

***EUROPEAN UNION – DEFINITIVE COUNTERVAILING DUTIES ON NEW BATTERY
ELECTRIC VEHICLES FROM CHINA***

(DS630)

**ORAL STATEMENT OF THE UNITED STATES OF AMERICA
AT THE THIRD-PARTY SESSION
OF THE FIRST SUBSTANTIVE MEETING OF THE PANEL**

July 2, 2026

Mr. Chairperson, Members of the Panel,

1. The United States appreciates the opportunity to appear before you today and provide our views regarding the proper legal interpretation of certain provisions of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement).

2. The United States, like most WTO Members, has a systemic interest in advancing mutually advantageous economic development, including through private, market-oriented investment, that promotes resilience and benefits workers. At the same time, we are increasingly concerned about the massive global economic disruptions from non-market-oriented policies and practices that undermine the rights of our workers and companies to fair competition. Certain Members are using extensive, trade-distortive government support and other non-market policies and practices to target specific industries for domestic or global market dominance. In the clean vehicle sector, for example, China has pursued global dominance through a broad range of non-market policies and practices. China now produces approximately 60 percent of electric vehicles sold globally, 80 percent of the batteries that power them, and almost 100 percent of lithium-iron-phosphate global production capacity.¹

3. When these harmful policies and practices include the use of subsidies, and subsidized imports harm another Member's domestic industry, the GATT 1994 and the SCM Agreement provide a remedy. The United States has a systemic interest in ensuring that the rules disciplining subsidies are available and effective to address acute situations in which subsidized imports harm a WTO Member's domestic industry. As to the domestic industry in this case, we note that even within the past week, as a result of increasing imports from China, European

¹ Washington Post, "How China pulled ahead to become the world leader in electric vehicles," March 3, 2025 (Exhibit USA-1); International Energy Agency, Global EV Outlook 2024, p. 80 (Exhibit USA-2).

carmakers have announced plans to lay off tens of thousands of workers and terminate production at several plants.²

4. In this statement, we will first address the proper interpretation of the term “public body” in Article 1.1(a)(1) of the SCM Agreement and then address the proper grounds for resorting to “facts available” under Article 12.7.

I. THE MEANING OF “PUBLIC BODY” UNDER ARTICLE 1.1(A)(1) OF THE SCM AGREEMENT

5. The United States has serious concerns³ about the interpretation proffered by China for the term “public body” under Article 1.1(a)(1) of the SCM Agreement.⁴ China argues that—based entirely on prior, erroneous Appellate Body language—the term “public body” refers to “an entity that ‘possesses, exercises or is vested with governmental authority,’” and that “an entity must be *governmental in nature* in order to be deemed to be a public body.”⁵

6. However, nothing in the text of Article 1.1(a)(1) of the SCM Agreement restricts the meaning of “public body” only to an entity possessing, exercising, or otherwise vested with governmental authority, or exercising governmental functions. Those terms do not appear in Article 1.1(a)(1) and are not suggested by the term “public body”. To the contrary, the ordinary meaning of the term “public body”, in its context, reveals that an entity may constitute a public body where “the government has the ability to control that entity and/or its conduct to convey

² Financial Times, “German carmakers embark on historic job cuts as Chinese rivals flood market,” June 27, 2026, available at <https://www.ft.com/content/b68964c9-f3d0-48e8-8873-8f463834936c?syn-25a6b1a6=1>.

³ U.S. Third Party Submission, paras. 7-22.

⁴ China First Written Submission, paras. 314, 321-328.

⁵ China First Written Submission, para. 322 (emphasis original) (citing *US- Countervailing Duties (China)* (Article 21.5 – *China*), para. 5.100).

financial value.”⁶ Put another way, a public body may be any entity that a government is able to control, such that when the entity conveys economic resources, it is transferring the public’s resources.

7. The SCM Agreement does not define the term “public body,”⁷ but definitions of the words “public” and “body” shed light on the ordinary meaning of the term.⁸ The ordinary meaning of the composite term “public body” according to dictionary definitions would be “an artificial person created by legal authority; a corporation; an officially constituted organization” that is “of or pertaining to the people as a whole; belonging to, affecting, or concerning the community or nation.”⁹ These definitions point toward ownership by the community as one meaning of the term “public body.” If an entity “belongs to” or is “of” the community, it also follows that the community can make decisions for, or control, that entity.

8. Nothing in those definitions restricts “public body” to an entity vested with, or exercising, governmental authority, or one exercising governmental functions.¹⁰ Had the drafters

⁶ *US – Countervailing Duties (China) (Article 21.5 – China) (AB)*, para. 5.248 (dissent). See also U.S. Second Written Submission, *US – Countervailing Measures (Article 21.5 – China) (Panel)*, paras. 82-89, available at https://ustr.gov/sites/default/files/enforcement/DS/US.Sub2_1.pdf; U.S. Appellant Submission, *US – Pipe and Tube Products (Turkey) (Panel)*, paras. 27-34, available at https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/WTO/Pending/US.Appellant.Sub.fin.%28public%29.pdf; U.S. Second Written Submission, *US – Pipe and Tube Products (Turkey) (Panel)*, para. 81, available at <https://ustr.gov/sites/default/files/enforcement/DS/US.Sub2.fi.pdf>; U.S. Statements at the August 15, 2019, DSB Meeting, pp. 3-7, available at [https://ustr.gov/sites/default/files/enforcement/DS/437.\(21.5\).Aug15.2019.DSB.Stmt.\(As.Delivered\).fin.pdf](https://ustr.gov/sites/default/files/enforcement/DS/437.(21.5).Aug15.2019.DSB.Stmt.(As.Delivered).fin.pdf); U.S. Statements at the December 19, 2014, DSB Meeting, pp. 4-5, available at https://ustr.gov/sites/default/files/enforcement/DS/436.Dec19.2014.DSB_.Stmt_.as-delivered.Public.pdf; U.S. Appellee Submission, *US – Anti-Dumping and Countervailing Duties (China) (AB)*, paras. 61-64, available at https://ustr.gov/sites/default/files/uploads/ziptest/WTO%20Dispute/New_Folder/Pending/US.Appellee.Sub_.fin_.pdf.

⁷ China First Written Submission, para. 321; *US – Countervailing Duties (China) (Article 21.5 – China) (AB)*, para. 5247 (dissent).

⁸ U.S. Third Party Submission, paras. 9-11.

⁹ U.S. Third Party Submission, para. 10.

¹⁰ U.S. Third Party Submission, para. 11.

intended to convey that meaning, they might have chosen any number of other terms, for example: “governmental body,” “public agency,” “governmental agency,” or “governmental authority.” That they did not do so sheds light on the different concept captured by the term that was chosen, “public body.”¹¹

9. The ordinary meaning of the terms of a treaty must be understood “in their context.”¹² Reading the term “public body” in context supports the conclusion that a “public body” is an entity controlled by the government such that the government can use that entity’s resources as its own.

10. In Article 1.1(a)(1), the term “public body” is part of the disjunctive phrase “by a government or any public body within the territory of a Member.” The SCM Agreement thus uses two different terms— “a government” on the one hand and “any public body” on the other hand—to identify the two types of entities that can provide a financial contribution. As a contextual matter, the use of the distinct terms “a government” and “any public body” together this way indicates that the terms have distinct and different meanings.

11. Treaty interpretation should give meaning and effect to all terms of a treaty. The terms “a government” and “any public body” thus need to be interpreted distinctly, so that the latter is not rendered redundant of the former. The ordinary meaning of “government” refers to, *inter alia*, “The governing power in a State; the body or successive bodies of people governing a State; the State as an agent; an administration, a ministry.”¹³ The term “public body,” therefore,

¹¹ U.S. Third Party Submission, para. 11.

¹² Vienna Convention on the Law of Treaties, Article 31.

¹³ Shorter Oxford English Dictionary, L. Brown (ed.) (Clarendon Press, 1993), Vol. I, p. 1123 (Exhibit USA-3).

should be interpreted as meaning something *other* than an entity that performs “functions of a ‘governmental’ character, that is, to ‘regulate’, ‘restrain’, ‘supervise’ or ‘control’ the conduct of private citizens.”¹⁴ Otherwise, a “public body” is “a government,” or a part of “a government,” and there is no reason for the term “public body” to have been included in Article 1.1(a)(1).

12. Furthermore, the context supplied by “financial contribution” in Article 1.1(a)(1) suggests a different common concept between “government” and “public body.” The notion that both are referred to collectively as “government” and are capable of making a “financial contribution” suggests that the core attribute they share is the ability to convey the economic resources of the public.

13. Under Article 1.1(a)(1), the investigating authority’s examination of whether an entity is a public body must be on a case-by-case basis in light of all the evidence before it. Nothing in the text of Article 1.1(a)(1) supports China’s interpretation that the inquiry must be “granular” or “entity-by-entity” to the exclusion of considering evidence that applies to more than one entity. That includes relevant information, such as that considered by the European Commission here, about an association an entity is a member of or the regulatory and economic environment in which it operates.¹⁵ An unbiased and objective investigating authority could take into account such information to determine that an entity is a public body.

14. China’s reliance upon an erroneous interpretation of “public body,”¹⁶ and flawed view of

¹⁴ See *Canada – Dairy (AB)*, para. 97.

¹⁵ China First Written Submission, paras. 314, 320, 329, 590, 999.

¹⁶ See, e.g., Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union, January 14, 2020 (“The Ministers agreed that the interpretation of ‘public body’ by the WTO Appellate Body in several reports undermines the effectiveness of WTO subsidy rules. To determine that an entity

the information that an investigating authority may consider under Article 1.1(a)(1), means that its claim should fail.

15. Pursuant to the Panel’s terms of reference under DSU Article 7.1, and as reflected in DSU Article 11, the Panel is charged by the DSB to undertake its own objective assessment of the meaning of Article 1.1(a)(1). By applying customary rules of interpretation of public international law, consistent with DSU Article 3.2, the United States respectfully suggests that the Panel reach its conclusions consistent with the interpretative approach set out here and in the U.S. third party submission,¹⁷ rather than rely upon the Appellate Body’s erroneous “governmental authority” interpretation.

II. THE USE OF FACTS AVAILABLE

16. Now turning to Article 12 of the SCM Agreement, the United States disagrees with China’s restrictive interpretation of the grounds on which an investigating authority can use and select “facts available.”¹⁸ China argues that an interested party cannot “refuse access to,” or otherwise “not provide” necessary information that is not in its “possession.” In such a case, China believes the party has satisfied its duty to cooperate, and an investigating authority is precluded from resort to facts available.¹⁹ However, China reads the term “possession” into Article 12.7 where there is none.

17. The plain meaning of the phrase “refuses access to, or otherwise not provide” simply

is a public body, it is not necessary to find that the entity ‘possesses, exercises or is vested with governmental authority.’”).

¹⁷ U.S. Third Party Submission, paras. 5-22.

¹⁸ U.S. Third Party Submission, paras. 42-58.

¹⁹ China First Written Submission, paras. 957-958.

connotes a “certain response—or a lack thereof—” by an interested party.”²⁰ The phrase “refuses access to” may encompass a situation where the interested party possesses the information, but it may also extend to other situations. And the phrase “or otherwise not provide” on its face extends beyond situations in which an interested party may impede “access to” information. Thus, Article 12.7 does not limit an investigating authority’s recourse to facts available only to situations in which an entity actually holds or possesses the requested information.²¹ China’s narrow interpretation incorrectly constrains the bases for using facts available and the ability of an investigating authority to conduct an investigation.²²

III. CONCLUSION

18. This concludes the U.S. oral statement. The United States would like to thank the Panel for its consideration of our views and looks forward to responding to the Panel’s questions.

²⁰ *US – Anti-Dumping and Countervailing Duties (Korea)*, para. 7.270.

²¹ Japan Third Party Submission, paras. 27-29 (noting that Article 12.7 “does not limit an investigating authority’s recourse to facts available only to situations where it seeks information from any entity that actually holds or possesses the requested information”). The United Kingdom states, “Article 12.7 does not limit an investigating authority’s recourse to facts available only to situations where it seeks information from an entity that actually holds or possesses the information at issue.” UK Third Party Submission, para. 22.

²² U.S. Third Party Submission, para. 47.