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

**(WT/DS630)**

**RESPONSES OF THE UNITED STATES OF AMERICA TO QUESTIONS FROM THE PANEL TO THIRD PARTIES**

**July 24, 2026**

## TABLE OF REPORTS

| Short Title | Full Case Title and Citation |
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| *US – Carbon Steel (AB)* | Appellate Body Report, *United States – Countervailing Duties on Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, WT/DS213/AB/R and Corr.1, adopted 19 December 2002 |
| *US – Anti-Dumping and Countervailing Duties (China)(AB)* | Appellate Body Report, *United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R, adopted 25 March 2011 |
| *US – Softwood Lumber IV (Panel)* | Panel Report, *United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada*, WT/DS257/R and Corr.1, adopted 17 February 2004, as modified by Appellate Body Report WT/DS257/AB/R |
| *US – Carbon Steel (India) (AB)* | Appellate Body Report, *United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India*, WT/DS436/AB/R, adopted 19 December 2014 |

## TABLE OF EXHIBITS

| Exhibit No. | Description |
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| USA-1 | Washington Post, "How China pulled ahead to become the world leader in electric vehicles," March 3, 2025 |
| USA-2 | International Energy Agency, Global EV Outlook 2024 |
| USA-3 | Definitions from The New Shorter Oxford English Dictionary, L. Brown (ed.) (Clarendon Press, 1993, 4th ed.) (excerpts) |
| USA-4 | Joint Statement of the Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union, January 14, 2020 |
| USA-5 | MOFCOM initiation notice for *ex officio* antidumping investigations on imports of pecans from Mexico and the United States, September 25, 2025 |

# 1 NOTICE TO INTERESTED PARTIES AND USE OF FACTS AVAILBLE

**1. <u>To the third parties</u>:**

**a. Under what circumstances, if at all, do you consider that the investigating authority can request the interested Member to transmit to the interested parties the "notice of the information which the authorities require" within the meaning of Article 12.1 of the SCM Agreement?**

**<u>Response</u>:**

1. Article 12 of the SCM Agreement permits the investigating authority to rely on the interested Member to transmit the notice to the interested parties, and does not limit the circumstances in which it may do so.

2. Under the Article 12.1 SCM Agreement, an investigating authority is obligated to provide notice of the requested information to interested parties and interested Members. Notably, the SCM Agreement is silent on the modality or means of transmission. Thus, the investigating authority may select the instrument through which notice is provided, with two conditions: (1) the chosen instrument is actually capable of conveying notice and (2) the content does convey notice of what information the investigating authority requires.

3. One such instrument is the interested Member. The SCM Agreement, in addition to not requiring a particular instrument, specifically provides that notice to interested parties can be provided to the authorities of an exporting Member. Article 12.1.3 requires that an investigating authority "provide the full text of written application received under paragraph 1 of Article 11 to the known exporters and to the authorities of the exporting Member." Footnote 41[1] in Article 12.1.3 further clarifies: "It is understood that where the number of exporters involved is particularly high, the full text of the application should instead be provided only to the authorities of the exporting Member or to the relevant trade association who then should forward copies to the exporters concerned." That is, this footnote clarifies that it is not only *acceptable* to provide notice to the authorities of the exporting Member, but in the circumstance of a particularly high number of known exporters, it is recommended, or *appropriate*, to only provide notice through those authorities.

4. Other provisions of the SCM Agreement similarly reinforce that an investigating authority may provide notice through the authorities of an interested Member. Footnote 40 under Article 12.1.1 provides that the questionnaire for respondents can be "transmitted to the

[1] The footnote follows the phrase "the known exporters," suggesting that investigating authorities should identify the exporters from whom an investigating authority is requesting information. This interpretation is supported by Article 11.2 (ii) of the SCM Agreement, which states that the written application by or on behalf of the domestic industry initiating an investigation shall contain, *inter alia*, "the identity of each known exporter or foreign producer . . .."

appropriate diplomatic representatives of the exporting Member or . . . an official representative of the exporting territory."

5. Accordingly, when it chooses to do so, an investigating authority may rely on an interested Member to transmit "notice of the information which the authorities require."

**b. And in those circumstances, if the interested Member indicates that it cannot, or will not, ensure transmission of the required notice, what are the consequences (i) for the investigating authority, (ii) for the interested Member, and (iii) for the interested parties to whom notice has not been given as a consequence?**

**(i) for the investigating authority:**

6. As noted in response to Question 1(a), an investigating authority must provide notice of required materials to interested Members and interested parties, but the authority may choose the instrument used to give such notice. If the notice is given and contains the information which the authorities require, the investigating authority has satisfied its obligation under Article 12.1, even if the interested Member declines to transmit it. For example, while an investigating authority can provide a general notice to all interested parties through a notice of initiation or verification letters, to satisfy Article 12.1, the notice must identify the information the authority requires.

**(ii) for the interested Member:**

7. Under the SCM Agreement, the interested Member should transmit the required notice to the known exporters concerned. If it refuses and necessary information is not on the record of the investigating authority, that could constitute, for example, "significantly imped[ing] the investigation" within the meaning of Article 12.7, permitting the investigating authority to resort to the use of facts available with respect to the interested Member.

**(iii) for the interested parties to whom notice has not been given:**

8. As noted earlier, under Article 12.1 the investigating authority may select the instrument through which the notice is provided to the interested parties. The instrument must actually be capable of conveying notice and the content must convey notice of the information the investigating authority requires. As explained above, the SCM Agreement makes clear that the interested Member is one instrument through which notice may be transmitted.

9. In addition to providing the required notice, Article 12.1 also requires that the investigating authority provide the interested Members and all interested parties with "ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question." If an interested Member refuses to transmit the notice, then the investigating authority may notify via other mechanisms, such as through a public notice of initiation specifying the required information. The investigating authority may consider giving the interested parties additional time beyond the 30-days for response. Otherwise, without giving an "ample opportunity" to respond, the investigating authority may not resort to facts available against the interested parties.

**2. <u>To the third parties</u>: What is the relevance of the fact that Article 12.7 refers to an "interested Member" and not just an "interested party"? In light of the scope of the SCM Agreement covering government conduct, does this reference suggest that an "interested Member" has a greater responsibility than an "interested party" for providing information that is not within its possession but which pertains to entities within its jurisdiction?**

**<u>Response</u>:**

10. The reference to "interested Member" in Article 12.7, in addition to "interested party", confirms that an interested Member is also a participant in a countervailing duty proceeding. Accordingly, the interested Member has an obligation to cooperate and to provide necessary information, and the scope of such information extends to entities within its jurisdiction.

11. For example, for an investigating authority to assess whether under Article 2.1(c) certain enterprises are predominant users or disproportionately receive a subsidy, the interested Member is expected to provide information related to specificity, including, when available, information on the total amount of funds disbursed under a subsidy program, the amounts received by all different industries, the amounts received by all different enterprises, and other relevant information.

**3. <u>To the third parties</u>: China argues that "[i]n all cases, the authority must be able to explain and establish why the requested information is necessary to reach its determinations." China also claims that the European Commission "failed to explain why" the requested information was necessary. Is the investigating authority always required under Article 12.7 of the SCM Agreement to provide an explanation in its determinations as to why the requested information is "necessary"?**

**<u>Response</u>:**

12. No, it is not. Article 12.7 of the SCM Agreement does not require the investigating authority to affirmatively explain why the requested information is necessary, although it may be the case that the necessity of the information is apparent on the face of the investigating authority's questionnaires and determinations. If an interested party or interested Member has questions regarding the necessity of such information, it has an "ample" and "full" opportunity under Article 12.1 of the SCM Agreement to present its evidence and defend its interests in its responses to the investigating authority. In this way, China appears to conflate two different requirements in order to create an obligation that does not exist under Article 12.7.

## 2 PREFERENTIAL FINANCING

**4. <u>To the third parties</u>: If the borrower's credit risk profile is an important factor influencing the cost of borrowing and a key element of the benchmark analysis under Article 14(b)[2], what impact does a finding by an investigating authority that financing is**

[2] Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, para. 480 (referring to Panel Report, *US – Anti-Dumping and Countervailing Duties (China)*, para. 10.113). See also Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, para. 836.

**granted without undertaking a risk assessment of the borrower have for the authority's benefit analysis?**

**<u>Response</u>:**

13. As reflected in the text of Article 14(b), such a finding would support a determination that the government loan conferred a benefit.

14. Article 14(b) sets forth the method for calculating a benefit from a loan conferred by a government. It provides that the benefit is the "difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market."

15. Article 14(b) requires the investigating authority to compare the interest rate on a government loan to the interest rate "on a comparable commercial loan that the firm could actually obtain on the market." If the firm in question had comparable commercial loans during the relevant time period, they would provide the basis for comparison.

16. If the firm did not have comparable commercial loans during the relevant period, this might indicate that it was not able to obtain such loans. Consequently, the investigating authority may examine the firm's "creditworthiness", or credit risk profile, to determine whether it could have obtained comparable commercial loans. If the government did not examine the firm's credit risk before granting a loan, while a commercial bank would have done so, that may indicate that the firm was not able to obtain comparable commercial loans. It may also indicate that the loan is not priced on market terms because the government is assuming a risk that the borrower presents more risk than whatever level was selected to price the loan. Accordingly, if an investigating authority finds that a loan had been granted without conducting a risk assessment of the borrower, this would support a finding that the government loan conferred a benefit.

**5. <u>To the third parties</u>: With respect to Article 14(d) of the SCM Agreement:**

**a. Can an investigating authority resort to an "out-of-country" benchmark under Article 14(d) once it establishes that in-country prices for goods or services are distorted, or is it required to also establish that such distortion is because of the government's "predominant role" in providing those goods or services?**

**<u>Response</u>:**

17. Yes, once an investigating authority determines that in-country prices for goods or services are distorted, it may use an out-of-country benchmark under Article 14(d). Article 14(d) requires that adequacy of remuneration be determined "in relation to prevailing market conditions . . .." It contains no requirement to demonstrate that the distorted in-country prices for goods or services are distorted because of the government's "predominant role" in providing them. The government's role as the predominant provider of a good or service is one scenario in which distortion could occur, but it is not the only scenario. It is the price distortion that

necessitates the use of an out-of-country benchmark in order to calculate an accurate benefit to the recipient in accordance with Article 14(d).

18. The key question that the investigating authority must address before resorting to an out-of-country benchmark is whether or not there is price distortion in the market within the country for a particular good or service. Distortion of prices in a market suggests that in-country private prices do not reflect prevailing market conditions.

19. Such market distortion is likely when the government is the predominant supplier of a good or service. This is because the government will influence prices, such that in-country "private" prices are reflective of government pricing. However, distortion may result from other factors, as discussed below. Past reports have concluded that an investigating authority must reach a conclusion regarding market distortion "based on all the evidence that is put on the record, including evidence regarding factors other than government market share."[3]

**b. Are there any other circumstances besides the government's "predominant role"[4] in the provision of goods or services in which an investigating authority can resort to an external benchmark under Article 14(d)? Are there other ways in which a government can intervene in a market resulting in its distortion sufficient to warrant recourse to a non-primary benchmark?**

20. Yes, other circumstances may warrant an investigating authority resorting to an external benchmark under Article 14(d). The text of Article 14(d) refers to a determination "in relation to prevailing market conditions." Thus, there are a number of different government interventions that may result in market distortion sufficient to warrant recourse to an out-of-country benchmark. Such government interventions may include export bans or other export restraints, and price-setting or other price controls. The panel in *US – Softwood Lumber IV* provided as an example the circumstance of a government that "administratively controls all of the prices for a good in the country," and there are no imports of that good.[5]

21. Furthermore, as observed in the *U.S. – Countervailing Measures* Appellate Body report, it may be appropriate to use out-of-country benchmarks "where information pertaining to in-country prices cannot be verified so as to determine whether they are market determined in accordance with the second sentence of Article 14(d)."[6]

**c. What is the relevance of such circumstances for Article 14(b), insofar as the latter provision does not refer to the "country of provision" but instead to a "comparable commercial loan"?**

22. The relevance of such circumstances for Article 14(b) is that when an investigating authority finds that government intervention in the lending market distorts in-country loans, the investigating authority may resort to an out-of-country benchmark that is "comparable." An Appellate Body report observed that reading Article 14(b) to require "a comparison with loans

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[3] *US – Anti-Dumping and Countervailing Duties (China)(AB)*, para. 443 (emphasis added).
[4] Appellate Body Report, *US – Softwood Lumber IV*, para. 90.
[5] *US – Softwood Lumber IV (Panel)*, para. 7.57.
[6] *US – Carbon Steel (India) (AB)*, para. 4.189.

denominated in the same currency as the investigated loans, even in circumstances where all loans in the same currency are distorted by government intervention, would lead to a comparison with government distorted loans, thus frustrating the purpose of Article 14(b)."[7]

23. However, resort to an external benchmark is necessary and appropriate under both Article 14(b) and (d). Article 14(d) refers to "country of provision" in the context of establishing that adequacy of remuneration take into account the market conditions for the good or service in question. It also refers to "prevailing market conditions," which necessitates that there be a "market". Distortion of in-country prices reflects that market conditions do not exist, and this justifies use of an out-of-country benchmark.

## 4 INITIATION

**7. <u>To the third parties</u>: Article 11.6 of the SCM Agreement includes the terms "special circumstances".**

> **a. Does the existence of "special circumstances" constitute a separate requirement that an investigating authority must satisfy to initiate an ex officio investigation, in addition to collecting "sufficient evidence" of subsidization, injury and causation?**

24. No, the "special circumstances" referred to in Article 11.6 are not a separate requirement to initiate an *ex officio* investigation. As noted below and elaborated in the U.S. third-party submission, the text does not support such a requirement, nor for that matter does China's own domestic practice in investigations concerning other Members.[8]

25. Article 11.6 of the SCM Agreement provides:

> If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of a subsidy, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.

26. 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." 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"). Indeed, an Appellate Body report stated that "Articles 11.2 and 11.6 prescribe the same evidentiary burden for both the domestic industry and the domestic authorities to initiate an investigation."[9]

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[7] *US — Anti-Dumping and Countervailing Duties (China) (AB)*, para. 484.
[8] U.S. Third-Party Submission, paras. 32-41.
[9] *US – Carbon Steel (AB)*, para. 24.

27. Furthermore, the text of Article 11.1 provides that "[e]xcept as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged subsidy shall be initiated upon a written application by or on behalf of the domestic industry." Although initiation pursuant to Article 11.6 is an exception to the initiation procedures outlined in Article 11.1, there is no further limitation on when that exception may be invoked. Indeed, the "special circumstance" included in Article 11.6, when read together with Article 11.1, simply reflect the recognition that an investigation is typically initiated by written application. That is, an Article 11.6 initiation is the "special circumstance".

28. Finally, the United States notes that the practice of China's investigating authority is precisely what it represents to the Panel as WTO-inconsistent.[10] Specifically, China does not purport to identify any "special circumstances" that are additional to the "sufficient evidence" listed in paragraph 2.[11] That China's investigating authority understands "special circumstances" differently, and applies that different understanding in investigations against imports from other Members, further underscores the error of China's interpretation here that "special circumstances" are a separate and additional requirement to Article 11.6.

**b. If your answer to the previous question is in the affirmative, what kind of circumstances qualify as "special"?**

**c. Is the investigating authority required to set out a finding on the existence of "special circumstances"? If any such requirement exists, must the finding be set out in the notice of initiation? In the published determinations?**

29. With respect to Question 7(b) and (c), no, the investigating authority is not required to identify circumstances that are "special" or to set out a finding on the existence of "special circumstances."

30. As explained above, the standard for initiation by an investigating authority (i.e., under Article 11.6) is explicitly the same as the standard for an initiation by application under Article 5.1. Initiation pursuant to Article 11.6 is the "special circumstances", for which the text sets out no additional requirement or limitation.

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[10] *See* MOFCOM initiation notice for *ex officio* antidumping investigations on imports of pecans from Mexico and the United States, September 25, 2025 (Exhibit USA-5).

[11] *See* Exhibit USA-5. In the AD Agreement, the parallel provisions are Article 5.2 and Article 5.6, which are the same except that they concern dumped rather than subsidized imports.