European Union – Definitive Countervailing Duties on New Battery Electric Vehicles from China

(DS630)

INTEGRATED EXECUTIVE SUMMARY OF THE UNITED STATES OF AMERICA

July 31, 2026

EXECUTIVE SUMMARY OF U.S. THIRD PARTY SUBMISSION

I. CLAIMS REGARDING ARTICLE 1.1(A)(1) OF THE SCM AGREEMENT

1. The United States has serious concerns with the interpretation of "public body" relied upon by China. It relies entirely on prior, erroneous Appellate Body reports, argues that 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." The EU appears to agree with China that "governmental authority" is required for an entity to be a public body, and the Commission appears to have made its public body finding in light of this purported requirement. However, the EU emphasizes that the SCM Agreement does not prescribe the mechanisms and evidence for such governmental authority, and that only the authority accorded to an entity must be governmental.

2. Contrary to the interpretation relied upon by China, nothing in Article 1.1(a)(1) of the SCM Agreement restricts the meaning of "public body" to an entity possessing, exercising, or otherwise vested with governmental authority, or exercising governmental functions. Indeed, the SCM Agreement is fundamentally about the ability of Members to defend against distortions caused by the transfer of the public resources of another Member. Logically, an entity may constitute a public body where evidence before an investigating authority supports that the government has the ability to control that entity to convey financial value. 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.

3. The SCM Agreement does not define the term "public body," but definitions of the words "public" and "body" shed light on the ordinary meaning of this term. By definition, the noun "body" refers to a group of persons or an entity (as opposed to, for example, the "material frame" of persons). The definition in the sense of "an aggregate of individuals" is: "an artificial person created by legal authority; a corporation; an officially constituted organization, an assembly, an institution, a society." Turning to the adjective "public," the relevant definition that pertains to a "body" as a group of individuals is the first: "of or pertaining to the people as a whole; belonging to, affecting, or concerning the community or nation." Thus, 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." These definitions point towards 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.

4. Nothing in these dictionary definitions restricts the meaning of the term "public body" to an entity vested with, or exercising, governmental authority, or one exercising governmental functions. Had the drafters of the SCM Agreement intended to convey that meaning, they could have chosen any number of other terms—for example, "governmental body," "public agency," "governmental agency," or "governmental authority." The ordinary meaning of these terms would have more clearly conveyed the sense of exercising governmental authority. That they

were not chosen sheds light on the different concept captured by the term that was chosen, "public body."

5. The ordinary meaning of the terms of a treaty must be understood "in their context." 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. 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 in this way indicates that the terms have distinct and different meanings. Treaty interpretation should give meaning and effect to all terms of a treaty, and provisions of the WTO Agreement should not be interpreted in such a manner that whole clauses or paragraphs of a treaty would be reduced to redundancy or inutility. In this way, the term "public body" should not be interpreted so as to render it redundant with the word "government."

6. The term "government," as the panel in *US – Anti-Dumping and Countervailing Duties (China)* found, means, among other things: "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." In *Canada – Dairy*, the Appellate Body explained that "[t]he essence of 'government' is . . . that it enjoys the effective power to 'regulate', 'control' or 'supervise' individuals, or otherwise 'restrain' their conduct, through the exercise of lawful authority." The Appellate Body further explained that a "'government agency' is, in our view, an entity which exercises powers vested in it by a 'government' for the purpose of performing functions of a 'governmental' character, that is, to 'regulate', 'restrain', 'supervise' or 'control' the conduct of private citizens." The term "public body," therefore, 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." 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) of the SCM Agreement.

7. The context supplied by "financial contribution" further suggests a different common concept between "government" and "public body." The notion that both entities 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. After all, control over and authority to dispose of the public's economic resources is a core function of government in every WTO Member. The broad language used and multiple methods of conveying value described in Article 1.1(a)(1) reveal an intention to capture within the meaning of "financial contribution" a wide array of transfers of value. Ultimately, the purpose of the

financial contribution analysis is to determine whether a transfer of value was made and can be attributed to the government.

8. With regard to this attribution analysis, the United States agrees with the dissenting Appellate Body member in *US – Countervailing Duties (China) (Article 21.5 – China)* that this "examination involves an assessment of the relationship between the relevant entity and the government", and that "[w]hen that relationship is sufficiently close, the entity in question may be found to be a public body and all of its conduct may be attributed to the relevant Member for purposes of Article 1.1(a)(1)." The United States further agrees that "[t]he relationship between an entity and a government may take different forms, depending on the legal and economic environment prevailing in the relevant Member." Under Article 1.1(a)(1), any examination of whether an entity is a public body must be on a case-by-case basis, and thus whether the entity's conduct can be attributed to the relevant government, in light of all the evidence before it. As discussed above, the ordinary meaning of "public body" in Article 1.1(a)(1) suggests that the key question is whether a government is able to control the entity such that when the entity conveys economic resources, it is transferring the public's resources. Requiring a finding that the entity in question has governmental authority or exercises governmental functions risks rendering synonymous the definitions of "government" and "public body", contrary to the principle of effectiveness.

9. In conducting this case-by-case inquiry, nothing in the text of Article 1.1(a)(1) supports China's assertions that it must be "granular" or "entity-by-entity" to the exclusion of considering evidence that applies to more than one entity (*e.g.*, relevant information about an association the entity is a member of or the regulatory and economic environment in which it operates). In sum, China seeks to fault the Commission's public body determinations on the basis of an erroneous interpretation of Article 1.1(a)(1) of the SCM Agreement. For that reason, the claim should fail. Furthermore, that both the EU and China present their arguments within the framework of the Appellate Body's government authority interpretation does not mean the Panel must accept it. For one, as described above, the interpretation contravenes the ordinary meaning and context of the language used in Article 1.1(a)(1); thus, for the Panel to apply it would contravene the Panel's terms of reference and direction under DSU Articles 7.1, 11, and 3.2 to interpret and apply the provisions of the covered agreements in light of the customary rules of interpretation of public international law.

10. The Appellate Body's government authority interpretation also reflects an interpretation that Members, including the EU, have repudiated as erroneous. For example, a January 2020 joint statement by the trade ministers of the EU, Japan, and the United States affirmed that to be a public body, "it is not necessary to find that the entity 'possesses, exercises or is vested with government authority'" and that the Appellate Body's erroneous interpretation "undermines the effectiveness of WTO subsidy rules." Similarly, during the WTO DSB meeting at which the *US – Anti-Dumping and Countervailing Duties (China)* panel and Appellate Body reports were

adopted, seven other Members joined the United States in raising concerns about the Appellate Body's interpretation. 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, rather than rely upon the Appellate Body's erroneous "governmental authority" interpretation.

II. CLAIMS REGARDING ARTICLE 2.1 OF THE SCM AGREEMENT

11. If an investigating authority clearly substantiates on the basis of positive evidence that access to a subsidy is limited to certain enterprises by a granting authority, or the legislation pursuant to which the granting authority operates, then the authority's determination of specificity is consistent with the requirements of Article 2 of the SCM Agreement. China's claims overlook that Article 2.1(a) does not prescribe a particular approach or type of record evidence that the investigating authority must consider in determining if there is an explicit limitation on access and if "certain enterprises" were identified. In particular, neither Article 2.1(a) nor Article 2.4 prohibits an investigating authority from relying upon a range of information rather than on a singular law or other legal instrument. The United States agrees with the EU that such determinations may be based on what the EU describes as the "totality" of evidence. An unbiased and objective investigating authority could, as the Commission did, support an explicit limitation on access to certain enterprises with "central provincial and municipal government planning documents" and a "cross-reference" through which one instrument operates by reference to another.

III. CLAIMS REGARDING ARTICLE 11.6 OF THE SCM AGREEMENT

12. By its own terms, Article 11.6 provides the evidentiary standard for an investigating authority to self-initiate an investigation when no "written application by or on behalf of a domestic industry." For instance, Article 11.6 provides that investigations may be initiated by an investigating authority "only if they have sufficient evidence of a subsidy, injury or causal link, as described in paragraph 2, to justify the initiation of an investigation." Accordingly, and contrary to China's assertion, nothing in the text of Article 11.6 suggests that the *ex officio* initiation of a countervailing duty investigation is subject to a unique evidentiary threshold or heightened scrutiny (*i.e.*, an additional requirement to show "special circumstances").

13. The United States notes that the practice of China's investigating authority is precisely what it represents to the Panel as WTO-inconsistent. That China's investigating authority understands "special circumstances" differently, and applies that different understanding in

investigations against imports from other Members, further underscores that China's interpretation of Article 11.6 in this dispute is incorrect and that its claim should fail.

IV. CLAIMS REGARDING ARTICLE 12.7 OF THE SCM AGREEMENT

14. The United States disagrees with China's restrictive interpretation of the grounds on which an investigating authority can use and select "facts available." The term "possession" does not appear anywhere in Article 12.7. Instead, the plain meaning of the phrase "refuses access to, or otherwise not provide" connotes a "certain *response* –or a lack thereof—" by an interested party. China's narrow interpretation unjustifiably constrains the basis for triggering "facts available" by reading a requirement of "possession" into the provision where none exists. The Commission's use of facts available in response to China's non-cooperation is consistent with Article 12.7. Article 12.7 permits a determination to be made on "facts available"—that is, on *facts*. Logically, a determination cannot be made on the basis of "non-factual assumptions or speculation." However, past WTO reports recognize that Article 12.7 only requires the investigating authority to select "facts available" that "reasonably replace" the missing information to arrive at an accurate determination.

IV. CLAIMS REGARDING FISCAL SUBSIDY PROGRAM

15. We note several ways in which China's claims regarding the Fiscal Subsidy Program misread those provisions and would suggest additional obligations on investigating authorities that do not exist in the text of the SCM Agreement or GATT 1994. The SCM Agreement does not require that for a subsidy to exist, the financial contribution and benefit must be provided to a single entity. Furthermore, the United States understands that the Commission's analysis of the Fiscal Subsidy Program did not simply assume that the recipient of the financial contribution was also the recipient of the benefit. Rather, the Commission "established that the Chinese BEV producers were the actual beneficiaries of the subsidy." This determination was based on evidence and analysis, *inter alia*, that (1) the subsidy was not a benefit to consumers in the form of a reduced purchase price, because when the subsidy was removed, the price of the vehicles did not increase; (2) the Chinese BEV producers received the subsidy as cash disbursements "without any condition to pass those amounts to consumers via lower prices;" and (3) the purpose of the Fiscal Subsidy Policy was to support the Chinese NEV industry, as evidenced by the fact that the program excluded imported BEVs. An unbiased and objective investigating authority could have determined based on the foregoing that the BEV producers were the actual beneficiaries of the Fiscal Subsidy Policy.

16. The United States generally agrees with the EU that because money is fungible, if there are no restrictions on the use of the subsidy funds, "it is reasonable to conclude that the subsidies could be used to benefit the totality of BEV production, including production that is ultimately destined for export." The Commission based this determination on the evidence that "the funds stemming from the Fiscal Subsidy Policy were fully available to the Chinese BEV producers,"

and that those producers were able to devote those funds to BEV production for the domestic and export markets. This reasoning reflects Articles 19.4 and Annex IV:3 of the SCM Agreement, which do not prescribe how to calculate the rate of subsidization. Article 19.4 calls for a calculation "in terms of subsidization per unit of the subsidized and exported product," and Annex IV:3 establishes that "[w]here to a subsidy the subsidy is tied to the production or sale of a given product, the value of the product shall be calculated as the total value of the recipient firm's sales of that product."

17. China argues that the Commission incorrectly calculated the benefit from the Fiscal Subsidy Policy because it did not adjust the amounts received by BEV producers to account for the income taxes levied on the subsidy amounts. The United States agrees with the EU that nothing in Article 1.1(b) or Article 14 of the SCM Agreement requires such an adjustment. Although the guidelines in Article 14 enumerate instances which "shall not be considered" to confer a benefit, it lacks any "guideline" for the financial contribution in the present dispute—*i.e.*, a "direct transfer of funds" in the form of a grant. Absent such text, a grant simply bestows a benefit to the recipient—as previous WTO panels have agreed. The United States generally agrees with the EU that the SCM Agreement permits an investigating authority to calculate the benefit based on subsidy funds provided during the period of investigation, regardless of whether that disbursement took place due to a company's actions or sales prior to the period of investigation. Nothing in the SCM Agreement imposes the rule China advocates; to the contrary, the notion of a "benefit" in Article 1.1 logically refers to the receipt of an advantage by the recipient.

18. In sum, based on the proper interpretation of the relevant articles of the SCM Agreement and the GATT 1994, and the record evidence highlighted by the EU, it appears that an unbiased and objective investigating authority could have determined that the Fiscal Subsidy Program (1) conferred a benefit to BEV producers that (2) reflected the subsidy amount in fact paid to those producers during the period of investigation.

V. CLAIMS REGARDING ALL-OTHERS RATE

19. Neither the SCM Agreement nor the GATT 1994 prescribe a particular methodology for calculating a countervailing duty rate for non-investigated firms. China's claim is based upon an interpretation of Articles 19.3 and 19.4 of the SCM Agreement that the text does not support. An unbiased and objective investigating authority could determine, as the Commission did, that the particular facts and circumstances of an investigation justify: (1) calculating a duty rate for non-investigated companies using the rates of a portion, rather than all, of the subsidy rates of the investigated companies and (2) including in such calculations subsidy rates based on partial facts available. The EU was only required to establish a reasonable methodology in view of the facts before it—*e.g.*, to use the subsidy rates calculated for the three companies whose imported BEV models were more comparable to the BEV models produced and sold in the EU.