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UNITED STATES – CERTAIN TAX CREDITS UNDER THE INFLATION REDUCTION ACT

REPORT OF THE PANEL

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CASES CITED IN THIS REPORT

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Argentina – Financial Services	Appellate Body Report, <i>Argentina – Measures Relating to Trade in Goods and Services</i> , WT/DS453/AB/R and Add.1, adopted 9 May 2016, DSR 2016:II, p. 431
Australia – Apples	Appellate Body Report, <i>Australia – Measures Affecting the Importation of Apples from New Zealand</i> , WT/DS367/AB/R , adopted 17 December 2010, DSR 2010:V, p. 2175
Brazil – Retreaded Tyres	Panel Report, <i>Brazil – Measures Affecting Imports of Retreaded Tyres</i> , WT/DS332/R , adopted 17 December 2007, as modified by Appellate Body Report WT/DS332/AB/R, DSR 2007:V, p. 1649
Brazil – Taxation	Panel Reports, <i>Brazil – Certain Measures Concerning Taxation and Charges</i> , WT/DS472/R , Add.1 and Corr.1 / WT/DS497/R , Add.1 and Corr.1, adopted 11 January 2019, as modified by Appellate Body Reports WT/DS472/AB/R / WT/DS497/AB/R, DSR 2019:II, p. 345
Canada – Autos	Appellate Body Report, <i>Canada – Certain Measures Affecting the Automotive Industry</i> , WT/DS139/AB/R , WT/DS142/AB/R , adopted 19 June 2000, DSR 2000:VI, p. 2985
Canada – Autos	Panel Report, <i>Canada – Certain Measures Affecting the Automotive Industry</i> , WT/DS139/R , WT/DS142/R , adopted 19 June 2000, as modified by Appellate Body Report WT/DS139/AB/R, WT/DS142/AB/R, DSR 2000:VII, p. 3043
Canada – Renewable Energy / Canada – Feed-in Tariff Program	Panel Reports, <i>Canada – Certain Measures Affecting the Renewable Energy Generation Sector / Canada – Measures Relating to the Feed-in Tariff Program</i> , WT/DS412/R and Add.1 / WT/DS426/R and Add.1, adopted 24 May 2013, as modified by Appellate Body Reports WT/DS412/AB/R / WT/DS426/AB/R, DSR 2013:I, p. 237
China – Auto Parts	Appellate Body Reports, <i>China – Measures Affecting Imports of Automobile Parts</i> , WT/DS339/AB/R / WT/DS340/AB/R / WT/DS342/AB/R , adopted 12 January 2009, DSR 2009:I, p. 3
China – Auto Parts	Panel Reports, <i>China – Measures Affecting Imports of Automobile Parts</i> , WT/DS339/R , Add.1 and Add.2 / WT/DS340/R , Add.1 and Add.2 / WT/DS342/R , Add.1 and Add.2, adopted 12 January 2009, upheld (WT/DS339/R) and as modified (WT/DS340/R / WT/DS342/R) by Appellate Body Reports WT/DS339/AB/R / WT/DS340/AB/R / WT/DS342/AB/R, DSR 2009:I, p. 119
China – Publications and Audiovisual Products	Appellate Body Report, <i>China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products</i> , WT/DS363/AB/R , adopted 19 January 2010, DSR 2010:I, p. 3
China – Publications and Audiovisual Products	Panel Report, <i>China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products</i> , WT/DS363/R and Corr.1, adopted 19 January 2010, as modified by Appellate Body Report WT/DS363/AB/R, DSR 2010:II, p. 261
China – Rare Earths	Panel Reports, <i>China – Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum</i> , WT/DS431/R and Add.1 / WT/DS432/R and Add.1 / WT/DS433/R and Add.1, adopted 29 August 2014, upheld by Appellate Body Reports WT/DS431/AB/R / WT/DS432/AB/R / WT/DS433/AB/R, DSR 2014:IV, p. 1127
China – TRQs	Panel Report, <i>China – Tariff Rate Quotas for Certain Agricultural Products</i> , WT/DS517/R and Add.1, adopted 28 May 2019
Colombia – Ports of Entry	Panel Report, <i>Colombia – Indicative Prices and Restrictions on Ports of Entry</i> , WT/DS366/R and Corr.1, adopted 20 May 2009, DSR 2009:VI, p. 2535
Colombia – Textiles	Appellate Body Report, <i>Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear</i> , WT/DS461/AB/R and Add.1, adopted 22 June 2016, DSR 2016:III, p. 1131
Colombia – Textiles	Panel Report, <i>Colombia – Measures Relating to the Importation of Textiles, Apparel and Footwear</i> , WT/DS461/R and Add.1, adopted 22 June 2016, as modified by Appellate Body Report WT/DS461/AB/R, DSR 2016:III, p. 1227
EC – Asbestos	Panel Report, <i>European Communities – Measures Affecting Asbestos and Asbestos-Containing Products</i> , WT/DS135/R and Add.1, adopted 5 April 2001, as modified by Appellate Body Report WT/DS135/AB/R, DSR 2001:VIII, p. 3305
EC – Fasteners (China)	Appellate Body Report, <i>European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China</i> , WT/DS397/AB/R , adopted 28 July 2011, DSR 2011:VII, p. 3995
EC – Hormones	Appellate Body Report, <i>European Communities – Measures Concerning Meat and Meat Products (Hormones)</i> , WT/DS26/AB/R , WT/DS48/AB/R , adopted 13 February 1998, DSR 1998:I, p. 135
EC – Sardines	Appellate Body Report, <i>European Communities – Trade Description of Sardines</i> , WT/DS231/AB/R , adopted 23 October 2002, DSR 2002:VIII, p. 3359

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EC – Seal Products	Appellate Body Reports, <i>European Communities – Measures Prohibiting the Importation and Marketing of Seal Products</i> , WT/DS400/AB/R / WT/DS401/AB/R , adopted 18 June 2014, DSR 2014:I, p. 7
EC – Seal Products	Panel Reports, <i>European Communities – Measures Prohibiting the Importation and Marketing of Seal Products</i> , WT/DS400/R and Add.1 / WT/DS401/R and Add.1, adopted 18 June 2014, as modified by Appellate Body Reports WT/DS400/AB/R / WT/DS401/AB/R , DSR 2014:II, p. 365
EC – Selected Customs Matters	Appellate Body Report, <i>European Communities – Selected Customs Matters</i> , WT/DS315/AB/R , adopted 11 December 2006, DSR 2006:IX, p. 3791
EC – Tariff Preferences	Panel Report, <i>European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries</i> , WT/DS246/R , adopted 20 April 2004, as modified by Appellate Body Report WT/DS246/AB/R , DSR 2004:III, p. 1009
EC – Tariff Preferences	Appellate Body Report, <i>European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries</i> , WT/DS246/AB/R , adopted 20 April 2004, DSR 2004:III, p. 925
EC and certain member States – Large Civil Aircraft	Panel Report, <i>European Communities and Certain Member States – Measures Affecting Trade in Large Civil Aircraft</i> , WT/DS316/R , adopted 1 June 2011, as modified by Appellate Body Report WT/DS316/AB/R , DSR 2011:II, p. 685
EU – Energy Package	Panel Report, <i>European Union and its member States – Certain Measures Relating to the Energy Sector</i> , WT/DS476/R and Add.1, circulated to WTO Members 10 August 2018, appealed 21 September 2018
EU – Palm Oil (Indonesia)	Panel Report, <i>European Union – Certain Measures Concerning Palm Oil and Oil Palm Crop-based Biofuels</i> , WT/DS593/R and Add.1, adopted 24 February 2025
EU and Certain Member States – Palm Oil (Malaysia)	Panel Report, <i>European Union and Certain Member States – Certain Measures Concerning Palm Oil and Oil Palm Crop-Based Biofuels</i> , WT/DS600/R and Add.1, adopted 26 April 2024
India – Autos	Panel Report, <i>India – Measures Affecting the Automotive Sector</i> , WT/DS146/R , WT/DS175/R , and Corr.1, adopted 5 April 2002, DSR 2002:V, p. 1827
India – Solar Cells	Panel Report, <i>India – Certain Measures Relating to Solar Cells and Solar Modules</i> , WT/DS456/R and Add.1, adopted 14 October 2016, as modified by Appellate Body Report WT/DS456/AB/R , DSR 2016:IV, p. 1941
India – Solar Cells	Appellate Body Report, <i>India – Certain Measures Relating to Solar Cells and Solar Modules</i> , WT/DS456/AB/R and Add.1, adopted 14 October 2016, DSR 2016:IV, p. 1827
India – Sugar and Sugarcane	Panel Reports, <i>India – Measures Concerning Sugar and Sugarcane</i> , WT/DS580/R and Add.1 (Australia) / WT/DS579/R and Add.1 (Brazil) / WT/DS581/R and Add.1 (Guatemala), circulated to WTO Members 14 December 2021, appealed 24 December 2021
Indonesia – Autos	Panel Report, <i>Indonesia – Certain Measures Affecting the Automobile Industry</i> , WT/DS54/R , WT/DS55/R , WT/DS59/R , WT/DS64/R , Corr.1 and Corr.2, adopted 23 July 1998, and Corr.3 and Corr.4, DSR 1998:VI, p. 2201
Indonesia – Chicken (Article 21.5 – Brazil)	Panel Report, <i>Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products – Recourse to Article 21.5 of the DSU by Brazil</i> , WT/DS484/RW and Add.1, circulated to WTO Members 10 November 2020, appealed 17 December 2020
Indonesia – Import Licensing Regimes	Panel Report, <i>Indonesia – Importation of Horticultural Products, Animals and Animal Products</i> , WT/DS477/R , WT/DS478/R , Add.1 and Corr.1, adopted 22 November 2017, as modified by Appellate Body Report WT/DS477/AB/R , WT/DS478/AB/R , DSR 2017:VII, p. 3131
Indonesia – Iron or Steel Products	Panel Report, <i>Indonesia – Safeguard on Certain Iron or Steel Products</i> , WT/DS490/R , WT/DS496/R , and Add.1, adopted 27 August 2018, as modified by Appellate Body Report WT/DS490/AB/R , WT/DS496/AB/R , DSR 2018:VII, p. 3707
Indonesia – Raw Materials	Panel Report, <i>Indonesia – Measures Relating to Raw Materials</i> , WT/DS592/R and Add.1, circulated to WTO Members 30 November 2022, appealed 8 December 2022
Japan – Alcoholic Beverages II	Appellate Body Report, <i>Japan – Taxes on Alcoholic Beverages</i> , WT/DS8/AB/R , WT/DS10/AB/R , WT/DS11/AB/R , adopted 1 November 1996, DSR 1996:I, p. 97
Japan – Apples (Article 21.5 – US)	Panel Report, <i>Japan – Measures Affecting the Importation of Apples – Recourse to Article 21.5 of the DSU by the United States</i> , WT/DS245/RW , adopted 20 July 2005, DSR 2005:XVI, p. 7911
Japan – DRAMs (Korea)	Panel Report, <i>Japan – Countervailing Duties on Dynamic Random Access Memories from Korea</i> , WT/DS336/R , adopted 17 December 2007, as modified by Appellate Body Report WT/DS336/AB/R , DSR 2007:VII, p. 2805
Korea – Various Measures on Beef	Appellate Body Report, <i>Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef</i> , WT/DS161/AB/R , WT/DS169/AB/R , adopted 10 January 2001, DSR 2001:I, p. 5

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<i>Mexico – Taxes on Soft Drinks</i>	Panel Report, <i>Mexico – Tax Measures on Soft Drinks and Other Beverages</i> , WT/DS308/R , adopted 24 March 2006, as modified by Appellate Body Report WT/DS308/AB/R, DSR 2006:I, p. 43
<i>Panama – Import Measures (Costa Rica)</i>	Panel Report, <i>Panama – Measures Concerning the Importation of Certain Products from Costa Rica</i> , WT/DS599/R and Add.1, circulated to WTO Members 5 December 2024, appealed 24 January 2025
<i>Russia – Pigs (EU)</i>	Appellate Body Report, <i>Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union</i> , WT/DS475/AB/R and Add.1, adopted 21 March 2017, DSR 2017:I, p. 207
<i>Thailand – Cigarettes (Philippines)</i>	Appellate Body Report, <i>Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines</i> , WT/DS371/AB/R , adopted 15 July 2011, DSR 2011:IV, p. 2203
<i>Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II)</i>	Panel Report, <i>Thailand – Customs and Fiscal Measures on Cigarettes from the Philippines – Second Recourse to Article 21.5 of the DSU by the Philippines</i> , WT/DS371/RW2 and Add.1, circulated to WTO Members 12 July 2019, appealed 9 September 2019
<i>Turkey – Additional Duties (US)</i>	Panel Report, <i>Turkey – Additional Duties on Certain Products from the United States</i> , WT/DS561/R and Add.1, circulated to WTO Members 19 December 2023, appealed 26 January 2024
<i>Turkey – Pharmaceutical Products (EU)</i>	Final Panel Report as issued to the parties in <i>Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products</i> , attached to Türkiye's notice of recourse to arbitration (WT/DS583/12 and Add.1)
<i>Turkey – Pharmaceutical Products (EU) (Article 25)</i>	Award of the Arbitrators, <i>Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products – Arbitration under Article 25 of the DSU</i> , WT/DS583/ARB25 and Add.1, 25 July 2022, DSR 2022:III, p. 1731
<i>Ukraine – Ammonium Nitrate</i>	Appellate Body Report, <i>Ukraine – Anti-Dumping Measures on Ammonium Nitrate</i> , WT/DS493/AB/R and Add.1, adopted 30 September 2019, DSR 2019:X, p. 5227
<i>US – Carbon Steel (India)</i>	Appellate Body Report, <i>United States – Countervailing Measures on Certain Hot-Rolled Carbon Steel Flat Products from India</i> , WT/DS436/AB/R , adopted 19 December 2014, DSR 2014:V, p. 1727
<i>US – Clove Cigarettes</i>	Appellate Body Report, <i>United States – Measures Affecting the Production and Sale of Clove Cigarettes</i> , WT/DS406/AB/R , adopted 24 April 2012, DSR 2012:XI, p. 5751
<i>US – COOL</i>	Appellate Body Reports, <i>United States – Certain Country of Origin Labelling (COOL) Requirements</i> , WT/DS384/AB/R / WT/DS386/AB/R , adopted 23 July 2012, DSR 2012:V, p. 2449
<i>US – COOL</i>	Panel Reports, <i>United States – Certain Country of Origin Labelling (COOL) Requirements</i> , WT/DS384/R / WT/DS386/R , adopted 23 July 2012, as modified by Appellate Body Reports WT/DS384/AB/R / WT/DS386/AB/R, DSR 2012:VI, p. 2745
<i>US – FSC (Article 21.5 – EC)</i>	Appellate Body Report, <i>United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS108/AB/RW , adopted 29 January 2002, DSR 2002:I, p. 55
<i>US – FSC (Article 21.5 – EC)</i>	Panel Report, <i>United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS108/RW , adopted 29 January 2002, as modified by Appellate Body Report WT/DS108/AB/RW, DSR 2002:I, p. 119
<i>US – Gambling</i>	Appellate Body Report, <i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> , WT/DS285/AB/R , adopted 20 April 2005, DSR 2005:XII, p. 5663 (and Corr.1, DSR 2006:XII, p. 5475)
<i>US – Gambling</i>	Panel Report, <i>United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services</i> , WT/DS285/R , adopted 20 April 2005, as modified by Appellate Body Report WT/DS285/AB/R, DSR 2005:XII, p. 5797
<i>US – Gasoline</i>	Panel Report, <i>United States – Standards for Reformulated and Conventional Gasoline</i> , WT/DS2/R , adopted 20 May 1996, as modified by Appellate Body Report WT/DS2/AB/R, DSR 1996:I, p. 29
<i>US – Large Civil Aircraft (2nd complaint)</i>	Appellate Body Report, <i>United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)</i> , WT/DS353/AB/R , adopted 23 March 2012, DSR 2012:I, p. 7
<i>US – Large Civil Aircraft (2nd complaint)</i>	Panel Report, <i>United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint)</i> , WT/DS353/R , adopted 23 March 2012, as modified by Appellate Body Report WT/DS353/AB/R, DSR 2012:II, p. 649
<i>US – Poultry (China)</i>	Panel Report, <i>United States – Certain Measures Affecting Imports of Poultry from China</i> , WT/DS392/R , adopted 25 October 2010, DSR 2010:V, p. 1909

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<i>US – Renewable Energy</i>	Panel Report, <i>United States – Certain Measures Relating to the Renewable Energy Sector</i> , WT/DS510/R and Add.1, 27 June 2019, mutually agreed solution reported
<i>US – Shrimp (Ecuador)</i>	Panel Report, <i>United States – Anti-Dumping Measure on Shrimp from Ecuador</i> , WT/DS335/R , adopted on 20 February 2007, DSR 2007:II, p. 425
<i>US – Steel and Aluminium Products (Turkey)</i>	Panel Report, <i>United States – Certain Measures on Steel and Aluminium Products</i> , WT/DS564/R , Add.1 and Suppl.1, circulated to WTO Members 9 December 2022, appealed 26 January 2023
<i>US – Tariff Measures (China)</i>	Panel Report, <i>United States – Tariff Measures on Certain Goods from China</i> , WT/DS543/R and Add.1, circulated to WTO Members 15 September 2020, appealed 26 October 2020
<i>US – Tax Incentives</i>	Appellate Body Report, <i>United States – Conditional Tax Incentives for Large Civil Aircraft</i> , WT/DS487/AB/R and Add.1, adopted 22 September 2017, DSR 2017:V, p. 2199
<i>US – Tuna II (Mexico) (Article 21.5 – Mexico)</i>	Appellate Body Report, <i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products – Recourse to Article 21.5 of the DSU by Mexico</i> , WT/DS381/AB/RW and Add.1, adopted 3 December 2015, DSR 2015:X, p. 5133
<i>US – Wool Shirts and Blouses</i>	Appellate Body Report, <i>United States – Measure Affecting Imports of Woven Wool Shirts and Blouses from India</i> , WT/DS33/AB/R , adopted 23 May 1997, and Corr.1, DSR 1997:I, p. 323
<i>US – Zeroing (EC) (Article 21.5 – EC)</i>	Appellate Body Report, <i>United States – Laws, Regulations and Methodology for Calculating Dumping Margins ("Zeroing") – Recourse to Article 21.5 of the DSU by the European Communities</i> , WT/DS294/AB/RW and Corr.1, adopted 11 June 2009, DSR 2009:VII, p. 2911
<i>US – Zeroing (Japan)</i>	Panel Report, <i>United States – Measures Relating to Zeroing and Sunset Reviews</i> , WT/DS322/R , adopted 23 January 2007, as modified by Appellate Body Report WT/DS322/AB/R , DSR 2007:I, p. 97

EXHIBITS REFERRED TO IN THIS REPORT

Exhibit	Title / Description
CHN-4	Public Law 117-169, An Act To Provide for Reconciliation Pursuant to Title II of the S. Con. Res. 14 (16 August 2022) (Excerpts)
CHN-5	White House, "Building a Clean Energy Economy: A Guidebook to the Inflation Reduction Act's Investments in Clean Energy and Climate Action" (January 2023, Version 2) (Excerpts)
CHN-17	Internal Revenue Code (Excerpts)
CHN-36	U.S. Internal Revenue Services, "Transfer of Certain Credits, Final Rule", 89 <i>Fed. Reg.</i> 34770 (30 April 2024)
CHN-38	U.S. Internal Revenue Service, "Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E" (12 May 2023) (Notice 2023-38)
CHN-45	26 CFR § 1.6418-1
CHN-48	U.S. Department of the Treasury, "Treasury Department Releases Guidance to Boost American Clean Energy Manufacturing" (12 May 2023)
CHN-49	White House, "FACT SHEET: One Year In, President Biden's Inflation Reduction Act is Driving Historic Climate Actions and Investing in America to Create Good Paying Jobs and Reduce Costs" (16 August 2023)
CHN-63	Title Pages of Subtitle A <i>et seq.</i>
CHN-66	26 U.S.C. § 7701
CHN-73	U.S. Internal Revenue Service, "Publication 551: Basis of Assets" (18 February 2025)
CHN-74	Executive Order 14213, "Establishing the National Energy Dominance Council" (14 February 2025), 90 <i>Fed. Reg.</i> 33
CHN-75	Coral Davenport, "Biden Administration Raises Costs to Drill and Mine on Public Lands" (12 April 2024) <i>The New York Times</i>
CHN-76	Environmental and Energy Study Institute "Fact Sheet. Fossil Fuel Subsidies: A Closer Look at Tax Breaks and Societal Costs" (July 2019)
CHN-78	"Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes" (12 July 2023), 88 <i>Fed. Reg.</i> 44,468
CHN-79	U.S. Department of Agriculture, "Fact Sheet: Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program" (June 2022)
CHN-80	U.S. Department of Agriculture, "Fact Sheet: Advanced Biofuel Payment Program"
CHN-81	U.S. Department of Energy, "Bioenergy Technologies Office Funding Opportunities"
CHN-84	Executive Order 14179 "Removing Barriers to American Leadership in Artificial Intelligence", 90 <i>Fed. Reg.</i> 8741 (23 January 2025)
CHN-87	U.S. Department of Commerce "Biden-Harris Administration Announces CHIPS Incentives Award with SK Hynix to Advance U.S. Technological Leadership and Expand Capacity of Chips Crucial to the AI Supply Chain" (19 December 2024)
CHN-88	Stanford University: Human-Centered Artificial Intelligence Explainer, "What the CHIPS and Science Act means for Artificial Intelligence" (August 2022)
CHN-91	The White House, "Fact Sheet: Two Years after the CHIPS and Science Act, Biden-Harris Administration Celebrates Historic Achievements in Bringing Semiconductor Supply Chains Home, Creating Jobs, Supporting Innovation, and Protecting National Security" (9 August 2024)
CHN-93	U.S. Department of Commerce, "Remarks by U.S. Secretary of Commerce Gina Raimondo: Investing in Leading-Edge Technology: An Update on CHIPS Act Implementation" (26 February 2024)
CHN-116	Tripp Mickle, "Trump Has Made Himself Commander in Chief of the Chip Industry" (13 August 2025), <i>The New York Times</i>
CHN-117	U.S. Internal Revenue Service, "Elective Pay and Transferability Frequently Asked Questions: Elective Pay"
US-16	Federal Trade Commission Act, 15 U.S.C. Section 45
US-17	Sherman Act, 15 U.S.C. Section 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-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-40	G7 Trade Ministers' Statement (2023)
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-85	Global Forum on Steel Excess Capacity, Steel Exports, trade remedy actions and sources of excess capacity (May 2024)
US-86	Global Forum on Steel Excess Capacity, Impacts of global excess capacity on the health of the GFSEC steel industries (March 2024)
US-104	Global Forum on Steel Excess Capacity, Global excess capacity and employment in steel and downstream activities (March 2025)

Exhibit	Title / Description
US-111	Summary of the Energy Security and Climate Change Investments in the Inflation Reduction Act of 2022 (July 27, 2022)
US-118	U.S. Department of Commerce, Remarks by U.S. Secretary of Commerce Gina Raimondo on the U.S. Competitiveness and the China Challenge (Nov. 30, 2022)
US-119	U.S. Department of the Treasury, Remarks by Secretary of the Treasury Janet L. Yellen at Livent in Bessemer City, North Carolina (November 30, 2023)
US-133	26 U.S.C. § 1012
US-136	26 U.S.C. § 1016
US-148	News Release, Sen. Robert Casey (Pennsylvania), Casey Applauds Senate Passage of Inflation Reduction Act, Historic Bill to Lower Costs for Families and Tackle Climate Crisis (Aug. 7, 2022)
US-169	Public Law 119-21, One Big Beautiful Bill Act
US-178	Public Law 119-21, One Big Beautiful Bill Act (revised exhibit US-169)

ABBREVIATIONS USED IN THIS REPORT

Abbreviation	Description
C.F.R.	U.S. Code of Federal Regulations
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
GATT 1994	General Agreement on Tariffs and Trade 1994
IRA	Inflation Reduction Act
IRS	U.S. Internal Revenue Service
ITCs	Investment Tax Credits
OBBA	U.S. One Big Beautiful Bill Act as signed into law on 4 July 2025
PTCs	Production Tax Credits
SCM Agreement	Agreement on Subsidies and Countervailing Measures
TRIMs Agreement	Agreement on Trade-Related Investment Measures
U.S.C.	United States Code
WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization

1 INTRODUCTION

1.1 Complaint by China

1.1. On 26 March 2024, China requested consultations with the United States pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), Article 8 of the Agreement on Trade-Related Investment Measures (TRIMs Agreement), and Articles 4 and 30 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) with respect to the measures and claims set out below.¹

1.2. Consultations were held on 7 May 2024.

1.2 Panel establishment and composition

1.3. On 15 July 2024, China requested the establishment of a panel pursuant to Article 6 of the DSU with standard terms of reference.² At its meeting on 23 September 2024, the Dispute Settlement Body (DSB) established a panel pursuant to the request of China in document WT/DS623/3, in accordance with Article 6 of the DSU.³

1.4. The Panel's terms of reference are the following:

To examine, in the light of the relevant provisions of the covered agreements cited by the parties to the dispute, the matter referred to the DSB by China in document WT/DS623/3 and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.⁴

1.5. On 10 December 2024, China requested the Director-General to determine the composition of the panel, pursuant to Article 8.7 of the DSU. On 19 December 2024, the Director-General accordingly composed the Panel as follows:

Chairperson: Ms Athalia Lesiba MOLOKOMME

Members: Ms Elaine FELDMAN
Ms Amina MOHAMED

1.6. Argentina; Australia; Brazil; Canada; Colombia; Ecuador; the European Union; Hong Kong, China; Indonesia; Israel; Japan; the Republic of Korea; Malaysia; Mexico; Norway; the Russian Federation; Singapore; Switzerland; Thailand; Türkiye; the United Arab Emirates; the United Kingdom; the Bolivarian Republic of Venezuela; and Viet Nam notified their interest in participating in the Panel proceedings as third parties.

1.3 Panel proceedings

1.7. After consultation with the parties, the Panel adopted its Working Procedures⁵ and timetable on 20 January 2025.

1.8. The Panel held a first substantive meeting with the parties on 6-7 May 2025. A session with the third parties took place on 7 May 2025. The Panel held a second substantive meeting with the parties on 26-27 August 2025. On 20 October 2025, the Panel issued the descriptive part of its Report to the parties. The Panel issued its Interim Report to the parties on 17 November 2025. The Panel issued its Final Report to the parties on 19 December 2025.

¹ Request for consultations by China, WT/DS623/1, G/L/1526 G/TRIMS/D/47, G/SCM/D137/1 (China's consultation request).

² Request for the establishment of a panel by China, WT/DS623/3 (China's panel request).

³ DSB, Minutes of the meeting held on 23 September 2024, WT/DSB/M/493, para. 3.9.

⁴ Constitution note of the Panel, WT/DS623/4.

⁵ Working Procedures of the Panel (Annex A-1).

2 FACTUAL ASPECTS

2.1 Introduction

2.1. The Inflation Reduction Act⁶ (IRA) is a statute adopted by the US Congress that was signed into law on 16 August 2022. Title I, Subtitle D (Energy Security) of the IRA amended the Internal Revenue Code, the primary source of US federal tax law, by creating and amending a number of tax credits concerning clean vehicle adoption and renewable energy production and investment. China's claims in this dispute are directed at "certain subsidies provided under the IRA that are contingent, in one way or another, upon the use of domestic over imported goods or that otherwise discriminate against goods of Chinese origin".⁷

2.2. More specifically, China's panel request challenges two sets of measures. The first is the Clean Vehicle Tax Credit. China's claims against the Clean Vehicle Tax Credit are directed at certain eligibility conditions that electric vehicles must meet to qualify for the tax credit. The second set of measures are the Investment Tax Credits (ITCs) and Production Tax Credits (PTCs) for clean electricity. As elaborated further below, China's claims against the ITCs and PTCs are directed at the associated Domestic Content Bonus Credits.

2.2 The United States' termination of the Clean Vehicle Tax Credit and China's withdrawal of its claims against that measure

2.3. As enacted, the IRA provided that the tax credit would be available for new clean vehicles placed into service until 31 December 2032. However, the United States' One Big Beautiful Bill Act (OBBBA), as signed into law on 4 July 2025, terminates the Clean Vehicle Tax Credit in respect of electric vehicles acquired after 30 September 2025.⁸

2.4. In the context of its comments on the United States' responses to the panel's questions following the second meeting, filed on 3 October 2025, China indicated that it was withdrawing its claims against the Clean Vehicle Tax Credit. Specifically, China explained that:

As the parties discussed at the second substantive meeting, and as the Panel is aware, the Clean Vehicle Credit was terminated effective 30 September 2025 as a result of the One Big Beautiful Bill Act (OBBBA). As this termination has now taken effect, China considers that it is no longer necessary for the Panel to make findings or recommendations in respect of this measure. China therefore withdraws its claims under Articles I:1 and III:4 of the GATT 1994, Articles 2.1 and 2.2 of the TRIMs Agreement, and Articles 3.1(b) and 3.2 of the SCM Agreement in respect of the Clean Vehicle Credit, and requests that the Panel decline to make findings or recommendations concerning these claims.⁹

2.5. In its subsequent comments, filed on 10 October 2025, the United States indicated that China's withdrawal of its claims against the Clean Vehicle Tax Credit means that China has effectively withdrawn the matter with respect to the Clean Vehicle Tax Credit from its panel request to the DSB.¹⁰ According to the United States, as China has withdrawn the Clean Vehicle Tax Credit from the matter referred to the DSB, the Clean Vehicle Tax Credit is now excluded from the Panel's terms of reference, and it is no longer permissible for the Panel to make findings or recommendations on these claims.¹¹

2.6. In the light of China's withdrawal of its claims and request that the Panel decline to make findings or recommendations concerning its claims against the Clean Vehicle Tax Credit, this

⁶ Public Law 117-169, An Act To Provide for Reconciliation Pursuant to Title II of the S. Con. Res. 14 (16 August 2022) (Exhibit CHN-4).

⁷ China's panel request, para. 6.

⁸ Public Law 119-21, One Big Beautiful Bill Act (revised exhibit US-169) (Exhibit US-178).

⁹ China's comments on the United States' responses to questions from the Panel after the second meeting, para. 1.

¹⁰ Additional comments of the United States of 10 October 2025, para. 1.

¹¹ Additional comments of the United States of 10 October 2025, para. 3.

descriptive part of the Report focuses on the ITC/PTC Domestic Content Bonus Credits and our findings in section 7 of this Report are limited to the ITC/PTC Domestic Content Bonus Credits.

2.7. The OBBBA also amends certain aspects of the eligibility criteria for the ITC/PTC Domestic Content Bonus Credits. However, neither party considers that these modifications should have any impact on the Panel's assessment of the matter before it.¹² Our findings in section 7 of this Report are therefore limited to the ITC/PTC Domestic Content Bonus Credits as they existed prior to the amendments introduced by the OBBBA.¹³

2.3 The ITC/PTC Domestic Content Bonus Credits

2.8. China challenges aspects of the Investment Tax Credits (ITCs) and Production Tax Credits (PTCs) for clean electricity. We refer to these aspects as the ITC/PTC Domestic Content Bonus Credits.¹⁴ We note that certain US government agencies have issued implementing regulations and/or other guidance documents related to the challenged aspects of the ITCs and PTCs that are contained in the US Code. In particular, on 12 May 2023, the IRS issued the "Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E", which sets forth proposed guidance equally applicable to the four ITCs and PTCs discussed below.¹⁵

2.9. The ITCs incentivize the initial development of new renewable energy projects (e.g. solar farms) by providing tax credits that reduce upfront costs of investment in such facilities. The IRA extended the application of the pre-existing ITC (codified at 26 U.S.C. Section 48) and introduced a new Investment Tax Credit for Clean Electricity (codified at 26 U.S.C. Section 48E). The pre-existing ITC codified at 26 U.S.C. Section 48 applies to a given "energy property" defined to cover a variety of renewable energy projects that began construction before 1 January 2025 (with certain exceptions).¹⁶ The new ITC for clean electricity applies to "qualified facilities" defined as those that produce electricity, have anticipated greenhouse gas emissions rates of zero, and are placed into service after 31 December 2024; it also applies to "energy storage technology".¹⁷

2.10. The PTCs incentivize ongoing renewable electricity production by providing tax credits for qualified facilities for generally the first ten years of operation. The IRA extended the application of the pre-existing PTC, codified at 26 U.S.C. Section 45 and in general applicable to electricity from facilities for which construction begins before 2025, and introduced a new PTC, codified at 26 U.S.C. Section 45Y and applicable to electricity generation facilities that are placed in service after 31 December 2024. The pre-existing PTC applied to electricity produced from "qualified energy resources" and "at a qualified facility" and defined "Qualified facilities" to cover a variety of renewable energy products.¹⁸ The new PTC for clean electricity defines a "qualified facility" as, generally, one that is placed into service after 31 December 2024 and produces electricity that has zero greenhouse gas emissions.¹⁹

2.11. The amount of the tax credits granted under the ITCs/PTCs vary depending on the circumstances, and certain additional "bonus" tax credit portions are also available. Generally speaking, there is a "base" rate for qualifying projects. For the ITCs, this base rate is usually 6% of

¹² Parties' responses to Panel question No. 29.

¹³ We note that the OBBBA amendments may result in the renumbering of some provisions cited herein.

¹⁴ In its panel request, China refers to the ITCs and PTCs collectively as the "Renewable Energy Tax Credits"; in its first written submission, it refers to them collectively as the "ITC/PTC Programmes". In the United States' first written submission, these credits are referred to as "Renewable Energy ITC/PTCs". China's claims are directed at what it variously refers to as the "bonus tax credits" or "bonus credits". The United States refers to them in its first written submission as "domestic content bonus credits". We find the United States' terminology helpful because it distinguishes the bonus credits at issue from certain other ITC/PTC "bonus tax credits", including the "energy community" bonus tax credit, which are not at issue in this dispute. Additionally, this terminology aligns with the terminology used in US implementing regulations, which also refer to the "Domestic Content Bonus Credits". (See Internal Revenue Service, Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E (12 May 2023) (Notice 2023-38) (Exhibit CHN-38).) We therefore refer to challenged aspects of the measures as the ITC/PTC Domestic Content Bonus Credits, by which we mean the ITCs and PTCs as increased by the Domestic Content Bonus Credits.

¹⁵ US Internal Revenue Service, "Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E" (12 May 2023) (Notice 2023-38) (Exhibit CHN-38).

¹⁶ 26 U.S.C. Sections 48(a)(1)-(3) and 48(c) (Exhibit CHN-17).

¹⁷ 26 U.S.C. Section 48E(a) and (b)(3) (Exhibit CHN-17).

¹⁸ 26 U.S.C. Section 45(d) (Exhibit CHN-17).

¹⁹ 26 U.S.C. Section 45Y(b)(1)(A) (Exhibit CHN-17).

the cost of constructing the clean energy facility.²⁰ For PTCs, the base rate is 0.3 cents per kWh of electricity generated by the clean energy facility.²¹ These base rates can be increased by a factor of five (i.e., to 30 percent for ITCs and to 1.5 cents/kWh for PTCs), where a project satisfies certain "prevailing wage and apprenticeship" requirements, subject to limited exceptions.²²

2.12. In this dispute, China challenges the ITC/PTC Domestic Content Bonus Credits. We refer to the Domestic Content Bonus Credits in the plural because the nature and method of the credit differ as between the ITCs and PTCs. Generally, they operate as follows: (a) in the context of the ITCs, the domestic content bonus credit amounts to up to additional ten percentage points of the total qualified capital costs of constructing the eligible clean energy facility; (b) in the context of the PTCs, the domestic content bonus credit amounts to the otherwise applicable PTC being increased by 10%.²³

2.13. Thus, in both instances, the Domestic Content Bonus Credit basically amounts to a 10% bonus increase of the otherwise available tax credit amount.²⁴ The Domestic Content Bonus Credits of the ITCs and PTCs are contingent on meeting two domestic content requirements. Both must be fulfilled, and the same domestic content requirements apply to all the ITCs and PTCs:

- a. The first domestic content requirement is the Steel and Iron Requirement. A project must use 100% domestic steel and iron to the extent that construction materials are made primarily of steel or iron and are structural in nature. This might include, in the case of a solar farm, steel module racking and steel or iron rebar in the foundation. In the case of a land-based or offshore wind turbine facility, this might include the tower and the steel or iron rebar in the foundation.²⁵
- b. The second domestic content requirement is the Manufactured Products Requirement. A specified percentage of manufactured goods that become part of an electricity generation facility (e.g. solar panels, wind turbine blades) must be mined, produced or manufactured in the United States. The percentage threshold is 40% for projects that begin construction before 2025 and increases by five percentage points per year up to 55% for projects starting construction in 2027 and beyond. For offshore wind facilities, the schedule starts at 20% and steps up to 55% for construction projects beginning after 2027.²⁶

2.14. The ITC/PTC Domestic Content Bonus Credits, and the associated Steel and Iron Requirement and Manufactured Products Requirement, are reflected in multiple statutory provisions that cross-reference other provisions.²⁷ The nature of the domestic content requirements (i.e. the Steel and

²⁰ See Section 48(a)(2)(A)(i) and Section 48E(a)(2)(A)(i). The ITCs calculate the amount of the credit with reference to the "basis" for the relevant facility, with certain exceptions. 26 U.S.C. Sections 48(a)(1), 48E(b)(1), and 48E(c)(1). The "basis" is the amount of an investment in property for tax purposes. The "basis" is usually the cost of the property and is subject to adjustments. See US Internal Revenue Service, "Publication 551: Basis of Assets" (18 February 2025) (Exhibit CHN-73); 26 U.S.C. Sections 1012(a) (Exhibit US-133) and 1016 (Exhibit US-136).

²¹ See 26 U.S.C. Sections 45(a) and 45Y(a). The ITCs and PTCs limited their simultaneous availability. 26 U.S.C. Sections 48(a)(3), 48E(b)(3)(C), and 45Y(b)(1)(E).

²² See 26 U.S.C. Sections 48(a)(9)(B), (10)(A), and (11) (Exhibit CHN-17).

²³ See para. 2.14 below and fn thereto.

²⁴ The Domestic Content Bonus Credits increase the value of the ITCs by "percentage points", consistent with the fact that the base rate of the ITCs is itself a *percentage* (i.e. generally 6% of the investment). The Domestic Content Bonus Credits increase the value of the PTCs by a certain "percent", consistent with the fact that the baseline value of the PTCs is an *absolute dollar amount* (i.e. generally 0.3 cents per kWh).

²⁵ See Sections 45(b)(9)(B)(ii), 45Y(g)(11)(B)(ii), 48(a)(12)(B), and 48E(a)(3)(B); and US Internal Revenue Service, "Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E" (12 May 2023) (Notice 2023-38), section 3.02 (Exhibit CHN-38).

²⁶ See Sections 45(b)(9)(B)(iii), 45(b)(9)(C), 45Y(g)(11)(B)(iii), 45Y(g)(11)(C), 48(a)(12)(B), and 48E(a)(3)(B). Section 48E(a)(3)(b) previously required at least 40% domestically manufactured products. Section 70513 of the OBBBA confirms that this percentage escalates in the same manner as Section 45Y. (United States' response to Panel question No. 29(b), para. 9; China's response to Panel question No. 29(b), fn 3.)

²⁷ Specifically, the pre-existing ITC provides that base percentage levels can be increased by a "domestic content bonus credit amount", which is either ten or two percentage points depending on whether certain other conditions are satisfied. (Section 48(a)(12)). For the actual domestic content requirements, the section cross-references the pre-existing PTC. (Section 48(a)(12)(B) ("Rules similar to the rules of section 45(b)(9)(B) shall apply.") The pre-existing PTC includes a section entitled "Domestic content bonus credit amount" (Section 45(b)(9)) which sets forth the Steel and Iron Requirement, the Manufactured Products

Iron Requirement and the Manufactured Products Requirement) are the same for each of the ITCs and PTCs.

2.15. The ITCs and PTCs for renewable energy are federal income tax credits that are claimed as "general business credits" under 26 U.S.C. Section 38.²⁸ Section 38 states that these credits "shall be allowed as a credit against the tax imposed by this chapter for the taxable year".²⁹ The credits thus reduce the total federal income tax liability of a taxpayer. If the credit exceeds the tax liability, unused credits can typically be carried back one year or forward up to 20 years to offset taxes in other years.³⁰ In addition to the default option of treating the ITCs/PTCs as tax credits, there are two other options to obtain the benefits contained in the ITCs and PTCs: (a) the "direct pay" option allows certain entities (esp. tax-exempt entities) to treat these tax credits as refundable payments of tax, in which case they may receive a direct payment from the IRS for any amount paid in excess of their tax liability³¹; and (b) the "transfer" option allows eligible taxpayers to transfer all or a portion of the ITC and PTC to an unrelated party for cash payment.³² Thus, while we refer to the measures as the ITC/PTC Domestic Content Bonus Credits, we recognize that they can be structured in ways that could be characterized other than as a tax credit.

3 PARTIES' REQUESTS FOR FINDINGS AND RECOMMENDATIONS

3.1. China claims that the ITC/PTC Domestic Content Bonus Credits are inconsistent with the following provisions of the covered agreements:

- a. Article III:4 of the GATT 1994, because by making eligibility for bonus subsidy amounts conditional on the use of US-origin goods, the United States does not accord to products of Chinese origin treatment no less favourable than the treatment accorded to like products of national origin in respect of laws, regulations, and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of the affected products.

Requirement, and the applicable increase in value of the credit if those requirements are satisfied. The new ITC contains a provision entitled "Domestic content" and states that rules similar to those in the pre-existing ITC, discussed above in this footnote, apply to this credit. (Section 48E(a)(3)(B) ("Rules similar to the rules of section 48(a)(12) shall apply.")) The new PTC contains a section entitled "Domestic content bonus credit amount" (Section 45Y(g)(11)) which reiterates, among other things, the Steel and Iron Requirement and the Manufactured Products Requirement. It also states the applicable increase in value of the credit if those requirements are satisfied.

²⁸ 26 U.S.C. Section 45(a) (referring to the credit as being "[f]or purposes of section 38"); Section 45Y(a) (same); Section 48(a) (referring to the credit as being "[f]or purposes of section 46"); Section 48E(a) (same); Section 46(2) (referring to the "energy credit" under Section 48(a) and being "[f]or purposes of section 38"); Section 38(b)(1) (referring to the credit under Section 46, i.e. sections 48 and 48E); Section 38(b)(8) (referring to the credit under Section 45(a)); Section 38(b)(41) footnote 1 and accompanying note (referring to the credit under Section 45Y); IRA, section 13702(b)(1)(C) (Exhibit CHN-4) (adding a subparagraph 7 to 26 U.S.C. Section 46 that references the clean electricity investment credit, which then will also be being "[f]or purposes of section 38").

²⁹ See 26 U.S.C. Section 38(a) (Exhibit CHN-17).

³⁰ See 26 U.S.C. Section 39(a) (Exhibit CHN-17).

³¹ See 26 U.S.C. Section 6417(a), (b)(2), (b)(8), (b)(10), and (b)(12) (Exhibit CHN-17) (allowing for this treatment for the four ITCs/PTCs). The entity electing this option is then treated as having paid tax in the amount equal to the credit. (26 U.S.C. Section 6417(a)) (Exhibit CHN-17).

³² See 26 U.S.C. Sections 6418(a), 6418(f)(1)(A)(ii), 6418(f)(1)(A)(vii), 6418(f)(1)(A)(ix), 6418(f)(1)(A)(xi) (Exhibit CHN-17) (allowing for the transfer of the four ITCs/PTCs); 26 C.F.R. Section 1.6418-1(c)(1)-(2) (Exhibit CHN-45) (defining "eligible credit" as one described in subparagraph (c)(2) that is with respect to an "eligible credit property" and that includes bonus amounts described in paragraph (c)(3)), (c)(2)(ii) (referring to the credit under Section 45(a)), (c)(2)(vii) (referring to the credit under Section 45Y(a)), (c)(2)(ix) (referring to the credit under Section 48), (c)(2)(xi) (referring to the credit under Section 48E), (c)(3)(ii) (referring to, *inter alia*, domestic content bonus credit under Section 45), (c)(3)(vi) (referring to, *inter alia*, domestic content bonus credit under Section 45Y), (c)(3)(viii) (referring to, *inter alia*, domestic content bonus credit under Section 48), (c)(3)(x) (referring to domestic content bonus credit under Section 48E), (d)(2), (d)(7), (d)(9) and (d)(11) (Exhibit CHN-45) (defining as "eligible credit property" relevant facilities under Sections 45, 45Y, 48 and 48E, respectively). The "eligible credit" can therefore be transferred to another taxpayer. (See 26 C.F.R. Section 1.6418-1(a).) The transferee is then allowed to claim the transferred credits on its tax return. (See 26 U.S.C. Section 6418(a).) The cash payments from the transferee to the transferor are not included in gross income of the eligible taxpayer and are not deductible by the unrelated taxpayers. (See 26 U.S.C. Section 6418(b)(1)-(3) (Exhibit CHN-17).) See also US Internal Revenue Service, "Transfer of Certain Credits, Final Rule", 89 Federal Register 34770 (30 April 2024) (Exhibit CHN-36).

- b. Article 2.1 of the TRIMs Agreement, because the conditions are investment measures related to trade in goods that are inconsistent with Article III:4 of the GATT 1994.
- c. Article 2.2 of the TRIMs Agreement, because the conditions are investment measures related to trade in goods, compliance with which is necessary to obtain an advantage, and which require the purchase or use by an enterprise of products of US origin or from any U.S. source, as provided for in paragraph 1(a) of the Annex to the TRIMs Agreement.
- d. Articles 3.1(b) and 3.2 of the SCM Agreement, because the ITC/PTC Domestic Content Bonus Credits are subsidies that are contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

3.2. China requests that the Panel recommend that the United States bring the challenged measures into conformity with its obligations under the relevant WTO covered agreements. With regard to the alleged prohibited subsidies, China requests that the Panel recommend that the United States withdraw these subsidies without delay, as contemplated by Article 4.7 of the SCM Agreement.³³

3.3. The United States does not dispute that the ITC/PTC Domestic Content Bonus Credits are inconsistent with the provisions of the GATT 1994 and the TRIMs Agreement referred to by China, and the United States does not dispute that the ITC/PTC Domestic Content Bonus Credits are subsidies contingent on the use of domestic over imported goods under the SCM Agreement. However, the United States requests that the Panel reject all of China's claims against the ITC/PTC Domestic Content Bonus Credits, on the grounds that the ITC/PTC Domestic Content Bonus Credits are justified under Article XX(a) of the GATT 1994 as measures necessary to protect public morals. The United States invokes the general exception in Article XX(a) in respect of China's claims under the GATT 1994, the TRIMs Agreement, and the SCM Agreement.

4 ARGUMENTS OF THE PARTIES

4.1. The arguments of the parties are reflected in their executive summaries, provided to the Panel in accordance with paragraph 23 of the Working Procedures adopted by the Panel (see Annexes B-1 and B-2).

5 ARGUMENTS OF THE THIRD PARTIES

5.1. The arguments of Argentina; Brazil; Canada; the European Union; Indonesia; Japan; Norway; the Russian Federation; Singapore; and Switzerland are reflected in their executive summaries, provided in accordance with paragraph 26 of the Working Procedures adopted by the Panel (see Annexes C-1 through C-10). Australia; Colombia; Ecuador; Hong Kong, China; Israel; the Republic of Korea; Malaysia; Mexico; Thailand; Türkiye; the United Arab Emirates; the United Kingdom; the Bolivarian Republic of Venezuela; and Viet Nam did not submit written or oral arguments to the Panel.

6 INTERIM REVIEW

6.1 Introduction

6.1. On 17 November 2025, the Panel issued its Interim Report to the parties.

6.2. On 1 December 2025, China and the United States each submitted written requests for the Panel to review precise aspects of the Interim Report. In its 1 December request for review, the United States indicated that it "requests an interim review meeting if it would be useful for the Panel to consider the issues identified in the written comments, including on the U.S. requests for the Panel to reconsider or further consider certain legal interpretations and conclusions in the interim report."³⁴

³³ China's first written submission, para. 174.

³⁴ See Request by the United States for Review of Precise Aspects of the Interim Report of the Panel, para. 9. See also accompanying cover letter.

6.3. On 3 December 2025 the Panel transmitted a communication to the parties that took note of the United States' offer to hold an interim review meeting and informed the parties that the Panel did not consider it necessary to schedule an interim review meeting to consider the issues raised in the written comments.

6.4. On 8 December 2025, the parties submitted written comments on each other's requests for review.

6.5. On 9 December 2025, the United States requested leave from the Panel to file rebuttal comments addressing China's assertion, in its comments on the United States' requests for review, that many of the United States' requests fell outside the proper scope of interim review.

6.6. On 12 December 2025, the Panel declined the United States' request to file rebuttal arguments on the scope of interim review. The Panel indicated that it would elaborate its reasons, as necessary, in the context of Section 6 of its Report. We do so in **section 6.2** below.

6.7. In accordance with Article 15.3 of the DSU, this section of the Report sets out the Panel's response to the parties' requests made at the interim review stage.

6.8. In addition to the requests for substantive modifications discussed below, various corrections or improvements of a clerical, typographical, or minor editorial nature were made to the Report, including but not limited to those suggested by the parties in the context of their comments on the Interim Report. In the interest of brevity, we refrain from listing or discussing such revisions here.

6.9. After addressing certain general issues raised by the parties' comments, we proceed to address all the substantive comments made individually and in sequence according to the paragraphs (and footnotes) to which such requests pertain.

6.10. Unless otherwise indicated, references to paragraph and footnote numbers in the discussion below correspond to the numbering in the Interim Report.

6.2 Authority for a panel to reconsider a legal conclusion

6.11. The United States introduces its comments on the Interim Report with arguments aimed at showing that the text of Article 15 of the DSU establishes that a party may seek to have the panel re-examine and reconsider its factual and legal findings and conclusions in the interim review process. The United States proceeds to provide its specific comments in each section on a paragraph-by-paragraph basis, and by reference to footnotes where appropriate. Several of these comments include requests for the Panel to reconsider certain record evidence, to reconsider certain aspects of its legal assessment, and to reconsider its legal conclusions that the Steel and Iron Requirement and the Manufactured Products Requirement are not designed to protect US public morals.

6.12. In its comments on the United States' comments, China observes that, in a significant number of instances, the United States' requests invite the Panel to reconsider and revise its conclusions on issues of fact and law. China states that the interim review process under Article 15.2 of the DSU is intended to allow parties to identify specific errors in the descriptive sections or in the Panel's reasoning, and to seek clarification of aspects of the report. However, in China's view, the process is not an opportunity for parties to re-argue positions that have already been fully presented, examined, and decided.³⁵ China submits that many of the United States' requests fall outside the proper scope of interim review and should be rejected.

6.13. We do not consider that any of the comments made by the United States in this dispute fall outside the proper scope of interim review. First, we note that each of the United States' comments are directed to specific aspects of the Panel's reasoning and/or specific aspects of the Panel's evaluation of the evidence in one or more identified paragraphs of the Report. In that sense, each

³⁵ China refers to Panel Report, *Panama – Import Measures (Costa Rica)*, para. 6.23 (in turn citing Panel Report, *Indonesia – Chicken (Article 21.5 – Brazil)*, para. 6.43 (in turn referring to Appellate Body Reports, *EC – Sardines*, para. 301; and *EC – Selected Customs Matters*, para. 259; and to Panel Reports, *US – Zeroing (EC) (Article 21.5 – EC)*, para. 7.26; *US – Zeroing (Japan)*, para. 6.106; *Japan – DRAMs (Korea)*, para. 6.2; *US – Poultry (China)*, para. 6.32; *India – Agricultural Products*, para. 6.5; *India – Solar Cells*, para. 6.24; *Russia – Pigs*, paras. 6.6-6.7; *Brazil – Taxation*, para. 6.7; and *EU – Energy Package*, para. 6.3)).

of the United States' comments meets the minimal threshold requirement of being related to "precise aspects" of the Report. Second, while we understand that the interim review stage is not a time to "reargue" or "relitigate" issues³⁶, in such a way that would require panels to "defend their findings and conclusions"³⁷, it does not follow that a panel should "exclude *a priori* from consideration any request for review from either party on the sole basis that it would seek reconsideration by the Panel of some of its determinations".³⁸ We note that there are instances in which prior panels have changed their approach to certain substantive issues, including their conclusions on certain claims, in the light of the parties' interim review comments.³⁹ Therefore, we do not refuse to consider any comments by the United States on the grounds that such comments may invite a re-examination and reconsideration our factual and legal findings and conclusions.

6.3 Requests to more accurately or thoroughly summarize the arguments of the parties

6.14. China observes that, in a significant number of instances, the United States' requests seek to have the Panel incorporate in the main body of the Report additional detail of arguments advanced by the United States in support of its unsuccessful defenses. These include the United States' requests in respect of paragraphs 7.94, 7.130 and 7.132, and the United States' "alternative" request in respect of a "new" paragraph 7.115. In China's opinion, none of these requests should be accepted by the Panel. China recalls that the United States' arguments in respect of these issues are included in its integrated Executive Summary, which will appear as an annex to the Panel Report, and for this reason it is neither appropriate nor necessary for the Panel to summarize all of the parties' evidence and arguments in the main body of the Panel Report.⁴⁰ China believes that the Panel has summarized the parties' positions in sufficient detail in the paragraphs identified by the United States.

6.15. We note that certain of the United States' comments are aimed at having us provide more detailed summaries or explanations of its arguments. We address any such requests individually. As a general comment at the outset, however, we note that we will aim to correct any inaccuracy in how a party's arguments are summarized. In addition, we will seek to accommodate any request to adjust the wording of existing argument summaries to more precisely and/or fully reflect the arguments made on the point being summarized. However, we have generally refrained from inserting substantial amounts of new text, including whole new paragraphs, merely for the sake of setting out more detailed argument summaries. Previous panels have emphasized, correctly in our view, that a panel is not required to reproduce all of the parties' arguments as set forth in their submission, and may reference and summarize the parties' arguments only to the extent it deems necessary and appropriate to facilitate understanding of the Panel's own assessment.⁴¹

6.4 Terms of reference

6.16. In the context of the descriptive part of the Report, the United States requests that the Panel revise and add several sentences to **paragraph 2.7**. These additional sentences would elaborate on the reasons why neither China nor the United States considers that the OBBBA's modifications of the ITC/PTC Domestic Content Bonus Credits should have any impact on the Panel's assessment of the matter before it. The additional sentences would then further clarify the basis for the Panel's

³⁶ See e.g. Panel Reports, *Japan – DRAMs (Korea)*, para. 6.2; *Japan – Apples (Article 21.5 – US)*, para. 7.23; *US – Poultry (China)*, para. 6.32; *EU – Energy Package*, paras. 6.13, 6.31, 6.36, 6.42, 6.45, 6.47, 6.55.

³⁷ Panel Reports, *Japan – DRAMs (Korea)*, para. 6.2; and *Indonesia – Iron or Steel Products (Chinese Taipei)*, Annex A-3, para. 2.3.

³⁸ Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II)*, Annex A-2, para. 2.2 (citing Panel Report, *US – Tuna II (Mexico)*, para. 6.3).

³⁹ Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines II)*, Annex A-2, para. 2.2 (citing Panel Reports, *US – Carbon Steel*, para. 7.24 and paras. 8.135-8.145; and *EC and certain member States – Large Civil Aircraft*, paras. 6.230-6.231).

⁴⁰ China references Appellate Body Reports, *Ukraine – Ammonium Nitrate (Russia)*, para. 6.42 ("it is within the panel's discretion to decide which arguments or evidence it addresses or relies on in reaching its findings") (citing Appellate Body Reports, *EC and certain member States – Large Civil Aircraft*, para. 1317 (quoting Appellate Body Report, *EC – Hormones*, para. 135); *US – COOL*, para. 299; *EC – Poultry*, para. 135; and *EC – Fasteners (China)*, para. 511).

⁴¹ Panel Reports, *India – Solar Cells*, para. 6.24; *US – Steel and Aluminium Products (Turkey)*, para. 6.3; *EU – Palm Oil (Indonesia)*, para. 6.6 and fn 172; *EU and Certain Member States – Palm Oil (Malaysia)*, para. 6.6 and fn 167.

decision to not consider the OBBBA's modifications as part of its analysis of the measures, by stating that the Panel agrees with the parties' reasons.

6.17. China responds that the parties' agreement on this point provides a sufficient basis for the Panel to limit its analysis to the ITC/PTC Domestic Content Bonus Credits as they existed prior to the amendments introduced by the OBBBA. China therefore considers that the Panel should reject the United States' request to have the Panel adopt the United States' preferred rationale on this point.

6.18. We recall that, as drafted, paragraph 2.7 provides that neither party considers that these modifications should have any impact on the Panel's assessment of the matter before it, and states that our findings in Section 7 of this Report are therefore limited to the ITC/PTC Domestic Content Bonus Credits as they existed prior to the amendments introduced by the OBBBA. We see no need to say anything further about the extent to which amendments to measures made after the time of a panel's establishment can be found to fall within the scope of a panel's terms of reference.

6.5 Order of analysis

6.19. The United States recalls that **paragraph 7.5** states that the Panel "sees no reason not to follow" the order of analysis applied in "most other disputes involving parallel claims under overlapping obligations in the GATT 1994, the TRIMS Agreement, and the SCM Agreement," and states in footnote 38 that the Panel "refer[s] to past WTO panel reports and Appellate Body reports when we consider them relevant and persuasive." The United States requests that, consistent with this assertion in footnote 38, and with Article 11 of the DSU, the Panel explain in paragraph 7.5 its understanding of the order of analysis of claims under the GATT 1994, the TRIMS Agreement, and the SCM Agreement, including whether the Panel finds the order of analysis approach in prior WTO panel reports and Appellate Body reports to be relevant and persuasive.

6.20. China responds that the Panel should reject the United States' request in respect of paragraph 7.5. According to China, the Panel states in this paragraph that it finds prior adopted reports concerning the order of analysis relevant and persuasive. According to China, those prior adopted reports speak for themselves, and nothing in the DSU requires the Panel to elaborate upon or reiterate the reasoning contained in those reports.

6.21. We recall that the order of analysis is discussed at paragraphs 7.4 and 7.5 of the Report. We do not agree with the United States' comment insofar as it implies that these paragraphs do not objectively assess this issue, that they do not explain our own understanding of the order of analysis, or that they remain silent on whether the Panel finds the approach taken in the prior reports to which it refers to be relevant or persuasive. Having said that, and with a view to accommodating the United States' request that we elaborate further on how the reports cited to are relevant and persuasive, we have provided some additional explanation in paragraph 7.5.

6.6 United States' defence under Article XX(a) of the GATT 1994

6.22. The United States observes that **paragraph 7.94** notes that the United States has submitted arguments that go beyond asserting that the measures are "not incapable" of protecting public morals, and that this paragraph then goes on to excerpt a portion of China's arguments. The United States requests that the Panel similarly summarize and excerpt the relevant portions of the US argument in more detail, for clarity and consistency with its summary and excerpt of China's position, and to provide a more balanced overview of the arguments.

6.23. As noted above, China responds that none of the US requests to elaborate on its arguments, including the United States' request regarding paragraph 7.94, should be accepted by the Panel.

6.24. In line with the principles articulated in paragraph 6.15, we have revised paragraph 7.94 to more fully reflect the United States' arguments.

6.25. The United States notes that in **paragraphs 7.107 and 7.108** the Panel opines that there is a limit on the objectives that a measure sought to be defended under Article XX(a) can seek to achieve, and "share[s] China's concern that an overly broad interpretation of 'public morals' could interfere with the 'carefully drawn balance of rights and obligations in the WTO Agreement'".

However, the Panel then recognizes at **paragraph 7.109** that it is "prudent to refrain from making any general or categorical findings on the interpretation of Article XX(a) in relation to this interpretive issue except to the extent necessary" and subsequently sets the issue aside at paragraph 7.203. The United States submits that, because the Panel need not reach a determination on whether "public morals" may be solely economic, paragraphs 7.107 and 7.108 should be deleted (along with a consequential deletion of the word "However" in the opening sentence of paragraph 7.109). In the United States' view, the statements in paragraphs 7.107 and 7.108 go beyond the function of panels as set out in DSU Article 11, and do not assist the DSB in discharging its responsibilities under the DSU and the covered agreements. Additionally, this deletion would also be consistent with the Panel's recognition in paragraphs 7.109 and 7.203 that a panel should not purport to "make law" by clarifying existing provisions of the WTO Agreement outside the context of resolving a particular dispute."

6.26. China responds that the Panel should reject this request. In China's view, while the Panel ultimately concludes that it need not make any "definitive" findings on the types of values or interests that may qualify as "public morals" under Article XX(a) of the GATT 1994, the Panel's interpretative discussion in paragraphs 7.107-7.109 provides important context for the Panel's subsequent analysis of the United States' invocation of Article XX(a). As that analysis reveals, many, if not all, of the "public morals" asserted by the United States in this dispute are economic in nature, and many of those alleged "public morals" concerns relate to topics that are governed by one or more of the covered agreements. In China's view, it is entirely appropriate – indeed, necessary – for the Panel to begin its analysis of the core issue in this dispute with interpretative observations concerning the nature and scope of the "public morals" exception under Article XX(a).

6.27. The paragraphs in question contain a discussion of issues discussed extensively by the parties and third parties in the proceedings, and in respect of which, therefore, the Panel has considered it appropriate to make certain limited observations with a view to being responsive to specific arguments advanced. Because the Panel ultimately did not find it necessary to resolve all the issues raised in these paragraphs, the paragraphs do not purport to "make law" in respect of the issues discussed therein. Accordingly, we reject the United States' request.

6.28. The United States recalls that **paragraph 7.113** summarizes China's view that it is difficult to ascertain the US public morals at issue from the US submissions, and that the second sentence quotes to the European Union's third-party statement describing the "large number and diverse nature of the interests to be protected that the United States puts forward." The United States submits that the EU assertion is not related to the alleged difficulty in identifying the US public morals at issue, and is instead related to the EU request for the Panel to make explicit findings on which of the elements put forward by the United States fall within the concept of "public morals" under Article XX(a).⁴² Accordingly, the United States requests deletion of the second sentence.

6.29. China submits that the Panel should reject the United States' request to delete reference to the argument made by the European Union in paragraph 7.113. China contends that, as context for its analysis of the United States' invocation of Article XX(a), it is appropriate for the Panel to observe that the United States was unclear and inconsistent as to its identification of the asserted "public morals" that the challenged measures were allegedly adopted to protect, including by reference to arguments made by China and third parties.

6.30. We understand the European Union's statement quoted in paragraph 7.113 to be consistent with China's position as quoted in the same paragraph. Both statements argue that the United States raised a large number of interests under the rubric of Article XX(a) and emphasize the Panel's role in assessing which of these interests are properly characterized as "public morals". The paragraph simply notes this point of convergence in the arguments of China and the European Union. Accordingly, we see no need to make the deletion requested by the United States.

6.31. The United States notes that **paragraph 7.114** states that the Panel sympathizes with China that it is difficult to ascertain the US public morals at issue, and points to "a degree of slippage" in US submissions. However, in **paragraph 7.115**, the Panel acknowledges that the United States has "sufficiently clarified its position on this issue over the course of its submissions". Accordingly, the United States strongly disagrees with the Panel's characterization of the US submissions in paragraph 7.114, and requests for deletion of the entirety of paragraph 7.114. The United States

⁴² European Union's third-party submission, para. 20.

observes that, over the course of a dispute, a complainant and a respondent address and expound upon issues; that China failed to sufficiently identify from the start its claims against the Clean Vehicle Tax Credit in both its panel request and first written submission, and required the Panel to issue questions on the matter; and that the Panel's initial views at paragraph 7.114 do not help resolve the dispute, as the Panel subsequently states, at paragraph 7.115, that the United States has identified the public morals at issue, as well as the behaviour by China at issue. Alternatively, if the Panel disagrees with the US request to delete paragraph 7.114, the United States requests that for clarity and transparency – and for consistency with the description and citations to China's arguments in paragraph 7.129 – the Panel include in paragraph 7.115 additional text explaining US arguments as clarified in the course of its submissions.

6.32. China submits that the Panel should reject the United States' request to delete paragraph 7.114, including its "alternative" request to insert a "new" paragraph 7.115. China submits that, as context for its analysis of the United States' invocation of Article XX(a), it is appropriate for the Panel to observe that the United States was unclear and inconsistent as to its identification of the asserted "public morals" that the challenged measures were allegedly adopted to protect.

6.33. We consider that paragraphs 7.114 and 7.115 accurately reflect our understanding of the development of the United States' arguments in this dispute and provide important context for understanding the Panel's analysis. However, to accommodate the United States' concerns, we have redrafted the paragraphs to more clearly emphasize that the "degree of slippage" we identified in the United States' first written submission did not undermine the existence of a discernible through-line in the United States' arguments concerning the public morals at issue.

6.34. With respect to the United States' request to add additional text in paragraph 7.115 providing further details of the United States' arguments, we note that the requested additional text is not related to the issue being discussed in this paragraph. The additional text concerns evidence submitted by the United States regarding alleged Chinese policies and practices. Paragraph 7.115, however, concerns the distinct issue of whether and when the United States clearly identified the public morals that the challenged measures seek to protect. Accordingly, and in line with the principles articulated in paragraph 6.15. we reject this request.

6.35. The United States observes that a footnote to **paragraph 7.115** clearly identifies portions of US submissions that identify the US public morals at issue, including the US first written submission, but that the second sentence in the paragraph attributes the identification of the US public morals to its responses to the Panel's questions after the first substantive meeting with the parties. Accordingly, for accuracy, the United States respectfully requests that the second sentence in paragraph 7.115, which states that the United States has clearly and repeatedly identified the values that the challenged measures are alleged to protect, be amended to remove the qualification "Beginning at least in its responses to the Panel's questions after the first substantive meeting with the parties...".

6.36. China responds that paragraph 7.115, second sentence, accurately identifies when the United States began to clarify the asserted "public morals" at issue.

6.37. The second sentence in paragraph 7.115 was not meant to suggest that the United States failed to identify the relevant public morals in its first written submission, or that the relevant public morals were only identified "[b]eginning at least in its responses to the Panel's questions after the first substantive meeting with the parties". Instead, read together with the relevant footnote, the paragraph as drafted indicated that, while the United States identified several possible public morals in its first written submission, including those it would later identify as the relevant public morals in responses to questions and subsequent submissions, the Panel identified a "degree of slippage" in the first written submission that was clarified at least from the United States' responses to the Panel's questions after the first substantive meeting. As noted above, we consider that 7.115 of the Interim Report accurately reflected the Panel's understanding of the development of the United States' arguments in this dispute and therefore provided important context for understanding the Panel's analysis. However, in order to accommodate the United States' concerns, we have revised the wording of the second sentence paragraph 7.115.

6.38. The United States argues that the last sentence of **paragraph 7.122** (paragraph 7.123 in the Final Report) erroneously states that the United States has not explained its understanding of

the concept of "unfair competition". The paragraph notes that it is unclear whether the concept includes restraint of trade, monopolization, and unfair or deceptive conduct, or whether the category includes those elements but is broader. The United States recalls that, in response to Panel Question No. 9(a) the United States explained why it considered each of China's policies and practices at issue to be non-market, including the fact that China's targeting of sectors and "policy of dominance is an effort towards monopolization". The United States also explained that China's targeting of sectors for dominance and non-market excess capacity did not occur in isolation, and is pursued through a variety of non-market means, such as the use of state-directed investment, forced labour, forced technology transfer, and the theft of trade secrets. Therefore, the United States maintains that it has explained its notion of "unfair competition": as is evident from its response to Question No. 9(a), the US concept of "unfair competition" includes restraint of trade, monopolization, unfair conduct, and more. Accordingly, the United States requests for deletion of the last sentence in paragraph 7.122 and asks the Panel to summarize and engage with the US arguments and evidence concerning the US concept of unfair competition, as well as its relationship with China's non-market policies and practices.

6.39. China responds that the Panel should reject this request. In China's view, the United States' request is nothing more than a request for the Panel to reweigh the evidence that it has already examined. China submits that the Panel's conclusion in the last sentence of paragraph 7.122 is correct – there was a mismatch between the evidence that the United States submitted to substantiate the existence of the asserted public moral against "unfair competition" and the nature of the alleged "public morals" concerns about imported Chinese products that the United States claimed the challenged measures were designed to protect.

6.40. In our view, paragraph 7.122 accurately reflects what the Panel perceives as a certain ambiguity in the United States' argument concerning the scope and existence of a broad or general public moral against "unfair competition". As the Report explains, this ambiguity arises from the fact that the evidence submitted by the United States does not demonstrate the existence of a unitary public moral against every kind of conduct that could be considered "non-market". The evidence on the record consists of laws against certain specific types of conduct, making it unclear whether the United States considers the various alleged Chinese policies and practices to constitute behaviour that falls within the confines of those laws, or whether it maintains that they contravene a broader public moral whose existence, however, is not demonstrated by the evidence submitted by the United States. This is the crucial point made in paragraphs 7.122-7.130. We decline to make changes to what we consider to be a full and accurate explanation of our views.

6.41. We note, additionally, that the United States' response to Panel Question No. 9(a), to which the United States refers in its request, explains why, in the United States' view, certain alleged Chinese practices and policies are "non-market". It then identifies which of the four public morals the various alleged practices and policies contravene. But the response does not clarify what the United States understands the content and scope of the public moral against unfair competition to be, especially in the light of the limited evidence on the record concerning this issue. Nor does the response provide new or additional evidence that the United States has a general public moral against "unfair competition" that would encompass any and all kinds of behaviour that could be considered non-market. Given that, the explanation in response to Question 9(a) as to why certain alleged Chinese policies and practices are "non-market" does not help elucidate the boundaries and content of the United States' public moral against unfair competition. We note finally that neither the response to Panel Question 9(a) nor the remainder of the United States' submissions contradict the evidence submitted by China that the United States has also maintained policies and practices that could themselves be characterized as "non-market", which, as we explain in paragraphs 7.129-7.130, cast doubt on the existence of a broad and unitary public moral in the United States against any and all kinds of conduct that could be described as "non-market".

6.42. For these reasons, the Panel has not made any revisions in response to these requests.

6.43. The United States argues that **paragraph 7.125** erroneously states that there is no evidence on the record supporting the existence of a broadly defined public moral against unfair competition. The United States submits that, in addition to the Sherman Act, the Federal Trade Commission Act, and several bilateral and multilateral statements, it submitted US court opinions that together reflect that the US public moral against unfair competition goes beyond the confines of the Sherman Act, reflecting the preservation of US democratic and social institutions. The United States submits that the Sherman Act and other laws "are examples and illustrations of the U.S. public moral against

unfair competition, but are not the confines of the public moral". Further, the United States submits that **paragraphs 7.126-7.128** fail to recount that the bilateral and multilateral statements do in fact reflect concerns of non-market policies and practices and value statements about unfair, non-market competition. For example, in the 2023 G7 Leaders' Statement on Economic Resilience and Economic Security, the United States and other G7 trade ministers "express[ed] renewed concerns about comprehensive strategies to use a range of non-market policies and practices" and affirmed the need to use existing means and developing new tools to address "the increased use of non-market policies and practices to reinforce vulnerability." Accordingly, in the United States' view, the evidence before the Panel demonstrates that the United States has a broad public moral against unfair competition, such that unfair competitive practices are viewed as a threat to the preservation of US democratic political and social institutions. The United States requests the Panel to fully evaluate and reconsider the record evidence.

6.44. China responds that the Panel should reject this request because it amounts to a request for the Panel to reweigh the evidence.

6.45. With respect to paragraph 7.125, we have redrafted this paragraph to provide additional clarity in respect of our analysis, and specifically to avoid unintentionally giving any impression that we have not considered the full range of evidence submitted by the United States in reaching our conclusions. However, we do not find anything in the United States' request that would prompt us to change the substance of those conclusions.

6.46. Insofar as the United States' request concerns certain bilateral and unilateral statements, we note that the Report does indeed engage with those statements, notably at paragraphs 7.126-7.127. We therefore do not understand the United States' assertion that the Report "fail[s] to recount" for those reports. The paragraphs in question examine the statements and, for the reasons explained therein, conclude that they do not support the existence of a broad public moral against "unfair competition". We do not see anything in the United States' request that would justify our changing that conclusion.

6.47. China requests that **paragraph 7.126** be amended to add the term "certain" prior to "China's practices" in relation to the description of signatory countries sharing concerns about "many of China's practices".

6.48. The United States indicates that the request by China is substantive, and not clerical. The United States does not object to China's request, but argues that this request further highlights the importance for the Panel to: (1) summarize the US arguments and evidence concerning China's non-market policies and practices, including as reflected in the U.S. request for review of paragraph 7.115; and (2) engage with the US arguments concerning the relationship of US public morals with China's non-market policies and practices, including as reflected in the US request for review of paragraph 7.122.

6.49. Given the United States' statement that it does not object to China's request, we have made the relevant change. We discuss the specific requests made by the United States in this connection in the appropriate parts of this Section.

6.50. The United States observes that **paragraph 7.130** recalls only a part of the US response to certain evidence provided by China suggesting that efforts to achieve sectoral dominance and engaging in market interventions, including through subsidies, cannot necessarily be understood to fall within the ambit of any US public moral against unfair competition. The United States requests that, for accuracy and completeness, this paragraph more fully reflect the US response. Specifically, the United States requests that paragraph 7.130 be amended to reflect that the United States has responded not only that such evidence is not akin to China's targeting and attaining dominance of sectors, but also that China has mischaracterized US actions; that China has not alleged that the United States has engaged in anything approaching China's behaviour; that China could not make such an allegation; and that China's targeting and attainment of dominance of sectors, including through the use of other non-market practices and policies "is singularly a China issue".

6.51. As noted above, China responds that none of these US requests to elaborate on its arguments, including the United States' request regarding **paragraph 7.130**, should be accepted by the Panel.

6.52. In line with the principles outlined in paragraph 6.15 of this Section, we have sought to accommodate the United States' request and added further detail of its arguments at paragraph 7.130. This addition has elicited a consequential elaboration of the Panel's reasoning in the same paragraph.

6.53. The United States argues that the second sentence of **paragraph 7.132** errs by stating that the United States did not "dedicate any part of its first written submission to demonstrating the existence of a public moral against coercion." To the contrary, the United States submits that paragraph 68 and footnotes 106 and 108 of the US first written submission clearly reflect that the United States has laws on coercion, and as recognized in paragraph 7.135, "[t]he United States has submitted several multilateral statements in which countries including the United States condemn economic coercion," including the 2023 G7 Trade Ministers' Statement. For accuracy, the United States requests that the paragraph to be amended to reflect the foregoing.

6.54. As noted above, China responds that none of the United States' requests to elaborate on its arguments, including the United States' request regarding paragraph 7.132, should be accepted by the Panel.

6.55. In response to the United States' request, and in line with the principles articulated in paragraph 6.15. , the Panel has redrafted paragraphs 7.132, 7.135 and 7.136 to both more fully and accurately reflect the United States' arguments and to ensure that the Panel's reasoning on this issue, including in respect of certain evidence submitted by the United States, is clear and complete.

6.56. The United States notes that **paragraph 7.134** excerpts a portion of China's argument from its oral statement at the second meeting of the panel. These arguments concern recent US actions, that China alleges, amount to "coercion". The United States submits, however, that the report does not summarize the US rebuttal made in the US opening statement at the second meeting of the panel (which the United States made in response to similar arguments from China in its second written submission), or the US closing statement at the second meeting of the panel. Accordingly, for clarity and a balanced presentation with the summary of China's position, the United States requests the Panel to add a paragraph after paragraph 7.134 summarizing these US rebuttal arguments.

6.57. China does not specifically respond.

6.58. In response to the United States' request, and in line with the principles articulated in paragraph 6.15. , we have added new paragraph 7.135 in the Final Report to reflect the United States' argument at the second substantive meeting of the Panel.

6.59. China requests that **paragraph 7.135** (paragraph 7.137 of the Final Report) be revised to add the term "alleged" concerning "conduct undertaken by and in China".

6.60. The United States indicates that the request by China is substantive, and not clerical. The United States does not object to China's request, but this request further highlights the importance for the Panel to: (1) summarize the US arguments and evidence concerning China's non-market policies and practices, including as reflected in the U.S. request for review of paragraph 7.115; and (2) engage with the US arguments concerning the relationship of US public morals with China's non-market policies and practices, including as reflected in the US request for review of paragraph 7.122.

6.61. Given the United States' statement that it does not object to China's request, we have made the relevant change in paragraph 7.137 of the Final Report. We discuss the specific requests made by the United States in this connection in the appropriate parts of this Section.

6.62. The United States argues that, at **paragraphs 7.162 to 7.166**, the Panel erroneously considers the ITCs and PTCs as a whole despite the fact that, as acknowledged elsewhere in the report (e.g., in paragraphs 2.2, 2.8, 2.12) China has only challenged the domestic content bonus credit. The United States submits that the consideration of the ITCs and PTCs as a whole is not germane to whether the *bonus credit* is designed to protect the identified US public morals. Indeed, the United States submits that the fact that Chinese steel or iron projects may qualify for the underlying base tax credit does not speak to whether the *bonus credit* may discourage use of Chinese steel or iron and protect US public morals. The United States argues that by tying the bonus credit

to the use of domestic steel or iron and avoidance of Chinese iron or steel, the credits contribute to the protection of US public morals.

6.63. China does not respond.

6.64. We explain at paragraph 7.165 of the Final Report (paragraph 7.163 of the Interim Report) why we considered it appropriate to analyse the domestic content bonus credit requirements in the context of, and as they operate within, their broader regulatory framework. In response to the United States' comments, and to ensure that our reasoning on this point is clear, we have added some additional explanatory text to paragraph 7.165. For the reasons given in that paragraph, we maintain our view that it is appropriate to examine the challenged bonus credit within the context of the ITCs and PTCs more generally.

6.65. The United States argues, as a cross-cutting comment on several aspects of the reasoning at **paragraphs 7.162-7.169 and 7.188-198** (paragraphs 7.164-7.171 and 7.190-7.220 of the Final Report), that the Panel's analysis conflates the concept of whether a measure is designed or taken to protect public morals with the *extent* of the measure's contribution under the necessity step. In this connection, the United States argues that several elements of the Panel's reasoning conflate whether a measure is designed to protect public morals with the *extent* of the measure's contribution. These include (a) the Panel's consideration of the fact that the projects that use Chinese iron or steel may still qualify for the underlying ITC/PTC base credit, (b) the Panel's assessment of the fact that the measures treat goods from FTA partners that are aligned with US public morals the same way as Chinese goods, and (c) the Panel's assessment of the fact that the Manufactured Products Requirement allows for a percentage of products to be manufactured in China. The United States requests the Panel to reconsider its legal conclusions that the Steel and Iron Requirement and the Manufactured Products Requirement are not "designed" or "taken to" protect US public morals, and to engage with the US arguments and evidence on whether the measures are "necessary" to protect U.S. public morals, including its arguments concerning the *extent* of the measure's contribution.

6.66. China responds that the Panel should reject this request. In China's view, the basis for the United States' request is its view that the Panel conflated the *design* inquiry under Article XX(a) with an assessment of the measure's *contribution* under the "necessity" prong. China considers the United States to be mistaken in this regard. According to China, the Panel's assessment clearly concerns the design, structure, and expected operation of the challenged measures. That is the proper basis on which to evaluate whether a challenged measure is one designed to address a public morals concern under Article XX(a). Moreover, China submits that it is well established that the types of evidence and evaluation relevant to the design inquiry under Article XX(a) may overlap with the types of evidence and evaluation relevant to the "necessity" analysis, should the latter become necessary.

6.67. We agree with the United States that panels should be careful not to conflate the question of whether a measure is designed or taken to pursue a particular objective with the related but distinct question of the extent of the contribution made by that measure to the objective it is designed to pursue. Our Report explicitly makes this point at paragraph 7.98. However, we do not agree with the United States' that the aspects of the measures referenced in the United States' request must be regarded as being more germane, let alone exclusively relevant, to the assessment of precisely how much the challenged measures contribute to the achievement of the alleged public morals objective. As the Report indicates, they are also germane to the assessment of what objective the challenged measures pursue. And it is in answering that question that we have engaged with them in the relevant paragraphs of our Report. Accordingly, we see no reason to make any revisions in the light of the United States' request.

6.68. The United States notes that the second and third sentences of **paragraph 7.165** (paragraph 7.167 of the Final Report) express the Panel's view that usually "a measure genuinely designed 'to protect public morals' from goods that are not inherently morally offensive" would express "moral disapprobation" towards use of that product. The accompanying footnote summarizes the US argument that the scope of Article XX(a) is not confined to measures that protect public morals from morally offensive products. However, in the United States' view, the Panel has not explained to the textual basis for its view that measures protecting public morals must "attach some negative signal or consequence to the consumption" of the morally offensive products. The United States requests that the Panel provide an explanation based on the ordinary meaning of the terms of Article XX(a).

6.69. China does not specifically respond.

6.70. We have reviewed the second sentence of paragraph 7.167 of the Final Report in the light of the United States' comment. Our intention in paragraph 7.167 was not to set out any general interpretation of the legal standard in Article XX(a). Rather, paragraph 7.167 is situated in the section of our findings that applies the legal standard in Article XX(a), as elaborated in the previous section of our findings, to the relevant factual aspects of the ITC/PTC Domestic Content Bonus Credits. We have revised paragraphs 7.167 to clarify that the statement in the second sentence, and related statements and reasoning in this part of our analysis, set out dispute-specific considerations related to the measures at issue in this dispute, in a way that is responsive to the arguments presented to us by the parties.

6.71. The United States further comments that **paragraphs 7.164 and 7.165** (paragraphs 7.166 and 7.167 of the Final Report) both reflect the Panel's view that, given the availability of base ITC/PTC credits for projects using Chinese steel, the Iron and Steel Requirement "does not, and cannot, express any kind of moral disapprobation" regarding Chinese unfair, non-market policies. However, in the United States' view, the Panel's conclusion is directly contradicted by China's very claim that the bonus credits provide less favourable treatment to Chinese goods as compared to US goods; that is, the developers of projects potentially eligible for ITC/PTC credits, their suppliers, and even their customers are made aware that the choice of Chinese iron and steel carries financial consequences for the project through the disapprobation expressed in the structure of the credits. The United States therefore requests the Panel to reconsider this aspect of its legal assessment as to Article XX(a).

6.72. China responds that the United States appears to misapprehend the nature of the Panel's conclusion in these and following paragraphs. In China's understanding, the Panel's essential point is that the ITC/PTC domestic content bonus requirements are *domestic content* requirements unrelated to the *origin* of the relevant manufactured goods, including iron and steel. These requirements do not target Chinese-origin products specifically, and by the United States' own admission they are "not designed to incentivize production in *other* countries that are aligned with US public morals".⁴³ The Panel therefore correctly concluded that these requirements were not taken for the purpose of protecting any US "public morals".

6.73. We do not agree with the United States that our finding that the Iron and Steel Requirement does not, and cannot, express any kind of moral disapprobation regarding alleged Chinese policies and practices is contradicted by our finding that the measure provides less favourable treatment to Chinese goods. As our Report explains, the measure does indeed treat Chinese goods less favourably, but not in a way that indicates or suggests that the less favourable treatment is a reflection of the *moral* character of Chinese goods. The Report also explains why we arrive at this conclusion: specifically, paragraphs 7.166-7.168 of the Final Report explain that while the Iron and Steel Requirement might incentivize consumers to purchase domestic steel and iron for economic reasons, thereby treating Chinese goods less favourably, it does not reflect, and could not be understood by consumers as reflecting, a preference that is based on or rooted in moral standards that are threatened or undermined by Chinese steel and iron. Accordingly, we see no reason to revise this aspect of our assessment.

6.74. The United States notes that **paragraph 7.171** (paragraph 7.173 of the Final Report) concerns the three GFSEC reports submitted by the United States in support of its arguments with respect to the Steel and Iron requirement for the ITC/PTC bonus credits. As the United States has explained – and China has not denied – it is well established that the steel sector faces non-market excess capacity, much of which has been attributed to China. The United States requests the Panel to limit its discussion of the GFSEC reports to what is necessary to resolve this dispute, and to ensure that its statements are not misconstrued to cast doubt on those GFSEC conclusions. Accordingly, the United States requests this paragraph to be amended in a way that reflects that the Panel's discussion of the GFSEC reports is limited to the purposes of assessing whether the measures at issue are designed to protect US public morals. The United States further requests that the Panel make clear that its findings related to the GFSEC reports are not intended to be otherwise relied upon or taken to express views concerning issues outside the context of this dispute. The United States requests certain other edits to the Panel's summary of the GFSEC reports to reflect more closely what these reports do and do not state about China having "infiltrate[d] and influence[d]

⁴³ United States' response to Panel question No. 38, para. 30 (emphasis original).

steel production outside of China". The United States makes a related request to amend the wording of a sentence in **paragraph 7.173** (paragraph 7.175 of the Final Report).

6.75. China responds that the panel should reject the United States' request in respect of paragraph 7.173. In China's view, the Panel properly weighed the significance of this evidence for the purpose for which it was submitted, and the modifications to this paragraph proposed by the United States are not relevant to the Panel's assessment of the evidence for that purpose.

6.76. We do not consider that the United States' requested revisions are necessarily relevant to the focus of the discussion in paragraph 7.173. However, in order to accommodate the United States' request, we have made the requested changes.

6.77. The United States observes that **paragraph 7.179** (paragraph 7.181 of the Final Report) discounts the US argument that the prevailing wage requirement contributes to the protection of US public morals. However, the United States submits that, without additional explanation from the Panel, the Report does not provide a clear basis for the Panel's rejection of the US argument. Accordingly, the US requests the Panel to provide additional explanation for its conclusion that the prevailing wage requirement does not "shed light on whether the two requirements challenged by China are designed or taken to protect public morals".

6.78. China does not respond.

6.79. In the light of the United States' comment, we have expanded our reasoning in paragraph 7.181 of the Final Report to more clearly explain the basis for our conclusion that the prevailing wage requirement does not shed light on whether the ITC/PTC Domestic Content Bonus Credits are designed or taken to protect public morals.

6.80. The United States submits that because the Panel has agreed to not make findings or recommendations with respect to the Clean Vehicle Tax Credit, references to arguments concerning China's dominance in the "electric vehicle" or "clean vehicle" sector should be deleted, consistent with the Panel's statement in paragraph 7.74. This includes references in **paragraphs 7.72, 7.104, 7.112, 7.116, 7.120 and footnotes 219, and footnote 268** of the Interim Report.

6.81. China does not respond.

6.82. We have removed references to "electric vehicles" and "clean vehicles" in the identified paragraphs and footnotes.

7 FINDINGS

7.1 Introduction and order of analysis

7.1. China's claims against the ITC/PTC Domestic Content Bonus Credits are directed at certain eligibility conditions which, if met, increase the amounts of the investment and production tax credits otherwise available to clean electricity producers. As set out in section 2 of this Report, the ITC/PTC Domestic Content Bonus Credits are conditional upon the fulfilment of: (1) the Steel and Iron Requirement, and (2) the Manufactured Products Requirement. We do not repeat our factual description here.

7.2. China claims that the ITC/PTC Domestic Content Bonus Credits are inconsistent with the national treatment obligations in Article III:4 of the GATT 1994 and Articles 2.1 and 2.2 of the TRIMs Agreement. China further claims that the ITC/PTC Domestic Content Bonus Credits are subsidies contingent on the use of domestic over imported goods in violation of Articles 3.1(b) and 3.2 of the SCM Agreement.

7.3. The United States does not dispute that the ITC/PTC Domestic Content Bonus Credits are inconsistent with the provisions of the GATT 1994, the TRIMs Agreement, and the SCM Agreement referred to by China. However, the United States requests that the Panel reject all of China's claims against the ITC/PTC Domestic Content Bonus Credits, on the grounds that the ITC/PTC Domestic Content Bonus Credits are justified under Article XX(a) of the GATT 1994 as measures necessary to protect public morals.

7.4. The order of analysis is informed by the manner in which the complainant has presented its claims, and equally, by the manner in which the respondent has presented its defences.⁴⁴ In its first written submission, China presents its claims under the GATT 1994 first, followed by its claims under the TRIMs Agreement, followed then by its claims under the SCM Agreement. The United States does not contest that the measures are inconsistent with the provisions referred to by China; it defends the measures by invoking the public morals exception in Article XX(a) of the GATT 1994 in respect of all the claims advanced.

7.5. In the circumstances of these proceedings, we see no reason to deviate from the order of analysis followed by China in its first written submission. We have considered the United States' suggestion that we begin our analysis with the claims under the SCM Agreement to efficiently resolve and fully address the claims at issue.⁴⁵ We agree with the United States that where a panel finds that a measure is a subsidy contingent on the use of domestic over imported products under Articles 3.1(b) and 3.2 of the SCM Agreement, such a finding would in principle serve to establish that the same measure is necessarily inconsistent with Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement, and potentially obviate the need to make further findings under the GATT 1994 and the TRIMs Agreement.⁴⁶ However, in the circumstances of this dispute we do not consider that exercising economy over the claims under the GATT 1994 and the TRIMs Agreement – which are straightforward and uncontested – would make any appreciable contribution to the efficient resolution of the dispute. Furthermore, while we appreciate the logic of the United States' suggestion, it appears that in most other disputes involving parallel claims under the overlapping obligations⁴⁷ in the GATT 1994, the TRIMs Agreement, and the SCM Agreement, panels have ordered their analysis to address claims under the GATT 1994 and the TRIMs Agreement before addressing prohibited subsidy claims under the SCM Agreement.⁴⁸ We consider that a panel's order of analysis may be informed by case-specific considerations. Having said that, the approach followed by past panels is relevant, insofar as it concerns the same issue we are confronted with here; and the approach followed by most past panels persuades us that the order of analysis followed by China raises no legal or logical problem, and may in fact facilitate the efficient resolution of the several claims raised in this dispute. As such, we see no reason not to follow this same approach in the present dispute.

7.6. Accordingly, we order our analysis to begin with China's claims under the GATT 1994, followed by China's claims under the TRIMs Agreement, and then address China's claims under the SCM Agreement. We will then address the United States' defence under the public morals exception in Article XX(a) of the GATT 1994, which it invokes as a response to all of China's claims.

7.7. Before doing so, we note that, as discussed in section 2.3 above, the ITCs and PTCs are worth certain monetary amounts, which the Domestic Content Bonus Credits can then *increase*. Because the Domestic Content Bonus Credits operate to increase the amount of the ITCs and PTCs, they are therefore intertwined, both practically and legislatively, with the ITCs and PTCs more generally. Accordingly, at times in our analyses below we will necessarily speak of the ITCs and PTCs more generally when assessing the design, structure, and content of these measures, and how they function. We consider it useful to recall that China does not challenge the ITCs and PTCs generally, and any findings of inconsistency with the covered agreements in this Report are only made with respect to the ITC/PTC Domestic Content Bonus Credits.

⁴⁴ See Appellate Body Report, *US – Zeroing (EC) (Article 21.5 – EC)*, para. 277; and Panel Report, *US – Large Civil Aircraft (2nd complaint)*, fn 1005 to para. 7.9.

⁴⁵ United States' response to Panel question No. 3, para. 8.

⁴⁶ United States' response to Panel question No. 3, paras. 3-8.

⁴⁷ As the United States observes, there is partial overlap between the claims under Article III:4 of the GATT 1994, Article 2 of the TRIMs Agreement, and Article 3.1(b) of the SCM Agreement, as all prohibit the use of local content requirements in certain circumstances, and address discriminatory conduct. (United States' response to Panel question No. 3, para. 4, citing Panel Reports, *Brazil – Taxation*, paras. 7.47-7.49.)

⁴⁸ See e.g. Panel Reports, *Canada – Autos*; *China – Auto Parts*; *Canada – Renewable Energy / Canada – Feed-In Tariff Program*; *Brazil – Taxation*; and *US – Renewable Energy*. Throughout this Report, we base our analysis on the terms of the DSU and other covered agreements under examination. We also refer to past WTO panel reports and Appellate Body reports when we consider them relevant and persuasive. We are aware that they are not binding, except with respect to resolving the particular dispute between the parties to that dispute. (See e.g. Appellate Body Report, *Japan – Taxes on Alcoholic Beverages*, p. 14.)

7.2 Claims under the GATT 1994

7.2.1 Introduction

7.8. China claims that the ITC/PTC Domestic Content Bonus Credits are inconsistent with Article III:4 because by making eligibility for bonus subsidy amounts conditional on the use of US-origin goods, the United States does not accord to products of Chinese origin treatment no less favourable than the treatment accorded to like products of national origin in respect of laws, regulations, and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of the affected products.⁴⁹

7.9. The United States does not contest China's claim.

7.10. Although the United States does not contest China's claims, we cannot summarily conclude that those claims are well-founded; we must make an objective assessment of whether China has made a *prima facie* case.⁵⁰ This section proceeds in two parts. First, it recalls the applicable legal standard under Article III:4. Second, it applies that legal standard to the ITC/PTC Domestic Content Bonus Tax Credits.

7.2.2 Applicable legal standard

7.11. Article III of the GATT 1994 is entitled "National Treatment on Internal Taxation and Regulation". Article III:4 provides, in relevant part, that:

The products of the territory of any Member imported into the territory of any other Member shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use.

7.12. China must demonstrate three elements to establish a violation of Article III:4: first, that the imported and domestic products at issue are "like" products; second, that the eligibility conditions are "laws, regulations, or requirements" affecting the internal sale, offering for sale, purchase, transportation, distribution or use of the relevant products; and third, that the eligibility conditions accord to imported products treatment that is "less favourable" than the treatment accorded to like domestic products.

7.13. Regarding the first element, the likeness evaluation generally takes account of the products' end-uses; consumers' tastes and habits; the physical properties of the products, including their nature and quality; and the tariff classification of the products. However, where a measure distinguishes between the two classes of products exclusively on the basis of origin, the likeness of the two classes of products is presumed, without the need to take the foregoing criteria into account.⁵¹

7.14. On the second element, the reference to "laws, regulations, or requirements" in Article III:4 includes requirements that an enterprise voluntarily undertakes in order to obtain an advantage from the government, including tax advantages or other forms of subsidy.⁵² The requirement that "laws, regulations, or requirements ... affect the internal sale, offering for sale, purchase, transportation, distribution or use of the relevant products" has been interpreted broadly to encompass measures that affect the equality of competitive opportunities for imported *vis-à-vis* like

⁴⁹ China's first written submission, paras. 94-110.

⁵⁰ Our approach is consistent with that followed in prior disputes where one or more claims were not contested. (See e.g. Panel Reports, *Mexico – Taxes on Soft Drinks*, para. 8.20; *US – Shrimp (Ecuador)*, paras. 7.9-7.11; *China – TRQs*, para. 7.21; and *Turkey – Additional Duties (US)*, para. 7.100.)

⁵¹ Panel Reports, *China – Publications and Audiovisual Products*, para. 7.1446 ("when origin is the sole criterion distinguishing the products, it is sufficient for purpose of satisfying the 'like product' requirement for a complaining party to demonstrate that there can or will be domestic and imported products that are 'like'"); *Brazil – Taxation*, para. 7.202; ("a complainant may establish 'likeness' by demonstrating that the measure at issue makes a distinction based on the origin of the product"); and *US – Poultry (China)*, para. 7.427 ("when origin is the sole criterion distinguishing the products, it has been sufficient for a complainant to demonstrate that there can or will be domestic and imported products that are 'like'").

⁵² See Panel Reports, *Brazil – Taxation*, para. 7.703. See also Panel Reports, *India – Autos*, paras. 7.184-7.186; *Canada – Autos*, para. 10.73; and *China – Auto Parts*, para. 7.240.

domestic products.⁵³ These include tax advantages, indigenization requirements, and other similar measures that create an incentive for the use of domestic over imported products.⁵⁴

7.15. With respect to the third element, the treatment accorded to like imported products under a measure at issue is less favourable if that treatment "modifies the conditions of competition in the relevant market to the detriment of imported products".⁵⁵ The fact that a measure modifies the conditions of competition to the detriment of imported products is, in itself, sufficient for a finding that the measure confers less favourable treatment.⁵⁶ A finding of less favourable treatment "need not be based on the actual effects of the contested measure in the marketplace".⁵⁷ Nor does it "require demonstration of trade effects, nor proof that the sourcing decisions of private firms have actually been impacted" by the measure or measures at issue.⁵⁸ This is because "Article III protects expectations not of any particular trade volume but rather of equal competitive relationships between imported and domestic products."⁵⁹

7.2.3 Application to the ITC/PTC Domestic Content Bonus Credits

7.16. We recall that the ITCs and PTCs are available to use as tax credits.⁶⁰ The four ITCs and PTCs have materially identical Domestic Content Bonus Credits, which are based on the Steel and Iron Requirement and the Manufactured Products Requirement. The former requires that domestic steel and iron be used in the construction of relevant facilities, and the latter requires that a certain amount of other domestic products be used in the construction of such facilities. Only if both such requirements are satisfied do the Domestic Content Bonus Credits become available, which essentially increase the amount of the ITC or PTC by either 10 percentage points or 10%, respectively. These are therefore conditions requiring the use of domestic over imported goods in the text of the measures themselves.

7.17. In the case of the ITC/PTC Domestic Content Bonus Credits, we consider that the likeness of the relevant domestic and imported products may be presumed because the eligibility conditions make distinctions exclusively on the basis of origin. In respect of steel and iron products falling within the scope of the Steel and Iron Requirement, the relevant eligibility conditions for obtaining a Domestic Content Bonus Credit relate exclusively to whether the products in question are of US origin. Similarly, for other manufactured products falling within the scope of the Manufactured Products Requirement, the relevant eligibility conditions for obtaining the Domestic Content Bonus Credits also relate exclusively to whether the products in question are of US origin.

7.18. We consider that the challenged eligibility conditions constitute requirements in the sense of Article III:4 because they are requirements that an enterprise must fulfil to obtain an advantage from the government – namely, the advantage of obtaining an increase in the amount of the ITC or PTC by either 10 percentage points or 10%, respectively. Furthermore, these requirements "affect the internal sale, offering for sale, purchase, ... distribution or use" of the relevant products – in this case, iron or steel, or other manufactured products, used in the subject project – because these requirements create an incentive to sell, offer for sale, purchase, or use domestic over like imported products of these types.

⁵³ See e.g. Appellate Body Report, *China – Publications and Audiovisual Products*, para. 227; Panel Reports, *Brazil – Taxation*, paras. 7.193–7.197.

⁵⁴ See e.g. Panel Reports, *US – Renewable Energy Sector*, para. 7.166; *Canada – Autos*, para. 10.82; and *Brazil – Taxation*, para. 7.706.

⁵⁵ Appellate Body Reports, *Korea – Various Measures on Beef*, para. 137; *Thailand – Cigarettes (Philippines)*, para. 128.

⁵⁶ Appellate Body Report, *Argentina – Financial Services*, para. 6.109.

⁵⁷ Appellate Body Report, *US – FSC (Article 21.5 – EC)*, para. 215.

⁵⁸ Panel Report, *US – FSC (Article 21.5 – EC)*, para. 8.159.

⁵⁹ Appellate Body Report, *Japan – Alcoholic Beverages II*, p. 16.

⁶⁰ As elaborated in the context of our assessment of China's claims under the SCM Agreement, there are different ways that the investment and production tax credits can be used by the recipient (i.e. the Investor/Producer Credit, the Elective Payment, and the Assignment Credit). We consider that the alternative ways the relevant transactions can be structured to be an issue that is more germane to question of identifying the form(s) that the relevant financial contribution(s) take under Article 1.1(a)(1)(i) and/or (ii) of the SCM Agreement. Accordingly, we discuss that issue in the context of our assessment of China's claims under the SCM Agreement.

7.19. Finally, we consider that the ITC/PTC Domestic Content Bonus Credits accord less favourable treatment to like imported products relative to the treatment accorded to qualifying domestic products. We note that less favourable treatment has consistently been found in the case of measures that provide tax incentives, subsidies, administrative advantages, or other similar benefits for the use of domestic products over like imported products.⁶¹ Importantly, "less favourable treatment" exists under these circumstances even where there are other means of obtaining the favourable treatment that do not require the use of domestic over imported goods.⁶²

7.20. We therefore find that China has made a *prima facie* case that the ITC/PTC Domestic Content Bonus Credits are inconsistent with Article III:4.

7.2.4 Conclusion

7.21. For the reasons stated above, we conclude that the ITC/PTC Domestic Content Bonus Credits are inconsistent with Article III:4 of the GATT 1994 because by making eligibility for bonus subsidy amounts conditional on the use of US-origin goods, the United States does not accord to products of Chinese origin treatment no less favourable than the treatment accorded to like products of national origin in respect of laws, regulations, and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of the affected products.

7.3 Claims under the TRIMs Agreement

7.3.1 Introduction

7.22. Having upheld China's claims under Article III:4 of the GATT 1994, we now turn to examine China's additional claims under Articles 2.1 and 2.2 of the TRIMs Agreement.

7.23. China submits that the ITC/PTC Domestic Content Bonus Credits are trade-related investment measures within the meaning of Article 1 of the TRIMs Agreement.⁶³ China argues that these tax credits are contingent on the use of domestic over imported goods and thus fall squarely within paragraph 1(a) of the illustrative list.⁶⁴ Moreover, China submits that it has demonstrated that the ITC/PTC Domestic Content Bonus Credits are inconsistent with Article III:4 of the GATT 1994.⁶⁵

7.24. The United States does not contest China's claims.

7.25. Although the United States does not contest China's claims, we recall that we must make an objective assessment that China has made a *prima facie* case.⁶⁶ This section proceeds in two parts. First, it recalls the applicable legal standards under Articles 1 and 2 of the TRIMs Agreement. Second, it applies those legal standards to the ITC/PTC Domestic Content Bonus Tax Credits.

7.3.2 Applicable legal standard

7.26. Article 1 of the TRIMs Agreement, entitled "Coverage", provides that the TRIMs Agreement applies to "investment measures related to trade in goods" (referred to as "TRIMs"). We consider that the use of the broad term "investment measures" indicates that the TRIMs Agreement is not limited to measures taken specifically in regard to *foreign* investment, and there is no reason in principle why measures relating to internal taxes or subsidies could not be construed as trade-related investment measures.⁶⁷ Several prior panels examining claims under the TRIMs Agreement have

⁶¹ See e.g. Appellate Body Reports, *US – FSC (Article 21.5 – EC)*, para. 220; *China – Auto Parts*, para. 195. See also Panel Reports, *India – Solar Cells*, paras. 7.89-7.98; *US – COOL*, para. 7.358; and *US – Renewable Energy*, paras. 7.253, 7.262, 7.272, 7.282, 7.292, 7.302, 7.314, 7.324, and 7.333.

⁶² See Panel Reports, *Canada – Autos*, para. 10.87; *India – Solar Cells*, para. 7.95; and Appellate Body Report, *US – FSC (Article 21.5 – EC)*, para. 221.

⁶³ China's first written submission, paras. 136-140.

⁶⁴ China's first written submission, paras. 127 and 140.

⁶⁵ China's first written submission, para. 141.

⁶⁶ See para. 7.10 above.

⁶⁷ Panel Report, *Indonesia – Autos*, para. 14.73.

concluded that domestic content requirements, or other types of localization requirements, were "investment measures" that were by definition "related to trade in goods".⁶⁸

7.27. Article 2 of the TRIMs Agreement is entitled "National Treatment and Quantitative Restrictions". Article 2.1 reads:

1. 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.

7.28. Thus, Article 2.1 of the TRIMs Agreement establishes the obligation not to apply any trade-related investment measure that is inconsistent with the provisions of Article III of the GATT 1994. The obligation in Article 2.1 of the TRIMs Agreement is defined in the relevant part by reference to the obligation in Article III of the GATT 1994, and any trade-related investment measure that is inconsistent with Article III:4 of the GATT 1994 (or any other subparagraph of Article III) is *ipso facto* inconsistent with Article 2.1 of the TRIMs Agreement.⁶⁹

7.29. Article 2.2 of the TRIMs Agreement reads:

2. 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.

7.30. Paragraph 1(a) of that illustrative list reads:

1. TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 include those which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage, and which require:

(a) the purchase or use by an enterprise of products of domestic origin or from any domestic source, whether specified in terms of particular products, in terms of volume or value of products, or in terms of a proportion of volume or value of its local production

7.31. Thus, Article 2.2 refers to the illustrative list of TRIMs that are inconsistent with the national treatment obligation in Article III:4 of GATT 1994. Where a measure is a TRIM that falls within the scope of the illustrative list, it follows that the measure is a TRIM that is inconsistent with Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement. A claim can be made under Article 2.1 *independently* of Article 2.2 and the Agreement's Illustrative List, or a claim can be made under Article 2.1 *in conjunction with* Article 2.2 and the Agreement's Illustrative List. In either case, any finding of violation would be in respect of Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement.⁷⁰ While China has articulated its claims of violation with respect to both Articles 2.1 and 2.2 of the TRIMs Agreement in the light of the intertwined nature of Article 2 as a whole and its view that the measures fall within the TRIMs Illustrative List, China recognizes that "Article 2.2 does not necessarily create an independent obligation, but rather applies in conjunction with Article 2.1".⁷¹

7.3.3 Application to the ITC/PTC Domestic Content Bonus Credits

7.32. China argues that the ITC/PTC Domestic Content Bonus Credits are TRIMs because the measures are investment measures that are trade related.

⁶⁸ Panel Reports, *Indonesia – Autos*, paras. 14.73-14.82; *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, paras. 7.108-7.112; *India – Solar Cells*, paras. 7.58-7.64; and *Brazil – Taxation*, paras. 7.356-7.361 and 7.800-7.802.

⁶⁹ See Panel Reports, *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, para. 7.117. See also Appellate Body Reports, *Brazil – Taxation*, para. 5.79.

⁷⁰ See e.g. Panel Report, *India – Solar Cells*, para. 7.73.

⁷¹ China's response to Panel question No. 2, para. 5.

7.33. Regarding the first of these two elements, China submits that the ITCs and PTCs are investment-related tax incentives that are specifically designed to reduce upfront investment and production costs for qualified facilities in the United States, and that the Domestic Content Bonus Credits offer additional tax credit subsidies for projects that satisfy certain domestic content requirements.⁷² China recalls that, to obtain these additional incentives, a project must use the specified proportions of US-origin steel or iron and other US-origin manufactured products and submits that, as expressly confirmed by the United States, these measures are "investment measures" because their objective is to incentivize production of steel, iron, and manufactured products in the United States.⁷³ In this connection, China refers to the following US government statements made in connection with these measures:

- a. "The Inflation Reduction Act *structures the clean energy Production Tax Credit (PTC) and Investment Tax Credit (ITC) provisions to incentivize investment* in communities most in need of new economic development."⁷⁴
- b. "The *domestic content bonus under the Inflation Reduction Act will boost American manufacturing, including in iron and steel*, so America's workers and companies continue to benefit from President Biden's Investing in America agenda. *These tax credits are key to driving investment* and ensuring all Americans share in the growth of the clean energy economy."⁷⁵
- c. "The *Inflation Reduction Act aims to boost domestic manufacturing*, create good-paying union jobs, and build more resilient, secure, and trusted supply chains. Together with the Bipartisan Infrastructure Law and the CHIPS and Science Act, *the law has helped spur over \$500 billion in private sector manufacturing investments since President Biden and Vice President Harris took office, including approximately \$240 billion in clean energy manufacturing investments.*"⁷⁶

7.34. We consider that the foregoing suffices to establish a *prima facie* case that the ITC/PTC Domestic Content Bonus Credits are "investment measures" within the meaning of Article 1. We recall that previous panels have reasoned that domestic content requirements or other localization measures are "related to trade in goods" because "such requirements, by definition, always favour the use of domestic products over imported products, and therefore affect trade".⁷⁷ China submits that the ITC/PTC Domestic Content Bonus Credits are "trade-related" for the same reason.⁷⁸ We agree.

7.35. We therefore find that China has made a *prima facie* case that the ITC/PTC Domestic Content Bonus Credits are "investment measures related to trade in goods" within the meaning of Article 1 of the TRIMs Agreement.

7.36. We have already found that the ITC/PTC Domestic Content Bonus Credits are inconsistent with Article III:4 of the GATT 1994.⁷⁹

7.37. We further consider that China has made a *prima facie* case that the ITC/PTC Domestic Content Bonus Credits fall within the scope of paragraph 1(a) of the illustrative list of TRIMs that violate Article III of the GATT 1994. In this connection, "compliance with" the ITC/PTC Domestic Content Bonus Credits (i.e. fulfilling the Steel and Iron Requirement and the Manufactured Products Requirement) is "necessary to obtain an advantage" (i.e. an increase in the amount of the ITC or

⁷² China's first written submission, para. 137.

⁷³ China's first written submission, para. 137.

⁷⁴ White House, "Building a Clean Energy Economy: A Guidebook to the Inflation Reduction Act's Investments in Clean Energy and Climate Action" (January 2023, Version 2) (Exhibit CHN-5), p. 12. (emphasis added)

⁷⁵ US Department of the Treasury, "Treasury Department Releases Guidance to Boost American Clean Energy Manufacturing" (12 May 2023) (Exhibit CHN-48). (emphases added)

⁷⁶ White House, "FACT SHEET: One Year In, President Biden's Inflation Reduction Act is Driving Historic Climate Actions and Investing in America to Create Good Paying Jobs and Reduce Costs" (16 August 2023) (Exhibit CHN-49). (emphases added)

⁷⁷ Panel Reports, Indonesia – Autos, para. 14.82; Canada – Renewable Energy / Canada – Feed-In Tariff Program, para. 7.111.

⁷⁸ China's first written submission, para. 139.

⁷⁹ See section 7.2 above.

PTC by either 10 percentage points or 10%, respectively) within the meaning of paragraph 1 of the illustrative list. By their terms, the Steel and Iron Requirement and the Manufactured Products Requirement both "require the purchase or use by an enterprise of products of domestic origin or from any domestic source" and that requirement is "specified in terms of particular products" (i.e. US domestic steel, iron and manufactured products), and also "in terms of volume or value of products" (i.e. the 100% of structural steel and iron, and specified thresholds for manufactured products).

7.38. It follows from the foregoing that the United States has violated the obligation in Article 2.1 of the TRIMs Agreement by applying a TRIM that is inconsistent with Article III:4 of the GATT 1994.

7.3.4 Conclusion

7.39. For the reasons stated above, we conclude that the ITC/PTC Domestic Content Bonus Credits are inconsistent with Article 2.1 of the TRIMs Agreement, because the conditions are investment measures related to trade in goods that are inconsistent with Article III:4 of the GATT 1994.

7.4 Claims under the SCM Agreement

7.4.1 Introduction

7.40. We have upheld China's claims that the ITC/PTC Domestic Content Bonus Credits are inconsistent with Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement. We now examine China's claims under Articles 3.1(b) and 3.2 the SCM Agreement.

7.41. China claims that ITCs and PTCs, including as increased by the Domestic Content Bonus Credits, are subsidies within the meaning of Article 1 of the SCM Agreement, and are contingent on the use of domestic over imported goods within the meaning of Articles 3.1(b) of the SCM Agreement insofar as the Domestic Content Bonus Credits increase their value.

7.42. The United States contests neither issue.

7.43. Although the United States does not contest China's claims, we must make an objective assessment that China has made a *prima facie* case.⁸⁰ This section proceeds in two parts. First, it recalls the applicable legal standards under Articles 1 and 3 of the SCM Agreement. Second, it examines whether the ITC/PTC Domestic Content Bonus Credits are subsidies contingent on the use of domestic over imported goods.

7.4.2 Applicable legal standards

7.4.2.1 Subsidy: Article 1 of the SCM Agreement

7.44. Article 1.1 of the SCM Agreement provide, in relevant part:

For the purpose of this Agreement, a subsidy shall be deemed to exist if:

- (a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:
 - (i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);
 - (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);

⁸⁰ See para. 7.10 above.

...

and

(b) a benefit is thereby conferred.

7.45. Regarding Article 1.1(a)(1)(i), the phrase "a government practice involv[ing] a direct transfer of funds" has been interpreted as capturing "conduct on the part of the government by which money, financial resources, and/or financial claims are made available to a recipient". The meaning of "funds" therefore includes not only money, but also financial resources and other financial claims more generally.⁸¹ Additionally, the phrase may encompass situations where a government or public body transfers funds to a recipient through an intermediary, depending on the nature and role of the intermediary and whether there is a resulting sufficient degree of "directness".⁸²

7.46. To determine if government revenue is "otherwise due" under Article 1.1(a)(1)(ii), a panel is required to:

- a. identify the tax treatment that applies to the alleged subsidy recipients;
- b. identify a benchmark for comparison (which involves identifying tax treatment of comparable income of comparably situated taxpayers); and
- c. compare the challenged treatment with the benchmark tax treatment.⁸³

7.47. Because transactions can be complex, different aspects of a transaction may be properly characterized as different types of financial contributions, and a transaction may be properly characterized as more than one type of financial contribution.⁸⁴

7.48. A financial contribution confers a benefit when it makes the recipient better off than it would otherwise have been, absent that contribution.⁸⁵ While a financial contribution and a benefit are separate legal elements in Article 1.1, as multiple panels have observed, where a financial contribution exists in the form of revenue forgone otherwise due, a finding of a benefit – and hence a subsidy – readily follows, i.e. the amount of tax that was forgone.⁸⁶ With respect to financial contributions in the form of direct transfer of funds, the benefit analysis will depend on the specific form that such a financial contribution takes. However, where the financial contribution takes the form of, for example, a grant or similar instrument lacking reciprocal obligations, a finding of a benefit will also readily follow because such payments are generally unavailable in the market.⁸⁷

7.49. Article 2.3 of the SCM Agreement provides that subsidies falling under Article 3 are deemed to be specific. Since China claims that the relevant subsidies are prohibited subsidies under Article 3, we need not separately address whether the alleged subsidies are specific under Article 2.

7.4.2.2 Contingency: Articles 3.1(b) and 3.2 of the SCM Agreement

7.50. Article 3 of the SCM Agreement provides:

3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:

⁸¹ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, para. 614.

⁸² Appellate Body Report, *US – Carbon Steel (India)*, paras. 4.94-4.95.

⁸³ Appellate Body Reports, *Brazil – Taxation*, paras. 5.162-5.163. Previous reports have also indicated that identifying the challenged tax treatment involves identifying the objective reasons behind it. (Appellate Body Reports, *Brazil – Taxation*, fn 542.) We note that the objective reasons behind a measure (as apparently distinguished from the measure itself) may often be subject to uncertainty, given that Members' characterizations of their measures may inevitably be coloured to some degree by subjective views.

⁸⁴ Appellate Body Reports, *Canada – Renewable Energy / Canada – Feed-in Tariff Program*, para. 5.120.

⁸⁵ Appellate Body Report, *US – Large Civil Aircraft (2nd complaint)*, paras. 635-636 and 662.

⁸⁶ Panel Report, *US – Large Civil Aircraft (2nd complaint)*, paras. 7.168-7.171.

⁸⁷ Panel Reports, *India – Sugar and Sugarcane*, para. 7.259.

(a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I;

(b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

3.2 A Member shall neither grant nor maintain subsidies referred to in paragraph 1. (footnotes omitted)

7.51. With respect to the concept of "contingency", it has previously been explained that:

[T]he relevant question [...] is not whether the eligibility requirements under a subsidy may *result* in the use of more domestic and fewer imported goods. Rather, the question is whether *a condition requiring* the use of domestic over imported goods can be discerned from the terms of the measure itself, or inferred from its design, structure, modalities of operation, and the relevant factual circumstances constituting and surrounding the granting of the subsidy that provide context for understanding the operation of these factors.⁸⁸

7.52. The word "use" within the meaning of Article 3.1(b) refers to the action of using or employing something, which can include "consuming a good in the process of manufacturing ... incorporating a component into a separate good, or serving as a tool in the production of a good".⁸⁹

7.4.3 Application to the ITC/PTC Domestic Content Bonus Credits

7.4.3.1 Subsidization

7.4.3.1.1 Introduction

7.53. China argues that the ITCs and PTCs, including as increased by the Domestic Content Bonus Credits, are subsidies within the meaning of Article 1 of the SCM Agreement. According to China, these measures can be used in three ways.⁹⁰ First, according to China, the ITCs and PTCs can be used in the form of a tax credit, i.e. a reduction in the amount of federal income taxes that the recipient would otherwise owe (the *Investor/Producer Credit*). In this situation, China argues that the ITCs and PTCs are a "financial contribution" in the form of "government revenue ... otherwise due ... foregone" within the meaning of Article 1.1(a)(1)(ii) of the SCM Agreement.⁹¹ Second, China asserts that the ITCs and PTCs can also be treated as payments of tax due, rather than as tax credits (the *Elective Payment*). Under this situation, China asserts that the ITCs and PTCs are a "financial contribution" in the form of a "direct transfer of funds" within the meaning of Article 1.1(a)(1)(i) when the payment is refunded to the taxpayer, or revenue forgone otherwise due under Article 1.1(a)(1)(i) when the deemed payment is applied to a tax due amount.⁹² Finally, China asserts that all or a portion of the ITCs and PTCs can be transferred to an unrelated third party (the *Assignment Credit*). According to China, that third party then claims the tax credit, and compensates the assignor of the credit with a cash payment. In this situation, China argues that the ITCs and PTCs are a "financial contribution" in the form of a "direct transfer of funds" within the meaning of Article 1.1(a)(1)(i).⁹³ China argues that in all three situations the benefit is received by the investing or producing entity.⁹⁴

⁸⁸ Appellate Body Report, *US – Tax Incentives*, para. 5.18. (emphases original) The existence of contingency under Article 3.1(b) is not limited to cases where the measure requires the recipient of the subsidy to use domestic goods to the complete exclusion of imported goods. (Appellate Body Report, *US – Tax Incentives*, para. 5.22.)

⁸⁹ Appellate Body Report, *US – Tax Incentives*, para. 5.8.

⁹⁰ China's response to Panel question No. 25.

⁹¹ China's first written submission, paras. 167-168.

⁹² China's first written submission, paras. 87 and 169; response to Panel question No. 41.

⁹³ China's first written submission, para. 87; response to Panel question No. 25(b). China also had earlier appeared to indicate that this method of using the ITCs and PTCs could result in a financial contribution in the form of revenue forgone otherwise due. China's first written submission, fn 204.

⁹⁴ China's response to Panel question No. 25(d). See also China's first written submission, para. 170.

7.54. The record reflects that the ITCs and PTCs can be used in the three different ways that China describes (i.e. the Investor/Producer Credit, the Elective Payment, and the Assignment Credit). This section analyses each in turn. Because of the similarity of the Domestic Content Bonus Credits under each ITC and PTC, and the similarity with which US law treats the ITCs and PTCs⁹⁵, the following analyses apply equally to each of the four ITCs and PTCs.

7.4.3.1.2 Investor/Producer Credit

7.55. As a default, the ITCs and PTCs are available to use as tax credits.⁹⁶ China argues that, used in this way, the ITCs and PTCs are financial contributions in the form of revenue forgone otherwise due under Article 1.1(a)(1)(ii) of the SCM Agreement. The United States does not contest this characterization. This section therefore evaluates this scenario under the three-step process described in paragraph 7.46 above.

7.56. First, we identify the challenged tax treatment. In this context, the ITCs and PTCs are federal income tax credits that are claimed as "general business credits" under 26 U.S.C. Section 38.⁹⁷ That section states that these credits "shall be allowed as a credit against the tax imposed by this chapter for the taxable year".⁹⁸ The phrase "this chapter" refers to Chapter 1 of the Internal Revenue Code, entitled "normal taxes and surtaxes", which includes tax on individuals and corporations.⁹⁹ If the credit exceeds the tax liability, it is generally carried back one year or forward up to 20 years to offset taxes in other years.¹⁰⁰ The ITCs and PTCs thus reduce the total federal tax liability of a taxpayer.¹⁰¹

7.57. Second, China argues that the benchmark for comparison is the set of normal tax rules that apply in the absence of the credit. More specifically, the benchmark according to China is Chapter 1 of the Internal Revenue Code, entitled "normal taxes and surtaxes", which includes tax on individuals and corporations.¹⁰² We accept this argument. Comparably situated taxpayers, in our view, are essentially those who invest in electricity production or produce electricity but do not qualify for the ITCs and PTCs or the Domestic Content Bonus Credits. The ITCs and PTCs lower the tax liability under otherwise applicable tax rules for a specified subset of projects.¹⁰³ This basic structure of the US tax code is evidenced by the wording of the credits, reducing tax liability under normal tax rules contained in the applicable code. We further discern no evidence on the record indicating – and the United States has not argued – that providing similar tax credits or tax reductions for electricity generation and investment, generally, or further increasing such credits or reductions for using US domestic steel, iron, and manufactured products in doing so, specifically, are organizing principles of the US tax code.

7.58. Finally, we note that, in instances where the taxpayer uses the ITCs and PTCs, generally, and the Domestic Content Bonus Credits, specifically, to lower the taxpayer's federal tax liability, the taxpayer pays less tax than if the taxpayer were unable to claim the credits. There is further no evidence that this difference is reflective of any general organizing principle of the US tax system other than to provide targeted exceptions to otherwise "normal" tax rules. This comparison therefore reveals that the ITCs and PTCs, including when increased by the Domestic Content Bonus Credits, represent financial contributions in the form of revenue forgone otherwise due within the meaning of Article 1.1(a)(1)(ii).

⁹⁵ See paras. 2.12-2.15 above.

⁹⁶ See para. 2.15 above.

⁹⁷ See para. 2.15 above.

⁹⁸ 26 U.S.C. Section 38(a) (Exhibit CHN-17).

⁹⁹ Title Pages of Subtitle A *et seq.* (Exhibit CHN-63).

¹⁰⁰ 26 U.S.C. Section 39(a) (Exhibit CHN-17).

¹⁰¹ 26 U.S.C. Section 7701(a)(1) and (14) (Exhibit CHN-66) (defining "taxpayer" as "any person subject to internal revenue tax" and defining "Person" as a wide variety of entities).

¹⁰² Title Pages of Subtitle A *et seq.* (Exhibit CHN-63).

¹⁰³ Although China only challenges the Domestic Content Bonus Credits that are nested within each ITC and PTC, rather than the ITCs and PTCs generally, we still consider this identification of similarly situated taxpayers reasonable. Indeed, the taxpayer needs to initially qualify for the ITC and/or PTC more generally before it is eligible to increase the ITC/PTC amount via the Domestic Content Bonus Credits. In this way, ITCs and PTCs, generally, and the Domestic Content Bonus Credits, specifically, are practically and legislatively intertwined.

7.59. We recall that a financial contribution confers a "benefit" when it makes the recipient "better off" than it would otherwise have been, absent that contribution.¹⁰⁴ We consider that when the ITC/PTC Domestic Content Bonus Credits are used as Investor/Producer Credits, a benefit is conferred by the lowered tax liability under the credits, leaving the taxpayer better off than in the credits' absence.

7.4.3.1.3 Elective Payment

7.60. Certain applicable entities can elect to treat the ITCs and PTCs as deemed payments against federal income tax liability, rather than as a tax credit.¹⁰⁵ The payments first offset any federal tax due and then any remaining amount of the deemed payment is refunded to the applicable entity.¹⁰⁶ The Elective Payment option can be used by tax-exempt entities as well as entities that may have federal income tax due.¹⁰⁷ In light of that background, according to China, the Elective Payment option can result in one of two different financial contributions, depending on the applicable entity's tax liability.

7.61. First, China asserts that if the applicable entity has no tax liability, or less tax liability than the value of the deemed payment, then the refunded portion of the deemed payment is a financial contribution in the form of a direct transfer of funds under Article 1.1(a)(1)(i) from the government to the applicable entity. We agree. When the government refunds all or a portion of the deemed payment (which is just the value of the tax credit, not an actual payment of money) to the applicable entity in the form of an actual payment of money, this is a direct transfer of funds from the government to the applicable entity. A benefit is conferred in the amount of the payment from the government, which essentially resembles a grant lacking reciprocal obligations, making the recipient better off in the amount of the payment.¹⁰⁸

7.62. Second, China asserts that when the government applies any portion of the deemed payment to the applicable entity's federal income tax liability, and thus retains that portion rather than refunding it, that portion is revenue forgone otherwise due under Article 1.1(a)(1)(ii). We agree. In this situation, the retention of the deemed payment applied against any tax due is functionally indistinguishable from a tax credit. However, instead of lowering initial tax liability like a credit, it simply counts as payment against an existing tax liability. In our minds, therefore, in this situation, the analysis in paragraphs 7.55-7.59 above, applies *mutatis mutandis*. The only material difference is that the challenged tax treatment here is not a tax credit, but simply a deemed payment of tax that exists under the normal tax rules. The benchmark is that set of normal tax rules as described in paragraph 7.57 above, with comparably situated taxpayers also being the same as described in that paragraph. Observations in that paragraph regarding the structure of the US tax code and its organizing principles apply equally here. The comparison between the challenged tax treatment and the benchmark also yields the same result for the same reasons, i.e. the reduction in tax is not reflective of any organizing principle of the US tax code, thus resulting in a finding of revenue forgone otherwise due in the amount of the retained portion of the deemed payment.¹⁰⁹ A benefit is conferred in the amount of the lowered tax liability by virtue of the Elective Payment, leaving the taxpayer better off than in the payment's absence.¹¹⁰

7.4.3.1.4 Assignment Credit

7.63. The Assignment Credit allows certain taxpayers¹¹¹ to transfer all or a portion of the ITCs and PTCs to an unrelated party.¹¹² The assignee can then claim the transferred credits on its tax return

¹⁰⁴ See para. 7.48 above.

¹⁰⁵ See para. 2.15 above.

¹⁰⁶ US Internal Revenue Service, "Elective Pay and Transferability Frequently Asked Questions: Elective Pay", Question 24 (Exhibit CHN-117).

¹⁰⁷ US Internal Revenue Service, "Elective Pay and Transferability Frequently Asked Questions: Elective Pay", Question 8 (Exhibit CHN-117) (indicating that certain rural electric cooperatives are "taxable"). China notes that the primary utility of the Elective Payment option, however, is that it allows tax-exempt entities (who, of course, cannot use tax credits) to realize the full value of the ITCs and PTCs.

¹⁰⁸ See para. 7.48 above.

¹⁰⁹ Where only a portion of the deemed payment is retained, and the other portion is refunded to the applicable entity, then both types of financial contributions described in this section would be present.

¹¹⁰ See para. 7.48 above.

¹¹¹ 26 U.S.C. Section 6418(f)(2) (Exhibit CHN-17).

¹¹² See para. 2.15 above.

essentially as if it were the assigning entity.¹¹³ The regulations specify that if the assignee provides something to the assignor in consideration for the credit, it must be cash.¹¹⁴

7.64. China argues that this situation results in a financial contribution in the form of a direct transfer of funds, within the meaning of Article 1.1(a)(1)(i), from the US government to the assignor.¹¹⁵ We recall that, in this context, the value that the government provides for the credit is provided directly to the *assignee* in the form of the tax credit, and then all or a portion of that value can then be transferred to the assignor via the cash payment from the assignee. In other words, the value of the credit flows from the government through the assignee to the assignor. The presence of the assignee as this intermediary, in our view, attenuates the "directness" of the transfer of the funds from the government to the assignor to some degree, as does the discretion of the assignee to (or not to) provide an unspecified amount of cash for the assigned credit. Nonetheless, we consider that the indicia of "directness" of the transfer is still sufficient under these specific circumstances. This is so because the statute foresees and mandates this flow of value from the government to the assignor and mandates the forms that the value takes (a tax credit essentially converted to a cash payment). The assignor ultimately receives cash, i.e. "funds". Overall, therefore, the law coherently regulates a series of transactions that inevitably results in the transfer of funds to the assignor. We consider this so even though the provision of cash to the assignor is not strictly mandated, because we consider it highly unlikely that the assignor will ignore strong and clear commercial incentives to not give away the valuable credit for free.¹¹⁶

7.65. A financial contribution confers a benefit when it makes the recipient better off than it would otherwise have been, absent that contribution.¹¹⁷ We consider that when the ITC/PTC Domestic Content Bonus Credits are used as an Assignment Credit, a benefit is conferred by the cash payment, leaving the assignor better off than in the payment's absence.

7.4.3.1.5 Conclusion

7.66. We therefore find that China has made a *prima facie* case that the ITCs and PTCs, as increased by the Domestic Content Bonus Credits, are subsidies within the meaning of Article 1 of the SCM Agreement when used as Investor/Producer Credits, as an Elective Payment, or as an Assignment Credit.

7.4.3.2 Contingency

7.67. China claims that the ITCs and PTCs, to the extent that they are increased by the Domestic Content Bonus Credits, are contingent on the use of domestic over imported goods by virtue of the Steel and Iron Requirement and Manufactured Products Requirement. The United States does not contest this issue.

7.68. These provisions have already been described in section 2.3 of this Report. We therefore recall that the four ITCs and PTCs have materially identical Domestic Content Bonus Credits, which are based on the Steel and Iron Requirement and the Manufactured Products Requirement. The former requires that domestic steel and iron be used in the construction of relevant facilities, and the latter requires that a certain amount of other domestic products be used in the construction of such facilities. Only if both such requirements are satisfied do the Domestic Content Bonus Credits become available, which essentially increase the amount of the ITC or PTC.¹¹⁸ These are therefore conditions requiring the use of domestic over imported goods in the text of the measures themselves.

¹¹³ 26 U.S.C. Section 6418(a) (Exhibit CHN-17).

¹¹⁴ 26 U.S.C. Section 6418(b)(1) (Exhibit CHN-17).

¹¹⁵ China's response to Panel question No. 25.

¹¹⁶ Even if the Assignment Credit could not be characterized as a direct transfer of funds, we would still find it to be a financial contribution that confers a benefit. Indeed, in our view, the claiming of the credit by the assignee results in revenue forgone otherwise due that confers a benefit under Article 1.1(a)(1)(ii) by applying the analysis in paras. 7.55-7.59 above, *mutatis mutandis*. (See China's first written submission, fn 204 (suggesting this characterization)). We see no legal or practical impediment to applying Article 1 to complex, multi-stage transactions in such a flexible manner. See para. 7.47 above.

¹¹⁷ See para. 7.48 above.

¹¹⁸ The fulfilment of the requirements for obtaining the Domestic Content Bonus Credits can also prevent the value of the ITCs and PTCs for purposes of the Elective Payment from being reduced. See 26 U.S.C. Sections 45(b)(10), 45Y(g)(12), 48(a)(13), and 48E(d)(5).

7.69. We therefore find that China has made a *prima facie* case that the ITC/PTC Domestic Content Bonus Credits require the use of domestic over imported goods, and are therefore subsidies contingent on the use of domestic over imported goods within the meaning of Article 3.1(b) of the SCM Agreement. Thus, the United States was and is prohibited from granting or maintaining such subsidies pursuant to Article 3.2 of the SCM Agreement.

7.4.4 Conclusion

7.70. For the reasons stated above, we conclude that the ITC/PTC Domestic Content Bonus Credits are inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement because they are subsidies contingent upon the use of domestic over imported goods granted or maintained by the United States.

7.5 United States' defence under Article XX(a) of the GATT 1994

7.5.1 Introduction

7.71. We have upheld China's claims that the ITC/PTC Domestic Content Bonus Credits are inconsistent with Article III:4 of the GATT 1994, Article 2 of the TRIMs Agreement, and Articles 3.1(b) and 3.2 of the SCM Agreement. The United States argues that the measures are "necessary to protect public morals" under Article XX(a) of the GATT 1994. We now turn to examine this defence.

7.72. According to the United States, the measures at issue protect the United States' public morals from China's "attainment and weaponization of global dominance in the ... renewable energy sector[.]".¹¹⁹ The United States submits that this dominance has been achieved through "non-market and trade distorting behaviour, including unfair competition, the use of forced labour, theft, and coercion", which violate prevailing US standards of right and wrong as reflected in US state and federal laws.¹²⁰ In the United States' view, the measures at issue protect public morals by reducing reliance on China and enhancing fair competition and market-oriented outcomes in the US market¹²¹, by incentivizing production in the United States and in other countries that align with the United States' public morals¹²², and by encouraging US consumers to make choices that do not reward Chinese conduct that is contrary to the United States' public morals.¹²³ The United States maintains that the measures are "necessary" to protect public morals because previous efforts by both the United States and other countries, including previous versions of the measures at issue, have failed to stop China from achieving global dominance in the renewable energy sector through the use of non-market policies and practices, and have not enabled the United States or other countries to maintain or develop capacity in those sectors.¹²⁴ Finally, the United States argues that the measures at issue are consistent with the *chapeau* of Article XX because the same conditions do not prevail in the United States and China, and because the measures do not constitute a disguised restriction on international trade.¹²⁵

7.73. China rejects the United States' arguments, maintaining that the measures are not justified under Article XX(a). In China's view, the United States has used an array of different terms and formulations to identify which "public morals" the challenged measures seek to protect, which in itself presents a significant obstacle to the United States' ability to discharge its burden of proof under Article XX(a).¹²⁶ Moreover, China considers that several of the public morals that the United States allegedly seeks to protect are not genuine public morals in the United States, and do

¹¹⁹ United States' second written submission, para. 17.

¹²⁰ United States' first written submission, para. 67. See United States' first written submission, paras. 67-103; opening statement at the first meeting of the Panel, paras. 30-45; second written submission, paras. 20-27.

¹²¹ China's first written submission, para. 106 and opening statement at the first meeting of the Panel, para. 53.

¹²² United States' opening statement at the first meeting of the Panel, para. 46. See also United States' first written submission, paras. 104-114 and second written submission, paras. 28-51.

¹²³ United States' response to Panel question No. 12, para. 41 and Panel question No. 16, para. 67.

¹²⁴ United States' first written submission, paras. 115-121; opening statement at the first meeting of the Panel, paras. 58-66; second written submission, paras. 59-68.

¹²⁵ United States' first written submission, paras. 124-135; opening statement at the first meeting of the Panel, paras. 68-75; second written submission, paras. 70-93.

¹²⁶ China's second written submission, paras. 49-54.

not constitute "public morals" within the meaning of Article XX(a) of the GATT 1994.¹²⁷ China further submits that, at any rate, the challenged measures were not designed to address any of the United States' alleged public morals concerns.¹²⁸ Finally, China submits that, because the measures are not provisionally justified under subparagraph (a) of Article XX, the Panel need not consider whether they are applied consistently with the requirements in the *chapeau* of Article XX.¹²⁹ Nevertheless, China argues that the challenged measures are not applied consistently with the *chapeau* because they result in arbitrary or unjustifiable discrimination¹³⁰ and constitute a disguised restriction on international trade.¹³¹

7.74. We recall that, in its written submissions, the United States invoked the public morals exception in Article XX(a) as a justification for both the Clean Vehicle Tax Credit and the ITC/PTC Domestic Content Bonus Credits. In the light of China's withdrawal of its claims against the Clean Vehicle Tax Credit¹³², we refrain from addressing any of the parties' arguments and evidence under Article XX(a) that are specific to the Clean Vehicle Tax Credit. Our assessment of the United States' defence under Article XX(a) focuses on those aspects of the parties' arguments and evidence that are either specific to the ITC/PTC Domestic Content Bonus Credits, or else are relevant to both sets of measures (and therefore pertinent to our analysis of the United States' defence with respect to the ITC/PTC Domestic Content Bonus Credits).

7.75. This section proceeds in two parts. First, it recalls the applicable legal standard under Article XX(a). It then examines whether the United States has established that the ITC/PTC Domestic Content Bonus Credits are measures necessary to protect public morals.

7.5.2 Applicable legal standard under Article XX(a) of the GATT 1994

7.5.2.1 General considerations

7.76. Article XX(a) of the GATT 1994 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 [Member] of measures:

(a) necessary to protect public morals;

7.77. The burden of proving that a measure is justified under Article XX rests on the party invoking that provision.¹³³ This means, in these proceedings, that the United States bears the burden of demonstrating that the challenged measures satisfy the requirements of both subparagraph (a) and the *chapeau* of Article XX. In assessing the parties' arguments and evidence in this respect, we are mindful that:

[T]he nature and scope of arguments and evidence required to establish a *prima facie* case will necessarily vary according to the facts of the case, and from measure to measure, provision to provision, and case-to-case. Moreover, these rules and principles of WTO jurisprudence must not be applied in an unduly formalistic or mechanistic fashion, nor inhibit the substantive analysis that must be undertaken by a panel.¹³⁴

7.78. Provisional justification under one of the subparagraphs has been understood to require that a challenged measure address the particular interest specified in that paragraph, and that there be a sufficient nexus between the measure and the interest protected. In the context of Article XX(a), this has been understood to mean that a Member seeking to demonstrate that a challenged measure

¹²⁷ China's second written submission, para. 54-78.

¹²⁸ China's second written submission, paras. 70-134.

¹²⁹ China's second written submission, para. 135.

¹³⁰ China's second written submission, paras. 137-141.

¹³¹ China's second written submission, paras. 142-144.

¹³² See section 2.2 of this Report.

¹³³ Appellate Body Report, *US – Wool Shirts and Blouses*, p. 14, DSR 1997:I, 323, at p. 335.

¹³⁴ Appellate Body Report, *US – Tuna II (Mexico) (Article 21.5 – Mexico)*, para. 7.33.

is provisionally justified must establish, first, that the measure was designed or taken "to protect public morals" (i.e. the challenged measure must "address the particular interest specified in that paragraph")¹³⁵; and second, that the measure is "necessary" to protect such public morals.¹³⁶ If this is established, the Panel must then confirm that the 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.

7.79. The contours of each of these steps or elements of the applicable legal standard under Article XX(a) has been subject to extensive commentary in past dispute settlement reports. We do not consider it useful to offer a lengthy recitation of prior panel and Appellate Body pronouncements on each of these elements in the abstract. We will however address several legal and interpretative issues that arise from the submissions of the parties and third parties in this dispute pertaining to the threshold examination of whether the measures at issue are measures that are designed or taken "to protect public morals".

7.5.2.2 Threshold requirement to show that a measure "protect[s] public morals"

7.80. We note that although the United States is right to point out that the words "designed to" do not appear in the text of Article XX(a)¹³⁷, the word "to" in adverbial relation with the infinitive verb "protect" is a formulation that "indicates a purpose or intention" and "[t]hus establishes a required link between the measure and the protected interest".¹³⁸ The ordinary meaning of the terms of Article XX(a) therefore supports the approach taken in prior dispute settlement reports considering an Article XX(a) defence, which has been to conduct an initial, threshold examination of whether the measures at issue were "designed to" or "taken to" protect public morals, before moving on to consider whether the measures were "necessary" for that purpose.¹³⁹ Furthermore, an examination of whether a measure is designed to pursue the claimed objective seems to us to be a necessary prerequisite to any examination of the contribution it makes to that asserted objective and/or to an assessment of whether any less trade-restrictive alternative measures exist that would contribute to that objective (i.e. whether it is "necessary").¹⁴⁰

7.81. Indeed, dispensing with any assessment of whether a measure was in fact designed or taken "to protect public morals" would be tantamount to a panel treating itself as bound by the respondent's assertion as to the challenged measure's objective, even when the issue is disputed and in the face of conflicting evidence and argumentation from the complaining party. However, it is well established, in the context of Article XX and more generally, that while a panel must take into account how the respondent has articulated the measure's objectives, it is not bound to accept that characterization: rather, a panel must make an objective and independent assessment¹⁴¹ of the

¹³⁵ Appellate Body Report, *Colombia – Textiles*, para. 5.67

¹³⁶ Appellate Body Reports, *EC – Seal Products*, para. 5.169.

¹³⁷ United States' response to Panel question No. 11, para. 38. The United States argues that the phrases "designed to" and "not incapable of" do not appear in Article XX(a), and a panel must apply the text of a covered agreement as understood through the application of customary rules of interpretation. In its view, there is no requirement under Article XX(a) of the GATT 1994 to show that a measure is "designed to" protect or "not incapable" of protecting public morals, nor is there a requirement to show that a measure is "in fact" designed to protect public morals. (United States' second written submission, para. 29.)

¹³⁸ Appellate Body Report, *Australia – Apples*, para. 172.

¹³⁹ See, e.g. Appellate Body Report, *Colombia – Textiles*, para. 5.68; Panel Reports, *EC – Seal Products*, para. 7.631; *EU – Energy Package*, para. 1141 (concerning the equivalent exception provision under GATS Article XIV(a)); *Brazil – Taxation*, para. 7.522; and *US – Tariff Measures (China)*, para. 7.112. The same legal analysis has been used in respect of Article XX(b), which concerns measures that are alleged to be "necessary to protect human, animal or plant life or health". See e.g. Panel Reports, *US – Gasoline*, para. 6.20 and *Turkey – Pharmaceutical Products (EU)*, para. 7.133.

¹⁴⁰ Among other things, the identification of a measure's objective is a logical and legal prerequisite to the assessment whether the measure is "necessary" because a measure's objective, as identified by the panel, serves as "the benchmark against which a panel must assess the degree of contribution made", as well as by any less trade-restrictive alternative measures that have been proposed. (Appellate Body Reports, *US – COOL*, para. 387.) The Appellate Body made this statement in the context of Article 2.2 of the TBT Agreement. However, we consider that these considerations necessarily apply just as equally in the context of Article XX of the GATT 1994 because in both contexts, a panel is called upon to assess the degree of contribution made by a measure to its objective, and the degree of contribution that would be made by any less trade-restrictive alternative measures.

¹⁴¹ Appellate Body Report, *US – Gambling*, para. 304. See also Panel Reports, *EU and Certain Member States – Palm Oil (Malaysia)*, fn 398; and *EU – Palm Oil (Indonesia)*, fn 401 (stating that "[a]s long clarified by the Appellate Body, a panel must always 'independently and objectively assess' the objective of the specific

measure's objective, taking into account all the available evidence, including the text of the measure, any relevant legislative history, and other evidence regarding the measure's structure and operation.¹⁴² This is especially so where the objective of a measure is contested between the parties, and competing arguments have been raised.¹⁴³

7.82. A panel's duty to make an objective and independent assessment of a measure's objective was initially recognized in the context of the general exceptions in Article XX of the GATT 1994¹⁴⁴, and subsequently reiterated in the context of related provisions in the TBT and SPS Agreements. In the context of Article 2.2 of the TBT Agreement, which also calls for an assessment of a measure's necessity by reference to its objective, it has been said that a panel "must assess what a Member seeks to achieve" by means of the measure, and in this task "is not bound by a Member's characterization of the objectives it pursues through the measure, but must independently and objectively assess them" taking that characterization into account. In doing so, a panel "may take into account the texts of statutes, legislative history, and other evidence regarding the structure and operation of the measure."¹⁴⁵ Likewise, in the context of the SPS Agreement, it has been stated that "the purpose of a measure is to be ascertained on the basis of objective considerations"¹⁴⁶, and "may be ascertained not only from the objectives of the measure as expressed by the responding party, but also from the text and structure of the measure, its surrounding regulatory context, and the way in which it is designed and applied."¹⁴⁷

7.83. We also note the United States' view that, because China has advanced similar arguments to show both that the challenged measures are not "designed to" protect public morals and that they are not "necessary" to protect public morals, an assessment of whether the measures are designed or taken to protect public morals would be an "inutile" exercise.¹⁴⁸ We do not agree. As explained above, we consider that an objective assessment of whether a challenged measure is designed or taken to protect public morals is both an important step of the legal analysis under Article XX(a) and a logically necessary precursor to any examination of whether that measure is "necessary" to such protection. We agree with past WTO adjudicators that, while the "designed to" and "necessity" steps of the analysis are legally and conceptually distinct, the same or similar evidence or considerations may be relevant to both inquiries.¹⁴⁹ As such, the fact that China raises similar arguments in connection with both steps of the analysis does not render the "designed to" analysis inutile or otherwise unnecessary.

7.84. Having said that, we understand that there may well be disputes in which the apparent overlap between the evidence and considerations arising under both steps warrants a more holistic analysis. In *US – Tariff Measures (China)* the panel concluded that it was "difficult to assess at any general level whether the measures at issue are 'designed' to protect public morals and is therefore not convinced that the intermediate step of such a design test is helpful for its analysis".¹⁵⁰ That panel ultimately proceeded with what it termed a "holistic approach"¹⁵¹ and "holistic examination"¹⁵² that

measures at issue without being bound by either party's characterization of the objective pursued.) In the *EU – Palm Oil* disputes, the panels addressed a series of disputed issues relating to the objective of the challenged measure. The European Union maintained that the challenged measure was taken for interrelated objectives of concerning public morals, the environment, and the conservation of exhaustible resources, whereas the complaining parties argued that it was taken for protectionist motives. (See Panel Reports, *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.250; and *EU – Palm Oil (Indonesia)*, para. 7.294.) The panels' analysis was developed in the context of the necessity test in Article 2.2 of the TBT Agreement, which it transposed *mutatis mutandis* to its assessment of the general exceptions in Article XX(b) and XX(g) of the GATT 1994. The European Union also invoked the public morals exception in Article XX(a), but the panel found it unnecessary to make findings on that exception. (Panel Reports, *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.250; and *EU – Palm Oil (Indonesia)*, paras. 7.293 and 7.1097-7.1099.)

¹⁴² Appellate Body Report, *EC – Seal Products*, para. 5.144; Panel Reports, *Colombia – Textiles*, para. 7.480 and *US – Tariff Measures (China)*, para. 7.117.

¹⁴³ Appellate Body Report, *US – COOL*, para. 395.

¹⁴⁴ Appellate Body Report, *US – Gambling*, para. 304.

¹⁴⁵ Appellate Body Report, *US – Tuna II*, para. 314 (citing Appellate Body Report, *US – Gambling*, para. 304.)

¹⁴⁶ Appellate Body Report, *Australia – Apples*, para. 172.

¹⁴⁷ Panel Report, *Panama – Import Measures (Costa Rica)*, para. 7.63 (citing previous disputes under the SPS Agreement.)

¹⁴⁸ United States' opening statement at the second meeting of the Panel, para. 36.

¹⁴⁹ Appellate Body Report, *Colombia – Textiles*, para. 5.125.

¹⁵⁰ Panel Report, *United States – Tariff Measures (China)*, para. 7.151.

¹⁵¹ Panel Report, *United States – Tariff Measures (China)*, para. 7.152.

¹⁵² Panel Report, *United States – Tariff Measures (China)*, para. 7.153.

combined its consideration of the aforementioned issues with assessment of the "necessity" step of the test under Article XX(a). The panel's approach in that case was elaborated in response to the particular arguments and evidence submitted by the parties in those proceedings, and we do not understand the panel to have suggested that its approach would, as a general matter or in all cases, supersede the traditional two-step analysis adopted by previous panels and the Appellate Body.

7.85. In sum, we consider it necessary to assess whether the ITC/PTC Domestic Content Bonus Credits are measures "to protect public morals", as an initial, threshold step, before proceeding with an assessment of whether they are "necessary" to protect public morals. We understand that the purpose of the first step under Article XX(a) is thus to determine whether the measures were taken for the purpose of protecting public morals.

7.5.2.3 Scope and nature of the assessment required

7.86. Having concluded that we must assess whether the ITC/PTC Domestic Content Bonus Credits are measures "to protect public morals", as an initial, threshold step before proceeding with an assessment of whether they are "necessary" to protect public morals, we next discuss the scope and nature of the required assessment.

7.87. The nature of the specific issues to be considered by a panel in the context of this first step under Article XX will necessarily depend on the circumstances of each case. There have been some disputes involving Article XX(b) in which the first step has entailed substantial findings on disputed scientific or other factual issues relating to the existence of the alleged "conduct" that the measure aims to reduce.¹⁵³ There have been some disputes in which the first step entailed substantial findings on direct evidence relating to the stated or declared aims and objectives of the challenged measures, as evidenced from such sources as the text of laws and regulations, the measure's legislative history, stated intentions of lawmakers, and surrounding circumstances.¹⁵⁴ In most disputes, the analysis has focused more on the extent to which there was any objectively discernible relationship between the stated objective and the design, structure, and expected operation of the measure. In some cases, the lack of any such discernible relationship has been regarded as dispositive when the design, structure, and expected operation revealed that the measure was incapable of contributing to the declared objectives.¹⁵⁵

7.88. We consider that there may be circumstances in which a panel's assessment could properly be limited to examining whether a measure is "incapable of" protecting public morals. Notably, in cases where the argumentation and evidence in relation to this first step substantially overlaps with the argumentation and evidence that is pertinent to examining the "contribution" step under the "necessity" test, it might be appropriate to limit the threshold assessment in this manner to avoid prematurely truncating the "necessity" analysis. However, we do not consider that a panel's consideration of the extent to which a measure relates to the alleged objective, let alone the entire first step of assessing whether a measure is one "to protect public morals", should invariably be circumscribed to an assessment of whether a measure is "incapable of" protecting public morals. Insofar as some prior panel reports could be taken to suggest a different understanding¹⁵⁶, and given

¹⁵³ See e.g. Panel Reports, *EC – Asbestos*, paras. 8.184-8.195; *Brazil – Retreaded Tyres*, paras. 7.53-7.93; *Turkey – Pharmaceutical Products (EU)*, paras. 7.165-7.180.

¹⁵⁴ See e.g. Panel Reports, *EC – Tariff Preferences*, para. 7.201; *China – Rare Earths*, paras. 7.169-7.171; *Turkey – Pharmaceutical Products (EU)*, paras. 7.181-7.208; *EU – Palm Oil (Indonesia)*, paras. 7.213-7.218; 7.243-7.275; and 7.1091-7.1096.

¹⁵⁵ See e.g. Panel Reports, *Indonesia – Import Licensing Regimes*, paras. 7.719-7.720 and paras. 7.657-7.660.

¹⁵⁶ See e.g. Panel Reports, *Brazil – Taxation*, paras. 7.569-7.583. In that dispute, the panel stated that "the discriminatory aspects of the PATVD programme do not, on their face, bear any relation to bridging the digital divide, or social inclusion" (para. 7.571); that Brazil had "not provided any evidence to indicate that transmitting equipment would not be made available in the Brazilian market in the necessary scale" (para. 7.573); that "the design, structure, operation, and stated objectives of the measure all support the notion that the measure was adopted for the objective of promoting domestic production as an end in and of itself" (para. 7.579); and that "the functioning of the measure appears to contradict its *raison d'être*" (para. 7.582). However, the panel concluded that "[n]otwithstanding its deep reservations regarding the design of the measure, the Panel does not consider that it is in a position to make a finding in the negative, to the effect that the PATVD programme is *incapable* of contributing to bridging the digital divide and promoting social inclusion", because to the panel it was "not inconceivable" that "under certain circumstances, discriminatory measures could indeed contribute to the claimed objectives in a manner similar to that

the potentially divergent views on this point reflected in some of the third parties' submissions in this dispute¹⁵⁷, we elaborate as follows.

7.89. In *Colombia – Textiles*, the Appellate Body explained, in a passage subsequently cited in several dispute settlement reports, that:

With respect to the analysis of the "design" of the measure, the phrase "to protect public morals" calls for an initial, threshold examination in order to determine whether there is a relationship between an otherwise GATT-inconsistent measure and the protection of public morals. If this initial, threshold examination reveals that the measure is incapable of protecting public morals, there is not a relationship between the measure and the protection of public morals that meets the requirements of the "design" step. In this situation, further examination with regard to whether this measure is "necessary" to protect such public morals would not be required. This is because there can be no justification under Article XX(a) for a measure that is not "designed" to protect public morals. However, if the measure is not incapable of protecting public morals, this indicates the existence of a relationship between the measure and the protection of public morals. In this situation, further examination of whether the measure is "necessary" is required under Article XX(a).¹⁵⁸

7.90. However, the fact that a challenged measure may be "not incapable" of making a contribution to a stated objective – even if only accidentally, coincidentally, or hypothetically – does not mean or imply that the measure was taken or designed for that objective. To accept the opposite would, in our view, be to conflate a measure's possible outcome or effect with its purpose.

7.91. Indeed, if such a truncated analysis were to exhaust the scope of the initial, threshold step of the assessment whether a measure was "designed to" address the particular interest specified in the paragraph of Article XX at issue, this would force panels to follow one of two possible approaches, both of which are, in our view, untenable.

7.92. First, a panel could proceed on the understanding that it is precluded from conducting any meaningfully objective and independent assessment of a measure's objective taking into account other relevant considerations and evidence. That would, however, contradict the principle, reflected in numerous prior dispute settlement reports under the GATT 1994, the TBT Agreement and the SPS Agreement, that panels must undertake an objective and independent assessment of a measure's objective based on the full range of available evidence.¹⁵⁹

7.93. Second, a panel could proceed by creating one or more additional, anterior threshold steps in the legal test before reaching the "designed to" step, to accommodate consideration of any relevant issues excluded from the scope of a narrow "designed to" analysis. This approach, however, would be inconsistent with past practice, which has consistently adopted a two-step analytical framework. It would be both confusing and misleading to describe the applicable legal standard as involving two steps, only to then define the first of those steps in a manner that would severely truncate its scope and utility, and then seek to assess the excluded elements into one or more anterior steps to be

explained by Brazil" (para. 7.581). The Panel consequently found that Brazil "has demonstrated that the measure is designed to protect public morals within the meaning of Article XX(a)" (para. 7.583).

See also Panel Report, *Indonesia – Raw Materials*, paras. 7.223-7.233. In that dispute, the panel stated that it could "not exclude the possibility that the export ban has had some downward pressure on extraction rate" (para. 7.228) and "[t]he fact that there is a possibility, even remote, for the export ban to secure compliance with Article 96(c), therefore, leads the Panel to conclude that Indonesia has demonstrated that the export ban is a measure to secure compliance with Article 96(c) within the meaning of Article XX(d) of the GATT 1994" (para. 7.233).

¹⁵⁷ See responses of Brazil, Canada, the European Union, Japan, and Singapore to Panel question No. 3 to third parties.

¹⁵⁸ Appellate Body Report, *Colombia – Textiles*, para. 5.68. (fns omitted)

¹⁵⁹ We refer to the discussion above at paras. 7.81-7.82. Indeed, the panel in *Brazil – Taxation* appeared to recognize some of the implications of its understanding of the Appellate Body's "not incapable" standard. In this connection, the panel noted that under such a truncated analysis, a "comprehensive analysis of the precise objectives of the measure" would not be required, even though, as the *Brazil – Taxation* panel observed, the Appellate Body itself had followed and upheld the panel's approach of determining the precise objective of the measures. (Panel Reports, *Brazil – Taxation*, fn 884.)

addressed *before* the "first" of the two established steps. Accordingly, we do not think this second approach finds any more support in previous dispute settlement reports than the first.

7.94. In this dispute, both parties have submitted detailed arguments on the issue of whether the measures were designed or taken to protect public morals, including with reference to their design, structure, and operation. We see no reason why we should not engage with these arguments on the terms on which they were submitted, that is, in order to determine whether the measures were "designed" or "taken" to protect public morals. The United States argues that we need not undertake an initial, threshold assessment of whether the measures are "designed to" or "not incapable" of protecting public morals. Moreover, in the United States' view, this step of the analysis, if undertaken, is "not particularly demanding".¹⁶⁰ The United States' thus argues that if we do undertake this step of the analysis, we should find that the challenged measures are designed to or not incapable of protecting public morals. In this connection, the United States advances detailed arguments about the design and structure of the challenged measures that go well beyond merely asserting that the measures are "not incapable" of protecting public morals.¹⁶¹ For its part, China submits that:

[P]rior panel and Appellate Body reports have used the phrase "not incapable of" as a short-hand for describing the first step of the inquiry under Article XX(a) of the GATT 1994 (as well as other subparagraphs under Article XX), and China has no objection to the use of that short-hand. In China's view, however, the phrase "not incapable of" can be misconstrued in a way that would render the first step of the Article XX(a) inquiry effectively meaningless. Properly understood, the first step of the Article XX(a) inquiry can provide an independent basis to reject a Member's invocation of this exception, and prior panels have understood and applied Article XX(a) (and other subparagraphs under Article XX) in this way.¹⁶²

7.95. We agree with China on this point. We do not read other dispute settlement reports citing the Appellate Body's use of the phrase "not incapable of" as having necessarily relied on those words to circumscribe the scope of a panel's assessment under the first step of the inquiry to an assessment only of whether a measure is "incapable of" protecting public morals. For instance, in *Turkey – Pharmaceutical Products (EU)*, the panel ultimately found that the respondent had not discharged its burden of demonstrating that the challenged measure was one taken or designed to protect human life or health under Article XX(b). Like the present dispute, that dispute also involved a domestic content requirement challenged under the GATT 1994, the TRIMs Agreement, and the SCM Agreement. In the course of its analysis, the panel stated that:

To determine whether a challenged measure is "designed to" protect human, animal or plant life or health, a panel must examine all the evidence before it, including the text of the relevant legal instruments, the legislative history, and other evidence regarding the design, structure and expected operation of the challenged measure. Such an enquiry has led some panels to conclude that the challenged measures were not designed to protect human, animal or plant life or health, and instead pursued other objectives. If this threshold enquiry reveals that the challenged measure is incapable of meeting the stated objective, the analysis need not go further to determine whether this measure is necessary to protect this objective.¹⁶³

7.96. The *Turkey – Pharmaceutical Products (EU)* panel's assessment of whether the challenged measure was one taken "to protect human life or health" was not confined to answering the question of whether the localisation requirement was "not incapable of" protecting against a future shortage of supply of safe, effective and affordable pharmaceutical products in Türkiye. Rather, the panel reached an overall conclusion based on three intermediate conclusions, none of which was regarded by the panel as decisive in and of itself.¹⁶⁴ The first intermediate conclusion the panel reached was that the hypothetical and overly general nature of the alleged risk, as asserted by Türkiye, "casts serious doubt on Turkey's assertion" that the localisation requirement was taken to protect against

¹⁶⁰ United States' second written submission, para. 30.

¹⁶¹ See United States' second written submission, paras. 30-51.

¹⁶² China's response to Panel question No. 11, para. 18.

¹⁶³ Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.135. (fns omitted)

¹⁶⁴ Panel Report, *Turkey – Pharmaceutical Products (EU)*, paras. 7.180, 7.200, 7.208, and 7.210.

a future shortage of supply of safe, effective and affordable pharmaceutical products in Türkiye.¹⁶⁵ The panel's second intermediate conclusion was that the documents pertaining to the implementation of the localisation requirement did not contain any contemporaneous references to a public health objective that could support the argument that the localisation requirement was a measure taken to protect human health or life, which "casts further doubt on Turkey's assertion" as to the objective of the measure.¹⁶⁶ Third, the panel concluded that there was "no rational relationship" between the measure's stated objective of meeting 60% (by value) of domestic pharmaceutical demand through domestic production and the alleged objective, and that was "a further indication" that the localisation requirement was not a measure taken to protect human life or health.¹⁶⁷

7.97. On appeal, Türkiye alleged various grounds of legal error in the panel's interpretation and application of Article XX(b) and (d). Among other things, Türkiye argued that past panels and the Appellate Body had shown "a significant degree of deference in accepting that the policy objective of a measure is to protect human life or health".¹⁶⁸ The Article 25 Arbitrator found that the panel had applied "a reasonable legal standard to assess whether the challenged measure was 'taken for' the purpose of protecting human, animal, or plant life or health or was instead taken for other reasons".¹⁶⁹ We likewise consider it to be an appropriate legal standard to assess whether challenged measures were designed to, or taken for the purpose of, protecting public morals, or were instead taken for other reasons.

7.98. For these reasons, we do not consider that a panel's assessment under the first step of the inquiry must be narrowly circumscribed to an assessment of whether a measure is "not incapable of" protecting public morals. We understand the Appellate Body's statements in *Colombia – Textiles* to mean that panels should be careful not to entirely conflate the question of whether a measure is designed or taken to pursue a particular objective with the related but distinct question of the extent of the contribution which that measure actually makes to the objective it is designed to pursue. We agree with the Appellate Body that the threshold step is not the appropriate point in the analysis to engage in a detailed or granular examination of the precise extent to which a measure achieves certain stated object or results in certain outcomes. However, we consider that it is the right place in the analysis to conduct an objective assessment, based on all pertinent evidence on the record, of what objectives a measure at issue was designed or taken to achieve. Put plainly, as we understand it, the threshold examination is intended to enable a panel to assess *what* objectives a measure is designed or taken to pursue; precisely *how much* it contributes to the achievement of those objectives is a question for the next step, the "necessity" analysis.

7.5.2.4 The types of values or interests that may qualify as "public morals" under Article XX(a)

7.99. Having elaborated our understanding on the general legal standard to be applied in the context of the "designed to" step of the legal test under Article XX(a), we now turn to certain issues raised in this dispute concerning the proper interpretation of the scope of the term "public morals" in Article XX(a). A central issue in this dispute is the extent to which issues of international trade

¹⁶⁵ Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.180. The panel had introduced its analysis of that issue by clarifying that its analysis of that issue would not be dispositive, in and of itself, of whether the challenged measure was taken or designed "to protect human life or health":

The Panel does not consider that there is any rigid or pre-determined threshold or evidentiary standard that should be applied in this respect. Insofar as a responding party presents evidence and arguments demonstrating that there is a substantial degree of probability of a specified risk to human life or health materializing, it will be easier for the responding party to discharge its burden of proving that the challenged measure was taken to protect against that risk, thus qualifying as a measure taken to protect human life or health under Article XX(b). Conversely, insofar as a responding party asserts the existence of a risk without establishing any substantial degree of probability, such that the risk appears to be theoretical, abstract or otherwise hypothetical, it will be more difficult for the responding party to discharge its burden of proving that the challenged measure was taken to protect against that risk.

(Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.171.)

¹⁶⁶ Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.200.

¹⁶⁷ Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.208.

¹⁶⁸ Award of the Arbitrators, *Turkey – Pharmaceutical Products (EU)* (Article 25) para. 6.93.

¹⁶⁹ Award of the Arbitrators, *Turkey – Pharmaceutical Products (EU)* (Article 25), para. 6.96.

and economic concerns can be understood as falling within the scope of "public morals" as that term is used in Article XX(a). We find it useful to begin by setting out the parties' arguments.

7.100. With respect to whether the alleged public morals fall within the scope of Article XX(a), the United States submits that the ordinary meaning of the term "public morals" refers to community or national standards of right and wrong, and recalls past panel and Appellate Body findings that, as used in Article XX(a), the term "public morals" refers to standards of right and wrong conduct maintained by or on behalf of a community or nation.¹⁷⁰ In the United States' view, "nothing in the ordinary meaning of the term 'public morals' limits the community or national standards of right and wrong that a Member may have".¹⁷¹

7.101. In response to a question from the Panel inviting the United States to respond to certain views in the European Union's third-party submission¹⁷², the United States maintains that the ordinary meaning of "public morals" does not suggest that there are limitations on a Member's community or national standards of right or wrong, or that public morals cannot relate to issues of economic concern. The United States argues that, on the contrary, the context of Article XX(a) "affirmatively rebuts the view that the phrase 'public morals' could be read to exclude any concerns that are 'economic' in nature" because, unlike several other subparagraphs of Article XX, Article XX(a) "is unaccompanied by any ... limiting or conditional language".¹⁷³ Finally, the United States rejects the argument that the term "public morals" under Article XX(a) excludes "pure economic objectives" because, first, "it is not clear how the Panel would distinguish what might be called 'purely economic objectives' from, for example, social or societal objectives", and second, "there can be overlap between economic and moral concerns": both theft and forced labour are examples of moral concerns that have economic dimensions or implications.¹⁷⁴ The United States notes the statement by the panel *US – Tariff Measures (China)* that "public morals objectives may frequently have inseparable economic aspects", and offers hypothetical examples to illustrate the impracticality of distinguishing between "economic" and "public morals" concerns.¹⁷⁵

7.102. China agrees with the United States that prior panel and Appellate Body reports have interpreted the concept of "public morals" in Article XX(a) as denoting "a set of habits of life relating to right and wrong conduct (i.e. societal values) that belong to, affect or concern a community or a nation".¹⁷⁶ However, China expresses "significant reservations" about past panel findings that public morals within the meaning of Article XX(a) could also encompass societal concerns that have an economic dimension to them.¹⁷⁷ Recalling that, according to the Appellate Body, Article XX(a) is designed to protect different non-economic interests and concerns and should not be widened to

¹⁷⁰ United States' first written submission, paras. 65-66.

¹⁷¹ United States' opening statement at the first meeting of the Panel, para. 31.

¹⁷² In its third-party submission, the European Union expresses the view that:

"a Member could not possibly justify as a matter of public morals measures that have as their primary objective replacing imported goods with domestic goods". It "agrees with the United States that practices such as forced labour, forced technology transfers or cyber theft may legitimately be regarded by a Member to as incompatible with its public morals within the meaning of 'public morals' in Article XX(a) of the GATT. On the other hand, the European Union considers that the mere existence of divergences as regards the economic principles prevailing in each Member, for example with regard to the role of the public sector, cannot be said to be morally objectionable conduct for the purpose of Article XX(a), which would allow other WTO Members to adopt trade-restrictive measures."

(European Union's third-party submission, paras. 23-26.)

¹⁷³ United States' response to Panel question No. 10, paras. 32-33.

¹⁷⁴ United States' response to Panel question No. 10, paras. 34-36.

¹⁷⁵ The United States offers the example of "when someone steals money from a bank, the bank and its customers suffer a harm that is 'economic' in nature. The act that brings about this economic harm – namely the act of theft – also has a moral dimension, which the EU agrees is a public moral within the meaning of Article XX(a). In this sense, it would be incongruous to say that the act of stealing money from a bank does not implicate 'moral' concerns because it imposes harms that are economic in nature." According to the United States, another example is forced or prison labour. It submits that Members may adopt measures against forced or prison labour for reasons of morality (e.g. because they object to slavery). Alternatively, or in addition, Members may adopt measures against forced or prison labour to protect principles of fair competition for their own economic actors (e.g. workers and companies). Thus, "there simply exists no bright line in Article XX(a) between 'moral' concerns and 'economic' concerns." (United States' response to Panel question No. 10, paras. 35-36.)

¹⁷⁶ China's second written submission, paras. 41-42.

¹⁷⁷ China's second written submission, para. 43 (referring Panel Report, *US – Tariff Measures (China)*, para. 7.140).

"cover measures serving trade policy purposes"¹⁷⁸, China submits that "the incorporation of economic concerns into Article XX(a) must be carefully constrained".¹⁷⁹

7.103. Following this line of reasoning, China submits that the concept of "public morals" under Article XX(a) cannot be interpreted to encompass economic concerns to the extent that those concerns are addressed by one or more of the covered agreements.¹⁸⁰ In China's view, an interpretation allowing matters regulated under the WTO covered agreements to be treated as public morals under Article XX(a) would risk "subsum[ing] the trade-related economic concerns that are the subject matter of the WTO's *positive* legal obligations"¹⁸¹ by "allow[ing] Members to circumvent their obligations under the covered agreements to address certain types of trade and trade policy concerns in accordance with those positive legal obligations", and to resolve disputes related to these obligations through recourse to the dispute settlement system.¹⁸²

7.104. As an example, China observes that the United States's submissions refer repeatedly to alleged Chinese subsidies in the renewable energy and steel sectors as a "non-market policy or practice" that offend the United States' public morals against unfair competition. China recalls that the subject of subsidies and their effects on the economic interests and concerns of other Members are the subject of a WTO agreement, the SCM Agreement. China notes that Article 32.1 of that agreement requires Members to take specific actions against the subsidies of other Members exclusively in accordance with the terms of the SCM Agreement (which could include, for example, dispute settlement under Part III of that agreement or the imposition of countervailing duties in accordance with Part V of that agreement). In China's view, it would defeat the object and purpose of the rules and procedures that the SCM Agreement has established for addressing subsidies and their effects if a Member could adopt GATT-inconsistent measures for the purpose (in whole or in part) of addressing concerns about subsidies allegedly provided by another Member and then seek to justify those inconsistent measures on "public morals" grounds.¹⁸³ On the basis of these considerations, China concludes that, properly interpreted, "economic concerns that are addressed by one or more of the WTO Agreements, or that are *purely* economic in nature (i.e. that are not ancillary to, or a consequence of, a genuine public moral), are not encompassed by the concept of 'public morals' under Article XX(a)".¹⁸⁴

7.105. Previous panels have generally approached this element of the test with a degree of flexibility¹⁸⁵, recognizing that the content and scope of public morals may vary from one WTO Member to another, influenced by each Member's systems and scales of values, including prevailing social, cultural, ethical and religious values.¹⁸⁶ Panels have tended to give Members considerable deference in articulating the public morals that apply in their society¹⁸⁷, and the Appellate Body has confirmed that "Members should be given some scope to define and apply for themselves the concept of public morals according to their own systems and scales of values".¹⁸⁸ Prior WTO adjudicators have treated as pertaining to public morals a wide range of policies, including prevention of underage gambling and the protection of pathological gamblers¹⁸⁹; restricting prohibited content in cultural goods, such as violence or pornographic content, as well as protection of Chinese culture and

¹⁷⁸ China's second written submission, para. 43 (referring to Appellate Body Reports, *EC – Seal Products*, para. 5.197 and *US – Gasoline*, p. 18).

¹⁷⁹ China's second written submission, para. 43.

¹⁸⁰ China's second written submission, para. 45.

¹⁸¹ China's second written submission, para. 43. (emphasis original)

¹⁸² China's second written submission, para. 43.

¹⁸³ China's second written submission, para. 44.

¹⁸⁴ China's second written submission, para. 47. The European Union similarly argues in its third-party written submission that "the notion of 'public morals' in Article XX(a) cannot be construed as including purely economic objectives, in particular where such objectives would defeat the objects and purposes pursued by the GATT and the WTO Agreement as a whole". European Union's third-party submission, para. 35.

¹⁸⁵ See e.g. Panel Reports, *Brazil – Taxation*, para. 7.567.

¹⁸⁶ Panel Report, *US – Tariff Measures (China)*, para. 7.116. See also Panel Report, *Colombia – Textiles*, paras. 7.299-7.302.

¹⁸⁷ See e.g. Panel Report, *US – Tariff Measures (China)*, para. 7.131.

¹⁸⁸ Appellate Body Reports, *US – Seal Products*, para. 5.199.

¹⁸⁹ Panel Report, *US – Gambling*, para. 6.469.

traditional values¹⁹⁰; protecting animal welfare¹⁹¹; combatting money laundering¹⁹²; and bridging the digital divide within society and promoting social inclusion.¹⁹³

7.106. When presented with similar arguments and issues, the panel in *US – Tariff Measures (China)* concluded that norms "against theft, misappropriation and unfair competition" could be covered by the term "public morals" "at least at a conceptual level".¹⁹⁴ Additionally, that panel accepted that public morals "may frequently have inseparable economic aspects", and that "a measure may be found to pursue a public morals objective even if it has economic aspects".¹⁹⁵ Thus, we understand that panel to have agreed with the United States's view that there is no "bright line" between economic and public morals concerns. We likewise agree, and recognize that there may be standards of right and wrong conduct that are based on or justified by both moral and other norms simultaneously. We see no reason why these kinds of standards could not constitute public morals within the scope of Article XX.

7.107. However, we do not consider that the term "public morals" imposes no limit on the objectives that a measure sought to be defended under Article XX(a) can seek to achieve. In this connection, we recall the Appellate Body's statement in *EC – Seal Products* that Article XX(a) is intended to protect "non-economic interests and concerns".¹⁹⁶ In this sense, we understand the oft-repeated definition of "public morals" as "standards of right and wrong conduct maintained by or on behalf of a community or nation"¹⁹⁷ to refer to standards of conduct that are right or wrong according to *moral* principles or norms, as opposed to principles or norms relating to other values, such as purely economic values. While we acknowledge that, as the United States points out, "nothing in the ordinary meaning of the term 'public morals' limits the community or national standards of right and wrong that a Member may have"¹⁹⁸, we do consider (and we do not understand the United States to disagree) that those standards of right or wrong must at least be "moral" standards, and not standards of any other kind, if they are to fall within the scope of Article XX(a).

7.108. While we have considered the United States' response, which is that exceptions (such as the one in Article XX(a)) "exist to exclude matters or permit actions that would otherwise be covered"¹⁹⁹, we see some force in China's submission that the scope of public morals under Article XX(a) may not always or necessarily extend to economic concerns expressly regulated by the covered agreements. We share China's concern²⁰⁰ that an overly broad interpretation of "public morals" could interfere with the "carefully drawn balance of rights and obligations in the WTO Agreement"²⁰¹ if it were to enable Members to avoid complying with their commitments by reframing those commitments (or perceived failures by other Members to comply therewith) as themselves, and without more, constituting or embodying moral concerns. For instance, an interpretation of Article XX(a) that enabled Members unilaterally to respond to alleged breaches of WTO commitments by adopting WTO-inconsistent measures to "protect public morals" rather than pursuing dispute settlement under the DSU might be in tension with the principles laid out in Article 23 of the DSU.

7.109. However, we recall that the WTO dispute settlement system is not meant "to encourage either panels or the Appellate Body to 'make law' by clarifying existing provisions of the WTO Agreement outside the context of resolving a particular dispute".²⁰² We therefore consider it prudent to refrain from making any general or categorical findings on the interpretation of Article XX(a) in relation to this interpretative issue except to the extent necessary. In our view, it would be efficient to put further consideration of this issue to one side until our further factual assessment of whether the challenged measures are taken or designed to protect public morals,

¹⁹⁰ Panel Report, *China – Publications and Audiovisual Products*, para. 7.763.

¹⁹¹ Panel Reports, *EC – Seal Products*, para. 7.410.

¹⁹² Panel Report, *Colombia – Textiles*, paras. 7.338-7.339.

¹⁹³ Panel Reports, *Brazil – Taxation*, paras. 7.521 and 7.568.

¹⁹⁴ Panel Report, *US – Tariff Measures (China)*, para. 7.140.

¹⁹⁵ Panel Report, *US – Tariff Measures (China)*, para. 7.137.

¹⁹⁶ Appellate Body Reports, *EC – Seal Products*, para. 5.197. The Appellate Body's statement referred explicitly to subparagraphs (a), (b), and (f) of Article XX as "concern[ing] the 'protection' of different non-economic interests and concerns".

¹⁹⁷ Appellate Body Report, *US – Gambling*, para. 296.

¹⁹⁸ United States' opening statement at the first meeting of the Panel, para. 31.

¹⁹⁹ United States' opening statement at the second meeting of the Panel, para. 32.

²⁰⁰ See China's second written submission, paras. 43-44.

²⁰¹ Panel Report, *US – Stainless Steel*, para. 37.

²⁰² Appellate Body Report, *US – Wool Shirts and Blouses*, pp. 18-19, DSR 1997:I, 323, at 339-340.

based on the nature of the alleged public morals invoked by the United States, the direct evidence of the objectives of the measures at issue, and the existence of a relationship between the alleged public morals and the design, structure, and expected operation of the ITC/PTC Domestic Content Bonus Credits.

7.5.2.5 The degree of precision with which the alleged public morals must be articulated

7.110. A respondent seeking to justify its measures under Article XX(a) must identify the relevant public morals with sufficient precision to enable a panel both to determine whether the measures at issue are designed, and then necessary, to protect those public morals.²⁰³

7.111. However, we recognize that "ascertaining the precise content and scope of morality in a given society may not be an easy task".²⁰⁴ Moreover, in *EC – Seal Products* the Appellate Body specifically rejected the argument that, for the purpose of an analysis under Article XX(a), a panel is required to identify "the exact content of the public morals standard at issue."²⁰⁵ In our view, this comports with the notion that there "is nothing inherent in the concept of identifying a measure's objective that dictates the level of immediacy or specificity at which it must be defined".²⁰⁶

7.112. In this dispute, the United States argues that the measures at issue protect the United States' public morals from China's "attainment and weaponization of global dominance in the ... renewable energy sector[]".²⁰⁷ The United States submits that this dominance has been achieved through "non-market and trade distorting behaviour, including unfair competition, the use of forced labour, theft, and coercion", which violate prevailing US standards of right and wrong as reflected in US state and federal laws.

7.113. China has repeatedly argued that the United States has offered up "an endless buffet of supposed 'public morals' objectives"²⁰⁸, making it difficult to determine precisely which public morals the United States considers the challenged measures to protect.²⁰⁹ In China's view, it has been "exceptionally difficult ... to sort out the alleged 'public morals' concerns that the GATT-inconsistent provisions of the IRA are supposedly meant to address".²¹⁰ The European Union, in its third-party submission, has also remarked on the "large number and diverse nature of the interests to be protected that the United States puts forward".²¹¹

7.114. We note that, in the early stages of these proceedings, the United States used several overlapping but sometimes different formulations to identify the public morals that it claims the measures at issue are intended to protect. There is, for instance, especially in the United States' first written submission a degree of slippage between what the United States *explicitly identifies as the public morals at issue*, on the one hand, and *practices that are inconsistent with those morals*, on the other hand. It has not always been entirely clear which of these constitute public morals in themselves, and which constitute policies and practices that are inconsistent with some underlying public moral.

7.115. However, we consider that the United States has progressively and sufficiently clarified its position on this issue over the course of its submissions, including in response to questions from the

²⁰³ See Panel Report, *EU – Energy Package*, para. 7.1153. We note that the panel's observations were made in the context of Article XIV(a) of GATS (which refers to measures necessary "to protect public morals or to maintain public order"), and in particular in the context of fn 5 thereto (which provides that the public order exception may be invoked "only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society"). We consider that the panel's observations are also relevant to a panel reviewing an invocation of "public morals" in the context of Article XX(a).

²⁰⁴ Panel Report, *EC – Seal Products*, para. 7.409.

²⁰⁵ Appellate Body Reports, *EC – Seal Products*, para. 5.199.

²⁰⁶ Panel Reports, *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.221; and *EU – Palm Oil (Indonesia)*, para. 7.221.

²⁰⁷ United States' second written submission, para. 17.

²⁰⁸ China's opening statement at the first meeting of the Panel, para. 41.

²⁰⁹ China's second written submission, paras. 49-50; opening statement at the second meeting of the Panel, paras. 10-11 (alleging that "the United States has continued to offer a grab-bag of allegations – blending political rhetoric with various alleged concerns – while never identifying, with any precision, the actual 'public morals' at issue").

²¹⁰ China's second written submission, para. 49.

²¹¹ European Union's third-party written submission, para. 20.

Panel. Over the course of the proceedings, the United States has clearly and repeatedly identified the values that the challenged measures are alleged to protect as the United States' public morals against unfair competition, forced labour, theft, and coercion.²¹² The United States has also been reasonably clear and consistent in explaining that, in its view, behaviours such as "targeting a sector for dominance" and non-market subsidization are instances or species of "unfair competition", but do not constitute public morals in themselves. Similarly, as we understand the United States' submissions, many of the other terms and phrases used by the United States, such as "anti-competitive" conduct, "state-directed investment", "forced technology transfer", and "non-market excess capacity" should be understood as the *means* by which, or *respects* in which, certain alleged Chinese practices and policies contravene the underlying public morals against unfair competition, forced labour, theft, and coercion, rather than as constituting public morals in themselves.

7.116. We note that just as measures "often have multiple objectives"²¹³, a measure taken to protect public morals may well implicate multiple norms. In this case, the United States' position is that China's "targeting of the ... renewable energy sector[] for dominance, and its achievement of that dominance, brings the protection of US norms against unfair competition to the fore", and the measures are necessary to protect "multiple US public morals" because China's non-market policies or practices are contrary "to one or more of the identified US public morals".²¹⁴ Insofar as the United States' submissions do not always clearly distinguish which public morals the measures at issue are alleged to protect (and how the various formulations of the measures' objectives relate to one another), this may be largely explained by the fact that the United States views Chinese practices as implicating multiple interrelated norms.

7.5.3 Application to the ITC/PTC Domestic Content Bonus Credits

7.5.3.1 Whether the ITC/PTC Domestic Content Bonus Credits are measures "to protect public morals"

7.117. Having set out the framework for our analysis, we now assess the evidence relevant to whether the ITC/PTC Domestic Content Bonus Credits are designed or taken to protect public morals.

7.118. As noted, the parties have submitted detailed arguments on whether the measures at issue qualify as measures "to protect public morals" within the first step of the analysis under Article XX(a).²¹⁵ In the circumstances of this case, we consider it appropriate to conduct a holistic examination of the totality of the facts to arrive at an overall conclusion on whether the United States has shown that the ITC/PTC Domestic Content Bonus Credits are measures "taken to protect public morals". We do so by structuring our analysis of the evidence before us by reference to: (i) the nature of the alleged public morals invoked by the United States; (ii) direct evidence of the objectives of the measures at issue; and (iii) the existence of an objectively discernible relationship between the alleged public morals and the measures at issue, based on our review of the design, structure, and expected operation of the challenged measures. We will then make our global assessment of such evidence.²¹⁶

7.5.3.2 The nature of the alleged public morals invoked by the United States

7.119. We note at the outset that China accepts that "theft" and "forced labour" constitute public morals concerns that fall within the scope of Article XX(a), and that these public morals exist within

²¹² United States' response to Panel question No. 9(a), paras. 20-27; opening statement at the first meeting of the Panel, paras. 27-28; second written submission, paras. 23-24; opening statement at the second meeting of the Panel, paras. 22-33. We note that the United States also identified these as relevant public morals in its first written submission, albeit less prominently. See United States' first written submission, paras. 83-84, 103, 121, and 197.

²¹³ Appellate Body Report, *US – Clove Cigarettes*, para. 136.

²¹⁴ United States' response to Panel question No. 9(c), para. 31.

²¹⁵ Indeed, all of China's principal arguments under Article XX are directed at the question of whether the measures at issue were designed or taken "to protect public morals", with China urging the panel to end its analysis at this step without proceeding further to an assessment of whether measures are "necessary" to protect the public morals asserted by the United States (or consistent with the requirements of the *chapeau* of Article XX).

²¹⁶ We note that even where a global assessment is warranted, it is normal practice for panels to strive for analytical clarity by stating conclusions on the individual elements and disputed issues. (Panel Report, *EU and Certain Member States – Palm Oil (Malaysia)*, para. 6.44.)

the society of the United States.²¹⁷ We agree. Theft and forced labour clearly relate to "standards of right and wrong conduct maintained by or on behalf of a community or nation".²¹⁸ Moreover, the United States has submitted several domestic laws establishing that forced labour and theft are prohibited, including criminally, in the United States.²¹⁹ Additionally, the United States has submitted unambiguous evidence that certain kinds of conduct, such as restraint of trade²²⁰ and unfair or deceptive acts or practices in or affecting commerce²²¹, are contrary to the United States' public morals. The main points in dispute relating to the nature of the alleged public morals invoked by the United States concern "unfair competition" and "coercion".

7.120. The United States points to several pieces of domestic legislation to demonstrate the existence in its society of public morals concerning unfair competition and coercion.²²² These include the Sherman Act²²³ and the Federal Trade Commission Act²²⁴, which prohibit certain practices as "unfair competition", as well as various laws concerning "good faith and fair dealing" in the performance of contracts²²⁵ and the protection of intellectual property rights.²²⁶ Additionally, the United States has submitted several executive orders and presidential memoranda concerning "unfair and unbalanced trade"²²⁷ and "anti-competitive policies and practices"²²⁸, and statements made in international fora that, in its view, demonstrate the domestic importance of public morals concerning fair, market-oriented competition.²²⁹ According to the United States, this evidence establishes that China's alleged non-market policies and practices that have resulted in China's global dominance of the renewable energy sector are inconsistent with the United States' public morals against unfair competition and coercion.²³⁰

7.121. We will begin by assessing the parties' arguments on whether a public moral against "unfair competition" exists in the United States. We will then turn to the alleged public moral against "coercion".

7.122. The United States has submitted domestic laws prohibiting certain kinds of restraint of trade and monopolization (or attempts at monopolization), and "unfair or deceptive acts or practices in or affecting commerce", as evidence that there is a public moral against unfair competition in the United States. We do not question that, as a general matter, domestic laws criminalizing or prohibiting certain conduct could constitute *prima facie* evidence that that conduct is morally impermissible in the regulating society. Even if this accepted, however, in the present proceedings the United States has not explained whether restraint of trade, monopolization, and unfair or deceptive conduct are synonymous with the category of "unfair competition" against which the

²¹⁷ China's second written submission, paras. 47 and 76.

²¹⁸ See e.g. Panel Report, *US – Tariff Measures (China)*, para. 7.115.

²¹⁹ See United States' first written submission, paras. 72-76 and the various instruments cited in fns 117-121 (concerning forced labour) and fns 122-126 (concerning theft).

²²⁰ Sherman Act, 15 U.S.C. Section 1 (Exhibit US-17) and Federal Trade Commission Act, 15 U.S.C. Section 45 (Exhibit US-16).

²²¹ Federal Trade Commission Act, 15 U.S.C. Section 45 (Exhibit US-16).

²²² United States' first written submission, paras. 68-74 and opening statement at the first meeting of the Panel, para. 61.

²²³ Sherman Act, 15 U.S.C. Section 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") (Exhibit US-17).

²²⁴ Federal Trade Commission Act, Section 15 U.S.C. Section 45 ("Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.") (Exhibit US-16).

²²⁵ Restatement (Second) of Contracts, Section 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.") (Exhibit US-18); Restatement (Second) of Torts Section 766A (Exhibit US-19).

²²⁶ 35 U.S.C. Section 200 (Exhibit US-20).

²²⁷ The White House, America First Trade Policy Presidential Memorandum, Jan. 20, 2025 (Exhibit US-33).

²²⁸ The White House, Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties Presidential Memorandum, Feb. 21, 2025 (Exhibit US-34).

²²⁹ United States' first written submission, paras. 77-82.

²³⁰ The United States refers to China's targeting of the renewable energy sector for dominance, non-market excess capacity in the renewable energy sectors, use of state-directed investment in and renewable energy sectors, use of forced labour in the renewable energy sectors, use of forced technology transfer in the renewable energy sectors, and theft of trade secrets in the renewable energy sectors. (United States' response to Panel question No. 9(a), paras. 20-27; second written submission, para. 24.)

United States claims to have a public moral, or whether the category of "unfair competition" includes but is broader than those types of behaviour.

7.123. If the former, it is not clear to us whether or how the wide range of activities and behaviours alleged by the United States relate to the more limited range of activities that would seem to be caught by the categories of behaviour prohibited under US domestic laws. Thus, while the United States argues that "China's policy of global dominance is an effort towards monopolization"²³¹ and is therefore inconsistent with United States public morals evidenced by the Sherman Act, it is not clear whether, for example, non-market excess capacity, state-directed investment, and forced technology transfer, which the United States also alleges are inconsistent with its public moral against "unfair competition", could properly be described as constituting restraints of trade, monopolization (or attempts at monopolization), or unfair or deceptive conduct. In our view, the United States' invocation of the Sherman Act and the Federal Trade Commission Act supports the existence of a public moral against the specific types of conduct prohibited in those laws. This, however, covers a narrower category of behaviour than, and only specific types of, "unfair competition". The United States has not explained whether it considers all of China's alleged practices and policies "targeting" the renewable energy sectors for dominance to fall within that narrower scope even assuming that the United States' description of them is accurate.

7.124. If, however, the United States' position is that China's targeting of specific sectors for dominance through non-market practices and policies violates a broader "public moral" in US society against unfair competition that encompasses but is not limited to restraint of trade, monopolization, and unfair and deceptive practices, it encounters two substantial difficulties.

7.125. First, we do not consider that the evidence on record establishes the existence of such a broad public moral in US society. As we have explained, the Sherman Act and the Federal Trade Commission Act concern specific types of conduct, not "unfair competition" in any general or unlimited sense. In addition to the Sherman Act and the Federal Trade Commission Act, the United States submits the decision of the US Supreme Court in *Northern Pacific Railway Co. v. United States*.²³² However, as the United States itself explains, this decision concerns the "importance of the Sherman Act to the fundamental principles of the United States".²³³ Additionally, while we note that the United States argues that its public morals are evidenced in the existence of laws concerning torts and contracts and governmental takings of property²³⁴, the United States refers to these laws only briefly in footnotes, and has not explained how the disparate kinds of regulation that they contain could be understood as demonstrating the existence of an underlying, unified public moral

²³¹ United States' response to Panel question No. 9(a), para. 21. See also United States' first written submission, para. 92 and second written submission, para. 27.

²³² *Northern Pacific Railway Co. v. United States*, 356 U.S. 1, 4-5 (1958) (Exhibit US-28).

²³³ United States' first written submission, para. 70. (emphasis added) The specific part of the decision referred to by the United States thus concerns the Sherman Act itself, explaining its purpose and significance in the society of the United States. It does not delineate a broad public moral against "unfair competition"; rather, its purpose is to articulate why the Sherman Act itself is important in preserving both economic and political freedom in the United States. Indeed, insofar as the decision states that "[t]he 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 could be read as suggesting that, to the extent a public moral against unfair competition exists in the United States "aimed at preserving free and unfettered competition as the rule of trade", its scope is defined by the Sherman Act which provides "a comprehensive charter of economic liberty". We need not decide this point, but simply observe that we do not find support for the existence of a broader public moral against "unfair competition" in this court decision. Similarly, the decision of the United States District Court for the Eastern District of Virginia in *United States v Google* (Exhibit US-82) concerns the interpretation of provisions relating to monopolization in the Sherman Act, and therefore does not constitute evidence of the existence of a public moral in the United States that extends beyond the scope of that legislation.

²³⁴ United States' first written submission, para. 68. We note that there is some inconsistency in the United States' submissions with respect to which of the identified public morals these laws are alleged to relate. In its first written submission, the United States refers to these instruments in a footnote in support of the proposition that "[t]he 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", without specifying which public moral(s) these laws relate to. (United States' first written submission, para. 68.) At the first meeting with the Panel, the United States argued that laws in respect of torts and contracts and governmental takings specifically evidenced the existence of public morals against unfair competition and coercion. (United States' opening statement at the first meeting of the Panel, para. 43.) However, during the second meeting the United States seemed to argue that these laws are only relevant to the existence of a public moral against coercion. (United States' opening statement at the second meeting of the Panel, para. 27.)

against a broad conception of "unfair competition". At any rate, we do not consider that it is appropriate to extrapolate or infer the existence of a broad public moral from specific laws dealing with defined situations or kinds of behaviour in the absence of a sufficient explanation as to how these laws relate to each other and a common set of underlying values in such a way as to reflect the existence of a broader, unified public moral. In simply referring to these laws in footnotes, the United States has not provided such an explanation.

7.126. Moreover, while the United States has also submitted several bilateral and multilateral statements that, it argues, "make clear ... the U.S. norms against unfair competition, forced labour, theft, and coercion are deeply held and enduring", these do not provide evidence of the existence of a broad public moral in the United States against "unfair competition". While these documents demonstrate that signatory countries share concerns about certain Chinese policies and practices, they do not suggest that the signatories consider these to constitute "public morals" concerns. To the contrary, these documents consistently frame the relevant concerns as economic or security rather than moral hazards.

7.127. For example, the 2022 G7 Trade Ministers' Statement expresses concern about "unfair practices, such as all forms of forced technology transfer, intellectual property theft, lowering of labour and environmental standards to gain competitive advantage, market-distorting actions of state-owned enterprises, and harmful industrial subsidies, including those that lead to excess capacity". However, these concerns are explicitly related to "level[ing the] playing field" in international trade relations rather than protecting public morals in the territories of the signatories.²³⁵ Similarly, the 2022 G7 Leaders' Communique raises concerns about non-market practices but links these explicitly to "Economic Stability and Transformation" and "Foreign and Security Policy".²³⁶ The 2023 G7 Leaders' Statement on Economic Resilience and Economic Security similarly ties concerns about "non-market practices and policies" to efforts to "enhance economic resilience and thereby economic security".²³⁷ Thus, while the documents may demonstrate that the United States (and other countries) has concerns about certain kinds of practice and policies, they do not, at least without more, establish that these concerns are *moral* concerns within the territory of the United States (or other signatory countries). Accordingly, they do not establish the existence of a broader public moral against "unfair competition".

7.128. Second, even if we were to accept the existence of a broader public moral against "unfair competition" that goes beyond the specific types of conduct prescribed in the Sherman and Federal Trade Commission Acts, the United States has not adequately explained the boundaries of the concept, and how China's alleged practices and policies fit within them. Indeed, as China has noted, the measures at issue in this dispute themselves "interfere with market-oriented outcomes" by creating incentives for sourcing outside of China and production in the United States. Thus, even if a public moral against "unfair competition" is understood to extend beyond monopolization (and the "unfair methods of competition" prohibited in the Federal Trade Commission Act), the United States has not shown that it would necessarily extend to the kinds of market intervention that, according to the United States, China engages in.

7.129. In this connection, we consider that the evidence submitted by China raises serious doubts as to whether "targeting" certain sectors for dominance and engaging in state-directed investment could reasonably be regarded as falling within the scope of the United States' purported public moral against unfair competition, even assuming such a public moral value exists in the abstract in US society. For instance, China has submitted evidence showing that:

- a. in the field of *energy technology and innovation*, the United States has explicitly adopted a policy to "expand all forms of reliable and affordable energy production to drive down inflation, grow our economy, create good-paying jobs, *reestablish American leadership in manufacturing, lead the world in artificial intelligence*, and restore peace through strength by wielding our commercial and diplomatic levers to end wars across the world."²³⁸

²³⁵ G7 Trade Ministers' Statement (2022) (Exhibit US-38).

²³⁶ G7 Leaders' Communique (2022) (Exhibit US-37).

²³⁷ G7 Leaders' Statement on Economic Resilience and Economic Security (2023) (Exhibit US-39).

²³⁸ Executive Order 14213, "Establishing the National Energy Dominance Council" (14 February 2025), 90 Federal Register 33 (Exhibit CHN-74). (emphasis added)

- b. The Executive Order establishing this policy also creates a *National Energy Dominance Council* whose task is, *inter alia*, to advise the President of the United States on "how best to exercise his authority to produce more energy to make America energy dominant", including through the use of "incentives to attract and retain private sector energy-production investments".²³⁹
- c. China has also submitted evidence showing that, in the field of *artificial intelligence*, the United States has passed an Executive Order establishing that "[i]t is the policy of the United States to sustain and enhance America's global AI dominance in order to promote human flourishing, economic competitiveness, and national security".²⁴⁰
- d. Similarly, in the field of *semiconductor manufacturing*, China has submitted evidence showing that the United States has adopted legislation with the explicit aim of "reestablishing United States' leadership in semiconductor manufacturing".²⁴¹
- e. Additionally, China has submitted evidence demonstrating that the United States has intervened in certain markets to support innovation and production in the United States. For instance, China points to the existence of "annual, nationally applicable volume targets" for certain types of *renewable fuels* requiring energy companies to use or blend these fuels, rather than leaving such decisions to market forces.²⁴²
- f. China has also adduced evidence of *significant subsidization* in sectors including fossil fuels²⁴³, biofuels²⁴⁴, artificial intelligence²⁴⁵, and semiconductor manufacturing.²⁴⁶

7.130. We recall that the United States has responded by arguing that such evidence is not akin to China's targeting and attaining dominance of sectors, and that "China mischaracterizes U.S. actions".²⁴⁷ The United States further argues that "China does not allege that the United States has engaged in anything approaching" the specific kinds of behaviour that China is alleged to engage in.²⁴⁸ What matters in this context, however, is not whether the United States engages in behaviour that is "akin" to China, but what the United States's actions indicate about the scope of a US public moral against unfair competition. The United States has not contradicted China's evidence concerning its (i.e. the United States') behaviours or explained how China's arguments "mischaracterize" them. While this evidence may not suggest that the United States has engaged in behaviour that is exactly alike or equivalent to China (a point on which there is no need to opine in these proceedings), it does suggest that, even assuming the existence of a public moral in the

²³⁹ Executive Order 14213, "Establishing the National Energy Dominance Council" (14 February 2025), 90 Federal Register 33 (Exhibit CHN-74). See China's second written submission, paras. 60-61.

²⁴⁰ Executive Order 14179 "Removing Barriers to American Leadership in Artificial Intelligence", 90 Federal Register 8741 (23 January 2025) (Exhibit CHN-84).

²⁴¹ The White House, "Fact Sheet: Two Years after the CHIPS and Science Act, Biden-Harris Administration Celebrates Historic Achievements in Bringing Semiconductor Supply Chains Home, Creating Jobs, Supporting Innovation, and Protecting National Security" (9 August 2024) (Exhibit CHN-91). See also US Department of Commerce, "Remarks by U.S. Secretary of Commerce Gina Raimondo: Investing in Leading-Edge Technology: An Update on CHIPS Act Implementation" (26 February 2024) (Exhibit CHN-93) ("President Biden is calling us to unite around a common purpose so that we can once again cement our role as the global technological leader in this industry").

²⁴² China's second written submission, para. 62 (referring to "Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes" (12 July 2023), 88 Federal Register 44,468 (Exhibit CHN-78)).

²⁴³ China's second written submission, para. 61 (referring to Coral Davenport, "Biden Administration Raises Costs to Drill and Mine on Public Lands" (12 April 2024) *The New York Times* (Exhibit CHN-75); Environmental and Energy Study Institute "Fact Sheet. Fossil Fuel Subsidies: A Closer Look at Tax Breaks and Societal Costs" (July 2019) (Exhibit CHN-76).

²⁴⁴ China's second written submission, para. 62 (referring to US Department of Agriculture, "Fact Sheet: Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program" (June 2022) (Exhibit CHN-79); US Department of Agriculture, "Fact Sheet: Advanced Biofuel Payment Program" (Exhibit CHN-80); US Department of Energy, "Bioenergy Technologies Office Funding Opportunities" (Exhibit CHN-81).

²⁴⁵ China's second written submission, para. 63 (referring to US Department of Commerce "Biden-Harris Administration Announces CHIPS Incentives Award with SK Hynix to Advance U.S. Technological Leadership and Expand Capacity of Chips Crucial to the AI Supply Chain" (19 December 2024) (Exhibit CHN-87) and Stanford University: Human-Centered Artificial Intelligence Explainer, "What the CHIPS and Science Act means for Artificial Intelligence" (August 2022) (Exhibit CHN-88).

²⁴⁶ China's second written submission, para. 64.

²⁴⁷ United States' opening statement at the second meeting of the Panel, para. 25.

²⁴⁸ United States' closing statement at the second meeting of the Panel, para. 11.

United States against unfair competition, and regardless of its precise scope, efforts to achieve sectoral dominance and engaging in market interventions, including through subsidies, cannot necessarily be understood to fall within its ambit.

7.131. We now turn to our assessment of the parties' arguments on whether a public moral against "coercion" exists in the United States.

7.132. The United States submits that several Chinese practices and policies, including the targeting of certain sectors for dominance, non-market excess capacity, and forced technology transfer are inconsistent with the public moral against coercion.²⁴⁹

7.133. In response, China argues in its second written submission that it "has reviewed the United States' submissions to date and has been unable to identify either a clear definition of what constitutes 'coercion', in the view of the United States, or any evidence that there is a public moral in the United States against 'coercion', however that term may be understood".²⁵⁰ China submits that the only evidence that may shed light on the meaning of the term "coercion" appears to relate to alleged "economic coercion" by a state in order to influence the policies or practices of another state. In China's view, however, "the United States engages in that sort of 'economic coercion' all the time, for example through its pervasive use of economic sanctions against other countries, including through its control over the world's most widely-used reserve currency", casting doubt on whether a public moral against this type of behaviour exists in the United States. At any rate, China submits that this type of coercion is "irrelevant" to the United States' invocation of "coercion" in the context of analysing the challenged measures under Article XX(a) of the GATT 1994.²⁵¹

7.134. At the second substantive meeting with the Panel, China also asserted that:

The United States has also regularly engaged in coercion against private companies, both foreign and domestic. In the past two weeks alone, the United States withheld the grant of licenses for an AI chips company, until that company agreed to provide to the US government 15 percent of revenue from certain sales of its products. Other actions taken by the United States have included the threat of removal of government grants, threats of targeted tariffs and other sanctions, and demands of significant investments in the United States in exchange for exemptions and other incentives. The United States has taken these coercive actions under the rubric of "lead[ing] the world in artificial intelligence". That is, "coercion" in order to "target" the artificial intelligence sector to establish "global dominance".²⁵²

7.135. In response to this point, the United States responded that the varied US actions referred to by China "in fact refute China's argument by illustrating egregious behavior by Chinese companies that are counter to U.S. principles, and U.S. efforts to protect its own national security".²⁵³

7.136. We consider that it is difficult to assess the existence of a public moral against coercion because the United States has not clearly defined what it understands this term to mean or what kinds of conduct it considers the public moral to encompass. The United States did not dedicate any part of its first written submission to either defining or demonstrating the existence of a public moral against coercion, as it did in respect of unfair competition²⁵⁴, forced labour²⁵⁵, and theft.²⁵⁶ Nor did it provide any further detail on this point in its second written submission.²⁵⁷ As noted above, in certain of its submissions the United States submitted that domestic laws concerning contracts and torts and government taking of property support of the existence of, *inter alia*, a public moral against

²⁴⁹ United States' response to Panel question No. 9(b), para. 29 and second written submission, para. 24.

²⁵⁰ China's second written submission, para. 72.

²⁵¹ China's second written submission, para. 73.

²⁵² China's oral statement at the second meeting of the Panel, para. 13 (referring to Tripp Mickle, "Trump Has Made Himself Commander in Chief of the Chip Industry" (13 August 2025), *The New York Times* (Exhibit CHN-116)); China's second written submission, paras. 72-75; Executive Order 14213, "Establishing the National Energy Dominance Council" (14 February 2025), 90 Federal Register 33 (Exhibit CHN-74).

²⁵³ United States' oral statement at the second meeting of the Panel, para. 27.

²⁵⁴ United States' first written submission, paras. 69-71.

²⁵⁵ United States' first written submission, paras. 72-73.

²⁵⁶ United States' first written submission, para. 74.

²⁵⁷ United States' second written submission, para. 23.

coercion. However, as explained²⁵⁸, we do not consider that these laws, mentioned only in footnotes, are sufficient, in the absence of further explanation, to establish the existence of a broad and unified public moral against "coercion" – especially where, as in this context, the United States has not articulated what it understands the concept of "coercion" to entail, or how to determine whether certain kinds of conduct amount to or represent instances of coercion, as opposed to (or even as well as), for example, unfair competition or theft.²⁵⁹

7.137. Additionally, while the United States has submitted several multilateral statements in which countries including the United States condemn economic coercion, the only document that provides any indication of what "economic coercion" might mean is the 2023 G7 Trade Ministers' Statement. This document expresses "serious concern" about "economic coercion that interferes with legitimate choices of another government".²⁶⁰ It is not clear whether this statement implies that "economic coercion" means, or is limited to, actions "that interfere with the legitimate choices of another government". Moreover, if that is what "economic coercion" means, and if that is what the alleged United States' public moral against coercion encompasses, it is unclear whether the alleged Chinese practices and policies that the challenged measures are said to target would fall within that definition. The United States has not explained, for instance, how targeting certain sectors for dominance, non-market excess capacity, state-directed investment, or even the use of forced labour constitute conduct that "interferes with the legitimate choices of another government". On the contrary, these practices seem to concern alleged conduct undertaken *by* and *in* China. This is, of course, not to suggest that these practices are unproblematic. Rather, it highlights the lack of clarity in how these practices are connected to a public moral against economic coercion as that concept is articulated in the G7 statement, even assuming that that articulation is understood as a definition of the United States' alleged public moral against "coercion".

7.138. As this discussion shows, the only evidence on the record that clearly and unambiguously relate to "economic coercion" refers to practices that are quite distinct from those which the United States includes under the term "coercion". Thus, even if we were to accept, on the basis of this evidence, that the United States has a public moral against (economic) coercion, it is unclear whether the particular practices targeted by the challenged measures would fall within the scope of that public moral.

7.139. For these reasons, we consider that there is evidence before us that contradicts the United States' assertion that "targeting" certain sectors for dominance and engaging in state-directed investment could reasonably be regarded as falling within the scope of the United States' purported public moral against either "unfair competition" or "coercion", even assuming such a public moral exists in the abstract in US society.

7.5.3.3 Direct evidence of the objectives of the measures at issue

7.140. When assessing whether a challenged measure is designed or taken to protect public morals, it is logical to ascertain whether the relevant measure makes explicit or direct reference to that objective. Such a reference may not be dispositive, and we agree with past WTO adjudicators that a measure may fall within the scope of the public morals exception even if the legal instruments implementing the measure do not expressly mention a public morals objective.²⁶¹ Nevertheless, the presence or absence of such express mention is pertinent.²⁶² Moreover, insofar as there is direct evidence that the objectives of a measure are different from the objective asserted by the parties, such evidence may be regarded as highly relevant.

7.141. There have been some disputes in which the first step of the analysis under a subparagraph of Article XX entailed findings, sometimes substantial, on direct evidence relating to the stated or declared aims and objectives of the challenged measures, as evidenced from such sources as the

²⁵⁸ See para. 7.125 above.

²⁵⁹ We do not discount the possibility that certain kinds of conduct may violate more than one public moral, but this does not diminish the logical necessity of defining each public moral distinctly, in terms that make clear its normative content and permit a reasoned assessment of whether the conduct would amount to a violation of it.

²⁶⁰ G7 Trade Ministers' Statement (2023) (Exhibit US-40).

²⁶¹ Panel Report, *US – Tariff Measures (China)*, para. 7.125.

²⁶² Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.200.

text of laws and regulations, the measure's legislative history, stated intentions of lawmakers, and surrounding circumstances.

7.142. For example, in *EC – Tariff Preferences*, the European Communities argued that certain tariff preferences given to 12 beneficiary countries were justified under Article XX(b) as measures necessary to protect human life or health, because the tariff preferences supported measures taken in those countries against the illicit production and trafficking of narcotic drugs, thereby reducing the supply of those drugs into its territory and protecting the life and health of EC citizens. The panel found that the tariff preferences were not designed to protect the life and health of EC citizens, based on, among other things, the fact that there was no mention of the asserted objective (protecting the life and health of EC citizens) in the text of the relevant instruments.²⁶³

7.143. In *China – Rare Earths*, China argued that its export duties on rare earths, tungsten, and molybdenum products were justified under Article XX(b), because they were "an integral part of a comprehensive policy that has the goal to reduce pollution and protect the health of China's population, its animals and plants".²⁶⁴ The panel found that the export duties were not taken to protect human, animal, or plant life or health based on, among other things, the fact that the Chinese instruments imposing the export duties made no link between the duties and any environmental or health objective.²⁶⁵

7.144. Similarly, in *Turkey – Pharmaceutical Products (EU)*, Türkiye argued that its localisation requirement was taken to protect it against a future shortage of supply of safe, effective and affordable pharmaceutical products in Türkiye. The panel found, on the basis of several intermediate conclusions, that Türkiye had failed to demonstrate that the localization requirement was taken for the stated objective. One of the panel's intermediate conclusions was that the documents pertaining to the implementation of the localisation requirement did not contain any contemporaneous references to a public health objective that could support the argument that the localisation requirement was a measure taken to protect human health or life. According to the panel, this "cast[] further doubt on Turkey's assertion" as to the objective of the measure.²⁶⁶

7.145. Turning to the ITC/PTC Domestic Content Bonus Credits, we observe that the relevant statutory provisions contain no explicit reference to the objective of protecting any of the public morals invoked by the United States. We further note that certain US government agencies have issued implementing regulations and/or other guidance documents related to the challenged aspects of the ITCs and PTCs that are contained in the US Code. In particular, on 12 May 2023, the IRS issued the "Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E".²⁶⁷ We are unable to find any explicit reference either to public morals in general or to any of the specific public morals identified by the United States in the implementing regulations and/or other guidance documents related to the challenged aspects of the ITCs and PTCs that are contained in the US Code.

7.146. In addition to explicit references in the text of a challenged measure, we consider that statements made by lawmakers in connection with the passage or entry into force of a challenged measure may provide insight into the relationship between the challenged measure and the objective of protecting public morals. In this connection, the United States responded to a question from the Panel by submitting a selection of public statements that, in its view, show that "there are longstanding and widespread concerns with China's non-market policies and practices shared across the US government ... as well as the private sector and civil society – and such concerns were specifically before the US Congress in the months leading up to the IRA's passage".²⁶⁸ We turn to these now to assess whether they demonstrate the existence of a link between the ITCs and PTCs and the objective of protecting public morals.

7.147. Although the United States has submitted a large number of statements, very few concern the IRA generally or the ITCs and PTCs in particular. Most of the statements address general concerns about the impact of Chinese industrial practices on the United States' economy but have

²⁶³ Panel Report, *EC – Tariff Preferences*, para. 7.201.

²⁶⁴ Panel Reports, *China – Rare Earths*, para. 7.157.

²⁶⁵ Panel Reports, *China – Rare Earths*, paras. 7.169-7.171.

²⁶⁶ Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.200.

²⁶⁷ US Internal Revenue Service, "Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E" (12 May 2023) (Notice 2023-38) (Exhibit CHN-38).

²⁶⁸ United States' response to Panel question No. 17, para. 69.

little or no explicit connection to the measures at issue in this dispute. In fact, we could find no specific references to the ITCs and PTCs, let alone the Domestic Content Bonus Credits in any of the statements submitted.

7.148. Moreover, none of the few statements that do concern the IRA demonstrate that officials of the United States understood that legislation to have been taken to address *moral* concerns. In response to a question from the Panel, the United States explained that "Congress passed the IRA because it believed the Act would lessen US reliance on China and promote US energy security by ensuring that the United States and its allies were not left beholden to foreign entities that do not share our interests and values".²⁶⁹ The statements may support the conclusion that there was concern among some lawmakers to reduce reliance on a trading partner perceived as unstable or unreliable and to promote a secure and stable energy supply in the United States. Neither of these concerns, however, is coterminous with the public morals concerns identified by the United States throughout its submissions. They are rather distinct policies and, however important they may be (a point on which we make no comment), they cannot be assimilated to what the United States itself has identified as the public morals at issue.

7.149. For instance, the United States refers to comments by Senators Schumer and Manchin during the passage through Congress of the IRA. The Senators praised the IRA for increasing American energy security:

[T]hrough policies to support energy reliability and cleaner production coupled with historic investments in American clean energy manufacturing to lessen our reliance on China, ensuring that the transition to a clean economy creates millions of American manufacturing jobs, and is powered by American-made clean technologies.²⁷⁰

7.150. Similarly, the United States notes that following the IRA's passage, Senator Casey of Pennsylvania observed in a statement that the IRA will "give a bonus to new clean energy investments made with American materials" and "invests in American-made energy and manufacturing".²⁷¹

7.151. Neither of these statements makes any reference to public morals concerns. To the contrary, they explicitly frame the IRA as a measure designed to reduce reliance on a trading partner perceived as unstable or unreliable and encourage the development of domestic industries.

7.152. Several of the statements submitted by the United States do refer, usually in broad and non-specific terms, to Chinese policies and practices that the speakers consider to be "unfair" or "non-market". Importantly, however, these statements never frame these policies or practices as giving rise to or implicating public morals concerns. Instead, the consistent concern expressed in the statements is the effect of Chinese policies and practices on domestic growth and manufacturing and the stability of the supply of important products. Thus, where concern is expressed in the statements about Chinese policies and practices, it is not because these are in themselves *morally* objectionable, but because of their *economic* effects on domestic manufacturing and stability of supply. Put another way, the statements portray the IRA as a response to an *economic* rather than a *moral* hazard.

7.153. For instance, the United States has submitted a speech by former Secretary of Commerce Gina Raimondo on "US Competitiveness and the China Challenge".²⁷² This is a very general speech that contains no substantive discussion of the IRA or the measures at issue in this dispute. It is revealing, however, that although Secretary Raimondo does characterize certain Chinese trade policies as "non-market", her speech does not evince any concern about the *moral* impact of these practices on the society of the United States. Secretary Raimondo thus notes that China's practices "are forcing **us** to defend **our** business and workers" and "rethink how we protect our national

²⁶⁹ United States' response to Panel question No. 17, para. 69.

²⁷⁰ Summary of the Energy Security and Climate Change Investments in the Inflation Reduction Act of 2022 (27 July 2022) (Exhibit US-111).

²⁷¹ News Release, Senator Robert Casey (Pennsylvania), "Casey Applauds Senate Passage of Inflation Reduction Act, Historic Bill to Lower Costs for Families and Tackle Climate Crisis" (7 August 2022) (Exhibit US-148).

²⁷² US Department of Commerce, "Remarks by U.S. Secretary of Commerce Gina Raimondo on the U.S. Competitiveness and the China Challenge" (30 November 2022) (Exhibit US-118).

security interests while also promoting our interests in trade and investment".²⁷³ Moreover, Secretary Raimondo explicitly refers to legislation passed by the Biden Administration, including the IRA, as a "modern industrial strategy", which is centrally designed to "revitalize" domestic manufacturing and avoid the structural risks associated with dependency on China in "critical supply chains".

7.154. Senator Raimondo's speech does make some reference to alleged human rights abuses in China, including the use of forced labour. However, these comments link the United States' efforts to combat forced labour with the Biden Administration's Uyghur Forced Labor Prevention Act; the Secretary makes no reference to the IRA in this connection. Additionally, the speech notes the importance of safeguarding the United States' "national security and democratic values"; but again, these statements are general and make no reference to the IRA or to the specific measures at issue in this dispute.

7.155. Another statement submitted by the United States is a speech by former Secretary of the Treasury Janet Yellen. This speech devotes considerable attention to the IRA.²⁷⁴ However, it makes no reference at all to public morals: instead, it explicitly identifies the "three distinct goals" of the IRA as "broadening economic opportunity; bolstering economic security; and propelling us toward a clean energy future".²⁷⁵ While the speech does allege that clean energy supply chains are "overconcentrated in China, in part due to unfair non-market practices", Secretary Yellen explains that "this makes America more vulnerable to risks that disrupt our access to ... foreign production", and argues that such disruption would result in "economic disruption and higher prices for American consumers". Accordingly, the speech emphasizes the perceived significance of the IRA in addressing important economic objectives, such as stability of energy supply chains, but provides no support for the United States' argument that the challenged measures are designed to protect public morals.

7.156. Finally, the United States has submitted a White House Fact Sheet concerning the Biden Administration's efforts to "Strengthen American Solar Manufacturing and Protect Manufacturers and Workers from China's Unfair Trade Practices". This document makes no reference to public morals, and explicitly describes the goal of the IRA as being to "incentiviz[e] US solar manufacturing".²⁷⁶

7.157. We recognize that measures "often have multiple objectives".²⁷⁷ As this discussion demonstrates, however, none of the statements above suggests that the measures were designed or taken to protect public morals, even as one among several objectives. On the contrary, insofar as these statements provide evidence of the IRA's general goals, they suggest that that legislation was designed to address economic and trade policy objectives, in particular the development of domestic manufacturing and the reduction of reliance on trade partners that are considered unreliable in order to secure stable supply of important goods. We cannot find any indication in these statements that these economic and trade policy objectives were considered to have moral dimensions.

7.158. As we have said, while promoting the development of domestic manufacturing and the reduction of reliance on trade partners that are considered unstable or unreliable may be important domestic goals, they are not synonymous with or assimilable to the objective of protecting public morals. Accordingly, we do not consider that these statements provide direct evidence that the measures are designed or taken to protect public morals. If anything, the statements provided are direct evidence that the measures were taken for other objectives.

7.159. For these reasons, we consider that the direct evidence pertaining to the objectives of the measures at issue submitted by the United States contradicts its assertion that the ITC/PTC Domestic Content Bonus Credits are measures taken to protect public morals.

²⁷³ US Department of Commerce, "Remarks by U.S. Secretary of Commerce Gina Raimondo on the U.S. Competitiveness and the China Challenge" (30 November 2022) (Exhibit US-118). (emphasis original)

²⁷⁴ US Department of the Treasury, "Remarks by Secretary of the Treasury Janet L. Yellen at Livent in Bessemer City, North Carolina" (November 2023) (Exhibit US-119).

²⁷⁵ US Department of the Treasury, "Remarks by Secretary of the Treasury Janet L. Yellen at Livent in Bessemer City, North Carolina" (November 2023) (Exhibit US-119).

²⁷⁶ Fact Sheet: "Biden-Harris Administration Takes Action to Strengthen American Solar Manufacturing and Protect Manufacturers and Workers from China's Unfair Trade Practices", 16 May 2024 (Exhibit US-68).

²⁷⁷ Appellate Body Report, *US – Clove Cigarettes*, para. 136.

7.5.3.4 Design, structure, and expected operation

7.160. In most disputes, the analysis of the initial, threshold step of whether a measure is one "to protect public morals" has focused mostly on the extent to which there was any objectively discernible relationship between the stated objective and the challenged measure, taking into account relevant aspects of the design, structure, and expected operation of the measure. We agree with prior WTO adjudicators that measures that do not expressly refer to public morals may nevertheless be found to have a relationship with public morals following an assessment of their design, content, structure and expected operation, if such assessment demonstrates the existence of an objectively discernible relationship between the measure and the stated objective.²⁷⁸ It is to these aspects of the challenged measures that we now turn.

7.161. For clarity, we will consider in turn each of the requirements that must be satisfied in order to obtain the bonus credits. We recall that each of these domestic content requirements has been explained in the descriptive part of this Report.

7.5.3.4.1 The Steel and Iron Requirement

7.162. The United States argues that the Steel and Iron Requirement is designed to protect public morals because the effects of China's non-market policies and practices have been particularly profound in the steel sector, and this problem persists despite the imposition of numerous trade remedy measures and longstanding global dialogues. According to the United States, by requiring the use of 100% US-produced steel and iron for construction materials, the Steel and Iron Requirement protects the United States' public morals by counteracting the effects of China's non-market policies and practices.²⁷⁹ The United States has further explained that the Steel and Iron Requirement, together with the Manufactured Products Requirement, is designed to protect public morals because they are "structured so as to avoid purchasers rewarding practices that violate the United States' public morals".²⁸⁰ In this connection, the United States argues that the measures are necessary as they "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".²⁸¹

7.163. Additionally, the United States has suggested that the measures are designed to encourage investments in the United States and like-minded partners to stand up alternative supply and supply chains to China.²⁸² However, in response to a question from the Panel, the United States clarified its position on this issue, arguing that "[t]he investment and production bonus credits relate to the U.S. content of steel, iron, and manufactured products, and are not designed to incentivize production in *other* countries that are aligned with US public morals."²⁸³

7.164. We do not agree with the United States' assertion that the Steel and Iron Requirement can be said to "counteract" Chinese policies and practices, or that it is structured to send a signal to the US market about the moral status of Chinese goods or avoid purchasers rewarding policies and practices that violate the United States' public morals. Our reasons are as follows.

7.165. In the first place, we recall that the Steel and Iron Requirement does not operate in isolation. It is one of two requirements that must be fulfilled to obtain the domestic content bonus credits (the other being the Manufactured Products Requirement) under the ITCs and PTCs. The domestic content bonus credits similarly do not exist or operate in isolation. Instead, they are an integral part of, and work together with, other aspects of the ITCs and PTCs, which provide tax credits to eligible renewable energy facilities under certain conditions. In our view, the relationship between the Steel and Iron Requirement – and the bonus credits more generally – and the objective of protecting public morals can be objectively assessed only when the domestic content bonus credits are understood in their regulatory context, as one aspect or element of a broader tax credit programme.

²⁷⁸ Panel Report, *US – Tariff Measures (China)*, para. 7.125.

²⁷⁹ United States' second written submission, para. 43.

²⁸⁰ United States' response to Panel question No. 16(c), para. 67.

²⁸¹ United States' first written submission, para. 121.

²⁸² United States' first written submission, para. 113; opening statement at the first meeting of the Panel, para. 28; second written submission, para. 56.

²⁸³ United States' response to Panel question No. 38, para. 30. (emphasis original)

Just as the bonus credits do not operate in isolation, so too do we consider that their relationship with the objective of protecting public morals must be assessed taking into account their place within, and their operation *vis-à-vis*, other related aspects of the broader regulatory framework. In so doing, we are not assessing the WTO consistency of the ITCs and PTCs generally; our inquiry is of course limited to whether the domestic content bonus credits, which are the measures challenged by China, fall within subparagraph (a) of Article XX.

7.166. The use of 100% domestic structural steel and iron is a condition only for receipt of the *bonus* credits under the ITCs and PTCs. Thus, as China has pointed out²⁸⁴, the *base* amount of the credit remains available even if the eligible facilities use a significant amount of Chinese steel and iron. In our view, this means that, even if the United States' allegations concerning Chinese policies and practices are correct, the Steel and Iron Requirement *does not* disincentivize, let alone restrict, limit, or otherwise stigmatize the use of Chinese steel and iron. Neither does it send any kind of signal to consumers that the use of Chinese steel or iron is morally problematic or contrary to the United States' public morals against unfair competition, forced labour, theft, or coercion. To the contrary, the ITCs and PTCs *continue to reward* eligible facilities even if they do use Chinese steel, albeit at a lower rate than if they used 100% domestic steel and iron.

7.167. Thus, while the Steel and Iron Requirement evidently reflects a policy preference for the use of *domestic* steel and iron, and might incentivize consumers to purchase domestic steel and iron for economic reasons (i.e. the possibility of receiving tax credits), we do not consider that it reflects, or could be understood by consumers as reflecting, a preference that is based on or rooted in moral standards that are threatened or undermined by Chinese steel and iron. The United States argues the challenged measures "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".²⁸⁵ In our view, whether a measure is capable of sending such a "signal" to consumers is indeed a potentially relevant consideration to be taken into account under Article XX(a); among other things, this consideration may be relevant to the assessment of whether a measure aimed at limiting the consumption of goods that are not inherently morally offensive²⁸⁶ is a measure capable of protecting public morals. However, for the reasons above, we consider that the Steel and Iron Requirement, operating within and as part of its larger regulatory framework, does not, and cannot, express any kind of moral disapprobation regarding China's alleged unfair and non-market practices or the moral hazard that Chinese steel and iron are alleged to represent.

7.168. As we see it, then, while the Steel and Iron Requirement, as one element of the *bonus* credits, may operate as an economic inducement to use domestic products, it is incapable of protecting public morals because it does not indicate or otherwise reveal to consumers that the consumption of Chinese steel and iron is contrary to the United States' public morals; and, indeed, is an element of, and works together with, a larger regulatory programme that *legitimizes* the consumption of Chinese steel and iron. As a result, it appears to us that any shift in consumption patterns towards domestic steel or iron could only be motivated by concerns unrelated to public morals. Insofar as the bonus credits, as an element of ITCs and PTCs, are capable of motivating consumer behaviour on the basis only of considerations that are *not* moral in nature, we do not

²⁸⁴ China's second written submission, para. 120.

²⁸⁵ United States' first written submission, para. 121.

²⁸⁶ In these proceedings, the United States has argued that Article XX(a) refers to measures that are "necessary to protect public morals", not measures necessary to protect public morals from morally offensive products. In the United States' view, therefore, nothing in the text of Article XX(a) indicates that a measure justified under that provision must apply "to any particular product, much less products that are themselves inherently morally offensive", and therefore a measure may be necessary to protect public morals "without being applied only to products that are inherently morally offensive". (See United States' opening statement at the second meeting of the Panel, para. 62.) We note, however, that the United States has also explained that:

"[r]egardless, the measures at issue [in this dispute] are directed to reduced dependencies on products that are themselves offensive to US public morals – that is the measures are directed to reduce US reliance on the products impacted by the measures at issue because they are a result of China's targeting and dominance of the ... renewable energy sector[], including through the use of other non-market policies and practices".

(See United States' opening statement at the second meeting of the Panel, para. 63. (emphasis original))

consider that those measures can be said to have been designed or taken "to protect public morals".²⁸⁷

7.169. As noted above, in its first two written submissions and its opening statement at the first meeting with the Panel, the United States also argued that the Steel and Iron Requirement (together with the Manufactured Products requirement) is designed to protect public morals by encouraging investments in the United States and like-minded partners to stand up alternative supply and supply chains to China.²⁸⁸ However, in response to a question from the Panel following the second substantive meeting, the United States clarified that "[t]he investment and production bonus credits relate to the US content of steel, iron, and manufactured products, and are not designed to incentivize production in *other* countries that are aligned with US public morals".²⁸⁹ In its response to that question, the United States distinguishes between the critical minerals sector, in which it "seeks to work with US allies that have significant mining experience to counteract China's global dominance", and the steel sector, in which "the effects of China's non-market policies and practices have been longstanding and particularly profound, and have resulted in global distortions".²⁹⁰

7.170. Thus, it is clear that the Steel and Iron Requirement *does not* support the establishment of supply chains with countries which the United States considers to be "like-minded". Instead, it establishes a domestic content requirement that can only be satisfied by using 100% domestic steel. The question therefore becomes whether this aspect of the challenged measures demonstrates that they are designed or taken to protect public morals. We do not understand how this domestic content requirement could be said to contribute to the protection of the public morals invoked by the United States. As we have observed, the Steel and Iron Requirement conditions the bonus credit upon the use of 100% domestic steel and iron. This of course means that the bonus credit is lost not only if an eligible facility uses structural steel or iron *from China*, but also if it uses such steel or iron from *any other country*, including countries that the United States, in its written submissions in this dispute, describes as "like-minded" on public morals issues, and with which it has free trade agreements (FTAs).²⁹¹

7.171. Throughout these proceedings, the United States has maintained that, unlike China²⁹², its FTA partners share its commitments against unfair competition, coercion, theft, and forced labour.²⁹³ Given this, it is difficult to understand how excluding steel from those countries could contribute in any way to the protection of public morals. Insofar as those countries are not alleged to engage in behaviours that contradict the United States' public morals against unfair competition, forced labour, theft, and coercion, and insofar as steel and iron produced in those countries is therefore not claimed to be in any way tainted by such practices, we cannot see how the domestic content requirement in the Steel and Iron Requirement is capable of protecting those public morals.

7.172. The United States responds that, because Chinese practices and policies have "infiltrated" the global steel market, the only way to ensure that consumers do not support Chinese practices and policies is to condition the bonus credit on the use of 100% domestic steel.²⁹⁴ This argument seems to be premised on the notion that steel production in *all* countries other than the United States has been so deeply infiltrated by Chinese practices and policies that *no* non-US steel is untarnished by China's alleged non-market practices and policies, and the use of non-US steel from *any* country risks rewarding China's alleged non-market practices and policies.

7.173. In our view, this premise has not been substantiated. In support of its arguments about Chinese "infiltration", the United States has submitted three reports from the Global Forum on Steel

²⁸⁷ Put another way, we do not see how the Steel and Iron Requirement could result in consumers making decisions based on *moral* considerations, or perceiving or understanding their consumption as having moral dimensions, given the design and structure of the Steel and Iron Requirement, operating in the context and as part of the ITCs and PTCs. The choice by consumers (i.e. electricity production facilities) to use 100% domestic steel could therefore be motivated only by economic considerations disconnected from the perception or actualization of "standards of right and wrong conduct" prevailing in the United States.

²⁸⁸ United States' first written submission, para. 113; opening statement at the first meeting of the Panel, para. 28; second written submission, para. 56.

²⁸⁹ United States' response to Panel question No. 38, para. 30. (emphasis original)

²⁹⁰ United States' response to Panel question No. 38, para. 32.

²⁹¹ United States' first written submission, para. 113; response to Panel question No. 12, paras. 42-45.

²⁹² United States' first written submission, para. 105.

²⁹³ United States' response to Panel question No. 12, paras. 42-45.

²⁹⁴ United States' response to Panel question No. 16(a), para. 65.

Excess Capacity (GFSEC).²⁹⁵ As an initial matter, we note that our discussion of these reports is limited to the purposes of assessing whether they support the United States' specific arguments in these proceedings. Our findings in respect of these reports should not be otherwise relied on or taken to express our views concerning issues outside the context of this dispute. The GFSEC reports submitted by the United States express concerns about the effects of excess steel capacity on the steel industries of GFSEC member countries.²⁹⁶ However, they do not state that China has "infiltrate[d] and influence[d] steel production outside of China" in the way the United States has suggested.²⁹⁷

7.174. In response to a question from the Panel inviting it to elaborate on how China has infiltrated global steel markets, the United States submitted that excess capacity can have negative effects by flooding the markets of importing third countries and displacing domestic steel production, leading to loss of profits and a less viable steel industry in the long term.²⁹⁸ This effect is also discussed in the GFSEC's reports, which note, for instance, that "excess capacity in China is expected to result in a surge of Chinese steel exports to third markets, thereby increasing their share of domestic market demand in importing economies".²⁹⁹ However, demonstrating that excess capacity has a negative effect on the profitability of third countries' steel industries is very different from showing that Chinese policies and practices have somehow "infiltrated" steel production in other countries and morally tarnished steel exported from there. This evidence suggests that exports of cheaper steel from China may have significant negative impacts on the steel industries of countries that import Chinese steel. It does not, without more, implicate the moral character of steel produced in or exported from those countries.

7.175. The United States further argued that China has "infiltrated" global steel production through "heavily-subsidized Chinese SOEs" that "have made significant investments in steel production capacity".³⁰⁰ The United States has submitted little evidence in support of this claim. Nevertheless, one GFSEC report does observe that "the moderation in capacity growth within China is being offset by investments abroad by Chinese companies, many being SOEs that tend to be heavily subsidised. This is generating non-market excess capacity outside of its borders, notably in Southeast Asia".³⁰¹ While this report therefore acknowledges that SOEs may be contributing to overproduction outside China, and especially in Southeast Asia, it does not state that SOEs have "infiltrated" domestic steel production in *all* or even *most* countries other than the United States in such a way as to render *all* steel from *all* countries other than the United States to be tarnished by the Chinese policies and practices that the United States considers to be contrary to its public morals.

7.176. Moreover, even if SOEs are operating in the steel industry of many countries outside China, the United States has not established that such investments necessarily result in steel being produced under "unfair" or "non-market" conditions inconsistent with the United States' public morals against unfair competition, forced labour, theft, and coercion. In this connection, we note that, in response to a question from the Panel about Chinese steel companies operating in the United States (whose steel would theoretically be eligible for the bonus credit under the Steel and Iron Requirement because it is produced domestically), the United States responded that "[a]ny such Chinese-owned or-controlled entity ... would be subject to US laws that protect US public morals"³⁰², and would therefore pose no risk to those public morals. If this is accepted – and there appears to be no reason why it should not be – it is not clear why other countries, especially those that the United States itself considers to be "like-minded" and united against unfair competition,

²⁹⁵ Global Forum on Steel Excess Capacity, Impacts of global excess capacity on the health of the GFSEC steel industries (March 2024) (Exhibit US-86); Global Forum on Steel Excess Capacity, Steel Exports, trade remedy actions and sources of excess capacity (May 2024) (Exhibit US-85); and Global Forum on Steel Excess Capacity, Global excess capacity and employment in steel and downstream activities (March 2025) (Exhibit US-104).

²⁹⁶ These are Argentina, Australia, Austria, Belgium, Brazil, Canada, the European Union, Finland, France, Germany, Greece, Hungary, Italy, Japan, South Korea, Luxembourg, Mexico, Netherlands, Norway, Poland, the Slovak Republic, South Africa, Spain, Sweden, Switzerland, Türkiye, the United Kingdom, and the United States.

²⁹⁷ United States' response to Panel question No. 16(a), para. 64.

²⁹⁸ United States' response to Panel question No. 16(a), para. 60.

²⁹⁹ Global Forum on Steel Excess Capacity, Impacts of global excess capacity on the health of the GFSEC steel industries (March 2024), (Exhibit US-86) p. 16.

³⁰⁰ United States' response to Panel question No. 16(a), para. 64.

³⁰¹ Global Forum on Steel Excess Capacity, Steel Exports, trade remedy actions and sources of excess capacity (May 2024), (Exhibit US-85) p. 7.

³⁰² United States' response to Panel question No. 16(b), para. 66.

coercion, theft, and forced labour, would not also maintain laws to ensure that Chinese SOEs (or other Chinese companies) behave in ways that are consistent with the relevant public morals. At any rate, there is no evidence on the record suggesting that this is not the case.

7.177. In its response to a question from the Panel following the second substantive meeting, the United States, in attempting to explain why the measures at issue are not designed to stand up alternative supply chains with like-minded partners, advanced some additional arguments relating to this issue. According to the United States:

[F]or decades the United States has taken steps to counteract the effects of China's non-market policies and practices in the US steel market. Unfortunately, other countries, including U.S. free trade agreement (FTA) partners, have failed to take similar steps, and their domestic steel markets remain significantly more susceptible to and distorted by China's practices than the US steel market.³⁰³

7.178. Thus, the United States argues that while it has taken a variety of steps to protect the US steel market from China's non-market policies and practices, for example, through anti-dumping and countervailing duty orders, other countries, including the United States' FTA partners, have not. In the United States' view, this has resulted in "US steel prices being higher than in other major markets, including US FTA partners, thereby leading to less distortion in the US market".³⁰⁴ According to the United States, this difference in price leads to price arbitrage, as increased and artificially low-price exports displace production and suppress prices in third-country markets. "As a result, global markets are distorted, and steel producers and traders seek to export to less-distorted markets. ... that less-distorted market is overwhelmingly the United States".³⁰⁵

7.179. As we understand it, the United States' argument is that the measures at issue are designed to protect the United States' public morals because they disqualify from the bonus credit steel and iron produced in third countries which, although they share the public morals invoked by the United States, have not taken what the United States considers to be sufficient action to protect their *own* domestic steel markets from China's alleged unfair policies and practices. This failure has resulted in harm to the domestic steel industries of these countries due to increased export penetration. This has resulted in domestic producers seeking to export more of their own steel to third markets, including to the United States.

7.180. In our view, even if the various factual and economic premises underlying this chain of reasoning are correct, it is difficult to see how this argument has any connection to the question of whether the measures at issue were designed to protect public morals. The United States' asserts that increased Chinese exports of steel to other countries has (a) caused harm to the domestic steel industries in those countries; and (b) resulted in increased exports of steel produced in those countries to the United States. We do not see that point (a) has any bearing on the United States' efforts to protect public morals in its own territory. With respect to point (b), the United States has not explained why the steel produced in those other countries would itself pose a threat to the United States' public morals against unfair competition, forced labour, theft, and coercion. That is, as we found above, the United States has not explained how or why the economic effects of China's alleged export penetration into the steel markets of third countries implicate the moral character of steel produced in and exported from those countries.

7.181. Before concluding, we recall that the United States has argued that, in addition to the Steel and Iron and the Manufactured Products requirements, the ITCs and PTCs contain a prevailing wage requirement: to qualify for increased credits under the renewable energy tax credits, US companies must pay labourers and mechanics wages that are sufficiently high under standards set by the Secretary of Labor.³⁰⁶ According to the United States, "[o]ne of the ways in which the renewable energy tax credits protect U.S. public morals is through the prevailing wage requirement".³⁰⁷ For the United States, this requirement "help[s] ensure that US companies uphold US public morals related

³⁰³ United States' response to Panel question No. 38, para. 33.

³⁰⁴ United States' response to Panel question No. 38, paras. 35-37.

³⁰⁵ United States' response to Panel question No. 38, para. 38. (internal citations omitted)

³⁰⁶ United States' second written submission, para. 42 (citing 26 U.S.C. Sections 48(a)(9)(B), (10)(A), and (11), 26 U.S.C. Sections 48E(d)(3) and (4), 26 U.S.C. Sections 45(b)(6) and (7), 26 U.S.C. Sections 45Y(g)(9) and (10) (Exhibit CHN-17)).

³⁰⁷ United States' second written submission, para. 42.

to unfair competition and forced labour"³⁰⁸. In our view, even if the United States had established that the prevailing wage requirement could somehow be understood as helping to ensure that US companies uphold US public morals related to "unfair competition" and "forced labour" (and we make no finding on this point), that would not change or otherwise affect the relationship between the domestic content bonus credits, which are the measures at issue in this dispute, and the objective of protecting public morals. The prevailing wage requirement is a distinct requirement within the broader regulatory framework of the ITCs and PTCs. The two sets of requirements (that is, the prevailing wage requirement on the one hand and the Steel and Iron and the Manufactured Products requirements on the other) operate separately, concern different issues, and set out different conditions that must be met to obtain the full tax credits. Each can be satisfied independently of the other and, indeed, provided that the Steel and Iron and Manufactured Products requirements are met, the domestic content bonus credits remain available even if the prevailing wage requirement is not met.³⁰⁹ Conversely, the domestic content bonus credits do not become available unless the Steel and Iron and the Manufactured Products are satisfied, even in situations where the prevailing wage requirement is met. We therefore do not see how it could shed any light on the question of whether the distinct domestic content rules in the Steel and Iron and the Manufactured Products requirements are themselves related to the objective of protecting public morals.

7.182. Finally, we do not consider pertinent the United States' evidence that, following the imposition of the measures at issue, "US crude steelmaking capacity *did* increase".³¹⁰ The reason is that such increase in domestic steel production is not necessarily coterminous with, indicative of, or even related to the protection of public morals. In our view, it does not, without more, show that the measures are designed or taken to protect public morals, as opposed to some other objective such as simply increasing domestic capacity. As we have explained, the Steel and Iron Requirement disqualifies from eligibility for the bonus credit steel and iron produced in and exported from countries that the United States views as sharing its values against unfair competition, forced labour, theft, and coercion. Accordingly, we do not consider that data showing an increase in domestic production constitutes cogent evidence that the challenged measures are designed or taken to protect public morals.

7.183. For these reasons, several aspects of the design, structure, and expected operation of the Steel and Iron Requirement contradict the United States' assertion that the ITC/PTC Domestic Content Bonus Credits are measures taken to protect public morals.

7.5.3.4.2 The Manufactured Products Requirement

7.184. We now turn to the second requirement that must be met in order to receive the ITC/PTC Domestic Content Bonus Credits, which is the Manufactured Products Requirement.

7.185. We begin by noting that the United States has not advanced arguments explaining how the Manufactured Products Requirement specifically relates to the objective of protecting public morals. In its written submissions, the United States refers to the ITCs and PTCs bonus credits together as the "renewable tax credits", and argues that they "reduce reliance on China, and enhance fair competition and market-oriented outcomes in the US market. Further, the measures incentivize sourcing outside of China".³¹¹ In its second written submission, the United States elaborated on the ways in which, in its view, the challenged measures are designed to protect public morals:

[T]he domestic content bonus provisions of the renewable energy tax credits also protect public morals. As the United States has explained, the effects of China's non-market policies and practices have been particularly profound in the steel sector, and

³⁰⁸ United States' second written submission, para. 42.

³⁰⁹ See e.g. 6 U.S.C. Sections 48(a)(12)(C) and 48E(a)(3)(B) (Exhibit CHN-17). We note that the value of the domestic content bonus credits may be reduced in certain circumstances if the prevailing wage requirement is not also satisfied (for instance, in respect of projects with a maximum net output of more than 1 megawatt of electrical (as measured in alternating current) or thermal energy the construction of which begins after the date that is 60 days after the Secretary publishes guidance with respect to the requirements of the prevailing wage requirement) (6 U.S.C. Section 48(a)(9)(B).) However, in no case is the availability of the domestic content bonus credits tied to satisfaction of the prevailing wage requirement. In other words, a domestic content bonus credit is always available when the Steel and Iron and the Manufactured Products requirements are satisfied, even if the prevailing wage requirement is not met.

³¹⁰ United States' response to Panel question No. 38, para. 44. (emphasis original)

³¹¹ United States' first written submission, para. 106.

this problem persists despite the imposition of numerous trade remedy measures and longstanding global dialogues. By requiring the use of 100 percent US-produced steel and iron for construction materials, and for manufactured products, that a certain percentage of the total cost of components incorporated is produced in the United States, the domestic content bonus provisions protect U.S. public morals by counteracting the effects of China's non-market policies and practices, which in these areas are global in nature and particularly acute.³¹²

7.186. This argument seems to us to relate primarily to the Steel and Iron Requirement discussed above. The Manufactured Products Requirement is concerned not with steel *per se*, but with *all* manufactured goods. While some or even many manufactured goods may contain steel, the Manufactured Products Requirement is extremely broad, and we are therefore not certain whether the United States intended this argument, which is specific to the steel sector, to be an explanation of the Manufactured Products Requirement as well.

7.187. In this connection, we note that, in response to a question from the Panel, the United States argued that "the effects of China's non-market policies and practices in the steel sector also affect iron (a key input for steel) and US manufacturing (given follow-on effects in US communities from the closure of steelmaking facilities)". However, the United States did not elaborate or attempt to substantiate this point.³¹³ At any rate, and more fundamentally, the Manufactured Products Requirement is not limited to products made from or containing steel. We therefore do not see the connection between this requirement and the United States' concerns about Chinese alleged policies and practices in respect of the steel sector.

7.188. In response to another question from the Panel, the United States suggested that the Manufactured Products Requirement is concerned primarily with goods in the renewable energy sector³¹⁴, which, according to the United States, has been targeted for dominance by China.³¹⁵ However, we note that the Manufactured Products Requirement is not limited to goods in that sector. By its terms, it applies to any item produced as a result of the manufacturing process that is incorporated into any article, material, or supply that is itself directly incorporated into an eligible facility.³¹⁶ In response to a question from the Panel on this issue, the United States explained that "[t]he manufactured products requirement ... applies to the upstream products that become part of a renewable energy project", and stated that "[m]anufactured products within the meaning of the investment and production tax bonus credits include, for example, photovoltaic trackers, photovoltaic modules, wind turbines, battery packs, and battery containers and housing".³¹⁷

7.189. We accept that many renewable energy-related products might fall within the scope of the Manufactured Products Requirement. It should be noted, however, that the requirement is much broader, and is not limited in its application, either implicitly or explicitly, to goods in the sectors in which China is alleged to behave in ways that are inconsistent with the United States' public morals. This broad scope bears no discernible relation to the objective of protecting those public morals that the United States alleges are threatened by goods in those specific sectors.

7.190. Even leaving this aside, we are not convinced that the Manufactured Products Requirement is capable of protecting the United States' public morals by counteracting the effects of China's non-market policies and practices³¹⁸, reducing reliance on China, or incentivizing production outside China.³¹⁹ As we have noted, this requirement provides that, in order to obtain the bonus credit, a specified percentage of manufactured goods that become part of an electricity generation facility must be manufactured in the United States. The percentage threshold is 40% for projects that begin construction before 2025 and increases by 5 percentage points per year up to 55% for projects starting construction in 2027 and beyond.³²⁰ This means that, at its most restrictive, (from 2027

³¹² United States' second written submission, para. 43. (fns omitted)

³¹³ United States' response to Panel question No. 38, para. 32.

³¹⁴ United States' response to Panel question No. 37, para. 28.

³¹⁵ See e.g. United States' second written submission, para. 27.

³¹⁶ US Internal Revenue Service, "Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E" (12 May 2023) (Notice 2023-38), (Exhibit CHN-38), pp. 6-7.

³¹⁷ United States' response to Panel question No. 37, para. 28.

³¹⁸ United States' second written submission, para. 43.

³¹⁹ United States' first written submission, para. 106.

³²⁰ We note that, for offshore wind facilities, the schedule starts at 20% and steps up to 55% for construction projects beginning after 2027. The United States has not explained why different percentages

onwards) the bonus credit will only be available to facilities that incorporate manufactured goods at least 55% of which are manufactured in the United States.

7.191. In the first place, and like the Steel and Iron Requirement, the Manufactured Products Requirement is an element of, and works together with, the other aspects of the ITCs and PTCs. While the Manufactured Products Requirement applies to the *bonus* credit, the base credit remains available to facilities that incorporate very few or even no products manufactured in the United States (and thus, presumably, many or even only manufactured products produced in China). For the reasons we explained in relation to the Steel and Iron Requirement, we do not think that a measure can be said to be designed or taken to protect public morals when it does not stigmatize, and even rewards, the use of the very products that are alleged to be inconsistent with the public morals at issue. The Manufactured Products Requirement, operating within and as part of its larger regulatory framework, does not express any kind of moral disapprobation regarding China's alleged unfair and non-market practices in the renewable energy or any other sector.

7.192. On the contrary, while it provides an economic incentive to use domestic products, it continues to mark Chinese products as legitimate market options. If, therefore, it creates an incentive to use domestic goods, it does not, and cannot, do so for any explicit or implicit *moral* reasons, and changes in consumption patterns could therefore only be motivated by reasons unrelated to the establishment or maintenance of standards of right and wrong conduct, as consumers would be entirely incapable of apprehending that the use of such Chinese manufactured products is inconsistent with the United States' standards of right and wrong conduct. In such circumstances, we do not see how the Manufactured Products Requirement can be said to be capable of protecting public morals.

7.193. Moreover, we note that the Manufactured Products Requirement does not require the use of 100% domestic manufactured products. Instead, it requires a certain percentage of domestic content that increases from 40% for projects that begin construction before 2025 up to 55% for projects starting construction in 2027 and beyond. This means that, even at its more restrictive, the Manufactured Products Requirement can be satisfied where up to 45% of manufactured components are manufactured in countries other than the United States, including China. It is therefore not only the regulatory programme of which the Manufactured Products Requirement forms part but the requirement itself that continues to legitimize and reward the consumption of the very goods that the United States submits represent a moral hazard. In the light of this circumstance, we cannot accept the United States' argument that the "bonus credits protect US public morals because they ensure that US support – through tax credits – does not reward China's non-market policies and practices".³²¹ As we have explained, the ITCs and PTCs generally and the Manufactured Products Requirement specifically seem to us to do precisely that.

7.194. Additionally, and as China has pointed out, the Manufactured Products Requirement does not merely require that, in order to protect the United States' public morals against China's alleged unfair and non-market practices, a certain percentage of manufactured products must be manufactured in countries other than China. Instead, it establishes that a percentage of *domestic* content must be used. In response to a question from the Panel on this issue, the United States explained that "[r]equiring manufacturing in the United States plays a significant role in protecting US public morals because manufacturers in the United States must comply with the US constitution, the Sherman Act, the Federal Trade Commission Act, US labour laws, and other laws that reflect US public morals".³²² No doubt this is true. But it fails to explain why manufacturers in countries other than China, and at least those "like-minded" countries that share the United States' commitments against unfair competition, coercion, theft, and forced labour, would not be subject to equivalent laws. Certainly, the United States has not provided any evidence that this is not the case.

7.195. We note, moreover, that the United States has consistently defended the challenged measures, including the Manufactured Products Requirement, on the basis that they are designed and necessary to "counteract[] the effects of *China's* non-market policies and practices".³²³ It has not argued that manufactured products, including in the renewable energy sector, that are

apply to offshore wind facilities, or whether and how these different percentages relate to the objective of protecting public morals.

³²¹ United States' response to Panel question No. 16(a), para. 56.

³²² United States' response to Panel question No. 16(a), para. 56.

³²³ United States' second written submission, para. 43. (emphasis added)

manufactured in countries *other* than China pose or otherwise embody a threat to the United States' public morals. There does not, therefore, appear to be any objective connection between the objective articulated by the United States and requiring the use of a *domestic* content as part of the eligibility condition for a tax credit.

7.196. Further, given that the Manufactured Products Requirement allows up to 45% of manufactured components to be non-domestic, we do not to understand, and the United States has not explained, how the parallel requirement that up to 55% be domestic bears any relationship to the objective of protecting public morals. If manufactured products that comprise 45% imported components do not threaten the United States' public morals, the question arises: how and why do manufactured products that are 65%, 75%, or even 100% imported components do so? Put another way, it is not clear what additional protection is provided to the United States' public morals by requiring a higher proportion of domestic inputs, when a substantial portion of foreign inputs is already deemed to be consistent with the protection of public morals. The United States has not explained, and we can discern no rational relationship between, the figure of 55% (or even lower in the years leading up to 2027) and the objective of protecting public morals.³²⁴ Indeed, at a more fundamental level, it is unclear to us how the sliding scale itself protects public morals: if 40% domestic content is sufficient to protect public morals in respect of facilities whose construction begins before 2025, then it is not clear why a higher percentage is required to achieve the same objective in respect of facilities whose construction begins one or several years later.

7.197. We are mindful that, in response to a question from the Panel concerning the Manufactured Products Requirement, the United States argued that:

[T]he fact that *some* content may originate outside the United States, including from China, does not render the measures at issue inconsistent with US public morals concerns. The measures at issue create financial incentives for alternative supply and are structured so as to avoid US purchasers rewarding China's non-market policies and practices that violate U.S. norms against unfair competition, forced labor, theft, and coercion.³²⁵

7.198. However, for the reasons we have explained, we do not consider that the domestic content requirements in the ITCs and PTCs are "are structured so as to avoid US purchasers rewarding China's non-market policies and practices". On the contrary, the challenged measures continue to reward consumers for using Chinese products, and are therefore incapable of incentivizing behaviour on the basis of standards of right and wrong conduct. Quite simply, by allowing "some content" to originate in China, the Manufactured Products Requirement is incapable of providing any indication to consumers that the use of Chinese products entails or involves *moral* considerations or has implications for the realization or protection of standards of right and wrong conduct.

7.199. The United States concluded its response to a further question about the ITCs and PTCs by arguing that "the measures incentivize US production and reduce dependence on and exposure to Chinese steel, iron, and manufactured products, thereby protecting US public morals against unfair competition, forced labour, theft, and coercion".³²⁶ In our view, the mere fact that a certain measure incentivizes or increases domestic production or reduces dependence on and exposure to a certain trading partner does not, on its own or without more, show that the measure was designed or taken to protect public morals. Those outcomes may be the goal or result of various kinds of objectives, perhaps including moral objectives, but certainly also including economic objectives that have no moral implications.³²⁷ Thus, the fact that a certain measure may, for example, increase domestic production does not, in itself, establish that the measure was designed to protect public morals. The question is not whether the measure produces a certain economic outcome, but whether the design

³²⁴ See Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.208, where the panel discussed similar considerations.

³²⁵ United States' response to Panel question No. 16(c), para. 67. (emphasis original)

³²⁶ United States' response to Panel question No. 38, para. 45.

³²⁷ We recall that, in *Turkey – Pharmaceutical Products (EU)*, the panel made a similar observation when it observed that "it does not logically follow ... that any measure taken by a WTO Member to increase its local production of pharmaceutical products must be deemed to have been taken for the purpose of protecting human life or health". Instead, the panel assessed the evidence before it to determine whether the design, structure, and expected operation of the specific measure at issue demonstrated that it was genuinely designed or taken for that purpose. See Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.210.

and structure of the measure demonstrate that that outcome itself embodies or advances the protection of public morals.

7.200. In this dispute, therefore, the relevant inquiry is not whether the challenged measures are designed to increase domestic production or reduce reliance on China, but whether they are designed to protect the United States' public morals against unfair competition, forced labour, theft, and coercion. The former may be a relevant factor in assessing the latter, but the two inquiries are not coterminous. The fact that a measure has a certain economic outcome is not a pertinent answer to doubts about whether that measure was taken to protect public morals that arise from an objective assessment of its design and structure. We have identified several aspects of the design and structure of the Manufactured Products Requirement that cast doubt on whether it is designed to protect public morals. And we are not convinced that the United States has explained these aspects in a way that is sufficient to remove those doubts.

7.201. For these reasons, several aspects of the design, structure, and expected operation of the Manufactured Products Requirement contradict the United States' assertion that the ITC/PTC Domestic Content Bonus Credits are measures taken to protect public morals.

7.5.3.5 Conclusion on whether the ITC/PTC Domestic Content Bonus Credits are measures "to protect public morals"

7.202. The United States has the burden of establishing that the ITC/PTC Domestic Content Bonus Credits are measures taken "to protect public morals" within the meaning of Article XX(a) of the GATT 1994.

7.203. For the reasons above, we consider that there is evidence before us that contradicts the United States' assertion that "targeting" certain sectors for dominance and engaging in state-directed investment could reasonably be regarded as falling within the scope of the United States' purported public morals against either "unfair competition" or "coercion", even assuming such public morals exists in the abstract in US society. We further consider that the direct evidence pertaining to the objectives of the measures at issue submitted by the United States contradicts its assertion that the ITC/PTC Domestic Content Bonus Credits are measures taken to protect public morals. Additionally, several aspects of the design, structure, and expected operation of the ITC/PTC Domestic Content Bonus Credits further contradict the United States' assertion that the ITC/PTC Domestic Content Bonus Credits are measures taken to protect public morals. Based on these considerations taken together, none of which we regard as necessarily decisive, our global assessment is that the United States has not demonstrated that the ITC/PTC Domestic Content Bonus Credits are measures necessary for the protection of public morals under the general exception in Article XX(a) of the GATT 1994.

7.5.4 Remaining issues in respect of the United States' Article XX(a) defence

7.204. We have concluded that the United States has not demonstrated that the measures at issue are taken "to protect public morals" based on the nature of the alleged public morals invoked by the United States, the direct evidence of the objectives of the measures at issue, and the existence of a relationship between the alleged public morals and the design, structure, and expected operation of the ITC/PTC Domestic Content Bonus Credits.

7.205. Accordingly, and recalling that the WTO dispute settlement system is not meant "to encourage either panels or the Appellate Body to 'make law' by clarifying existing provisions of the WTO Agreement outside the context of resolving a particular dispute"³²⁸, it is unnecessary for us to make any definitive findings on the types of values or interests that may qualify as "public morals" under Article XX(a), including the relevant interpretative issues raised by the arguments of the parties and third parties in this dispute.³²⁹

³²⁸ Appellate Body Report, *US – Wool Shirts and Blouses*, pp. 18-19, DSR 1997:I, 323, at 339-340.

³²⁹ See para. 7.109 above.

7.206. Likewise, because the ITC/PTC Domestic Content Bonus Credits fail to meet this threshold legal element, we do not need to assess the remaining legal elements of the "necessity" test under Article XX(a) to determine the applicability of this exception.

7.207. Since the challenged measures have not been shown to fall under Article XX(a) and are thus not provisionally justified under this subparagraph, it is also not necessary for us to assess whether the measures have been applied consistently with the requirements of the *chapeau* of Article XX.³³⁰

7.208. Finally, in the light of our finding that the measures are not justified under Article XX(a) of the GATT 1994, we do not need to rule on whether the general exceptions in Article XX are applicable to the SCM Agreement. This is so because the United States' invocation of Article XX(a) *vis-à-vis* all the relevant covered agreements rests on the same evidence and arguments. The United States has not advanced, and we do not discern, any way in which the United States' invocation of Article XX(a) of the GATT 1994 could fail *vis-à-vis* the GATT 1994 but succeed in the context of the SCM Agreement (or the TRIMs Agreement).³³¹

7.5.5 Conclusion

7.209. For the reasons stated above, we conclude that the United States has not demonstrated that the ITC/PTC Domestic Content Bonus Credits are measures necessary for the protection of public morals under the general exception in Article XX(a) of the GATT 1994.

8 CONCLUSIONS AND RECOMMENDATIONS

8.1. For the reasons set forth in this Report, the Panel concludes that:

- a. the ITC/PTC Domestic Content Bonus Credits are inconsistent with Article III:4 of the GATT 1994 because by making eligibility for bonus subsidy amounts conditional on the use of US-origin goods, the United States does not accord to products of Chinese origin treatment no less favourable than the treatment accorded to like products of national origin in respect of laws, regulations, and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of the affected products;
- b. the ITC/PTC Domestic Content Bonus Credits are inconsistent with Article 2.1 of the TRIMs Agreement, because the conditions are investment measures related to trade in goods that are inconsistent with Article III:4 of the GATT 1994;
- c. the ITC/PTC Domestic Content Bonus Credits are inconsistent with Articles 3.1(b) and 3.2 of the SCM Agreement because they are subsidies granted or maintained by the United States contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods; and
- d. the United States has not demonstrated that the ITC/PTC Domestic Content Bonus Credits are measures necessary for the protection of public morals under the general exception in Article XX(a) of the GATT 1994.

8.2. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. The Panel concludes that, to the extent that the ITC/PTC Domestic Content Bonus Credits are inconsistent with the GATT 1994, the TRIMs Agreement, and the SCM Agreement, they have nullified or impaired benefits accruing to China under those agreements.

³³⁰ Prior WTO adjudicators have traditionally refrained from assessing for conformity with the *chapeau* of Article XX measures that they have found not to be provisionally justified. See e.g. Panel Reports, *US – Tariff Measures (China)*, para. 7.242; *India – Solar Cells*, paras. 7.389-7.390; *China – Publications and Audiovisual Products*, para. 7.912; and *Colombia – Ports of Entry*, para. 7.620. See also Appellate Body Reports, *India – Solar Cells*, para. 5.155; and *China – Publications and Audiovisual Products*, fn 614.

³³¹ We note that Article 3 of the TRIMs Agreement states that "[a]ll exceptions under GATT 1994 shall apply, as appropriate, to the provisions of this Agreement." The SCM Agreement contains no such analogous language, and the parties actively contested the applicability of the exceptions under Article XX of the GATT 1994 to the SCM Agreement.

8.3. Pursuant to Article 19.1 of the DSU, the Panel *recommends* that the United States bring the ITC/PTC Domestic Content Bonus Credits into conformity with Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement.

8.4. Pursuant to Article 4.7 of the SCM Agreement, and in the light of its findings under Articles 3.1(b) and 3.2 of the SCM Agreement, the Panel further *recommends* that the United States withdraw the ITC/PTC Domestic Content Bonus Credits without delay.

8.5. Article 4.7 of the SCM Agreement directs us to specify, in our recommendation, the time-period within which these measures must be withdrawn. We recognize that the United States' implementation of our recommendation would require legislative action to modify the relevant provisions of US tax law, and we also understand that the US fiscal year 2027 starts on 1 October 2026, although the parties disagree regarding the significance of the fiscal year.³³² In the circumstances of this case, that date appears a reasonable deadline for the withdrawal of the ITC/PTC Domestic Content Bonus Credits. Given the timing of the issuance of this Report, we consider that this deadline will provide sufficient time to take relevant legislative action, and it also accommodates any fiscal-year issues identified by the United States with respect to these tax measures. We note that the United States has provided no reasoning as to why legislative action could not be accomplished in such a time frame. While we do not consider that it would always be appropriate to set a time-period that would allow a responding Member to continue to grant prohibited subsidies through to the end of the fiscal year in which circulation and adoption of a panel report takes place, we note that granting the United States until 30 September 2026 also finds support in the approach taken by the panel in *US – FSC*.³³³

8.6. Accordingly, the Panel *recommends* that the United States withdraw the ITC/PTC Domestic Content Bonus Credits by 1 October 2026 at the latest.

³³² China most recently noted that in previous disputes the time-period for implementation has most often been 90 days but has been extended in certain circumstances to 120 to 180 days. (China's response to Panel question No. 32; comments on the United States' response to Panel question No. 32). The United States noted that any such time-period should allow for engagement between the parties with respect to withdrawal of the measures and also take into account that the withdrawal of the measures would require legislative action; the United States further noted that the normal legislative calendar for making tax changes is on a fiscal year basis and referred, in this connection, to the approach taken by the panel in *US – FSC*, and thus suggests one year from the date of adoption as the deadline for compliance. (United States' response to Panel question No. 32; comments on China's response to Panel question No. 32, para. 4)

³³³ See Panel Report, *US – FSC*, para. 8.8 (taking the fiscal year into account).