UNITED STATES – CERTAIN TAX CREDITS UNDER THE INFLATION REDUCTION ACT

(DS623)

ADDITIONAL COMMENTS OF THE UNITED STATES OF AMERICA TO CHINA'S COMMENTS ON U.S. RESPONSES TO THE PANEL'S QUESTIONS FOLLOWING THE SECOND SUBSTANTIVE MEETING OF THE PANEL WITH THE PARTIES

October 10, 2025

Question 30. To both parties: The Panel thanks the parties for their responses to the questions sent before the second substantive meeting regarding the One Big Beautiful Bill Act (OBBBA), in which both parties confirm that the Clean Vehicle Tax Credit is terminated in respect of vehicles acquired after 30 September 2025. Are there any additional reasons that would weigh in favour of the Panel making findings on the Clean Vehicle Tax Credit, apart from those already outlined in the parties' responses of 7 August 2025?

U.S. Comments:

1. The United States takes note of China's statement that it withdraws its claims against the Clean Vehicle Tax Credit under Articles I:1 and III:4 of the GATT 1994, Articles 2.1 and 2.2 of the TRIMs Agreement, and Articles 3.1(b) and 3.2 of the SCM Agreement.[1] As these provisions were the entire legal basis for China's complaint against this measure, the United States considers that China has effectively withdrawn the matter relating to the Clean Vehicle Tax Credit from its panel request to the DSB. Accordingly, the Clean Vehicle Tax Credit is no longer a part of the "matter" before the Panel to examine, and the measure is excluded from the Panel's terms of reference.

2. Specifically, as the United States has explained, pursuant to Article 6.2 of the DSU, "the matter" referred to the DSB consists of "the specific measures at issue" and "a brief summary of the legal basis of the complaint" as set out in the panel request.[2] By withdrawing the entirety of its claims against the Clean Vehicle Tax Credit, China no longer has a "legal basis" or "complaint" against the Clean Vehicle Tax Credit, and there is no "matter" before the Panel with respect to the measure.

3. Accordingly, although China states that "it is no longer necessary for the Panel to make findings or recommendations," it is more correct to say that it is no longer permissible for the Panel to make findings or recommendations. The DSU does not permit the Panel to make findings or recommendations on a matter that is not before it. Article 7.1 sets out a panel's terms of reference as "[t]o examine … the matter referred to the DSB" by the complaining party in its panel request. As China has withdrawn the matter with respect to the Clean Vehicle Tax Credit from the matter referred to the DSB, the Clean Vehicle Tax Credit is now excluded from the Panel's terms of reference.

[1] China's Responses to U.S. Comments Following Second Panel Meeting, para. 1.
[2] DSU, Art. 6.2.