

***UNITED STATES – CERTAIN TAX CREDITS UNDER
THE INFLATION REDUCTION ACT***

(DS623)

**RESPONSES OF THE UNITED STATES OF AMERICA
TO THE PANEL’S QUESTIONS FOLLOWING THE
SECOND SUBSTANTIVE MEETING OF THE PANEL WITH THE PARTIES**

September 19, 2025

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<i>EC – Selected Customs Matters (AB)</i>	Appellate Body Report, <i>European Communities – Selected Customs Matters</i> , WT/DS315/AB/R, adopted 11 December 2006
<i>US – FSC (Panel)</i>	Panel Report, <i>United States – Tax Treatment for “Foreign Sales Corporations”</i> , WT/DS108/R, adopted 20 March 2000, as modified by Appellate Body Report WT/DS108/AB/R

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US-1	International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022
US-2	Washington Post, “How China pulled ahead to become the world leader in electric vehicles”, March 3, 2025
US-3	U.S. Geological Survey, Mineral Commodities Summaries 2024, January 2024
US-4	U.S. Geological Survey, 2020-2021 Minerals Yearbook: China, May 2024
US-5	International Energy Agency, Global Critical Minerals Outlook 2024, May 2024
US-6	19 Code of Federal Regulations part 182 (United States-Mexico-Canada Agreement), Appendix A (Rules of Origin Regulations)
US-7	49 Code of Federal Regulations part 565 (Vehicle Identification Number requirements)
US-8	Infrastructure Investment and Jobs Act, P.L. 117-58, 135 Stat. 429 (November 15, 2021)
US-9	William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, P.L. 116-283, 134 Stat. 3388 (January 1, 2021) (definition of “covered nation” codified at 10 U.S.C. Section 4872(d)(2) (renumbered from 10 U.S.C. Section 2533c))
US-10	Internal Revenue Service, Transfer of Clean Vehicle Credits Under Section 25E and Section 30D, Proposed Rule, 88 FR 70310 (October 10, 2023)
US-11	Internal Revenue Service, Definition of Energy Property and Rules Applicable to the Energy Credit, Proposed Rule (<i>Correction</i>), 89 FR 2182 (January 12, 2024)
US-12	Internal Revenue Service, Definition of Energy Property and Rules Applicable to the Energy Credit, Proposed Rule (<i>Second Correction</i>), 89 FR 13293 (February 22, 2024)
US-13	Wall Street Journal, “U.S. Car Makers’ EV Plans Hinge on Made-in-American Batteries,” Feb. 6, 2023

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US-17	Sherman Act, Section 15 U.S.C. § 1
US-18	Restatement (Second) of Contracts, § 205 (Duty of Good Faith and Fair Dealing)
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US-28	<i>Northern Pacific Railway Co. v. United States</i> , 356 U.S. 1, 4-5 (1958) (Justice Hugo Black)
US-29	Executive Order 13923, “Establishment of the Forced Labor Enforcement Task Force Under Section 741 of the United States-Mexico-Canada Agreement Implementation Act”, May 15, 2020
US-30	California Code, Penal Code § 484 (General Theft Statute)

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US-32	18 U.S.C. Ch. 31 (Embezzlement and Theft)
US-33	The White House, America First Trade Policy Presidential Memorandum, Jan. 20, 2025
US-34	The White House, Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties Presidential Memorandum, Feb. 21, 2025
US-35	The President’s 2025 Trade Policy Agenda
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US-43	Joint Declaration Against Trade-Related Economic Coercion and Non-Market Policies and Practices, June 9, 2023
US-44	Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union, Sept. 25, 2018
US-45	National Renewable Energy Laboratory, Winter 2024 Solar Industry Update, Jan. 25, 2024
US-46	Cipher News, “Chinese solar panel manufacturing outpaces global demand,” Feb. 28, 2024

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US-48	2023 State of the Union Address by EU President von der Leyen at Strasbourg, Sept. 13, 2023
US-49	International Energy Agency, Global EV Outlook 2024, April 2024
US-50	China Daily, “‘New three’ paves way for high-quality growth,” Feb. 21, 2024
US-51	Information Technology & Innovation Foundation, “The Impact of China’s Production Surge on Innovation in the Global Solar Photovoltaics Industry,” October 2020
US-52	Council on Foreign Relations, “Is ‘Made in China 2025’ a Threat to Global Trade?” (2019)
US-53	European Chamber of Commerce, “China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces” (2017)
US-54	CSIS, “Electric Shock: Interpreting China’s Electric Vehicle Export Boom,” Sept. 2023
US-55	CSIS, “The Chinese EV Dilemma: Subsidized Yet Striking,” June 28, 2024
US-56	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-57	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-58	Financial Times, “China outbound investment surges to record levels on clean energy ‘tsunami,’” Oct. 2, 2024
US-59	U.S. Chamber of Commerce, Made in China 2025: Global Ambitions Built on Local Protections (2017)
US-60	PC Magazine, “Corning, Suniva, Heliene to produce first fully US-made solar module,” Mar. 7, 2025

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US-62	U.S. Department of Labor, “Traced to Forced Labor: Solar Supply Chains Dependent on Polysilicon from Xinjiang, 2020
US-63	U.S. Customs and Border Protection, “The Department of Homeland Security Issues Withhold Release order on Silica-Based Products Made by Forced Labor in Xinjiang,” June 24, 2021
US-64	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-65	Forbes, “China Scores Big Win in Solar Trade Battle as REC Silicon Shuttles US Polysilicon Production,” Feb. 8, 2016
US-66	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-67	CBS News, “Chinese hackers took trillions in intellectual property from about 30 multinational companies,” May 4, 2022
US-68	Fact Sheet: Biden-Harris Administration Takes Action to Strengthen American Solar Manufacturing and Protect Manufacturers and Workers from China’s Unfair Trade Practices, May 16, 2024
US-69	Congressional Research Service, Inflation Reduction Act of 2022: Incentives for Clean Transportation, Sept. 6, 2022
US-70	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-71	U.S. First Written Submission in <i>United States – Origin Marking (Hong Kong, China)</i> (Panel)
US-72	Financial Times, “Foreign carmakers confront ‘moment of truth’ in China,” Apr. 21, 2023
US-73	Solar Energy Industries Association, US Solar Market Insight: Executive Summary, 2024 Year in Review, March 2025

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US-74	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
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US-76	Inside EVs, “The U.S. is about to nearly double its battery production capacity,” Feb. 23, 2025.
US-77	U.S.-EU Trade and Technology Council Inaugural Joint Statement, Sept. 29, 2021
US-78	GM Authority, “GM EV Sales Up 19 Percent Moving 19k Units this Quarter, 75k Units for the year during Q4 2023,” Mar. 23, 2024
US-79	Environmental Defense Fund, U.S. Electric Vehicle Manufacturing Investments and Jobs, August 2024
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US-80	PV Magazine, “China expected to dominate solar manufacturing through 2026,” Nov. 7, 2023
US-81	Rhodium Group, “How China’s Overcapacity Holds Back Emerging Economies,” June 13, 2024
US-82	<i>United States v. Google</i> , Case 1:23-cv-108 (LMB/JFA) (E.D, Va Apr. 17, 2025) (Excerpt)
US-83	Rhodium Group, “Far From Normal: An Augmented Assessment of China’s State Support,” March 17, 2025
US-84	Sheffield Hallam University, “Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region,” Dec. 2022
US-85	Global Forum on Steel Excess Capacity, <i>Steel Exports, trade remedy actions and sources of excess capacity</i> (May 2024)
US-86	Global Forum on Steel Excess Capacity, <i>Impacts of global excess capacity on the health of the GFSEC steel industries</i> (March 2024)
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US-91	8 U.S.C. § 1182
US-92	America First Investment Policy Presidential Memorandum (Feb. 21, 2025)
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US-94	OECD, “Government Support in the Solar and Wind Value Chains,” January 2025
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US-96	Definitions Set 2, <i>The New Shorter Oxford English Dictionary</i> (4 th Edition) (1993)
US-97	China Daily, “Solar industry is reined in,” Oct. 10, 2009
US-98	Office of the U.S. Trade Representative, The World Trade Organization at Thirty and U.S. Interests, February 2025
US-99	European Council on Foreign Relations, “High-voltage trade: How Europe should fight the electric vehicle wars,” December 15, 2023
US-100	The Economist, “Western firms are quaking as China’s electric-car industry speeds up,” January 11, 2024
US-101	Financial Times, “Japan warns over threat from China’s chip material export controls,” February 21, 2025
US-102	Rhodium Group, “Ain’t No Duty High Enough,” April 29, 2024
US-103	Rhodium Group, “Was Made in China 2025 Successful,” May 5, 2025
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US-107	Virtual Hearing before the Subcommittee on Environment and Climate Change of the Committee on Energy and Commerce, House of Representatives, Serial No. 117-21 (Apr. 15, 2021) (excerpts)
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US-111	Summary of the Energy Security and Climate Change Investments in the Inflation Reduction Act of 2022 (July 27, 2022)
US-112	Manchin’s Inflation Reduction Act Will Lower Energy and Healthcare Costs, Increase Domestic Energy Production and Pay Down National Debt, Senate passes Inflation Reduction Act, now heads to the House of Representatives (Aug. 7, 2022)
US-113	Press Release, Rep. Adam Smith (Washington’s 9 th District), House Passes Inflation Reduction Act with Historic Investments to Address Climate Change (Aug. 9, 2022)
US-114	Press Release, Rep. Shontel Brown (Ohio’s 11 th district), Rep. Brown Votes for Inflation Reduction Act to Lower Health Care Costs and Create Jobs for Ohioans (Aug. 14, 2022)
US-115	Press Release, Rep. Josh Harder (California’s 9 th District) Harder Statement on House Passage of the Inflation Reduction Act (Aug. 12, 2022)
US-116	Press Release, Pallone Praises House Passage of the Historic Climate & Health Care Provisions in the Inflation Reduction Act: Landmark Legislation Includes Climate & Health Care Provisions that Pallone Either Originally Authored or Advanced Through His Committee (Aug. 12, 2022)
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US-120	GATT Council, Minutes of Meeting on May 7, 1982, C/M/157 (June 22, 1982)
US-121	GATT Council, Minutes of Meeting of May 29, 1985, C/M/188 (June 28, 1985)
US-122	Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (“Tokyo Round Subsidies Code”)
US-123	Multilateral Trade Negotiations, Group 3(b) – Export Subsidies and Countervailing Duties, Note by the Secretariat on the Meeting of May 1974, MTN/3B/19 (June 28 1974)
US-124	Group “Non-Tariff Measures”, Sub-Group “Subsidies and Countervailing Duties”, Addendum, at pp. 2, MTN/NTM/W/26/Add.1 (Oct. 31, 1975)
US-125	Group “Non-Tariff Measures”, Sub-Group “Subsidies and Countervailing Duties”, Addendum, at pp. 1, 3, MTN/NTM/W/26/Add.2 (Nov. 10, 1975)
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US-127	Group “Non-Tariff Measures”, Sub-Group “Subsidies and Countervailing Duties”, United States, pp. 3-4, MTN/NTM/W/43/Add.6 (May 31, 1976)
US-128	Multilateral Trade Negotiations, Sub-Group “Subsidies/Countervailing Duties”, Outline of an Approach (Circulated at the Request of Certain Delegations), MTN/INF/13 (Dec. 23, 1977)
US-129	Multilateral Trade Negotiations, Group “Non-Tariff Measures”, Sub-Group “Subsidies and Countervailing Duties”, Draft Code prepared by the Delegation of Canada, MTN/NTM/W/80 (Jan. 19, 1977)
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US-134	26 U.S.C. § 263
US-135	26 U.S.C. § 263A
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US-138	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) (excerpts)
US-139	Transcript, United States International Trade Commission, <i>Certain Oil Country Tubular Goods (OCTG) from China</i> , Inv. Nos. 701-TA-463 and 731-TA-1159 (Final) (excerpt)
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US-141	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)
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US-145	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) (excerpts)
US-146	Christopher D. Watson, Domestic Steel Manufacturing: Overview and Prospects (May 17, 2022)
US-147	Letter from the Congressional Steel Caucus to Commissioner Jason E. Kearns of the U.S. International Trade Commission (May 24, 2022)
US-148	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-149	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-150	FACT SHEET: Biden-Harris Administration Announces New Actions to Protect U.S. Steel and Shipbuilding Industry from China’s Unfair Practices (Apr. 17, 2024)
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US-154	Report to the President on the America First Trade Policy Executive Summary (Apr. 3, 2025)
US-155	Office of the United States Trade Representative, 2025 Special 301 Report
US-156	White House, National Security Strategy (Oct. 2022)
US-157	White House, Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth, 100-Day Reviews under Executive Order 14017 (June 2021)

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US-160	National Security Strategy of Japan, Provisional Translation (Dec. 2022)
US-161	United Kingdom Cabinet Office Policy Paper, National Security Strategy 2025: Security for the British People in a Dangerous World (June 24, 2025)
US-162	Intentionally omitted
US-163	Press Release, Justice Department Implements Critical National Security Program to Protect Americans’ Sensitive Data from Foreign Adversaries (Apr. 11, 2025)
US-164	Office of the Director of National Intelligence, Annual Threat Assessment of the U.S. Intelligence Community (March 2025)
US-165	Department of Commerce, Securing the Information and Communications Technology and Services Supply Chain: Connected Vehicles, 90 Fed. Reg. 5360 (Jan. 16, 2025)
US-166	Executive Order 13873, Securing the Information and Communications Technology and Services Supply Chain (May 17, 2019)
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US-170	U.S. Department of Justice, “Chinese Telecommunications Device Manufacturer and its U.S. Affiliate Indicted for Theft of Trade Secrets, Wire Fraud, and Obstructions of Justice,” Jan. 28, 2019
US-171	U.S. Department of Justice, “Chinese Telecommunications Conglomerate Huawei and Subsidiaries Charged in Racketeering Conspiracy and Conspiracy to Steal Trade Secrets,” Feb. 13, 2020

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US-172	BuzzFeed News, “Leaked Audio from 80 Internal TikTok Meetings Shows that US User Data Has Been Repeatedly Accessed from China,” June 17, 2022
US-173	Fortune, “TikTok fined \$600 million after the illegal transfer of EU personal data to China – one of the largest fines ever imposed,” May 2, 2025
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US-178	Public Law 119-21, One Big Beautiful Bill Act (revised exhibit US-169)
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US-182	Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 77 Fed. Reg. 73108 (Dec. 7, 2012)
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US-185	Proclamation 9693, To Facilitate Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products) and for Other Purposes, Jan. 23, 2018
US-186	Executive Order 14285, Unleashing America’s Offshore Critical Minerals Resources (Apr. 24, 2025)
US-187	Forced Labor Enforcement Task Force Release of the 2025 Update to the UFLPA Strategy, Office of the U.S. Trade Representative (Aug. 19, 2025)
US-188	OECD Steel Outlook 2025
US-189	Financial Times, “Chile’s largest steel mill shuts amid surge in Chinese imports,” Aug. 7, 2024
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US-192	Financial Times, “From steel to kimchi, South Korean exporters face flood of Chinese rivals,” Sept. 16, 2024
US-193	The Korea Economic Daily, “South Korea’s steel imports from China at 7-year high,” Jan. 13, 2025
US-194	The Canadian Steel Producers Association, Written Submission for the Pre-Budget Consultations in Advance of the Federal 2022 Budget (Aug. 6, 2021)
US-195	The Canadian Steel Producers Association, Finance Canada Pre-Budget Consultations in Advance of Budget 2023 (Feb. 10, 2023)
US-196	Proclamation 9705, Adjusting Imports of Steel Into the United States, 83 Fed. Reg. 11625 (Mar. 15, 2018)
US-197	Proclamation 9980, Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States, 85 Fed. Reg. 5281 (Jan 29, 2020)

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?

Response:

1. The United States and China appear to be in agreement that the One Big Beautiful Bill Act (OBBBA) does not impact the panel's terms of reference under the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU).¹ The DSB established the Panel on September 23, 2024,² and set the Panel's terms of reference to examine the matter referred by China to the DSB in its panel request.³ Therefore, the Panel must assess the measure as it existed at the time of the Panel's establishment.

2. The DSU does not grant a panel discretion to depart from its obligations under the DSU in the case of an expired or terminated measure. To the contrary, the DSU uses mandatory terms to set out the matter a panel is charged to examine, and the recommendation that follows a finding of WTO-inconsistency. A complaining party may, however, withdraw its claim with respect to such a measure that expires or is terminated in the course of a panel proceeding.

3. Importantly, where a panel makes a finding of inconsistency, Article 19.1 of the DSU and, in the case of a prohibited subsidy, Article 4.7 of the SCM Agreement, impose a mandatory obligation on the panel to also make a recommendation. Article 19.1 of the DSU states that where a panel concludes that a measure is inconsistent, "it *shall* recommend that the Member concerned bring the measure into conformity with that agreement." Article 4.7 of the SCM Agreement states that the panel "*shall* recommend that the subsidizing Member withdraw the subsidy without delay" in the case of a prohibited subsidy. Further, "the panel *shall* specify in its recommendation the time-period within which the measure must be withdrawn." Therefore, the DSU does not grant discretion to a panel to not issue a recommendation where a finding of inconsistency has been made.

Question 31. To both parties: Article 4.7 of the SCM Agreement provides that if a measure is found to be a prohibited subsidy, the panel shall recommend that the subsidizing Member withdraw the subsidy without delay, and further directs that "the panel shall specify in its recommendation the time-period within which the measure must be withdrawn". Regarding the Clean Vehicle Tax Credit:

¹ China's Response to Questions Before Second Panel Meeting, para. 2 ("China does not consider that the prospective repeal of the Clean Vehicle Credit has any impact on the Panel's assessment of China's claims in respect of this measure.").

² WT/DSB/M/493, para. 3.9.

³ WT/DS623/3.

a. Do the parties agree that the termination of the Clean Vehicle Tax Credit pursuant to the OBBBA constitutes "withdrawal" of the measure in the sense of Article 4.7 of the SCM Agreement and Article 3.7 of the DSU?

b. If so, how would the Panel fulfil the requirement in Article 4.7 to specify the time period "within which the measure must be withdrawn"?

c. Are there any prior disputes in which a panel made a recommendation pursuant to Article 4.7 in respect of a measure that had been withdrawn in the course of the proceedings?

Response:

4. In response to part (a) of the question, as the United States has explained, the Clean Vehicle Tax Credit is not a prohibited subsidy under Articles 3.1 and 3.2 of the SCM Agreement, and is also necessary to protect U.S. public morals under Article XX(a) of the GATT 1994. Therefore, Article 4.7 of the SCM Agreement is not relevant to this dispute.

5. Further, as discussed above in response to question 30, the Panel's task, as defined by its terms of reference, is to assess the measure as it existed at the time of the Panel's establishment. Therefore, the termination of the Clean Vehicle Tax Credit is not relevant to the legal situation that existed when the DSB established the Panel with standard terms of reference.⁴

6. For the sake of completeness, the United States observes that for vehicles acquired after September 30, 2025, as a result of OBBBA, the Clean Vehicle Tax Credit will cease to exist. The United States agrees that legal termination of a measure would normally be considered one means to "withdraw" a measure under Article 4.7 of the SCM Agreement and Article 3.7 of the DSU.

7. In response to parts (b) and (c) of the question, Article 4.7 of the SCM Agreement requires that "the panel *shall* recommend that the subsidizing Member withdraw the subsidy without delay" in the case of a prohibited subsidy and "specify . . . the time period" that is "without delay". Accordingly, hypothetically, if the Panel were to find the Clean Vehicle Tax Credit to be inconsistent with the WTO agreements, the United States would be entitled to such a time period.

8. Importantly, as discussed above, the task before the Panel is to make findings *and* recommendations, consistent with the Panel's obligations under the DSU and the SCM Agreement.⁵ Whether a responding party has brought its measure into conformity with a recommendation of the DSB (for instance, whether the challenged measure has been withdrawn consistent with Article 4.7 of the SCM Agreement) is a separate issue. If there were a disagreement between complaining and responding parties as to whether a measure had been

⁴ EC – *Selected Customs Matters (AB)*, para. 187 (finding that the panel's review of the consistency of the challenged measure with the covered agreements properly "focused on these legal instruments as they existed and were administered *at the time of establishment of the Panel*") (italics added).

⁵ Article 19.1, DSU; Article 4.7, SCM Agreement.

withdrawn, the parties could have recourse to further proceedings under the DSU, including compliance proceedings under Article 21 of the DSU.

Question 32. To both parties: If the Panel were to uphold China's claim that the ITC/PTC Domestic Content Bonus Credits are a prohibited subsidy, please provide your views on the appropriate time-period for the withdrawal of the measure under Article 4.7.

Response:

9. As an initial matter, as the United States has explained, the investment and production bonus tax credits are justified under Article XX(a) of the GATT 1994, and therefore, Article 4.7 of the SCM Agreement is not relevant to this dispute.

10. For the sake of completeness, under the hypothetical scenario that the Panel were to find that the investment and production bonus tax credits are inconsistent with Articles 3.1 and 3.2 of the SCM Agreement, the Panel should set a time period that would allow for engagement between the parties with respect to withdrawal of the measures. Consistent with Article 3.7 of the DSU, this would further the aim of the DSU to secure a positive solution to a dispute.

11. An additional consideration is that withdrawal of the measures would require legislative action. Prior adjudicators have likewise considered the necessity for legislative action, and the normal legislative calendar for making tax changes on a fiscal year basis, in assessing an appropriate time period that would constitute “without delay” under Article 4.7.⁶

Question 33. To both parties: Do the parties consider that the Panel should, in the context of its assessment of the merits of the United States' defence under Article XX(a) of the GATT 1994, take account of factual developments that have occurred after the Panel's establishment? (See e.g. China's opening statement, paragraphs 2-7, 13, 18 and 34; United States' opening statement, paragraphs 6 and 59 (referencing paragraph 58 of its second written submission); United States' second written submission, paragraphs 77, 80, and 105.)

Response:

12. As the United States explained above, it is the *measures* as they existed at the time of the panel's establishment, when the “matter” was referred to the Panel, that are properly within the panel's terms of reference and on which the Panel is called upon to make findings. With respect to *evidence*, a panel is generally free to consult evidence arising *after* the date of panel establishment to the extent such evidence is pertinent in assessing the WTO-consistency of challenged measures *as of* the date of panel establishment when the panel's terms of reference were set.⁷ Therefore, the relevance of the evidence depends on whether that evidence sheds light on the legal situation that existed on the date of panel establishment.

⁶ See *US – FSC (Panel)*, para. 8.8 (providing a year to withdraw the measures at issue).

⁷ See *EC – Selected Customs Matters (AB)*, para. 187 (finding that the panel's review of the consistency of the challenged measure with the covered agreements properly “focused on these legal instruments as they existed and were administered *at the time of establishment of the Panel*”) (italics added).

13. Here, as referenced in the Panel’s question, the United States has presented evidence spanning the time period before and after the date of panel establishment demonstrating China’s attainment of global dominance in the clean vehicle and renewable energy sectors, including through the use of non-market policies and practices, as well as China’s subsequent weaponization of that dominance.⁸ This evidence is directly relevant to the legal situation on the date the DSB established the Panel and set its terms of reference. China has not refuted this evidence; nor can it. The evidence also shows that the United States and other Members have voiced concerns of China’s dominance through the use of non-market policies and practices.⁹ Such evidence is relevant in assessing the necessity of the measures at issue in protecting U.S. public morals.¹⁰ Accordingly, the Panel should take into account the evidence demonstrating China’s attainment and weaponization of global dominance in the clean vehicle and renewable energy sectors.

14. As also referenced in the question, the Panel may likewise take into account OBBBA in assessing whether the measures at issue are necessary to protect U.S. public morals.¹¹ However, as the United States explains in response to Question 34 below, OBBBA does not undermine the U.S. invocation of Article XX(a) of the GATT 1994, but rather demonstrates the importance to the United States of protecting U.S. public morals, as is evident, for example, from OBBBA’s termination of the Section 45W leasing provision.¹²

Question 34. To the United States: In its opening statement, China argues that the termination of the Clean Vehicle Tax Credit as from 30 September 2025, and the termination of the ITC/PTC programmes in respect of wind and solar at the end of 2027, undermine the United States’ argument that the challenged measures are necessary to protect public morals. Please comment.

Response:

15. China’s argument is incorrect as a matter of law and simply ignores relevant facts that amply demonstrate the longstanding and ongoing public morals that the United States has sought and continues to protect. The fact that OBBBA changed the measures at issue does not undermine the U.S. invocation of Article XX(a) of the GATT 1994. As the United States has explained, a Member may use one means or many means to address an issue, including different means at different points in time.¹³ There is nothing in the WTO Agreement or the word “necessary” that suggests there can be one, and only one, measure that is necessary to protect

⁸ U.S. Opening Statement at Second Panel Meeting, paras. 6 & 59.

⁹ See U.S. Second Written Submission, paras. 77 & 80. See also U.S. Second Written Submission, para. 78 (citing 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)).

¹⁰ See U.S. Responses to Panel’s First Set of Questions, para. 18.

¹¹ China’s Opening Statement at Second Panel Meeting, paras. 2-7, 34.

¹² See Public Law 119-21, Section 70503 (US-178, which is revised US-169). US-169 inadvertently omitted Section 70502 of Public Law 119-21 concerning the Clean Vehicle Tax Credit. US-178 is revised exhibit US-169, and prior references to US-169 in previous U.S. submissions in this dispute should be understood as referring instead to US-178.

¹³ U.S. Opening Statement at Second Panel Meeting, para. 12.

public morals at a given point in time. For Article XX(a), a measure must be indispensable, essential, or requisite to serve the objective.¹⁴

16. “Necessary” does not mean that a measure must *absolutely* and *always* be indispensable, essential, or requisite. Indeed, a Member’s actions are not frozen in time, and “necessary” does not mean that a Member is forever required to maintain a measure and not use other means. A Member may choose at a different point in time different means that are “necessary” to protect its public morals.

17. The fact that the previous U.S. Administration determined to use the clean vehicle and renewable energy tax credits as means necessary to protect U.S. public morals does not mean that the challenged measures are the *only* means that may protect U.S. public morals. Further, having chosen to adopt the Inflation Reduction Act, the United States was not required to maintain forever the clean vehicle and renewable energy tax credits as “necessary” to protect U.S. public morals.

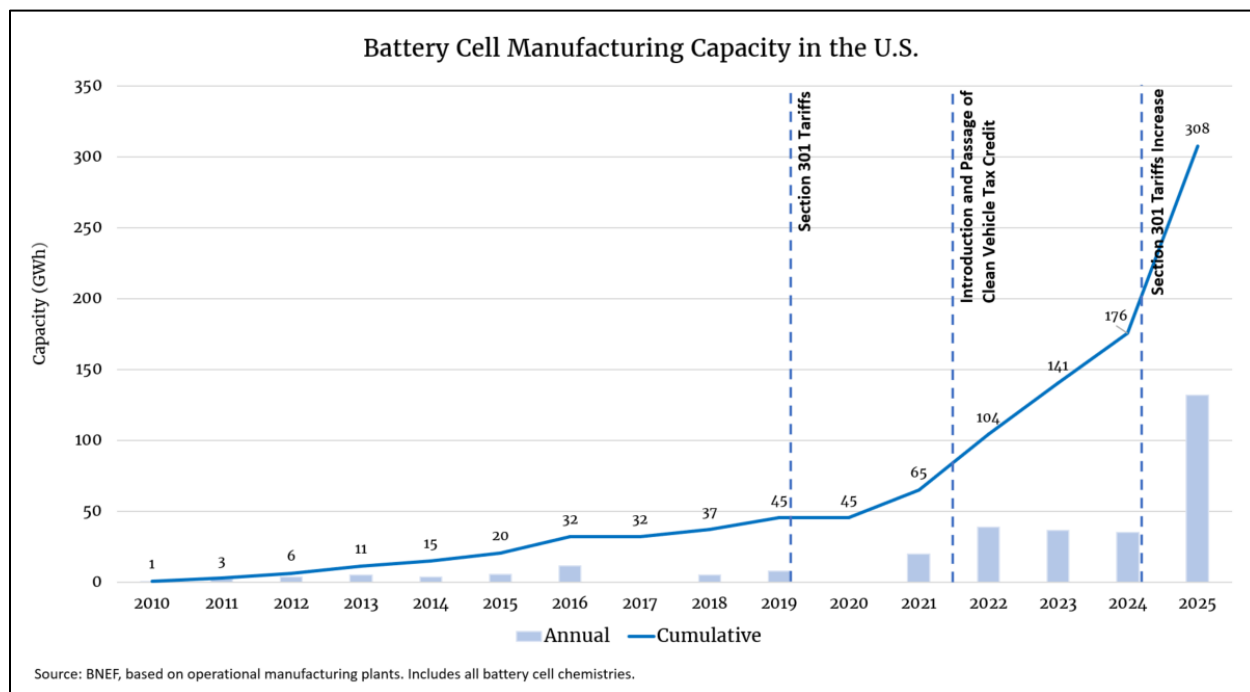
18. For example, the United States has previously taken actions in the clean vehicle sector to protect U.S. public morals – specifically, the use of Section 301 tariffs. The first Trump Administration imposed Section 301 tariffs in 2019 on EV batteries,¹⁵ and the Biden-Harris Administration increased those Section 301 tariffs in 2024.¹⁶ As Chart 1 below illustrates, battery cell manufacturing capacity in the United States increased somewhat following the imposition of the Section 301 tariffs (from 45 GWh in 2019 to 65 GWh in 2021). However, with the introduction and adoption of the Clean Vehicle Tax Credit, battery cell manufacturing capacity increased at a significantly higher rate, nearly tripling between 2021 and 2024. That enhanced capacity reduces reliance on and exposure to China, thereby protecting U.S. public morals. With the termination of the Clean Vehicle Tax Credit, the United States may rely on previously taken actions, or consider taking different actions, to continue protecting those morals.

¹⁴ U.S. First Written Submission, para. 115 (citing *The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 1895 (definition of “necessary”: “[t]hat which is indispensable, an essential, a requisite”; “[t]hat cannot be dispensed with or done without; requisite, essential, needful”) (US-15)).

¹⁵ Notice of Modification of Section 301 Action: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 84 Fed. Reg. 43304 (Aug. 20, 2019) (US-181).

¹⁶ Notice of Modification: China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation, 89 Fed. Reg. 76581 (Sept. 18, 2024) (US-180).

Chart 1¹⁷



19. As illustrated in Charts 2 and 3, below, the United States has also previously taken actions to address China’s targeting and dominance of the renewable energy sectors, including through antidumping and countervailing duties and safeguards. A previous U.S. administration imposed antidumping and countervailing duties on solar cells and modules from China in 2012 and 2015, respectively.¹⁸ In 2018, the first Trump Administration imposed safeguards on solar cells and modules,¹⁹ as well as Section 301 tariffs.²⁰ The Biden-Harris administration increased Section 301 tariffs on solar cells and modules in 2024.²¹ However, such actions only related to *an aspect*

¹⁷ Chart 1 illustrates the effects of various means on U.S. battery cell manufacturing capacity that the United States has taken to combat China’s targeting and dominance of the clean vehicle sector. See Notice of Modification of Section 301 Action: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 84 Fed. Reg. 43304 (Aug. 20, 2019) (US-181); Notice of Modification: China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation, 89 Fed. Reg. 76581 (Sept. 18, 2024) (US-180).

¹⁸ Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order, 77 Fed. Reg. 73108 (Dec. 7, 2012) (US-182); Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People’s Republic of China: Countervailing Duty Order, 77 Fed. Reg. 73017 (Dec. 7, 2012) (US-183); Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 80 Fed. Reg. 8592 (Feb. 18, 2015) (US-184).

¹⁹ Proclamation 9693, To Facilitate Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products) and for Other Purposes, Jan. 23, 2018 (US-185).

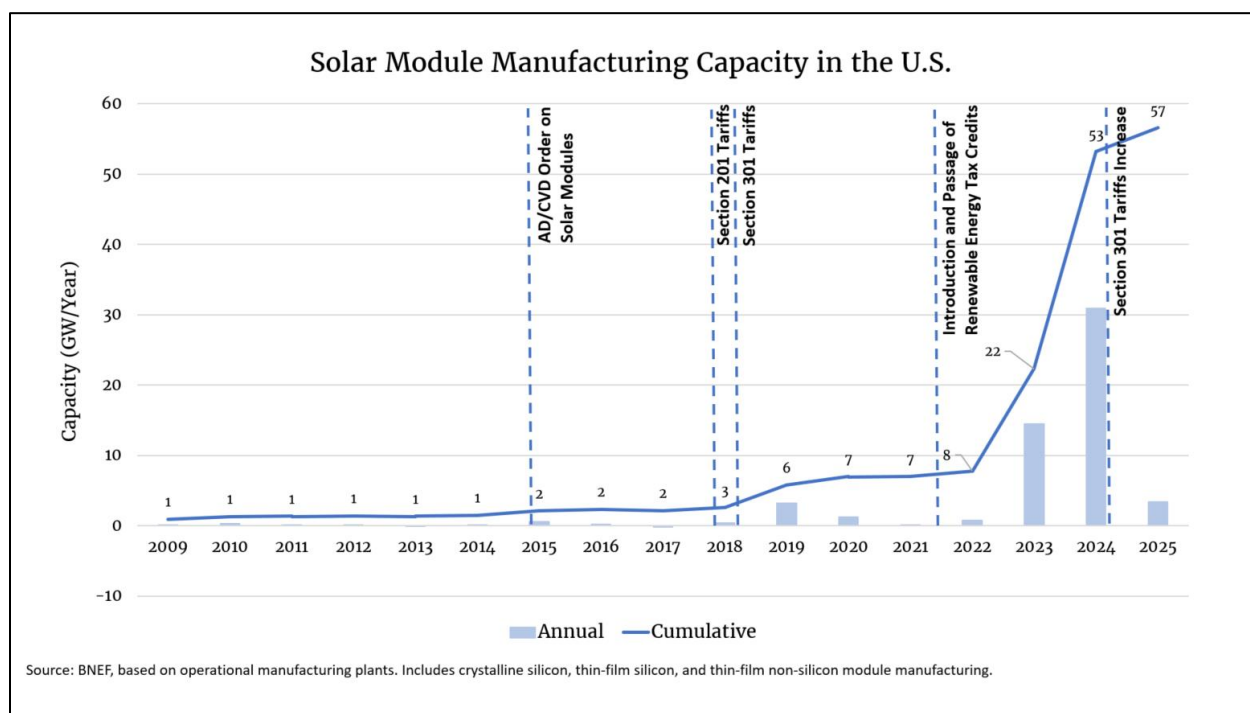
²⁰ Notice of Action Pursuant to Section 301: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 40823 (Aug. 16, 2018) (US-179).

²¹ Notice of Modification: China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation, 89 Fed. Reg. 76581 (Sept. 18, 2024) (US-180).

of China’s targeting and dominance of the renewable energy sector, as evidenced by the fact that despite such actions, China continued to target, attain, and weaponize its global dominance in the renewable energy sector.²² Indeed, those prior actions were not alone able to sufficiently increase U.S. manufacturing capacity and reduce reliance on and exposure to China.

20. Indeed, with respect to trade remedy measures, Chart 2 demonstrates no measurable difference in U.S. solar module manufacturing capacity following the imposition of antidumping and countervailing duties in 2015.

Chart 2²³



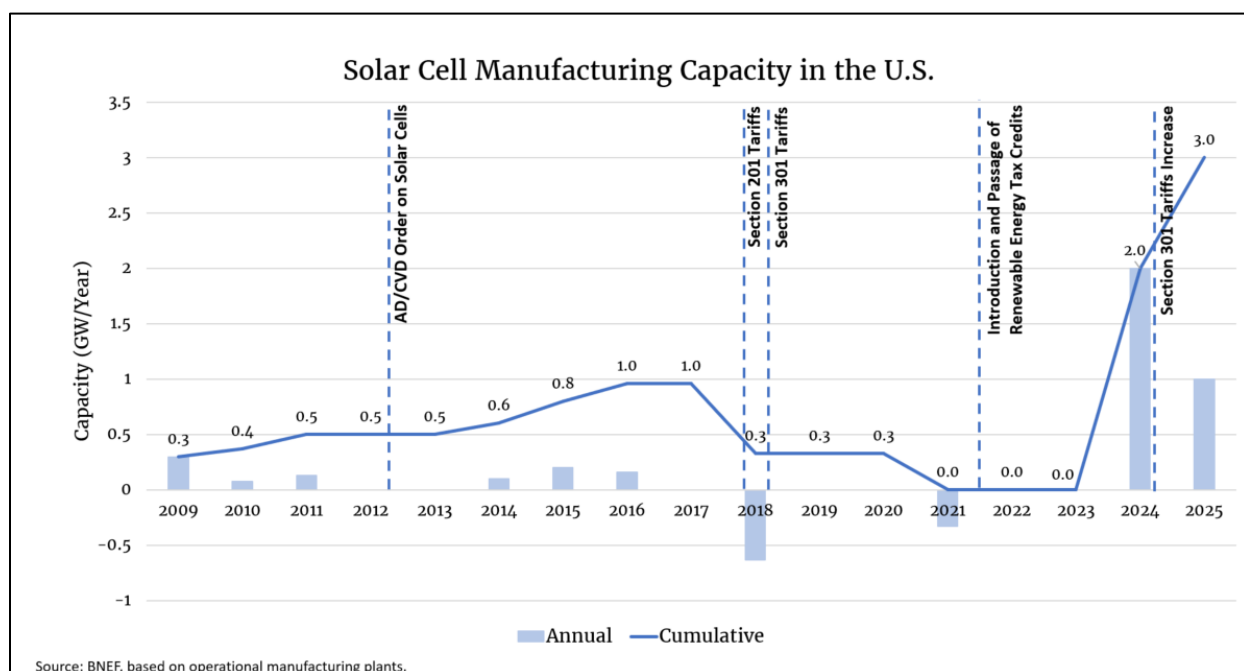
21. Likewise, in Chart 3, although U.S. solar cell manufacturing capacity experienced a modest increase following the imposition of antidumping and countervailing duties, that increase was only short-term and temporary. With the introduction and adoption of the renewable energy tax credits (that is, the investment and production tax credits), both solar module manufacturing

²² See also Figures 2 & 3, U.S. Opening Statement at Second Panel Meeting, paras. 2-3 (illustrating China’s dominance in manufacturing capacity of polysilicon and wafers in the solar sector).

²³ Chart 2 illustrates the effects of various means on the U.S. solar module manufacturing capacity that the United States has taken to combat China’s targeting and dominance of the solar sector. See Certain Crystalline Silicon Photovoltaic Products from the People’s Republic of China: Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 80 Fed. Reg. 8592 (Feb. 18, 2015) (US-184); Proclamation 9693, To Facilitate Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products) and for Other Purposes, Jan. 23, 2018 (US-185); Notice of Action Pursuant to Section 301: China’s Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 40823 (Aug. 16, 2018) (US-179); Notice of Modification: China’s Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation, 89 Fed. Reg. 76581 (Sept. 18, 2024) (US-180).

capacity (Chart 2), followed by solar cell manufacturing capacity (Chart 3), increased significantly, dwarfing the levels seen in the prior decade.²⁴ Again, that enhanced capacity reduces reliance on China, thereby protecting U.S. public morals. With the modification of the investment and production tax credits, the United States may rely on previously taken actions, or consider taking different actions, to continue protecting those morals.

Chart 3²⁵



²⁴ The antidumping and countervailing duty orders and safeguard actions were not sufficient to increase U.S. manufacturing capacity and reduce reliance on and exposure to China. This demonstrates that China's targeting and attainment of global dominance in the renewable energy sector, including through the use of other non-market policies and practices, is both broader in scope and more profound in effects than matters covered by the *Anti-dumping Agreement*, *Subsidies Agreement*, and *Safeguards Agreement*. Accordingly, China errs in arguing that its non-market policies and practices are fully subject to the *Subsidies Agreement*. See China's Second Written Submission, para. 44.

²⁵ Chart 3 illustrates the effects of various means on the U.S. solar cell manufacturing capacity that the United States has taken to combat China's targeting and dominance of the solar sector. See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value, and Antidumping Duty Order*, 77 Fed. Reg. 73108 (Dec. 7, 2012) (US-182); *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Countervailing Duty Order*, 77 Fed. Reg. 73017 (Dec. 7, 2012) (US-183); Proclamation 9693, To Facilitate Positive Adjustment to Competition From Imports of Certain Crystalline Silicon Photovoltaic Cells (Whether or Not Partially or Fully Assembled Into Other Products) and for Other Purposes, Jan. 23, 2018 (US-185); Notice of Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 83 Fed. Reg. 40823 (Aug. 16, 2018) (US-179); Notice of Modification: China's Acts, Policies and Practices Related to Technology Transfer, Intellectual Property and Innovation, 89 Fed. Reg. 76581 (Sept. 18, 2024) (US-180).

22. Therefore, for both the clean vehicle and renewable energy sectors, the previous U.S. Administration determined to use the clean vehicle and renewable energy tax credits as a necessary means to counter China’s targeting and dominance of the clean vehicle and renewable energy sectors, thereby protecting U.S. public morals. And, as the United States has demonstrated, and as evident in the charts above, the measures were successful in reducing reliance on and exposure to China by increasing U.S. manufacturing capacity, thereby protecting the U.S. public morals against unfair competition, forced labor, theft, and coercion. Thus, the fact that the current U.S. Administration may now choose to rely on other means or adopt other measures to protect U.S. public morals does not undermine the U.S. invocation of Article XX(a).

23. China also ignores overwhelming evidence, including in OBBBA itself, relating to ongoing U.S. concerns with China’s global dominance in the clean vehicle and renewable energy sector, including through the use of non-market policies and practices. Indeed, the United States has submitted a plethora of evidence that demonstrates that the United States and other Members have voiced serious concerns with China’s attainment of global dominance in the clean vehicle and renewable energy sectors through the use of non-market policies and practices to the detriment of all other Members.²⁶

24. The present U.S. Administration has taken numerous actions already to address these concerns—seeking to strengthen partnerships with allies and industry to counter China’s growing influence in critical minerals,²⁷ underscoring its commitment to prohibiting goods made with forced labor in China from entering U.S. supply chains,²⁸ and noting the unique economic challenge that China poses to the United States.²⁹ Therefore, these concerns by the United States persist and did not simply disappear with the passage of OBBBA. Indeed, OBBBA itself demonstrates the U.S. commitment to protecting U.S. public morals in these sectors, for example, through the termination of the Section 45W leasing credit to close the “loophole”³⁰ to the Clean Vehicle Tax Credit by disallowing Chinese vehicles from accessing a \$7500 tax credit.³¹

25. Therefore, contrary to China’s allegations, OBBBA does not undermine the use of the clean vehicle and renewable energy tax credits at one point in time to protect U.S. public morals. Importantly, OBBBA’s termination of the Clean Vehicle Tax Credit and modification of the renewable energy tax credits does not change the question before the Panel to assess the measures as they existed at the time of the Panel’s establishment and as set out in the Panel’s terms of reference.

²⁶ See, e.g., U.S. Opening Statement at First Panel Meeting, para. 9; U.S. Responses to Panel’s First Set of Questions, para. 71, n. 97-99; U.S. Second Written Submission, paras. 77-81; U.S. Opening Statement at Second Panel Meeting, para. 67; U.S. Closing Statement at the Second Panel Meeting, paras. 4 & 6.

²⁷ Executive Order 14285, Unleashing America’s Offshore Critical Minerals Resources (Apr. 24, 2025) (US-186)

²⁸ Forced Labor Enforcement Task Force Release of the 2025 Update to the UFLPA Strategy, Office of the U.S. Trade Representative (Aug. 19, 2025) (US-187).

²⁹ The President’s 2025 Trade Policy Agenda, p. 3 (US-35).

³⁰ China’s Second Written Submission, para. 109 n. 107.

³¹ See Public Law 119-21, Section 70503 (US-178, which is revised exhibit US-169).

Question 35. To China: With reference to paragraph 33 of the United States' opening statement, please comment on the United States' argument that "[t]he United States has not asserted that 'targeting' and 'dominance' are by themselves distinct public morals".

Response:

26. This question is addressed to China.

Question 36. To China: At paragraph 36 of its opening statement, the United States argues that although "China portrays the design test as the first step of the Article XX(a) inquiry, it now presents the same arguments for both the 'design' and the 'necessary' steps, thereby demonstrating the inutile nature of the exercise." Please comment.

Response:

27. This question is addressed to China.

Question 37. To the United States: Please elaborate on why the ITC/PTC Domestic Content Bonus Credits apply to all manufactured products, including products outside of the sectors where the United States has asserted that China has attained global dominance through non-market practices and policies.

Response:

28. The United States has demonstrated, and China has not denied, that China has attained global dominance in the renewable energy sector.³² The manufactured products requirement, which is a condition for receiving bonus tax credits under the investment and production tax credits at issue in this dispute, applies to the upstream products that become part of a renewable energy project.³³ Manufactured products within the meaning of the investment and production tax bonus credits include, for example, photovoltaic trackers, photovoltaic modules, wind turbines, battery packs, and battery containers and housing.³⁴ Each of these products can be part of a renewable energy project eligible for the investment and production tax bonus credits.

29. To the extent the Panel's question also relates to the steel content requirement for receiving bonus credits under the investment and production tax credits, the United States has demonstrated—and China has not denied—that China has achieved global dominance in the steel sector.³⁵ As the Global Forum on Steel Excess Capacity and the OECD Steel Committee have observed:

³² China's Response to First Set of Panel Questions, para. 17.

³³ Public Law 117-169, An Act to Provide for Reconciliation Pursuant to Title II of the S. Con. Res. 14 (August 16, 2022) (CHN-4); China's First Written Submission, para. 76.

³⁴ U.S. Internal Revenue Service, Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E (May 12, 2023) (Notice 2023-38) (CHN-38).

³⁵ See U.S. Responses to Panel's First Set of Questions, paras. 55-65.

- “This era of growing and persistent global excess capacity [from 2012 to 2021] was largely driven by the People’s Republic of China.”³⁶
- “China’s excess capacity was grounded in market-distorting government interventions and other non-market factors.”³⁷
- “History has shown that excess capacity is associated with surges in steel exports from countries that are the source of global excess capacity. This leads to over-supply of steel on international markets and depressed steel prices, as well as lower market shares and capacity utilisation rates for domestic steel producers in third countries that operate under market conditions.”³⁸
- “[T]he sheer size of China’s steel sector means that movements in its industry have huge effects on world markets The rise in China’s position in the global steel industry . . . reflects a steel industry expansion driven by . . . non-market policies and practices.”³⁹

Question 38. To the United States: During the second substantive meeting, the Panel understood the United States to confirm that the ITC/PTC Domestic Content Bonus Credits are not designed in a way that incentivizes production in countries that are aligned with the United States’ public morals against unfair competition, coercion, theft, and forced labour. Is this understanding correct?

Response:

30. The investment and production bonus credits relate to the U.S. content of steel, iron, and manufactured products, and are not designed to incentivize production in *other* countries that are aligned with U.S. public morals. These bonus tax credits *are* designed to and not incapable of protecting U.S. public morals against unfair competition, forced labor, theft, and coercion. As the United States has previously detailed, the domestic content bonus reflects that (1) the steel market demands a different approach because of China’s longstanding, non-market excess capacity, and (2) manufacturers in the United States must comply with the U.S. laws that protect U.S. public morals.⁴⁰

31. Requiring U.S. content for steel and iron or U.S. manufactured products in renewable energy projects in order to receive these bonus credits—as opposed to, for example, granting tax credits for clean vehicles that use critical minerals or battery components from countries with which the United States has a free trade agreement—reflects the particular circumstances of the

³⁶ Global Forum on Steel Excess Capacity, Global excess capacity and employment in steel and downstream activities (March 2025), p. 6 (US-104).

³⁷ Global Forum on Steel Excess Capacity, Steel Exports, trade remedy actions and sources of excess capacity (May 2024), p. 6 (US-85).

³⁸ Global Forum on Steel Excess Capacity, Impacts of global excess capacity on the health of the GFSEC steel industries (March 2024), p. 5 (US-86).

³⁹ OECD Steel Outlook 2025, p. 14 (US-188).

⁴⁰ U.S. Responses to Panel’s First Set of Questions, paras. 55-65; U.S. Second Written Submission, paras. 42-51.

steel and manufacturing sectors, which differ from those of the critical minerals or battery sectors.

32. With respect to critical minerals and batteries in the clean vehicle sector, the United States seeks to work with U.S. allies that have significant mining experience to counteract China's global dominance.⁴¹ In the steel sector, by contrast, the effects of China's non-market policies and practices have been longstanding and particularly profound, and have resulted in global distortions.⁴² As the United States previously explained, China's non-market policies and practices have led to artificially low prices, lower imports into China, and higher exports from China.⁴³ China's artificially low-priced steel exports lead to price arbitrage, as these exports displace production and suppress prices in third-country markets.⁴⁴ And the effects of China's non-market policies and practices in the steel sector also affect iron (a key input for steel) and U.S. manufacturing (given follow-on effects in U.S. communities from the closure of steelmaking facilities).⁴⁵

33. As explained below, for decades the United States has taken steps to counteract the effects of China's non-market policies and practices in the U.S. steel market. Unfortunately, other countries, including U.S. free trade agreement (FTA) partners, have failed to take similar steps, and their domestic steel markets remain significantly more susceptible to and distorted by China's practices than the U.S. steel market. In these circumstances, it is necessary to protect U.S. public morals by requiring the use of domestic steel and iron or U.S. manufacturing—that is, by relying on a market that is less distorted than other major markets, including U.S. FTA partners.

Protection of the U.S. steel market from China's non-market policies and practices

34. As the Congressional Research Service reported in May 2022—shortly before the IRA was enacted—global excess steelmaking capacity is a longstanding concern for U.S. steel producers.⁴⁶ Although China is the principal driver of steel excess capacity, China's non-market policies and practices have affected steel markets globally—including the steel markets of U.S. FTA partners—such as through trade distortion, trade diversion, and non-market investments by Chinese SOEs.⁴⁷ Members of the U.S. Congress have also long expressed concerns regarding global excess capacity in the steel sector and related manufacturing sectors,⁴⁸ and the Global

⁴¹ See, e.g., U.S. Responses to Panel's First Set of Questions, paras. 72-73, 76.

⁴² See, e.g., U.S. Responses to Panel's First Set of Questions, paras. 55-65.

⁴³ U.S. Responses to Panel's First Set of Questions, para. 60.

⁴⁴ See U.S. Responses to Panel's First Set of Questions, para. 60; OECD Steel Outlook 2025, p. 18 (US-188).

⁴⁵ See, e.g., U.S. Responses to Panel's First Set of Questions, paras. 55-65; U.S. Second Written Submission, para. 47.

⁴⁶ Congressional Research Service, Christopher D. Watson, Domestic Steel Manufacturing: Overview and Prospects (May 17, 2022), p. 4 (US-146).

⁴⁷ See U.S. Responses to of Panel's First Set of Questions, paras. 55-65.

⁴⁸ See U.S. Second Written Submission, paras. 45-49.

Forum on Steel Excess Capacity and the OECD Steel Committee have documented China's role in global steel excess capacity.⁴⁹

35. Over the past 50 years, the United States has taken a variety of steps to protect the U.S. steel market from China's non-market policies and practices, for example, through antidumping and countervailing duty orders, more than 300 of which are in force on iron and steel products.⁵⁰ Since 2018, the United States has also imposed national security measures on steel imports under Section 232 of the Trade Act of 1962.⁵¹ As discussed further below, although these actions were not sufficient to counter China's global dominance in the steel sector, they did contribute to U.S. steel prices being higher than in other major markets, including U.S. FTA partners, thereby leading to less distortion in the U.S. market.

U.S. steel prices exceed prices in other major steel markets

36. As the Congressional Research Service reported, in December 2021 the price of hot-rolled band steel per metric ton was \$646 in China and \$1,031 in Europe, compared with \$1,855 in the United States, almost three times prices in China.⁵² As Chart 4 illustrates, this price differential is long-standing. Chart 4 shows the U.S. prices of hot rolled coil steel (typically seen as a benchmark for prices of all steel goods), as compared with prices in Northern Europe, Southeast Asia, and China.

⁴⁹ See generally 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); Global Forum on Steel Excess Capacity, Global excess capacity and employment in steel and downstream activities (March 2025) (US-104); OECD Steel Outlook 2025 (US-188).

⁵⁰ See Congressional Research Service, Christopher D. Watson, Domestic Steel Manufacturing: Overview and Prospects (May 17, 2022), pp. 5-6 (US-146).

⁵¹ Congressional Research Service, Christopher D. Watson, Domestic Steel Manufacturing: Overview and Prospects (May 17, 2022), p. 5 (US-146).

⁵² Congressional Research Service, Christopher D. Watson, Domestic Steel Manufacturing: Overview and Prospects (May 17, 2022), p. 5 (US-146).

Chart 4 [Source redacted]

[CHART REDACTED – CONTAINS CONFIDENTIAL INFORMATION]

37. As Chart 4 demonstrates, since 2020 steel prices in the United States have consistently been higher than steel prices in Northern Europe, Southeast Asia, and China. Indeed, the Southeast Asia price is virtually identical to the China price, showing how China's non-market excess capacity effectively determines prices, and that Southeast Asian countries have not been able to correct China's price distortions.

38. As the United States has explained, the difference in prices leads to price arbitrage, as increased and artificially low-price exports displace production and suppress prices in third-country markets.⁵³ As a result, global markets are distorted, and steel producers and traders seek to export to less-distorted markets.⁵⁴ As Chart 4 makes clear, that less-distorted market is overwhelmingly the United States. Moreover, the failure of Chinese prices to track market trends (such as the price spike following the COVID-19 pandemic experienced in the United States and Northern Europe) further underscores the non-market nature of China's steel industry.

Other countries, including U.S. FTA partners, have failed to protect their steel markets from China's non-market policies and practices

39. Other countries, including U.S. FTA partners, have failed to take action similar to that taken by the United States to protect their domestic markets from China's non-market policies and practices in the steel industry, and this failure to act is reflected in their domestic steel markets. U.S. FTA partners have not imposed national security measures on steel imports from

⁵³ See U.S. Responses to Panel's First Set of Questions, para. 60; OECD Steel Outlook 2025, p. 18 (US-188).

⁵⁴ See U.S. Responses to Panel's First Set of Questions, para. 60; OECD Steel Outlook 2025, p. 18 (US-188).

around the world to discourage steel excess capacity and production, as the United States did in 2018. And as WTO data indicate, U.S. FTA partners have not imposed antidumping and countervailing duty orders on steel imports to a similar degree to the United States. For example, WTO data indicate that on or after January 1, 2020, the United States had in force 298 antidumping measures with respect to base metals and articles of base metals, as compared with 95 such measures in force in Canada, 66 in Mexico, 52 in Australia, 16 in Korea, and 4 in Japan.⁵⁵ While the number of antidumping measures in force does not fully reflect the scope of any remedies imposed, such a large disparity in the number of orders does provide an indication of the extent to which these Members have taken (or failed to take) steps to defend their domestic markets from China's non-market policies and practices.

40. The failure of U.S. FTA partners to defend their domestic steel markets from China's non-market policies and practices is further confirmed by the decline of their domestic steel industries and the increasing export penetration they have experienced. For example, *Chile* suffered the closure of its only steel mill after 74 years in operation.⁵⁶ In explaining this closure, the company representative specifically cited cheap Chinese imports and the Chilean government's failure to take adequate steps to address unfair competition from China.⁵⁷

41. The steel industry in *Korea* has also struggled due to China's aggressive export strategy, with Korean steelmakers reporting declining profits in recent years and as imports of Chinese steel to Korea grow even when total steel imports have declined.⁵⁸

42. The steel industry in *Canada* tells a similar story. In 2021, the Canadian Steel Producers Association expressed concern that China and others continued to add excess capacity in the global steel market, which had the effect of further intensifying the distortion in global steel trade flows.⁵⁹ In fact, the Canadian Steel Producers Association specifically called on its government to address rising unfair steel imports "and better align with the United States".⁶⁰ In 2023, the Canadian Steel Producers Association expressed similar concerns, as it lamented the

⁵⁵ See WTO Trade Remedies Data Portal, Database of Antidumping Measures, filtered by HS Selection to XV, <https://trade-remedies.wto.org/en/antidumping/measures>.

⁵⁶ See, e.g., Financial Times, "Chile's largest steel mill shuts amid surge in Chinese imports," Aug. 7, 2024 (US-189); Emol, "Siderúrgica Huachipato suspende operaciones: Considera 'insuficientes' los aranceles a acero chino," Mar. 20, 2024 (US-190).

⁵⁷ See, e.g., Financial Times, "Chile's largest steel mill shuts amid surge in Chinese imports," Aug. 7, 2024 (US-189); Emol, "Siderúrgica Huachipato suspende operaciones: Considera 'insuficientes' los aranceles a acero chino," Mar. 20, 2024 (US-190).

⁵⁸ See, e.g., Steel News, "South Korea's steel industry struggles amid China's aggressive export strategy," July 5, 2024 (US-191); Financial Times, "From steel to kimchi, South Korean exporters face flood of Chinese rivals," Sept. 16, 2024 (US-192); The Korea Economic Daily, "South Korea's steel imports from China at 7-year high," Jan. 13, 2025 (US-193).

⁵⁹ The Canadian Steel Producers Association, Written Submission for the Pre-Budget Consultations in Advance of the Federal 2022 Budget (Aug. 6, 2021), p. 2 (US-194).

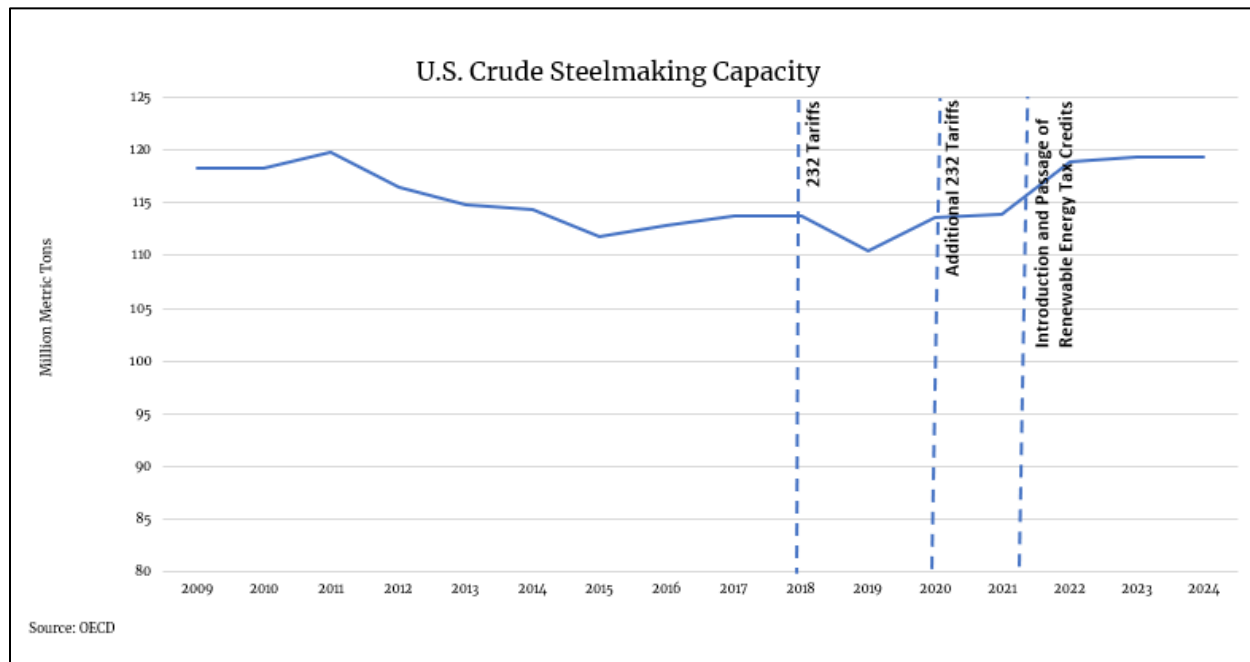
⁶⁰ The Canadian Steel Producers Association, Written Submission for the Pre-Budget Consultations in Advance of the Federal 2022 Budget (Aug. 6, 2021), p. 1 (US-194).

“skyrocketing” steel imports coming to Canada from offshore (e.g., from outside North America) and continued to press for enhancements to Canada’s trade defense system.⁶¹

Pre-2022 U.S. actions were not sufficient to counter China’s global dominance in the steel sector in the U.S. steel market

43. Even the numerous trade actions that the United States has imposed to defend its domestic steel market from China’s non-market policies and practices were not by themselves sufficient. Chart 5 below tracks U.S. steelmaking capacity from 2009 to 2024, over a time when the United States was imposing numerous trade remedy measures with respect to steel, and tracking the imposition of national security tariffs on imports of steel to the United States and the introduction and passage of the renewable energy tax credits (that is, the investment and production tax credits).

Chart 5⁶²



44. As Chart 5 illustrates, U.S. steelmaking capacity declined significantly between 2010 and 2015, despite the imposition of numerous antidumping and countervailing duty orders on steel imports to the United States during this time. U.S. crude steelmaking capacity began to increase sharply in 2019, following the U.S. imposition of national security measures on steel. Following the introduction and passage of the investment and production tax credits, U.S. steelmaking

⁶¹ The Canadian Steel Producers Association, Finance Canada Pre-Budget Consultations in Advance of Budget 2023 (Feb. 10, 2023), p. 3 (US-195)

⁶² Chart 5 illustrates the effects of various means on U.S. crude steelmaking capacity. See Proclamation 9705, Adjusting Imports of Steel Into the United States, 83 Fed. Reg. 11625 (Mar. 15, 2018) (US-196); Proclamation 9980, Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States, 85 Fed. Reg. 5281 (Jan. 29, 2020) (US-197).

capacity increased further, reaching levels not achieved for more than 15 years. Accordingly, the investment and production bonus tax credits are designed to and not incapable of protecting U.S. public morals against unfair competition, forced labor, theft, and coercion, and following their imposition, U.S. crude steelmaking capacity *did* increase.

45. Accordingly, because China's non-market policies and practices have affected the steel market globally, and other countries, including U.S. FTA partners, have not taken measures similar to U.S. efforts to defend their domestic markets from China's non-market policies and practices, the investment and production tax credits are limited to the use of U.S. domestic content. By stimulating demand for these products, the measures incentivize U.S. production and reduce dependence on and exposure to Chinese steel, iron, and manufactured products, thereby protecting U.S. public morals against unfair competition, forced labor, theft, and coercion.

Question 39. To China: In its second written submission, China reiterates it "cannot, and therefore will not, specifically comment on the United States' purported invocation of Article XXI" unless and until the United States identifies one or more relevant subparagraphs of Article XXI(b) (para. 152). In its second written submission, the United States refers to a number of US legal instruments, determinations and government reports that identify China as a "foreign adversary" or assert that China poses a threat to the United States, in terms of a threat to national security or otherwise (paras. 104-105). According to the United States, "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" and "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." (para. 106)

In the light of this argumentation and evidence, and further to China's comments at paragraph 32 of its opening statement, the Panel invites China to elaborate its views on whether the FEOC Requirement constitutes action "taken in time of war or other emergency in international relations" between the United States and China within the meaning of Article XXI(b)(iii).

Response:

46. This question is addressed to China.

Question 40. To China: Can China please confirm whether Exhibit CHN-72 contains the most current version of 26 U.S.C. Section 46?

Response:

47. This question is addressed to China.

Question 41. To both parties: The Panel understands that certain taxpayers can use ITCs/PTCs as a payment of tax. Are all entities entitled to use the ITCs/PTCs in this way

always tax-exempt? If yes, do such entities receive the payment back from the government as a tax refund of an overpayment? If no, and the taxpayer can have tax due, then how does the US government treat this tax payment in this situation, and what would the relevant "financial contribution" be?

Response:

48. The investment and production tax credits can be used by U.S. taxpayers to reduce tax liability. That is, if an entity has an income tax liability, the investment and production tax credits would offset the taxpayer's income tax liability. The investment and production tax credits are also eligible for "elective pay" under 26 U.S.C. 6417. This means that tax-exempt entities and other "applicable entities" listed in 26 U.S.C. 6417 (such as state and local governments) can receive the value of any investment and production tax credits for which they are eligible as a payment from the U.S. Federal government.