panel Meeting, paras. 21-22.

[21] China's Responses to the Panel's First Set of Questions, para. 63 n. 67.

[22] U.S. Responses to the Panel's First Set of Questions, para. 117.

[23] DSU, Article 3.2.

[24] *See Brazil – Taxation (AB)*, para. 5.279 ("[T]he relevant question in determining the existence of a contingency under Article 3.1(b) is 'whether a *condition requiring* the use of domestic over imported goods can be discerned' from

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

16. As explained in prior submissions and detailed below, the measures at issue are justified under Article XX(a) of the GATT 1994.[25] First, the United States demonstrates (and has demonstrated)—with an overwhelming amount of evidence from numerous sources—that the measures at issue "protect [U.S.] public morals" within the meaning of Article XX(a). China has not refuted the evidence; nor can it.

17. Second, the United States – faced with China's attainment and weaponization of global dominance in the clean vehicle and renewable energy sectors—adopted the IRA's clean vehicle and renewable energy tax credits because they are necessary to protect the U.S. public morals against unfair competition, forced labor, theft, and coercion. China unabashedly celebrates its global dominance,[26] and has not refuted the U.S. arguments.

18. Lastly, 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 chapeau of Article XX of the GATT 1994. The same conditions do not prevail between the United States and China. Nor has China argued that the measures at issue are a "disguised restriction on international trade".

19. Accordingly, the Panel should reject China's claims under the GATT 1994, TRIMs Agreement, and SCM Agreement with respect to the measures at issue.

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

20. The United States has demonstrated that the measures at issue protect U.S. public morals within the meaning of Article XX(a) of the GATT 1994. As described below, first, the United

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the measure." (italics original)). China makes much of the recent U.S. imposition of tariffs on imports of automobiles, which China attempts to characterize as "dramatic steps to reduce the integration of the North American automotive industry." China's Responses to the Panel's First Set of Questions, para. 13 & n. 13. As the United States has explained, the operative legal text of the IRA provisions at issue are not changed by the political issues or other measures that China raises. U.S. Closing Statement at First Panel Meeting, para. 3. And in any event, these tariffs were imposed pursuant to Section 232 of the Trade Expansion Act of 1962, based on the President's determination that tariffs were necessary to adjust the imports of automobiles and auto parts that threaten to impair the national security of the United States. Notably, China fails to acknowledge that the U.S. Department of Commerce report underlying these tariffs observed that "China is planning to rapidly grow exports to the United States," noted that China had identified EVs as a "critical technology" in its Made in China 2025 plan, and pointed to China's implementation of explicit market share targets and other policies in pursuit of its goal of acquiring EV technology. U.S. Department of Commerce, *The Effect of Imports of Automobiles and Automobile Parts on the National Security*, p. 53 and appendix F (Feb. 19, 2019) (US-138). Accordingly, contrary to China's assertions, the imposition of these tariffs is consistent with the U.S. arguments in this dispute.

[25] While the Clean Vehicle Tax Credit is not inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement, that measure would also be justified under Article XX(a) of the GATT 1994. U.S. First Written Submission, para. 196.

[26] China's Responses to the Panel's First Set of Questions, para. 17.

States has established that, relevant to the measures at issue, the U.S. public morals are against unfair competition, forced labor, theft, and coercion.

21. Second, the United States has demonstrated that China's non-market policies and practices—including the targeting of sectors for global dominance; non-market excess capacity; stated-directed investment; forced labor; forced technology transfer; and theft of trade secrets—are contrary to the U.S. public morals against unfair competition, forced labor, theft, and coercion. 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 organization, and press reports from various news outlets.

22. Third, as discussed below, the measures at issue protect the U.S. public morals. The United States has demonstrated that the design, content, structure, and operation of the clean vehicle and renewable tax credits protect the U.S. public morals against unfair competition, forced labor, theft, and coercion.

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

23. The United States has established the existence of U.S. public morals against unfair competition, forced labor, theft, and coercion, presenting extensive evidence in U.S. law to demonstrate these fundamental U.S. norms.[27] China has not presented any rebuttal arguments or evidence to the contrary despite having opportunities since the U.S. first written submission.[28]

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

24. The United States has also demonstrated that China's non-market policies and practices targeting the clean vehicle and renewable energy sectors violate the U.S. public morals against unfair competition, forced labor, theft, and coercion.[29] China's non-market policies and practices include: targeting of sectors for global dominance; non-market excess capacity; stated-directed investment; forced labor; forced technology transfer; and theft of trade secrets. Specifically,

- 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.[30]

[27] U.S. First Written Submission, paras. 68-74.
[28] China's Opening Statement at First Panel Meeting, para. 41 ("But then there's the fact that the United States offers up an endless buffet of supposed 'public morals' objectives that the challenged provisions are allegedly designed to address. Neither time nor common sense allows me to march through each and every one of these in this statement and evaluate whether they are, in fact, legitimate 'public morals' objectives under Article XX(a).").
[29] U.S. First Written Submission, paras. 84-102; U.S. Opening Statement at First Panel Meeting, paras. 36-45; U.S. Responses to the Panel's First Set of Questions, paras. 16-30.
[30] U.S. Opening Statement at First Panel Meeting, para. 37.

- China's non-market excess capacity in the clean vehicle and renewable energy sectors is contrary to the U.S. public morals against unfair competition, forced labor, theft, and coercion.[31]

- China's use of state-directed investment in the clean vehicle and renewable energy sectors is contrary to the U.S. public moral against unfair competition.[32]

- China's use of forced labor in the clean vehicle and renewable energy sectors is contrary to the U.S. public morals against unfair competition and forced labor.[33]

- China's use of forced technology transfer in the clean vehicle and renewable energy sectors is contrary to the U.S. public morals against unfair competition and coercion.[34]

- China's theft of trade secrets in the clean vehicle and renewable energy sectors is contrary to the U.S. public morals against unfair competition and theft.[35]

25. Although China argues that the U.S. public morals concerns are based on a "distorted narrative about the China economy",[36] the overwhelming evidence presented by the United States demonstrates the outrageousness and fiction of China's assertion. Concerns with China's non-market policies and practices, and their effects in other markets, are longstanding and widespread. Already before the Panel are numerous reports and statements on these issues from various U.S. and non-U.S. government agencies,[37] U.S. and other civil society organizations,[38]

[31] U.S. Opening Statement at First Panel Meeting, para. 38.
[32] U.S. Opening Statement at First Panel Meeting, para. 39.
[33] U.S. Opening Statement at First Panel Meeting, para. 42.
[34] U.S. Opening Statement at First Panel Meeting, para. 43.
[35] U.S. Opening Statement at First Panel Meeting, para. 44.
[36] China's Opening Statement at First Panel Meeting, para. 44.
[37] *See, e.g.*, 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-66); 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-56); 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-74); U.S. Department of Labor, "Traced to Forced Labor: Solar Supply Chains Dependent on Polysilicon from Xinjiang, 2020 (US-62); U.S. Department of Energy, Solar Photovoltaics: Supply Chain Deep Dive Assessment, Feb. 24, 2022 (US-61); 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-64); 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-57); 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-70); The President's 2025 Trade Policy Agenda (US-35).
[38] *See, e.g.*, U.S. Chamber of Commerce, Made in China 2025: Global Ambitions Built on Local Protections (2017) (US-59); European Chamber of Commerce, "China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces" (2017) (US-53); Rhodium Group, "How China's Overcapacity Holds Back Emerging Economies," June 13, 2024 (US-81); Rhodium Group, "Far From Normal: An Augmented Assessment of China's State Support," March 17, 2025 (US-83); Rhodium Group, "Ain't No Duty High Enough," April 29, 2024 (US-102); Rhodium Group,

various international organizations or intergovernmental forums,[39] and press reports from various news organizations.[40] These reports and statements document years long concerns with China's non-market policies and practices and their effects on the United States and other countries—that is, China's targeting and achievement of global dominance in the clean vehicle and renewable energy sectors to the detriment of all Members' economic futures.

26. Despite being explicitly asked by the Panel to respond to U.S. datapoints concerning China's global dominance in the clean vehicle and renewable energy sectors, China has declined to present any data or arguments. This is telling. China unabashedly states that it is "proud of its accomplishments in this area".[41] China also misconstrues U.S. arguments and suggests—incredibly—the Panel's question is not relevant.[42] As the United States has explained, China's *targeting* of the clean vehicle and renewable energy sectors for global dominance *is* contrary to U.S. public morals.[43]

27. Further, China's *attainment* of global dominance in the clean vehicle and renewable energy sectors—that is, China's success in targeting these sectors and effective monopolization of them—demonstrates the necessity of the measures.[44] Accordingly, despite China's attempts

"Was Made in China 2025 Successful," May 5, 2025 (US-103); Sheffield Hallam University, "Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region," Dec. 2022 (US-84); Council on Foreign Relations, "Is 'Made in China 2025' a Threat to Global Trade?" (2019) (US-52); European Council on Foreign Relations, "High-voltage trade: How Europe should fight the electric vehicle wars," December 15, 2023 (US-99); Information Technology & Innovation Foundation, "The Impact of China's Production Surge on Innovation in the Global Solar Photovoltaics Industry," October 2020 (US-51); CSIS, "Electric Shock: Interpreting China's Electric Vehicle Export Boom," Sept. 2023 (US-54); CSIS, "The Chinese EV Dilemma: Subsidized Yet Striking," June 28, 2024 (US-55).

[39] *See, e.g.*, Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union, Sept. 25, 2018 (US-44); 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; U.S.-EU Trade and Technology Council Inaugural Joint Statement, Sept. 29, 2021 (US-77); G7 Leaders' Communique (2022) (US-38); G7 Trade Ministers' Statement (2024) (US-36); Global Forum on Steel Excess Capacity, *Steel Exports, trade remedy actions and sources of excess capacity* (May 2024) (US-85); Global Forum on Steel Excess Capacity, *Impacts of global excess capacity on the health of the GFSEC steel industries* (March 2024) (US-86); International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022 (US-1); International Energy Agency, Global Critical Minerals Outlook 2024, May 2024 (US-5); International Energy Agency, Global EV Outlook 2024, April 2024 (US-49).

[40] *See, e.g.,* Washington Post, "How China pulled ahead to become the world leader in electric vehicles," March 3, 2025 (US-2); Cipher News, "Chinese solar panel manufacturing outpaces global demand," Feb. 28, 2024 (US-46); Financial Times, "China outbound investment surges to record levels on clean energy 'tsunami,'" Oct. 2, 2024 (US-58); Forbes, "China Scores Big Win in Solar Trade Battle as REC Silicon Shutters US Polysilicon Production," Feb. 8. 2016 (US-65); CBS News, "Chinese hackers took trillions in intellectual property from about 30 multinational companies," May 4, 2022 (US-67); Financial Times, "Foreign carmakers confront 'moment of truth' in China," Apr. 21, 2023 (US-72); PV Magazine, "China expected to dominate solar manufacturing through 2026," Nov. 7, 2023 (US-80); Washington Post, "How China came to dominate the world in renewable energy," March 3, 2025 (US-93); 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).

[41] China's Responses to the Panel's First Set of Questions, para. 17.

[42] China's Responses to the Panel's First Set of Questions, para. 16.

[43] U.S. Responses to the Panel's First Set of Questions, paras. 17-18; U.S. Opening Statement at First Panel meeting, paras. 28, 37.

[44] U.S. Responses to the Panel's First Set of Questions, paras. 17-18.

to evade this issue, the datapoints presented by the United States concerning China's global dominance of the clean vehicle and renewable energy sector are not only relevant to this dispute—they are the central issue before the Panel.

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

28. The United States has demonstrated that the measures at issue protect the U.S. public morals against unfair competition, forced labor, theft, and coercion. China erroneously suggests that the Panel should engage in what it terms a "design inquiry," which—according to China—involves examination of "whether the measure was *in fact* designed for the purpose of fulfilling" the relevant objective.[45] China also asserts that the phrase "not incapable of" protecting public morals does not fully capture the nature and purpose of the "design inquiry" under Article XX(a) of the SCM Agreement.[46]

29. As an initial matter, as the United States has explained, the phrases "designed to" and "not incapable of" do not appear in Article XX(a), and a panel must apply the text of a covered agreement as understood through the application of customary rules of interpretation.[47] There is no requirement under Article XX(a) of the GATT 1994 to show that a measure is "designed to" protect or "not incapable" of protecting public morals.[48] Nor is there a requirement to show that a measure is "in fact" designed to protect public morals.[49]

30. If the Panel opts to consider this issue, however, it should find that the measures at issue are "designed to" or "are not incapable of" protecting public morals. Although the measures at issue need not explicitly refer to public morals to be justifiable under Article XX(a), prior adjudicators have looked to the design, content, structure and expected operation of the measure.[50] Indeed, the evaluation of whether a measure is "designed to" protect or "not incapable of" protecting public morals is "not … particularly demanding."[51] As the United States discusses below, the design, content, structure and expected operation of the measures at issue protect U.S. public morals.

a. The Clean Vehicle Tax Credit protects public morals

31. The Panel should find that the Clean Vehicle Tax Credit was "designed to" or "not incapable of" protecting U.S. public morals. The design, content, structure, and operation of the

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[45] China's Responses to the Panel's First Set of Questions, paras. 18-26.
[46] China's Responses to the Panel's First Set of Questions, para. 26.
[47] *See* U.S. Responses to the Panel's First Set of Questions, paras. 38-40.
[48] U.S. Responses to the Panel's First Set of Questions, paras. 38-40.
[49] China's Responses to the Panel's First Set of Questions, para. 26. The phrase "*in fact* designed" appears to be of China's own making, and does not appear in either of the two reports China relies upon—*Turkey – Pharmaceutical Products* and *Indonesia – Import Licensing Regimes*.
[50] *US – Tariff Measures (Panel)*, para. 7.125 ("The Panel does not consider that for a measure to fall within the scope of the public morals exception of Article XX(a), the legal instruments implementing the measure must expressly mention a public morals objective. The Panel agrees with prior WTO adjudicators that measures that do not expressly refer to 'public morals' may nevertheless be found to have a relationship with public morals following an assessment of their design, their content, structure and expected operation.").
[51] *Colombia – Textiles (AB)*, para 5.70 ("We do not see the examination of the 'design' of the measure as a particularly demanding step of the Article XX(a) analysis.").

Clean Vehicle Tax Credit all demonstrate that the measure was intended to protect U.S. public morals again unfair competition, forced labor, theft, and coercion.

i. The design, content, and structure of the Clean Vehicle Tax Credit demonstrate that the measure protects U.S. public morals

32. The United States has explained that the North American assembly requirement, the battery components sourcing requirement, and the critical minerals sourcing requirement 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. As the United States has explained, U.S. free trade agreements 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,[52] reaffirming labor obligations,[53] providing for the protection and enforcement of IP rights,[54] and regulating state-owned enterprises.[55]

33. By requiring that final assembly take place in North America and that increasing percentages of the value of battery components be manufactured or assembled in North America, the Clean Vehicle Tax Credit helps incentivize the manufacturing or assembly of clean vehicles and their battery components in the United States, Canada, or Mexico—countries that are parties to the USMCA, a free trade agreement containing provisions to protect U.S. public morals.[56] Under the critical minerals sourcing requirement, 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.[57]

34. The United States-Japan Critical Minerals Agreement, which qualifies as 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- oriented conditions for trade in critical minerals, ensure robust labor and environment standards . . . ."[58]

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[52] *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)).
[53] *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)).
[54] *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)).
[55] *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)).
[56] *See* U.S. Responses to the Panel's First Set of Questions, paras. 41-46.
[57] U.S. First Written Submission, para. 21.
[58] 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)).

The agreement contains provisions for the parties to facilitate trade in critical minerals, to confer on 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.[59] Thus, the critical mineral sourcing requirement protects U.S. public morals against unfair competition, forced labor, theft, and coercion.

ii. The Clean Vehicle Tax Credit reflects the U.S. Congress's concerns with China's non-market policies and practices

35. Numerous statements by Members of Congress and others, including statements contemporaneous with the IRA's passage, also demonstrate that the Clean Vehicle Tax Credit was designed to or not incapable of protecting U.S. public morals.[60] As the United States explained, longstanding and widespread U.S. concerns with China's non-market policies and practices were specifically before the U.S. Congress leading up to the IRA's passage. For example, former U.S. Secretary of Energy, Dr. Ernest Moniz testified before a congressional committee in March 2021 that "China dominates the processing of many . . . critical minerals" needed for EV battery production, and "as a sane energy security issue, we need to work to diversify these sources of minerals and their processing" including by working with U.S. allies.[61]

36. When the IRA moved forward in July 2022, Senators Schumer and Manchin similarly noted that the IRA would "[i]ncrease[] American energy security . . . with historic investments in American clean energy manufacturing to lessen our reliance on China."[62] U.S. industry leaders and other stakeholders touted the IRA's benefits in similar terms.[63] Thus, the U.S. Congress passed the IRA because it believed it would lessen U.S. reliance on China and ensure that the United States and its allies were not left beholden to foreign entities that do not share our interests and values.[64]

37. Following the IRA's passage, Biden Administration officials continued to assert that the measures would assist in countering China's dominance. The United States has presented evidence demonstrating this point, and provided several examples of statements from former government officials following the IRA's passage.[65] China's own evidence likewise

[59] 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).
[60] *See* U.S. Responses to the Panel's First Set of Questions, paras. 68-81.
[61] *See* U.S. Responses to the Panel's First Set of Questions, para. 72; Virtual Hearing before the Committee on Energy and Commerce, House of Representatives, LIFT America: Revitalizing Our Nation's Infrastructure and Economy, Serial No. 117-15 (March 22, 2021), p. 133 (US-106).
[62] Summary of the Energy Security and Climate Change Investments in the Inflation Reduction Act of 2022 (July 27, 2022) (US-111).
[63] *See* U.S. Responses to the Panel's First Set of Questions, para. 76.
[64] *See* U.S. Responses to the Panel's First Set of Questions, paras. 68-81.
[65] U.S. Responses to the Panel's First Set of Questions, paras. 78-79.

demonstrates this point. For example, former National Security Advisor Jake Sullivan in an April 2023 speech, stated:[66]

> More than 80 percent of critical minerals are processed by one country, China. Clean-energy supply chains are at risk of being weaponized in the same way as oil in the 1980s, or natural gas in Europe in 2022. So through the investments in the Inflation Reduction Act . . . we're taking action.

iii. The operation of the Clean Vehicle Tax Credit demonstrates that the measure protects U.S. public morals

38. Lastly, the Clean Vehicle Tax Credit has shown meaningful results, demonstrating the operation of the measure.[67] As a result of the measures at issue, companies have been exploring new opportunities in the EV supply chain that diversify and are outside of China. For instance, 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.[68] Likewise, EV supply chains have been developing in Mexico as a result of access to financial support from the IRA.[69]

39. EV investments and manufacturing capacity 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.[70] 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.[71]

40. 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.

b. The renewable energy tax credits also protect public morals

41. The Panel should likewise find that the IRA renewable energy tax credits at issue—specifically, the Investment and Production and Tax Credits – are likewise "designed to" or "not

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[66] 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).
[67] *US – Tariff Measures (Panel)*, para. 7.125 ("The Panel agrees with prior WTO adjudicators that measures that do not expressly refer to 'public morals' may nevertheless be found to have a relationship with public morals following an assessment of their design, their content, structure and expected operation.").
[68] U.S. First Written Submission, para. 110 (citing International Energy Agency, Global EV Outlook 2024, p. 89 (US-49)).
[69] U.S. First Written Submission, para. 110 (citing International Energy Agency, Global EV Outlook 2024, p. 82 (US-49)).
[70] U.S. First Written Submission, para. 111 (citing TechCrunch, "Tracking the EV battery factory construction boom across North America," Feb. 6, 2025 (US-75)).
[71] U.S. First Written Submission, para. 112 (citing Environmental Defense Fund, U.S. Electric Vehicle Manufacturing Investments and Jobs, August 2024 (US-79)).

incapable of" protecting public morals. The design, content, structure, and operation of the renewable energy tax credits all demonstrate that the measures were intended to protect U.S. public morals against unfair competition, forced labor, theft, and coercion.

i. The design, content, and structure of the renewable energy tax credits demonstrate that they protect U.S. public morals

42. As the United States has explained, the renewable energy tax 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. One of the ways in which the renewable energy tax credits protect U.S. public morals is through the prevailing wage requirement. 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.[72] If a company fails to satisfy these wage requirements, the renewable energy tax credits also provide for correction payments to the laborers and mechanics, and penalties for the company.[73] Such requirements help ensure that U.S. companies uphold U.S. public morals related to unfair competition and forced labor.

43. Further, the domestic content bonus provisions of the renewable energy tax credits also protect public morals. As the United States has explained, the effects of China's non-market policies and practices have been particularly profound in the steel sector, and this problem persists despite the imposition of numerous trade remedy measures and longstanding global dialogues.[74] By requiring the use of 100 percent U.S.-produced steel and iron for construction materials, and for manufactured products, that a certain percentage of the total cost of components incorporated is produced in the United States, 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.[75]

ii. The renewable energy tax credits reflect the U.S. Congress's concerns with China's non-market policies and practices

44. Numerous statements by Members of the U.S. Congress and others, including statements contemporaneous with the IRA's passage, also demonstrate that domestic content bonus provisions of the renewable energy tax credits were designed to or not incapable of protecting U.S. public morals.

45. Members of Congress from across the political spectrum and across the United States have long expressed concerns regarding global excess capacity in the steel sector and related manufacturing sectors. For example, in testimony presented in 2009 U.S. trade remedy proceedings on certain steel products, *Members of Congress from Pennsylvania and Ohio*

[72] U.S. Opening Statement at First Panel Meeting, para. 48 (citing 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)).
[73] U.S. Opening Statement at First Panel Meeting, para. 48 (citing 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)).
[74] *See* U.S. Responses to the Panel's First Set of Questions, paras. 55-65.
[75] *See* U.S. Responses to the Panel's First Set of Questions, paras. 55-65.

pointed to China's "unfair trade and anticompetitive business practices"[76] and emphasized China's "massive production of build up of" steel.[77] In a 2013 hearing on hot-rolled steel from China, India, Indonesia, Taiwan, Thailand, and Ukraine, *Members of Congress from Indiana* expressed similar concerns.[78]

46. As the global steel excess capacity crisis worsened, these expressions of concern grew broader and more urgent. In October 2016, for example, a bipartisan group of *U.S. Senators from ten U.S. states—Minnesota, Ohio, Alabama, Arkansas, North Carolina, Indiana, Pennsylvania, Oklahoma, West Virginia, and New York*—wrote to the president to urge action to tackle steel excess capacity. These senators described the non-market policies and practices that led to global steel excess capacity—specifically "government subsidy policies, state-owned enterprise involvement in the market, and access to free capital that allows unprofitable steel companies to pump excess steel products into the market"—and noted that China had not yet taken sufficient steps to reduce its total steel production capacity.[79]

47. Members of Congress also observed the effects of global steel excess capacity on U.S. manufacturing. For example, in 2017, submissions related to the Section 232 national security investigation of imports of steel articles into the United States, *Members of Congress from Ohio* observed that "rising and unprecedented global overcapacity and unfair trade practices threaten the viability of our United States steel industry," [80] and noted that rising import levels "are unsustainable for U.S. companies and their workers."[81] One Member of Congress linked job losses in the steel sector to other declines, stating that when U.S. steelworkers lose their jobs, "entire communities suffer as small businesses lose customers and local governments lose revenue."[82] Similarly, in a 2019 letter to the U.S. Trade Representative, *Members of Congress*

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[76] Transcript, United States International Trade Commission, *Certain Oil Country Tubular Goods (OCTG) from China*, Inv. Nos. 701-TA-463 and 731-TA-1159 (Final) (testimony of Sen Arlan Specter of Pennsylvania), p. 16 (US-139).
[77] Transcript, United States International Trade Commission, *Certain Oil Country Tubular Goods (OCTG) from China*, Inv. Nos. 701-TA-463 and 731-TA-1159 (Final) (testimony of Rep. Jason Altmire, Ohio's 4th District), p. 43 (US-139).
[78] Revised and Corrected Transcript, United States International Trade Commission, *Hot-Rolled Steel Products from China, India, Indonesia, Taiwan, Thailand, and Ukraine*, Inv. Nos. 701-TA-405, 406, and 408 and 731-TA-899-901 and 906-908 (Second Review) (Oct. 31, 2013) (testimony of Sen. Joe Donnelly of Indiana), p. 11 (pointing to "market diluting practices" of certain countries, particularly China, as a factor exacerbating the lack of growth in the U.S. steel sector, and observing that "much of the growth in these countries comes from making more steel than they can consume and exporting it by whatever means necessary. Such unfair trade practices have harmed the steel industry for decades.") (US-140). Revised and Transcript, United States International Trade Commission, *Hot-Rolled Steel Products from China, India, Indonesia, Taiwan, Thailand, and Ukraine*, Inv. Nos. 701-TA-405, 406, and 408 and 731-TA-899-901 and 906-908 (Second Review) (Oct. 31, 2013) (testimony of rep. Peter J. Visclosky of Indiana's 1st District), pp. 15-16 (Noting that U.S. consumption of hot-rolled steel had fallen, while China and India's production capacity had increased significantly, and asking "Where is that steel going to go?") (US-140).
[79] News Release, Sen. Amy Klobuchar of Minnesota, Klobuchar, Franken, and Bipartisan Group of Senators Push Administration for Renewed Emphasis on Enforcement to Tackle Steel Overcapacity (Oct. 4, 2016) (US-141).
[80] *See* 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).
[81] Letter to U.S. Secretary of Commerce Wilbur Ross from Senators Sherrod Brown and Rob Portman of Ohio (Sep. 15, 2017) (US-143).
[82] *See* 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).

from Ohio, Indiana, and Pennsylvania characterized global excess capacity as "menac[ing] the industrial heartland" of the United States.[83]

48. Members of Congress continued to express these concerns around the time of the IRA's passage. In an April 2021 letter to congressional leadership, *52 members of the Congressional Steel Caucus* pointed to the "unprecedented challenges" facing the American steel industry and its workers "due to dumped and subsidized imports and chronic global steel capacity" and stating that "China's state-owned and state-subsidized manufacturers should not have access to American tax dollars."[84] Although the passage of other U.S. legislation at the end of 2021 was expected to encourage investment in U.S. steelmaking capacity, the Congressional Research Service reported in May 2022 that "domestic steel producers seem likely to face greater headwinds due to a slowing economy and continued global excess steelmaking capacity."[85] Also in May 2022, *49 members of the Congressional Steel Caucus* likewise noted in connection with four trade remedy proceedings that "[g]lobal overcapacity in steel markets remains a significant issue" and warned of potential devastation of domestic steel producers.[86]

49. Following the IRA's passage, Members of Congress, then-President Joe Biden, and others touted the domestic content bonus provisions of the renewable energy tax credits as boosting the U.S. steel sector and U.S. manufacturing. Senator Casey of Pennsylvania observed in August 2022, for example, that the IRA will "give a bonus to new clean energy investments made with American materials" and "invests in American-made energy and manufacturing," and that "all clean energy projects will receive a 10% bonus tax credit for meeting domestic content standards."[87] About a year after the IRA's passage, the Chief Executive Officer of U.S. Steel called the IRA a "Manufacturing Renaissance Act"."[88] In a 2024 press release, then-President Biden noted the "significant challenge" that "China's overcapacity and non-market investments" pose for the American steel industry, and pointed to the IRA's domestic content provisions for steel and manufacturing as "support[ing] the economic comeback of steel communities in Pennsylvania, Ohio, and the South and Midwest."[89]

iii. The operation of the renewable energy tax credits demonstrates that the measures protect U.S. public morals

50. Lastly, the renewable energy tax credits have produced meaningful results, demonstrating the operation of the measures. For the solar industry, from 2022 to 2023, the United States

[83] 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).
[84] Committee on Transportation and Infrastructure Members' Day Hearing, Remote Hearing before the Committee on Transportation and Infrastructure, House of Representatives, 117-11 (Apr. 14, 2021), pp. 180-81 (US-145).
[85] Christopher D. Watson, Domestic Steel Manufacturing: Overview and Prospects (May 17, 2022) (US-146).
[86] Letter from the Congressional Steel Caucus to Commissioner Jason E. Kearns of the U.S. International Trade Commission (May 24, 2022) (US-147).
[87] News Release, Sen. Robert Casey (Pennsylvania), Casey Applauds Senate Passage of Inflation Reduction Act, Historic Bill to Lower Costs for Families and Tackle Climate Crisis (Aug. 7, 2022) (US-148).
[88] Senate Democrats, One Year After Becoming Law, The Inflation Reduction Act Is Reducing Costs For American Families, From Health Care To Home Rebates, And Creating Thousands Of Jobs In The Process (Aug. 16, 2023) (US-149).
[89] FACT SHEET: Biden-Harris Administration Announces New Actions to Protect U.S. Steel and Shipbuilding Industry from China's Unfair Practices (Apr. 17, 2024) (US-150).

increased its installed battery cell manufacturing capacity by more than 45%.[90] In 2024, U.S. module manufacturing capacity grew 190%.[91] The U.S. solar industry also installed record breaking 50 gw of capacity in 2024.[92] 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.[93] 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."[94]

51. Accordingly, the renewable energy tax credits are designed to protect or are not incapable of protecting U.S. public morals.

B. The measures at issue are "necessary" to protect U.S. public morals at a time when China has already attained global dominance of the clean vehicle and renewable energy sectors

52. The United States has established that the measures at issue are necessary to protect U.S. public morals based on a totality of the circumstances.

1. The measures are apt to contribute to deeply held U.S. public morals by promoting U.S. and other investments, and reducing dependence on China

53. First, as the United States previously explained, the measures are apt to contribute to U.S. public morals by promoting U.S. and other investments, thereby reducing dependence on China.[95] The measures are structured so as to avoid U.S. purchasers' rewarding China's non-market policies and practices that violate the U.S. public morals against unfair competition, forced labor, theft, and coercion.

54. 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.[96]

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[90] U.S. First Written Submission, para. 109 (citing International Energy Agency, Global EV Outlook 2024, p. 81 (US-49)).
[91] U.S. First Written Submission, para. 109 (citing Solar Energy Industries Association, US Solar Market Insight: Executive Summary, 2024 Year in Review, March 2025, p. 4 (US-73)).
[92] U.S. Opening Statement at First Panel Meeting, para. 54 (citing Solar Energy Industries Association, US Solar Market Insight: Executive Summary, 2024 Year in Review, March 2025, p. 5 (US-73)).
[93] U.S. First Written Submission, para. 109 (citing Solar Energy Industries Association, US Solar Market Insight: Executive Summary, 2024 Year in Review, March 2025, p. 4 (US-73)).
[94] U.S. First Written Submission, para. 109 (citing PC Magazine, "Corning, Suniva, Heliene to produce first fully US-made solar module," Mar. 7, 2025 (US-60)).
[95] *See, e.g.,* U.S. First Written Submission, para. 120; U.S. Opening Statement at First Panel Meeting, para. 60.
[96] U.S. First Written Submission, paras. 68-83.

2. The measures are necessary in light of China's attainment of global dominance and weaponization of that dominance in the clean vehicle and renewable energy sectors

55. Third, the measures are taken in a context in which China has already achieved global dominance in the clean vehicle and renewable energy sectors, vividly demonstrating the necessity of such measures.[97] As the United States has explained, China's domination and effective monopolization of the clean vehicle and renewable energy sectors globally has made it such that essentially all portions of the clean vehicle and renewable energy supply chains are now dependent on China. China has created an untenable situation for the United States and other Members.[98] In both the U.S. first written submission and at the first panel meeting, the United States provided a set of datapoints concerning the startling nature of China's dominance in these sectors.[99] China does not dispute this;[100] nor can it.

56. Further, not only does China's achievement of global dominance demonstrate the necessity of the measures at issue, but China's *weaponization* of its global dominance in the clean vehicle and renewable energy sectors also demonstrates the necessity of the measures at issue and the importance of creating supply chains not dependent upon China.

57. Indeed, as observed by the Rhodium Group:

> China's dominance . . . creates, first and foremost, a risk of economic coercion, where the government restrains access to crucial inputs for political leverage. Examples already exist, from rare earth exports to Japan in 2010 to more recent export controls on solar panels and other technologies and reported denied access to solar equipment in India.[101]

58. Likewise, China has "increasingly threatened to weaponize their control of supply chains"[102] and "have banned exports to the United States of gallium, [and] germanium"[103]—important components for EVs.[104] As recent as April 2025, China has also imposed export controls on seven critical rare earth metals, of which some are critical for the clean vehicle and

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[97] 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," p. 14 (May 2023) ("To the extent that the United States had been motivated by nondomestic factors, it was the threat of China that it used to mobilize its legislation.") (CHN-19).
[98] *See* U.S. First Written Submission, para. 86 n. 145 & para. 118; U.S. Opening Statement at First Panel Meeting, paras. 7-9.
[99] U.S. First Written Submission, paras. 85-88 and Illustrations 1-2; U.S. Opening Statement at First Panel Meeting, paras. 3-5.
[100] China's Responses to the Panel's First Set of Questions, para. 16.
[101] Rhodium Group, "How China's Overcapacity Holds Back Emerging Economies," June 13, 2024, p. 5 (US-81).
[102] Washington Post, "How China came to dominate the world in renewable energy," March 3, 2025, p. 4 (US-93).
[103] Washington Post, "How China came to dominate the world in renewable energy," March 3, 2025, p. 4 (US-93); Financial Times, "Japan warns over threat from China's chip material export controls," February 21, 2025, p. 1 (US-101).
[104] U.S. First Written Submission, para. 88. *See also* Financial Times, "Japan warns over threat from China's chip material export controls," February 21, 2025 (US-101).

renewable energy sectors.[105] Accordingly, 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.[106]

3. Previous versions of the measures at issue have been not been successful in protecting U.S. public morals

59. Previous versions of the IRA tax credits challenged in this dispute have not been successful in protecting U.S. public morals, demonstrating the necessity of the measures at issue.[107] 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. Likewise, 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 domestic content bonus credit—was added by the IRA.

60. Therefore, the tax credits were in existence prior to the IRA, yet, despite their existence, the United States was not able to maintain or develop capacity, and 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 non-market policies and practices targeting the clean vehicle and renewable energy sectors. The challenged measures have filled that gap.

61. Similarly, 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. For example, the United States has imposed tariffs and other measures on steel imports, and has participated in numerous international dialogues aimed at addressing global steel excess capacity. Despite these efforts, the problem of global steel excess capacity persists, and in fact is projected to worsen.[108] The failure of these previous efforts demonstrates the necessity of the renewable energy tax credits and their domestic content bonus credit provisions.

4. No country has been able to restore its manufacturing capacity since China's dominance and effective monopolization of the clean vehicle and renewable energy sectors

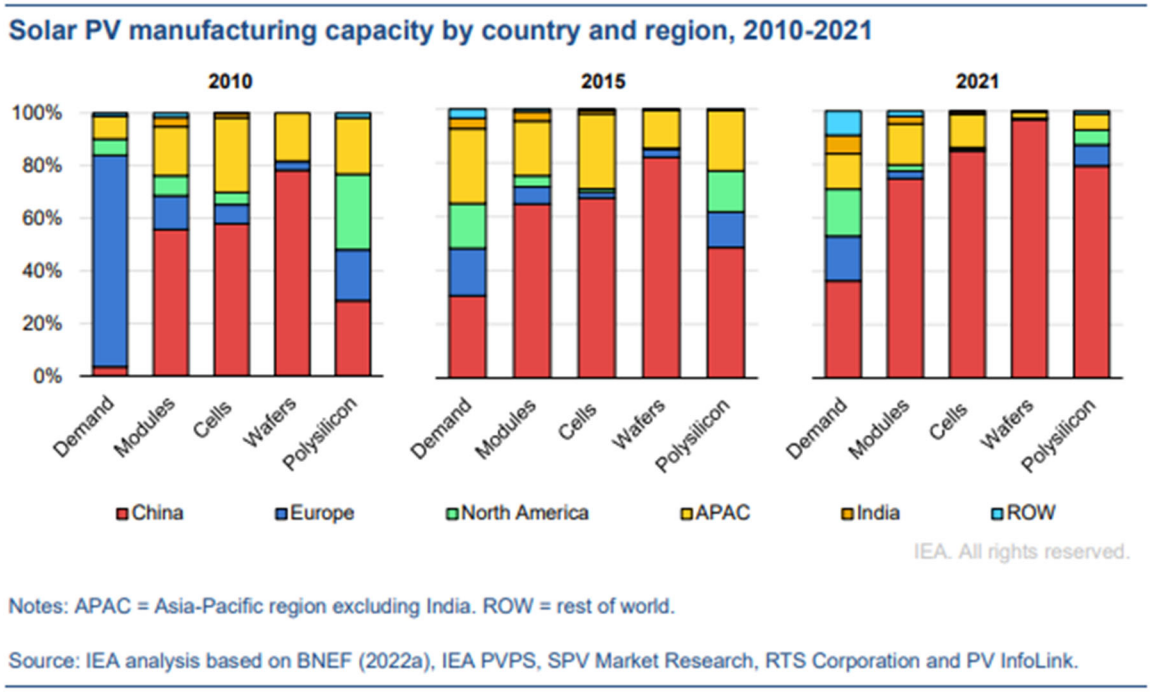
62. The measures are also evidently necessary because *no country* has been able to maintain or restore its manufacturing capacity since China's monopolization of the clean vehicle and renewable energy sectors obtained through the use of non-market policies and practices targeting these sectors. For example, for the solar industry, as illustrated in Illustrations 1 & 2, below,

[105] 9meters, "What China's 7 Critical Rare Earth Metals Are Used For," Apr. 11, 2025 (US-159).
[106] U.S. Opening Statement at First Panel Meeting, para. 6.
[107] U.S. Opening Statement at First Panel Meeting, paras. 63-64.
[108] *See* U.S. Responses to the First Set of Panel Questions, paras. 62-63.

between 2010 and 2021, China expanded its dominance of global manufacturing capacity across the solar supply chain, displacing the United States and other countries. As the International Energy Agency observed:[109]

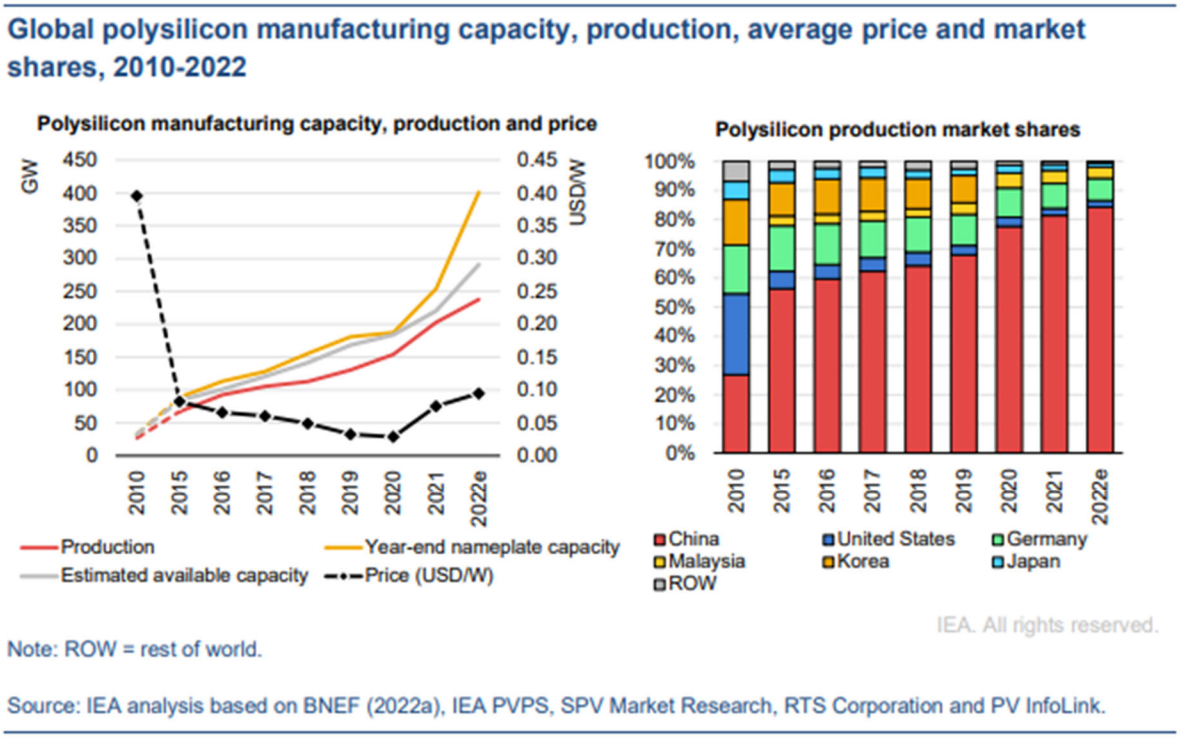
> In 2010, at the beginning of the solar PV demand boom in the European Union, producers from the United States, Germany, Korea, Japan and China were competing for market shares, with each holding 15-30%. During 2010-2015, China expanded its manufacturing capacity twice as quickly as the rest of the world, leading to a major global supply glut and causing polysilicon prices to plummet 70%, pushing many producers out of the market.
>
> Despite rapid demand growth through 2020, the overcapacity situation persisted as Chinese manufacturers further invested in new production facilities. Meanwhile, low prices have led producers in Japan, Korea and the United States to downsize or close their polysilicon plants.

Illustration 1[110]



[109] International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 22 (US-1).
[110] International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 18 (US-1).

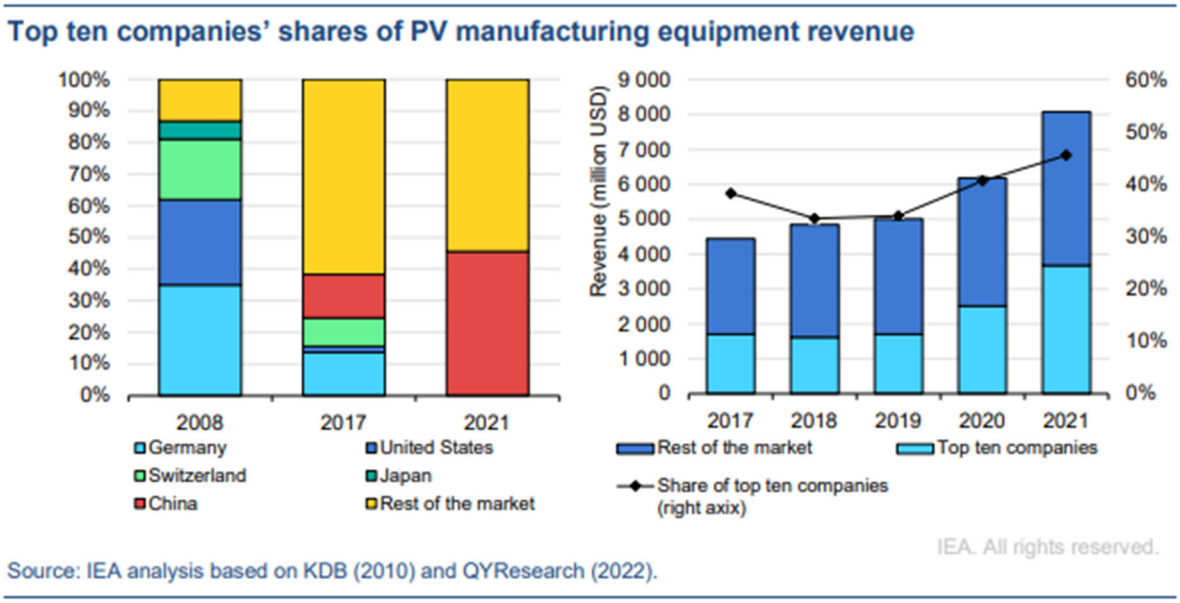
Illustration 2[111]



63. Likewise, as illustrated in Illustration 3, below, China now dominates the solar PV equipment manufacturing market once led by Europe, the United States, and Japan. In 2008, the top ten solar PV equipment manufacturers operated only in Germany, the United States, Switzerland, and Japan.[112] In contrast, in 2022, all top ten equipment manufacturers were in China and have over 45% of the global market share.[113]

[111] International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 22 (US-1).
[112] International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 34 (US-1).
[113] International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 34 (US-1).

Illustration 3[114]



64. Importantly, China's attainment of global dominance was obtained through the use of non-market policies and practices targeting the clean vehicle and renewable energy sectors. Although China contends that it "welcomes competition from other countries in the field of clean energy products, as well as international collaboration between companies and countries in accelerating the transition to clean energy,"[115] the evidence overwhelmingly demonstrates that China's achievement of global dominance is through the use of non-market policies and practices targeting the clean vehicle and renewable energy sectors, including through the means of non-market excess capacity, state-directed investment, forced labor, forced technology transfer, and theft of trade secrets. For example, in the renewable energy sector, the Department of Justice indicted two individuals and a cybersecurity firm associated with China's Ministry of State Security for carrying out state-sponsored intellectual property theft from companies in the solar sector.[116]

65. Nor is the United States the only country to reach such a conclusion. In 2023, EU President von der Leyen discussed the impact of China's unfair trade practices on the solar industry, stating,[117]

> We have not forgotten how China's unfair trade practices affected our solar industry. Many young businesses were pushed out by heavily subsidized Chinese competitors. Pioneering companies had to file for bankruptcy. Promising talents went searching for fortune abroad. This is why fairness in the global economy is so important – because it affects lives and livelihoods. Entire industries and

[114] International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 35 (US-1).
[115] China's Responses to the Panel First Set of Questions, para. 17.
[116] U.S. First Written Submission, para. 101.
[117] 2023 State of the Union Address by EU President von der Leyen at Strasbourg, Sept. 13, 2023, p. 4 (US-48).

> communities depend on it. So, we have [sic] to be clear-eyed about the risks we face.

66. In July and August 2024, Canada held consultations on potential policy responses to unfair Chinese trade practices in the EVs sector.[118] In describing the concerns at issue, Canada pointed to evidence and findings by, among other sources, Rhodium Group, the International Energy Agency, Wood Mackenzie, and TrendForce.[119] Following those consultations, Canada announced variety of measures on EVs and other products from China, based on its findings that "Canadian auto workers and the auto sector currently face unfair competition from Chinese producers, who benefit from unfair, non-market policies and practices" and 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."[120]

67. Through the measures at issue, the United States has incentivized production in the United States and other countries that have made commitments that align with U.S. public morals, thereby protecting U.S. public morals. As previously demonstrated, the measures at issue have already shown meaningful results in generating both investments and manufacturing capacity in the United States and other countries. Thus, China's characterization of the measures at issue as "Made in America" provisions is partly true[121]—but does not undermine the U.S. invocation of Article XX(a). The evidence amply supports that the measures at issue are necessary to protect the U.S. public morals against unfair competition, forced labor, theft, and coercion.

68. Indeed, the Panel must evaluate whether the measures at issue are necessary now, at the time of this WTO challenge, when China has already achieved global dominance of the clean vehicle and renewable energy sectors.[122] The United States has demonstrated that at a time when China has already dominated and effectively monopolized the clean vehicle and renewable energy sectors, the measures at issue are indispensable, essential, or requisite to ensure the protection of U.S. public morals against unfair competition, forced labor, theft, and coercion.

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[118] Department of Finance Canada, Consultations on potential surtaxes in response to unfair Chinese trade practices in critical manufacturing sectors (Sep. 10, 2024) (US-151).
[119] Department of Finance Canada, Consultations on potential surtaxes in response to unfair Chinese trade practices in critical manufacturing sectors (Sep. 10, 2024) (US-151).
[120] 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).
[121] *See, e.g.*, China's Opening Statement at First Panel Meeting, para. 40.
[122] *See* U.S. Responses to the Panel's First Set of Questions, paras. 9-12. As the United States has explained, pursuant to the DSU, the Panel's assessment of China's claims, including the Panel's assessment of the applicability of the exceptions invoked by the United States, must be based on the situation that existed at the time of the Panel's establishment by the DSB. The Panel must examine the *measures and arguments* regarding WTO consistency as of a time when, as the facts adduced by the United States clearly establish, China has already achieved global dominance of the clean vehicle and renewable energy sectors. *Id.* However, the *evidence* used to demonstrate the measures and arguments at issue may post-date the Panel's establishment. The parties appear to agree on this point. China's Responses to the Panel's First Set of Questions, paras. 11, 13.

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

69. Lastly, 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 chapeau of Article XX of the GATT 1994.

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

70. 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.[123] As the United States has demonstrated, China—with the use of non-market policies and practices targeting the clean vehicle and renewable energy sectors for global dominance—very clearly does not have the same conditions as the United States.

a. The Phase One Agreement does not address all sectors threatened by China's non-market behavior, and in any event the United States has serious concerns with China's lack of compliance with that agreement

71. China argues that the U.S. free trade agreement disciplines referenced by the United States are not materially different from the obligations that the United States and China have with each other in the Economic and Free Trade Agreement between the Government of the United States and the Government of the People's Republic of China ("Phase One Agreement").[124] China—incredibly—appears to tout the Phase One Agreement as demonstrative of rising to the level of being a free trade agreement with the United States within the meaning of the Clean Vehicle Tax Credit, asserting that intellectual property and technology transfer issues are addressed in the Agreement.[125] China's arguments fail for numerous reasons.

72. The Phase One Agreement grew out of an investigation into certain acts, policies, and practices of China related to technology transfer, intellectual property, and innovation.[126] Yet, technology and IP-intensive sectors are hardly the only ones that are threatened by China's non-market behavior.[127] Indeed, in a 2024 report, the U.S. Trade Representative (USTR) observed:

> It also remains unclear how faithfully and fairly China will actually enforce the changes to its laws and regulations. Meanwhile, other commitments that China made, such as in the area of technology transfer, are difficult to verify given the tactics that China takes to obscure its activities.

[123] U.S. First Written Submission, paras. 124-125.
[124] *See* China's Responses to the Panel's First Set of Questions, paras. 28, 37.
[125] China's Responses to the Panel's First Set of Questions, para. 33.
[126] *See* The President's 2025 Trade Policy Agenda (US-35).
[127] *See* The President's 2025 Trade Policy Agenda (US-35).

> Notably, the Phase One Agreement did not address many of the U.S. concerns that the United States had been seeking to address in its negotiations with China. The reality is that 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. The unresolved issues included critical concerns in areas such as state-led industrial plans targeting industries for dominance, massive and pervasive subsidization, favorable regulatory support for domestic enterprises, state-owned enterprises, non-market excess capacity, state-sponsored theft of intellectual property, standards, cybersecurity, data localization requirements, restrictions on cross-border data transfers, competition law enforcement and regulatory transparency as well as certain issues in the areas of intellectual property, technology transfer and services market access that were not addressed in the Phase One Agreement. In furtherance of its industrial policy objectives, China's government has also limited market access for imported goods and services and restricted the ability of foreign manufacturers and services suppliers to do business in China.[128]

73. Furthermore, as China is 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 commitments in numerous areas, including the protection of intellectual property rights.[129] In May 2024, USTR issued a report that found that China's unfair acts, policies and practices had continued and, in some cases, had worsened.[130] For example, as documented in that report:

- China has not abandoned its use of state-directed and supported outbound foreign direct investment (OFDI) as a tool to acquire technology. This is despite increased U.S. regulatory oversight . . . and Chinese restrictions on certain types of outbound investments, and despite Chinese commitments in the [Phase One Agreement] not to direct OFDI to acquire foreign technology.[131]

- A 2022 survey by the European Chamber, reports that technology transfer is "ongoing" and that "compelled technology transfers occurred after the Foreign Investment Law" entered into force in 2020. Furthermore, in its most recent 2023 survey, the European Chamber reports that 17 percent of its respondents felt "compelled to transfer technology and/or trade secrets in order to maintain market access." Of respondents that did transfer

[128] Office of the U.S. Trade Representative, 2024 Report to Congress on China's WTO Compliance, p. 27 (US-153).
[129] Report to the President on the America First Trade Policy Executive Summary (Apr. 3, 2025) (US-154). *See also* Office of the U.S. Trade Representative, 2024 Report to Congress on China's WTO Compliance, pp. 27-28 (US-153).
[130] 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-64).
[131] 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).

their technology, 41 percent did so "due to joint venture regulations," "written policy requirements," or "verbal pressure from government officials."[132]

- 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. Furthermore, the role of the Chinese government in perpetuating these intrusions is evident, as over 570 documents leaked in February 2024 provided a firsthand account of how a private Chinese security contractor was paid by the Chinese government to target a range of victims for cyber intrusions, with some services costing as little as $15,000.[133]

74. Accordingly, China is mistaken when it attempts to equate the Phase One Agreement with a "free trade agreement" for purposes of the Clean Vehicle Tax Credit. China's arguments also ignore the serious concerns that the United States has with China's lack of compliance with the Phase One Agreement.

b. China's WTO Protocol of Accession and domestic laws do not establish that the same conditions prevail in the United States and in China

75. It is deeply ironic that China's points to its Protocol of Accession to the WTO in attempting to establish that the same conditions prevail in China as in the United States.[134] China's dominance of the clean vehicle and renewable energy sectors itself demonstrates the woeful insufficiency of that Protocol in restraining China's behavior.

76. Nor does China's domestic competition and anti-monopoly laws provide any meaningful assurances regarding the conditions that prevail in China. Contrary to China's assertions,[135] U.S. companies have cited selective enforcement of the Anti-Monopoly Law against foreign companies seeking to do business in China as a major concern. They have highlighted in particular the comparatively limited enforcement of this law against China's own state-owned enterprises.[136] IP rights holders have expressed concerns regarding China's enforcement of its anti-monopoly law, observing that it can be misused for the purpose of depressing the value of foreign-owned intellectual property in key technologies.[137]

[132] 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. 50 (footnotes omitted) (US-64).
[133] 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, pp. 23-24 (footnotes omitted) (US-64).
[134] China's Responses to the Panel's First Set of Questions, paras. 32, 34.
[135] China's Responses to the Panel's First set of Questions, para. 32.
[136] Office of the U.S. Trade Representative, 2024 Report to Congress on China's WTO Compliance, pp. 53-54 (US-153).
[137] *See* Office of the United States Trade Representative, 2025 Special 301 Report, p. 50 (US-155).

c. The United States and others have long expressed concerns regarding the conditions that prevail in China.

77. For years, the United States has made clear that the same conditions do not prevail in the United States and China. For example:

- The 2025 America First Investment Policy Presidential Memorandum observes that "Certain foreign adversaries, including the People's Republic of China (PRC), systematically direct and facilitate investment in United States companies and assets to obtain cutting-edge technologies, intellectual property, and leverage in strategic industries. The PRC pursues these strategies in diverse ways, both visible and concealed, and often through partner companies or investment funds in third countries."[138]

- As the 2022 U.S. National Security Strategy states, China "benefits from the openness of the international economy while limiting access to its domestic market, and it seeks to make the world more dependent on the PRC while reducing its own dependence on the world".[139]

- As observed in a June 2021 White House Report, with respect to industrial policies "China stands out for its aggressive use of measures—many of which are outside globally accepted fair trading practices—to stimulate domestic production and capture global market share in critical supply chains."[140]

- The 2017 U.S. National Security Strategy observed that "China seeks to displace the United States in the Indo-Pacific region, expand the reaches of its state-driven economic model, and reorder the region in its favor"[141]

78. Nor is the United States the only country expressing concern regarding the conditions that prevail in China. As noted above, in imposing a variety of measures on EVs from China, *Canada* pointed to "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."[142] In its 2022 National Security Strategy, *Japan* observed that "China is redoubling its strategic efforts to establish its security in the economic field, and there have been instances of China taking advantage of other countries' dependence on China to exert economic pressure on other countries."[143]

[138] America First Investment Policy Presidential Memorandum (Feb. 21, 2025) (US-92).
[139] White House, National Security Strategy (Oct. 2022), p. 23 (US-156).
[140] White House, Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth, 100-Day Reviews under Executive Order 14017 (June 2021) (US-157).
[141] National Security Strategy of the United States of America (Dec. 2017), p. 25 (US-158).
[142] 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).
[143] National Security Strategy of Japan, Provisional Translation (Dec. 2022) (US-160).

79. The September 2022 *G7 Leaders' Communiqué* called out China's non-market policies and practices specifically, calling them "non-transparent and market-distorting":

> We remain committed to upholding fair and transparent competition in the global economy and strengthening international rules in this regard. With regard to China's role in the global economy, we are continuing to consult on collective approaches, also beyond the G7, to challenges posed by non-market policies and practices which distort the global economy. We will build a shared understanding of China's non-transparent and market-distorting interventions and other forms of economic and industrial directives. We will then work together to develop coordinated action to ensure a level playing field for our businesses and workers, to foster diversification and resilience to economic coercion, and to reduce strategic dependencies.[144]

80. And in its National Security Strategy, released in June 2025, the *United Kingdom* stated that it would seek a trade and investment relationship with China that supports secure and resilient growth and boosts the UK economy, while emphasizing "stark differences" between itself and China and China's "undermining of [the UK's] economic security."[145] As stated in that strategy:

> Yet there are several major areas, such as human rights and cyber security, where there are stark differences and where continued tension is likely. Instances of China's espionage, interference in our democracy and the undermining of our economic security have increased in recent years. Our national security response will therefore continue to be threat-driven, bolstering our defences and responding with strong counter-measures. We will continue to protect the Hong Kong community in the UK and others from transnational repression.[146]

81. Further, as USTR has reported, "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."[147] In numerous WTO Trade Policy Reviews of China, the United States and other countries have expressed significant concerns with the conditions that prevail in China.[148] Regardless of

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[144] G7 Leaders' Communique (2022), p. 18 (US-37).
[145] United Kingdom Cabinet Office Policy Paper, National Security Strategy 2025: Security for the British People in a Dangerous World (June 24, 2025), Strategic Framework, Pillar (ii) - Strength Abroad, para. 27 (US-161).
[146] United Kingdom Cabinet Office Policy Paper, National Security Strategy 2025: Security for the British People in a Dangerous World (June 24, 2025), Strategic Framework, Pillar (ii) - Strength Abroad, para. 27 (US-161).
[147] Office of the U.S. Trade Representative, 2024 Report to Congress on China's WTO Compliance, p. 18 (US-153).
[148] *See* Trade Policy Review Body, Trade Policy Review, China, Minutes of Meeting, WT/TPR/M/458 (July 17 and 19, 2024), para. 4.24 (United Kingdom statement that "there's much more we think China could do to improve market access for foreign investors and importers."); *id.*, para. 4.57 (Australia statement that "[w]here there are industrial policies and practices that distort global markets and lead to excess capacity, these need to be addressed. Australia is concerned about such state-led interventions in markets that promote overcapacity."); *id.*, para. 4.81 (United States statement that "China uses constantly evolving non-market policies and practices to achieve the domination objectives in its industrial plans."); *id.,* para. 4.134 (statement of Thailand that "there are many trade policies of China that many Members mentioned today which are of keen interest to Thailand as well. Specifically,

China's claims regarding its domestic laws, China's bilateral commitments with the United States, or multilateral commitments with Members of the WTO, such laws and commitments have not stopped China from continuing to engage in non-market policies and practices targeting the clean vehicle and renewable energy sectors for dominance at the expense of the United States and other Members. Accordingly, the same conditions do not prevail between the United States and China.

2. The measures at issue do not discriminate where the same conditions prevail

82. The United States also has not discriminated among partners with the "same conditions"—that is, the countries that have agreed to commitments aligned with U.S. public morals in a U.S. free trade agreement.[149]

a. Certain variations among U.S. free trade agreements are logical, and disciplines in U.S. free trade agreements are more comprehensive and stronger than WTO disciplines

83. China attempts to undermine the U.S. distinction between U.S. free trade agreement partners and non-free trade agreement countries by asserting that U.S. free trade agreements are heterogenous, and do not substantively expand on obligations that exists under WTO Agreements or other agreements.[150] China's arguments miss the mark.

84. As an initial matter, logically, it makes sense for free trade agreements 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. free trade agreements that is important, namely provisions that discourage unfair competition, forced labor, theft, and coercion.[151]

85. Contrary to China's assertions, U.S. free trade agreements build on the foundation of the WTO Agreement, and they have more comprehensive and stronger disciplines. Indeed, as China

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those include China's support to entrepreneurs in the manufacturing sector through cost reduction measures, support for machinery upgrades to enhance production efficiency, and the promotion of high-tech products, notably electric cars, batteries, and solar panels."); *id.,* paras. 4.142 & 4.144 (statement of the EU that "[o]ver the last years, the EU has conveyed growing concerns regarding systemic imbalances that characterize the Chinese economy" and that "[s]ystemic imbalances are worsened by the negative impact resulting from China's distortive industrial policies and practices, in particular with regard to the widespread support for the manufacturing sector that tilts the global playing field, creating further overcapacity in China with negative externalities for a wide range of WTO Members."); *id.*, para. 4.361 (statement of Ukraine that "we notice that state-owned enterprises (SOEs) continue to play a significant role in China's economy and the number of SOEs increased significantly in industrial and construction sectors over the review period. In this regard, we believe that it is important to review and optimize the national policy on SOEs that may negatively affect the functioning of market-oriented practices globally."); *id.*, para. 4.406 (India statement that "[w]e note that various Members have raised several questions related to legal and institutional framework in China such as transparency of trade laws and regulations, institutional framework, trade measures related to import/export and affecting production including concerns related to overcapacity in various sectors.").

[149] *See* U.S. Opening Statement at First Panel Meeting, paras. 72-73.

[150] China's Responses to the Panel's First Set of Questions, paras. 29, 34, 35, 37.

[151] *See* U.S. Opening Statement at First Panel Meeting, para. 49.

itself appears to recognize,[152] the USMCA includes TRIPS-plus obligations relating to trade secrets, including, for example but not limited to, obligations relating to the protection of trade secrets.[153] And even free trade agreement provisions that simply reiterate or incorporate provisions set forth in other agreements serve to reinforce those commitments and signal the value that free trade agreement partners place on those commitments.

b. The content of U.S. free trade agreements was considered in the development of the Clean Vehicle Tax Credit

86. Next, China falsely alleges that the United States has presented *ex post* rationalization for the purposes of this dispute—arguing that the consideration of U.S. free trade agreement partners has nothing to do with the *content* of the free trade agreements.[154] China's assertions ignore that the U.S. Congress heard testimony on the importance of working with U.S. allies in sourcing and processing critical minerals in the months leading up to the IRA's passage, that stakeholders and industry leaders specifically welcomed the IRA's inclusion of free trade agreement partners in IRA provisions to ensure adequate supplies for U.S. manufacturing, and that Biden Administration officials highlighted the IRA's provisions that involved partnering with our allies.[155]

87. Moreover, as is evident from the definition of the term "free trade agreement" in Treasury's regulations implementing critical minerals sourcing requirement of the Clean Vehicle Tax Credit, 26 C.F.R. 1.30D-2(b), the content of the free trade agreement is precisely what was considered. Specifically, the regulation at 26 C.F.R. 1.30D-2(b)(13)(i) provides:[156]

> (13) Country with which the United States has a free trade agreement in effect—
>
> (i) In general. The term *country with which the United States has a free trade agreement in effect* means any of those countries identified in paragraph (b)(13)(ii) of this section or that the Secretary of the Treasury or her delegate (Secretary) may identify in the future. The criteria the Secretary will consider in determining whether to identify a country under this paragraph (b)(13) include whether an agreement between the United States and that country, as to the critical minerals contained in clean vehicle batteries or more generally, and in the context of the overall commercial and economic relationship between that country and the United States:
>
> (A) Reduces or eliminates trade barriers on a preferential basis;
> (B) Commits the parties to refrain from imposing new trade barriers;
> (C) Establishes high-standard disciplines in key areas affecting trade (such as core labor and environmental protections); and/or

[152] China's Responses to the Panel's First Set of Questions, para. 30.
[153] *See, e.g.,* USMCA Chapter 20, Article 20.69 *et seq.*
[154] China's Responses to the Panel's First Set of Questions, para. 38.
[155] *See* U.S. Response to the Panel's First Set of Questions, paras. 73, 76, 78.
[156] Treas. Reg. § 1.30D-2(b)(13)(i) (CHN-24).

> (D) Reduces or eliminates restrictions on exports or commits the parties to refrain from imposing such restrictions.

88. Accordingly, 26 C.F.R. 1.30D-2(b)(13)(i) explicitly provides criteria for Treasury to determine agreements which are eligible—taking into consideration the *content* of agreements, which include 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. China, in its first written submission, likewise recognized that the regulations provided this standard.[157]

89. As further evidence, in the proposed rule implementing the critical minerals sourcing requirement, Treasury explained that the proposed definition of "free trade agreement," takes into account the term's meaning, use, and context in the statute.[158] Specifically, the proposed rule explained,[159]

> The IRA's amendments to section 30D 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*. The Treasury Department and the IRS recognize that *more secure and resilient supply chains* are essential for our national security, our economic security, and our technological leadership. The Treasury Department and the IRS propose to identify the countries with which the United States has free trade agreements in effect for purposes of section 30D consistent with the statute's purposes of promoting reliance on such supply chains and of providing eligible consumers with access to tax credits for the purchase of new clean vehicles.

90. Accordingly, the term "free trade agreement" in the critical minerals sourcing requirement, explicitly considers the content of the free trade agreement, and reaffirms the statute's purpose to promote reliance on supply chains in countries with which the United States has reliable and trusted economic relationships.

91. Lastly, China argues that the United States-Japan Critical Minerals Agreement ("CMA") lacks any obligations concerning intellectual property, thereby undermining the U.S. position that intellectual property is a relevant condition for the free trade agreements.[160] However,

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[157] China's First Written Submission, para. 21 n. 27.
[158] U.S. Internal Revenue Service, "Section 30D New Clean Vehicle Credit, Proposed Rule," 88 Fed. Reg. 23370, 23376 (Apr. 17, 2023) (CHN-20).
[159] 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).
[160] China's Responses to the Panel's First Set of Questions, para. 31. China misconstrues the U.S. position to mean that a free trade agreement for the purposes of the Clean Vehicle Tax Credit must all contain provisions concerning labor rights, intellectual property, and fair competition. *Id.*, paras. 31, 35. As the United States explained, the United States has not discriminated among countries that have agreed to commitments that align with U.S. public morals in a free trade agreement, including, for example, agreements that have provisions concerning labor rights, IP protections, or fair competition norms. By including such free trade agreement partners in the critical minerals

Article 3.4 of the CMA reflects that the parties will cooperate on non-market policies and practices of non-parties, affecting trade in critical minerals.[161] This would include—for instance—industrial espionage or the theft of trade secrets.

92. Accordingly, 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 the United States would seek to extricate the U.S. clean vehicle and renewable energy sectors from the dominance of China. The measures at issue are 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.

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

93. As the United States has stated, the measures at issue also are not being applied in a manner that constitutes a "disguised restriction on international trade".[162] The United States has taken no steps to conceal the requirements of the measures at issue. China has not refuted this assertion; nor has China engaged on the argument at all.

D. Conclusion

94. Accordingly, 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.

IV. THE FEOC EXCLUSION IN THE CLEAN VEHICLE TAX CREDIT IS COVERED BY ARTICLE XXI(B) OF THE GATT 1994

95. In an attempt to distract the Panel from its own targeting and dominance of these sectors, and its non-market policies and practices—which China has not even attempted to deny—China invites the Panel to import requirements on an invocation of Article XXI(b) that have no basis in the text of that provision or anywhere else in the covered agreements. As discussed below, China's arguments are unavailing. Consistent with the ordinary meaning of the terms of Article XXI(b), the only finding that the Panel may make with respect to the FEOC exclusionary rule from the Clean Vehicle Tax Credit is to note the U.S. invocation of Article XXI(b) and to so report to the DSB.

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sourcing requirement, the United States achieves the statute's purpose to promote reliance on supply chains in countries with which the United States has reliable and trusted economic relationships.

[161] 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).

[162] U.S. First Written Submission, paras. 133-135.

A. China's attempt to invent a "burden of proof" under Article XXI(b) is not supported by the text of the covered agreements

96. China's complains that the United States has not met a purported "burden of proof" for an invocation of Article XXI,[163] but neither the DSU nor any other covered agreement uses that phrase, and—consistent with DSU Article 3.2—what is required of a Member exercising its right under Article XXI is set forth in the terms of Article XXI itself.[164] All that is required under Article XXI(b), as interpreted in accordance with the customary rules of interpretation of public international law, is that the Member considers one or more of the circumstances set forth in Article XXI(b) to be present. As the United States has explained, this interpretation of Article XXI is confirmed by supplementary means of interpretation, including Uruguay Round negotiating history.[165]

97. China cites no support for its invented "burden of proof" for an invocation of Article XXI(b), and indeed China's complaints about the U.S. invocation of Article XXI(b) here appear contrary to its own previous assertions regarding Article XXI(b) as a third party in *Russia-Traffic in Transit*.[166] Accordingly, the Panel should decline China's invitation to import requirements to Article XXI(b) that have no basis in the text of the covered agreements.

B. Notwithstanding that Article XXI is self-judging, the United States has made available information regarding its invocation of that provision

98. Even if the United States did bear a "burden of proof" in its invocation of Article XXI—which it does not—China is incorrect when it suggests that United States is "waiting until late in the panel proceedings before it makes any attempt to discharge" that purported burden.[167]

99. Contrary to China's complaints, notwithstanding the self-judging nature of Article XXI(b), from the beginning of this dispute the United States has made available information to China and other Members regarding the U.S. invocation of Article XXI. In response to China's request for a panel at the September 2024 Dispute Settlement Body meeting, the United States observed that China had complained about IRA requirements related to foreign entities of concern, which is defined by reference to U.S. national security legislation, and the United States noted "that issues of national security are not susceptible to review or resolution by WTO dispute settlement."[168]

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[163] China's Responses to the Panel's First Set of Questions, paras. 41-42.
[164] *See* U.S. Responses to the Panel's First Set of Questions, paras. 82-83.
[165] *See* U.S. First Written Submission, para. 47.
[166] *See* U.S. Responses to the Panel's First Set of Questions, paras. 84-86.
[167] China's Responses to the Panel's First Set of Questions, para. 42.
[168] *See* U.S. First Written Submission, para. 48 and footnote 90; U.S. Statement, Minutes of Meeting of Dispute Settlement Body (September 23, 2024) (WT/DSB/M/493), para. 3.6 ("China has also complained about requirements under the Inflation Reduction Act related to "foreign entities of concern", as defined by reference to U.S. national security legislation. As Members well know, it is the long-standing position of the United States, and numerous other Members historically, that issues of national security are not susceptible to review or resolution by WTO dispute settlement.").

100. In its first written submission, the United States reiterated that Article XXI(b) is self-judging,[169] but nevertheless described the underlying national security legislation for China and the Panel, submitted that legislation as an exhibit, and stated that the FEOC exclusion to the Clean Vehicle Tax Credit is expressly a matter of U.S. national security.[170]

101. In its opening statement at the first panel meeting, the United States pointed to additional publicly available information demonstrating the self-evident national security basis for the FEOC exclusion. As the United States noted, the U.S. defense procurement law from which part of the FEOC definition is drawn characterizes China as a "non-allied foreign nation" and other U.S. instruments similarly identify China and other countries as "foreign adversaries," or observe, for example that China "pose[s] significant risk to the United States homeland."[171] As the United States observed at that meeting, such listings 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.[172] China does not even attempt to dispute these characterizations. Thus, the United States has invoked Article XXI clearly—and also referred to its national security legislation—from the very outset of this dispute.

C. China's invented requirement to identify a subparagraph of Article XXI(b) in an invocation of that provision is likewise not supported by the text

102. China also asserts—without support in the text of Article XXI(b)—that "the United States bears the burden of establishing that one more of the subparagraphs of Article XXI(b) is objectively applicable to the GATT-inconsistent measure for which justification is sought."[173] As the United States has explained, Article XXI(b) does not require a Member invoking that provision to identify the subparagraph ending that Member may consider most relevant, and indeed nothing in the text of Article XXI(b) suggests that the subparagraphs are mutually exclusive.[174] This understanding of the text of Article XXI(b) is supported by, among other things, the context provided by Article XXI(a).[175]

103. In any event, the FEOC exclusionary rule is self-evidently a matter of national security and could be understood to relate to one or more subparagraphs of Article XXI(b). As the United States has explained, the FEOC exclusionary rule excludes from eligibility for the Clean Vehicle Tax Credit any clean vehicle that, beginning on January 1, 2024, contains any battery components manufactured or assembled by an FEOC and, beginning on January 1, 2025, contains any applicable critical minerals extracted, processed, or recycled by an FEOC.[176] Under regulations implementing this exclusion, qualified manufacturers must certify their compliance with the FEOC rule on an ongoing basis by submitting periodic written reports.[177] The IRA

[169] *See* U.S. First Written Submission, paras. 47-49.
[170] *See* U.S. First Written Submission, paras. 8, 23-277, 49-51.
[171] *See* U.S. Opening Statement at First Panel Meeting, paras. 79-81.
[172] *See* U.S. Opening Statement at First Panel Meeting, paras. 81.
[173] China's Responses to the Panel's First Set of Questions, para. 40.
[174] U.S. Responses to the Panel's First Set of Questions, paras. 87-88.
[175] U.S. Responses to the Panel's First Set of Questions, paras. 87-88.
[176] *See* U.S. First Written Submission, para. 23.
[177] U.S. First Written Submission, para. 27.

defines FEOC by cross-reference to the Infrastructure Investment and Jobs Act of 2021, which sets out a five-part definition:

> (5) Foreign entity of concern. The term "foreign entity of concern" means a foreign entity that is—
>
> > (A) designated as a foreign terrorist organization by the Secretary of State under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a));
> >
> > (B) included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury (commonly known as the SDN list);
> >
> > (C) owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation (as defined in section 2533c(d) of title 10, United States Code);
> >
> > (D) alleged by the Attorney General to have been involved in activities for which a conviction was obtained under—
> >
> > > (i) chapter 37 of title 18, United States Code (commonly known as the "Espionage Act") [18 U.S.C. §§ 791 et seq.];
> > >
> > > (ii) section 951 or 1030 of title 18, United States Code;
> > >
> > > (iii) chapter 90 of title 18, United States Code (commonly known as the "Economic Espionage Act of 1996") [18 U.S.C. §§ 1831 et seq.];
> > >
> > > (iv) the Arms Export Control Act (22 U.S.C. 2751 et seq.);
> > >
> > > (v) section 224, 225, 226, 227, or 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2274, 2275, 2276, 2277, and 2284);
> > >
> > > (vi) the Export Control Reform Act of 2018 (50 U.S.C. 4801 et seq.); or
> > >
> > > (vii) the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.); or
> >
> > (E) determined by the Secretary of Energy, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.[178]

104. Perhaps acknowledging the self-evident national security basis for at least four parts of this definition, China has focused its arguments only on the third FEOC ground, foreign entities

[178] *See* U.S. First Written Submission, para. 23.

"owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation."[179] As the United States has explained, the term "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."[180]

105. As the United States noted at the first panel meeting, numerous other instruments similarly identify China and these other nations as "foreign adversaries" or note that China poses a threat to the United States.[181] For example:

- In April 2025, the U.S. Department of Justice addressed an "urgent threat" by establishing what are effectively export controls that prevent China and other foreign adversaries, and those subject to their control, jurisdiction, ownership, and direction from accessing U.S. government-related data and certain personal data.[182]

- The March 2025 Annual Threat Assessment of the U.S. Intelligence Community includes China among state actors that "present proximate and enduring threats to the United States and its interests in the world," and calls China "the actor most capable of threatening U.S. interests globally."[183]

- The February 2025 America First Investment Policy Presidential 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."[184]

- The President's 2025 Trade Policy Agenda calls China "the single biggest source of our country's large and persistent trade deficit and a unique economic challenge" and noted that a variety of sectors "are threatened by China's non-market behavior."[185]

- In January 2025, the U.S. Department of Commerce prohibited transactions involving vehicle connectivity systems designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of China, building on a prior a finding that China is "engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States or security and

[179] U.S. Opening Statement at First Panel Meeting, para. 81; China's First Written Submission, para. 29.
[180] U.S. Opening Statement at First Panel Meeting, para. 81.
[181] U.S. Opening Statement at First Panel Meeting, para. 81.
[182] Press Release, Justice Department Implements Critical National Security Program to Protect Americans' Sensitive Data from Foreign Adversaries (Apr. 11, 2025) (US-163).
[183] Office of the Director of National Intelligence, Annual Threat Assessment of the U.S. Intelligence Community (March 2025), p. 9 (US-164).
[184] U.S. Opening Statement at First Panel Meeting, para. 81.
[185] The President's 2025 Trade Policy Agenda, p. 3 (US-35).

safety of United States persons", and is therefore a "foreign adversary" for purposes of a 2019 Executive Order on information and communications technology and services.[186]

- The 2022 U.S. National Security Strategy states that China "is using its technological capacity and increasing influence over international institutions to create more permissive conditions for its own authoritarian model, and to mold global technology use and norms to privilege its interests and values" and "seeks to make the world more dependent on the PRC while reducing its own dependence on the world."[187]

- In a section entitled "[d]ependence on potential adversaries," a June 2021 White House Report on building resilient supply chains observed that "China has used its state-supported position as the leading manufacturer and consumer of lithium-ion cells to further limit competition in the supply chain for those cells" and that "China has used this market control to restrict access to materials and to inhibit the ability of firms operating outside of China to compete."[188]

- The 2017 U.S. National Security Strategy states that China "want[s] to shape a world that is antithetical to U.S. values and interests" and "seeks to displace the United States in the Indo-Pacific region, expand the reaches of its state-driven economic model, and reorder the region in its favor."[189]

106. Thus, despite China's attempts to feign ignorance, such statements—which date from before the IRA's passage to the present—further confirm the self-evident national security basis for FEOC exclusion from the Clean Vehicle Tax Credit. That national security basis could be seen as implicating one or more of the subparagraphs, for example, Article XXI(b)(iii) as an action that a Member considers necessary for the protection of its essential security interests taken in time of war or other emergency in international relations.

107. Accordingly, contrary to China's unsupported assertions, a Member invoking Article XXI(b) bears no burden to identify a particular subparagraph of the provision in that invocation. And even if such a requirement did exist—which it does not—it is self-evident that the FEOC definition fits one or more of those subparagraphs.

[186] *See* Department of Commerce, Securing the Information and Communications Technology and Services Supply Chain: Connected Vehicles, 90 Fed. Reg. 5360 (Jan. 16, 2025) (US-165); Executive Order 13873, Securing the Information and Communications Technology and Services Supply Chain (May 17, 2019) (US-166); Department of Commerce, Securing the Information and Communications Technology and Services Supply Chain, 89 Fed. Reg. 96872 (Dec. 6, 2024) (US-167); 15 C.F.R. 791.4 (US-168).
[187] White House, National Security Strategy (Oct. 2022), p. 23 (US-156).
[188] White House, Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth, 100-Day Reviews under Executive Order 14017 (June 2021), p. 121 (US-157).
[189] National Security Strategy of the United States of America (Dec. 2017), p. 25 (US-158).

V. THE EXCEPTIONS UNDER ARTICLE XX OF THE GATT 1994 APPLY TO THE SCM AGREEMENT

108. As the United States has demonstrated, the general exceptions under Article XX of the GATT 1994 apply to the SCM Agreement.[190] The ordinary meaning of the terms of the SCM Agreement, read in their context, including the overall structure and object and purpose of the WTO Agreement, establish that the exceptions under Articles XX of the GATT 1994 are applicable to the SCM Agreement.[191] The negotiating history likewise confirms the understanding that emerges from the ordinary meaning of the terms of the SCM Agreement.[192]

A. The SCM Agreement contains multiple provisions of text linking the SCM Agreement with the GATT 1994 and the Article XX Exceptions

109. As the United States has demonstrated, the explicit textual link in the SCM Agreement—in particular Article 32.1 and footnote 56—establish that the Article XX exceptions apply.[193] China misleadingly adds language into footnote 56, asserting that footnote 56 is limited to the subject matter of Article 32.1, and therefore footnote 56 "clarifies that Members may take actions *against subsidy measures* under other relevant provisions of the GATT 1994, as appropriate."[194] However, this is not what footnote 56 states. Rather, the ordinary meaning of the terms in footnote 56 simply state, "action under other relevant provisions of GATT 1994". Therefore, footnote 56 is not limited to "actions *against subsidy measures*" as China asserts.

110. Further, the structure of the WTO Agreement as a whole and the context provided by it also demonstrates that the general exceptions under Article XX apply.[195] Citing to the principle of effective treaty interpretation, China argues that the GATT 1994 exceptions only apply if there is a clear and unambiguous incorporation of the exceptions.[196]

111. However, the principle of effectiveness is not a separate rule of interpretation, and does not result in the conclusion that an interpretation that Article XX of the GATT 1994 applies to the SCM Agreement would render the specific incorporation in other Annex 1A agreements, redundant or ineffective. To the contrary, under the correct interpretation identified by the United States, Members would have recourse to Article XX of the GATT 1994 to defend a measure, and a specific reference to Article XX in an Annex 1A agreement simply provides further clarity on this point. That is, an article providing explicitly for incorporation is not "ineffective" as a legal matter simply because it is not uniquely effective. Indeed, the principle

[190] In its responses to the Panel's First Set of Questions, China stated that its claims under Articles 3.1(b) and 3.2 of the SCM Agreement did not apply to the FEOC exclusion. China's Responses to the Panel's First Set of Questions, para. 4. The United States is invoking Article XXI of the GATT 1994 only with respect to the FEOC requirement. U.S. First Written Submission, para. 45; U.S. Responses to the Panel's First Set of Questions, para. 15. Therefore, for the purposes of this dispute, the Panel need only consider whether Article XX of the GATT 1994 apply to claims under the SCM Agreement.
[191] U.S. First Written Submission, paras. 140-179.
[192] U.S. Responses to the Panel's First Set of Questions, paras. 93-108.
[193] U.S. First Written Submission, paras. 147-150.
[194] China's Opening Statement at First Panel Meeting, para. 26.
[195] U.S. First Written Submission, paras. 164-179.
[196] China's Opening Statement at First Panel Meeting, para. 20.

of effectiveness does not mean one should interpret a treaty in such a way to provide the provisions "maximum" effectiveness in the sense that the outcomes would necessarily be different in the absence of the language at issue. Instead, the principle simply means that interpretation should not be conducted in a way that makes a provision ineffective.

112. Indeed, the Appellate Body report in *China – Rare Earths* noted Article 3 of the TRIMS Agreement as an example of express incorporation, but went on to explain,

> In many instances, no express language identifying the relationship between specific terms and provisions of a Multilateral Trade Agreement with those of another Multilateral Trade Agreement . . . is found in the agreements at issue. Where this is so, recourse to other interpretative elements will be necessary to determine the specific relationship . . . .[197]

113. Therefore, as the United States has demonstrated, textual interpretation under the customary rules of interpretation establishes that Article XX of the GATT 1994 applies to the SCM Agreement. This interpretation therefore reflects the principle of effectiveness, by giving effect to the terms of the agreements themselves and the structure of the WTO Agreement as a whole. No separate rule or principle dictates a different conclusion.

B. The negotiating history of the SCM Agreement confirms that the Article XX exceptions apply to the SCM Agreement

114. China suggests there is "no indication from the negotiating history that the drafters intended the Article XX exceptions available under the GATT 1994 to apply to the SCM Agreement,"[198] but this assertion misperceives the relationship between the SCM Agreement and the GATT 1994. As the United States has explained, while not necessary in this dispute, the negotiating history likewise confirms that the Article XX exceptions apply to the SCM Agreement.[199] As the United States detailed, the Tokyo Round Subsidies Code elaborates only the subsidies disciplines set out in the GATT 1947, rather than amending or replacing those disciplines.[200] The Tokyo Round Subsidies Code left unaffected other provisions of the GATT 1947, such as Article XX of the GATT 1994 – and those provisions continued to apply unaffected.

115. Negotiation of the SCM Agreement during the Uruguay Round similarly reflects an elaboration upon the core principles and objectives of the GATT 1947, including the foundational exceptions reflected in Articles XX.[201] Importantly, the SCM Agreement ultimately incorporated—at Article 32.1 and footnote 56—Article 19 and footnote 1 of the Tokyo Round subsidies code which, read in conjunction, confirm that where an article is not

[197] *China – Rare Earths (AB)*, para. 5.56.
[198] China's Responses to the Panel's First Set of Questions, para. 43.
[199] U.S. Responses to the Panel's First Set of Questions, paras. 93-108.
[200] U.S. Responses to the Panel's First Set of Questions, paras. 98-102.
[201] U.S. Responses to the Panel's First Set of Questions, paras. 103-108.

interpreted by the SCM Agreement, the authority to take action under the GATT 1994 provisions remain unchanged.[202]

116. Accordingly, the exceptions under Article XX of the GATT 1994 apply to claims under the SCM Agreement.

VI. CONCLUSION

117. For the foregoing reasons, the United States respectfully requests that the Panel: (1) reject China's request for findings under Articles 3.1(b) and 3.2 of the SCM Agreement with respect to the Clean Vehicle Tax Credit; (2) find that the United States has invoked its essential security interests under Article XXI(b) of the GATT 1994 with respect to the FEOC exclusionary rule under the Clean Vehicle Tax Credit and so report to the DSB; and (3) find that all other measures challenged by China are justified under Article XX(a) of the GATT 1994.

[202] *See* U.S. First Written Submission, paras. 148-150.