

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

(DS623)

**INTEGRATED EXECUTIVE SUMMARY
OF THE UNITED STATES OF AMERICA**

October 17, 2025

EXECUTIVE SUMMARY OF U.S. FIRST WRITTEN SUBMISSION

I. INTRODUCTION

1. This dispute is fundamentally about fairness, namely the ability of the United States to respond to one Member's adoption of anti-competitive, non-market policies and dominance of sectors critical to all Members' economic futures. The United States adopted the measures at issue in this dispute, in relevant part, to address China's non-market policies and practices that have resulted in China's global dominance of the clean vehicle and renewable energy sectors, undermining fair competition for U.S. companies, U.S. workers, and the U.S. economy more broadly. China's global dominance deprives market-oriented businesses and their workers of commercial opportunities and lessens competition. China's dominance of the clean vehicle and renewable energy sectors also has increased economic security risks in the U.S. market by creating dependencies and vulnerabilities, and has reduced global supply chain resiliency.

2. The facts of China's non-market-oriented dominance of the clean vehicle and renewable energy sectors are almost too extreme to be believed. China's share of the global solar energy supply chain – that is, global polysilicon, ingot, and wafer production – soon will reach almost 95 percent. China dominates manufacturing capacity across all segments of the solar supply chain worldwide, with its share exceeding 80 percent in all stages (*i.e.*, polysilicon, ingots, wafers, cells, and modules). China produces approximately 60 percent of electric vehicles sold globally and approximately 80 percent of the batteries that power them. China also dominates the production and supply of many critical minerals that are key inputs for clean energy production. China's global production of graphite is at 77 percent, gallium is at 98 percent, germanium is at 68 percent, and tungsten is at 84 percent. By 2030, over 90 percent of battery-grade graphite and 77 percent of refined rare earths could come from China.

3. China has achieved that global dominance through pervasive non-market policies and practices that undermine fair competition and cause global distortions in the clean vehicle and renewable energy sectors. China's fundamentally unfair non-market policies and practices undermine support for an international trading system that permits such practices to escape discipline. Such policies and practices further undermine U.S. norms against theft and coercion, and U.S. norms of fair competition and respect for innovation, all of which are key aspects of U.S. culture. China's non-reciprocal and morally wrong behavior further threatens to undermine U.S. society's confidence in the effectiveness of the WTO if the international trading system creates the conditions for, fails to address, or even exacerbates a fundamentally uneven playing field. Accordingly, the measures at issue in this dispute are justified because they are measures "necessary to protect public morals" of the United States within the meaning of Article XX(a) of the *General Agreement on Tariffs and Trade 1994* (GATT 1994).

4. China also has challenged a provision of the Inflation Reduction Act of 2022 (IRA) that is expressly a matter of U.S. national security. The exclusion under the Internal Revenue Code (IRC) Section 30D Clean Vehicle Tax Credit from participation by a "foreign entity of concern" (FEOC) in the supply chain is expressly based on national security elements of legislation of the United States. As the WTO Agreement reflects, in Article XXI of the GATT 1994 and elsewhere, every WTO Member has the right – and we would say responsibility – to "tak[e] any

action which it considers necessary for the protection of its own essential security interests.” WTO Members did not relinquish this inherent right in joining the WTO, and WTO Members have not agreed to subject the exercise of this right to legal review. Therefore, U.S. invocation of Article XXI in relation to the FEOC exclusionary rule ends the WTO’s review of that national security matter.

5. In short, it is hypocritical for China to target the U.S. measures in this dispute while failing to address its use of non-market policies and practices that have contributed to its global dominance of the clean vehicle and renewable energy sectors and are detrimental to all WTO Members. China’s approach has created an untenable situation for governments seeking to meet their legitimate policy objectives of promoting fair competition, fostering innovation, and enhancing supply chain security. China remains the biggest challenge to a fair, competitive, and mutually beneficial international trading system.

6. The United States respectfully requests that the Panel find that China has established no WTO-inconsistency in this dispute.

II. BACKGROUND

7. The IRA is a statute signed into law on August 16, 2022, creating or amending a number of tax credits concerning clean vehicle adoption and renewable energy production or investment.

8. The U.S. Department of the Treasury (Treasury) and the U.S. Internal Revenue Service (IRS), a component of Treasury, issued implementing guidance regarding the tax credits created or amended by the IRA. The implementing guidance sets forth requirements which taxpayers must comply with in claiming these credits.

9. China has challenged certain requirements for five tax credits in this dispute. Regarding the **Clean Vehicle Tax Credit**, the IRA made a number of amendments to **IRC Section 30D**, which was originally enacted in 2008. As amended by the IRA, Section 30D provides for a maximum \$7500 tax credit for new clean vehicles placed in service after August 16, 2022 through December 31, 2032. The availability and amount of the credit is determined based on the satisfaction of certain requirements. China has challenged the North American assembly requirement, the critical minerals sourcing requirement, the battery components sourcing requirement, and the FEOC exclusionary rule.

10. The North American assembly requirement is that, to meet the definition of a “new clean vehicle” and therefore to access any part of the \$7500 credit, final assembly of a motor vehicle must occur within North America. Pursuant to Treasury regulations, North America means the territory of the United States, Canada, and Mexico.

11. The critical minerals sourcing requirement is that, to access half of the maximum \$7500 credit amount (\$3750), an increasing percentage of the applicable critical minerals contained in the clean vehicle’s battery must have been extracted or processed in the United States or in any country with which the United States has a free trade agreement in effect, or recycled in North America. The following countries have been identified as countries with which the United States has a free trade agreement in effect: Australia, Bahrain, Canada, Chile, Colombia, Costa Rica,

Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Japan, Jordan, South Korea, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, and Singapore. The list of countries is subject to revision based on application of the criteria established by regulations.

12. The battery components sourcing requirement is that, to access half of the maximum \$7500 credit amount (\$3750), an increasing percentage of the value of the clean vehicle’s battery components must have been manufactured or assembled in North America.

13. The FEOC exclusionary rule excludes from eligibility for the \$7500 tax credit any clean vehicle that, beginning on January 1, 2024, contains any battery components manufactured or assembled by an FEOC and, beginning on January 1, 2025, contains any applicable critical minerals extracted, processed, or recycled by an FEOC. The term “foreign entity of concern” or “FEOC” is defined by cross-reference to the Infrastructure Investment and Jobs Act of 2021, which sets out a five-part definition as follows:

(5) Foreign entity of concern. The term “foreign entity of concern” means a foreign entity that is—

(A) designated as a foreign terrorist organization by the Secretary of State under section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a));

(B) included on the list of specially designated nationals and blocked persons maintained by the Office of Foreign Assets Control of the Department of the Treasury (commonly known as the SDN list);

(C) owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation (as defined in section 2533c(d) of title 10, United States Code);

(D) alleged by the Attorney General to have been involved in activities for which a conviction was obtained under—

(i) chapter 37 of title 18, United States Code (commonly known as the “Espionage Act”) [18 U.S.C. §§ 791 et seq.];

(ii) section 951 or 1030 of title 18, United States Code;

(iii) chapter 90 of title 18, United States Code (commonly known as the “Economic Espionage Act of 1996”) [18 U.S.C. §§ 1831 et seq.];

(iv) the Arms Export Control Act (22 U.S.C. 2751 et seq.);

(v) section 224, 225, 226, 227, or 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2274, 2275, 2276, 2277, and 2284);

(vi) the Export Control Reform Act of 2018 (50 U.S.C. 4801 et seq.); or

(vii) the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.); or

(E) determined by the Secretary of Energy, in consultation with the Secretary of Defense and the Director of National Intelligence, to be engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.

14. China focuses on the third element of the definition, which covers a foreign entity that is “owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation [as defined in U.S. defense procurement law]”. U.S. defense

procurement law defines “covered nation” to mean the Democratic People’s Republic of North Korea, the People’s Republic of China, the Russian Federation, and the Islamic Republic of Iran.

15. China also challenged aspects of four **renewable energy investment and production tax credits: IRC Sections 48, 48E, 45, and 45Y (hereinafter “renewable energy ITC/PTCs”)**. The IRA generally modified and extended the existing IRC Section 45 and Section 48 tax credits for qualified facilities or energy projects that begin construction before January 1, 2025, and created new IRC Section 45Y and Section 48E as successor tax credits for qualified facilities or energy projects placed in service after December 31, 2024.

16. The renewable energy ITCs at IRC Section 48 and Section 48E incentivize renewable energy projects by providing tax credits that reduce upfront costs of investment in such facilities. Section 48 generally provides a tax credit for investment in renewable energy projects beginning construction before January 1, 2025. Eligible recipients include fuel cell, solar, geothermal, small wind, energy storage, biogas, microgrid controllers, and combined heat and power properties. Section 48E provides a technology-neutral tax credit for investment in facilities that generate clean electricity placed in service from January 1, 2025 (and available through the phase-out period described above). Eligible recipients are facilities that generate electricity with a greenhouse gas emissions rate that is not greater than zero and qualified energy storage technologies. For both Section 48 and Section 48E, the base credit amount generally is 6 percent of the qualified investment. The base credit amount generally is increased to 30 percent if separate requirements for prevailing wage and apprenticeship are met.

17. The renewable energy PTCs at IRC Section 45 and Section 45Y incentivize renewable electricity production by providing tax credits for qualified facilities for generally the first 10 years of operations. Section 45 provides a tax credit for production of electricity from renewable sources for projects beginning construction before January 1, 2025. Eligible recipients include facilities generating electricity from wind, biomass, geothermal, solar, landfill and trash, hydropower, and marine and hydrokinetic renewable energy. Section 45Y provides a technology-neutral tax credit for production of clean electricity for facilities placed in service from January 1, 2025 (and available through the phase-out period described above). Eligible recipients are facilities generating electricity for which the greenhouse gas emissions rate is not greater than zero. For both Section 45 and Section 45Y, the base credit amount generally is 0.3 cents per kilowatt hour of electricity produced at a qualified facility, adjusted for inflation. The base credit amount generally is multiplied by 5 if separate requirements for prevailing wage and apprenticeship are met.

18. A domestic content bonus credit is available to increase the amount of the credit determined under the renewable energy ITC/PTCs, respectively. To access the bonus, a taxpayer must establish that a domestic content requirement is satisfied with respect to an applicable project by certifying that “any steel, iron, or manufactured product which is a component of [the applicable project] (upon completion of construction) was produced in the United States”. For steel and iron, eligible projects must use 100 percent U.S.-produced steel and iron for construction materials; for manufactured products, a certain percentage of the total cost of components incorporated into an eligible product must be produced in the United States, depending on the construction timeline and type of project.

19. A taxpayer may only claim one of the renewable energy ITC/PTCs with respect to a qualified facility or energy property. For certain types of entities, such as tax-exempt organizations, to obtain the full benefit of the Sections 45, 45Y, 48, and 48E base credits, domestic content requirements must be met. However, in such cases, exceptions are available that allow for flexibility if domestic materials are not available or are too costly.

III. THE SECTION 30D CLEAN VEHICLE CREDIT IS NOT INCONSISTENT WITH ARTICLES 3.1(B) AND 3.2 OF THE SCM AGREEMENT

20. Article 3.1(b) prohibits subsidies that are “contingent” upon the use of domestic over imported goods. The relevant dictionary definition of “contingent” is “[c]onditional; dependent on, upon; [d]ependent for its existence on something else.” The Appellate Body also has interpreted the term “contingent” to mean “conditional” or “dependent for its existence on something else”, and reasoned that a subsidy would be “contingent” upon the use of domestic over imported goods “if the use of those goods were a condition, in the sense of a requirement, for receiving the subsidy”. Article 3.2 of the SCM Agreement then provides that “[a] Member shall neither grant nor maintain subsidies referred to in paragraph 1.”

21. Although the United States does not dispute that the Section 30D Clean Vehicle Tax Credit is a subsidy within the meaning of the SCM Agreement, China has failed to establish that the Section 30D Clean Vehicle Credit is inconsistent with Article 3.1(b) because the credit is not contingent on the use of domestic over imported goods. China’s arguments concern two conditions (*i.e.*, requirements): the critical minerals sourcing requirement and the battery components sourcing requirement. Neither requirement is conditioned on the use of domestic over imported goods, and it is possible to satisfy both requirements by use of exclusively imported goods—that is, without the use of *any* U.S. domestic goods.

22. The critical minerals requirement is that, to access half of the maximum \$7500 credit amount (\$3750), a certain percentage of the value of the critical minerals contained in the clean vehicle’s battery must have been (i) extracted or processed in the United States; (ii) extracted or processed in any country with which the United States has a free trade agreement in effect; or (iii) recycled in North America. Therefore, critical minerals extracted, processed, or recycled outside of the United States may be used to satisfy the critical minerals requirement.

23. The battery components sourcing requirement is that, to access half of the maximum \$7500 credit amount (\$3750), an increasing percentage of the value of the clean vehicle’s battery components must have been manufactured or assembled in North America, *i.e.*, in the territory of the United States, Canada, or Mexico. A vehicle powered by a battery with components sourced from Canada or Mexico – and that otherwise contains no components sourced from the United States – can satisfy the battery components sourcing requirement. Therefore, the battery components sourcing requirement may be satisfied by use of components manufactured or assembled outside of the United States.

24. China’s argument is essentially that a violation of Article 3.1(b) results where a condition *may* be satisfied by the use of domestic goods. That is, where a condition may be fulfilled through several options, China argues that there is a violation if an option for fulfillment is via

use of domestic goods. This argument must be rejected as contrary to the text of Article 3.1(b). China’s logic reads out of Article 3.1(b) that the subsidy must be “contingent” on the use of domestic “over” imported goods.

IV. THE FEOC EXCLUSIONARY RULE UNDER THE CLEAN VEHICLE CREDIT IS COVERED UNDER ARTICLE XXI(B) OF THE GATT 1994

25. With respect to China’s claims related to the FEOC exclusionary rule, the United States invokes Article XXI(b) of the GATT 1994. Article XXI(b) is by its terms self-judging. The text establishes that each WTO Member retains the right to “take[] any action which it considers necessary for the protection of its own essential security interests.” The self-judging nature of Article XXI(b) of GATT 1994 is established by that text (“which it considers”), in its context, and in the light of the treaty’s object and purpose. This interpretation is confirmed by supplementary means of interpretation, including Uruguay Round negotiating history.

26. As the United States has previewed to the Dispute Settlement Body, the FEOC exclusionary rule for the Clean Vehicle Tax Credit is an issue of national security. The United States “considers” that the FEOC exclusionary rule is “an[] action ... necessary for the protection of [U.S.] essential security interests” pursuant to Article XXI(b). Accordingly, the Panel must limit its findings in this dispute with respect to the FEOC exclusionary rule to a recognition that the United States has invoked its essential security interests.

27. Article XXI does not contain any requirement that a WTO Member invoking the essential security exception must justify its invocation. Nonetheless, as additional background, the United States provides the following factual statement. Under the FEOC definition, there are five grounds on which a foreign entity may be considered an FEOC, with cross-references to other U.S. laws addressing security concerns. It is self-evident that identification and exclusion of the categories of actors described in the statute is a matter of national security for the United States.

V. THE MEASURES AT ISSUE ARE JUSTIFIED UNDER ARTICLE XX(A)

28. The measures at issue are justified because they are “necessary to protect public morals” within the meaning of Article XX(a) of the GATT 1994. As discussed below, China’s non-market policies and practices have resulted in China’s global dominance of the clean vehicle and renewable energy sectors, undermining fair competition for U.S. companies, U.S. workers, and the U.S. economy more broadly. China’s global dominance and non-market policies deprive market-oriented businesses and their workers of commercial opportunities and lessen competition. China’s dominance of clean vehicle and renewable energy sectors and non-market policies also have increased economic security risks in the U.S. market by creating dependencies and vulnerabilities, and has reduced global supply chain resiliency. The challenged U.S. measures are one response to China’s non-market policies and global dominance, seeking to counteract those harms and restore fair competition.

29. Article XX(a) of the GATT 1994 provides in relevant part, “Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures ... (a) necessary to protect public morals”. A Member seeking to establish that a measure is

justified under Article XX(a) of the GATT 1994 must demonstrate that the measure (1) protects public morals and (2) is “necessary” to achieve that objective. In addition, to satisfy the chapeau of Article XX, the measure (3) must not be applied in a manner that constitutes “arbitrary or unjustifiable discrimination between countries where the same conditions prevail” or a “disguised restriction on international trade”.

A. The measures at issue “protect public morals” within the meaning of Article XX(a) of the GATT 1994

30. As explained below, the challenged measures are necessary to protect public morals of the United States within the meaning of Article XX(a).

1. Legal Framework

31. The ordinary meaning of the word “public” is defined as “[o]f or pertaining to the people as a whole; belonging to, affecting, or concerning the community or nation,” whereas the ordinary meaning of “morals” is defined as “of or pertaining to the distinction between right and wrong.” Therefore, the ordinary meaning of the term “public morals” refers to community or national standards of right and wrong. Accordingly, prior WTO panels have found that the term “public morals” refers to “standards of right and wrong conduct maintained by or on behalf of a community or nation”. It follows that the public morals of each Member may vary “in their respective territories, according to their own systems and scales of values.”

32. In practice, panels have found that a measure “protect[s] public morals” within the meaning of Article XX(a) to the extent the measure is designed to prevent conduct or outcomes deemed morally objectionable within a Member’s territory. Relevant to this dispute, the panel in *US – Tariff Measures* found that the U.S. norms against theft, misappropriation and competition could be covered by the term “public morals” within the meaning of Article XX(a).

2. The measures at issue “protect public morals” of the United States within the meaning of Article XX(a)

33. China’s non-market policies and practices that have resulted in China’s global dominance of the clean vehicle and renewable energy sectors undermine U.S. “public morals” within the meaning of Article XX(a). That is, China’s non-market and trade distorting behavior, including unfair competition, the use of forced labor, theft, and coercion, violates prevailing U.S. “standards of right and wrong,” as reflected in U.S. civil and criminal laws, such as those on unfair competition, contracts and torts, patents, governmental takings of property, forced labor, cyber-hacking, and trade secret theft.

34. First, the United States has norms against unfair competition, as reflected in U.S. laws against anti-competitive behavior, such as the Sherman Act and the Federal Trade Commission Act. These statutes articulate standards of behavior that have maintained a highly competitive free market in the United States for more than a century. The first anti-competitive statute was the Sherman Act, which codified the fair competition moral underpinnings of the U.S. economy in 1890. The importance of the Sherman Act to the fundamental principles of the United States is summarized by the U.S. Supreme Court in *Northern Pacific Railway Co.*, “The Sherman Act

was designed to be a comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade . . . while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.”

35. Therefore, the United States does not simply view unfair competitive practices as merely a detriment to business and innovation. Ultimately, these practices are viewed as a threat to the “preservation of our democratic political and social institutions”. Accordingly, certain violations of these laws, such as monopolization, are even criminalized.

36. Moreover, the United States maintains and enforces laws against the use of forced labor. The Thirteenth Amendment of the U.S. Constitution states, “[n]either slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” The United States criminalizes the use of forced labor, under the broader umbrella of human trafficking, through the Trafficking Victim’s Protection Act of 2000, as amended. Further, the United States prohibits the importation of goods produced wholly or in part with forced labor under Section 307 of the Tariff Act of 1930. The United States has recently bolstered the enforcement of this prohibition through the Uyghur Forced Labor Prevention Act (UFLPA), which creates a rebuttable presumption that goods mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China, or by an entity on the UFLPA entity list, are prohibited from importation under Section 307.

37. In addition, the act of “theft” is a criminal offense throughout the United States. U.S. laws also criminalize the specific acts of cyber-enabled theft, economic espionage, and the misappropriation of trade secrets (including though the act of “bribery” or “extortion”). While community standards of right and wrong can be derived from many sources, standards of right and wrong are clearly reflected in a jurisdiction’s *criminal law*.

38. In other words, the United States imposes constraints on behavior based on national concepts of right and wrong to ensure market-oriented outcomes. U.S. law specifically does not permit the type of unreasonable, anti-competitive behavior to determine winners and losers in the marketplace that China champions.

a. Additional statements that demonstrate U.S. public morals relating to fair, market-oriented competition

39. The United States continues to reiterate the importance of these norms domestically, at the WTO and other fora, and in conjunction with allies and partners. In 2025, U.S. support for fair competition and trade has been reiterated in numerous executive orders and presidential memoranda. The President has ordered numerous actions to address unfair and unbalanced trade, and has condemned one-sided, anti-competitive policies and practices of foreign governments. The President’s 2025 Trade Policy Agenda similarly observes that “technology and IP-intensive sectors are hardly the only ones that are threatened by China’s non-market behavior” and promises that “USTR will look broadly at the bilateral relationship to identify, and respond to, additional unfair practices.”

40. In addition to other trade-related Group of Seven (G7) activity, in 2024, the United States and other G7 partners took a number of steps to enhance cooperation on addressing non-market policies and practices and economic coercion. For instance, in July 2024, the United States and other G7 trade ministers issued a joint statement underscoring the need to address non-market policies and practices and promote economic resilience and economic security.

41. In July 2024, the United States and Japan engaged on non-market policies and practices. In March 2023, the United States and Japan agreed to address non-market policies and practices in the critical minerals sector. Similarly, in June 2023, Australia, Canada, Japan, New Zealand, the United Kingdom, and the United States endorsed a joint declaration against trade-related economic coercion and non-market policies and practices.

42. In September 2021, the United States and the EU recognized the concern of non-market policies and practices in stating that “[w]e stand together in continuing to protect our businesses, consumers, and workers from unfair trade practices, in particular those posed by non-market economies, that are undermining the world trading system”.

43. Earlier, in October 2020, the United States, Brazil, and Japan issued a joint statement recognizing the importance of market-oriented conditions to the world trading system. That statement also expressed serious concerns with non-market policies and practices that had resulted in damage to the world trading system, and affirmed that market-oriented conditions are fundamental to a free, fair, and mutually advantageous world trading system, to ensure a level playing field for Members’ enterprises for the benefit of their citizens.

44. In May 2018, the United States, Japan, and the European Union issued a joint statement confirming their shared objective to address non-market-oriented policies and practices that lead to severe overcapacity and create unfair competitive conditions for our workers and businesses.

45. As these U.S. statements and actions over the years make clear, the U.S. norms against unfair competition, forced labor, theft, and coercion are deeply held and enduring, and constitute public morals within the meaning of Article XX(a).

3. China’s non-market policies and practices violate U.S. public morals

46. China’s non-market policies and practices that have resulted in China’s global dominance of the clean vehicle and renewable energy sectors offend U.S. standards of right and wrong. As discussed below, China has achieved global dominance of the clean vehicle and renewable energy sectors, undermining fair competition for U.S. companies, workers, and the U.S. economy generally. Both China’s dominance of these sectors and the non-market policies it pursues violate U.S. public morals against unfair competition, forced labor, theft, and coercion.

47. For example, with respect to solar: China’s share of the global solar energy supply chain – that is, global polysilicon, ingot, and wafer production – soon will reach almost 95 percent. China dominates manufacturing capacity across all segments of the solar supply chain worldwide, with its share exceeding 80% in all stages. Global solar manufacturing capacity has grown by 2-3 times in the past five years, 90% of which occurred in China. Estimates are that China produces far more solar panel modules than the world is on track to use.

48. China also dominates electric vehicle supply chains: China produces approximately 60 percent of electric vehicles sold globally and approximately 80 percent of the batteries that power them. China also has a leading role in the upstream stages of the battery supply chain. China accounts for almost 90 percent of global installed cathode active material manufacturing capacity, over 97% of anode material manufacturing capacity, almost 100 percent of lithium-iron-phosphate production capacity, and more than 75 percent of global production of installed nickel manganese cobalt oxide. In 2023, China's cathode and anode active material installed manufacturing capacity was four and nine times greater than global EV cell demand in 2023.

49. China also dominates the production and supply of many critical minerals that are key inputs for clean energy production. According to the International Energy Agency (IEA), China's global production of graphite is at 77 percent, gallium is at 98 percent, germanium is at 68 percent, and tungsten is at 84 percent. The IEA projects that by 2030 over 90 percent of battery-grade graphite and 77% of refined rare earths could come from China.

50. It is also well documented that China has targeted the clean energy sectors for dominance. For instance, China's *Made in China 2025* industrial plan, introduced in 2015, makes clear China's ambitions to dominate the clean energy supply chain, both domestically and globally. The *Made in China 2025 Technology Greenbook* calls for the support of important solar applications and focus on energy-efficient and new-energy vehicles.

51. China has achieved this global dominance through pervasive non-market policies and practices that undermine fair competition. As explained below, those non-market policies in the clean vehicle and renewable energy sectors include: non-market excess capacity; government interference with or direction of commercial decision-making; forced labor and unfair labor practices; forced technology transfer, including cyber intrusions and cyber theft; arbitrary regulations; insufficient regulatory and market transparency; pervasive subsidization; and anti-competitive activities of state-owned or -controlled enterprises.

52. For example, with respect to the electric vehicle sector, China has used various types of non-market policies and practices to secure its dominant position in the electric vehicle sector. Central and sub-central government industrial plans in China have set quantitative targets for the automotive sector broadly and the electric vehicle sector specifically, including both dominant domestic market share targets and export volume targets as a share of total production that would mean securing significantly larger market shares abroad. China has engaged in massive and relentless subsidization of Chinese companies, including Chinese electric vehicle manufacturers, as well as forced or pressured technology transfer. China provides ad hoc preferences benefiting Chinese companies operating in the electric vehicle sector, such as easier and speedier regulatory approvals than are available to foreign companies.

53. China further uses state-directed investment to unfairly acquire U.S. technology, through means that are in contradiction with the Sherman Act's prohibition and criminalization of monopolization – or even attempts at monopolization – in any aspect of interstate trade or commerce. Monopolistic power is characterized by the ability to act independently of competition or market-based considerations. The Chinese government has implemented an investment policy that seeks to create dominance in specific sectors through non-market based

funding and investment strategies. That is, Chinese economic entities are not subject to market disciplines in making investments for state-desired technologies through state-provided or state-directed financing.

54. Further, China’s market share targets identified in its Made in China 2025 industrial plan – which includes the clean energy sectors – demonstrate that China is using this state-directed investment to unfairly acquire U.S. technology in order to dominate not only the Chinese market, but also markets around the world. For Chinese companies to gain market share, they must displace foreign companies in existing markets and take new markets as they develop.

55. China also uses subsidies in the form of direct financial support to establish and promote non-market excess capacity in clean energy sectors. For instance, for solar, from 2000 to 2010, China reportedly invested \$50 billion into solar production facilities. Likewise, for electric vehicles, from 2009 to 2023, China provided over \$230.9 billion in government support to its EV sector.

56. Further, it is well known that severe and persistent excess capacity exists in China’s clean energy sectors. This non-market excess capacity derives from China’s targeting of sectors for dominance, its control of economic entities, artificial cost advantages through labor rights or wage suppression, severe government subsidies, and more. Once Chinese firms dominate the domestic market, they export to foreign markets at such low prices and in such quantities that foreign firms find it hard to compete with the unfair competition.

57. Forced labor is also used in the solar supply chains dependent on polysilicon from the Xinjiang Uyghur Autonomous Region. Nearly half of the world’s polysilicon comes from the Xinjiang Uyghur Autonomous Region, a region of China where members of ethnic and religious minority groups are forced by the Chinese government to work against their will. China has arbitrarily detained more than one million Uyghurs and other mostly Muslim minorities, forcing them to work under guard and constant threats in mines and factories producing polysilicon.

58. China also uses technology transfer-related acts, policies, and practices, among other tools. For example, China imposes foreign ownership restrictions, such as joint venture requirements and foreign equity limitations, and various administrative review and licensing process, to require or pressure technology transfer from foreign companies. For example, in 2014, Norwegian-based REC Silicon was compelled to form a joint venture with and license its proprietary technology to a Chinese partner. REC Silicon held a 49% stake in the resulting Chinese joint venture and, in 2015, sold its core polysilicon manufacturing technology to the joint venture for USD 198 million in upfront payments. The company had been left with little option but to strike a deal and transfer its intellectual property to a Chinese company in an effort to stay in business. Likewise, for electric vehicles, “foreign producers still face difficulties in gaining a majority share of their joint ventures, buying out their Chinese partners, or establishing new wholly-owned subsidies in China”.

59. It is also documented that China conducts and supports unauthorized intrusions into, and theft from, the computer networks of foreign companies to access their sensitive commercial information and trade secrets. For instance, in 2014, the Department of Justice indicted officers

of 3PLA, a unit under China’s People’s Liberation Army, for cyber intrusions into the computer networks of six U.S. companies, including SolarWorld Americas, whose Passivated Emitter Rear Contact solar cell technology was stolen and then adopted by Chinese solar producers. In 2020, the U.S. Department of Justice (DOJ) indicted two individuals working with China’s Ministry of State Security for carrying out state-sponsored intellectual property theft with a focus on high tech sectors, which included the solar sector. In 2022, a cybersecurity firm found that APT-41, a group that is linked to China’s Ministry of State Security, carried out state-sponsored intellectual property theft with a focus on high tech sectors, which included solar module designs.

60. In other words, China—as a matter of state policy and practice—uses coercion and subterfuge to steal or otherwise improperly acquire intellectual property, trade secrets, technology, and confidential business information from U.S. companies with the aim of advantaging Chinese companies and achieving China’s industrial policy goals.

4. The measures at issue protect U.S. public morals

61. As a result of China’s dominance in the clean vehicle sector and clean energy supply chain, the United States enacted the measures at issue to reduce reliance on China, and enhance fair competition and market-oriented outcomes in the U.S. market. Further, the measures incentivize sourcing outside of China, given that China will soon have a 95 percent share in the global solar supply chain, and China produces approximately 60 percent of electric vehicles sold globally and approximately 80 percent of the batteries that power them.

62. For example, in a fact sheet released by the prior U.S. Administration concerning actions to protect U.S. manufacturers and workers from China’s unfair trade practices, the domestic content bonus credit enacted by the IRA was listed as an action “to strengthen American solar manufacturing and protect businesses and workers from China’s unfair trade actions”. Similarly, the U.S. Congressional Research Service observed, in examining the incentives for clean transportation enacted by the IRA, that the requirements of the Clean Vehicle Tax Credit “appear to support other efforts to reduce reliance on production and manufacturing activities in China”.

63. The impact of the measures at issue are apparent. For the solar industry, from 2022 to 2023, the United States increased its installed battery cell manufacturing capacity by more than 45%. In 2024, module manufacturing capacity grew 190% in the United States. In the same year, cell manufacturing was reshored for the first time in five years as Suniva restarted production at its 1 GW factory in Georgia. Similarly, in January 2025, ES Foundry started a cell factory in South Carolina. In March 2025, Corning, Suniva, and Heliene announced that they would aim to produce the first solar module with polysilicon, wafers, and cells made in the United States. Both Hanwha Qcells and Silfab Solar are expected to start U.S. cell production in 2025.

64. Companies also have begun to explore new opportunities upstream in EV supply chains. For instance, in 2024, Tesla and several Korean battery makers met with Chilean government agencies regarding lithium supply, with the aim of supplying the U.S. market as a result of the tax credits from the IRA. Likewise, EV supply chains have been developing in Mexico as a result of access to financial support from the IRA.

65. EV investments have also begun in the United States. Automakers and battery manufacturers have collectively invested and promised to make substantial investments in U.S. cell and module manufacturing, with the potential to deliver an annual capacity of close to 1,200 gigawatt-hours before 2030. For instance, General Motors aims to have three total battery plants in the United States, and is building a new battery cell development center in Michigan. In 2025, 10 new plants will increase the U.S. battery manufacturing capacity to 421.5 gigawatt-hours annually, almost double the growth of the U.S. battery manufacturing capacity from 2024.

66. EV manufacturing capacity in the United States has also increased. It is projected that the United States will have a total EV manufacturing capacity of 5.8 million new light-, medium-, and heavy-duty EVs each year by 2027. For instance, General Motors is on track for the capacity to produce 1 million EVs annually by the end of 2025. Scout Motors (Volkswagen) started building an electric sports utility vehicle manufacturing plant in South Carolina.

67. Thus, fundamentally, the clean vehicle and renewable energy tax credits at issue have as their goal—and have resulted in—investments in the United States (and like-minded partners) to stand up alternative supply and supply chains to China. Such new capacity seeks to restore market-oriented conditions and competition within the United States, and would mean that U.S. consumers and the U.S. market are no longer rewarding China’s non-market policies.

B. The measures at issue are “necessary” within the meaning of Article XX(a)

68. The ordinary meaning of “necessary” means “[t]hat which is indispensable, an essential, a requisite”; “[t]hat cannot be dispensed with or done without; requisite, essential, needful”. Therefore, for Article XX(a), a measure must be indispensable, essential, or requisite to serve the objective—in this case, to protect public morals.

69. The Panel must evaluate whether the measures at issue are necessary within the meaning of Article XX(a) now, at a time when China has already achieved global dominance of the clean vehicle and renewable energy sectors, and in light of the importance of the U.S. morals against unfair competition, forced labor, theft and coercion. As the United States has learned through its experience with China’s behavior in the solar, critical minerals, and other sectors, development of a secure and sustainable clean energy supply chain is required to effectively counter—and correct for—China’s targeting and to restore conditions that reflect U.S. public morals.

70. China achieved global dominance of the clean vehicle and renewable energy sectors through pervasive non-market policies and practices that undermine fair competition. Over time, and without corrective action, market-oriented economies risk deepening integration with and dependencies upon China and its non-market policies and practices. This dynamic undermines efforts to create a “race to the top” that incentivizes high standards, and causes U.S. businesses, workers, and consumers to unwittingly or unwillingly reward anti-competitive and unfair behavior, forced labor and labor rights violations, and forced technology transfer, including cybertheft and industrial espionage.

71. Given that China has already achieved global dominance in the clean vehicle and renewable energy sectors, the measures at issue in this dispute are necessary to uphold the U.S.

morals of fair competition in the marketplace. Indeed, without corrective action, there is simply no way for market economies to hope to restore fair competition in their markets.

72. For example, by conditioning the availability of the domestic content bonus credit under the renewable energy ITC/PTCs on the use of certain amounts of domestic content, the tax credits incentivize the manufacturing of these products in the United States – a market-oriented economy, which pays market wages and in which companies must compete for business. Creating these incentives also helps expand production in the United States, which staves off dependencies upon non-market policies and practice-wielding governments. Other requirements of IRA clean energy tax credits, which may be fulfilled with production outside the United States, incentivize production in countries that are also more market-oriented—and helps preserve those countries’ market orientation, and defends the United States against imports that are products of non-market practices or policies.

73. Accordingly, the measures at issue pursue the vitally important objective of upholding U.S. norms that are threatened by China’s non-market policies and practices. The measures at issue also signal to businesses in the U.S. marketplace that China’s policies will not be tolerated in the U.S. marketplace.

C. The measures at issue are not inconsistent with the chapeau of Article XX

74. A measure that is “necessary to protect public morals” within the meaning of Article XX(a) must not be applied in a manner that constitutes “arbitrary or unjustifiable discrimination between countries where the same conditions prevail” or a “disguised restriction on international trade”. The United States has not applied the measures at issue in a manner inconsistent with the chapeau of Article XX.

1. The United States has not applied the remaining measures at issue in a manner that constitutes “arbitrary or unjustifiable discrimination”

75. First, the United States has not applied the measures at issue in a manner that constitutes “arbitrary or unjustifiable discrimination between countries where the same conditions prevail.” The ordinary meaning of the term “arbitrary” includes “capricious, unpredictable, [or] inconsistent” manner, while the ordinary meaning of “unjustifiable” may be understood as “[n]ot justifiable, indefensible.” The word “discrimination” may be defined as “[t]he action or an act of discriminating or distinguishing; the fact or condition of being discriminated or distinguished; a distinction made.” Definitions of “discriminate” include “[m]ake or recognize a distinction, esp. a fine one; provide or serve as a distinction; exercise discernment.” Definitions of the word “conditions” include “[s]tate, or mode of being” or “[n]ature, character, quality; a characteristic, an attribute.”

76. Based on these definitions, this text in Article XX of the GATT 1994 may be understood as prohibiting an exercise of discernment or distinction as between countries that have the same state, mode of being, or nature; and only when exercise of discernment or distinction is unpredictable or indefensible. Accordingly, relevant in this dispute is whether distinctions that the United States has exercised between itself and China in the measures at issue are between

countries that have the same state, mode of being or nature; and whether those distinctions are unpredictable or indefensible.

a. The same conditions do not prevail in the United States and China

77. China has achieved global dominance of the clean vehicle and renewable energy sectors, through pervasive non-market policies and practices. The United States, by contrast, believes in—and has long had laws and other measures promoting—fair competition, as well as norms against forced labor, theft, and coercion which are reflected in U.S. civil and criminal laws. Unlike China, the United States does *not* target certain sectors for dominance and has laws such as the Sherman Act aiming to preserve economic liberty. Unlike China, the United States has *not* used pervasive non-market policies and practices to achieve global dominance in numerous clean energy sectors; instead, the United States has enshrined in its Constitution a prohibition of forced labor and enacted criminal and civil laws against the use of forced labor. Thus, the same conditions do not prevail in the United States and China.

b. Discrimination between the United States and China in the application of the measures at issue is not arbitrary or unjustifiable

78. Nor are the “distinctions made” between the United States and China in the application of the measures at issue arbitrary or unjustifiable. Given the significant differences in the conditions that prevail in the United States and China, it is entirely logical for the United States to exercise discernment or distinction between itself and China in the application of the measures at issue. In fact, in light of China’s non-market policies and dominance of the clean vehicle and renewable energy sectors, the measures at issue are simply a continuation of longstanding U.S. measures promoting fair competition and prohibiting forced labor, and an effort to counter—and correct for—China’s behavior and restore market-oriented conditions. Were the United States not to distinguish itself from China, the measures would be incapable of achieving those goals and protecting U.S. public morals.

2. The United States has not applied the measures at issue in a manner that constitutes “a disguised restriction on international trade”

79. The measures at issue are not being applied in a manner that constitutes a “disguised restriction on international trade”. The United States has taken no steps to conceal the requirements of the measures at issue. The text of the law is clear, and the United States has not disguised the requirements that must be fulfilled to access the tax credits raised in this dispute.

VI. THE EXCEPTIONS UNDER ARTICLES XX AND XXI OF THE GATT 1994 APPLY TO THE CLAIMS UNDER THE TRIMS AND SCM AGREEMENTS

80. It is—or should be—self-evident that WTO Members continue to have the authority under the WTO to take essential security measures and measures under the general exceptions for public policy reasons, such as protecting public morals, protecting life or health, countering use of prison labor, or conserving natural resources – just as they did under the GATT. For the avoidance of any doubt, the United States sets out the legal and textual basis for the applicability of the essential security and general exceptions to the TRIMs Agreement and SCM Agreement.

A. The ordinary meaning of the terms of the TRIMs and SCM Agreements establish that Article XX and XXI of the GATT 1994 apply to claims under those agreements

81. The ordinary meaning of the terms of the TRIMs and SCM Agreements establish that the exceptions under Articles XX and XXI of the GATT 1994 are applicable to the TRIMs and SCM Agreements.

1. The TRIMs Agreement contains multiple provisions of text linking the TRIMs Agreement with the GATT 1994 and its exceptions

82. The ordinary meaning of the terms of the TRIMs Agreement establishes that Articles XX and XXI of the GATT 1994 are available as defenses to claims under the TRIMs Agreement. Most notably, Article 3 of the TRIMs Agreement states that “[a]ll exceptions under GATT 1994, shall apply, as appropriate, to the provisions of this Agreement.” Therefore, pursuant to Article 3 of the TRIMs Agreement, a Member may utilize any exception under the GATT 1994, as appropriate to the provisions of the TRIMs Agreement.

83. Even without regard to Article 3, the TRIMs Agreement contains twelve other references to the GATT 1994, that demonstrate Articles XX and XXI apply to the TRIMs Agreement. These twelve references include statements that the TRIMs Agreement terms should be understood “in such a manner as”, “provided for”, “in conformity with” provisions of the GATT 1994. For example, Articles 4 and 6 confirm that the GATT 1994 is applicable to measures subject to the TRIMs Agreement, and that the GATT is inextricably linked with the text of the TRIMs Agreement. The TRIMs Agreement also contains more general references to the GATT 1994, including in Articles 6 and 8. These provisions demonstrate that the commitments and rights in the GATT 1994 apply with respect to TRIMs.

2. The SCM Agreement Contains Multiple Provisions of Text Linking It with the GATT 1994 and the Articles XX and XXI Exceptions

84. The SCM Agreement also includes numerous references to the GATT 1994, thus also establishing that Articles XX and XXI are available as defenses to claims under the SCM Agreement. Perhaps most notably, Article 32.1 states, “No specific action against a subsidy of another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement”. The Article is accompanied by footnote 56, which states, “This paragraph is not intended to preclude action under other relevant provisions of GATT 1994, where appropriate.”

85. Article 32.1 is an explicit textual link with the GATT exceptions in the SCM Agreement. Specifically, Article 32.1 of the SCM Agreement provides that no action against a subsidy can be taken “except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.” Action taken under Article XX or XXI of the GATT 1994 is “in accordance with the provisions of GATT 1994”, and therefore, is taken pursuant to Article 32.1. Although Article 32.1 also contains the phrase, “as interpreted by this Agreement,” footnote 56 confirms that the paragraph is *not intended to preclude action under other relevant provisions of the GATT 1994* (emphasis added). Therefore, Article 32.1 and footnote 56, read in conjunction, confirm

that where an article is not interpreted by the SCM Agreement, the authority to take action under GATT provisions remain unchanged.

86. In addition, another way to consider the link is to look directly to footnote 56 to Article 32.1. The reference in footnote 56 to such “other relevant provisions of the GATT 1994” includes both Article XX and Article XXI. That is, although Article 32.1 makes clear that Members shall take no action against a subsidy except in accordance with those provisions of the GATT 1994 as interpreted by the SCM Agreement, footnote 56 states that actions under other relevant provisions of the GATT 1994 – such as Articles XX and XXI – that have not been interpreted by the SCM Agreement are not precluded from use.

87. The SCM Agreement also contains 24 other references to the GATT 1994. These 24 references include numerous statements that SCM Agreement terms should be understood “in the sense of”, “in accordance with”, “as provided for”, “within the meaning of”, or “for the purposes” of GATT 1994 Articles VI and XVI. The text therefore establishes that the SCM Agreement not only applies and interprets Articles VI and XVI of the GATT 1994, but also expands upon the GATT disciplines relating to the use of subsidies and countervailing duties. The references demonstrate that the SCM Agreement provides disciplines tied to the implementation of the GATT 1994, and has strong textual links with the GATT 1994.

B. The structure and context of the WTO Agreement establishes that Articles XX and XXI apply to the TRIMS and SCM Agreements

88. The structure of the WTO Agreement and the context it provides also establish that Articles XX and XXI(b) are defenses to claims under the SCM Agreement. The Marrakesh Agreement is an umbrella, establishing among other things that all of the agreements in its annexes are a single undertaking.

89. The core multilateral substantive obligations are contained in Annex 1. Relevant to this dispute, the public morals and essential security exceptions appear in each of Annexes 1A, 1B, and 1C. In particular, in Annex 1A, Article XX of the GATT 1994; in Annex 1B, Article XIV of the GATS; and in Annex 1C, Article 27.2 of the TRIPS Agreement.

90. The essential security exception also applies to each of Annexes 1A, 1B, and 1C. In particular, in Annex 1A, Article XXI of the GATT 1994; in Annex 1B, paragraph 1 of Article XIV bis of the GATS; and in Annex 1C, Article 73 of the TRIPS Agreement.

91. Within Annex 1A, the Multilateral Agreements on Trade in Goods, the first agreement listed is the GATT 1994, a successor to the GATT 1947. The GATT 1947/1994 contain the public morals and essential security exceptions in their respective equivalent of Articles XX and XXI. The remaining agreements in Annex 1A (including the TRIMs and SCM Agreements) are the product of negotiations in the Uruguay Round, undertaken with the purpose of elaborating upon the disciplines in the GATT 1994 and related matters involving trade in goods.

92. The negotiators understood that the GATT 1947/1994 public morals and essential security exceptions apply to the new agreements on trade in goods contained in Annex 1A. The General Interpretative Note to Annex 1A supports the interpretation that the GATT 1994 general

exceptions and essential security exception apply to the new trade-in-goods agreements. The note addresses possible conflicts between the GATT 1994 and the new agreements in Annex 1A; in doing so, the note confirms that the negotiators viewed the new agreements as addressing the same topics as the GATT 1994. Further, in providing that the new agreements prevail in the event of conflict, the drafters were reflecting the general rule that more specific provisions prevail over general provisions. Thus, the interpretive note confirms that the new trade-in-goods agreements were viewed as an elaboration upon the disciplines in the GATT 1994.

93. In addition, the interpretation that the GATT 1994 general exceptions and essential security exception apply throughout Annex 1A is fully consistent with the conflict rule set out in the interpretive note. In particular, none of the new trade-in-goods agreements contains a provision stating that the Article XX and Article XXI exceptions are inapplicable to the obligations under those agreements.

94. Past adjudicators have considered the structure of the WTO Agreement, and likewise considered the structure of a “single undertaking”, in examining the relationship between Annex 1A agreements. Thus, how the legal structure serves as interpretative context depends on the interpretative issue at hand. Accordingly, it is helpful to examine the specific ties between the SCM Agreement and the GATT 1994, as well as the specific claims brought by China.

C. The claims in this dispute confirm the link between the GATT 1994 and the TRIMS and SCM Agreements

95. The claims in this dispute confirm the link between the GATT 1994 and the TRIMs and SCM Agreements. China argues that the United States has acted inconsistently with Articles 3.1(b) and 3.2 of the SCM Agreement, and Articles 2.1 and 2.2 of the TRIMs Agreement.

96. First, China alleges that the United States has acted inconsistently with Article 3.1(b) of the SCM Agreement. Article 3.1(b) prohibits subsidies that are contingent on the use of domestic content, and reiterates the principles set out within Article III of the GATT, regarding national treatment on internal taxation and regulation. The link between Article 3.1(b) of the SCM Agreement and Article III of the GATT 1994 is particularly clear in this dispute where China has alleged that the measures at issue are inconsistent with both Article III:4 of the GATT 1994 and Article 3.1(b) of the SCM Agreement.

97. China also alleges that the measures at issue are inconsistent with Article 3.2 of the SCM Agreement. Article 3.2 provides that, “[a] Member shall neither grant nor maintain subsidies referred to in paragraph 1.” Article 3.1(a) prohibits export subsidies, including those illustrated in Annex 1. In Annex 1 of the SCM Agreement, Illustrative List of Export Subsidies, paragraph (l), the last paragraph of Annex 1, explicitly references Article XVI of the GATT 1994.

98. With respect to the TRIMs Agreement, China argues that the measures at issue are inconsistent with Articles 2.1 and 2.2 of the TRIMs Agreement. From the first half of Article 2.1 with the phrase “[w]ithout prejudice to other rights and obligations under GATT 1994”, it is evident that the article is not intended to curtail the other rights that Members have under the

GATT 1994, including Articles XX and XXI of the GATT 1994. For the second half of Article 2.1, China acknowledges the link between Article 2.1 of the TRIMs and the GATT 1994.

99. Next, China also alleges that the measures at issue are inconsistent with Article 2.2 of the TRIMs Agreement. Article 2.2 provides an illustrative list of TRIMs that are inconsistent with certain provisions of the GATT 1994. Moreover, China specifically cites to paragraph 1(a) of the Annex, which lists an example that is inconsistent with Article III:4 of the GATT 1994.

100. Further, the link between Articles 2.1 and 2.2 of the TRIMs Agreement and Article III of the GATT 1994 is particularly clear in this dispute where China has alleged that the measures at issue are inconsistent with both Article III:4 of the GATT 1994 and Articles 2.1 and 2.2 of the TRIMs Agreement. Therefore, the claims in this dispute confirm the link between the GATT 1994 and the TRIMs and SCM Agreements.

EXECUTIVE SUMMARY OF U.S. OPENING STATEMENT AT THE FIRST SUBSTANTIVE MEETING WITH THE PANEL

I. CHINA’S NON-MARKET POLICIES AND PRACTICES VIOLATE U.S. PUBLIC MORALS AND ARE JUSTIFIED UNDER ARTICLE XX(A) OF THE GATT 1994

101. China’s non-market policies and practices include: targeting of sectors for dominance; non-market excess capacity; state-directed investment; forced labor; forced technology transfer; and theft of trade secrets. These non-market policies and practices of China violate the U.S. public morals against unfair competition, forced labor, theft, and coercion.

102. China’s **targeting of the clean vehicle and renewable energy sectors for dominance** is contrary to the U.S. public morals against unfair competition, forced labor, theft, and coercion. The targeting of sectors for dominance does not occur in isolation. 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.

103. China’s **non-market excess capacity** is contrary to the U.S. public morals against unfair competition, forced labor, theft, and coercion. Non-market excess capacity is deliberately created by China through investments and capacity expansion far in excess of what market-oriented actors, operating under market economy constraints would create.

104. China’s use of **state-directed investment** is contrary to the U.S. public moral against unfair competition. China’s investment policy seeks to create dominance in specific sectors through non-market based funding and investment strategies, including by subsidizing sectors with excess capacity, as well as unfairly acquiring U.S. technology. China also directs and encourages outbound investment by Chinese economic entities in areas it deems strategic.

105. China’s **use of forced labor** is contrary to the U.S. public morals against unfair competition and forced labor. The use of polysilicon is a key component in the production of solar panels. Nearly half of the world’s polysilicon comes from the Xinjiang Uyghur Autonomous Region, a region of China where members of ethnic and religious minority groups

work against their will, under guard and constant threats, in mines and factories producing polysilicon. Likewise, in the clean vehicle sector, lithium is a key component for EV batteries – and several lithium-ion battery manufacturers that feed into the EV supply chain are located in the Xinjiang region, using forced labor.

106. China’s use of **forced technology transfer** in the clean vehicle and renewable energy sectors is contrary to the U.S. public morals against unfair competition and coercion.

107. China also conducts and supports unauthorized intrusions into, and **theft** from, the computer networks of foreign companies to access their sensitive commercial information and trade secrets, in violation of the U.S. public morals against theft and unfair competition.

II. FEOC EXCLUSIONARY RULE UNDER THE CLEAN VEHICLE TAX CREDIT IS COVERED BY ARTICLE XXI(B) OF THE GATT 1994

108. In light of the self-judging nature of Article XXI(b), the sole finding that the Panel may make with respect to the FEOC exclusionary rule under the Clean Vehicle Tax Credit—consistent with its terms of reference and the DSU—is to note in the Panel’s report that the United States has invoked its essential security interests. Although Article XXI(b) does not require an invoking Member to furnish reasons for its invocation, we point to publicly available information demonstrating the self-evident national security basis for the FEOC exclusion.

109. The five statutory grounds on which a foreign entity may be considered an FEOC are self-evidently matters of national security for the United States. China’s challenge focuses on the third FEOC ground, foreign entities “owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation.” This definition of “covered nation” was incorporated into the FEOC provision from U.S. defense procurement law, which defines a “covered nation” to mean North Korea, China, Russia, and Iran, and characterizes these countries as “non-allied foreign nations.” Numerous other U.S. instruments similarly identify these four nations as “foreign adversaries.” The inclusion of China in lists of “non-allied” foreign nations and “foreign adversaries” make clear that China’s inclusion is a matter of national security for the United States.

110. The United States is aware of recent WTO reports suggesting – erroneously – that panels have authority to review a responding party’s invocation of Article XXI(b). The DSU does not assign precedential value to panel or appellate reports, though this Panel may take them into account in its own objective assessment to the extent the Panel finds them persuasive or helpful. Those reports are not persuasive, however, because they fail to interpret the ordinary meaning of the terms of Article XXI(b).

EXECUTIVE SUMMARY OF U.S. RESPONSES TO THE PANEL’S FIRST SET OF QUESTIONS

Excerpt from U.S. Response to Question 8

111. China’s *targeting* of the clean vehicle and renewable energy sectors for dominance is contrary to U.S. public morals, and China’s *achievement* of global dominance through the use of

non-market policies and practices targeting these sectors demonstrates the necessity of the measures.

Excerpt from U.S. Response to Question 11

112. The United States emphasizes that the phrase “designed to” and “not incapable of” does not appear in the text of Article XX(a) of the GATT 1994. Rather, a panel must apply the text of a covered agreement as understood through application of customary rules of interpretation. Therefore, there is no requirement under Article XX(a) to show that a measure is “designed to” protect or “not incapable” of protecting public morals.

Excerpt from U.S. Response to Question 12.

113. The Clean Vehicle Tax Credit is “designed” to protect, and is “not incapable” of protecting, the U.S. public morals against unfair competition, as well as forced labor, theft, and coercion. For example, to qualify for the Clean Vehicle Tax Credit, final assembly must occur in North America and increasing percentages of the value of battery components to be manufactured or assembled in North America. Such requirements ensure that clean vehicles and their battery components are manufactured or assembled in the United States, Canada or Mexico – countries that are parties to the United States-Mexico-Canada Agreement (USMCA), a free trade agreement containing provisions to protect U.S. public morals. Specifically, USMCA contains, among other commitments, the strongest labor provisions in any trade agreement, including agreeing to eliminate all forms of forced labor and prohibiting the importation of goods from sources produced by forced labor, provisions that protect source code and algorithms and prohibit forced technology transfer, and the protection of trade secrets.

114. Likewise, a vehicle may qualify for part of the Clean Vehicle Tax Credit if it contains a battery with critical minerals extracted or processed in any country with which the United States has a free trade agreement in effect. U.S. free trade agreements protect U.S. public morals because they contain provisions that help maintain fair competition and discourage forced labor, theft, and coercion – such as provisions prohibiting anti-competitive conduct, reaffirming labor obligations, providing for the protection and enforcement of IP rights, and regulating state-owned enterprises.

115. Another such agreement is the United States-Japan Critical Minerals Agreement, which contains provisions demonstrating the contribution of such an agreement to achieving U.S. public morals. The objective of the agreement is “to strengthen and diversify critical minerals supply chains and promote the adoption of electric vehicle battery technologies by formalizing the shared commitment of the Parties to facilitate trade, promote fair competition and market-oriented conditions for trade in critical minerals, ensure robust labor and environment standards”.

Excerpt from U.S. Response to Question 13

116. The Clean Vehicle Tax Credit incentivizes an alternative supply chain distinct from China – in the United States or in countries that have made commitments in free trade agreements with the United States that advance and align with U.S. public morals. Similarly, the renewable energy tax credits distinguish China by incentivizing market-oriented behavior. The

domestic content bonus provision in the renewable energy tax credits protects U.S. public morals because steel manufacturers in the United States must comply with U.S. law, which reflect U.S. public morals against unfair competition, forced labor, theft, and coercion. Further, the renewable energy tax credits also contain a prevailing wage requirement that requires companies to pay laborers and mechanics wages that are sufficiently high. This requirement ensures that U.S. public morals are upheld, and ensures that China's non-market policies are not rewarded, including its use of forced labor in the renewable energy sector.

Excerpt from U.S. Response to Question 16

117. Domestic content bonus provisions reflect that (1) the steel market demands a different approach because of China's non-market excess capacity, and (2) manufacturers in the United States must comply with the U.S. laws that protect U.S. public morals. To recall, the IRA Investment and Production Tax bonus credit is additional to existing investment and production tax credits, and is available if (1) 100 percent of structural steel or iron is produced in the United States, or (2) a certain percentage (up to 55 percent in 2027) of manufacturing takes place within the United States.

118. Like other aspects of the measures at issue, these bonus credits protect U.S. public morals because they ensure that U.S. support – through tax credits – does not reward China's nonmarket policies and practices. Requiring manufacturing in the United States plays a significant role in protecting U.S. public morals because manufacturers in the United States must comply with the U.S. Constitution, the Sherman Act, the Federal Trade Commission Act, U.S. labor laws, and other laws that reflect U.S. public morals. With respect to steel and iron in particular (with iron being an input for steelmaking) these provisions' focus on production in the United States reflects the global steel excess capacity crisis, brought on by China's non-market policies and practices.

119. Although China's non-market policies and practices have affected a number of sectors, their effects on the global steel market are particularly profound. As the Global Forum on Steel Excess Capacity (GFSEC) has observed, distorted "steel production in countries like China benefits downstream sectors, such as electric vehicle manufacturing, providing these sectors a competitive edge in international markets." In this way distortions that start in the steel sector extend beyond the steel industry itself, posing long-term risks in other sectors.

120. Moreover, China's non-market policies and practices in the steel sector have affected the steel market globally, for example, through trade distortion and diversion, as well as through significant investments in steelmaking outside China by Chinese state-owned enterprises (SOEs). There is no doubt that China was the principal driver of this global crisis at the time this Panel was established (and remains so today). And despite significant efforts by the United States and others, including through domestic trade remedies measures, international dialogues, and coordinated actions, the problem persists and in fact is projected to worsen.

Excerpt from U.S. Response to Question 17

121. The measures at issue need not explicitly refer to public morals to be justifiable under Article XX(a), as is clear from the ordinary meaning of the terms of Article XX(a). The terms of Article XX(a) do not require that a measure was “taken” or “adopted” “in order to ensure” a particular result or pursuant to a particular aim.

122. There are longstanding and widespread concerns with China’s nonmarket policies and practices shared across the U.S. government (and other governments) as well as the private sector and civil society, and such concerns were specifically before the U.S. Congress in the months leading up to the IRA’s passage. As ultimately adopted, the U.S. Congress passed the IRA because it believed the Act would lessen U.S. reliance on China and promote U.S. energy security by ensuring that the United States and its allies were not left beholden to foreign entities that do not share our interests and values.

123. The FEOC exclusion from the Clean Vehicle Tax Credit is necessary, but not sufficient, to protect U.S. public morals. This provision excludes from eligibility for the Clean Vehicle Tax Credit any clean vehicle that contains certain components manufactured or assembled, or certain minerals extracted, processed, or recycled, by an entity that is “owned by, controlled by, or subject to the jurisdiction or direction of” China. The FEOC exclusion alone does not address the global distortions that China has caused, however, for example as it does not incentivize production in other countries that align with the U.S. public morals against unfair competition, forced labor, theft, and coercion.

EXECUTIVE SUMMARY OF U.S. SECOND WRITTEN SUBMISSION

I. THE MEASURES ARE JUSTIFIED UNDER ARTICLE XX(A)

A. The measures at issue are necessary to protect public morals

124. The United States has established that the measures at issue are necessary to protect U.S. public morals based on a totality of the circumstances.

125. First, the measures are apt to contribute to U.S. public morals by promoting U.S. and other investments, thereby reducing dependence on China. The measures are structured so as to avoid U.S. purchasers’ rewarding China’s non-market policies and practices that violate the U.S. public morals against unfair competition, forced labor, theft, and coercion.

126. Second, the United States has established the deeply held and enduring nature of the U.S. public morals against unfair competition, forced labor, theft, and coercion, therefore demonstrating the fundamental importance to the United States of ensuring that such public morals are upheld.

127. Third, the measures are taken in a context in which China has already achieved global dominance in the clean vehicle and renewable energy sectors, vividly demonstrating the necessity of such measures. China’s domination and effective monopolization of the clean vehicle and renewable energy sectors globally has made it such that essentially all portions of the clean vehicle and renewable energy supply chains are now dependent on China. China has created an untenable situation for the United States and other Members. In both the U.S. first

written submission and at the first panel meeting, the United States provided a set of datapoints concerning the startling nature of China’s dominance in these sectors. China does not dispute this; nor can it.

128. China’s weaponization of its global dominance in the clean vehicle and renewable energy sectors also demonstrates the necessity of the measures at issue and the importance of creating supply chains not dependent upon China. China has “increasingly threatened to weaponize their control of supply chains” and “have banned exports to the United States of gallium, [and] germanium” —important components for EVs. As recent as April 2025, China has also imposed export controls on seven critical rare earth metals, of which some are critical for the clean vehicle and renewable energy sectors. Accordingly, China has threatened and now has actually taken action to choke off the supply of critical minerals and supplies that are necessary for production in the clean vehicle and renewable energy sectors in other countries, including the United States.

129. Also, previous versions of the IRA tax credits challenged in this dispute have not been successful in protecting U.S. public morals, demonstrating the necessity of the measures at issue. Versions of the measures—without the challenged portions—existed prior to the IRA, yet, despite their existence, the United States was not able to maintain or develop capacity, and China was able to achieve global dominance, in the clean vehicle and renewable energy sectors.

130. Previous U.S. measures attempting to address the effects of global non-market excess capacity on the U.S. steel sector and U.S. manufacturing have likewise been unsuccessful in protecting U.S. public morals. For example, the United States has imposed tariffs and other measures on steel imports, and has participated in numerous international dialogues aimed at addressing global steel excess capacity. Despite these efforts, the problem of global steel excess capacity persists, and in fact is projected to worsen. The failure of these previous efforts demonstrates the necessity of the renewable energy tax credits and their domestic content bonus credit provisions.

131. The measures are also evidently necessary because *no country* has been able to maintain or restore its manufacturing capacity since China’s monopolization of the clean vehicle and renewable energy sectors obtained through the use of non-market policies and practices targeting these sectors. The Panel must evaluate whether the measures at issue are necessary now, at the time of this WTO challenge, when China has already achieved global dominance of the clean vehicle and renewable energy sectors.

B. THE MEASURES ARE NOT INCONSISTENT WITH THE CHAPEAU

1. The measures at issue do not discriminate because the same conditions do not prevail between China and the United States

132. Relevant to this dispute is whether distinctions that the United States has drawn between *itself and China* in the measures at issue are between countries that have the same state, mode of being or nature; and whether those distinctions are unpredictable or indefensible.

133. China argues that the U.S. free trade agreement disciplines referenced by the United States are not materially different from the obligations that the United States and China have with each other in the Economic and Free Trade Agreement between the Government of the United States and the Government of the People’s Republic of China (“Phase One Agreement”). China’s arguments fail for numerous reasons.

134. The Phase One Agreement grew out of an investigation into certain acts, policies, and practices of China related to technology transfer, intellectual property, and innovation. Yet, technology and IP-intensive sectors are hardly the only ones that are threatened by China’s non-market behavior. Indeed, in a 2024 report, the U.S. Trade Representative (USTR) observed:

It also remains unclear how faithfully and fairly China will actually enforce the changes to its laws and regulations. Meanwhile, other commitments that China made, such as in the area of technology transfer, are difficult to verify given the tactics that China takes to obscure its activities.

Notably, the Phase One Agreement did not address many of the U.S. concerns that the United States had been seeking to address in its negotiations with China. The reality is that the Phase One Agreement did not meaningfully address the more fundamental concerns that the United States has with China’s state-led, non-market policies and practices and their harmful impact on the U.S. economy and U.S. workers and businesses. The unresolved issues included critical concerns in areas such as state-led industrial plans targeting industries for dominance, massive and pervasive subsidization, favorable regulatory support for domestic enterprises, state-owned enterprises, non-market excess capacity, state-sponsored theft of intellectual property, standards, cybersecurity, data localization requirements, restrictions on cross-border data transfers, competition law enforcement and regulatory transparency as well as certain issues in the areas of intellectual property, technology transfer and services market access that were not addressed in the Phase One Agreement. In furtherance of its industrial policy objectives, China’s government has also limited market access for imported goods and services and restricted the ability of foreign manufacturers and services suppliers to do business in China.

135. Furthermore, as China is aware—China’s lack of compliance with the Phase One Agreement is a serious concern to the United States, as China has failed to live up to its commitments in numerous areas, including the protection of intellectual property rights. In May 2024, USTR issued a report that found that China’s unfair acts, policies and practices had continued and, in some cases, had worsened. Accordingly, China is mistaken when it attempts to equate the Phase One Agreement with a “free trade agreement” for purposes of the Clean Vehicle Tax Credit.

136. It is also deeply ironic that China’s points to its Protocol of Accession to the WTO in attempting to establish that the same conditions prevail in China as in the United States. China’s dominance of the clean vehicle and renewable energy sectors itself demonstrates the woeful insufficiency of that Protocol in restraining China’s behavior.

137. Nor does China’s domestic competition and anti-monopoly laws provide any meaningful assurances regarding the conditions that prevail in China. Contrary to China’s assertions, U.S. companies have cited selective enforcement of the Anti-Monopoly Law against foreign companies seeking to do business in China as a major concern. They have highlighted in particular the comparatively limited enforcement of this law against China’s own state-owned enterprises. IP rights holders have expressed concerns regarding China’s enforcement of its anti-monopoly law, observing that it can be misused for the purpose of depressing the value of foreign-owned intellectual property in key technologies.

2. The measures at issue do not discriminate where the same conditions prevail

138. The United States also has not discriminated among partners with the “same conditions”—that is, the countries that have agreed to commitments aligned with U.S. public morals in a U.S. free trade agreement. China attempts to undermine the U.S. distinction between U.S. free trade agreement partners and non-free trade agreement countries by asserting that U.S. free trade agreements are heterogenous, and do not substantively expand on obligations that exists under WTO Agreements or other agreements.

139. As an initial matter, logically, it makes sense for free trade agreements to be heterogenous since they are commitments undertaken to address issues between two or more countries, and each country has individual trade concerns. And for purposes of this dispute, it is the *commonality* of provisions across U.S. free trade agreements that is important, namely provisions that discourage unfair competition, forced labor, theft, and coercion.

140. Contrary to China’s assertions, U.S. free trade agreements build on the foundation of the WTO Agreement, and they have more comprehensive and stronger disciplines. Indeed, as China itself appears to recognize, the USMCA includes TRIPS-plus obligations relating to trade secrets, including, for example but not limited to, obligations relating to the protection of trade secrets. And even free trade agreement provisions that simply reiterate or incorporate provisions set forth in other agreements serve to reinforce those commitments and signal the value that free trade agreement partners place on those commitments.

II. THE FEOC EXCLUSION IS COVERED BY ARTICLE XXI(B)

141. China complains that the United States has not met a purported “burden of proof” for an invocation of Article XXI, but neither the DSU nor any other covered agreement uses that phrase, and—consistent with DSU Article 3.2—what is required of a Member exercising its right under Article XXI is set forth in the terms of Article XXI itself. China cites no support for its invented “burden of proof” for an invocation of Article XXI(b), and indeed China’s complaints about the U.S. invocation of Article XXI(b) here appear contrary to its own previous assertions regarding Article XXI(b) as a third party in *Russia-Traffic in Transit*.

142. China also asserts—without support in the text of Article XXI(b)—that “the United States bears the burden of establishing that one more of the subparagraphs of Article XXI(b) is objectively applicable to the GATT-inconsistent measure for which justification is sought.” Article XXI(b) does not require a Member invoking that provision to identify the subparagraph

ending that Member may consider most relevant, and indeed nothing in the text of Article XXI(b) suggests that the subparagraphs are mutually exclusive.

143. In any event, the FEOC exclusionary rule is self-evidently a matter of national security and could be understood to relate to one or more subparagraphs of Article XXI(b). The IRA defines FEOC by cross-reference to the Infrastructure Investment and Jobs Act of 2021, which sets out a five-part definition. Perhaps acknowledging the self-evident national security basis for at least four parts of this definition, China has focused its arguments only on the third FEOC ground, foreign entities “owned by, controlled by, or subject to the jurisdiction or direction of a government of a foreign country that is a covered nation.” The term “covered nation” was incorporated into the FEOC provision from U.S. defense procurement law, which defines a “covered nation” to mean North Korea, China, Russia, and Iran, and characterizes these countries as “non-allied foreign nations.”

144. Numerous other instruments similarly identify China and these other nations as “foreign adversaries” or note that China poses a threat 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 the FEOC exclusion from the Clean Vehicle Tax Credit. That national security basis 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.

EXECUTIVE SUMMARY OF U.S. OPENING STATEMENT AT THE SECOND SUBSTANTIVE MEETING WITH THE PANEL

I. INTRODUCTION

145. The Panel should examine the measures as they existed at the time of panel establishment. Although the challenged measures have now changed, this does not change the Panel’s inquiry pursuant to the DSU to assess the existence of the measures at a time when China targeted and attained global dominance in the clean vehicle and renewable energy sectors.

146. Indeed, a Member may have many tools at its disposal. A Member can use one means or many means. One U.S. administration imposed antidumping and countervailing duties on solar cells and modules from China. The first Trump Administration imposed safeguards on solar cells and modules. The prior U.S. Administration chose to use the IRA as one means to address China’s targeting and dominance of the clean vehicle and renewable energy sectors. The current Administration may choose other means or adopt other measures to protect U.S. public morals. But that Members may have various tools to address an issue over time does not undermine the use of tax credits at one point in time to defend societal values.

II. THE FEOC EXCLUSION IS COVERED BY ARTICLE XXI(B)

147. Article XXI(b) is self-judging by its terms. Notwithstanding the self-judging nature of Article XXI(b), from the beginning of this dispute the United States has made available information regarding the U.S. invocation of Article XXI. Perhaps acknowledging that Article

XXI(b) is self-judging as interpreted in accordance with customary rules of interpretation of public international law, in arguing to the contrary China grasps for what it terms “accepted principles of treaty interpretation”. China does not explain, however, what “principles” it is referring to, how they might have been “accepted,” and how these principles compare with the customary rules of interpretation of public international law.

148. Perhaps acknowledging the lack of support for its position in the ordinary meaning of the terms of Article XXI(b) itself, China repeatedly points to *United States – Hong Kong Origin Marking*. That report is not persuasive, however, and this Panel should not repeat its errors, and instead should find that Article XXI(b), as interpreted according to the customary rules of interpretation of public international law, is self-judging; and accordingly, the sole finding that this Panel may make with respect to FEOC, consistent with its terms of reference under Article 7.1 of the DSU, is to note the U.S. invocation of Article XXI.

EXECUTIVE SUMMARY OF U.S. RESPONSES TO THE PANEL’S SECOND SET OF QUESTIONS

Excerpt from U.S. Response to Question 30

149. 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 DSU. The DSB established the Panel on September 23, 2024, and set the Panel’s terms of reference to examine the matter referred by China to the DSB in its panel request. Therefore, the Panel must assess the measure as it existed at the time of the Panel’s establishment.

150. 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. 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.

Excerpt from U.S. Response to Question 33

151. 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. 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.

Excerpt from U.S. Response to Question 37

152. The United States has demonstrated, and China has not denied, that China has attained global dominance in the renewable energy sector. 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. 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. Each of these products can be part of a renewable energy project eligible for the investment and production tax bonus credits.

153. 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.

Excerpt from U.S. Response to Question 38

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

155. 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. 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. China’s non-market policies and practices have led to artificially low prices, lower imports into China, and higher exports from China. China’s artificially low-priced steel exports lead to price arbitrage, as these exports displace production and suppress prices in third-country markets. 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).

156. 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. 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.

**EXECUTIVE SUMMARY OF U.S. COMMENTS ON CHINA’S ANSWERS TO THE
PANEL’S SECOND SET OF QUESTIONS**

Excerpt from U.S. Comment on China’s Response to Question 32

157. 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. 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.

Excerpt from U.S. Comment on China’s Response to Question 36

158. 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.” Accordingly, 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.

EXECUTIVE SUMMARY OF U.S. ADDITIONAL COMMENTS

Excerpt from U.S. Additional Comment to China’s Comment on Question 30

159. The United States takes note of China’s statement that it withdraws its claims against the Clean Vehicle Tax Credit, and considers that China has effectively withdrawn the matter relating to the Clean Vehicle Tax Credit from its panel request to the DSB. By withdrawing the entirety of its claims against the Clean Vehicle Tax Credit, China no longer has a “legal basis” or “complaint” against the Clean Vehicle Tax Credit, and there is no “matter” before the Panel with respect to the measure.

160. Accordingly, although China states that “it is no longer necessary for the Panel to make findings or recommendations,” it is more correct to say that it is no longer permissible for the Panel to make findings or recommendations. The DSU does not permit the Panel to make findings or recommendations on a matter that is not before it. As China has withdrawn the matter with respect to the Clean Vehicle Tax Credit from the matter referred to the DSB, the Clean Vehicle Tax Credit is now excluded from the Panel’s terms of reference.