

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

(DS623)

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

October 3, 2025

TABLE OF REPORTS

SHORT TITLE	FULL CASE TITLE AND CITATION
<i>India – Export Related Measures (Panel)</i>	Panel Report, <i>India – Export Related Measures</i> , WT/DS541/R, circulated 31 October 2019
<i>India – Sugar and Sugarcane (Australia) (Panel)</i>	Panel Reports, <i>India – Measures Concerning Sugar and Sugarcane</i> , WT/DS579/R, WT/DS580/R, WT/DS581/R, circulated 14 December 2021
<i>Russia – Traffic in Transit</i>	Panel Report, <i>Russian Federation – Measures Concerning Traffic in Transit</i> , WT/DS512/R, and Add.1, adopted 26 April 2019
<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
<i>US – Large Civil Aircraft (2nd complaint) (Panel)</i>	Panel Report, <i>United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)</i> , WT/DS353/R, adopted 23 March 2012, as modified by Appellate Body Report WT/DS353/AB/R
<i>US – Upland Cotton (Panel)</i>	Panel Report, <i>United States – Subsidies on Upland Cotton</i> , WT/DS267/R, Corr.1, and Add.1 to Add.3, adopted 21 March 2005, as modified by Appellate Body Report WT/DS267/AB/R

TABLE OF EXHIBITS

EXHIBIT	DESCRIPTION
US-198	U.S. Responses to Panel's First Set of Questions in <i>US – Large Civil Aircraft (2nd Complaint) (Panel)</i> (excerpt)
US-199	U.S. Comments to Brazil's Answers to Panel Questions Following the Second Panel Meeting in <i>US – Upland Cotton (Panel)</i> (excerpt)
US-200	The White House, Fact Sheet: President Donald J. Trump Establishes the National Energy Dominance Council, Feb. 14, 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 does not have further comments at this time. The United States refers the Panel to the U.S. response to this question.

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:

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?

U.S. Comments:

2. The United States refers the Panel to the U.S. response to this question. In particular, as the United States explained, in the event of a finding of WTO-inconsistency, Article 19.1 of the DSU and Article 4.7 of the SCM Agreement impose a mandatory obligation on the Panel to make both findings *and* recommendations.¹ In contrast, China's argument that the Panel may issue a finding but not a recommendation is not based on the text of the DSU or SCM Agreement.

3. Although China cites to *US – Large Civil Aircraft (2nd Complaint)* as an example of a prior dispute where a panel did not make a recommendation with respect to a withdrawn

¹ Article 4.7, SCM Agreement ("[T]he panel *shall* recommend that the subsidizing Member withdraw the subsidy without delay.") (emphasis added); Article 19.1, DSU (Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it *shall* recommend that the Member concerned bring the measure into conformity with that agreement.") (emphasis added). *See also* Article 3.7, DSU ("The aim of the dispute settlement mechanism is to secure a positive solution to a dispute.").

measure,² that panel also did not ground that decision in the text of the DSU or the SCM Agreement. In addition, the facts presented there are distinguishable from the facts at hand. Specifically, in that dispute, one reason the panel refrained from making a recommendation was that the measures at issue were already subject to an operative recommendation in *US – FSC*.³ Therefore, the panel in *US – Large Civil Aircraft (2nd Complaint)* considered it important not to disturb that recommendation and to avoid “detract[ing] from the legal force of the existing obligation insofar as it would give rise to a new period of implementation”.⁴ In that situation, findings and recommendations would not assist in “secur[ing] a positive resolution to [the] dispute.”⁵ Here, however, there is no prior panel report recommending that the United States withdraw the Clean Vehicle Tax Credit without delay.

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.

U.S. Comments:

4. As the United States previously explained, under the hypothetical scenario that the Panel were to find the renewable energy tax credits to be inconsistent with Articles 3.1 and 3.2 of the SCM Agreement, the Panel should set a time period that would allow for: (1) legislative action to withdraw those credits with consideration for the normal legislative calendar for making tax changes on a fiscal year basis; and (2) engagement between the parties with respect to withdrawal of the measure. As discussed below, in light of the irrelevant examples cited by China, which would not afford a realistic period to engage in a legislative process to withdraw the measures at issue, the United States suggests a time period of one year from the date of adoption of the report by the DSB. Such a time period would be “without delay” under Article 4.7.

5. Indeed, prior adjudicators have factored in the need for legislative action in setting a time period that is “without delay” under Article 4.7 of the SCM Agreement, including by providing one year to withdraw the measure at issue.⁶ Although China cites to various disputes wherein prior adjudicators provided 90 to 120 days, those time frames did not relate to measures that required legislative action.⁷ Here, in contrast, legislative action is required to withdraw the measures at issue.

² China's Responses to Panel's Questions Following the Second Panel Meeting, para. 4.

³ *US – Large Civil Aircraft (2nd complaint) (Panel)*, para. 8.6.

⁴ *US – Large Civil Aircraft (2nd complaint) (Panel)*, para. 8.6 & n. 4267.

⁵ Article 3.7, DSU. See also U.S. Responses to Panel's First Set of Questions in *US – Large Civil Aircraft (2nd complaint) (Panel)*, para. 165 (US-198).

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

⁷ See *India – Export Related Measures (Panel)*, paras. 9.9 & 9.11 (discussing that the measures at issue require amendment by the government, as opposed to the legislature); *India – Sugar and Sugarcane (Panel)*, para. 6.59 (“[W]e note that the measures to be withdrawn are not statutes that would have required a legislative process for withdrawal or modification, which typically takes more time than modifying or withdrawing administrative instruments.”).

6. China also observes that some panels have provided 180 days, citing *India – Export Related Measures* and *US – Upland Cotton*, disputes involving measures requiring legislative action. However, the circumstances in those disputes differed—specifically, that the parties in those disputes represented that a time period of 180 days was sufficient. In *India – Export Related Measures*, the panel observed that although India asked for more than 180 days, “India’s comments concede that 180 days suffice as a minimum period for withdrawal”.⁸ In *US – Upland Cotton*, the panel’s time frame of 180 days was consistent with the U.S. position that the United States needed until the end of that year given that there were already bills before both houses of the U.S. Congress to repeal the measure at issue.⁹

7. Here, in contrast, the United States has not conceded that 180 days would be sufficient to complete the legislative amendment withdrawing the measures at issue. Rather, the United States requests one year from the date of adoption by the DSB, consistent with the panel’s approach in *US – FSC*, in consideration of the normal legislative calendar for making tax changes on a fiscal year basis.

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.)

U.S. Comments:

8. The parties appear to agree that 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.¹⁰ However, contrary to China’s assertion, the *date* of evidence is not necessarily indicative of the degree of relevance of any such evidence.¹¹ Rather, the substance of the evidence itself determines its probative value. For example, the United States has provided evidence dating from before, during, and after the passage of the renewable energy tax credits to demonstrate that the measures were designed to or are not incapable of protecting the U.S. public

⁸ *India – Export Related Measures (Panel)*, para. 9.17.

⁹ U.S. Comments to Brazil’s Answers to Panel Questions Following the Second Panel Meeting in *US – Upland Cotton (Panel)*, para. 177 (US-199). Specifically, the U.S. submission was filed in January 2004, and stated that the United States needed until the “end of this year” (that is, 2004) to complete the legislative process. The panel report was adopted in March 2005 and allowed for six months from the date of adoption or July 1, 2005, whichever was early. *US – Upland Cotton (Panel)*, para. 8.3(b). Therefore, either time frame chosen by the Panel was consistent with the U.S. request to have until December 31, 2004 to complete the legislative process.

¹⁰ China’s Responses to Panel’s Questions Following Second Panel Meeting, para. 6.

¹¹ See China’s Responses to Panel’s Questions Following Second Panel Meeting, para. 8 (“[E]vidence contemporaneous with the adoption of the measure at issue may be more relevant in assessing whether the measure was *designed* to fulfil its purported objectives, while post-establishment evidence may have greater probative value when evaluating whether the measure *contributes* to its asserted objective.”).

morals against unfair competition, forced labor, theft, and coercion.¹² The substance of that evidence, not the date of the evidence, determines its probative value.

Question 34. To the United States: Intentionally omitted.

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".

U.S. Comments:

9. The United States has established the existence of the U.S. public morals against: (1) unfair competition, (2) forced labor, (3) theft, and (4) coercion, presenting extensive evidence in U.S. law and U.S. statements in other fora to demonstrate these fundamental U.S. norms.¹³ The United States has also clearly stated that China's targeting of the clean vehicle and renewable energy sectors for dominance is contrary to all four of those public morals.¹⁴ China has not denied that it engages in targeting of the clean vehicle and renewable energy sectors, and indeed celebrates that China has achieved global dominance in these sectors.¹⁵

10. As the United States explained, China has targeted the clean vehicle and renewable energy sectors for dominance by setting non-market-determined quantitative targets for the clean vehicle and renewable energy sectors in its central and sub-central government plans,¹⁶ leading Chinese economic actors to overinvest, to displace foreign companies in existing markets, and to take new markets as they develop.¹⁷ For example, as a European Union Chamber of Commerce in China's report explained, the Made in China 2025 roadmap includes,

hundreds of market share targets for 2020 and 2025, both domestic *and international*, as well as technologies and products to be developed in all ten industries covered by the initiative. Clearly this is *no mere domestic exercise*: it has ramifications for European business, both in their home and third-party markets.¹⁸

The report further stated that these targets, along with other positions in the Made in China 2025 roadmap, make clear that China is engaged in a "large-scale import substitution plan aimed at nationalising key industries, or at least severely curtailing the position of foreign business in

¹² See U.S. Second Written Submission, paras. 42-51.

¹³ U.S. First Written Submission, paras. 68-74.

¹⁴ See U.S. Opening Statement at First Panel Meeting, para. 37; U.S. Second Written Submission, para. 24.

¹⁵ China's Response to First Set of Panel Questions, para. 17.

¹⁶ U.S. First Written Submission, paras. 89, 91, 93 (citing European Chamber of Commerce, *China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces* (2017), pp. 74-77 (US-53); CSIS, "Electric Shock: Interpreting China's Electric Vehicle Export Boom," Sept. 2023, p. 2 (US-54); U.S. Chamber of Commerce, *Made in China 2025: Global Ambitions Built on Local Protections* (2017), p. 13 (US-59)); U.S. Second Written Submission, para. 21.

¹⁷ U.S. Opening Statement at First Panel Meeting, para. 37; U.S. Second Written Submission, para. 21.

¹⁸ European Chamber of Commerce, *China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces* (2017), p. 11 (US-53).

them, both as suppliers of key components and finished products.”¹⁹

11. As the United States has also explained, China’s targeting of sectors for dominance does not occur in isolation.²⁰ Rather, China’s targeted sectors align with China’s use of state-directed investment, forced labor, theft of trade secrets, and forced technology transfer to achieve dominance.²¹

12. China attempts to distract the Panel by alleging that the United States engages in “targeting” of industries for “dominance”. However, as the United States has noted, the evidence presented by China mischaracterizes U.S. actions.²² Simply put, U.S. actions in no shape or form rise to the level of targeting that China engages in—which has resulted in China holding, for example, 86 percent of global manufacturing capacity for battery cells, 94 percent of global manufacturing capacity for polysilicon, and 96 percent of global manufacturing capacity for wafers²³—and that is contrary to the U.S. public morals against unfair competition, forced labor, theft, and coercion.²⁴

13. Further, China’s targeting is in stark contrast to U.S. laws which aim for “free and unfettered competition as the rule of trade”²⁵ and the U.S. civil and criminal laws against forced labor, theft, and coercion. Although China argues that U.S. laws concern enterprises, and not countries, China’s argument erroneously suggests that a Member must have a domestic law concerning the specific fact scenario to demonstrate a public moral.²⁶ Rather, U.S. law prohibiting and criminalizing monopolization illustrates that the United States opposes such practices. In fact, China’s *global* market share in the clean vehicle and renewable energy sectors meets or exceeds levels at which U.S. courts will find that monopoly power exists in the U.S. market.²⁷

¹⁹ European Chamber of Commerce, *China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces* (2017), p. 12 (US-53).

²⁰ U.S. Opening Statement at First Panel Meeting, para. 37.

²¹ U.S. Opening Statement at First Panel Meeting, para. 37.

²² U.S. Opening Statement at Second Panel Meeting, para. 25.

²³ U.S. Opening Statement at Second Panel Meeting, paras. 1-3.

²⁴ For example, China misleadingly cites to the National Energy Dominance Council (NEDC) as an example of the United States “targeting” an industry for “dominance.” China’s Second Written Submission, para. 60; China’s Responses to Panel Questions Following Second Panel Meeting, para. 11 n. 16. Contrary to China’s argument, however, the NEDC goal to “reduce [U.S.] dependency on foreign imports” further supports the U.S. statements in this dispute that the U.S. has a public moral against unfair competition and seeks to protect the U.S. supply chain from China’s non-market policies and practices. Establishing the National Energy Dominance Council, Executive Order 14213, Feb. 14, 2025 (CHN-74). In explaining how the NEDC will enable the United States to “reduce its reliance on foreign entities, including strategic adversaries,” a White House Fact Sheet on the NEDC makes this point even more clearly, observing that “[t]he United States is also highly dependent on China for a range of critical minerals, which has put our Nation’s supply chain at risk, as exemplified by China’s recent weaponization of its resources through bans on exporting germanium, gallium, and antimony to the United States.” The White House, Fact Sheet: President Donald J. Trump Establishes the National Energy Dominance Council, Feb. 14, 2025 (US-200).

²⁵ *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 4-5 (1958) (Justice Hugo Black) (US-28).

²⁶ U.S. Opening Statement at Second Panel Meeting, para. 24.

²⁷ *United States v. Google*, Case 1:23-cv-108 (LMB/JFA), at 71-72 (E.D. Va. Apr. 17, 2025) (US-82).

14. Accordingly, contrary to China's allegation, the United States *does not* engage in "targeting" of sectors. Indeed, China fails to explain how any of the evidence concerning the United States is akin to China's targeting and attainment of global dominance of the clean vehicle and renewable energy sectors;²⁸ nor could it.

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.

U.S. Comments:

15. As the United States has explained, the phrases "designed to" and "not incapable of" do not appear in Article XX(a), and a panel must apply the text of a covered agreement as understood through the application of customary rules of interpretation.²⁹ Rather, Article XX(a) states that "nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures necessary to protect public morals". Therefore, there is no requirement under Article XX(a) of the GATT 1994 to show that a measure is "designed to" protect or "not incapable" of protecting public morals.³⁰ The inquiry for the Panel is to determine whether the measures are "necessary" under Article XX(a). Indeed, China presents the same arguments for both the "design" and the "necessary" steps,³¹ thereby demonstrating the inutile nature of separating out the exercise.

16. Likewise, the United States observes that the panel in *US – Tariff Measures* stated that an analysis under Article XX(a) is a "*holistic* exercise," refraining from reaching any intermediate conclusion before completing the entire analysis under Article XX(a) to "guarantee[] that the nature and purpose of Article XX(a) are not frustrated."³² Accordingly, contrary to China's assertion,³³ the Panel should proceed to an assessment of whether the measures are necessary to protect U.S. public morals, without a need to first reach an intermediate finding under the "design" step.

17. To the extent that the Panel opts to consider a separate "design step," the United States has demonstrated that the design, content, structure, and expected operation of the measures protect U.S. public morals.³⁴

Question 37. To the United States: Intentionally omitted.

²⁸ U.S. Opening Statement at Second Panel Meeting, para. 25.

²⁹ See U.S. Responses to Panel's First Set of Questions, paras. 38-40; U.S. Second Written Submission, para. 29.

³⁰ U.S. Responses to Panel's First Set of Questions, paras. 38-40; U.S. Second Written Submission, para. 29.

³¹ China's Second Written Submission, para. 124.

³² *US – Tariff Measures (Panel)*, para. 7.111 & n. 200.

³³ China's Responses to Panel's Questions Following Second Panel Meeting, para. 15 ("If – as is the case in this dispute – a measure is *not* designed to address the interests protected by the relevant subparagraph of Article XX, based on an examination of these factors, then there is no need for the adjudicator to proceed to an assessment of whether the measure is 'necessary' for that purpose (or whether it is one that 'relates to' that purpose, in the case of certain Article XX subparagraphs)").

³⁴ U.S. Second Written Submission, paras. 31-51.

Question 38. To the United States: Intentionally omitted.

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).

U.S. Comments:

18. In its response to the Panel's Question 39, China appears to abandon any pretense of relying on the customary rules of interpretation of public international law, as it repeatedly refers to "prior panels"³⁵ and fails to make any reference to the ordinary meaning of the terms of Article XXI(b). Prior panel reports interpreting Article XXI(b) are erroneous and unpersuasive,³⁶ however, and this Panel should not repeat the errors in those reports.

19. In fact, China's only reference to the Vienna Convention on the Law of Treaties is its suggestion that the United States must make some sort of showing to provide a "basis for a panel to determine whether the exception has been invoked in good faith, as is required under Article 26."³⁷ China makes no allegation of bad faith by the United States, however, and in any event China's argument would turn Article 26 on its head, using that provision—which states, "Every treaty in force is binding upon the parties to it and must be performed by them in good faith"—as a basis to import requirements into treaty provisions that are not supported in their text. The Panel should decline to misconstrue the VCLT provision on *pacta sunt servanda* to alter underlying treaty terms and subvert their ordinary meaning.

³⁵ China's Responses to Panel's Questions Following Second Panel Meeting, paras. 20, 21, and 25.

³⁶ See, e.g., U.S. Opening Statement at First Panel Meeting, paras. 82-86; U.S. Opening Statement at Second Panel Meeting, paras. 90-94; U.S. First Written Submission in *United States – Origin Marking (Hong Kong, China) (Panel)*, paras. 215-265 (US-71).

³⁷ China's Responses to Panel's Questions Following Second Panel Meeting, para. 27.

20. China does not attempt to deny that the U.S. defense procurement law underlying the third FEOC ground, on which China's arguments have focused, lists China among "non-allied foreign nations."³⁸ Nor does China refute that numerous other instruments similarly identify China among "foreign adversaries" or note that China poses a threat to the United States.³⁹ China also has not explained why it asks this Panel to examine political matters in this dispute, despite its contrary representations to the DSB,⁴⁰ and why its views on Article XXI(b) appear to differ depending on whether it is the complaining party.⁴¹

21. China's complaint that some instruments cited in paragraph 105 of the U.S. second written submission post-date the introduction of the Clean Vehicle Tax Credit⁴² is irrelevant. As discussed in the U.S. response to question 33, the substance of evidence, not the date of the evidence, determines its probative value. Here, the relevance is evident as the United States has provided numerous instruments that identify China among "foreign adversaries". This includes evidence that pre-dates and post-dates the passage of the FEOC provision, as well as U.S. lawmakers' numerous references to "energy security" in statements regarding the IRA contemporaneous with its enactment⁴³ and in light of the other instruments cited in paragraph 105 that are also contemporaneous with the passage of the FEOC provision.⁴⁴

22. China also errs in asserting that the IRA reference in the 2022 U.S. National Security Strategy is "made solely in the context of 'combatting the climate crisis'".⁴⁵ In fact, that reference states "[c]ombatting the climate crisis, *bolstering our energy security*, and hastening the clean energy transition."⁴⁶ Thus, despite China's attempts to misconstrue them, such

³⁸ U.S. Opening Statement at First Panel Meeting, para. 81; U.S. Second Written Submission, para. 104.

³⁹ U.S. Opening Statement at First Panel Meeting, para. 81; U.S. Second Written Submission, para. 105.

⁴⁰ See U.S. Opening Statement at Second Panel Meeting, para. 93; China's Statement, Minutes of Meeting of Dispute Settlement Body (May 13, 2025) (WT/DSB/M/500), para. 2.4.

⁴¹ *Compare Russia - Traffic in Transit*, Annex D-4, Executive Summary of the Arguments of China, WT/DS512/R/Add/1, para. 9; *Russia – Traffic in Transit*, para. 7.41 with China's Second Written Submission, paras. 146-152 and Annex A.

⁴² China's Responses to Panel's Questions Following Second Panel Meeting, para. 23.

⁴³ See, e.g., Summary of the Energy Security and Climate Change Investments in the Inflation Reduction Act of 2022 (July 27, 2022) (US-111); 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-112); Press Release, Rep. Shontel Brown (Ohio's 11th District), Rep. Brown Votes for Inflation Reduction Act to Lower Health Care Costs and Create Jobs for Ohioans (Aug. 14, 2022) (US-114); Press Release, Rep. Josh Harder (California's 9th District) Harder Statement on House Passage of the Inflation Reduction Act (Aug. 12, 2022) (US-115); United States Senate Committee on Energy & Natural Resources, U.S. Senator Joe Manchin, Chairman, What They're Saying About the Inflation Reduction Act of 2022: Excerpted Statements from Stakeholders and Industry Leaders (US-117); U.S. Department of Commerce, Remarks by U.S. Secretary of Commerce Gina Raimondo on the U.S. Competitiveness and the China Challenge (Nov. 30, 2022) (US-118); Virtual Hearing before the Committee on Energy and Commerce, House of Representatives, LIFT America: Revitalizing Our Nation's Infrastructure and Economy, Serial No. 117-15 (March 22, 2021), p. 133 (US-106).

⁴⁴ The White House, National Security Strategy (Oct. 2022), p. 23 (US-156); The White House, Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth, 100-Day Reviews under Executive Order 14017 (June 2021), p. 121 (US-157); National Security Strategy of the United States of America (Dec. 2017), p. 25 (US-158).

⁴⁵ China's Responses to Panel's Questions Following Second Panel Meeting, para. 23 n. 33.

⁴⁶ See The White House, National Security Strategy (Oct. 2022), p. 15 (US-156) (emphasis added).

statements further confirm the self-evident national security basis for the FEOC exclusion from the Clean Vehicle Tax Credit.

23. In sum, China has failed to rebut U.S. arguments that the FEOC exclusion to the Clean Vehicle Tax Credit is covered by the essential security exception at Article XXI(b), and that Article XXI(b) is self-judging by its terms. Instead, China asks this Panel to ignore that—despite the self-judging nature of Article XXI(b)—the United States has pointed to publicly available information to support its invocation. China also asks this Panel to read Article XXI(b) in a manner that, as even China appears to acknowledge, finds no support in the customary rules of interpretation of public international law, and attempts to hide this lack of support by citing erroneous statements by prior WTO panels. The Panel should not close its eyes to the evidence presented, nor should this Panel adopt erroneous statements of prior panels or interpret Article XXI(b) contrary to the ordinary meaning of its terms.

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

U.S. Comments:

24. The United States does not have comments on this response.

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?

U.S. Comments:

25. The United States does not have further comments. The United States refers the Panel to the U.S. response to this question.