UNITED STATES – CERTAIN TAX CREDITS UNDER THE INFLATION REDUCTION ACT
(DS623)

FIRST WRITTEN SUBMISSION OF THE UNITED STATES OF AMERICA

March 21, 2025

TABLE OF CONTENTS

TABLE OF REPORTS

SHORT TITLE	FULL CITATION
Brazil – Desiccated Coconut (AB)	Appellate Body Report, *Brazil – Measures Affecting Desiccated Coconut*, WT/DS22/AB/R, adopted 20 March 1997
Brazil – Retreaded Tyres (Panel)	Panel Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/R, adopted 17 December 2007, as modified by Appellate Body Report WT/DS332/AB/R
Brazil – Taxation (Panel)	Panel Report, *Brazil – Certain Measures Concerning Taxation and Charges*, WT/DS472/R / WT/DS497/R / Corr. 1 and Add. 1, adopted 11 January 2019, as modified by Appellate Body Report, WT/DS472/AB/R / WT/DS497/AB/R and Add. 1
Canada – Autos (AB)	Appellate Body Report, *Canada – Certain Measures Affecting the Automotive Industry*, WT/DS139/AB/R, WT/DS142/AB/R, adopted 19 June 2000
Canada – Periodicals (Panel)	Panel Report, *Canada – Certain Measures Concerning Periodicals*, WT/DS31/R and Corr.1, adopted 30 July 1997, as modified by Appellate Body Report WT/DS31/AB/R
Canada – Renewable Energy / Canada – Feed-in Tariff Program (AB)	Appellate Body Reports, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector / Canada – Measures Relating to the Feed-in Tariff Program*, WT/DS412/AB/R / WT/DS426/AB/R, adopted 24 May 2013
Canada – Renewable Energy / Canada – Feed-in Tariff Program (Panel)	Panel Reports, *Canada – Certain Measures Affecting the Renewable Energy Generation Sector / Canada – Measures Relating to the Feed-in Tariff Program*, WT/DS412/R, adopted 24 May 2013, as modified by Appellate Body Reports WT/DS412/AB/R / WT/DS426/AB/R
China – Publications and Audiovisual Products (Panel)	Panel Report, *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/R and Corr.1, adopted 19 January 2010, as modified by Appellate Body Report WT/DS363/AB/R
China – Rare Earths (AB)	Appellate Body Reports, *China – Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*, WT/DS431/AB/R / WT/DS432/AB/R / WT/DS433/AB/R, adopted 29 August 2014
Colombia – Textiles (AB)	Appellate Body Report, *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear*, WT/DS461/AB/R and Add. 1, adopted 22 June 2016

SHORT TITLE	FULL CITATION
Colombia – Textiles (Panel)	Panel Report, *Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear*, WT/DS461/R and Add. 1, adopted 22 June 2016, as modified by Appellate Body Report WT/DS461/AB/R and Add. 1
EC – Asbestos (Panel)	Panel Report, *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/R and Add.1, adopted 5 April 2001, as modified by Appellate Body Report WT/DS135/AB/R
EC – Seal Products (AB)	Appellate Body Reports, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R / WT/DS401/AB/R, adopted 18 June 2014
EC – Seal Products (Panel)	Panel Reports, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/R / WT/DS401/R / and Add. 1, adopted 18 June 2014, as modified by Appellate Body Reports, WT/DS400/AB/R / WT/DS401/AB/R
US – 1916 Act (EC) (Panel)	Panel Report, *United States – Anti-Dumping Act of 1916, Complaint by the European Communities*, WT/DS136/R and Corr.1, adopted 26 September 2000, upheld by Appellate Body Report WT/DS136/AB/R, WT/DS162/AB/R
US – Gambling (Panel)	Panel Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/R, adopted 20 April 2005, as modified by Appellate Body Report WT/DS285/AB/R
US – Safeguard Measure on PV Products (China) (Panel)	Panel Report, *US – Safeguard Measure on Imports of Crystalline Silicon Photovoltaic Products*, WT/DS562, circulated 2 September 2021
US – Shrimp (Article 21.5 – Malaysia) (Panel)	Panel Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products – Recourse to Article 21.5 of the DSU by Malaysia*, WT/DS58/RW, adopted 21 November 2001, upheld by Appellate Body Report WT/DS58/AB/RW
US – Tariff Measures (Panel)	Panel Report, *United States – Tariff Measures on Certain Goods from China*, WT/DS543/R and Add.1, circulated 15 September 2020
US – Tax Incentives (AB)	Appellate Body Report, *United States – Conditional Tax Incentives for Large Civil Aircraft*, WT/DS487/AB/R and Add. 1, adopted 22 September 2017

TABLE OF EXHIBITS

EXHIBIT	DESCRIPTION
US-1	International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022
US-2	Washington Post, "How China pulled ahead to become the world leader in electric vehicles", March 3, 2025
US-3	U.S. Geological Survey, Mineral Commodities Summaries 2024, January 2024
US-4	U.S. Geological Survey, 2020-2021 Minerals Yearbook: China, May 2024
US-5	International Energy Agency, Global Critical Minerals Outlook 2024, May 2024
US-6	19 Code of Federal Regulations part 182 (United States-Mexico-Canada Agreement), Appendix A (Rules of Origin Regulations)
US-7	49 Code of Federal Regulations part 565 (Vehicle Identification Number requirements)
US-8	Infrastructure Investment and Jobs Act, P.L. 117-58, 135 Stat. 429 (November 15, 2021)
US-9	William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, P.L. 116-283, 134 Stat. 3388 (January 1, 2021) (definition of "covered nation" codified at 10 U.S.C. Section 4872(d)(2) (renumbered from 10 U.S.C. Section 2533c))
US-10	Internal Revenue Service, Transfer of Clean Vehicle Credits Under Section 25E and Section 30D, Proposed Rule, 88 FR 70310 (October 10, 2023)
US-11	Internal Revenue Service, Definition of Energy Property and Rules Applicable to the Energy Credit, Proposed Rule (*Correction*), 89 FR 2182 (January 12, 2024)
US-12	Internal Revenue Service, Definition of Energy Property and Rules Applicable to the Energy Credit, Proposed Rule (*Second Correction*), 89 FR 13293 (February 22, 2024)
US-13	Wall Street Journal, "U.S. Car Makers' EV Plans Hinge on Made-in-American Batteries," Feb. 6, 2023
US-14	H.R.5376 - Inflation Reduction Act of 2022: Summary

EXHIBIT	DESCRIPTION
US-15	*The New Shorter Oxford English Dictionary* (4th Edition) (1993)
US-16	Federal Trade Commission Act, Section 5 U.S.C § 45
US-17	Sherman Act, Section 15 U.S.C. § 1
US-18	Restatement (Second) of Contracts, § 205 (Duty of Good Faith and Fair Dealing)
US-19	Restatement (Second) of Torts § 766A
US-20	35 U.S.C. § 200 (Patents Policy and objective)
US-21	U.S. Constitution (excerpts of Fifth Amendment and Thirteenth Amendment)
US-22	Trafficking Victim's Protection Act of 2000, as amended, 22 U.S.C. § 7101, *et. seq*.
US-23	Section 307 of the Tariff Act of 1930, 19 U.S.C. § 1307
US-24	Uyghur Forced Labor Prevention Act, P.L. 117-78
US-25	Computer Fraud and Abuse Act (18 U.S.C. § 1030)
US-26	Economic Espionage Act of 1996 (18 U.S.C. § 1831-1832)
US-27	Uniform Trade Secrets Act (1985), with documentation of U.S. state-level adoption
US-28	*Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 4-5 (1958) (Justice Hugo Black)
US-29	Executive Order 13923, "Establishment of the Forced Labor Enforcement Task Force Under Section 741 of the United States-Mexico-Canada Agreement Implementation Act", May 15, 2020
US-30	California Code, Penal Code § 484 (General Theft Statute)
US-31	Texas Penal Code, Title 7, Chapter 31 (Offenses against Property – Theft)

EXHIBIT	DESCRIPTION
US-32	18 U.S.C. Ch. 31 (Embezzlement and Theft)
US-33	The White House, America First Trade Policy Presidential Memorandum, Jan. 20, 2025
US-34	The White House, Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties Presidential Memorandum, Feb. 21, 2025
US-35	The President's 2025 Trade Policy Agenda
US-36	G7 Trade Ministers' Statement (2024)
US-37	G7 Leaders' Communique (2022)
US-38	G7 Trade Ministers' Statement (2022)
US-39	G7 Leaders' Statement on Economic Resilience and Economic Security (2023)
US-40	G7 Trade Ministers' Statement (2023)
US-41	Office of the U.S. Trade Representative, Readout of the Fifth Round of Meetings under the U.S.-Japan Partnership on Trade, July 31, 2024
US-42	Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chains (March 28, 2023)
US-43	Joint Declaration Against Trade-Related Economic Coercion and Non-Market Policies and Practices, June 9, 2023
US-44	Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union, Sept. 25, 2018
US-45	National Renewable Energy Laboratory, Winter 2024 Solar Industry Update, Jan. 25, 2024
US-46	Cipher News, "Chinese solar panel manufacturing outpaces global demand," Feb. 28, 2024
US-47	Remarks by President Trump at Signing of Section 201 Actions, Jan. 23, 2018

EXHIBIT	DESCRIPTION
US-48	2023 State of the Union Address by EU President von der Leyen at Strasbourg, Sept. 13, 2023
US-49	International Energy Agency, Global EV Outlook 2024, April 2024
US-50	China Daily, "'New three' paves way for high-quality growth," Feb. 21, 2024
US-51	Information Technology & Innovation Foundation, "The Impact of China's Production Surge on Innovation in the Global Solar Photovoltaics Industry," October 2020
US-52	Council on Foreign Relations, "Is 'Made in China 2025' a Threat to Global Trade?" (2019)
US-53	European Chamber of Commerce, "China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces" (2017)
US-54	CSIS, "Electric Shock: Interpreting China's Electric Vehicle Export Boom," Sept. 2023
US-55	CSIS, "The Chinese EV Dilemma: Subsidized Yet Striking," June 28, 2024
US-56	Office of the U.S. Trade Representative, "Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974 ("Section 301 Report"), Mar. 22, 2018
US-57	European Commission, Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations, Oct. 4, 2024
US-58	Financial Times, "China outbound investment surges to record levels on clean energy 'tsunami,'" Oct. 2, 2024
US-59	U.S. Chamber of Commerce, Made in China 2025: Global Ambitions Built on Local Protections (2017)
US-60	PC Magazine, "Corning, Suniva, Heliene to produce first fully US-made solar module," Mar. 7, 2025
US-61	U.S. Department of Energy, Solar Photovoltaics: Supply Chain Deep Dive Assessment, Feb. 24, 2022

EXHIBIT	DESCRIPTION
US-62	U.S. Department of Labor, "Traced to Forced Labor: Solar Supply Chains Dependent on Polysilicon from Xinjiang, 2020
US-63	U.S. Customs and Border Protection, "The Department of Homeland Security Issues Withhold Release order on Silica-Based Products Made by Forced Labor in Xinjiang," June 24, 2021
US-64	Office of the U.S. Trade Representative, "Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practice Related to Technology Transfer, Intellectual Property, and Innovation" ("Four-Year Review"), May 14, 2024
US-65	Forbes, "China Scores Big Win in Solar Trade Battle as REC Silicon Shutters US Polysilicon Production," Feb. 8. 2016
US-66	U.S. Department of Justice, "U.S. Charges Five Chinese Military Hackers for Cyber Espionage Against U.S. Corporations and a Labor Organization for Commercial Advantage," May 19, 2014
US-67	CBS News, "Chinese hackers took trillions in intellectual property from about 30 multinational companies," May 4, 2022
US-68	Fact Sheet: Biden-Harris Administration Takes Action to Strengthen American Solar Manufacturing and Protect Manufacturers and Workers from China's Unfair Trade Practices, May 16, 2024
US-69	Congressional Research Service, Inflation Reduction Act of 2022: Incentives for Clean Transportation, Sept. 6. 2022
US-70	Office of the U.S. Trade Representative, "Adapting Trade Policy for Supply Chain Resilience: Responding to Today's Global Economic Challenges" ("Supply Chain Resilience Report"), January 2025
US-71	U.S. First Written Submission in *United States – Origin Marking (Hong Kong, China) (Panel)*
US-72	Financial Times, "Foreign carmakers confront 'moment of truth' in China," Apr. 21, 2023
US-73	Solar Energy Industries Association, US Solar Market Insight: Executive Summary, 2024 Year in Review, March 2025
US-74	U.S. Department of Justice, "Two Chinese Hackers Working with the Ministry of State security charged with global computer intrusion campaign targeting intellectual property and confidential business information, including COVID-19 research," July 21, 2020

EXHIBIT	DESCRIPTION
US-75	TechCrunch, "Tracking the EV battery factory construction boom across North America," Feb. 6, 2025
US-76	Inside EVs, "The U.S. is about to nearly double its battery production capacity," Feb. 23, 2025.
US-77	U.S.-EU Trade and Technology Council Inaugural Joint Statement, Sept. 29, 2021
US-78	GM Authority, "GM EV Sales Up 19 Percent Moving 19k Units this Quarter, 75k Units for the year during Q4 2023," Mar. 23, 2024
US-79	Environmental Defense Fund, U.S. Electric Vehicle Manufacturing Investments and Jobs, August 2024

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.[1] 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. But they are real – and so are the risks created by that dominance. China's share of the global solar energy supply chain – that is, global polysilicon, ingot, and wafer production – soon will reach almost 95 percent.[2] 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).[3] China produces approximately 60 percent of electric vehicles sold globally and approximately 80 percent of the batteries that power them.[4] 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,[5] gallium is at 98 percent,[6] germanium is at 68 percent,[7] and tungsten is at 84 percent.[8] By 2030, over 90 percent of battery-grade graphite and 77 percent of refined rare earths could come from China.[9]

3. China has achieved that global dominance through pervasive non-market policies and practices that undermine fair competition. 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; weak

---

[1] The Inflation Reduction Act of 2022, as significant U.S. budget legislation with 8 titles, 20 subparts, and 142 sections, was passed with multiple aims, including fighting inflation, reducing greenhouse gas emissions, and investing in domestic energy production and manufacturing to secure the renewable energy supply chain. H.R.5376 - Inflation Reduction Act of 2022: Summary (US-14); Fact Sheet, The Inflation Reduction Act Supports Workers and Families (CHN-12).

[2] International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 9 (US-1).

[3] International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 7 (US-1).

[4] Washington Post, "How China pulled ahead to become the world leader in electric vehicles", March 3, 2025 (US-2).

[5] U.S. Geological Survey, Mineral Commodities Summaries 2024, p. 84 (US-3).

[6] U.S. Geological Survey, Mineral Commodities Summaries 2024, p. 74 (US-3).

[7] U.S. Geological Survey, 2020-2021 Minerals Yearbook: China, May 2024, p. 9.1 (US-4).

[8] U.S. Geological Survey, 2020-2021 Minerals Yearbook: China, May 2024, p. 9.1 (US-4).

[9] International Energy Agency, Global Critical Minerals Outlook 2024, May 2024, p. 8 (US-5).

environmental protection; 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.

4. These non-market policies and practices undermine fair competition and cause global distortions in the clean vehicle and renewable energy sectors – such as solar, electric vehicles, batteries, critical minerals, and wind– the very sectors that China has made the focus of this dispute.

5. The United States adopted the measures challenged in this dispute – various clean vehicle and renewable energy tax credits – as one response to China's unfair and anti-competitive dominance of these sectors. As such, they are amply justified under World Trade Organization (WTO) rules. China's effort to use WTO dispute settlement as a sword to attack the U.S. effort to defend its society and economy from China's global dominance must be rejected.

6. Indeed, 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 (as well as that in a number of other Members). China's non-reciprocal and – from the U.S. perspective – 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.

7. 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).

8. China also has challenged a provision of the Inflation Reduction Act of 2022 (IRA)[10] that is expressly a matter of U.S. national security. The exclusion under the Internal Revenue Code (IRC)[11] 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.

9. 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

[10] The Inflation Reduction Act of 2022, P.L. 117-169, 136 Stat. 1818 (August 16, 2022) (CHN-4).

[11] Internal Revenue Code of 1986, U.S. Code, Title 26.

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.

10. In Section II of this submission, the United States provides factual background for the measures in dispute.

11. In Section III, the United States explains that China has failed to establish that the Section 30D Clean Vehicle Tax Credit is a prohibited import substitution subsidy inconsistent with Articles 3.1(b) and 3.2 of the *Agreement on Subsidies and Countervailing Measures* (SCM Agreement).

12. In Section IV, the United States invokes Article XXI(b) of the GATT 1994 for the FEOC exclusionary rule under the Section 30D Clean Vehicle Tax Credit. In this situation, the sole finding that the Panel can make is to note the U.S. invocation of Article XXI(b).

13. In Section V, the United States establishes that the measures at issue in this dispute – the Section 30D Clean Vehicle Tax Credit and the renewable energy tax credits (IRC Sections 48, 48E, 45, and 45Y) are justified because they are measures "necessary to protect public morals" within the meaning of Article XX(a) of the GATT 1994. While the Section 30D Clean Vehicle Tax Credit is not inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement, that measure would also be justified under Article XX(a) of the GATT 1994.

14. In Section VI, the United States explains that, while it is self-evident that WTO Members continue to have the authority to take security measures and measures under the general exceptions, it is also specifically the case that the GATT 1994 Article XX(a) and Article XXI(b) exceptions apply to claims under both the WTO *Agreement on Trade-Related Investment Measures* (TRIMs) and the SCM Agreement. This follows from the text of the agreements, the structure of the WTO Agreement as a whole, and the context it provides in light of the object and purpose of the WTO Agreement and those annexed agreements. Further, China's claims raised in this dispute also confirm that the GATT 1994 exceptions apply to the TRIMs and SCM Agreements.

15. In sum, and for the reasons further explained in this submission, the United States respectfully requests that the Panel find that China has established no WTO-inconsistency in this dispute.

II. BACKGROUND

16. The IRA is a statute adopted by the U.S. Congress and signed into law on August 16, 2022.[12] IRA Title I, Subtitle D (Energy Security) created or amended a number of tax credits

[12] The Inflation Reduction Act of 2022, P.L. 117-169, 136 Stat. 1818 (August 16, 2022) (CHN-4).

concerning clean vehicle adoption and renewable energy production or investment in the IRC.[13] The IRC is the primary source of U.S. federal tax law.

17. 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. The process for issuing IRA implementing guidance generally has involved numerous opportunities for interested parties to provide input through notice and comment procedures. Final rules issued to date included responses to public comments received on the proposed rules and were made public in the same manner as the proposed rules.

18. China has challenged certain requirements for five tax credits created or amended by the IRA. The credits raised in this dispute are as follows. The United States provides an overview of these credits and key implementing guidance below.

a. Clean Vehicle Tax Credit (IRC Section 30D)[14]
b. Investment Tax Credit for Energy Property (IRC Section 48)[15]
c. Clean Electricity Investment Tax Credit (IRC Section 48E)[16]
d. Production Tax Credit for Electricity from Renewables (IRC Section 45)[17]
e. Clean Electricity Production Tax Credit (IRC Section 45Y)[18]

19. 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.[19] The credit may be claimed for individual or business use. Individual taxpayers may claim the credit when filing an annual federal income tax return, or alternatively the credit may be transferred to a registered vehicle dealer, through a process where the consumer (*i.e.*, the taxpayer) receives a reduction in price at the time of sale (before filing an annual federal income tax return) and the dealer receives a reimbursement in the form of an advance payment.[20] The availability and amount of the credit is determined based on the

---

[13] Internal Revenue Code of 1986, U.S. Code, Title 26.

[14] Amended by IRA section 13401 (CHN-4).

[15] Amended by IRA section 13102 (CHN-4).

[16] Created by IRA section 13702 (CHN-4).

[17] Amended by IRA section 13101 (CHN-4).

[18] Created by IRA section 13701 (CHN-4).

[19] 26 U.S.C. Sections 30D(b)(1) and 30D(h) as created or amended by IRA sections 13401(a) and 13401(h) (CHN-4). A new clean vehicle is considered to be "placed in service" on the date the taxpayer takes possession of the vehicle. Treasury Regulation 1.30D-2(b)(36).

[20] 26 U.S.C. Section 30D(g) as created by IRA section 13401(g) (CHN-4); Treas. Reg. § 1.30D-5. Regulations have been issued for the advance payment program. *See* Internal Revenue Service, Clean Vehicle Credits Under Sections

definition of "new clean vehicle" and 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.

20. 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.[21] Final assembly is defined as "the process by which a manufacturer produces a new clean vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle".[22] Pursuant to Treasury regulations described further below, North America means the territory of the United States, Canada, and Mexico.[23] Also pursuant to regulations, taxpayers may rely on the following information to determine that final assembly occurred in North America: (i) the vehicle's plant of manufacture as indicated by the vehicle identification number[24]; or (ii) the final assembly point reported on the label affixed to the vehicle.[25] The North American assembly requirement applies after the date of enactment of the IRA, *i.e.*, August 16, 2022.

21. 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 applicable percentage started at 40 percent in 2023 and will increase to 80 percent after December 31, 2026.[26] Section 45X, enacted by the IRA, defines "applicable critical

---

25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18).

[21] 26 U.S.C. Section 30D(d)(1)(G) as created by IRA section 13401(b)(1) (CHN-4).

[22] 26 U.S.C. Section 30D(d)(5) as created by IRA section 13401(b)(2) (CHN-4).

[23] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18). Pursuant to these final regulations, Treas. Reg. § 1.30D-2(b)(34), North America means the territory of the United States, Canada, and Mexico as defined in 19 Code of Federal Regulations part 182, Appendix A, § 1(1) (US-6).

[24] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); Treas. Reg. § 1.30D-2(b)(23)(i). A vehicle identification number is a unique 17-character code assigned to every motor vehicle sold or imported into the United States. The vehicle identification number contains key information about a vehicle's manufacturer, model, production details, and origin. *See* 49 Code of Federal Regulations Part 565 – Vehicle Identification Number Requirements (US-7).

[25] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); Treas. Reg. § 1.30D-2(b)(23)(ii).

[26] 26 U.S.C. Section 30D(e)(1)(B) as created by IRA section 13401(e)(1)(B) (CHN-4).

minerals".[27] Treasury regulations clarify the meaning of the terms "extraction",[28] "processing",[29] and "recycling",[30] and establish criteria for the Secretary of the Treasury to identify countries with which the United States has a free trade agreement in effect, in consultation with the Office of the U.S. Trade Representative.[31] 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.[32] The list of countries is subject to revision based on application of the criteria established by regulations.[33] North America means the territory of the United States, Canada, and Mexico.[34]

22. 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.[35] The applicable percentage started at 50 percent in 2023 and will increase to 100 percent for vehicles placed in service after December 31, 2028.[36] Treasury regulations clarify the meaning of the terms

---

[27] 26 U.S.C. Section 45X(c)(6) as created by IRA section 13502(c)(6) (CHN-4).

[28] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); Treas. Reg. § 1.30D-2(b)(21).

[29] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); Treas. Reg. § 1.30D-2(b)(37).

[30] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); Treas. Reg. § 1.30D-2(b)(43).

[31] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); *see also* Treas. Reg. § 1.30D-2(b)(13)(i).

[32] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); Treas. Reg. § 1.30D-2(b)(13)(ii).

[33] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); Treas. Reg. § 1.30D-2(b)(13)(iii).

[34] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18). Pursuant to these final regulations, North America means the territory of the United States, Canada, and Mexico as defined in 19 Code of Federal Regulations part 182, Appendix A, § 1(1) (US-6); Treas. Reg. § 1.30D-2(b)(34).

[35] 26 U.S.C. Section 30D(e)(2) as amended by IRA section 13401(a)(3) (CHN-4).

[36] 26 U.S.C. Section 30D(e)(2)(B) as created by IRA section 13401(e)(1) (CHN-4).

"manufacturing"[37] and "assembly",[38] as well as the definition of "battery component"[39] and "qualifying battery component content".[40] North America means the territory of the United States, Canada, and Mexico.[41]

23. 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.[42] The term "foreign entity of concern" or "FEOC" is defined by cross-reference to the Infrastructure Investment and Jobs Act of 2021[43], 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);

[37] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); Treas. Reg. § 1.30D-2(b)(30).

[38] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); Treas. Reg. § 1.30D-2(b)(3).

[39] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); Treas. Reg. § 1.30D-2(b)(8).

[40] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); Treas. Reg. § 1.30D-2(b)(39).

[41] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18). Pursuant to these final regulations, North America means the territory of the United States, Canada, and Mexico as defined in 19 Code of Federal Regulations part 182, Appendix A, § 1(1) (US-6); Treas. Reg. § 1.30D-2(b)(34).

[42] 26 U.S.C. Section 30D(d)(7) as created by IRA section 13401(e)(2) (CHN-4).

[43] 26 U.S.C. Section 30D(d)(7) as amended by IRA section 13401(e)(2) (CHN-4) cross-references section 40207(a)(5) of the Infrastructure Investment and Jobs Act (US-8).

> (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);[44]
>
> (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.[45]

24. In its panel request and first written submission, 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]".[46] 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.[47]

---

[44] "The "covered nations" are the People's Republic of China (PRC), the Russian Federation, the Democratic People's Republic of North Korea, and the Islamic Republic of Iran. *See* William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, P.L. 116-283, 134 Stat. 3388 (January 1, 2021) (definition of "covered nation" codified at 10 U.S.C. Section 4872(d)(2) (renumbered from 10 U.S.C. Section 2533c)) (US-9).

[45] Infrastructure Investment and Jobs Act, P.L. 117-58, 135 Stat. 429, 963-64 (November 15, 2021) (US-8).

[46] Section 40207(a)(5)(C) of the Infrastructure Investment and Jobs Act (US-8). *See* China's First Written Submission, para. 29.

[47] William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, P.L. 116-283, 134 Stat. 3388 (January 1, 2021) (definition of "covered nation" codified at 10 U.S.C. Section 4872(d)(2) (renumbered from 10 U.S.C. Section 2533c)) (US-9).

25. A foreign entity also may be excluded under the FEOC exclusionary rule if it is designated as a foreign terrorist organization by the U.S. Department of State, appears on a list of specially designated nationals and blocked persons maintained by Treasury's Office of Foreign Assets Control, or is convicted under certain statutes including the Espionage Act and International Emergency Economic Powers Act.[48] Further grounds for exclusion include a determination by the Secretary of Energy, in consultation with the Secretary of Defense and the Director of National Intelligence, that a foreign entity is engaged in unauthorized conduct that is detrimental to the national security or foreign policy of the United States.[49] The U.S. Department of Energy (DOE) is responsible for issuing implementing guidance regarding the statutory definition of FEOC that is cross-referenced in Section 30D.

26. Treasury and the IRS, and DOE, have issued several guidance documents regarding the above-mentioned requirements for Section 30D, including proposed and final rules. On May 6, 2024, the Treasury and the IRS issued the final rule *Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern*, with an effective date of July 5, 2024, and varying applicability dates depending on the requirement.[50] This rule addressed, among other things, the North American assembly requirement, the critical minerals sourcing requirement, and the battery components sourcing requirement, as well as how clean vehicle manufacturers must demonstrate compliance with the FEOC exclusionary rule. The final rule reflects final versions of those proposed rules issued April 17 and December 4, 2023.[51]

27. On December 4, 2023, DOE issued the proposed rule *Interpretation of Foreign Entity of Concern, Proposed Interpretive Rule*, with a public comment period that closed January 3, 2024.[52] On May 6, 2024, DOE issued a final rule *Interpretation of Foreign Entity of Concern, Final Interpretive Rule*, which entered into effect upon publication, although the requirements addressed in the rule have varying applicability dates.[53] The proposed and final interpretive rules clarify the third element of the FEOC definition (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]") by interpreting key statutory

---

[48] Sections 40207(a)(5)(A), (B), (D) of the Infrastructure Investment and Jobs Act (US-8).

[49] Section 40207(a)(5)(E) of the Infrastructure Investment and Jobs Act (US-8).

[50] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18).

[51] Internal Revenue Service, Section 30D New Clean Vehicle Credit, Proposed Rule, 88 FR 23370 (April 17, 2023) (CHN-20); Internal Revenue Service, Section 30D Excluded Entities, Proposed Rule, 88 FR 84098 (December 4, 2023) (CHN-21). An additional set of proposed regulations, which addressed the advance payment program, were issued in October 2023. Internal Revenue Service, Transfer of Clean Vehicle Credits Under Section 25E and Section 30D, 88 FR 70310 (October 10, 2023) (US-10).

[52] Department of Energy, Interpretation of Foreign Entity of Concern, Proposed Rule, 88 FR 84082 (December 4, 2023) (CHN-22).

[53] Department of Energy, Interpretation of Foreign Entity of Concern, Final Rule, 89 FR 37079 (May 6, 2024) (CHN-23).

terms, including "government of a foreign country"; "foreign entity"; "subject to the jurisdiction"; and "owned by, controlled by, or subject to the direction". For the purpose of Section 30D, qualified manufacturers must certify compliance with the FEOC rule on an ongoing basis by submitting "periodic written reports" to the IRS.[54]

28. 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. The Section 45Y and Section 48E credits will begin to phase out the later of (a) 2032, or (b) the second year after the Secretary of the Treasury "determines that the annual greenhouse gas emissions from the production of electricity in the United States are equal to or less than 25 percent of the annual greenhouse gas emissions from the production of electricity in the United States for calendar year 2022".[55]

29. 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, as modified and extended by the IRA, generally provides a tax credit for investment in renewable energy projects beginning construction before January 1, 2025.[56] Eligible recipients include fuel cell, solar, geothermal, small wind, energy storage, biogas, microgrid controllers, and combined heat and power properties.[57] Section 48E, created by the IRA as a replacement to Section 48, 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).[58] Eligible recipients are facilities that generate electricity with a greenhouse gas emissions rate that is not greater than zero and qualified energy storage technologies.[59] For both Section 48 and Section 48E, the base credit amount generally is 6

[54] Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18); Treas. Reg. § 1.30D-6.

[55] 26 U.S.C. Sections 45Y(d)(3) and 48E(e)(2) as created by IRA sections 13701(a) and 13702(a) (CHN-4). Phase-out is based on beginning of construction dates.

[56] 26 U.S.C. Section 48 as modified and extended by IRA section 13102 (CHN-4). For geothermal heat pumps, the credit is available for projects beginning construction before January 1, 2035.

[57] 26 U.S.C. Section 48(a)(3)(A).

[58] 26 U.S.C. Section 48E as created by IRA section 13702 (CHN-4).

[59] 26 U.S.C. Section 48E(b)(3) as created by IRA section 13702(a) (CHN-4).

percent of the qualified investment.[60] The base credit amount generally is increased to 30 percent if separate requirements for prevailing wage and apprenticeship are met.[61]

30. 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, as modified and extended by the IRA, provides a tax credit for production of electricity from renewable sources for projects beginning construction before January 1, 2025.[62] Eligible recipients include facilities generating electricity from wind, biomass, geothermal, solar, landfill and trash, hydropower, and marine and hydrokinetic renewable energy.[63] Section 45Y, created by the IRA as a replacement to Section 45, 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).[64] Eligible recipients are facilities generating electricity for which the greenhouse gas emissions rate is not greater than zero.[65] 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.[66] The base credit amount generally is multiplied by 5 if separate requirements for prevailing wage and apprenticeship are met.[67]

31. A domestic content bonus credit is available to increase the amount of the credit determined under the renewable energy ITC/PTCs, respectively.[68] 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 (as determined under section [sic] 661 of title 49, Code of Federal Regulations)."[69] For steel and iron, eligible projects must use 100 percent U.S.-produced steel and iron for construction materials;[70] for manufactured products, a certain percentage of the total cost of components incorporated into an eligible product must be produced in the United States,

---

[60] 26 U.S.C. Section 48(a) and Section 48E(a)(2). Under Section 48, for geothermal heat pump property, the base credit amount is 6 percent for the first 10 years, then reduces to 5.2 percent in 2033 and 4.4 percent in 2034.

[61] 26 U.S.C. Section 48(a)(9) and Section 48E(a)(2)(A)(ii).

[62] 26 U.S.C. Section 45 as modified and extended by IRA section 13101 (CHN-4).

[63] 26 U.S.C. Section 45(c)(1).

[64] 26 U.S.C. Section 45Y as created by IRA section 13701 (CHN-4).

[65] 26 U.S.C. Section 45Y(b)(1)(A).

[66] 26 U.S.C. Section 45(a) and (b)(2), 26 U.S.C. Section 45Y(a)(2)(A) and (c).

[67] 26 U.S.C. Section 45(b)(6) and Section 45Y(a)(2)(B).

[68] 26 U.S.C. Section 45(b)(9), Section 45Y(g)(11), Section 48(a)(12), and Section 48E(a)(3)(B), as created or amended by IRA sections 13101(g), 13701(a), 13102(l), and 13702(a) (CHN-4).

[69] 26 U.S.C. Section 45(b)(9)(B)(i), Section 45Y(g)(11)(B)(i), Section 48(a)(12)(B), and Section 48E(a)(3)(B).

[70] 26 U.S.C. Section 45(b)(9) and (b)(10), Section 45Y(g)(11) and (g)(12), Section 48(a)(12), and Section 48E(a)(3)(B).

depending on the construction timeline and type of project.[71] The United States notes, however, that under Treasury and IRS guidance the steel and iron requirement has been interpreted to apply only to structural steel or iron items (*e.g.*, rebars, wind towers, foundation elements, etc.) and the requirement does not apply to steel or iron that is contained in a manufactured product; thus, a project may contain a significant amount of steel and iron that is not produced in the United States.

32. For Section 45 and Section 45Y, the general base credit amount of 0.3 cents per kilowatt hour of electricity, or 1.5 cents per kilowatt hour of electricity if separate requirements for prevailing wage and apprenticeship are met, produced at a qualified facility (adjusted for inflation) is increased by 10 percent if the project meets the domestic content requirement.[72] For Section 48 and Section 48E, the general base credit amount of 6 percent of the qualified investment, or 30 percent of the qualified investment if prevailing wage and apprenticeship requirements are met, is increased by either 2 percentage points or 10 percentage points for projects meeting the domestic content requirement, depending on the satisfaction of at least one of three separate requirements.[73] If at least one of the three separate requirements is satisfied, the bonus is 10 percentage points. If none of the three separate requirements is satisfied, the bonus is 2 percentage points.

33. The renewable energy ITC/PTCs may be claimed as general business credits by taxpayers, including individuals and corporate persons, in filing annual federal income tax returns. A taxpayer may only claim one of the renewable energy ITC/PTCs with respect to a qualified facility or energy property.[74] 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.

34. The IRS has issued final rules on the operation of the renewable energy ITC/PTCs. Regarding Section 48, the IRS issued final rules providing definitions for various types of energy property eligible for the tax credit and rules for determining whether investments in energy property are eligible, such as ownership and calculation rules.[75] Regarding Section 45Y and

---

[71] 26 U.S.C. Section 45(b)(9) and (b)(10), Section 45Y(g)(11) and (g)(12), Section 48(a)(12), and Section 48E(a)(3)(B).

[72] 26 U.S.C. Section 45(b)(9) and Section 45Y(g)(11).

[73] 26 U.S.C. Section 48(a)(12), and Section 48E(a)(3)(B). The three separate requirements are: (i) the energy project has a maximum net output of less than 1 megawatt of electrical (as measured in alternating current) or thermal energy; (ii) construction of the energy project began before January 29, 2023; or (iii) the energy project satisfies prevailing wage and apprenticeship requirements.

[74] 26 U.S.C. Section 45Y(b)(1)(D) and Section 48E(b)(3)(C).

[75] Internal Revenue Service, Definition of Energy Property and Rules Applicable to the Energy Credit, Final Rule, 89 FR 100598 (December 12, 2024) (CHN-34). *See also* Internal Revenue Service, Definition of Energy Property and Rules Applicable to the Energy Credit, Proposed Rule, 88 FR 82188 (November 22, 2023) (CHN-33); Internal Revenue Service, Definition of Energy Property and Rules Applicable to the Energy Credit, Proposed Rule (*Correction*), 89 FR 2182 (January 12, 2024) (US-11); Internal Revenue Service, Definition of Energy Property and

Section 48E, the IRS issued final rules for determining greenhouse gas emissions rates resulting from the production of electricity; petitioning for provisional emissions rates; and determining eligibility for these credits in various circumstances.[76] Regarding the domestic content bonus credit, the IRS issued guidance documents clarifying the bonus for all four renewable energy ITC/PTCs.[77] This guidance includes a safe harbor that taxpayers may elect to use to qualify for the domestic content bonus credit instead of determining the manufacturer's direct costs of producing manufactured products and manufactured product components in an applicable project.[78] The IRS has not yet issued proposed or final regulations regarding the domestic content bonus credit but intends to do so. Until such regulations are issued, taxpayers may rely on the guidance for the domestic content bonus credit requirements for any qualified facility, energy project, or energy storage technology the construction of which begins before the date that is 90 days after the date of publication of the forthcoming proposed regulations in the Federal Register.[79]

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

35. The Section 30D Clean Vehicle Tax Credit is not a prohibited import substitution subsidy under Article 3.1(b) of the SCM Agreement because the credit is not contingent upon the use of domestic over imported goods. Accordingly, the Section 30D Clean Vehicle Tax Credit also is not inconsistent with Article 3.2 of the SCM Agreement.

Rules Applicable to the Energy Credit, Proposed Rule (*Second Correction*), 89 FR 13293 (February 22, 2024) (US-12).

[76] Internal Revenue Service, Section 45Y Clean Electricity Production Credit and Section 48E Clean Electricity Investment Credit, Final Rule, 90 FR 4006 (January 15, 2025) (CHN-37). *See also* Internal Revenue Service, Section 45Y Clean Energy Production Credit and Section 48E Clean Electricity Investment Credit, Proposed Rule, 89 FR 47792 (June 3, 2024) (CHN-35).

[77] Internal Revenue Service, Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E (May 12, 2023) (Notice 2023-38) (CHN-38); Internal Revenue Service, Domestic Content Bonus Credit Amounts under the Inflation Reduction Act of 2022: Expansion of Applicable Projects for Safe Harbor in Notice 2023-38 and New Elective Safe Harbor to Determine Cost Percentages for Adjusted Percentage Rule (May 16, 2024) (Notice 2024-41) (CHN-39); Internal Revenue Service, Domestic Content Bonus Credit Amounts under the Inflation Reduction Act of 2022: First Updated Elective Safe Harbor modifying Notice 2024-41 (January 16, 2025) (Notice 2025-08) (CHN-41).

[78] Internal Revenue Service, Domestic Content Bonus Credit Amounts under the Inflation Reduction Act of 2022: Expansion of Applicable Projects for Safe Harbor in Notice 2023-38 and New Elective Safe Harbor to Determine Cost Percentages for Adjusted Percentage Rule (May 16, 2024) (Notice 2024-41) (CHN-39); Internal Revenue Service, Domestic Content Bonus Credit Amounts under the Inflation Reduction Act of 2022: First Updated Elective Safe Harbor modifying Notice 2024-41 (January 16, 2025) (Notice 2025-08) (CHN-41).

[79] Internal Revenue Service, Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E (May 12, 2023) (Notice 2023-38) (CHN-38), page 2; Internal Revenue Service, Domestic Content Bonus Credit Amounts under the Inflation Reduction Act of 2022: Expansion of Applicable Projects for Safe Harbor in Notice 2023-38 and New Elective Safe Harbor to Determine Cost Percentages for Adjusted Percentage Rule (May 16, 2024) (Notice 2024-41) (CHN-39), page 2; Internal Revenue Service, Domestic Content Bonus Credit Amounts under the Inflation Reduction Act of 2022: First Updated Elective Safe Harbor modifying Notice 2024-41 (January 16, 2025) (Notice 2025-08) (CHN-41).

36. Part II, Article 3 (Prohibition) prohibits two kinds of subsidies, including import substitution subsidies under Article 3.1(b), which provides in relevant part:

> Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited: …(b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

37. 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."[80] The Appellate Body also has interpreted the term "contingent" to mean "conditional" or "dependent for its existence on something else",[81] 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".[82]

38. Article 3.2 of the SCM Agreement then provides that "[a] Member shall neither grant nor maintain subsidies referred to in paragraph 1."

39. 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,[83] 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.

40. First, China attempts to break the critical minerals sourcing requirement—a single condition—into three separate conditions.[84] 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

---

[80] *The New Shorter Oxford English Dictionary*, (4th edition) (1993), p. 494 (US-15).

[81] *US – Tax Incentives (AB)*, para. 5.7; *Canada – Autos (AB)*, para. 123.

[82] *US – Tax Incentives (AB)*, para. 5.7; *Canada – Autos (AB)*, para. 130.

[83] China raises the issue of what type of financial contribution the Section 30D Clean Vehicle Tax Credit is under Article 1.1(a)(1), arguing that the credit is "revenue foregone" within the meaning of subparagraph (ii) where the individual taxpayer claims the credit when filing an annual income tax return, and a direct transfer of funds within the meaning of subparagraph (i) where the credit is transferred to a registered vehicle dealer. China's First Written Submission, paras. 151-159. However, the United States considers that the distinction is ultimately immaterial to the Panel's analysis as the United States does not dispute that the Section 30D Clean Vehicle Tax Credit is a financial contribution by the government within the meaning of Article 1.1(a)(1), whether the contribution falls under subparagraph (i) or subparagraph (ii).

[84] *See* China's First Written Submission, para. 162.

States has a free trade agreement in effect; or (iii) recycled in North America.[85] The conjunction "or" before "recycled in North America" in the statute makes clear that this single condition may be satisfied by any of the three options listed.

41. Therefore, critical minerals extracted, processed, or recycled outside of the United States may be used to satisfy the critical minerals requirement. Put differently, while option (i) provides that critical minerals extracted or processed in the United States may be used to satisfy the requirement, option (ii) alternatively allows for critical minerals extracted or processed outside of the United States (that is, in any country with which the United States has a free trade agreement in effect) to be used to satisfy the same requirement. Likewise, option (iii) allows for critical minerals that have been recycled in North America, *i.e.*, in the territory of the United States, Canada, or Mexico, to satisfy the requirement – that is, not exclusively sourced in the United States. For example, a vehicle powered by a battery with critical minerals sourced entirely from Chile or recycled entirely in Mexico could satisfy the critical minerals sourcing requirement.

42. China also attempts to break the battery components sourcing requirement—a single condition—into three separate conditions.[86] 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.[87] Because North

---

[85] This provision states:

> (e) Critical mineral and battery component requirements
>
> (1) Critical minerals requirement
>
> (A) In general
>
> The requirement described in this subparagraph with respect to a vehicle is that, with respect to the battery from which the electric motor of such vehicle draws electricity, the percentage of the value of the applicable critical minerals (as defined in section 45X(c)(6)) contained in such battery that were-
>
> (i) extracted or processed-
>
> (I) in the United States, or
>
> (II) in any country with which the United States has a free trade agreement in effect, <u>*or*</u>
>
> (ii) recycled in North America,
>
> is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary).

26 U.S.C. Section 30D(e)(1)(A) (emphasis added).

[86] *See* China's First Written Submission, para. 163.

[87] As this provision states,

> (e) Critical mineral and battery component requirements
>
> . . . .
>
> (2) Battery components

America is not limited to the United States, this single condition may be satisfied by use of battery components sourced in the territories of any of the three countries listed in the definition of North America. That is, 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.

43. 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), which prohibits only "subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods". By China's logic, a subsidy with a condition that may be satisfied by use of goods on a most-favored-nation basis would be inconsistent with Article 3.1(b) because one way to satisfy the condition would be to use domestic goods. Such an interpretation is not supported by the text of Article 3.1(b) as it misconstrues the ordinary meaning of the concept of a "condition." That is, China's interpretation erroneously treats as a "condition" the existence of a single scenario among many that could result in receipt of the subsidy. This reads out of Article 3.1(b) that the subsidy must be "contingent" on the use of domestic "over" imported goods.

44. For these reasons, China has failed to establish that the Section 30D Clean Vehicle Tax Credit is a prohibited import substitution subsidy under Article 3.1(b) of the SCM Agreement because the subsidy is not contingent upon the use of domestic over imported goods. Accordingly, the Section 30D Clean Vehicle Tax Credit also is not inconsistent with Article 3.2 of the SCM Agreement. Likewise, the Panel should also reject China's request to withdraw the measure at issue without delay in accordance with Article 4.7 of the SCM Agreement,[88] as China has failed to establish that the Section 30D Clean Vehicle Tax Credit is a prohibited subsidy.

> (A) In general
>
> The requirement described in this subparagraph with respect to a vehicle is that, with respect to the battery from which the electric motor of such vehicle draws electricity, the percentage of the value of the components contained in such battery that were manufactured or assembled in North America is equal to or greater than the applicable percentage (as certified by the qualified manufacturer, in such form or manner as prescribed by the Secretary).)

26 U.S.C. Section 30D(e)(2). *See also* Internal Revenue Service, Clean Vehicle Credits Under Sections 25E and 30D; Transfer of Credits; Critical Minerals and Battery Components; Foreign Entities of Concern, Final Regulations, 89 FR 37706 (May 6, 2024) (CHN-18) ("North America means the territory of the United States, Canada, and Mexico as defined in 19 CFR part 182, Appendix A, § 1(1).").

[88] China's First Written Submission, para. 174.

IV. THE FEOC EXCLUSIONARY RULE UNDER THE SECTION 30D CLEAN VEHICLE CREDIT IS COVERED BY THE ESSENTIAL SECURITY EXCEPTION UNDER ARTICLE XXI(B) OF THE GATT 1994

45. With respect to China's claims related to the FEOC exclusionary rule, the United States invokes Article XXI(b) of the GATT 1994. As this provision states:

> Nothing in this Agreement shall be construed …
>
> > (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
> >
> > > (i) relating to fissionable materials or the materials from which they are derived;
> > >
> > > (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
> > >
> > > (iii) taken in time of war or other emergency in international relations.

46. As discussed in Section IV.A, Article XXI(b) is self-judging, and therefore, as discussed in Section IV.B, the sole finding that this Panel may make with respect to China's claims related to the FEOC exclusionary rule is to note the U.S. invocation of Article XXI(b).

A. ARTICLE XXI(B) IS SELF-JUDGING

47. 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 of Article XXI is confirmed by supplementary means of interpretation, including Uruguay Round negotiating history.[89]

48. As the United States has previewed to the Dispute Settlement Body,[90] the FEOC exclusionary rule for the Section 30D Clean Vehicle Tax Credit is an issue of national security. The United States "considers" that the FEOC exclusionary rule is "an[] action … necessary for

---

[89] U.S. interpretive arguments regarding Article XXI(b) are set out in full in the U.S. First Written Submission in *United States – Origin Marking (Hong Kong, China) (Panel)* (US-71) and incorporated by reference.

[90] *See* U.S. Reply to China Request for Consultations, WT/DS623/2 (April 5, 2024) ("Without prejudice to whether…the consultations request raises issues of national security not susceptible to review or capable of resolution by WTO dispute settlement, the United States accepts the request of China to enter into consultations."); *see also* U.S. Statement, Minutes of Meeting of Dispute Settlement Body (September 23, 2024) (WT/DSB/M/493), para. 3.6 ("China has also complained about requirements under the Inflation Reduction Act related to "foreign entities of concern", as defined by reference to U.S. national security legislation. As Members well know, it is the long-standing position of the United States, and numerous other Members historically, that issues of national security are not susceptible to review or resolution by WTO dispute settlement.").

the protection of [U.S.] essential security interests" pursuant to Article XXI(b) of the GATT 1994. 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.

49. 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.

50. As described above in Section II, 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. Subparagraphs (A), (B), and (D) address entities designated as foreign terrorist organizations by the Secretary of State, included on the Specially Designated Nationals and Blocked Persons List (SDN List) maintained by the Department of the Treasury's Office of Foreign Assets Control (OFAC), and alleged by the Attorney General to have been involved in various illegal activities, including espionage and arms exports, for which a conviction was obtained, respectively. Subparagraph (C) cross-references a definition of "covered nation" as related to a prohibition on the Secretary of Defense from procuring covered materials from those covered nations. Subparagraph (E) refers to foreign entities "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".[91]

51. 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.

B. BECAUSE ARTICLE XXI(B) IS SELF-JUDGING, THE SOLE FINDING THAT THE PANEL MAY MAKE IS TO NOTE THE U.S. INVOCATION

52. 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 Section 30D Clean Vehicle Tax Credit—consistent with its terms of reference and the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU)—is to note in the Panel's report that the United States has invoked its essential security interests.

53. The DSB has established the Panel's terms of reference under Article 7.1 of the DSU.[92] Under these standard terms of reference, the DSB has tasked the Panel (1) "[t]o examine" the matter and (2) to "make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for" in the covered agreements.

---

[91] 26 U.S.C. Section 30D(d)(7) as amended by IRA section 13401(e)(2) (CHN-4) cross-references section 40207(a)(5) of the Infrastructure Investment and Jobs Act (US-8).

[92] *United States – Certain Tax Credits Under the Inflation Reduction Act*, Constitution of the Panel Established at the Request of China, Note by the Secretariat, WT/DS623/4 (December 20, 2024).

54. Article 11 of the DSU similarly states that the "function of panels" is to "assist the DSB in discharging its responsibilities" under the DSU itself and the covered agreements. Article 11 provides that a panel "should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements," and "such other findings *as will assist the DSB in making the recommendations* or in giving the rulings provided for in the covered agreements" (italics added).

55. In this dispute, the Panel has been tasked by the DSB to examine the matter and to make such findings as may lead to a recommendation to bring a WTO-inconsistent measure into conformity with the WTO Agreement. In the context of the U.S. invocation of Article XXI(b) in this dispute regarding the FEOC exclusionary rule, such an assessment begins with interpreting Article XXI(b) in accordance with the customary rules of interpretation of public international law as reflected in Articles 31 to 33 of the Vienna Convention on the Law of Treaties. And that objective assessment of Article XXI(b) leads to the understanding that the sole finding that the Panel may make is to recognize the Member's invocation of Article XXI(b).

56. The panel objectively assesses the facts of the case by noting that the responding Member has invoked Article XXI(b). The panel objectively assesses the applicability of and conformity with the relevant covered agreements by first interpreting Article XXI(b) in accordance with the customary rules of interpretation, and—once it has done so and determined Article XXI(b) to be self-judging—finding Article XXI(b) applicable. Nothing in the DSU—including Article 11 of the DSU—requires otherwise.

57. This result is consistent with DSU Article 19. Article 19.1 provides that "recommendations" are issued "[w]here a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement" and are recommendations "that the Member concerned bring the measure into conformity with that agreement." DSU Article 19.2 clarifies that "in their findings and recommendations, the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreement."

58. Invocation of Article XXI(b) means that an essential security action cannot be found by a panel or the Appellate Body to be inconsistent with a covered agreement. It would diminish a Member's "right" to take action it considers necessary for the protection of its essential security interests if a panel or the Appellate Body purported to find such an action inconsistent with Article XXI(b). Thus, the sole finding that the Panel may make regarding the FEOC exclusionary rule under the Section 30D 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. No additional findings concerning the claims raised by China would be consistent with the DSU, in light of the text of Article XXI(b).

V. THE MEASURES AT ISSUE ARE JUSTIFIED UNDER ARTICLE XX(A) OF THE GATT 1994

59. 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.[93] 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.[94]

60. 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".

61. 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.[95] 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".[96]

62. In Section V.A., we first explain that the challenged measures protect public morals within the meaning of Article XX(a). We demonstrate that China's non-market policies and practices resulting in China's global dominance of the clean vehicle and renewable energy

---

[93] While the Section 30D Clean Vehicle Tax Credit is not inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement, that measure would also be justified under Article XX(a) of the GATT 1994.

[94] We note that this dispute is not the first effort by China to seek to attack a WTO Member's response to its global domination of these sectors. China challenged U.S. safeguard measures on solar cells and modules and did not prevail in that challenge. *US – Safeguard Measure on PV Products (China) (Panel)*, para. 8.1. China has also recently challenged the application of countervailing duties by the European Union against Chinese subsidized EVs. *EU – Definitive CVDs on BEVs (China)*. This pattern of harassing litigation further reveals that China intends to dominate these sectors globally at any cost.

[95] GATT 1994, Art. XX(a). *See also Colombia – Textiles (Panel)*, para. 7.293 ("In the context of Article XX(a), … a Member wishing to justify its measure must demonstrate: (i) that it has adopted or enforced the measure 'to protect public morals', and (ii) that the measure is ''necessary' to protect such public morals.").

[96] The Chapeau of Article XX provides

> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures . . . .

sectors violate the U.S. public morals against unfair competition, forced labor, theft, and coercion. In Section V.B., we demonstrate that the measures at issue are necessary within the meaning of Article XX(a) due to China's global dominance of the clean vehicle and renewable energy sectors and the importance of the U.S. public morals against unfair competition, forced labor, theft, and coercion. In Section V.C., we demonstrate that the measures at issue are not being applied in a manner inconsistent with the chapeau of Article XX. That is, the clean vehicle and renewable energy tax credits do not constitute arbitrary or unjustifiable discrimination where the same conditions prevail, nor are they a disguised restriction on international trade. In sum, the United States establishes that the measures are justified under Article XX(a) of the GATT 1994.

A. THE MEASURES AT ISSUE "PROTECT PUBLIC MORALS" WITHIN THE MEANING OF ARTICLE XX(A) OF THE GATT 1994

63. As explained below, the challenged measures are necessary to protect public morals of the United States within the meaning of Article XX(a). China's non-market policies and practices have resulted in China's global dominance of the clean vehicle and renewable energy sectors. The clean vehicle and renewable energy tax credits created or amended by the IRA are intended to prevent unfair competition and to restore market-oriented opportunities for U.S. businesses and workers.

64. In Section V.A.1, we first explain the legal interpretation of Article XX(a), including the key term "public morals". In Section V.A.2, we explain how U.S. public morals include notions of fair, market-oriented competition; norms on forced labor and protection of fundamental labor rights; and norms against forced technology transfer, including cyber theft, economic espionage, and the misappropriation of trade secrets. In Section V.A.3, we explain that China's non-market policies and practices have resulted in China's global dominance of the clean vehicle and renewable energy sectors, violating U.S. public morals.

1. Legal Framework

65. 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,"[97] whereas the ordinary of the meaning of "morals" is defined as "of or pertaining to the distinction between right and wrong."[98] 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

[97] *See The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 2404 (US-15).

[98] *See The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 1827 (US-15).

by or on behalf of a community or nation". [99] It follows that the public morals of each Member may vary "in their respective territories, according to their own systems and scales of values."[100]

66. 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) of the GATT 1994.[101] Other measures determined by prior adjudicators to "protect public morals" have also included measures concerning: (1) "money laundering, organized crime, fraud, underage gambling, and pathological gambling;"[102] (2) the dissemination of audio visual products and publications that contain morally objectionable content;[103] and (3) harm to animal welfare.[104]

[99] *See Brazil – Taxation (Panel)*, para. 7.520; *EC – Seal Products (Panel)*, para. 7.380; *US – Gambling (Panel)*, paras. 6.461-6.468; *Colombia – Textiles (Appellate Body),* footnote 155.

[100] *See Brazil – Taxation (Panel)*, para. 7.520.

[101] *US – Tariff Measures (Panel)*, para. 7.140.

[102] *See US – Gambling (Panel*), para. 6.486 – 6.497 (finding that the Illegal Gambling Act was a measure to "protect public morals" because it "was adopted to address concerns such as those pertaining to money laundering, organized crime, fraud, underage gambling and pathological gambling.").

[103] *See China – Publications and Audiovisual Products (Panel)*, para. 7.766 ("It is clear to us that the above-mentioned Chinese requirements that the content of reading materials and finished audiovisual products must be examined prior to importation, and that such products cannot be imported if they contain prohibited content, are measures to protect public morals in China.").

[104] *See EC — Seal Products (Panel*), paras. 7.410 – 7.411.

2. The measures at issue "protect public morals" of the United States within the meaning of Article XX(a) because they uphold U.S. standards of right and wrong

67. 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 the state and federal laws of the United States.

68. The U.S. belief in promoting fair competition is a key aspect of the U.S. culture and value system, in contrast to China's use of non-market policies and practices that promotes unfair competition. The U.S. also has fundamental norms against forced labor, theft, and coercion. These standards of right and wrong are reflected in U.S. civil and criminal laws, such as those on unfair competition,[105]contracts and torts,[106] patents,[107] governmental takings of property,[108] forced labor,[109] cyber-hacking,[110] and trade secret theft.[111]

69. First, the United States has norms against unfair competition, as reflected in U.S. laws against anti-competitive behavior, such as the Sherman Act[112] and the Federal Trade Commission Act.[113]

---

[105] *See* Federal Trade Commission Act, Section 5 U.S.C § 45 (Unfair methods of competition unlawful; prevention by the Commission) (US-16); Sherman Act, Section 15 U.S.C. § 1 ("Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal") (US-17).

[106] Restatement (Second) of Contracts, § 205 (Duty of Good Faith and Fair Dealing) ("Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.") (US-18); Restatement (Second) of Torts § 766A ("One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person, by preventing the other from performing the contract or causing his performance to be more expensive or burdensome, is subject to liability to the other for the pecuniary loss resulting to him.") (US-19).

[107] *See* 35 U.S.C. § 200 (Patents Policy and objective) (US-20):

> It is the policy and objective of the Congress to use the patent system to p*romote the utilization of inventions* arising from federally supported research or development; to encourage maximum participation of small business firms in federally supported research and development efforts; to promote collaboration between commercial concerns and nonprofit organizations, including universities; to ensure that inventions made by nonprofit organizations and small business firms are used in a manner to promote *free competition* and enterprise without unduly encumbering future research and discovery; to promote the commercialization and public availability of inventions made in the United States by United States industry and labor." (emphasis added)

[108] *See, e.g.*, U.S. Constitution, Fifth Amendment ("No person shall … be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.") (US-21).

[109] *See, e.g.,* U.S. Constitution, Thirteenth Amendment ("Neither 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.") (US-21); 22 U.S.C. § 7101 (US-22); 19 U.S.C. § 1307 ("All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict

70. 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 best 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. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic political and social institutions.[114]

71. 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

---

labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States . . . .") (US-23); Uyghur Forced Labor Prevention Act ("It is the policy of the United States . . . to strengthen the prohibitions against the importation of goods made with forced labor, including by ensuring that the Government of the People's Republic of China does not undermine the effective enforcement of section 307 of the Tariff Act of the 1930 (19 U.S.C. 1307) . . . .") (US-24).

[110] *See* Computer Fraud and Abuse Act (18 U.S.C. § 1030) (US-25); *see in particular* 18 U.S.C. § 1030 (a)(4):

> Whoever— (4) knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer and the value of such use is not more than $5,000 in any 1-year period . . . shall be punished as provided in subsection (c) of this section.

[111] *See* Economic Espionage Act of 1996 (18 U.S. Code § 1831-1832) (US-26). The EEA contains two separate provisions that criminalize the theft or misappropriation of trade secrets: 18 U.S.C. § 1831 (economic espionage) and 18 U.S.C. § 1832 (trade secret theft); Uniform Trade Secrets Act (1985) (US-27), Section 1 (defining trade secret theft to include "espionage through electronic or other means."). The Uniform Trade Secrets Act (1985) has been adopted by every U.S. state (US-27).

[112] *See* Sherman Act, Section 15 U.S.C. § 1 ("Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal") (US-17).

[113] *See* Federal Trade Commission Act, Section 15 U.S.C § 45 ("Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.") (US-16).

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

"preservation of our democratic political and social institutions".[115] Accordingly, certain violations of these laws, such as monopolization, are even criminalized.[116]

72. Moreover, the United States maintains and enforces laws against the use of forced labor. As an initial matter, 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."[117] 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.[118]

73. 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.[119] The United States has recently bolstered the enforcement of this prohibition through the Uyghur Forced Labor Prevention Act (UFLPA),[120] 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. In order to monitor U.S. enforcement of the prohibition under Section 307, the President established the Forced Labor Enforcement Task Force, composed of representatives from U.S. executive departments and agencies.[121]

---

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

[116] Sherman Act, 15 U.S.C. § 1 ("Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.") and *Sherman Act*, 15 U.S.C. § 2 ("Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.") (US-17).

[117] U.S. Constitution, Thirteenth Amendment (US-21).

[118] 22 U.S.C. § 7101, *et. seq.* (US-22). In enacting this Act, Congress found that "the United States outlawed slavery and involuntary servitude in 1865, recognizing them as evil institutions that must be abolished." 22 U.S.C. § 7101(b)(22).

[119] 19 U.S.C. § 1307 (US-23).

[120] Uyghur Forced Labor Prevention Act (US-24).

[121] Executive Order 13923, "Establishment of the Forced Labor Enforcement Task Force Under Section 741 of the United States-Mexico-Canada Agreement Implementation Act", May 15, 2020 (US-29).

74. In addition, the act of "theft" is a criminal offense throughout the United States.[122] U.S. laws also criminalize the specific acts of cyber-enabled theft,[123] economic espionage, and the misappropriation of trade secrets[124] (including though the act of "bribery" or "extortion"). While community standards of right and wrong can be derived from many sources (including "prevailing social, cultural, ethical and religious values"[125]), standards of right and wrong are clearly reflected in a jurisdiction's *criminal* law.[126]

75. 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. As described below, however, through its non-market policies and dominance of clean vehicle and renewable energy sectors, China seeks to bring about unfair and non-market-oriented competition globally, including in the U.S. market.

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

76. 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,[127] and has condemned one-sided, anti-competitive policies and practices of foreign governments.[128] 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

---

[122] *See, e.g.,* California Code, Penal Code § 484 (General Theft Statute) (US-30); Texas Penal Code, Title 7, Chapter 31 (Offenses against Property – Theft) (US-31); 18 U.S.C. Ch. 31 (Embezzlement and Theft) (US-32); 18 U.S.C. § 1832 (Theft of Trade Secrets) (US-27).

[123] *See* Computer Fraud and Abuse Act (18 U.S.C. § 1030) (US-25); *see in particular* 18 U.S.C. § 1030 (a)(4):

> Whoever— (4) knowingly and with intent to defraud, accesses a protected computer without authorization, or exceeds authorized access, and by means of such conduct furthers the intended fraud and obtains anything of value, unless the object of the fraud and the thing obtained consists only of the use of the computer and the value of such use is not more than $5,000 in any 1-year period . . . shall be punished as provided in subsection (c) of this section.

[124] *See* Economic Espionage Act of 1996 (18 U.S. Code § 1831-1832) (US-26). The EEA contains two separate provisions that criminalize the theft or misappropriation of trade secrets: 18 U.S.C. § 1831 (economic espionage) and 18 U.S.C. § 1832 (trade secret theft); Uniform Trade Secrets Act (1985), Section 1 (defining trade secret theft to include "espionage through electronic or other means.") (US-27). The Uniform Trade Secrets Act (1985) has been adopted by every U.S. state (US-27).

[125] *See US—Gambling (Panel)*, para. 6461.

[126] *See The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 549 (noting that the word "crime" refers to "sinfulness, wickedness, wrongdoing" or "an evil or injurious act; a grave offence.") (US-15).

[127] The White House, America First Trade Policy Presidential Memorandum, Jan. 20, 2025 (US-33).

[128] The White House, Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties Presidential Memorandum, Feb. 21, 2025 (US-34).

behavior" and promises that "USTR will look broadly at the bilateral relationship to identify, and respond to, additional unfair practices."[129]

77. 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 to effectively deter and respond to 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.[130] To this end, the United States and other G7 partners focused on addressing non-market excess capacity.

78. In July 2024, the United States and Japan engaged on non-market policies and practices during discussions of the U.S.-Japan Partnership on Trade.[131] Earlier, in March 2023, the United States and Japan agreed to address non-market policies and practices in the critical minerals sector.[132]

79. 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.[133] As observed in that statement, trade-related economic coercion and non-market policies and practices threaten the livelihoods of our citizens, harm our workers and businesses, and could undermine global security and stability.[134]

---

[129] The President's 2025 Trade Policy Agenda, p. 3 (US-35).

[130] *See* G7 Trade Ministers' Statement (2024) (US-36). This followed on earlier statements by G7 Leaders and Trade Ministers expressing concern and intent to take action with respect to non-market policies and practices. *See, e.g.*, G7 Leaders' Communique (2022) (US-37) (recognizing "trade distorting actions by state-owned enterprises, notably those that lead to excess capacity"); G7 Trade Ministers' Statement (2022) (US-38) (recognizing "harmful industrial subsidies, including those that lead to excess capacity" and "market distorting actions of state-owned enterprises"); G7 Leaders' Statement on Economic Resilience and Economic Security (2023) (US-39) (recognizing "harmful industrial subsidies"); and G7 Trade Ministers' Statement (2023) (US-40) (recognizing "pervasive, opaque, and harmful industrial subsidies" and "market distortive practices of state-owned enterprises").

[131] Office of the U.S. Trade Representative, Readout of the Fifth Round of Meetings under the U.S.-Japan Partnership on Trade, July 31, 2024 (US-41).

[132] As stated in the Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chains (March 28, 2023), Article 3.4 (US-42):

> In order to promote fair competition and market-oriented conditions for trade in critical minerals, the Parties shall confer on potential effective and appropriate domestic measures to address non-market policies and practices of non-Parties affecting trade in critical minerals and on issues relating to global critical minerals supply chains, including extraction and processing capacity and trends, price differences between markets, domestic industry conditions, and trade flows. The Parties may share publicly available data with respect to trade in critical minerals, including from other markets.

[133] Joint Declaration Against Trade-Related Economic Coercion and Non-Market Policies and Practices, June 9, 2023 (US-43).

[134] Joint Declaration Against Trade-Related Economic Coercion and Non-Market Policies and Practices, June 9, 2023 (US-43).

80. The United States led efforts in the United States–European Union Trade and Technology Council (TTC) to engage European Union (EU) partners on effective means to address non-market policies and practices, economic coercion, and other issues of concern posed by third countries, including China. In September 2021, the United States and the EU in their Inaugural TTC Joint Statement, 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".[135]

81. 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.[136] 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.[137]

82. In May of 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.[138] Ministers of all three countries also endorsed a joint statement on market-oriented conditions, noting that their citizens and businesses operate under market-oriented conditions and agreed to engage with other trading partners in identifying means to maintain market-oriented conditions.[139]

83. As these U.S. statements and actions over the years make clear, therefore, the U.S. norms against unfair competition, forced labor, theft, and coercion are deeply held and enduring. They constitute public morals within the meaning of Article XX(a).[140] As described below, China's non-market policies and dominance of the clean vehicle and renewable energy sectors deprives market-oriented businesses and their workers of commercial opportunities, and lessens competition. Through the targeting of these sectors, China has also increased risk and reduced U.S. supply chain resilience.

---

[135] U.S.-EU Trade and Technology Council Inaugural Joint Statement, Sept. 29, 2021 (US-77).

[136] Importance of Market-Oriented Conditions to the World Trading System, Statement from Brazil, Japan, and the United States, WT/GC/W/803/Rev.1, Oct. 2, 2020.

[137] Importance of Market-Oriented Conditions to the World Trading System, Statement from Brazil, Japan, and the United States, WT/GC/W/803/Rev.1, Oct. 2, 2020.

[138] Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union, Sept. 25, 2018 (US-44).

[139] Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union, Sept. 25, 2018 (US-44).

[140] *US – Tariff Measures (Panel)*, para. 7.140.

3. China's non-market policies and practices that have resulted in China's global dominance of the clean vehicle and renewable energy sectors violate U.S. public morals

84. 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.

85. 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.[141]

- China dominates manufacturing capacity across all segments of the solar supply chain worldwide, with its share exceeding 80% in all stages (i.e., polysilicon, ingots, wafers, cells, and modules).[142]

- Global solar manufacturing capacity has grown by 2-3 times in the past five years, 90% of which occurred in China.[143]

- Estimates are that China produces far more solar panel modules than the world is on track to use.[144]

86. The result of China's sustained targeting has been the hollowing out of the solar industries in other Members, including the United States, Japan, and the European Union, that sought to compete on a level playing field.[145]

---

[141] International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 9 (US-1).

[142] International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 7 (US-1).

[143] National Renewable Energy Laboratory, Winter 2024 Solar Industry Update, Jan. 25, 2024, p. 3 (US-45).

[144] Cipher News, "Chinese solar panel manufacturing outpaces global demand," Feb. 28, 2024 (US-46).

[145] *See, e.g.*, Remarks by President Trump at Signing of Section 201 Actions, Jan. 23, 2018, pp. 1-2 ("My administration is committed to defending American companies, and they've been very badly hurt from harmful import surges that threaten the livelihood of their workers, of jobs…") (US-47); 2023 State of the Union Address by EU President von der Leyen at Strasbourg, Sept. 13, 2023, p. 4 ("We have not forgotten how China's unfair trade practices affected our solar industry. Many young businesses were pushed out by heavily subsidized Chinese competitors. Pioneering companies had to file for bankruptcy. Promising talents went searching for fortune abroad. This is why fairness in the global economy is so important – because it affects lives and livelihoods. Entire industries and communities depend on it. So, we have [sic] to be clear-eyed about the risks we face.") & p. 8 ("We have seen real bottlenecks along global supply chains, including because of the deliberate policies of other countries. Just think about China's export restrictions on gallium and germanium – which are essential for goods like semiconductor and solar panels.") (US-48).

87. China also dominates electric vehicle supply chains, as exhibited in illustration 1 and 2, below. Specifically, with respect to the electric vehicle supply chain:

- China produces approximately 60 percent of electric vehicles sold globally and approximately 80 percent of the batteries that power them.[146]

- 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 (LFP) production capacity, and more than 75 percent of global production of installed nickel manganese cobalt oxide.[147]

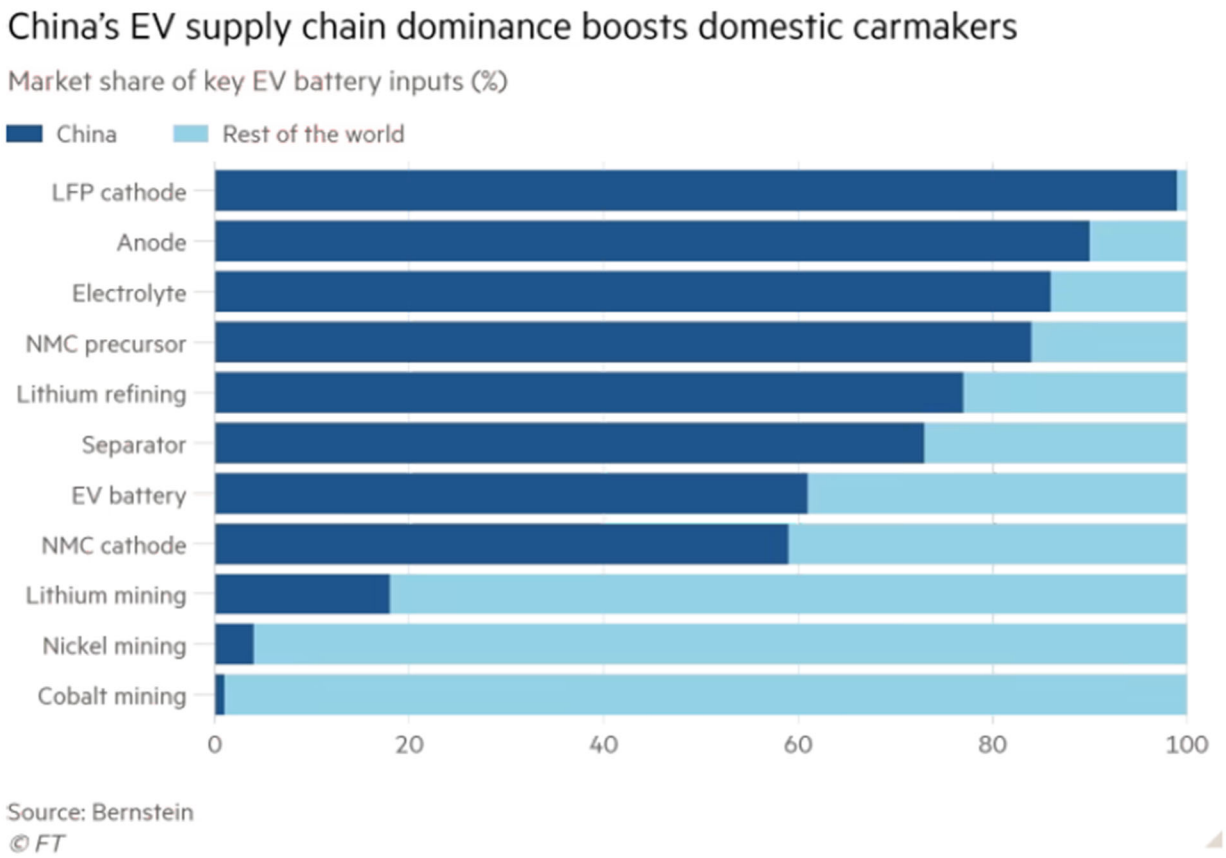
- In 2023, China's cathode and anode active material installed manufacturing capacity was four and nine times greater than global EV cell demand in 2023.[148]

[146] Washington Post, "How China pulled ahead to become the world leader in electric vehicles", March 3, 2025 (US-2).

[147] International Energy Agency, Global EV Outlook 2024, p. 80 (US-49).

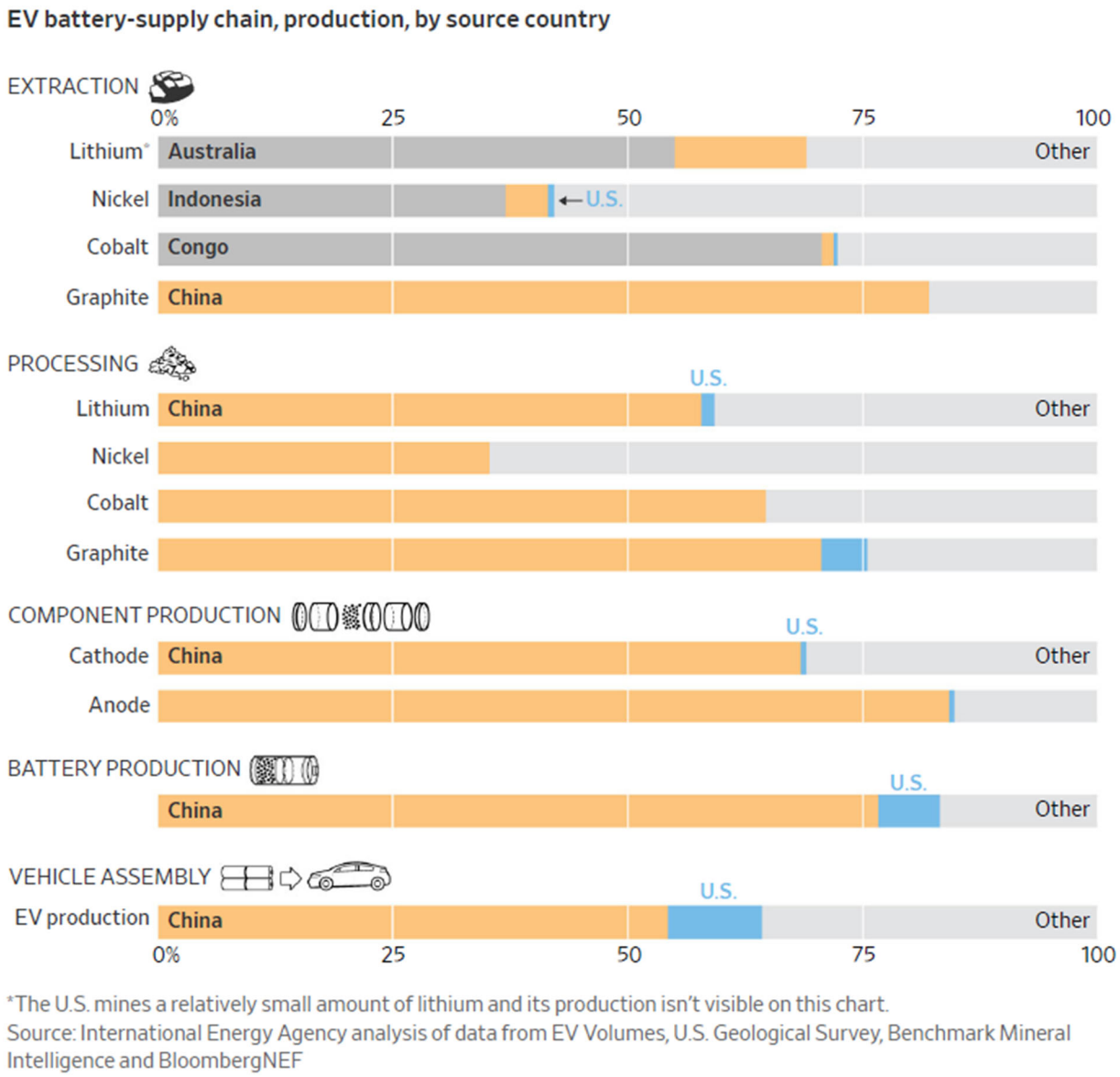
[148] International Energy Agency, Global EV Outlook 2024, p. 81 (US-49).

Illustration 1[149]



[149] Financial Times, "Foreign carmakers confront 'moment of truth' in China," Apr. 21, 2023 (US-72).

Illustration 2[150]



88. 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,[151] gallium is at 98 percent,[152] germanium

[150] Wall Street Journal, "U.S. Car Makers' EV Plans Hinge on Made-in-America Batteries," Feb. 6, 2023 (US-13)

[151] U.S. Geological Survey, Mineral Commodities Summaries 2024, p. 84 (US-3).

[152] U.S. Geological Survey, Mineral Commodities Summaries 2024, p. 74 (US-3).

is at 68 percent,[153] and tungsten is at 84 percent.[154] The IEA projects that by 2030 over 90 percent of battery-grade graphite and 77% of refined rare earths could come from China.[155]

89. It is also well documented that China has targeted the clean energy sectors for dominance.[156] 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.[157] The *Made in China 2025 Technology Greenbook* calls for the support of important solar applications, including the integration of solar cell technology with electric vehicle technology and the use of solar technology in power generation. The *Greenbook* also calls for focus on energy-efficient and new-energy vehicles.[158]

90. 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. These non-market policies and practices of China violate U.S. norms of right and wrong.

91. For example, with respect to the electric vehicle sector, China used a state-led, non-market industrial policy to first develop its automotive sector and then, over time, transition into the production of electric vehicles, a sector in which China now dominates domestically and is making increasing inroads in global markets. China has used various types of non-market policies and practices to secure its dominant position in the electric vehicle sector. For instance, 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

---

[153] U.S. Geological Survey, 2020-2021 Minerals Yearbook: China, May 2024, p. 9.1 (US-4).

[154] U.S. Geological Survey, 2020-2021 Minerals Yearbook: China, May 2024, p. 9.1 (US-4).

[155] International Energy Agency, Global Critical Minerals Outlook 2024, p. 8 (US-5).

[156] *See, e.g.,* China Daily, "'New three' paves way for high-quality growth," Feb. 21, 2024 (explaining that China has pivoted to targeting the "new three" – photovoltaics, lithium-ion batteries and new energy vehicles) (US-50); Information Technology & Innovation Foundation, "The Impact of China's Production Surge on Innovation in the Global Solar Photovoltaics Industry," October 2020, pp. 8-9 ("Although the Chinese central government gave little direct support to PV manufacturers before 2009, 'provincial and local governments were quick to get behind the new solar firms in their jurisdictions' . . . . A series of national planning documents signaled to lower levels of government that the central government considered renewable energy broadly to be a strategic industry and encouraged inflows of foreign equipment and investment to.") (US-51); Council on Foreign Relations, *Is 'Made in China 2025' a Threat to Global Trade?* (2019) (US-52); European Chamber of Commerce, *China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces* (2017), p. 10 (US-53).

[157] European Chamber of Commerce, *China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces* (2017), pp. 74-77 (US-53).

[158] European Chamber of Commerce, *China Manufacturing 2025: Putting Industrial Policy Ahead of Market Forces* (2017), pp. 74-77 (US-53).

mean securing significantly larger market shares abroad.[159] Also, China has engaged in massive and relentless subsidization of Chinese companies, including Chinese electric vehicle manufacturers,[160] as well as forced or pressured technology transfer.[161] China further 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.[162]

92. China further uses state-directed investment to unfairly acquire U.S. technology,[163] 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.

93. Further, China's market share targets for sectors 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, including the United States.[164] Indeed, market share targets necessitate substitution by Chinese companies at the expense of foreign competitors. That is, for Chinese companies to gain market share, they must displace foreign companies in existing markets and take new markets as they develop in the future.

---

[159] *See* CSIS, "Electric Shock: Interpreting China's Electric Vehicle Export Boom," Sept. 2023, p. 2 (US-54).

[160] CSIS, "The Chinese EV Dilemma: Subsidized Yet Striking," June 28, 2024, p. 3 (US-55).

[161] *See, e.g.*, Office of the U.S. Trade Representative, "Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation Under Section 301 of the Trade Act of 1974 ("Section 301 Report"), Mar. 22, 2018, p. 29 (US-56).

[162] European Commission, Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations, Oct. 4, 2024, p. 162 (US-57).

[163] *See* Section 301 Report (US-56), p. 65 ("[T]he Chinese government directs and unfairly facilitates the systematic investment in, and acquisition of, U.S. companies and assets by Chinese companies, to obtain cutting-edge technologies and intellectual property (IP) and generate large-scale technology transfer in industries deemed important by state industrial plans. The role of the state in directing and supporting this outbound investment strategy is pervasive, and evident at multiple levels of government – central, regional, and local. The government has devoted massive amounts of financing to encourage and facilitate outbound investment in areas it deems strategic. In support of this goal, China has enlisted a broad range of actors to support this effort, including SOEs, state-backed funds, government policy banks, and private companies."); Financial Times, "China outbound investment surges to record levels on clean energy 'tsunami'", Oct. 2, 2024 (US-58).

[164] U.S. Chamber of Commerce, Made in China 2025: Global Ambitions Built on Local Protections (2017), p. 13 ("Capture Global Market Share After developing or acquiring its own technology and brands, China aims to capture domestic and international market share across MIC 2025 industries and technologies.") (US-59).

94. Market-based considerations do not drive China's outbound investment and acquisition activities.[165] Instead, as recognized by the European Commission:

> the [Chinese] government's determination to further develop the dominant role of the state-owned economy, in particular by selectively creating large SOEs, shielded from competition domestically and expanding internationally. Such SOEs are meant serve the Government's strategic industrial policies rather than focus on their own economic performance.[166]

95. 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, according to one report, from 2000-2010, China reportedly invested $50 billion into solar production facilities.[167] Likewise, for electric vehicles, according to one estimate, from 2009-2023, China provided over $230.9 billion in government support to its EV sector.[168]

96. Further, it is well known that severe and persistent excess capacity exists in China's clean energy sectors, including, for example, in the solar and EV sectors.[169] 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.[170]

97. Forced labor is also used in the solar supply chains dependent on polysilicon from the Xinjian Uyghur Autonomous Region. 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 are forced by the Chinese government to work against their will.[171] It is believed that 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.[172] In June 2021, the U.S. Customs and Border Protection issued a withhold release order stopping imports

---

[165] *See* Section 301 Report, p. 148 (US-56).

[166] European Commission, Commission Staff Working Document on Significant Distortions in the Economy of the People's Republic of China for the Purposes of Trade Defence Investigations, Oct. 4, 2024, p. 131 (US-57).

[167] U.S. Department of Energy, Solar Photovoltaics: Supply Chain Deep Dive Assessment, Feb. 24, 2022 (US-61).

[168] CSIS, "The Chinese EV Dilemma: Subsidized Yet Striking",", June 28, 2024, p. 3 (US-55).

[169] *See, e.g.*, CSIS, "The Chinese EV Dilemma: Subsidized Yet Striking", June 28, 2024, p. 7 ("[T]here are 200 EV producers in China, who collectively have created far more capacity than the domestic market can bear.") (US-55).

[170] CSIS, "The Chinese EV Dilemma: Subsidized Yet Striking", June 28, 2024, p. 7 (US-55).

[171] U.S. Department of Labor, "Traced to Forced Labor: Solar Supply Chains Dependent on Polysilicon from Xinjiang, 2020 (US-62).

[172] U.S. Department of Labor, "Traced to Forced Labor: Solar Supply Chains Dependent on Polysilicon from Xinjiang, 2020 (US-62).

into the United States of silica-based products produced by a Chinese company located in the Xinjiang Uyghur Autonomous Region on the basis that there was information reasonably indicating that the company was using forced labor to manufacture silica-based products.[173]

98. To dominate the clean energy sectors, China also uses non-market policies and practices, including 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.[174] 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.[175]

99. 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".[176]

100. 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. Through these cyber intrusions, China has gained unauthorized access to a wide range of commercially-valuable business information, including trade secrets, technical data, negotiating positions, and sensitive and proprietary internal communications.[177] 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.

---

[173] U.S. Customs and Border Protection, "The Department of Homeland Security Issues Withhold Release order on Silica-Based Products Made by Forced Labor in Xinjiang," June 24, 2021 (US-63).

[174] *See* Office of the U.S. Trade Representative, "Four-Year Review of Actions Taken in the Section 301 Investigation: China's Acts, Policies, and Practice Related to Technology Transfer, Intellectual Property, and Innovation" ("Four-Year Review"), May 14, 2024, p. 35 ("[I]n December 2018, NDRC finalized a new measure that prohibited certain types of investment projects, including new internal combustion engine enterprise investment projects by both foreign and domestic companies. The measure also introduced additional requirements for investments in pure electric vehicle enterprises, as well as requirements on the ownership of IP and R&D in China, creating new conditions that would continue to disadvantage foreign competition and facilitate indirect technology transfer . . .") (US-64); U.S. Chamber of Commerce, Made in China 2025: Global Ambitions Built on Local Protections (2017), p. 17 (US-59).

[175] Forbes, "China Scores Big Win in Solar Trade Battle as REC Silicon Shutters US Polysilicon Production", Feb. 8. 2016 ("In 2014, REC Silicon established a joint venture agreement with a company located in the Chinese city of Yulin.") (US-65).

[176] CSIS, "The Chinese EV Dilemma: Subsidized Yet Striking", June 28, 2024, p. 3 (US-55).

[177] *See* Four-Year Review, Table 1, p. 25 (US-64).

companies, including SolarWorld Americas, whose Passivated Emitter Rear Contact solar cell technology was stolen and then adopted by Chinese solar producers.[178]

101. In addition, 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.[179] In addition, 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.[180]

102. 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.

103. As demonstrated above, the United States holds basic notions of right and wrong that oppose unfair competition, forced labor, theft, and coercion. China's non-market policies and practices in the clean vehicle and renewable energy sectors that have resulted in global dominance undermine those notions. As such, China's non-market policies and practices in the clean vehicle and renewable energy sectors are inconsistent with U.S. public morals within the meaning of Article XX(a).

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

104. The measures at issue in this dispute "protect public morals" within the meaning of Article XX(a) because they seek to restore fair competition and opportunities to the U.S. economy, businesses, and workers and push back against China's unfair, non-market policies that have resulted in China's global dominance of the clean vehicle and renewable energy sectors. China's global dominance and non-market policies in these sectors deprive market-oriented businesses and their workers of commercial opportunities, and lessens competition. These Chinese policies and practices violate U.S. standards of right and wrong.

---

[178] U.S. Department of Justice, "U.S. Charges Five Chinese Military Hackers for Cyber Espionage Against U.S. Corporations and a Labor Organization for Commercial Advantage", May 19, 2014 (US-66).

[179] U.S. Department of Justice, "Two Chinese Hackers Working with the Ministry of State security charged with global computer intrusion campaign targeting intellectual property and confidential business information, including COVID-19 research," July 21, 2020, p. 2 ("The 11-count indictment alleges LI Xiaoyu , 34, and DONG Jiazhi, 33, who were trained in computer applications technologies at the same Chinese university, conducted a hacking campaign lasting more than ten years to the present, targeting companies in countries with high technology industries, including the United States, Australia, Belgium, Germany, Japan, Lithuania, the Netherlands, Spain, South Korea, Sweden, and the United Kingdom. Targeted industries included, among others, high tech manufacturing; medical device, civil, and industrial engineering; business, educational, and gaming software; solar energy; pharmaceuticals; defense.") (US-74). *See also* Four-Year Review, Table 1, p. 25 (US-64).

[180] CBS News, "Chinese hackers took trillions in intellectual property from about 30 multinational companies," May 4, 2022 (US-67).

105. That these non-market policies and practices may *not* offend China's sense of public morals, as China engages in the practices, is irrelevant, if highly regrettable. Indeed, each WTO Member may seek to protect the public morals of its society.[181] Notably, the United States is not seeking to change China's public morals; rather, the United States wishes to protect the U.S. standards of right and wrong by preventing unfair competition and restoring market-oriented opportunities for U.S. businesses and workers in its clean vehicle and renewable energy sectors and address China's non-market policies and practices in these sectors.

106. The challenged requirements under the IRC Section 30D Clean Vehicle Tax Credit and the four renewable energy ITC/PTCs (IRC Sections 48, 48E, 45, and 45Y) were developed to protect the clean vehicle sector and renewable energy supply chain from China's non-market policies and practices, and to promote fair competition. That is, 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,[182] and China produces approximately 60 percent of electric vehicles sold globally and approximately 80 percent of the batteries that power them.[183] The United States aims to promote alternatives to China's global dominance in the clean energy sectors.

107. 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". Notably, the fact sheet remarked,

> the U.S. led the world in solar innovation and manufacturing for decades. China's anticompetitive subsidization and trade practices, however, decimated the U.S. solar manufacturing industry in the 2000s and 2010s. Recently … China has further ramped up solar overcapacity, dumping artificially cheap modules and components into the global market and circumventing trade enforcement measures in an attempt to put other countries' manufacturers out of business.[184]

108. Similarly, the U.S. Congressional Research Service—a public policy research institute of the U.S. Congress—observed, in examining the incentives for clean transportation enacted by the

---

[181] *See EC – Seal Products (AB)*, para. 5.200 ("Members have the right to determine the level of protection that they consider appropriate").

[182] International Energy Agency, Special Report on Solar PV Global Supply Chains, Aug. 2022, p. 9 (US-1).

[183] Washington Post, "How China pulled ahead to become the world leader in electric vehicles," March 3, 2025 (US-2).

[184] Fact Sheet: Biden-Harris Administration Takes Action to Strengthen American Solar Manufacturing and Protect Manufacturers and Workers from China's Unfair Trade Practices, May 16, 2024 (US-68).

IRA, that the requirements of the Section 30D Clean Vehicle Tax Credit "appear to support other efforts to reduce reliance on production and manufacturing activities in China".[185]

109. 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%.[186] In 2024, module manufacturing capacity grew 190% in the United States.[187] 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.[188] Similarly, in January 2025, ES Foundry started a cell factory in South Carolina.[189] In March 2025, Corning, Suniva, Heliene announced that they would aim to produce the first solar module with polysilicon, wafers, and cells made in the United States.[190] And, both Hanwha Qcells and Silfab Solar are expected to start U.S. cell production in 2025.[191]

110. 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 Inflation Reduction Act.[192] Likewise, EV supply chains have been developing in Mexico as a result of access to financial support from the Inflation Reduction Act.[193]

111. 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.[194] 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.[195] In 2025, 10 new plants will increase the U.S. battery manufacturing capacity to 421.5 gigawatt-

---

[185] Congressional Research Service, Inflation Reduction Act of 2022: Incentives for Clean Transportation, Sept. 6. 2022, p. 2 (US-69).

[186] International Energy Agency, Global EV Outlook 2024, p. 81 (US-49).

[187] Solar Energy Industries Association, US Solar Market Insight: Executive Summary, 2024 Year in Review, March 2025, p. 4 (US-73).

[188] Solar Energy Industries Association, US Solar Market Insight: Executive Summary, 2024 Year in Review, March 2025, p. 4 (US-73).

[189] Solar Energy Industries Association, US Solar Market Insight: Executive Summary, 2024 Year in Review, March 2025, p. 6 (US-73).

[190] PC Magazine, "Corning, Suniva, Heliene to produce first fully US-made solar module," Mar. 7, 2025 (US-60).

[191] Solar Energy Industries Association, US Solar Market Insight: Executive Summary, 2024 Year in Review, March 2025, p. 6 (US-73).

[192] International Energy Agency, Global EV Outlook 2024, p. 89 (US-49).

[193] International Energy Agency, Global EV Outlook 2024, p. 82 (US-49).

[194] TechCrunch, "Tracking the EV battery factory construction boom across North America," Feb. 6, 2025 (US-75).

[195] TechCrunch, "Tracking the EV battery factory construction boom across North America," Feb. 6, 2025 (US-75).

hours annually, almost double the growth of the U.S. battery manufacturing capacity from 2024.[196]

112. EV manufacturing capacity in the United States has also increased as a result of the Inflation Reduction Act. 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.[197] For instance, General Motors is on track for the capacity to produce 1 million EVs annually by the end of 2025.[198] Scout Motors (Volkswagen) has started building an electric sports utility vehicle manufacturing plant in South Carolina.[199]

113. 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. Such new capacity would mean that U.S. consumers and the U.S. market are no longer rewarding China's non-market policies, including targeting of sectors for dominance, deliberate creation of non-market excess capacity, forced labor, violations of labor rights, wage-suppressing practices, forced technology transfer, and others. The measures therefore protect and reinforce U.S. standards of right and wrong.

114. In sum, China's non-market policies and practices clearly violate prevailing U.S. standards of right and wrong, and therefore implicate U.S. public morals within the meaning of Article XX(a) of the GATT 1994. And, because the United States adopted the measures at issue to counter China's targeting of the clean energy sectors for dominance and prevent infiltration of non-market policies and practices in the U.S market, the measures at issue "protect public morals" within the meaning of Article XX(a) of the GATT 1994.

B. THE MEASURES AT ISSUE ARE "NECESSARY" WITHIN THE MEANING OF ARTICLE XX(A)

115. 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".[200] Therefore, for Article XX(a), a measure must be indispensable, essential, or requisite to serve the objective—in this case, to protect public morals.

116. The Panel must evaluate whether the measures at issue are necessary within the meaning of Article XX(a) of the GATT 1994 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

---

[196] Inside EVs, "The U.S. is about to nearly double its battery production capacity," Feb. 23, 2025 (US-76).

[197] Environmental Defense Fund, U.S. Electric Vehicle Manufacturing Investments and Jobs, August 2024 (US-79).

[198] GM Authority, "GM EV Sales Up 19 Percent Moving 19k Units this Quarter, 75k Units for the year during Q4 2023," Mar. 23, 2024 (US-78).

[199] International Energy Agency, Global EV Outlook 2024, p. 120 (US-49).

[200] *See The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 1895 (US-15).

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[201]—and correct for—China's targeting and to restore the market-oriented conditions that reflect U.S. standards for public morals.

117. As detailed above, China achieved global dominance of the clean vehicle and renewable energy sectors through pervasive non-market policies and practices that undermine fair competition. These non-market policies and practices 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.

118. 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.[202]

119. The United States seeks a marketplace with robust competition and supplier diversity, which cultivates greater innovation, lower prices, and more consumer choice.[203] However, as detailed above, China has achieved dominance of these sectors through the use of non-market policies and practices. Through its targeting of the clean energy sectors, China seeks to bring about unfair and non-market-oriented competition. Indeed, as the Information Technology and Innovation Foundation observed, "[China's] entrenchment as the dominant photovoltaic manufacturer has corresponded with plummeting R&D intensity, patents, and new market entry in the United States".[204]

120. 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

---

[201] *See* International Energy Agency, Special Report on Solar PV Global Supply Chains, p. 11 ("Government policies are vital to build a more secure solar PV supply chain . . . . Globally, policies to support solar PV to date have focused mostly on increasing demand and lowering costs. However, resilient and sustainable supply chains are also needed to ensure the timely and cost-effective delivery of solar panels worldwide. Governments therefore need to turn their attention to ensuring the security of solar PV supplies as an integral part of clean energy transitions. Countries should consider assessing their domestic solar PV supply chain vulnerabilities and risks – and developing strategies and actions to address them."), p. 12 ("Diversify manufacturing and raw material supplies" and "De-risk investment. Facilitate investment in manufacturing, e.g., through finance and tax policies, and other measures to de-risk PV manufacturing investment.") (US-1).

[202] USTR, Adapting Trade Policy for Supply Chain Resilience: Responding to Today's Global Economic Challenges ("Supply Chain Resilience Report"), January 2025, pp. 37-38 (US-70).

[203] USTR, Supply Chain Resilience Report, p. 37 (US-70).

[204] Information Technology & Innovation Foundation, "The Impact of China's Production Surge on Innovation in the Global Solar Photovoltaics Industry," Oct. 2020, p. 18 (US-51).

no way for market economies to hope to restore fair competition in their markets. 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. Indeed, success in the marketplace will be based on consumer perceptions of a product—that is, fair competition—rather than artificial cost advantages from non-market practices and policies. Therefore, given China's global dominance in these sectors, and as demonstrated by the expansion of U.S. (and other market economies') investments under the measures at issue, no other measures would be effective in accomplishing the U.S. objective.

121. Accordingly, the measures at issue pursue the vitally important objective of upholding U.S. norms against unfair competition, forced labor, theft, and coercion 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, thereby reducing the incentive for actors in the U.S. marketplace to adopt or encourage behavior similar to that of China, and reducing the reward that Chinese entities may gain from engaging in that behavior. For these reasons, the measures at issue are necessary to protect U.S. public morals within the meaning of Article XX(a).

C. THE MEASURES AT ISSUE ARE *NOT* BEING APPLIED IN MANNER INCONSISTENT WITH THE CHAPEAU OF ARTICLE XX

122. The chapeau of Article XX provides:

> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures . . . .

123. Therefore, 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". As explained below, 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"

124. 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,[205] while the ordinary meaning of "unjustifiable" may be understood as "[n]ot justifiable, indefensible."[206] 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."[207] Definitions of "discriminate" include "[m]ake or recognize a distinction, esp. a fine one; provide or serve as a distinction; exercise discernment."[208] Definitions of the word "conditions" include "[s]tate, or mode of being" or "[n]ature, character, quality; a characteristic, an attribute."[209]

125. 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.

126. As discussed in Section V.A., the United States and China do not have the same state of being or nature, as China – unlike the United States – has achieved global dominance of the clean vehicle and renewable energy sectors, and exercises non-market policies and practices to achieve that dominance. Nor are distinctions between the United States and China in the application of the measures unpredictable nor indefensible, given these differences between the two countries and the clarity of the measures at issue.

127. Thus, the measures at issue do not constitute arbitrary or unjustifiable discrimination between countries where the same conditions prevail within the meaning of the Article XX chapeau.

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

128. As the United States has explained in Section V.A.3, China has achieved global dominance of the clean vehicle and renewable energy sectors, for example, through pervasive non-market policies and practices such as non-market excess capacity, government interference with or direction of commercial decision-making, forced labor and unfair labor practices, forced technology transfer, arbitrary regulations, insufficient regulatory and market transparency, pervasive subsidization, and anti-competitive activities of state-owned or -controlled enterprises.

---

[205] *See The New Short Oxford English Dictionary* (4th Edition) (1993), p. 107 (US-15). *See also Brazil – Retreaded Tyres (Panel)*, para. 7.257 – 7.258; *US – Shrimp (Article 21.5 – Malaysia) (Panel)*, para. 5.241.

[206] *The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 3493 (US-15). *See also Brazil – Retreaded Tyres (Panel)*, paras. 7.259 – 7.260.

[207] *The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 689 (US-15).

[208] *The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 689 (US-15).

[209] *The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 472 (US-15).

129. 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.[210] 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

130. Nor are the "distinctions made" between the United States and China in the application of the measures at issue arbitrary (*i.e.*, capricious, unpredictable, inconsistent) or unjustifiable (*i.e.*, indefensible). 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.

131. Further, as detailed in Section II, the requirements of the statute are clear. The Section 30D Clean Vehicle Tax Credit requires clean vehicles to be assembled in North America to access any part of the $7500 credit. It also requires that, to access half of the maximum $7500 credit ($3750), an increasing percentage of the applicable critical minerals in the clean vehicle's battery to be 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. In addition, to access half of the maximum $7500 credit ($3750), an increasing percentage of the value of a clean vehicle's battery components must be manufactured or assembled in North America. The increasing percentages are determined by the year in which the vehicle is placed in service. For the four renewable energy ITC/PTCs, to access the domestic content bonus credit, generally an applicable project must use a certain percentage of domestic steel, iron, and manufactured products.

132. Accordingly, there is no basis to conclude that the United States has adopted or applied the measures at issue in a manner that constitutes "arbitrary or unjustifiable discrimination" within the meaning of the chapeau of Article XX.

---

[210] *See* Section V.A.2.

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

133. The measures at issue are not being applied in a manner that constitutes a "disguised restriction on international trade". A "disguised" restriction is one that is "deliberately alter[ed] . . . so as to mislead or deceive; exhibit in a false light; misrepresent."[211] The United States has taken no steps to conceal the requirements of the measures at issue. That is, the text and effect of the law is plain and undisguised.

134. As explained in Section II, among other reasons, the U.S. Congress enacted the IRA clean energy tax credit requirements to ensure a secure and sustainable clean energy supply chain that was based on market principles and fair competition, including to protect against non-market policies and practices. 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.

135. In sum, the Panel should find that the measures at issue are justified because they protect U.S. public morals and are necessary within the meaning of Article XX(a) of the GATT 1994; and are not being applied in manner inconsistent with the chapeau of Article XX of the GATT 1994. WTO panels should be cognizant of the importance of affording WTO Members' sufficient public policy space under Article XX of the GATT 1994, particularly with respect to measures enacted under democratic processes.

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

136. China raises claims under Articles I and III of the GATT 1994, Articles 2.1 and 2.2 of the TRIMs Agreement, and Articles 3.1(b) and 3.2 of the SCM Agreement. 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. Because some litigants for obvious reasons have recently controverted this commonsense conclusion,[212] 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.

137. As discussed in detail in Section VI.A., the ability to invoke exceptions under Articles XX and XXI of the GATT 1994 for claims under the TRIMs and SCM Agreements is clear. The ordinary meaning of the terms of the TRIMs and SCM Agreements—including their numerous explicit textual links to the GATT 1994—establish that exceptions under Articles XX and XXI of the GATT 1994 are available as defenses to TRIMs and SCM Agreement claims.

---

[211] *The New Shorter Oxford English Dictionary* (4th Edition) (1993), p. 691 (US-15).

[212] China's First Written Submission, para. 5. *See also US – Origin Marking (Hong Kong, China) (Panel)*, Annex B-1 Integrated Executive Summary of Hong Kong, China, p. 34 ("Hong Kong, China's view, shared by all of the third parties, is that the U.S. position on the applicability of Article XXI(b) to the TBT Agreement is baseless.").

138. As the United States demonstrates in Section VI.B., the structure of the WTO Agreement as a whole and the context provided by it also demonstrates that the general exceptions under Article XX and the essential security exception of Article XXI of the GATT 1994 apply to the multilateral agreements on trade in goods, including the TRIMs and SCM Agreements. To conclude otherwise would be contrary to the intent of negotiators for the exceptions to apply to the fundamental disciplines in the GATT 1994.

139. Further, as detailed in Section VI.C., the claims raised by China in this dispute also confirm the link between the GATT 1994 and the TRIMs and SCM Agreements.

A. THE ORDINARY MEANING OF THE TERMS OF THE TRIMS AND SCM AGREEMENTS ESTABLISH THAT DEFENSES UNDER ARTICLE XX AND XXI OF THE GATT 1994 APPLY TO CLAIMS UNDER THOSE AGREEMENTS

140. As demonstrated below, 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

141. 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. Perhaps 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."

142. First, the ordinary meaning of the term "all" means "the entire number of; the individual constituents of, without exception," "every".[213] Therefore, "*all* exceptions under GATT 1994" means that every exception in the GATT 1994 "shall apply" – including Article XX and XXI of the GATT 1994. Further, the ordinary meaning of "appropriate" is defined as "make, or select as, appropriate or suitable".[214] 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.[215]

143. 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, Article 4 states that "A developing country Member shall be free to deviate temporarily from the provisions of Article 2 *to the extent and in such a manner as* Article XVIII

---

[213] *The New Short Oxford English Dictionary* (4th Edition) (1993), p. 52 (USA-15).

[214] *The New Short Oxford English Dictionary* (4th Edition) (1993), p. 103 (USA-15).

[215] *Canada – Renewable Energy / Feed-In Tariff Program (AB)*, para. 5.27.

of GATT 1994 . . . permit[s] the Member to deviate from the provisions of Articles III and XI of GATT 1994" (italics added).

144. And, Article 6 states that with respect to transparency, "*[i]n conformity with* Article X of GATT 1994 no Member is required to disclose information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private" (italics added). These texts 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.

145. The TRIMs Agreement also contains more general references to the GATT 1994, including in its provisions on transparency and dispute settlement. Article 6 states that "Members reaffirm, with respect to TRIMs, their commitment to obligations on transparency and notification in Article X of GATT 1994". And Article 8 states that, "[t]he provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and the settlement of disputes under this Agreement." These provisions also demonstrate that the commitments and rights in the GATT 1994 apply with respect to TRIMs.

146. Therefore, as demonstrated above, the TRIMs Agreement contains multiple provisions of text linking the TRIMs Agreement with the GATT 1994 and the Articles XX and XXI exceptions.

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

147. The SCM Agreement also includes numerous references to the GATT 1994, thus also establishing that Articles XX and XXI of the GATT 1994 are available as defenses to claims under the SCM Agreement. Perhaps most notably, in Part XI of the SCM Agreement concerning final provisions, 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."

148. 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 of the SCM Agreement. 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.

149. In addition, another way to consider the link between the GATT exceptions with the SCM Agreement 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 of the GATT 1994. 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 clearly 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.

150. Accordingly, the text of Article 32.1 and footnote 56 confirms that the SCM Agreement permits a Member to invoke Article XX or XXI.

151. In addition to Article 32.1, the SCM Agreement 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.

152. For example, Part I of the SCM Agreement covers general provisions and provides the definition of a subsidy within the meaning of the agreement. The definition references the GATT 1994. Specifically, footnote 1 to Article 1.1(a)(1)(ii) states,

> In accordance with the provisions of Article XVI of GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of this Agreement, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy. (Emphasis added).

153. Article 1.1(a)(2) states that a subsidy shall be deemed to exist if "there is any form of income or price support in the sense of Article XVI of GATT 1994" (emphasis added).

154. Therefore, Article 1, which provides the definition of a subsidy as used in the SCM Agreement, links its definition with Article XVI (Subsidies) of the GATT 1994, making clear that the definition of a subsidy within the meaning of the SCM Agreement is connected with Article XVI of the GATT 1994, which concerns subsidies.

155. Part III of the SCM Agreement concerns actionable subsidies, and again links its provisions with the GATT 1994, in particular, in defining the use of its terms. Footnote 12 to Article 5(b) states that the term "nullification or impairment" is used in the SCM Agreement "in the same sense as it is used in the relevant provisions of GATT 1994, and the existence of nullification or impairment shall be established in accordance with the practice of application of these provisions." Footnote 13 to Article 5(c) likewise states that the term "serious prejudice to the interests of another Member" is used in the SCM Agreement "in the same sense as it is used in the paragraph 1 of Article XVI of GATT 1994".

156. Part V of the SCM Agreement concerns countervailing measures, and is explicitly linked to the application and interpretation of the GATT 1994. Specifically, Part V begins with Article

10, which is titled "application of Article VI of GATT 1994" and obligates members to impose a countervailing duty "in accordance with the provisions of Article VI [(Anti-dumping and Countervailing Duties)] of GATT 1994" and the terms of the SCM Agreement. Footnote 36 in Article 10 defines the term "countervailing duty" to "be understood to mean a special duty levied for the purpose of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise, as provided for in paragraph 3 of Article VI of GATT 1994." Article 11.2 states that an application concerning an alleged subsidy shall include sufficient evidence of "injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement". Article 15.1 sets out the requirements for "[a] determination of injury for purposes of Article VI of GATT 1994".

157. Part VII of the SCM Agreement concerns notification and surveillance. Article 25.10 permits "any Member which considers that any measure of another Member having the effects of a subsidy has not been notified in accordance with the provisions of paragraph 1 of Article XVI of GATT and this Article" to bring the matter to the attention of the such other Member.

158. Elsewhere the SCM Agreement contains more general references to the GATT 1994, including in its provisions on consultation, notification and surveillance, and dispute settlement. For example, with respect to consultation, for example, in Annex 1 of the SCM Agreement, Illustrative List of Export Subsidies, footnote 59 to paragraph (e) states that "Members shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of Members under GATT 1994, including the right of consultation created in the preceding sentence."

159. With respect to notification, Article 25.1 notes timelines for submission of notifications concerning subsidies "without prejudice to the provisions of paragraph 1 of Article XVI of GATT 1994". Article 25.6 requires Members to inform the Secretariat if they consider there are no measures in their territories requiring notification under paragraph 1 of Article XVI of GATT 1994. Article 25.7 states that "Members recognize that notification of a measure does not prejudge either its legal statutes under GATT 1994 or this Agreement, the effects under this Agreement, or the nature of the measure itself."

160. With respect to surveillance, Article 26.1 concerns surveillance of subsidies and covers notifications submitted under "paragraph 1 of Article XVI of GATT 1994 and paragraph 1 of Article 24 of this Agreement".

161. With respect to dispute settlement, Article 30 provides that the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to the SCM Agreement.

162. The text therefore establishes that the SCM Agreement not only applies and interprets Articles VI (Anti-dumping and Countervailing Duties) and XVI (Subsidies) of the GATT 1994, but also expands upon the GATT disciplines relating to the use of subsidies and countervailing duties. The references above demonstrate that the SCM Agreement provides disciplines tied to the implementation of the GATT 1994, and has strong textual links with the GATT 1994.

3. Conclusion

163. In sum, the numerous references to the GATT 1994 in the TRIMS and SCM Agreements demonstrate the strong textual link between the TRIMs and SCM Agreements and the GATT 1994, and confirm that GATT 1994 Article XX and Article XXI(b) exceptions apply to TRIMs and SCM Agreement claims.

B. THE STRUCTURE OF THE WTO AGREEMENT AND THE CONTEXT IT PROVIDES ALSO ESTABLISHES THAT THE GENERAL EXCEPTIONS AND THE ESSENTIAL SECURITY EXCEPTION APPLY TO THE MULTILATERAL AGREEMENTS ON TRADE IN GOODS, INCLUDING THE TRIMS AND SCM AGREEMENTS

164. 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.[216] The core multilateral substantive obligations are contained in Annex 1. In particular, Annex 1A consists of the Multilateral Agreements on Trade in Goods (including the TRIMs and SCM Agreements), Annex 1B consists of the *General Agreement on Trade in Services* (GATS), and Annex 1C consists of the *Agreement on Trade Related Aspects of International Property Rights* (TRIPS Agreement).

165. 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 provides in relevant part:

> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, 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 [.]

166. In Annex 1B, Article XIV of the GATS provides in relevant part:

> [N]othing in this Agreement shall be construed to prevent the adoption or enforcement by an Member of measures:
>
> (a) necessary to protect public morals or to maintain public order[.]

167. And in Annex 1C, Article 27.2 of the TRIPS Agreement states:

> Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre*

[216] Article II(2) ("The agreements and associated legal instruments included in Annexes 1,2, and 3 (hereinafter referred to as 'Multilateral Trade Agreements') are integral parts of this Agreement, binding on all Members.").

> *public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law. Members may, in formulation or amending their laws of regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement."

168. 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 provides as follows:

> Nothing in this Agreement shall be construed
>
> (a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or
>
> (b) to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests
>
> > (i) relating to fissionable materials or the materials from which they are derived;
> >
> > (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
> >
> > (iii) taken in time of war or other emergency in international relations; or
>
> (c) to prevent any contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.[217]

169. In Annex 1B, paragraph 1 of Article XIV bis of the GATS provides as follows:

> 1. Nothing in this Agreement shall be construed:
>
> (a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
>
> (b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:
>
> > (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

[217] Article XXI, GATT 1994.

> (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
>
> (iii) taken in time of war or other emergency in international relations; or
>
> (c) to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.[218]

170. And in Annex 1C, Article 73 of the TRIPS Agreement provides as follows:

> Nothing in this Agreement shall be construed:
>
> (a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or
>
> (b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;
>
> (i) relating to fissionable materials or the materials from which they are derived;
>
> (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
>
> (iii) taken in time of war or other emergency in international relations; or
>
> (c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.[219]

171. Within Annex 1A, the Multilateral Agreements on Trade in Goods, the first agreement listed is the GATT 1994. The GATT 1994 is a successor to the GATT 1947. The GATT 1947, and the slightly modified GATT 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.

172. Two possibilities arise from this structure. The first, which the United States submits is the proper interpretation, is that the negotiators understood that the GATT 1947/1994 public morals and essential security exceptions apply to the new agreements on trade in goods

---

[218] Article XIV bis, para. 1, General Agreement on Trade in Services.

[219] Article 73, Agreement on Trade-Related Aspects of Intellectual Property Rights.

contained in Annex 1A. The other possibility is that for some reason, the negotiators believed that those exceptions applied to the fundamental disciplines in the GATT 1994, but not to the elaborations upon those disciplines as set out in the other trade-in-goods agreements. This second interpretation is untenable.

173. 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 provides:

> In the event of conflict between a provision of the General Agreement on Tariffs and Trade 1994 and a provision of another agreement in Annex 1A to the Agreement Establishing the World Trade Organization (referred to in the agreements in Annex 1A as the "WTO Agreement"), the provision of the other agreement shall prevail to the extent of the conflict.

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.

174. 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.

175. It is not the case that the negotiators thought that in 1994, as compared to when the GATT was agreed to in 1947, public morals and essential security was no longer an over-riding concern. To the contrary, when the parties decided to extend disciplines to new areas—services, and intellectual property—the new agreements contain the public morals and essential security exceptions.

176. Further, it is not the case that negotiators thought that basic disciplines should be subject to the public morals and essential security exceptions, but not more detailed or elaborated exceptions. No logical rationale exists for such distinction, nor in most cases can the distinction even be made. Rather, substantial overlap exists between the disciplines in the GATT 1994 and the new Uruguay Round Agreements on trade in goods. Indeed, in the new areas—Annex 1B services and Annex 1C intellectual property—the public morals and essential security exception applies to the obligations —whether fundamental or more detailed. No rationale would point to a different intent for obligations with respect to trade in goods.

177. With these considerations in mind, the United States would highlight that the following scenario resulting from the second interpretation—that negotiators believed that those exceptions applied to the fundamental disciplines in the GATT 1994, but not to the elaborations upon those

disciplines as set out in the other trade-in-goods agreements—is untenable. For instance, Article XXI(c) of the GATT 1994 permits Members to take actions in pursuance of their obligations under the United Nations Charter for the maintenance of international peace and security; those actions could otherwise be inconsistent with obligations under the GATT 1994, the TRIMs and SCM Agreement, and the GATS. Under the second interpretation, WTO Members would respond that they can take actions that are inconsistent with the GATT 1994 and GATS in order to meet their UN obligations to maintain international peace and security, but cannot take any actions in contravention of the TRIMs and SCM Agreements in order to meet their UN obligations to maintain international peace and security. An interpretation of the WTO Agreement that reaches this outcome and sets the WTO agreements at odds with the maintenance of international peace and security is unsupportable.

178. Past adjudicators have considered the structure of the WTO Agreement,[220] and likewise considered the structure of a "single undertaking", in examining the relationship between Annex 1A agreements. In *US – 1916 Act (Panel)*, for example, the report stated that "In application of the customary rules of interpretation of international law, we are bound to interpret Article VI of the GATT 1994 as part of the WTO Agreement . . . ."[221] In *Brazil – Desiccated Coconut (AB)*, the report stated that "the relationship between the GATT 1994 and the other goods agreements in Annex 1A is complex and must be examined on a case-by-case basis."[222] Similarly, the *China – Rare Earths (AB)* report reasoned that the relationship between individual provisions of the multilateral trade agreements,

> must be ascertained through scrutiny of the provisions concerned, read in the light of their context and object and purpose, *with due account being taken of the overall architecture of the WTO system as a single package of rights and obligations*, and any specific provisions that govern or shed light on the relationship between the provisions of different instruments (such as the General Interpretative Note to Annex 1A).[223]

Thus, how the legal structure serves as interpretative context depends on the interpretative issue at hand.[224]

---

[220] *See, e.g.*, *Canada – Periodicals (Panel),* para. 5.16; *China – Rare Earths (AB)*, para. 5.51.

[221] *US – 1916 Act (Panel)*, para. 6.97 (internal citations omitted).

[222] *Brazil – Desiccated Coconut (AB)*, pages 14, 16.

[223] *China – Rare Earths (AB)*, para. 5.56 (emphasis added).

[224] Outside of the WTO context, see, for example *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*, Judgment of 5 December 2011, I.C.J. Reports 2011, p. 644, para. 97 (noting that the "provisions containing assurances, including those that impose obligations on the Applicant to change its conduct — appears elsewhere in the treaty" than in Article 11, paragraph 1, and finding that "In light of the structure and the object and purpose of the treaty, it appears to the Court that the Parties would not have imposed a significant new constraint on the Applicant — that is, to constrain its consistent practice of calling itself by its constitutional name — by mere implication in Article 11, paragraph 1.").

179. Accordingly, in order to find that the exceptions expressed in GATT 1994 apply to the specific trade-in-goods agreements (*i.e.*, SCM Agreement), 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. As discussed above, the strong and explicit textual links establish that Article XX and XXI exceptions apply to TRIMs and SCM Agreement claims. Taking into account the context provided by the "single undertaking" structure of the WTO Agreement, consistent with the customary rules of treaty interpretation, further establishes that the exceptions under Articles XX and XXI of the GATT 1994 apply to China's claims under the TRIMs and SCM Agreements. In Section I.D. below, the United States demonstrates the strong tie between China's claims under the TRIMs and SCM Agreements and the GATT 1994, further supporting that the GATT 1994 exceptions apply.

C. THE CLAIMS IN THIS DISPUTE CONFIRM THE LINK BETWEEN THE GATT 1994 AND THE TRIMS AND SCM AGREEMENTS

180. Finally, 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.

181. 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 contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods." Article 3.1(b) therefore prohibits subsidies that are contingent on the use of domestic content (so-called "import substitution" or "local content" subsidies), 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.

182. 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) concerns export subsidies, and as discussed above, Article 3.1(b) concerns import substitution subsidies. Article 3.1(a) has explicit textual links with Article XVI of the GATT 1994. Specifically, 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 the GATT 1994, listing "[a]ny other charge on the public account constituting an export subsidy in the sense of Article XVI of the GATT 1994" as an export subsidy. Therefore, the Illustrative List of Export Subsidies, as referenced by Article 3.1(a), interprets and expands upon the provisions of Article XVI of the GATT 1994.

183. With respect to the TRIMs Agreement, China argues that the measures at issue at inconsistent with Articles 2.1 and 2.2 of the TRIMs Agreement.

184. First, China alleges that the measures at issue are inconsistent with Article 2.1 of the TRIMs Agreement. Article 2.1 states, "Without prejudice to other rights and obligations under

GATT 1994, no Member shall apply any TRIM that is inconsistent with the provisions of Article III or Article XI of GATT 1994." Therefore, as is evident from the text of Article 2.1, there is an explicit textual link with the GATT 1994 in two parts of the article. In the first half of Article 2.1, the text states, "[w]ithout prejudice to other rights and obligations under GATT 1994". In the second half, Article 2.1 states that a Member shall not apply a TRIM "that is inconsistent with the provisions of Article III or Article XI of GATT 1994".

185. From the first half of Article 2.1 with the phrase "[w]ithout prejudice to other rights and obligations under GATT 1994",[225] it is evident that the article is not intended to curtail the other rights that Members have under the GATT 1994, including the exceptions under Articles XX and XXI of the GATT 1994.

186. For the second half of Article 2.1, China explicitly acknowledges the link between Article 2.1 of the TRIMs and the GATT 1994, stating,

> The scope of Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement "overlap[s] broadly; the only difference is that to be inconsistent with Article 2.1 of the TRIMs Agreement, the measure must be a trade-related investment measure".[226] It follows that any measure found to be inconsistent with Article III of the GATT 1994, that is also a TRIM, will also be incompatible with Article 2.1 of the TRIMs Agreement.[227]

187. Therefore, the link in this dispute between China's claim under Article 2.1 of the TRIMs with the GATT 1994 and its Article XX and XXI exceptions is clear.

188. Next, China also alleges that the measures at issue are inconsistent with Article 2.2 of the TRIMs Agreement. Article 2.2 states,

> An illustrative list of TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 and the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 is contained in the Annex to this Agreement.

189. Relying upon Article 2.2 of the TRIMs Agreement, China points to the example in paragraph 1(a) of the Annex to the TRIMs Agreement, which lists "the purchase or use by an enterprise of products of domestic origin of from any domestic sources, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion

---

[225] *See Canada – Renewable Energy / Feed-In Tariff Program (AB)*, para. 5.27.

[226] *Brazil – Taxation (Panel)*, para. 7.40.

[227] China's First Written Submission, para 128 (citing *Canada – Renewable Energy / Canada – Feed-in Tariff Program (Panel)*, para. 7.117; *Brazil – Taxation (AB)*, para. 5.79).

of volume or value of its local production" as TRIM that is inconsistent with Article III:4 of the GATT 1994.[228]

190. Again then, the text of the article is clear – that is, 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 of a TRIM that is inconsistent with Article III:4 of the GATT 1994.

191. 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.

192. Therefore, the claims in this dispute confirm the link between the GATT 1994 and the TRIMs and SCM Agreements.

D. CONCLUSION

193. In sum, as the United States has demonstrated, the numerous explicit textual links in the TRIMs and SCM Agreements to the GATT 1994 establish that the exceptions under Articles XX and XXI of the GATT 1994 are applicable to claims under the TRIMs and SCM Agreements. Further, the structure of the WTO Agreement and the context it provides also support that the exceptions under the GATT 1994 apply to the TRIMs and SCM Agreements. Lastly, the claims raised by China in this dispute likewise confirm the link between the GATT 1994 and the TRIMS and SCM Agreements. Accordingly, the exceptions under Articles XX and XXI of the GATT 1994 are applicable to claims under the TRIMs and SCM Agreements.

VII. CONCLUSION

194. For the foregoing reasons, the United States respectfully requests that the Panel reject China's request for findings under Articles 3.1(b) and 3.2 of the SCM Agreement with respect to the Section 30D Clean Vehicle Tax Credit.

195. With respect to the FEOC exclusionary rule under the Section 30D Clean Vehicle Tax Credit, the United States respectfully requests that the Panel find that the United States has invoked its essential security interests under Article XXI(b) of the GATT 1994 and so report to the DSB.

196. The United States further requests that the Panel find that the measures challenged by China are justified under Article XX(a) of the GATT 1994. While the Section 30D Clean Vehicle Tax Credit is not inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement, that measure would also be justified under Article XX(a) of the GATT 1994.

197. In sum, and for the reasons explained in this submission, the United States respectfully requests that the Panel find that China has established no WTO-inconsistency in this dispute. To

[228] China's First Written Submission, para. 127.

the contrary, given China's non-market policies and global dominance of the clean vehicle and renewable energy sectors, the measures at issue are necessary to protect U.S. public morals relating to unfair competition, forced labor, theft, and coercion.