



TÜRKİYE – MEASURES CONCERNING ELECTRIC VEHICLES AND OTHER TYPES OF VEHICLES FROM CHINA

REPORT OF THE PANEL

Addendum

This *addendum* contains Annexes A to C to the Report of the Panel to be found in document WT/DS629/R.

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ANNEX A

WORKING PROCEDURES OF THE PANEL

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ANNEX A-1

WORKING PROCEDURES OF THE PANEL

Adopted on 9 May 2025

General

1. (1) In this proceeding, the Panel shall follow the relevant provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). In addition, the following Working Procedures apply.

(2) The Panel reserves the right to modify these Working Procedures and adopt additional procedures as necessary, after consultation with the parties.

Confidentiality

2. (1) The deliberations of the Panel and the documents submitted to it shall be kept confidential. Members shall treat as confidential information submitted to the Panel that the submitting Member has designated as confidential.

(2) In accordance with the DSU, nothing in these Working Procedures shall preclude a party or third party from disclosing statements of its own positions to the public.

(3) If a party submits a confidential version of its written submissions to the Panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public. A party should endeavour to promptly provide a non-confidential summary to any Member requesting it, and if possible within 10 days of receiving the request.

(4) Upon request, the Panel may adopt appropriate additional procedures for the treatment and handling of confidential information after consultation with the parties.

Submissions

3. (1) Before the first substantive meeting of the Panel with the parties, each party shall submit a written submission in which it presents the facts of the case and its arguments, in accordance with the timetable adopted by the Panel.

(2) Each party shall also submit to the Panel, before the second substantive meeting of the Panel with the parties, a written rebuttal, in accordance with the timetable adopted by the Panel.

(3) Each third party that chooses to make a written submission before the first substantive meeting of the Panel with the parties shall do so in accordance with the timetable adopted by the Panel.

(4) The Panel may invite the parties or third parties to make additional submissions during the proceeding, including with respect to requests for preliminary rulings in accordance with paragraph 4 below.

(5) Each party is encouraged to be succinct in its submissions in the interest of efficient dispute settlement.

Preliminary rulings

4. (1) If Türkiye considers that the Panel should make a ruling before the issuance of the Report that certain measures or claims in the panel request or the complainant's first written submission are not properly before the Panel, the following procedure applies. Exceptions to this procedure shall be granted upon a showing of good cause.
- a. Türkiye shall submit any such request for a preliminary ruling at the earliest possible opportunity and in any event no later than in its first written submission to the Panel. China shall submit its response to the request before the first substantive meeting of the Panel, at a time to be determined by the Panel in light of the request.
 - b. The Panel may issue a preliminary ruling on the issues raised before, during or after the first substantive meeting, or the Panel may defer any ruling until it issues its Report.
 - c. If the Panel finds it appropriate to issue a preliminary ruling before the issuance of its Report, the Panel may provide reasons for the ruling at the time that the ruling is made, or subsequently in its Report.
 - d. Any request for such a preliminary ruling by Türkiye before the first meeting, and any subsequent submissions of the parties in relation thereto before the first meeting, shall be served on the third parties. The Panel may provide the third parties with an opportunity to provide comments on any such request, either in their written submission, as provided for in the timetable, or in a separate submission. Any preliminary ruling issued by the Panel before the first substantive meeting on whether certain measures or claims are properly before the Panel shall be shared with the third parties.
- (2) This procedure is without prejudice to the parties' right to request other types of preliminary or procedural rulings during the proceeding, and to the procedures that the Panel may follow with respect to such requests.

Evidence

5. (1) Each party shall submit all evidence to the Panel no later than during the first substantive meeting, except evidence necessary for purposes of rebuttal, or evidence necessary for responses to questions or comments on responses provided by the other party. Additional exceptions may be granted upon a showing of good cause.
- (2) If any new evidence has been admitted upon a showing of good cause, the Panel shall accord the other party an appropriate period of time to comment on the new evidence submitted.
6. (1) If the original language of an exhibit or portion thereof is not a WTO working language, the submitting party or third party shall simultaneously submit a translation of the exhibit or relevant portion into the WTO working language of the submission. The Panel may grant reasonable extensions of time for the translation of exhibits upon a showing of good cause.
- (2) Any objection as to the accuracy of a translation should be raised promptly in writing, preferably no later than the next submission or meeting (whichever occurs earlier) following the submission that contains the translation in question. Any objection shall be accompanied by an explanation of the grounds for the objection and an alternative translation.
7. (1) To facilitate the maintenance of the record of the dispute and maximize the clarity of submissions, each party and third party shall sequentially number its exhibits throughout the course of the dispute, indicating the submitting Member and the number of each exhibit on its cover page. Exhibits submitted by China should be numbered CHN-1, CHN-2, etc. Exhibits submitted by Türkiye should be numbered TUR-1, TUR-2, etc. If the last exhibit in connection with a submission was numbered CHN-5, the first exhibit in connection with the next submission thus would be numbered CHN-6. If a party withdraws an exhibit or leaves one or more exhibits intentionally blank, it should indicate "exhibit withdrawn" or "exhibit intentionally left blank" on the cover page that contains the number of the exhibit concerned.

(2) Each party shall provide an updated list of exhibits (in Word or Excel format) together with each of its submissions, oral statements, and responses to questions.

(3) If a party submits a document that has already been submitted as an exhibit by the other party, it should explain why it is submitting that document again.

(4) If a party includes a hyperlink to the content of a website in a submission and intends that the cited content form part of the official record, the cited content of the website shall be provided in the form of an exhibit along with an indication of the date that it was accessed.

Editorial Guide

8. In order to facilitate the work of the Panel, each party and third party is invited to make its submissions in accordance with the Editorial Guide (which is available in the Help & Resources section of the Disputes Online Registry Application (DORA)).

Questions

9. The Panel may pose questions to the parties and third parties at any time, including:
- a. Before any meeting, the Panel may send written questions, or a list of topics it intends to pursue in questioning orally during a meeting. The Panel may ask different or additional questions at the meeting.
 - b. The Panel may put questions to the parties and third parties orally during a meeting, and in writing following the meeting, as provided for in paragraphs 15 and 21 below.

Substantive meetings

10. The Panel shall meet in closed session.
11. The parties and third parties shall be present at the meetings only when invited by the Panel to appear before it. As a general matter, the Panel intends to conduct such meetings in person but may provide for remote participation as appropriate.
12. (1) Each party has the right to determine the composition of its own delegation when meeting with the Panel.
- (2) Each party shall have the responsibility for all members of its delegation and shall ensure that each member of its delegation acts in accordance with the DSU and these Working Procedures, particularly with regard to the confidentiality of the proceeding and of the submissions of the parties and third parties.
13. Each party shall provide the list of members of its delegation who will attend the meeting no later than 5:00 p.m. (Geneva time) three working days before the first day of each meeting with the Panel.
14. A request by a party for interpretation from one WTO working language to another should be made to the Panel as early as possible, preferably at the organizational stage, to allow sufficient time to ensure availability of interpreters.
15. The first substantive meeting of the Panel with the parties shall be conducted as follows:
- a. The Panel shall invite China to make an opening statement to present its case first. Subsequently, the Panel shall invite Türkiye to present its opening statement. Before each party takes the floor, it shall provide the Panel and other participants at the meeting with a provisional written version of its statement. If interpretation is needed, each party shall provide additional copies for the interpreters before taking the floor.

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- b. Each party should limit the duration of its opening statement to not more than 75 minutes. If either party considers that it requires more time for its opening statement, it should inform the Panel and the other party at least seven working days before the meeting, together with an estimate of the expected duration of its statement. The Panel will accord equal time to the other party.
 - c. After the conclusion of the opening statements, the Panel shall give each party the opportunity to make comments or ask the other party questions.
 - d. The Panel may subsequently pose questions to the parties.
 - e. Once the questioning has concluded, the Panel shall afford each party an opportunity to present a brief closing statement, with China presenting its statement first. Before each party takes the floor, it should provide the Panel and other participants at the meeting with a provisional written version of its closing statement, if available.
 - f. Following the meeting:
 - i. Each party shall submit a final written version of its opening statement as delivered no later than 5:00 p.m. (Geneva time) on the first working day following the meeting. At the same time, each party should also submit a final written version of any prepared closing statement that it delivered at the meeting of the Panel with the parties.
 - ii. Each party shall send in writing, within the timeframe confirmed by the Panel before the end of the meeting, any questions to the other party to which it wishes to receive a response in writing.
 - iii. The Panel shall send in writing, within the timeframe confirmed by the Panel before the end of the meeting, any questions to the parties to which it wishes to receive a response in writing.
 - iv. Each party shall respond in writing to the questions from the Panel, and to any questions posed by the other party, within the time-frame established by the Panel.
16. The second substantive meeting of the Panel with the parties shall be conducted in the same manner as the first substantive meeting with the Panel, except that Türkiye shall be given the opportunity to present its oral statement first. The party that presented its opening statement first shall present its closing statement first.

Third-party session

17. Each third party may present its views orally during a session of the first substantive meeting with the parties set aside for that purpose.
18. Each third party shall indicate to the Panel whether it intends to make an oral statement during the third-party session three weeks before this session.
19. (1) Each third party has the right to determine the composition of its own delegation when meeting with the Panel.
- (2) Each third party shall have the responsibility for all members of its delegation and shall ensure that each member of its delegation acts in accordance with the DSU and these Working Procedures, particularly with regard to the confidentiality of the proceeding and of the submissions of the parties and third parties.
- (3) Each third party shall provide the list of members of its delegation who will attend the third-party session no later than 5:00 p.m. (Geneva time) three working days before the third-party session.
20. To ensure the availability of interpreters, the third parties shall also indicate at least three weeks before the third-party session whether they intend to make their statement in a WTO

working language other than English and whether they require interpretation from English to any other WTO working language.

21. The third-party session shall be conducted as follows:

- a. All parties and third parties may be present during the entirety of this session.
- b. The Panel shall first hear the oral statements of the third parties, who shall speak in alphabetical order. Each third party making an oral statement at the third-party session shall provide the Panel and other participants at the session with a provisional written version of its statement before it takes the floor. If interpretation of a third party's oral statement is needed, that third party shall provide additional copies for the interpreters before taking the floor.
- c. Each third party should limit the duration of its statement to 15 minutes. If a third party considers that it requires more time for its oral statement, it should inform the Panel and the parties at least seven working days before the meeting, together with an estimate of the expected duration of its statement. The Panel will accord equal time to all third parties for their statements.
- d. After the third parties have made their statements, the parties shall be given the opportunity to pose questions to any third party for clarification on any matter raised in that third party's submission or statement.
- e. The Panel may subsequently pose questions to any third party.
- f. Following the third-party session:
 - i. Each third party shall submit the final written version of its oral statement as delivered, no later than 5:00 p.m. (Geneva time) on the first working day following the meeting.
 - ii. Each party may send in writing, within the timeframe to be confirmed by the Panel before the end of the meeting, any questions to one or more third parties to which it wishes to receive a response in writing.
 - iii. The Panel may send in writing, within the timeframe to be confirmed by the Panel before the end of the meeting, any questions to one or more third parties to which it wishes to receive a response in writing.
 - iv. Each third party choosing to do so shall respond in writing to written questions from the Panel or a party, within the timeframe established by the Panel.

Descriptive part and executive summaries

22. The description of the arguments of the parties and third parties in the descriptive part of the Panel Report shall consist of executive summaries provided by the parties and third parties, which shall be annexed as addenda to the Report. These executive summaries shall not in any way serve as a substitute for the submissions of the parties and third parties in the Panel's examination of the matter.
23. Each party shall submit one integrated executive summary. This integrated executive summary shall summarize the facts and arguments as presented to the Panel. The timing of the submission of the integrated executive summary shall be indicated in the timetable adopted by the Panel.
24. Each integrated executive summary shall not exceed 30 pages.
25. Each third party shall submit an integrated executive summary of its arguments as presented to the Panel. The executive summary to be provided by each third party shall not exceed six pages. If a third party wishes for one of its submissions which does not exceed six pages

to serve as its executive summary, it shall so indicate. The timing of the submission of the integrated executive summary shall be indicated in the timetable adopted by the Panel.

Interim review

26. Following issuance of the Interim Report, each party may submit a written request to review precise aspects of the interim report and request a further meeting with the Panel, in accordance with the timetable adopted by the Panel. The right to request such a meeting shall be exercised no later than at the time the written request for review is submitted.
27. If no meeting is requested, each party may submit written comments on the other party's written request for review in accordance with the timetable adopted by the Panel. Such written comments shall be limited to the other party's written request for review.
28. If a meeting is requested, the Panel shall consult with the parties on the timing of the meeting and any further written comments.

Interim and Final Reports

29. The Interim Report, as well as the Final Report before its official circulation, shall be kept strictly confidential and shall not be disclosed.

Service of documents

30. The following procedures regarding service of documents apply to all documents submitted by parties and third parties during the proceeding:
 - a. Unless otherwise requested by the Panel, the Panel Secretary or the DS Registry, all communications with the Panel shall take place via the Disputes On-Line Registry Application (DORA) <https://dora.wto.org>. All submissions shall be uploaded to the Documents tab by 5:00 p.m. (Geneva time) on the due dates established by the Panel. The electronic version uploaded to DORA shall constitute the official version for the purposes of submission deadlines and the record of the dispute. Upload of a document to DORA shall constitute electronic service on the Panel, the other party, and the third parties. Parties and third parties should upload all submissions in the Documents tab, not as attachments to messages transmitted via the Messages tab.
 - b. The DS Registry is available to assist parties and third parties with DORA, including managing their DORA accounts and filing and downloading documents. The DS Registry is located in Room 2047 of the CWR building and is open from 9.30 a.m. to 12.30 p.m. and 2.30 p.m. to 5:00 p.m. The Registry can be reached at 022 739 5644 and via email at DSRegistry@wto.org. A DORA User Guide for Members is available in the Help & Resources section of DORA.
 - c. If a document is in a format that cannot be submitted electronically, then the party or third party shall complete the Notice of Manual Filing (available in the Help & Resources section of DORA) and upload that Notice to DORA by 5:00 p.m. on the due date established by the Panel. The party or third party shall bring the physical document to the DS Registry by 5:00 p.m. (Geneva time) the next working day along with the documents described in subparagraph e.
 - d. The parties and third parties should upload submissions in both Microsoft Word and PDF formats. To the extent possible, all documents in PDF format, including exhibits, should be searchable.
 - e. Each party and third party shall make an appointment with the DS Registry to file one paper copy of all documents it submits to the Panel, including the exhibits. The DS Registry shall stamp the documents with the date and time of the submission. If an exhibit is in a format that is impractical to submit as a paper copy, then the party may submit such exhibit in electronic format only. In this case, the cover page that contains the number of the exhibit concerned should indicate that the exhibit is only available in electronic format.

- f. The Panel shall provide the parties with the Draft Descriptive Part of the Report, the Interim Report and the Final Report, as well as all other documents or communications issued by the Panel during the proceeding, via DORA.
- g. If any party or third party is unable to meet a deadline set by the Panel because of technical difficulties in uploading any document to DORA that it cannot resolve with the assistance of the DS Registry, it shall submit the document(s) via email without delay and no later than by 6:00 p.m. on the due date. Any such email shall be addressed to the DS Registry, the Panel Secretary, the other party and, if appropriate, the third parties.
- h. In case any party or third party is unable to access a document submitted via DORA because of technical difficulties, it shall promptly, upon becoming aware of the problem, inform the DS Registry, the Panel Secretary, and the party or third party that submitted the document, of the problem. The party or third party that submitted the document(s) shall promptly provide an electronic version of the relevant document(s) to the affected party or third party by email, with a copy to the DS Registry and the Panel Secretary.

Correction of clerical errors in submissions

- 31. The Panel may grant leave to a party or third party to correct clerical errors in any of its submissions (including paragraph numbering and typographical mistakes). Any such request should identify the nature of the errors to be corrected and should be made promptly following the submission in question.

ANNEX A-2**ADDITIONAL WORKING PROCEDURES OF THE PANEL CONCERNING
BUSINESS CONFIDENTIAL INFORMATION****Adopted on 9 May 2025**

1. These procedures adopted in accordance with paragraph 2(4) of the Panel's Working Procedures are additional to the general protection of confidential information set forth in paragraph 2(1) of the Panel's Working Procedures and apply to any business confidential information (BCI) that a party or a third party submits in the course of the present proceeding.
2. For the purpose of this proceeding, BCI is defined as any information that has been designated as such by a party submitting the information to the Panel. The parties shall only designate as BCI information that is not available in the public domain, the release of which would cause serious harm to the interests of the originator(s) of the information.
3. Each party and third party shall act in good faith and exercise restraint in designating information as BCI.
4. No person may have access to BCI except a member of the Panel, a member of the WTO Secretariat assisting the Panel, an employee of a party or a third party, or an outside advisor to a party or a third party for the purposes of this dispute. However, an outside advisor is not permitted to access to BCI if that advisor is an officer or employee of an enterprise engaged in the production, sale, export, or import of the products affected by the measures at issue in this dispute, or an officer or employee of an association of such enterprises.
5. When third parties receive written submissions pursuant to the Working Procedures, the third parties shall receive a version of such written submissions and any exhibits with BCI redacted. The BCI-redacted versions of written submissions and exhibits received by third parties shall be sufficient to convey a reasonable understanding of the nature of the information at issue.
6. A third party may request access to the BCI version of a BCI-redacted written submission or exhibit received pursuant to the Working Procedures. The Panel, after consulting the parties, shall decide whether to grant access to such BCI, taking into consideration the sensitivity of the information and the need for the third party to see the information for the purpose of participating effectively in the Panel proceedings. Any such request shall include a list of the third party's representatives and outside advisors who would like to review the BCI. If granted, the third party's access to the non-redacted version of a written submission or exhibit containing BCI will take place on the premises of the WTO Secretariat, unless good cause is shown for an alternative arrangement.
7. A person having access to BCI shall treat it as confidential, i.e., shall not disclose that information other than to those persons authorized to receive it pursuant to these procedures. Each party and third party shall have responsibility in this regard for its employees as well as any outside advisors for the purposes of this dispute. BCI obtained under these procedures may be used only for the purpose of providing information and argumentation in this dispute and for no other purpose. All documents and electronic storage media containing BCI shall be stored in such a manner as to prevent unauthorized access to such information.
8. When a party or third party includes BCI in a submission or exhibit, the cover and/or first page of the document containing BCI, and each page of the document, shall be marked to indicate the presence of such information. The first page or cover of the document shall state "Contains Business Confidential Information on pages xxxxxx", and each page of the document shall contain the notice "Contains Business Confidential Information" at the top of the page. The specific information in question shall be placed between double square brackets, as follows: [[xx.xxx.xx]]. BCI presented in the form of, or as part of, an exhibit shall be marked to indicate, in addition to the above, that it contains BCI by putting "BCI" next to the exhibit number (e.g. Exhibit [MEMBER SYMBOL]-1 (BCI)). If the entire content of an exhibit constitutes BCI, the cover page and the top of each page of the

exhibit shall state in bold "All of the information included in this exhibit is business confidential information" without it being necessary to place all of the specific information in that exhibit between double brackets.

9. When BCI is submitted in electronic format, the file name shall include the terms "Business Confidential Information" or "BCI". In addition, when BCI is submitted in electronic format using the Disputes Online Registry Application (DORA), the level of confidentiality shall be selected as BCI.

10. At any of the meetings of the Panel with the parties, including the third-party session, if a party or third party intends to refer to BCI, it shall inform the Panel before doing so, and the Panel will ensure that only persons authorized to have access to BCI pursuant to these procedures are in the room to hear that statement. The written versions of such oral statements submitted to the Panel shall be marked as provided for in paragraphs 6 and 7 above.

11. When a party or third party submits a document containing BCI to the Panel, the other party and third parties, when referring to that BCI in their documents, including written submissions, and oral statements shall clearly identify all such information in those documents. All such documents shall be marked as described in paragraphs 6 and 7 above.

12. If a party considers that information submitted by the other party or a third party should have been designated as BCI and objects to such submission without BCI designation, it shall promptly bring this objection to the attention of the Panel and the other party or third party, together with the reasons for the objection. Similarly, if a party considers that the other party or a third party submitted information designated as BCI, information which should not be so designated, it shall promptly bring this objection to the attention of the Panel and the other party or third party, together with the reasons for the objection. The Panel shall decide whether information subject to an objection will be treated as BCI for the purposes of these proceedings on the basis of the criteria set out in paragraph 2. The information subject to an objection shall be treated as BCI in accordance with these procedures until the Panel issues its decision.

13. The Panel will not disclose BCI, in its report or in any other way, to persons not authorized under these procedures to have access to BCI. The Panel may, however, make statements of conclusion drawn from such information. Before the Panel circulates its final report to the Members, the Panel will give each party an opportunity to review the report to ensure that it does not contain any information that the party has designated as BCI.

14. Submissions, exhibits, and other documents or recordings containing BCI will be included in the record forwarded to the Appellate Body in the event of an appeal of the Panel's Report.

15. The Panel reserves the right, after consulting with the parties, to amend and/or supplement these Additional Working Procedures concerning BCI.

ANNEX B

ARGUMENTS OF THE PARTIES

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ANNEX B-1**INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF CHINA****I. CHINA'S FIRST WRITTEN SUBMISSION****A. Introduction and Summary of Measures**

1. This dispute concerns a series of discriminatory and protectionist measures imposed by Türkiye on imports of Chinese electric vehicles and certain other vehicles. These measures seek to restrict the entry of Chinese electric vehicles and certain other vehicles into the Turkish market with the ultimate objective of compelling Chinese producers into investing and manufacturing the vehicles in Türkiye. However, Türkiye's measures violate the cornerstone obligations of the World Trade Organization ("WTO"), including Most-Favoured Nation ("MFN"), the predictability of tariff concessions, national treatment, and the prohibition on quantitative restrictions.

2. Türkiye has taken measures in an incremental manner to make it more and more difficult for Chinese producers to offer vehicles in the Turkish market that are not locally manufactured. In particular, Türkiye is seeking to exclude imported Chinese electric vehicles and certain other vehicles from its market through two categories of measures. First, since 2023, Türkiye imposes additional duties solely on the importation of electric vehicles from China. At the end of 2024, Türkiye expanded the coverage of the duties to certain other vehicles solely imported from China.

3. Second, in 2023, Türkiye enacted an import permit certificate scheme ("IPLS") pursuant to which importation of electric vehicles from countries including China is conditioned on importers obtaining a permit prior to importation. To obtain a permit, importers must satisfy a number of burdensome and unreasonable requirements, some of which do not apply to domestic producers. In 2024, Türkiye extended the application of the IPLS to certain other vehicles from countries including China. Vehicles imported from the EU and countries with which Türkiye has a Free Trade Agreement ("FTA") are exempt from the import permit certificate requirement.

4. The objective underlying these policies is to compel investment in manufacturing vehicles in Türkiye. This objective was clearly articulated in the statement issued on 8 June 2024 by the Turkish Ministry of Trade.¹ The statement clearly acknowledges that the measures are taken to "maintain the market share of domestic production, encourage domestic investment, and reduce the current account deficit", "in order to increase and protect the falling share of domestic production", and in order to "promote domestic investment and production".² It further announces that the Ministry of Trade "will continue to effectively regulate and implement import policies in line with its goals of supporting domestic production, employment, foreign trade and balancing the current account".³

5. Türkiye's measures are not only protectionist and discriminatory, they also undermine the global transition to the green economy and the fight against climate change. The development of China's electric vehicles and hybrid vehicles industry provides high-quality, environmental-friendly products to the world. The measures at issue by Türkiye, trade restrictions on green energy products, hinder access to, and increase the costs of, electric vehicles and hybrid vehicles in Türkiye, thereby delaying the transition to a cleaner economy that could positively contribute to mitigating global climate change.

1. Türkiye's Additional Duties on EVs from China

6. Imports of electric vehicles ("EVs") into Türkiye are subject to an applied MFN customs duty of 10% ad valorem. The applied MFN rate, which has remained at 10% during the relevant period of this dispute, is set in Türkiye's Import Regime Decision (Decision No. 3350)⁴, as amended each

¹ 8 June 2024 Statement of the Turkish Ministry of Trade (Exhibit CHN-1).

² Ibid.

³ Ibid.

⁴ Import Regime Decision (Decision 3350) (Exhibit CHN-4).

year and most recently with Decision 9391.⁵ However, through a series of Presidential Decisions, Türkiye imposed additional duties of 40% ad valorem on the importation of EVs from China. The additional duties of 40% apply only to imports from China. The additional duties are distinct and in addition to the 10% MFN customs duties that Türkiye imposes on imported EVs (including from China).

2. *Türkiye's Import Permit Certificate Scheme*

7. In 2023, Türkiye established an import permit certificate scheme pursuant to which importation of EVs is conditional on obtaining an import permit. The import permit may only be obtained if the importer satisfies a number of onerous conditions. The IPLS was first introduced through the Notification on the Importation of Certain Electric Vehicles (Import: 2023/22) (hereinafter "Notification 2023/22"). Notification 2023/22 was replaced by Notification on the Importation of Certain Electric Vehicles (Import: 2024/22) of 31 December 2023 (hereinafter "Notification Import 2024/22"). Notification on the Importation of Certain Electric and Externally Rechargeable Hybrid Vehicles (Import: 2024/22) of 20 September 2024 (hereinafter "Notification 2024/22-SEPT") expands the import permit certificate scheme to externally rechargeable hybrid vehicles. Notification on the Import of Certain Electric and Externally Rechargeable Hybrid Vehicles (Import 2025/7) of 31 December 2024 (hereinafter "Notification Import 2025/7") further expands the type of vehicles subject to the import permit certificate scheme.

8. Additionally, Türkiye purportedly adopted an Implementation Directive on 2 January 2024, more than a month after the import permit requirement was imposed.⁶ However, a copy of that version of the Implementation Directive is not publicly available. The Implementation Directive was reportedly modified on 11 November 2024.⁷ It was subsequently superseded by the Implementation Directive adopted on 10 January 2025.

9. The IPLS is not only restrictive, it is also discriminatory. EVs imported from the EU and from countries with which Türkiye has an FTA do not require an import permit prior to importation. In 2024, Türkiye extended the application of the IPLS to externally rechargeable hybrid vehicles. Application of the import permit scheme to externally rechargeable hybrid vehicles is also subject to obtaining an import permit, which in turn, requires the importer to satisfy several onerous requirements. These requirements include making capital investments to establish at least 20 service centers, vocational certificates from Turkish authorities, establish a local call center with at least 40 personnel, maintain an authorized representative in the country and a written commitment "that the procedures to be carried out regarding the monitoring, control and supervision of the battery systems are accepted by the importer". According to Notification 2025/7, the importer must satisfy all of the conditions which are cumulative. Like the case of EVs, imports of externally rechargeable hybrid vehicles from the EU and countries with which Türkiye has an FTA do not require an import permit for importation.

10. In sum, the import permit certificate is a necessary condition for importation. In order to apply for the import permit certificate, importers must meet a series of onerous requirements that are cumulative. Limited guidance on how to meet the requirements is provided to importers.

3. *Türkiye's Additional Duties on Other Vehicles from China*

11. Türkiye applies a 10% ad valorem MFN duty on imports of vehicles other than EVs classified under HS heading 8703. These vehicles include gasoline (spark-ignition) vehicles under HS 8703.21; diesel (compression-ignition) vehicles under HS 8703.31; non-plug-in hybrid vehicles under HS 8703.40 and 8703.50; and plug-in hybrid vehicles under HS 8703.60 and 8703.70. These categories of vehicles are collectively referred to as "other vehicles" in this submission.

⁵ Import Regime Decision (Decision 9391) (Exhibit CHN-5).

⁶ See Publication Date in screenshot of "Announcement Regarding the 'Permit Certificate' to be Issued Within the Scope of the Communiqué on the Importation of Certain Electric and Externally Rechargeable Hybrid Vehicles (Import: 2025/7)", <https://www.tse.org.tr/duyuru/bazi-elektrikli-araclarin-ithaline-iliskin-teblig-ithalat2024-22-kapsaminda-duzenlenecek-izin-belgesi-hakkinda-duyuru/>, accessed on 24 May 2025 (Exhibit CHN-24).

⁷ Implementation Directive, 11 November 2024 (Exhibit CHN-25).

12. In addition to the MFN customs duties regime, Türkiye imposes additional duties on the importation of other vehicles from China, ranging from the higher of 40 percent ad valorem or 7,500 USD per unit to the higher of 50 percent ad valorem or 9,500 USD per unit. These additional duties apply exclusively to imports from China.

B. Türkiye's Additional Duties on EVs Are Inconsistent with Article I:1 of the GATT 1994

13. Türkiye's additional duties of 40% ad valorem apply to EVs imported from China only. EVs imported into Türkiye from other WTO Members are either exempt from additional duties or are subject to lower additional duties. As a result, Türkiye acts inconsistently with the most-favoured nation obligation in Article I:1 of the GATT 1994.

14. Panels and the Appellate Body have stated that a measure will be found to be inconsistent with Article I:1 where it satisfies the following elements: (i) the measure at issue falls within the scope of application of Article I:1; (ii) the imported products at issue are "like" products within the meaning of Article I:1; (iii) the measure at issue confers an "advantage, favour, privilege, or immunity" on a product originating in the territory of any country; and (iv) the advantage so accorded is not extended "immediately" and "unconditionally" to "like" products originating in the territory of all Members.⁸

15. First, a plain reading of Türkiye's measures demonstrates that the additional duties imposed on Chinese EVs are "customs duties and charges of any kind imposed on or in connection with importation". Therefore, the total of 50% applied duty imposed on Chinese EVs by Türkiye, which includes 40% additional customs duty and 10% MFN duty, falls within the scope of Article I:1. Consequently, the first element of Article I:1 is satisfied. Second, the 40% additional duties apply only to EV imports from China. Since the additional duties draw a distinction based exclusively on origin, EVs from China and EVs imported from other countries are presumed to be "like".

16. Similarly to the measure in *Turkey – Additional Duties (US)*, in this case, the 40% additional duties apply only to EVs "originating from the People's Republic of China". Hence, following the logic of the *Turkey – Additional Duties (US)* and earlier panels, a presumption of "likeness" applies in this case as well.

17. In any case, EVs from other countries and EVs from China have similar (i) properties, nature and qualities; (ii) end-uses; (iii) consumers' tastes and habits; and (iv) tariff classification.⁹ EVs from both China and other countries are constructed from steel, aluminum, plastic and several other materials, and, broadly speaking, the EVs include a chassis, an electric motor, battery pack, charging system, and four wheels. Therefore, EVs from China and other countries have the same or similar properties, nature and qualities. The end use of Chinese EVs and of EVs from other countries is to transport passengers. EVs from China and other countries are in the same general market segments available to the Turkish consumers to choose, and therefore consumers perceive EVs from China and from other countries to be similar. Furthermore, EVs from China and from other countries fall within the same tariffs classifications when imported to Türkiye

18. In sum, the Panel should apply a presumption that Chinese EVs and EVs from other countries are "like" because Türkiye's measure draws an origin-based distinction. However, even if the Panel were to decide to apply the traditional "likeness" test, it should in any case conclude that Chinese EVs and EVs from other countries are "like" for purposes of Article I:1 of the GATT 1994.

19. Third, imports of EVs from countries other than China are subject to no additional duties or lower additional duties. The nil or lower additional duties, and the resulting nil or lower total duties, constitute an "advantage" for purposes of Article I:1. Fourth, Türkiye is under an obligation under Article I:1 to extend immediately and unconditionally to imports of EVs from China any advantages, favours, or privileges that it accords to imports of like products from other countries. Nevertheless, in clear contravention of this obligation, Türkiye denies the nil or lower additional duties, and the resulting nil or lower total duties, to imports of EVs from China. Türkiye's failure to apply the nil or lower additional duties, and the nil or lower total duties to EVs from China, means that Türkiye fails to accord "immediately" and "unconditionally" an advantage, favour, or privilege to EVs from China

⁸ Appellate Body Report, *EC – Seal Products*, para. 5.86.

⁹ Panel Report, *US – Poultry (China)*, para. 7.425.

that it grants to EVs originating in other countries.

C. Türkiye's Additional Duties on EVs Are Inconsistent with Article II of the GATT 1994

20. Türkiye's additional duties are ordinary customs duties that exceed Türkiye's bindings and, therefore, are inconsistent with Article II:1(b), first sentence, of the GATT 1994. Alternatively, Türkiye's additional duties are other duties or charges ("ODCs") that are prohibited under Article II:1(b), second sentence. The additional duties also violate Article II:1(a) as a consequence of their inconsistency with Article II:1(b).

1. Türkiye's Additional Duties on Chinese EVs are Inconsistent with Article II:1(b), First Sentence

21. The first sentence of Article II:1(b) prohibits the imposition of ordinary customs duties in excess of the rates set forth in a Member's bound Schedule.¹⁰ The additional duties imposed pursuant to Decision 3351, as amended, are financial charges that are imposed on the importation of the EVs into Türkiye. The nature of the additional duties as ordinary customs duties is evident from Türkiye's measures.

22. Pursuant to Decision 3351, as amended, Türkiye imposes additional duties of 40% on EVs imported from China. These additional duties are collected by Türkiye in addition to the 10% MFN tariff on EVs imported from China. Thus, the total duties imposed by Türkiye on EVs imported from China are 50%. However, the rate that Türkiye has bound in its Schedule for EVs is 20%. Therefore, the total duties imposed by Türkiye on EVs imported from China (50%) significantly exceed the rate bound in Türkiye's Schedule (20%). As a result, Türkiye acts inconsistently with its obligations under the first sentence of Article II:1(b). The panel in *Turkey – Additional Duties* arrived at a similar result when it examined the additional duties imposed by Türkiye on imports from the United States.¹¹

2. In the Alternative, Türkiye's Additional Duties on Chinese EVs are Inconsistent with Article II:1(b), Second Sentence

23. If the additional duties are not found to be ordinary customs duties, they would constitute ODCs. Given that Türkiye did not record the additional duties in its Schedule, the additional duties would be inconsistent with Article II:1(b), second sentence. As the panel in *Chile – Price Band System* noted, "[i]f other duties or charges were not recorded but are nevertheless levied, they are inconsistent with the second sentence of Article II:1(b), in light of the Understanding on the Interpretation of Article II:1(b)".¹²

3. Türkiye's Additional Duties on Chinese EVs are Inconsistent with Article II:1(a)

24. Article II:1(a) requires Türkiye to accord to the commerce of China treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to the GATT 1994. Following the logic of the panel in *Turkey – Additional Duties (US)*, the finding of violation of Article II:1(b) must necessarily result in a finding of inconsistency with Article II:1(a).

D. Türkiye's IPLS Is Inconsistent with Article I:1 of the GATT 1994

25. Türkiye conditions the importation of EVs and externally rechargeable hybrid vehicles from China on the importer applying for and obtaining a permit certificate prior to importation. Imports of EVs and externally rechargeable hybrid vehicles from the European Union and other countries with which Türkiye has an FTA are not subject to this requirement. This discriminatory treatment of Chinese EVs and externally rechargeable hybrid vehicles is inconsistent with the most-favoured nation obligation in Article I:1 of the GATT 1994.

26. As discussed above, Article I:1 prohibits discrimination among like products originating in

¹⁰ Panel Report, *Turkey – Additional Duties*, para. 7.124 (citing Appellate Body Reports, *India – Additional Import Duties*, para. 150; *Colombia – Textiles*, para. 5.35).

¹¹ Panel Report, *Turkey – Additional Duties (US)*, para. 7.146.

¹² Panel Report, *Chile – Price Band System*, para. 7.107.

different Members.¹³ Below, China demonstrates that application of the four elements that lead to the conclusion that the import permit certificate scheme is inconsistent with Article I:1.

27. First, Notification 2025/7 "regulate[s] the import of electric or externally rechargeable hybrid vehicles", as expressly stated in Article 1(1) of the Notification.¹⁴ An import permit certificate "must be presented at customs clearance" in accordance with Article 3(1) of the Notification. Applying for and obtaining a permit certificate is a requirement that must be fulfilled to import EVs from China into Türkiye. For these reasons, the IPLS constitutes rules and formalities in connection with importation within the meaning of Article I:1. Prior panels have found that import licensing schemes¹⁵ and a requirement to submit an advance import declaration are rules and formalities in connection with importation.¹⁶ Given the similarities between the IPLS and an import licensing scheme, and the fact that it involves a requirement to submit an application prior to importation, the Panel should similarly find that the import permit certificate scheme are rules and formalities in connection with importation.

28. The second element of the Article I:1 test is the requirement that the imported products are "like". In this case, EVs and externally rechargeable hybrid vehicles from China and EVs and externally rechargeable hybrid vehicles from exempt countries are "like" products within the meaning of Article I:1. The Panel should apply a presumption that Chinese EVs and externally rechargeable hybrid vehicles from China, on the one hand, and from the EU and other FTA countries, on the other hand, are "like" because Türkiye's measure draws an origin-based distinction. However, even if the Panel were to decide to apply the traditional "likeness" test, it should in any case conclude that they are "like" for purposes of Article I:1.

29. Third, Notification 2025/7 exempts EVs and externally rechargeable hybrid vehicles from the EU and FTA countries from the import permit certificate requirement. This exemption is an "advantage" within the meaning of Article I:1. The exemption from the IPLS clearly provides more favourable import opportunities and affects the competitive relationship between products of different origins. The exemption frees importers from the need to submit an application and await approval prior to entering their vehicles into Turkish territory. This also saves importers the financial costs and administrative burden of having to submit an application and wait for its approval. Moreover, it gives flexibility to importers as they can respond more rapidly to market developments. For example, if there is a surge in demand, they can quickly ship vehicles into Türkiye without having to first obtain an import permit certificate. The lack of conditionality also reduces the level of uncertainty that they face in the Turkish market.

30. Fourth, Türkiye is under an obligation under Article I:1 to extend immediately and unconditionally to imports of EVs from China any advantages, favours, or privileges that it accords to imports of like products from other countries. As discussed above, Türkiye exempts EVs and externally rechargeable hybrid vehicles from the EU and FTA countries from the requirement to obtain an import permit certificate. This exemption is an "advantage" within the meaning of Article I:1. By contrast, EVs and externally rechargeable hybrid vehicles from China must obtain an import permit certificate as a condition for importation. Thus, the advantage that Türkiye confers on EVs and externally rechargeable hybrid vehicles from the EU and FTA countries—that is, the exemption from the import permit certificate scheme—is not conferred on EVs and externally rechargeable hybrid vehicles from China. EVs and externally rechargeable hybrid vehicles imported from the EU and FTA countries are "like" EVs and externally rechargeable hybrid vehicles imported from China. Therefore, Türkiye fails to extend an advantage to Chinese EVs and externally rechargeable hybrid vehicles immediately and unconditionally that it accords to the like products originating in EU and FTA countries.

E. The IPLS Is a Restriction That Is Inconsistent with Article XI:1 of the GATT 1994

31. Article XI:1 of the GATT 1994 provides that "[n]o prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any

¹³ Appellate Body Report, *Canada – Autos*, para. 84.

¹⁴ Notification Import 2025/7 (Exhibit CHN-16).

¹⁵ Panel Report, *EC – Bananas III*, para. 7.189.

¹⁶ Panel Report, *Colombia – Ports of Entry*, para. 7.342.

product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party".

32. As noted earlier, an import permit is a mandatory condition to import EVs and externally rechargeable hybrid vehicles into Türkiye from China and other non-FTA countries. Given that importation is conditional on obtaining a permit certificate, the import permit scheme is a measure "on importation" within the meaning of Article XI:1.¹⁷ The import permit certificate scheme has a limiting effect on imports and therefore is a "restriction" within the meaning of Article XI:1. The limiting effects can be discerned from the design of the measure.

33. First, importers that cannot meet the conditions required to obtain an import permit certificate are prohibited from importing Chinese EVs and externally rechargeable hybrid vehicles. This in itself has limiting effects. Indeed, previous panels have found that such conditions are restrictions because of their limiting effects.¹⁸ Second, the additional burdens and costs imposed on importers of EVs and externally rechargeable hybrid vehicles from China also have limiting effects on imports.

34. Pursuant to Notification 2025/7, importers of Chinese EVs and externally rechargeable hybrid vehicles must undertake significant investment in Türkiye before they are allowed to import those vehicles into Türkiye. For example, Notification 2025/7 requires the importer itself to establish 20 authorized service stations in 7 geographic regions.¹⁹ In addition, the importer must establish a call in Türkiye with at least 40 personnel. To meet these requirements, importers must make substantial investments in Türkiye before they can even begin to import EVs and externally rechargeable hybrid vehicles into Türkiye. The requirement to make such investments imposes additional costs on importers who wish to import EVs from China. These additional costs will discourage importers from importing EVs from China. The disincentive created by the additional cost to import has the effect of limiting the quantity of Chinese EVs imported into Türkiye.

35. Third, no transition period was provided despite the fact that some of the requirements that must be fulfilled to obtain an import permit certificate require significant lead time. For example, importers had no lead time to establish the 20 service stations in 7 geographical regions. Establishing a network of service centers takes time and cannot be done immediately. The lack of a transition period to comply with the requirements indicates that the measure was seeking to limit imports into Türkiye.

36. Fourth, the requirements are overly rigid and inflexible. Importers must establish a minimum of 20 service centers in 7 geographical regions. No justification is provided for requiring such a high number of service centers and vast geographic spread. As noted before, no transition period was provided. Nor were importers allowed to expand the number of service stations gradually. The same applies to the requirement to establish a call center in Türkiye with at least 40 personnel. No basis is provided for requiring a minimum of 40 personnel, much less for requiring that number as a minimum immediately, even before an importer has sold any vehicles in Türkiye. Moreover, no flexibility is provided to subcontract the call center, to establish the call center outside Türkiye, or to have one call center for several brands. These rigid and inflexible requirements seek to discourage importers from importing Chinese EVs and externally rechargeable hybrid vehicles or at the very least delay the importation of these vehicles.

37. In sum, the design of the measure is such that it has limiting effects on the quantities of EVs and externally rechargeable hybrid vehicles imported from China.

F. The Requirements Underlying the IPLS Are Incompatible with the National Treatment Obligation in Article III:4 of the GATT 1994

38. The IPLS imposes requirements on imported EVs and externally rechargeable hybrid vehicles that are more onerous than those applicable to Turkish "like" products. As a consequence, these requirements are inconsistent with Türkiye's national treatment obligation under Article III:4 of the GATT 1994.

¹⁷ Panel Report, *EU and Certain Member States — Palm Oil (Malaysia)*, para. 7.968 (referring to Panel Reports, *India -Autos*, paras. 7.257, 7.261; *Colombia – Ports of Entry*, para. 7.227; and *Brazil – Retreaded Tyres*, para. 7.37).

¹⁸ Panel Report, *Argentina – Import Measures*, para. 6.259.

¹⁹ Notification 2023/22, Article 3(2). (Exhibit CHN-13).

39. Prior panels and the Appellate Body have explained that a measure is inconsistent with Article III:4 if it satisfies the following three elements: (i) the imported and domestic products at issue are "like products"; (ii) that the measure at issue is a "law, regulation, or requirement affecting their internal sale, offering for sale, purchase, transportation, distribution, or use"; and (iii) the imported products are accorded "less favourable" treatment than that accorded to like domestic products.²⁰ China demonstrates below that each of these elements is satisfied in this case.

40. In this case, the Turkish measure distinguishes based exclusively on origin. In fact, the measure imposes the requirements solely on imported EVs and externally rechargeable hybrid vehicles originating from countries other than the EU or FTA countries. The measure does not apply to EVs or externally rechargeable hybrid vehicles of Turkish origin. Thus, a presumption of "likeness" applies. In any case, EVs and externally rechargeable hybrid vehicles imported from China are "like" Turkish EVs and externally rechargeable hybrid vehicles based on similar physical properties, end uses, consumer preferences and tariff classification.

41. Second, Notification 2025/7 is a "law, regulations, or requirements" and "affect[s] [the products'] internal sale, offering for sale, purchase, transportation, distribution, or use". Notification 2025/7 is a legal act that is mandatory. Notification 2025/7 contains rules that form part of the Turkish legal system and as such constitutes a "law" or "regulation" within the meaning of Article III:4.²¹ The Notification and its requirements are to be enforced by Türkiye's Minister of Trade.²² It is published in the Official Gazette of Türkiye²³ along with other legal acts of the Government of Türkiye. The specific requirements in Notification 2025/7 also constitute "requirements" within the scope of Article III:4. Importers of EVs and externally rechargeable hybrid vehicles "must" comply with each of the requirements set out in Article 3(a) "[t]o obtain a permit certificate". Each of these requirements are "binding enforceable conditions" to obtain a permit certificate. As the panel in *India – Autos* found, "[a] binding enforceable condition seems to fall squarely within the ordinary meaning of the word 'requirement'".²⁴

42. Third, the requirements set out in Article 3(2) of Notification 2025/7 apply only to imported EVs and imported rechargeable hybrid vehicles. The requirements do not apply to domestic vehicles. This conclusion arises from the scope of the Notification, which clearly only covers imported vehicles as expressly indicated in the title of the Notification and in Article 1(1). It also emerges from Article 3(1), which indicates that only imported vehicles are subject to the permit certificate. Furthermore, it is also evident from some of the requirements in Article 3(2) themselves which are addressed to importers and not to domestic producers. China is not aware that any of the other requirements imposed on Chinese EVs and externally rechargeable hybrid vehicles are imposed through other legislation on Turkish EVs and externally rechargeable hybrid vehicles.

G. The Import Permit Certificate Scheme Is Inconsistent with Article 2.1 of the TRIMS Agreement

43. The IPLS is a trade-related investment measure that is inconsistent with Article 2.1 of the TRIMS Agreement. To obtain a permit certificate, importers must establish 20 authorized service stations in 7 geographical regions.²⁵ They must also establish a call center in Türkiye and hire and retain at least 40 personnel.²⁶ Both of these obligations require importers to make investments in Türkiye. Thus, the import permit certificate scheme has investment objectives and features, and has an impact on investment in the Turkish automobile sector. Press reports also indicate that the objectives of the import permit certificate scheme include compelling Chinese automobile manufacturers to invest in domestic production in Türkiye.²⁷ Therefore, IPLS is an "investment measure" within the meaning of Article 1 of the TRIMS Agreement.

²⁰ Appellate Body Report, *Korea – Various Measures on Beef*, para. 133. See also Panel Report, *EU – Energy Package*, para. 7.519.

²¹ Panel Report, *India – Solar Cells*, paras. 7.307-7.308.

²² Article 8(1) of Notification 2025/7 (Exhibit CHN-16)

²³ Exhibit CHN-16 showing publication.

²⁴ Panel Report, *India – Autos*, para. 7.190.

²⁵ Notification Import 2025/7 (Exhibit CHN-16).

²⁶ *Ibid.*

²⁷ "Turkey cracks down on hybrid car imports as it seeks Chinese investment", Reuters, 20 September 2024 (Exhibit CHN-2).

44. Article 2.1 prohibits Türkiye from applying "any TRIM that is inconsistent with the provisions of Article III or Article XI of GATT 1994". As described above, China established that the import permit certificate scheme is inconsistent with Article XI:1 of the GATT 1994. Moreover, China also previously demonstrated that the underlying requirements of the import permit certificate scheme are inconsistent with Article III:4 of the GATT 1994. It therefore follows that Türkiye is acting inconsistently with Article 2.1 of the TRIMS Agreement by applying a TRIM that is inconsistent with the provisions of Article III and Article XI of the GATT 1994.

H. Türkiye Acts Inconsistently with Article X:3(a) of the GATT 1994

45. Türkiye does not administer the IPLS in a uniform, impartial, and reasonable manner and therefore acts inconsistently with Article X:3(a) of the GATT 1994.

46. The panel in *EU and Certain Member States — Palm Oil (Malaysia)* recently noted that in establishing a violation of Article X:3(a), a complainant must show that the measure at issue: (a) administers, i.e. put into effect, a legal instrument of the type listed in Article X:1 of the GATT 1994; and (b) in a manner that is not uniform, impartial or reasonable.²⁸

47. First, as explained previously, pursuant to Notification 2025/7, a permit certificate must be obtained to import EVs and externally rechargeable hybrid vehicles into Türkiye. Notification 2025/7 applies to all imports of EVs and externally rechargeable hybrid vehicles from countries other than the EU or those with an FTA with Türkiye. Thus, Notification 2025/7 is a regulation of general application pertaining "to requirements, restrictions or prohibitions on imports" within the meaning of Article X:1. As a consequence, administration of the measure in this case falls within the scope of Article X:3(a).

48. Second, Türkiye's administration of the import permit certificate scheme is not uniform, impartial or reasonable. Türkiye's administration of the import permit certificate scheme is not reasonable because it imposed the requirements on the importation of EVs and externally rechargeable hybrid vehicles suddenly and without any justification. Prior to the adoption of Notification 2023/22, EVs from China and other countries could be imported freely into Türkiye. Importers were not required to have 20 authorized service stations in 7 geographical regions nor have a call center established in Türkiye with at least 40 personnel prior to importation. Nor were importers required to provide a written commitment regarding the monitoring, control and supervision of battery systems prior to importation. A similar situation existed as regards externally rechargeable hybrid vehicles prior to the adoption of Notification 2024/22-SEPT. Neither Notification 2023/22 nor Notification 2024/22-SEPT provide any explanation as to the justification for the very sudden change from a free entry regime to a regime that conditions the importation of EVs and externally rechargeable hybrid vehicles on satisfying a series of onerous requirements that did not previously exist. The administration is also unreasonable because Türkiye provided a mere thirteen days for importers to comply with the requirements of Notification 2023/22, notwithstanding that compliance with the requirements involves the need to make significant investments in Türkiye. Notification 2024/22-SEPT likewise provided only thirteen days for importers to comply with similar requirements.

49. The administration of the IPLS is not uniform because importers of Chinese and non-FTA country EVs and externally rechargeable hybrid vehicles, on the one hand, and importers of EU and FTA-country EVs and externally rechargeable hybrid vehicles, on the other hand, are similarly situated and yet are treated very differently. Importers of Chinese and non-FTA country EVs and externally rechargeable hybrid vehicles must apply and obtain a permit certificate before they can place their vehicles on the Turkish market, for which they have to previously comply with the requirements of Notification 2025/7. By contrast, importers of EVs and externally rechargeable hybrid vehicles from the EU and other FTA countries may import the vehicles freely into Türkiye without first applying or obtaining a permit certificate. Yet, there is no rational basis to treat these two sets of importers differently. The mere existence of an FTA between Türkiye and the country of origin of the vehicles does not mean that the importers are situated differently.

²⁸ Panel Report, *EU and Certain Member States — Palm Oil (Malaysia)*, para. 7.1046.

50. The administration is not impartial because it unfairly favours importers of EU and FTA country EVs and externally rechargeable hybrid vehicles as well as domestic producers. As discussed above, the import permit certificate scheme was introduced suddenly and importers from China and other non-FTA countries were given a mere thirteen days to comply with its requirement onerous requirements. By doing so, Türkiye effectively suspended imports of EVs and externally rechargeable hybrid vehicles from China and other non-FTA countries for at least the period during which importers were in the process of complying with the import permit certificate scheme requirements and applying for, and obtaining, the permit. Importers' ability to obtain the permit was further delayed and made more difficult by the delays in providing guidance and the fact that some of the requirements remain vague and overly broad. The exclusion of EVs and externally rechargeable hybrids from China and non-FTA countries from the Turkish market—even if it turns out to be temporary—benefits importers of these vehicles from the EU and other FTA countries and domestic producers. The exclusion reduces competition by limiting supply, which economic logic suggests would also raise prices in the Turkish markets. The compliance costs associated with the import permit certificate scheme also impose higher costs on importers of EVs and externally rechargeable hybrid vehicles from China. This also benefits domestic producers and importers from the EU and FTA countries.

I. Türkiye's Additional Duties on Other Vehicles Are Inconsistent with Article I:1 of the GATT 1994

51. Türkiye applies additional duties of 50% ad valorem, or a minimum 9,500 USD/unit, whichever is higher, on imports of Chinese vehicles within subheadings 8703.21 through 8703.50 falling under the additional duty measures. It also applies additional duties of 40% ad valorem, or a minimum 7,000 USD/unit, whichever is higher, on imports of Chinese-origin plug-in hybrid vehicles within subheadings 8703.60 and 8703.70. These additional duties, and the resulting higher total duties, apply only to imports from China and, consequently, are inconsistent with Türkiye's obligations under Article I:1 of the GATT 1994, as demonstrated below.

52. China recalls that a measure will be found to be inconsistent with Article I:1 of the GATT 1994 where it satisfies four elements. The additional duties imposed by Türkiye on other vehicles from China satisfy each of these elements. First, the additional duties imposed by Türkiye on the importation of other vehicles from China are "customs duties and charges of any kind imposed on or in connection with importation". A plain reading of Türkiye's measures demonstrates that the additional duties imposed on other vehicles from China are "customs duties and charges of any kind imposed on or in connection with importation". Therefore, Türkiye's additional duties on other vehicles from China fall within the scope of Article I:1.²⁹

53. Second, Türkiye's measures expressly distinguish based on origin and therefore "likeness" may be presumed for purposes of the Article I:1 analysis. If the Panel were to decide that a presumption is not applicable, the Panel should in any case find that Chinese other vehicles and other vehicles from other countries are like based on their similar (i) properties, nature and qualities; (ii) end-uses; (iii) consumers' tastes and habits; and (iv) tariff classification. Both Chinese and non-Chinese other vehicles either use gasoline or diesel engines or combine internal combustion engines with a battery and electric motor, and share the same fundamental nature. The vehicles are constructed from steel, aluminum, plastic and several other materials. Chinese and non-Chinese other vehicles are for similar transportation uses. Moreover, they are in the same general market segments, and therefore consumers perceive other vehicles from China and from other countries to be similar. Finally, other vehicles from China and from other countries fall within the same tariff classifications when imported to Türkiye.

54. Third, imports of other vehicles from countries other than China are subject to no additional duties. The nil additional duties, and the resulting lower total duties, constitute an "advantage" for purposes of Article I:1. Fourth, Türkiye is under an obligation under Article I:1 to extend immediately and unconditionally to imports of other vehicles from China any advantages, favours, or privileges that it accords to imports of like products from other countries. Nevertheless, in clear contravention of this obligation, Türkiye denies the nil additional duties, and the resulting lower total duties, to imports of other vehicles from China. Türkiye's failure to apply the nil additional duties, and the

²⁹ The panel in *Turkey – Additional Duties (US)* relied on similar language in the measure at issue to conclude that the additional duties imposed by Türkiye on imports from the United States fell within the scope of Article I:1. (Panel Report, *Türkiye – Additional Duties (US)*, paras. 7.105-7.108).

lower total duties, to other vehicles from China means that Türkiye fails to accord "immediately" and "unconditionally" an advantage, favour, or privilege to other vehicles from China that it grants to other vehicles originating in other countries.

J. Türkiye's Additional Duties on Other Vehicles From China Are Inconsistent with Article II of the GATT 1994

55. Türkiye's additional duties on other vehicles from China are ordinary customs duties that exceed Türkiye's bindings and, therefore, are inconsistent with Article II:1(b), first sentence, of the GATT 1994. Alternatively, Türkiye's additional duties are other duties or charges that are prohibited under Article II:1(b), second sentence. The additional duties also violate Article II:1(a) as a consequence of their inconsistency with Article II:1(b).

1. Türkiye's Additional Duties on Other Vehicles from China are Inconsistent with Article II:1(b), First Sentence

56. Türkiye imposes additional duties on imports of Chinese vehicles within subheadings 8703.21 through 8703.50 of 50% ad valorem or 9,500 USD per unit, whichever is higher.³⁰

57. An additional duty of 40% ad valorem or 7,000 USD per unit, whichever is higher, applies on Chinese-origin imports of plug-in hybrid vehicles falling under tariff lines 8703.60.10.00.00, 8703.60.90.00.00 and 8703.70.00.00.00.

58. Türkiye applies a 10% MFN rate on all tariff lines subject to the additional duties. Since additional duties are collected separately from MFN duties, Chinese-origin imports of vehicles within subheadings 8703.21 through 8703.50 falling under the additional duty measures face an effective 60% ad valorem customs duty, or, if higher, a 10% ad valorem customs duty plus 9,500 USD per unit. Chinese-origin plug-in hybrid vehicles within subheadings 8703.60 and 8703.70 face an effective 50% ad valorem customs duty, or, if higher, a 10% ad valorem customs duty plus 7,000 USD.

59. Since the additional duties on other vehicles from China accrue because of the importation of the vehicles into Türkiye, this Panel should also find that the additional duties are ordinary customs duties falling within the scope of the first sentence of Article II:1(b).

60. Moreover, pursuant to Decision 3351, as amended, Türkiye applies additional duties on other vehicles imported from China. These additional duties apply in addition to a 10% MFN rate on all tariff lines subject to additional duties. Since additional duties are collected on top of the MFN duties, Chinese-origin vehicles within subheadings 8703.21 through 8703.50 falling under the additional duty measures face an effective 60% ad valorem customs duty, or, if higher, a 10% ad valorem customs duty plus 9,500 USD per unit. Chinese-origin plug-in hybrid vehicles within subheadings 8703.60 and 8703.70 face an effective 50% ad valorem customs duty, or, if higher, a 10% ad valorem customs duty plus 7,000 USD.

61. These the total duties imposed on Chinese origin vehicles exceed the duties bound in Türkiye's Schedule. Given that Türkiye's total duties on Chinese-origin vehicles exceed the rates bound in Türkiye's Schedule, Türkiye acts inconsistently with its obligations under the first sentence of Article II:1(b).³¹

2. In the Alternative, Türkiye's Additional Duties on Chinese Other Vehicles are Inconsistent with Article II:1(b), Second Sentence

62. In the event the Panel finds that the additional duties on other vehicles are not ordinary

³⁰ Specifically, these additional duties apply to the following 12-digit tariff lines: 8703.21.10.10.00, 8703.21.90.10.00, 8703.22.10.10.00, 8703.22.90.10.00, 8703.23.19.11.00, 8703.23.19.12.00, 8703.23.19.13.00, 8703.23.90.11.00, 8703.23.90.12.00, 8703.23.90.13.00, 8703.24.10.10.00, 8703.24.90.10.00, 8703.31.10.10.00, 8703.31.90.10.00, 8703.32.19.11.00, 8703.32.19.12.00, 8703.32.19.13.00, 8703.32.90.11.00, 8703.32.90.12.00, 8703.32.90.13.00, 8703.33.19.10.11, 8703.33.19.10.12, 8703.33.90.10.11, 8703.33.90.10.12, 8703.40.10.00.00, 8703.40.90.00.00, 8703.50.00.00.00.

³¹ Panel Report, *Turkey – Additional Duties (US)*, para. 7.146.

customs duties, it should find that they are other duties and charges ("ODCs") within the meaning of second sentence of Article II:1(b). Türkiye is prohibited from applying ODCs not recorded in its Schedule, in accordance with Article II:1(b), second sentence, and the Understanding on the Interpretation of Article II:1(b) of the GATT 1994. Türkiye's Schedule XXXVII for non-agricultural goods records only the following ODCs: a municipal tax and a transportation infrastructure tax. The additional duties on other vehicles are not recorded as ODCs in Türkiye's Schedule. Given that the additional duties on certain other vehicles imported from China are ODCs, and that Türkiye did not record the additional duties in its Schedule, the additional duties on certain other vehicles are inconsistent with Article II:1(b), second sentence.

3. Türkiye's Additional Duties on Chinese Other Vehicles are Inconsistent with Article II:1(a)

63. Article II:1(a) requires Türkiye to accord to the commerce of China treatment no less favourable than that provided for in the appropriate Part of the appropriate Schedule annexed to the GATT 1994. As demonstrated above, Türkiye's additional duties are inconsistent with Article II:1(b) of the GATT 1994. Following the logic of the panel in *Turkey – Additional Duties*, the finding of violation of Article II:1(b) must necessarily result in a finding of inconsistency with Article II:1(a).

II. CHINA'S SECOND WRITTEN SUBMISSION

64. Despite Türkiye's attempts to portray it differently, the real objective of the measures at issue in this dispute is import substitution.³² Türkiye is pursuing this objective by enacting a series of protectionist measures that have disrupted the operations of foreign vehicle manufacturers that had been exporting to Türkiye. It is not the first time that Türkiye pursues aggressive protectionist policies. This case is part of a line of prior disputes in which WTO Members have had to resort to WTO dispute settlement because of import substitution policies pursued by Türkiye.³³

65. In September of this year, only a few days before the first Panel meeting, Türkiye enacted Decision 10436.³⁴ Rather than bring about compliance, Decision 10436 maintains the additional duties on Chinese EVs and externally rechargeable hybrid vehicles ("HVs"), incorporating a specific duty component for both types of vehicles. Decision 10436 is yet another measure in Türkiye's deliberate policy of erecting multiple barriers on imports of EVs and HVs with the objective of compelling producers to transfer production to Türkiye. These barriers now include excessive ad valorem duties, specific duties, an import restriction, and discriminatory regulatory requirements.

66. Türkiye's claims that the additional duties are environmental measures that seek to reduce CO2 emissions in its transportation sector and the IPLS as an instrument that enforces Articles 1 and 58 of its Law on Consumer Protection ("LCP") are not borne out by the measures' design and it is contradicted by the facts on the records.

67. Since enacting Decision 10436, Türkiye applies higher additional duties on EVs and HVs than it does on combustion engine vehicles.³⁵ Türkiye is therefore incentivizing combustion engine vehicles, which emit tailpipe CO2, over EVs that do not have tailpipe CO2 emissions. The same perverse incentive applies in respect of combustion engine vehicles and HVs. No amount of window dressing can plausibly hide the fact that imposing higher import duties on EVs and HVs than combustion engine vehicles is bad for the environment.

A. Decision 10436 is within the Panel's Terms of Reference

68. China and Türkiye agree that Decision 10436 is within the Panel's terms of reference.³⁶ Therefore, the Panel should make findings on the consistency of Decision 10436 with Türkiye's obligations under the GATT 1994. Decision 10436 was adopted on 22 September 2025, only two days before the first Panel meeting.³⁷ Decision 10436 modifies the additional duties on EVs and other vehicles.

³² Exhibit CHN-49.

³³ See, for example, *Turkey – Pharmaceutical Products (EU)* and *Turkey – Rice*.

³⁴ Decision 10436 (Exhibit TUR-88).

³⁵ Exhibit TUR-88.

³⁶ Türkiye's closing statement at the first Panel meeting; Türkiye's response to Panel Question No. 1, paras. 1.4-1.20.

³⁷ Exhibit TUR-88.

69. China's panel request in this case "covers any annexes or schedules thereto, amendments, supplements, replacements, renewals, extensions, successor, implementing measures or any other related measures".³⁸ This language is broad enough to cover Decision 10436. As Türkiye itself has noted, Decision 10436 amends Decision 3351³⁹, which is expressly covered in China's panel request.⁴⁰ Moreover, as its title indicates, Decision 10436 regulates the imposition of additional customs duties on imports.⁴¹ The additional duties are identified in China's panel request. The products listed in Decision 10436 are the same as those listed in Decision 3351 as amended by subsequent decisions also identified in China's panel request.⁴² Thus, the essence of the measure has not changed. Türkiye agrees.⁴³

B. The Additional Duties on EVs and Other Vehicles Are Inconsistent with Article I:1 of the GATT 1994

70. China has established that Türkiye's additional duties are inconsistent with Article I:1 of the GATT 1994 and Türkiye has not provided any arguments or evidence to rebut China's prima facie case.

71. The additional duties remain inconsistent with Article I:1 under Decision 10436.⁴⁴ The additional duties imposed by Türkiye on the importation of EVs and other vehicles from China pursuant to Decision 10436 are "customs duties and charges of any kind imposed on or in connection with importation".⁴⁵ Türkiye agrees that the additional duties imposed pursuant to Decision 10436 are "customs duties and charges of any kind imposed on or in connection with importation" within the meaning of Article I:1.⁴⁶ Decision 10436 distinguishes exclusively based on origin.⁴⁷ Therefore, likeness may be presumed.⁴⁸ Türkiye agrees that Decision 10436 distinguishes exclusively based on origin and has not disputed that Chinese EVs and other vehicles are "like" EVs and other vehicles originating in Members not subject to the additional duties.⁴⁹ Imports of EVs and other vehicles from certain other countries are subject to nil additional duties. The nil additional duties constitute an "advantage" for purposes of Article I:1. Türkiye thus denies this advantage to imports of EVs and other vehicles from China. Türkiye agrees that it exempts imports of EVs and other vehicles from CU and FTA partners from the additional duties imposed by Decision 10436, but that it subjects imports of EVs and other vehicles from China to the additional duties.⁵⁰

72. In its submissions, Türkiye has not contested that the additional duties on Chinese EVs and other vehicles, including subsequent to Decision 10436, are inconsistent with Article I:1.⁵¹

73. Therefore, since China has established a prima facie case that has not been rebutted by Türkiye, the Panel should find that the additional duties on Chinese EVs and other vehicles as they existed at the time of Panel establishment and as amended by Decision 10436 are inconsistent with Article I:1.

³⁸ WT/DS629/2.

³⁹ Article 2 of Decision 10436 (Exhibit TUR-88); Türkiye's response to Panel Question No. 1, paras. 1.1-1.2.

⁴⁰ WT/DS629/2.

⁴¹ Decision 10436 (Exhibit TUR-88).

⁴² Türkiye's response to Panel Question No. 1, para. 1.16.

⁴³ Türkiye's response to Panel Question No. 1, paras. 1.14-1.17.

⁴⁴ Exhibit TUR-88.

⁴⁵ The title of Decision 104356 characterizes the duties "Additional Customs Duty on Imports". (Exhibit TUR-88).

⁴⁶ Türkiye's response to Panel Question No. 19, para. 1.50.

⁴⁷ Exhibit TUR-88, Article 1.

⁴⁸ Panel Report, *Turkey – Additional Duties (US)*, para. 7.109 (citing Appellate Body Report, *Argentina – Financial Services*, para. 6.36; Panel Reports, *Colombia – Ports of Entry*, paras. 7.355-7.356; and *US – Poultry (China)*, paras. 7.424-7.432).

⁴⁹ Türkiye's FWS, paras. 2.5 and 2.6; Türkiye's response to Panel Question No. 1, para. 1.20.

⁵⁰ Türkiye's response to Panel Question No. 1, para. 1.20. Türkiye incorrectly suggests that China's Article I:1 claim in relation to the additional duties on Chinese EVs at the time of Panel establishment did not include the less favourable treatment vis. a vis imports of "like" vehicles from FTA countries. At no point in its submission, did China exclude the less favourable treatment vis. a vis imports from FTA countries. On the contrary, China's first written submission provides comparisons of the treatment of imports of EVs from China and imports of "like" products from FTA countries. (China's FWS, paras. 112-113).

⁵¹ See Türkiye's FWS, paras. 2.13-2.17; Türkiye's opening statement at the first Panel meeting, para. 2.2.

C. The Additional Duties on Chinese EVs Are Inconsistent with Article II of the GATT 1994

74. China and Türkiye agree that the additional duties imposed on Chinese EVs at the time of Panel establishment and pursuant to Decision 10436 are ordinary customs duties within the meaning of Article II:1(b), first sentence of the GATT 1994.⁵² Türkiye does not appear to dispute the magnitude of the additional duties or of the total duties applied on Chinese EVs. The only issue that is in dispute between the parties would appear to be whether Türkiye has tariff bindings on EVs. As discussed below, China has demonstrated that Türkiye has tariff bindings. Türkiye's arguments have no basis in the text of Article II, are logically flawed, and have been rejected in previous disputes. Indeed, as further mentioned below, the panel in *Turkey – Additional Duties (US)* already has confirmed that Türkiye has bound its tariff for vehicles with electric motors.

75. Türkiye's "core argument" is that "in 1995, electric vehicles lacked the commercial and technological relevance that they have today".⁵³ However, whether a product had the same commercial or technological relevance when the concessions was made that it has today does not determine whether a WTO Member has bound its tariff for that product for purposes of Article II. This conclusion was confirmed by the panel in *Turkey – Additional Duties (US)*. That panel found that subheading 870390 in Türkiye's CTS file "covers 'other vehicles' principally designed for the transport of persons that were not covered by 870310 (e.g. vehicles specially designed for travelling on the snow; golf cars and similar vehicles), 870320 (other vehicles, with spark-ignition internal combustion reciprocating piston engine), or 870330 (other vehicles, with only compression-ignition internal combustion piston engine (diesel or semi-diesel))".⁵⁴ According to the panel, the bound subheading "includes, for example, vehicles with only electric motors".⁵⁵ The panel thus concluded that "all vehicles with 'electric motors' falling under tariff line 8703901000 are bound at 20%, where there is no further differentiation of the types of vehicles."⁵⁶

76. Türkiye's arguments about the transposition exercise are a straw man. Türkiye's CTS file, which is based on HS2002, clearly includes motor cars and vehicles with electric motors. The transposition from HS1996 to HS2002 concluded and the tariff concessions reflected in Türkiye's CTS files were certified prior to the initiation of this dispute.⁵⁷ Even if the current transposition process were relevant—and it is not—it would not change the fact that Türkiye's current, certified schedule includes tariff bindings on EVs.

77. Thus, Türkiye's arguments relating to its transposition exercise lack merit. Indeed, if Türkiye's argument were accepted, it would create a perverse incentive for WTO Members to delay their transposition processes because this would shield any duties applied above their bindings from being challenged in WTO dispute settlement. Such an outcome would not promote security and predictability.

78. It follows from Türkiye's Schedule that Türkiye's additional duties and total duties on EVs imported from China exceed Türkiye's tariff bindings.

1. In the Alternative, Türkiye's Additional Duties on Chinese EVs are Inconsistent with Article II:1(b), Second Sentence

79. In its first written submission, China argued that, in the event the Panel finds that the additional duties are not ordinary customs duties, it should find that they are ODC's within the meaning of the second sentence of Article II:1(b).⁵⁸ This alternative argument applies not only to Türkiye's additional duties as they existed at the time of Panel establishment, but also to the additional duties after adoption of Decision 10436. Therefore, if the additional duties on EVs imported from China are found to be ODCs, the additional duties would be inconsistent with Article II:1(b), second sentence.

⁵² Türkiye's response to Panel Question No. 19, paras. 1.50-1.51.

⁵³ Türkiye's response to the Panel's written questions after the first Panel meeting, para. 1.32.

⁵⁴ Panel Report, *Turkey – Additional Duties (US)*, para. 7.140.

⁵⁵ Panel Report, *Turkey – Additional Duties (US)*, para. 7.140.

⁵⁶ Panel Report, *Turkey – Additional Duties (US)*, para. 7.140.

⁵⁷ G/MA/W/158/Rev.11.

⁵⁸ China's FWS, paras. 136-141.

2. *Türkiye Acts Inconsistently with Article II:1(a) of the GATT 1994*

80. As demonstrated above, Türkiye's additional duties are inconsistent with Article II:1(b) of the GATT 1994. The finding of violation of Article II:1(b) must necessarily result in a finding of inconsistency with Article II:1(a).⁵⁹ Türkiye has not disputed that a violation of Article II:1(b) will also result in a violation of Article II:1(a).

D. Türkiye Fails to Establish That the Additional Duties on Chinese EVs Are Justified Under Article XX of the GATT 1994

81. Türkiye has the burden of establishing that each of the requirements of Article XX(b) and (g) are met.⁶⁰ This burden applies in respect of each of the aspects of the additional duties that are inconsistent with Türkiye's GATT obligations, that is, the excess duties that are inconsistent with Article II and the discriminatory treatment that is inconsistent with Article I:1 of the GATT 1994.⁶¹ As explained in China's responses to the Panel's questions, this approach is consistent with the statements made in previous disputes that "the aspects of a measure to be justified under the subparagraphs of Article XX are those that give rise to the finding of inconsistency under the GATT 1994".⁶²

1. *The Additional Duties are Not Designed to Protect Human, Animal or Plant Life or Health*

82. Türkiye's assertion that the additional duties on EVs imported from China are designed to reduce CO2 emissions in the transportation sector is entirely unpersuasive. For starters, EVs do not generate tailpipe emissions. Thus, EVs imported from China do not present a risk that CO2 emissions will increase in the Turkish transportation sector.

83. Türkiye seems to consider that domestic EVs generate less CO2 emissions than EVs imported from non-CU and FTA partners. Yet, there is no basis for such notion and Türkiye has certainly not provided any substantiation for it. The same erroneous logic permeates Türkiye's distinction between EVs imported from CU/FTA partners and EVs imported from other countries. This distinction has nothing to do with differences in CO2 emissions, but rather is based entirely on the geographical location of the manufacturer. Türkiye has provided no evidence that EVs imported from CU/FTA countries generate less CO2 emissions than EVs imported from non-CU/FTA countries. It cannot, because EVs, regardless of origin, do not generate CO2 emissions.

84. What Türkiye is actually trying to do is substitute imported EVs—at least those from non-CU or FTA partners—for domestically-manufactured EVs. That is the real objective of the additional duties. However, import substitution is not a policy that is protected by Article XX(b). To disguise this objective, Türkiye has put forward a convoluted theory that not only lacks credibility, but also suffers from numerous flaws. The starting premise of Türkiye's theory is that protecting domestic manufacturers is necessary to ensure the development of a domestic charging network. Yet, there is no basis to assume that the problems with charging network in Türkiye, if there is any, are caused by imports, and could be solved by replacing imports with domestic production. Türkiye's theory depends entirely on establishing this initial step in its "chain of causation". Since it has failed to establish this initial step, the "chain of causation" is broken from the outset and the entire "chain" must fall apart.

85. If Türkiye really wanted to promote the adoption of EVs, it should not be imposing barriers and costs on imported EVs, but rather should look for ways to reduce those barriers.

⁵⁹ Panel Report, *Turkey – Additional Duties (US)*, para. 7.125.

⁶⁰ Appellate Body Report, *US – Gasoline*, p. 22.

⁶¹ China's response to Panel Question No. 20, paras. 25-27; Australia's response to Panel Question No. 7, paras. 12-13; EU's response to Panel Question No. 7, para. 18; Japan's response to Panel Question No. 7, para. 11.

⁶² Appellate Body Reports, *EC – Seal Products*, para. 5.185 referring to Appellate Body Report, *Thailand – Cigarettes (Philippines)*, para. 177 (observing that the analysis of the Article XX(d) defense in that case should focus on the differences in the regulation of imports and of like domestic products giving rise to the finding of less favourable treatment under Article III:4).

2. *The Additional Duties on EVs Imported from China are Not Necessary Within the Meaning of Subparagraph (b)*

86. China agrees on the importance of the objective of mitigating climate change. However, the additional duties at issue in this case are not necessary because they do not contribute to the objective of reducing CO2 emissions in the transportation sector and they are highly trade restrictive. In fact, Türkiye's decision to restrict imported EVs is all the more disconcerting considering the importance that it claims to attach to the objective of reducing CO2 emissions in the transportation sector. If Türkiye really wanted to prioritize the objective of reducing CO2 emissions, it would reduce barriers on EVs, not increase them.

87. China recalls that the assessment of "necessity" involves a weighing and balancing of the following elements: (i) the importance of the interests or values at stake; (ii) the extent of the contribution to the achievement of the measure's objective; and (iii) its trade restrictiveness.⁶³

88. On the first factor, China reiterates that it agrees that mitigating climate change is an important objective. There is no dispute between the parties on this element of the "necessity" test. As regards the second element, in the previous section, China demonstrated that Türkiye has failed to establish that the additional duties on EVs contribute to reducing CO2 emissions. Neither the excess duties nor the discriminatory aspects of the additional duties contribute to the reduction of CO2 emissions. The excess duties increase the cost and reduce the supply of EVs in the Turkish market, discouraging consumers from shifting from combustion engine vehicles. Under Türkiye's contribution theory, the exemption for EVs imported from the EU and FTAs countries would reduce the alleged incentives for the domestic industry to expand the charging network. China further notes that apart from putting forward an unsubstantiated and logically flawed theory, Türkiye has failed to provide any arguments or evidence as to the alleged degree of contribution that the additional duties make to the purported objective of reducing CO2 emissions.

89. Finally, China has provided arguments and evidence showing that the additional duties on imported Chinese EVs are highly trade restrictive. Even under Decision 10436, Türkiye's total duties are at least twice as high as its tariff binding. The total duties could be even higher as a result of the specific duty introduced in Decision 10436 for imported EVs.

90. Because Türkiye has failed to establish the alleged contribution of the additional duties to purported objective, it is not strictly necessary for China to identify alternative measures that are less trade restrictive.⁶⁴ Nevertheless, for completeness, China recalls that it has identified two alternative measures that Türkiye could adopt to achieve its purported objective.

91. The first consists of eliminating the customs duties on imported EVs regardless of their origin. China has explained that eliminating customs duties regardless of origin would be WTO-consistent because it would not exceed Türkiye's WTO bindings and would not be discriminatory.⁶⁵ This alternative measure would contribute to the objective of reducing CO2 emissions by giving Turkish consumers enhanced access to a wider range of EVs.⁶⁶ As noted earlier, the evidence submitted by Türkiye shows that availability and higher prices are obstacles to adoption of EVs by Turkish consumers. The proposed alternative is less trade restrictive since tariffs would be lower and origin-neutral. Finally, this alternative does not present difficulties in terms of implementation considering that Türkiye already exempts imports from some WTO Members from tariffs.⁶⁷

92. The second alternative proposed by China is addressed to the alleged concern with expanding the charging network. The alternative proposed is to offer tax incentives to investors to build charging stations and to consumers to install charging points at their homes. This alternative would achieve the policy goal purportedly pursued by Türkiye without adverse trade effects and does not present difficulties in terms of implementation either.

93. Türkiye has failed to establish that the additional duties on EVs make a contribution to the purported objective of reducing CO2 emissions. At the same time, the additional duties are highly

⁶³ Appellate Body Report, *Brazil – Retreaded Tyres*, para. 178.

⁶⁴ Appellate Body Report, *EC – Seal Products*, para. 5.169.

⁶⁵ Panel Report, *Brazil – Taxation*, para. 7.946.

⁶⁶ Ibid.

⁶⁷ Ibid.

trade-restrictive, and there are reasonably available alternative measures. Given these factors, the Panel should find that Türkiye has failed to establish that the additional duties are "necessary" for purposes of subparagraph (b) of Article XX.

3. *Türkiye Fails to Satisfy the Requirements of Subparagraph (g)*

94. In invoking subparagraph (g) in its first written submission, Türkiye essentially referred back to its arguments under subparagraph (b) to show that the additional duties relate to the conservation of exhaustible natural resources under subparagraph (g).⁶⁸ China already has rebutted Türkiye's arguments under subparagraph (b). China's rebuttal arguments also show that Türkiye has failed to demonstrate that the additional duties on EVs imported from China have a rational relationship with the objective of reducing CO2 emissions, much less a "close and genuine relationship of ends and means".

95. In response to the Panel's questions, Türkiye argues that the discriminatory treatment of Chinese imports relates to the conservation of clean air "because the level of the duties will assist the domestic hybrid and EV producing industry to establish itself and thrive, which will in turn improve the quality and extent of the charging infrastructure".⁶⁹ Türkiye's statement clearly discloses that the objective pursued by Türkiye is to support its domestic industry. Helping a domestic industry "establish itself and thrive" is an economic objective that is not related to the conservation of exhaustible resources.

96. Subparagraph (g) requires that the measures are "made effective in conjunction with" restrictions on domestic production and consumption. Türkiye fails to identify any restrictions on domestic production or consumption of EVs. Nor does Türkiye identify any *current* restrictions on the domestic production or consumption of fossil fuel vehicles. While Türkiye briefly refers to the Special Consumption Tax and a recycling program⁷⁰, it does not provide any explanation or evidence of how either restricts domestic production or consumption of fossil fuel vehicles.

97. Türkiye did not offer any additional argumentation in its opening statement at the first Panel meeting on subparagraph (g), beyond referring back to the unsubstantiated statements in its first written submission.⁷¹ China has already rebutted those arguments.

4. *Türkiye Fails to Substantiate its Defense Under the Chapeau of Article XX*

98. Since the additional duties do not meet the requirements of subparagraphs (b) or (g), the Panel's analysis need not reach the chapeau. However, for the sake of completeness, China demonstrates below that Türkiye fails to establish that the additional duties satisfy the requirements of the chapeau.

99. The chapeau of Article XX prohibits Türkiye from applying the additional duties on EVs "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". Panels and the Appellate Body have found that discrimination is arbitrary or unjustifiable where the reasons given for the discrimination are not rationally related to the policy objective pursued.⁷²

100. In its first written submission, Türkiye suggested that the same conditions do not prevail in China vis-à-vis other countries with EV production. This argument should be rejected.⁷³ As China observed at the Panel meeting, China's success in EV production stems from measures such as early strict targets for energy conservation and emission reduction, fuel efficiency standards, and license plate exemptions for EV buyers in major cities, etc. It is these policies that helped accelerate adoption and innovation. Consequently, the reasons given by Türkiye for the discrimination are not rationally related to the policy objective of reducing CO2 emissions. Türkiye offer no further

⁶⁸ Türkiye's FWS, para. 2.115.

⁶⁹ Türkiye's response to Panel Question No. 20, para. 1.73.

⁷⁰ Türkiye's FWS, para. 2.117.

⁷¹ Türkiye's opening statement at the first Panel meeting, paras. 2.17-2.18.

⁷² Appellate Body Report, *Brazil – Retreaded Tyres*, para. 227.

⁷³ Türkiye's FWS, para. 2.128.

arguments or evidence in its response to the Panel's written questions.⁷⁴

101. The Panel therefore should find that Türkiye has failed to satisfy the requirements of the chapeau of Article XX.

102. For all of reasons discussed above, the Panel should reject Türkiye's defense under Article XX(b) and (g).

E. Türkiye's Additional Duties on Other Vehicles from China Are Inconsistent with Article II of the GATT 1994

103. The additional duties imposed by Türkiye on other vehicles from China as they existed at the time of Panel establishment and since the adoption of Decision 10436 are inconsistent with Türkiye's obligations under Article II of the GATT 1994.

104. As noted previously, Türkiye has agreed that the CTS file submitted by China accurately reflects its tariffs concession regarding HS2002.⁷⁵ Türkiye has further agreed that the WCO's correlation tables provide guidance and that it "takes WCO HS Correlation Tables into consideration as guidance when revising its national tariff classification".⁷⁶ Türkiye, moreover, has expressly stated that it "does not dispute the tariff classification of hybrid ... vehicles under HS 2017 or the subsequent HS versions".

105. Türkiye's suggestion that hybrids are not covered by its schedule because they were introduced in the HS 2017 revision is inaccurate. As China explained in its first written submission⁷⁷, the 2017-2012 correlation table explains that "[t]he structure of heading 87.03 has been redrafted and renumbered to provide separately for hybrid electric vehicles, plug-in hybrid vehicles and for all-electric motor vehicles, respectively". As regards 8703.70, the table states that the new subheading includes some products that were previously classified under subheadings 8703.31, 8703.32, 8703.33, and 8703.90. No changes were made to subheadings 8703.31, 8703.32, 8703.33, and 8703.90 between HS 2012 and HS 2007 or between HS 2007 and HS 2002. Therefore, subheadings 8703.31, 8703.32, 8703.33, and 8703.90 in HS 2012 match subheadings 8703.31, 8703.32, 8703.33, and 8703.90 in HS 2002.

106. Türkiye's CTS file clearly shows that it has bound tariffs for a range of products falling within subheadings 8703.31, 8703.32, 8703.33, and 8703.90. Specifically, all of the products contained in subheading 8703.90 have a bound rate of either 19% or 20% in Türkiye's Schedule, and therefore since part of the products under 8703.90 that are plug-in hybrid vehicles were transposed into current subheading 8703.70, these transposed products under current subheading 8703.70 fall within the bound rate for Türkiye. In addition, all the plug-in hybrid vehicles under the specific 10-digit subheadings under 8703.31, 8703.32 and 8703.33 with a bound rate of 19% in Türkiye's Schedule that have been transposed into the current subheading 8703.70, also fall under the bound rate for Türkiye. Hence, plug-in hybrids covered by the bound subheadings under 8703.31, 8703.32, 8703.33, and 8703.90 and that now fall within subheading 8703.70 are subject to a bound rate of 19% or 20%. Türkiye has not provided any arguments or evidence to contradict the above analysis.

107. In light of the evidence submitted by China and considering Türkiye's acknowledgments that (i) the CTS file correctly reflects its bindings, (ii) WCO correlation tables provide guidance for correlating later versions of the HS with prior versions, and (iii) China has correctly set out the tariff classification of the vehicles at issue under HS2017 and subsequent HS versions, the Panel should find that Türkiye has bound its tariffs for other vehicles. China recalls that its argumentation follows the same approach that was followed by the panel in *Turkey – Additional Duties (US)*.⁷⁸

108. As regards hybrid vehicles, Türkiye repeated the argument that it has no bindings because it is in the process of transposing its schedule.⁷⁹ The same argument was rejected by the panel in *Turkey – Additional Duties (US)*. Contrary to Türkiye's assertion, Türkiye has bound its tariffs for

⁷⁴ See Türkiye's response to Panel Question No. 20, para. 1.67.

⁷⁵ Türkiye's response to the Panel Question No. 6, para. 1.28.

⁷⁶ Türkiye's response to Panel Question No. 12, paras. 1.29 and 1.32.

⁷⁷ China's FWS, paras. 283-292 and Exhibits CHN-21 and 31-35.

⁷⁸ China's FWS, para. 290.

⁷⁹ China's FWS, paras. 2.25-2.26.

hybrid vehicles and the additional duties on hybrid vehicles from China exceed those bindings.⁸⁰

109. In its first written submission, China provided arguments and evidence demonstrating prima facie that the additional duties and total duties imposed by Türkiye on other vehicles at the time of Panel establishment exceed Türkiye's tariff bindings.⁸¹ Türkiye has not contested the accuracy of the tariff levels identified by China in its first written submission.

110. In its first written submission, China argued that, in the event the Panel finds that the additional duties are not ordinary customs duties, it should find that they are ODCs prohibited by the second sentence of Article II:1(b).⁸² This alternative argument would apply not only to Türkiye's additional duties as they existed at the time of Panel establishment, but also to the additional duties after adoption of Decision 10436. Since Türkiye did not record the additional duties in its Schedule, if the Panel finds that the additional duties on other vehicles imported from China are ODCs, it must find that the additional duties are inconsistent with Article II:1(b), second sentence.

F. Türkiye Fails to Justify the Additional Duties on Other Vehicles Under Subparagraphs (b) And (g) of the GATT 1994

1. Subparagraph (b) of Article XX

111. In the case of HVs, Türkiye's theory on the design of the measure depends on the alleged positive link between the additional duties and the purported incentives to create a charging station network. Türkiye makes the same argument in respect of EVs.⁸³ China has already explained that Türkiye has failed to substantiate such a link. The same flaw applies to the argument as it relates to hybrid vehicles. To avoid repetition, China refers the Panel back to its earlier explanations.

112. Türkiye argues that the additional duties on combustion engine vehicles also contribute to its environmental goals, "as they restrict domestic consumption of fuel vehicles".⁸⁴ Türkiye fails to address the fact that the additional duties applied only to imports from China.⁸⁵ In the circumstances, Türkiye would have to explain how additional duties that applied only to Chinese vehicles restricted consumption of combustion engine vehicles in Türkiye when the measure did not impose any constraints on the supply of those vehicles from all other countries or from domestic producers. Türkiye failed to provide such explanation, much less evidence to back it up. Türkiye also fails to explain how the additional duties since the adoption of Decision 10436 contribute to the objective despite the fact that it exempts imports from CU and FTA partners.

113. China reiterates that it agrees on the importance of the objective of mitigating climate change. That said, even on the arguendo assumption that the Panel finds that the measures are designed to reduce CO2 emissions, Türkiye fails to show that the measures are "necessary".

114. As regards combustion engine vehicles, Türkiye claims that the additional duties make a material contribution "to gradually phase out the production and the sale of new fossil-fuel powered vehicles"⁸⁶ However, higher duties on Chinese combustion engine vehicles do not constrain Turkish production of those vehicles or imports from countries not subject to the additional duties. Türkiye has failed to identify the mechanism through which additional duties on imports from one country reduce domestic production in the importing country and in other countries not subject to the additional duties. A similar flaw applies to domestic consumption. Türkiye fails to identify the mechanism through which additional duties on Chinese combustion engine vehicles will reduce consumption of those vehicles in Türkiye when the additional duties do not apply to domestic combustion engine vehicles or to combustion engine vehicles imported from other countries.

115. The additional duties are highly trade restrictive. The additional duties are collected on top of

⁸⁰ China's FWS, paras. 281-295.

⁸¹ China's FWS, paras. 293-295 and Exhibit CHN-35.

⁸² China's FWS, paras. 296-298.

⁸³ Türkiye's FWS, paras. 2.74 and 2.76.

⁸⁴ Türkiye's FWS, para. 2.77.

⁸⁵ China's FWS, paras. 68-86.

⁸⁶ Türkiye's FWS, para 2.96.

the MFN duties⁸⁷ The additional duties are also discriminatory.

116. Given that Türkiye has not substantiated the contribution of the additional duties to the purported public policy objective, China is not required to identify less trade restrictive alternative measures.⁸⁸ In any case, as noted earlier, Türkiye could eliminate customs duties on EVs and HVs as an alternative measure, while ensuring that its customs duties on other vehicles do not exceed its tariff bindings. Other alternative measures could include limiting the number of days of the week in which drivers could use combustion vehicles or limiting their access to certain areas. These restrictions would discourage the use of combustion vehicles. These alternative measures would be WTO-consistent and would achieve Türkiye's purported objective of reducing CO2 emissions in the transportation sector. Moreover, these measures would not pose implementation difficulties.

2. *Subparagraph (g) of Article XX*

117. Under subparagraph (g), Türkiye only refers to its arguments that it raised in connection with the "necessity" requirement in subparagraph (b). As China just explained, Türkiye failed to substantiate its defense under subparagraph (b). Thus, Türkiye also fails to substantiate its case under subparagraph (g).

118. While Türkiye claims that it imposes restrictions on domestic production of fuel vehicles, it provides no evidence that such restrictions are currently in place.

119. Furthermore, its contention that its policies are "even-handed" does not bear out. Chinese other vehicles are subject to both the additional duties and the Special Consumption Tax Law, whereas domestic other vehicles are subject only to the latter.

3. *Chapeau*

120. China notes that Türkiye's arguments on the chapeau refers exclusively to EVs. Türkiye provides no argumentation to show that the additional duties on other vehicles from China comply with the requirements of the chapeau.⁸⁹ China recalls that at the time of Panel establishment the additional duties applied only to imports from China and not to imports from other countries. Decision 10436 exempts imports of other vehicles from CU and FTA partners from the additional duties.

G. Article XXIV And the Enabling Clause Do Not Justify the Exemption from the Additional Duties

121. In its response to the Panel's questions, Türkiye has hinted that the exemption of certain countries from the additional duties is justified by Article XXIV and the Enabling Clause.⁹⁰ However, Türkiye has yet to provide its argumentation to support its defense. To the extent Türkiye intends to justify the exemption under Article XXIV and the Enabling Clause, it has the burden to establish that it satisfies the requirements of those provisions. Until Türkiye does so, the Panel is precluded from applying Article XXIV or the Enabling Clause to justify Türkiye's inconsistency with Article I:1.⁹¹

122. Since Türkiye has not invoked either provision, the Panel need not consider Article XXIV or the Enabling Clause in respect of the less favourable treatment of Chinese EVs and other vehicles existing at the time of Panel establishment. Furthermore, since Türkiye has not made a prima facie case that the exemption for FTA countries satisfies the requirements of Article XXIV and the Enabling Clause, the Panel may not apply Article XXIV or the Enabling Clause to the less favourable treatment of Chinese EVs and other vehicles in Decision 10436.

H. The Import Permit Certificate Scheme Is Inconsistent with Article I:1 of the GATT 1994

123. Türkiye's IPLS is inconsistent with the most-favoured nation obligation in Article I:1 of the

⁸⁷ China's FWS, para. 293.

⁸⁸ Appellate Body Report, *EC – Seal Products*, para. 5.169.

⁸⁹ See Türkiye's FWS, paras. 2.122-2.130.

⁹⁰ Türkiye's response to Panel Question No. 1, footnote 23.

⁹¹ See Appellate Body Report, *Japan – Agricultural Products II*, para. 129; see also Panel Report, *Indonesia – Import Licensing Regime*, para. 7.511.

GATT 1994. China provided arguments and evidence sufficient to make a prima facie case of inconsistency with Article I:1 in its first written submission. Türkiye does not dispute that the IPLS is inconsistent with Article I:1.

I. The IPLS Is Inconsistent with Article XI:1 of the GATT 1994

124. The IPLS is also inconsistent with the prohibition on import restrictions in Article XI:1 of the GATT 1994. Türkiye's arguments do not rebut China's prima facie case. Indeed, although Türkiye sometimes equivocates, it has essentially acknowledged the limiting effects of the IPLS.

125. In responding to the Panel's questions, Türkiye suggests that "the centre of gravity of the IPLS measure is its dimension as an internal (behind the border) measure".⁹² The requirement to apply for and obtain an import permit is a condition for importation. As noted previously, Türkiye itself has characterized the IPLS as an import licensing scheme. Article XI:1 expressly covers import licensing. Indeed, immediately after claiming the centre of gravity is internal, Türkiye describes the IPLS as "[t]he import restriction in the form of an import license"⁹³, thus acknowledging yet again that the IPLS is a measure on importation that falls within the scope of Article XI:1. By describing the IPLS as an "import restriction", Türkiye is not only admitting that it is a measure "on importation", it is effectively admitting that the measure is inconsistent with Article XI:1.

126. As noted above, Türkiye has referred to the IPLS as an "import restriction".⁹⁴ Thus, it is contradictory for Türkiye to try to argue at the same time that the IPLS does not have limiting effects. The arguments that Türkiye has put forward do not rebut China's prima facie case. Türkiye is incorrect in asserting that additional costs are insufficient to show limiting effects.⁹⁵ Additional costs limit the competitive opportunities for imported products, as previous panels have found.⁹⁶ The limiting effects are evident in the design of the IPLS. China is not required to quantify the limiting effects. It is also telling that Türkiye has failed to provide evidence that importers have been granted import certificates under the IPLS. The lack of evidence that importers have been granted import certificates speaks to how burdensome and costly it is.

127. Türkiye's arguments about alleged importer "control"⁹⁷ are flawed and fail to rebut China's prima facie case. As China has already explained⁹⁸, the suggestion that importers are "in control" is inaccurate. For example, importers' ability to satisfy some of the requirements underlying the IPLS will depend on the availability of the required physical and human resources in Türkiye that are not within the control of importers. The lack of guidance has created further challenges. Importers were not informed about how and where to submit an application for the import permit certificate.⁹⁹ Even after Türkiye issued the Implementation Directive, the link where importers were supposed to submit applications did not work, as Türkiye has conceded.¹⁰⁰ These are all factors outside the control of importers. Hence, Türkiye's assertion that that importers are "in control" is not supported by the record.

128. Türkiye's argument about the alleged lack of discrimination is similarly erroneous.¹⁰¹ The IPLS *is* discriminatory. Türkiye has not even contested that the measure accords less favourable treatment to EVs and HVs imported from China within the meaning of Article I:1.¹⁰² Furthermore, China also has demonstrated that the underlying requirements of the IPLS accord less favourable treatment within the meaning of Article III:4. Thus, Türkiye's contention that importers must already set up the service centers under other regulations is not persuasive. As China has demonstrated¹⁰³, domestic manufacturers are not required to own the service centers, whereas the IPLS does require the importer to own the service center itself. In any case, the text of Article XI:1 does not require a

⁹² Türkiye's response to Question No. 20, para. 1.87.

⁹³ Türkiye's response to Question No. 20, para. 1.87.

⁹⁴ Türkiye's response to Question No. 20, para. 1.87.

⁹⁵ Türkiye's FWS, para. 3.127.

⁹⁶ Panel Report, *Colombia – Ports of Entry*, paras. 7.274-7.275; Panel Reports, *Argentina – Import Measures*, para. 6.473.

⁹⁷ Türkiye's FWS, para. 3.131.

⁹⁸ China's opening statement at the first Panel meeting, para. 62.

⁹⁹ Exhibit CHN-13.

¹⁰⁰ Türkiye's FWS, para. 3.182.

¹⁰¹ Türkiye's FWS, para. 3.135.

¹⁰² Türkiye's FWS, paras. 3.9-3.10.

¹⁰³ China's opening statement at the first Panel meeting, para. 72.

demonstration of discriminatory treatment. The Panel should reject Türkiye's attempt to conflate Article XI:1 with discussions of a different provision in a different WTO agreement.

129. Türkiye's attempt to rely on the alleged policy purpose of the measure is likewise irrelevant in the analysis under Article XI:1.¹⁰⁴ Again, the relevant question for purposes of the analysis under Article XI:1 is whether the measure has "limiting effects". The policy purpose of the measure is not part of the analysis under Article XI:1.

J. The Underlying Requirements of the IPLS Are Inconsistent with Article III:4 of the GATT 1994

1. Chinese EVs and HVs are "Like" Turkish EVs and HVs

130. China has demonstrated that Notification 2025/7 distinguishes exclusively based on origin.¹⁰⁵ Consequently, the "likeness" between Chinese EVs and HVs, on the one hand, and Turkish EVs and HVs, on the other hand, may be presumed.¹⁰⁶ Türkiye does not dispute that Chinese EVs and HVs are "like" Turkish EVs and HVs.¹⁰⁷ Hence, the Panel should find that the "likeness" element of the Article III:4 test has been met.

2. The Underlying Requirements of the IPLS Fall Within the Scope of Article III:4

131. China has demonstrated that the underlying requirements of the IPLS are laws, regulations or requirements that modify the conditions of competition of Chinese EVs and HVs in the Turkish market within the meaning of Article III:4. Türkiye does not dispute that the underlying requirements of the IPLS fall within the scope of Article III:4.¹⁰⁸

3. The Underlying Requirements of the IPLS Accord Less Favourable Treatment to Chinese EVs and HVs

132. China has provided arguments and evidence sufficient to establish a prima facie case that the underlying requirements modify the conditions of competition in the Turkish market to the detriment of Chinese EVs and HVs.¹⁰⁹ China's arguments and evidence have included demonstrating that:

- Chinese EVs and HVs may be sold in Türkiye only after the "importer itself" has established 20 authorized service stations in 7 geographical regions. By contrast, domestically produced EVs and HVs may be sold in Türkiye if there are 20 authorized service stations in 7 geographical regions *regardless of who owns those service stations*.¹¹⁰
- The absence of an equivalent requirement for Turkish EVs and HVs to establish a call center for each brand with a minimum of 40 personnel.¹¹¹
- Chinese EVs and HVs are subject to battery requirements that do not apply to Turkish EVs and HVs.¹¹²

¹⁰⁴ Türkiye's FWS, para. 3.135.

¹⁰⁵ China's FWS, paras. 201-209. China also discussed the traditional "likeness" factors in its FWS. (China's FWS, paras. 105-109). China notes, in this regard, that the Deloitte survey submitted by Türkiye in Exhibit TUR-29 found that "[w]hen it comes to consumer preference toward domestic and foreign brands, nearly half of consumers surveyed are content with either, as long as the vehicle meets their needs". (TUR-29, p. 18).

¹⁰⁶ Panel Report, *India - Autos*, para. 7.174; Panel Report, *Canada - Wheat Exports and Grain Imports*, footnote 246 to para. 6.164; Panel Reports, *Brazil - Taxation*, para. 7.139; and Appellate Body Reports, *Brazil - Taxation*, para. 5.23.

¹⁰⁷ Türkiye's FWS, para. 3.72.

¹⁰⁸ Türkiye's FWS, para. 3.72; Türkiye's response to Panel Question No. 36, para. 2.33.

¹⁰⁹ Appellate Body Report, *Brazil - Taxation*, para. 5.75.

¹¹⁰ China's FWS, para. 218; China's opening statement at the first Panel meeting, para. 72.

¹¹¹ China's opening statement at the first Panel meeting, para. 74.

¹¹² China's FWS, para. 215; China's opening statement at the first Panel meeting, paras. 76-80.

- More flexible competency requirements applicable in relation to Turkish EVs and HVs.¹¹³
- Significantly more lenient penalties in relation to Turkish EVs and HVs.¹¹⁴
- More burdensome requirements applicable in relation to the designation of an authorized representative.¹¹⁵

K. The IPLS Is Inconsistent with Article 2.1 of the TRIMS Agreement

133. Türkiye's suggestion that any investment implications of the IPLS are "incidental" is not credible.¹¹⁶ Establishing 20 services centers and a call center for each brand are mandatory requirements of the IPLS. Making these investments is a mandatory condition that an importer must satisfy before it may request an import permit certificate to import EVs or HVs into Türkiye. An exemption from the IPLS is conditional on establishing manufacturing facilities in Türkiye. Türkiye has not contested that these are mandatory conditions for importation. Hence, expending money in Türkiye is a key requirement imposed by the IPLS on importers and is far from being "incidental".

134. Finally, Türkiye argues that the IPLS is not one of the measures in the Illustrative List in the Annex to the TRIMS Agreement. However, as its name clearly implies, the Illustrate List merely sets out examples and is not exhaustive.¹¹⁷

135. Furthermore, China has demonstrated that the IPLS is inconsistent with Article XI:1 of the GATT 1994 and that the underlying requirements of the IPLS are inconsistent with Article III:4 of the GATT 1994. It therefore follows that Türkiye is acting inconsistently with Article 2.1 by applying a TRIM that is inconsistent with those GATT provisions. Türkiye does not contest that this is the necessary consequence under Article 2.1.¹¹⁸

L. Türkiye Acts Inconsistently with Article X:3(A) of the GATT 1994

136. Türkiye errs in arguing that the scope of Article X:3(a) is limited to discretionary acts by an agency.¹¹⁹ This is too narrow a view of the scope of Article X:3(a). Previous panels have found, *inter alia*, that a legal instrument giving effect to another legal instrument¹²⁰ and definitions, guidelines or standards¹²¹ may be challenged pursuant to Article X:3(a).

137. Türkiye also errs in requiring a "pattern". Contrary to Türkiye's position, Article X:3(a) does not require a "pattern of decision-making over time".¹²² Türkiye mischaracterizes the significance of an isolated statement by the panel in *US – Hot-Rolled Steel*. Other panels have made findings under Article X:3(a) without requiring a "pattern of decision-making over time", confirming that no such requirement exists in Article X:3(a).¹²³

138. Contrary to Türkiye's assertions, these aspects of Türkiye's implementation of the Notification are not focused on the substantive content of the Notifications. The Implementation Directive, as its name implies, implements the Notifications and therefore constitutes "administration" for purposes of Article X:3(a). As previous panels have explained, "the scope of administration that is subject to a challenge under Article X:3(a) includes both the manner in which the legal instruments of the kind falling under Article X:1 are applied or implemented in particular cases as well as a legal instrument that regulates such application or implementation".¹²⁴ Türkiye itself concedes that "[i]t is well-established caselaw that the manner of administration can be reflected in ... a written measure of

¹¹³ China's opening statement at the first Panel meeting, para. 73.

¹¹⁴ China's opening statement at the first Panel meeting, para. 81.

¹¹⁵ China's opening statement at the first Panel meeting, paras. 82-83.

¹¹⁶ Türkiye's response to Panel Question No. 38, para. 2.36.

¹¹⁷ Appellate Body Reports, *Canada – Renewable Energy / Feed-In Tariff Program*, para. 5.22.

¹¹⁸ See Türkiye's FWS para. 3.142-3.149.

¹¹⁹ Türkiye's FWS, para. 3.157.

¹²⁰ Appellate Body Report, *EC – Selected Customs Matters*, para. 200.

¹²¹ Panel Reports, *China – Raw Materials*, paras. 7.745-7.746.

¹²² Türkiye's FWS, para. 3.157.

¹²³ See, for example, Panel Report, *EU and Certain Member States – Palm Oil (Malaysia)*, paras. 7.1041-7.1063 and Panel Report, *Thailand – Cigarettes (Philippines) (Article 21.5 – Philippines)*, paras. 7.897-7.935.

¹²⁴ Panel Report, *Thailand – Cigarettes (Philippines)*, para. 7.886.

general application".¹²⁵ Türkiye, however, attempts to introduce a caveat that the content of the written measure must be "administrative nature". However, no such requirement is reflected in Article X:3(a). Türkiye's suggestion would introduce a double "administration" requirement into Article X:3(a) that is not there since the measure would not only have to involve administration by implementing another legal instrument, it would also need to have a content that is administrative in nature. Türkiye is yet again reading additional requirements into Article X:3(a) that are not there. In short, the Implementation Directive, including its substantive content, may properly be challenged under Article X:3(a).

139. Türkiye has argued that accepting unknown future obligations is "perfectly normal".¹²⁶ Nevertheless, this argument does not address the failure to identify the current obligations which the importer is required to commit. Furthermore, it is unreasonable to require an importer to give *ex ante* a blanket commitment to accept future unknown requirements. Türkiye's argument that the commitment is "only a confirmation that the importer understands its obligations that flow from otherwise applicable provisions of Turkish law" is similarly unconvincing.¹²⁷ The Implementation Directive does not identify what are the "applicable provisions of Turkish law" and nor does Türkiye. Insofar as Türkiye claims that the provisions are those of the Regulation on Control of Waste Batteries and Accumulators, China already has shown that the two do not completely overlap.

M. Türkiye Fails to Substantiate Its Defense Under Article XX(d)

140. As the party invoking the general exceptions, Türkiye has the burden of establishing that the IPLS satisfies each of the requirements of Article XX(d). Türkiye has alleged that the IPLS is necessary to secure compliance with Articles 1 and 58 of Türkiye's LCP. Türkiye therefore must establish that the IPLS is (i) designed to secure compliance with Articles 1 and 58 of the LCP; (ii) "necessary" to secure such compliance; and (iii) satisfies the requirements of the chapeau of Article XX.

141. Türkiye's assertion that the IPLS is designed to secure compliance with Articles 1 and 58 of the LCP is not persuasive.

142. As China noted at the oral hearing, Article 1 of the LCP set outs the purpose of the LCP. It does not contain any obligations or requirements. Therefore, Article 1 "does not qualify as a law or regulation for the purposes of Article XX(d)".¹²⁸ Türkiye has provided no rebuttal of China's argument in respect of Article 1. Hence, the Panel should dismiss this aspect of Türkiye's defense.

143. China also presented a comparison of the underlying requirements of the IPLS, on the one hand, and the *specific* obligations in Article 58. This comparison clearly shows that requirements underlying the IPLS are not designed to secure compliance with Article 58 of the LCP.

144. For example, Article 58 does not require importers to establish at least 20 authorized service stations in 7 geographical regions. Indeed, Article 58(4) expressly states that importers "may make use of existing service stations or services organizations". Thus, since Article 58 does not require importers to establish themselves authorized service stations, much less at least 20 of them in 7 geographical regions, the IPLS cannot be said to secure compliance with specific obligations in Article 58. This is not a case where the LCP provides for a general requirement and the IPLS provides more specification. Instead, in this case the requirements are different. Therefore, the IPLS cannot be deemed as securing compliance with the requirements of Article 58. Rather, the IPLS changes the requirements for importers.

145. China agrees that consumer protection is an important policy objective. However, Türkiye has failed to establish that the IPLS contributes to securing compliance with Articles 1 and 58.

146. As discussed earlier, the IPLS is not designed to "secure compliance" with Articles 1 and 58 of the LCP. China has explained that Article 1 does not contain obligations and thus is not a law or regulation falling within the scope of subparagraph (d). China also has explained that Article 58 does not impose the requirements that are included in the IPLS such that the latter cannot secure

¹²⁵ Türkiye's response to Panel Question No. 41, para. 2.48.

¹²⁶ Türkiye's FWS, para. 3.175.

¹²⁷ Türkiye's FWS, para. 3.177.

¹²⁸ Panel Report, *Indonesia – Raw Materials*, para. 7.

compliance with the former. Furthermore, as China explained above, the sole criterion used to impose the IPLS is that the products are imported from a country that is not a CU/FTA partner. The discrimination between EVs and HVs imported from CU/FTA partners and non-CU/FTA partners, the discrimination between EVs and HVs imported from non-CU/FTA partners and domestic EVs and HVs, and the quantitative restriction do not take account of any differences relating to consumer protection. Moreover, all manufacturers within countries that are not CU/FTA partners are treated the same without taking account of differences between them. The same is true of manufacturers in CU/FTA partners.

147. Indeed, even if Türkiye's allegation that the requirements underlying the IPLS "mirror" the requirements of the After Sales Regulation were taken at face value, this would still be insufficient to show the contribution of the IPLS to secure compliance with Article 58. This is because the IPLS would be merely duplicative, and Türkiye would not have demonstrated the specific contribution made by the IPLS to securing compliance.

148. Given that Türkiye has failed to establish that the IPLS and its underlying requirements make a contribution to securing compliance with Articles 1 and 58 of the LCP, it is not necessary for China to identify reasonably available alternative measures that are less trade restrictive. Nevertheless, for completeness, China notes that the LCP includes its own enforcement provisions and Article 77(10)(b) sets out specific penalties for failure to comply with Article 58.¹²⁹ Moreover, Article 77(10)(b) expressly states that these penalties may be applied to both importers and manufacturers. Since the penalties are origin-neutral, the measure would be WTO-consistent. Furthermore, given that these penalties are specifically designed to enforce Article 58, they logically would provide the same or greater level of contribution to the objective purportedly pursued by Türkiye. Finally, since these penalties are already provided for in the LCP, there are no difficulties in terms of implementation. Nor has Türkiye identified any concrete difficulties. Thus, Türkiye could use the enforcement mechanisms provided in the LCP as an alternative to the import permit certificate scheme and its requirements.¹³⁰

149. The chapeau of Article XX prohibits Türkiye from applying the IPLS and its underlying requirements "in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail". Türkiye has failed to demonstrate that the distinction between imports and importers from FTA and CU-partners and imports and importers from non-FTA and non-CU partners is not arbitrary or unjustifiable.

N. Türkiye Has Failed to Establish That the Discriminatory Treatment of Chinese Imported Vehicles Under the IPLS Is Justified by Article XXIV of the GATT 1994

150. Türkiye fails in its attempt to establish that the discriminatory treatment of Chinese vehicles under the IPLS is justified by Article XXIV of the GATT 1994. Türkiye has not demonstrated that the IPLS was introduced upon the formation of Türkiye's CU and FTAs, nor has Türkiye demonstrated that the formation of the CU or those FTAs would have been prevented if Türkiye were not allowed to introduce the measure at issue. China also shows that Türkiye's proposed test is not supported by the text or context of Article XXIV.

151. In considering the applicability of Article XXIV, it is important for the Panel to bear in mind that this is not an instance of liberalization through a CU or FTA. The IPLS is not a measure that existed before Türkiye negotiated its CU and FTAs. Türkiye did not limit the application of the IPLS following any liberalization programme within the CU or those FTAs. Rather, the IPLS is a new barrier that Türkiye adopted against third countries. As such, it is far from the type of liberalization that is intended to be covered by Article XXIV. Article XXIV was never intended to justify new barriers against non-CU or FTA partners.

152. China additionally notes that Türkiye provides exemptions from the IPLS that are unrelated to its CU or FTAs, further undermining Türkiye's claim that Article XXIV applies in this case.

153. Türkiye additionally submits that, acceptance of the *Turkey – Textiles* requirements would "freeze" trade liberalization between the RTA parties at the level prevailing at the time of

¹²⁹ Exhibit TUR-37.

¹³⁰ Panel Report, *Indonesia – Import Licensing Regimes*, para. 7.803.

formation.¹³¹ Türkiye's concerns are misplaced. The IPLS, the measure at issue, in this case, is not "liberalizing". On the contrary, the IPLS is a new restriction introduced by Türkiye in 2023 on imports from China and non-CU and FTA partners. There is nothing in the IPLS that involves further liberalization in the context of its existing CU or FTAs.

154. As required by the chapeau of Article XXIV:5, Türkiye must demonstrate that: (i) the measure at issue was introduced upon the formation of a customs union or free trade area; and (ii) the formation of that customs union or free trade area would be prevented if it were not allowed to introduce the measure at issue. The Appellate Body underscored that the Article XXIV defense "is available only when [the] two conditions are fulfilled".¹³² Panels are expected "to require a party to establish that both of these conditions have been fulfilled".¹³³ Neither condition has been met in this case.

155. The exemption from the IPLS was not introduced upon the formation of Türkiye's FTA with EFTA and the UK or customs union with the EU. Thus, the formation of these FTAs and customs union could not have been prevented if Türkiye were not allowed to introduce the measure at issue. Türkiye has the burden of justifying the measure under Article XXIV:5¹³⁴, and it has failed to satisfy this burden. Consequently, the Panel should reject Türkiye's defense.

O. Türkiye Has Failed to Substantiate Its Defense Under the Enabling Clause

156. With the exception of the FTA with Egypt, Türkiye has not notified any of the FTAs pursuant to paragraph 4(a) of the Enabling Clause.¹³⁵ Türkiye argues that the notification cannot be dispositive as to the provision that may be invoked in dispute settlement.¹³⁶ However, the provision under which the parties to an FTA choose to notify the FTA surely must reflect the parties' understanding that the FTA was negotiated pursuant to that provision. Türkiye has not provided any evidence that it made a mistake or that it has since tried to correct its notification. Furthermore, most of these FTAs expressly state that they establish a free trade area consistent with Article XXIV and do not refer to the Enabling Clause.¹³⁷ The fact that parties included such provision reflects their common understanding that they were proceeding under Article XXIV. There is no basis to infer that they were instead acting pursuant to the Enabling Clause. Türkiye cannot seek to ex-post change that understanding and do so unilaterally. Furthermore, Türkiye cannot now seek to justify the IPLS on the basis of the Enabling Clause when it did not rely on the Enabling Clause to negotiate those FTAs and when those agreements have not been notified under paragraph 4(a) of the Enabling Clause.

P. The Panel Should Reject Türkiye's Jurisdictional Argument Relating to Article I:1

157. Türkiye relies on the Appellate Body report in *EC – Tariffs Preferences* to support its objection. However, the Appellate Body's analysis in that case does not support Türkiye's position in this case. First, as China and several third parties have noted previously, the Appellate Body's reasoning in *EC – Tariff Preferences* focused on the specific nature of the measure at issue. The dispute concerned preferences granted by the EU to developing countries under its Generalized System of Preferences Scheme. The measure at issue in this dispute is not a preference scheme for developing countries and differs significantly from such schemes. Unlike the preference scheme in *EC – Tariff Preferences*, the IPLS imposes obligations on WTO Members that are not exempt from the measure. Furthermore, the discrimination favours several developed Members, including the European Union.

158. Second, the provision of the Enabling Clause at issue here is not the same as in *EC – Tariff Preferences*. In this dispute, Türkiye is invoking paragraph 2(c) of the Enabling Clause, while, in *EC – Tariff Preferences*, the Appellate Body addressed paragraph 2(a), "which provides for GSP schemes". The Appellate Body's discussion was clearly focused on preference schemes falling under

¹³¹ Türkiye's response to Panel question No. 50, para. 2.92.

¹³² Appellate Body Report, *Turkey – Textiles*, para. 58.

¹³³ Appellate Body Report, *Turkey – Textiles*, para. 59.

¹³⁴ Panel Report, *Turkey – Textiles*, para. 9.57.

¹³⁵ Exhibit CHN-42.

¹³⁶ Türkiye's response to Panel Question No. 46, para 2.56.

¹³⁷ See, for example, Türkiye's FTAs with Malaysia, Chile, and Mauritius. Exhibits CHN-43, CHN-44 and CHN-45.

paragraph 2(a)¹³⁸ and was not intended to cover other provisions of the Enabling Clause.¹³⁹ Third, there is no evidence in this case that China was on notice that Türkiye intended to raise the Enabling Clause as a defense. Indeed, Türkiye had actually made statements suggesting the opposite.

159. Turning to Article XXIV, there is no basis for Türkiye's jurisdictional objection. China properly raised its claim under Article I:1 of the GATT 1994 in accordance with Articles 6 and 7 of the DSU. It is well-established that it is the respondent's responsibility to raise any defenses.¹⁴⁰ Türkiye does not identify any textual support in Article XXIV or in the DSU to support its erroneous contention that the complaining party must include Article XXIV in its panel request.

Q. Conclusion

160. For the reasons set out above, China respectfully requests that the Panel find that Türkiye's measures are inconsistent with Articles I:1, II:1(a) and (b), XI:1, X:3(a) and III:4 of the GATT 1994, and Article 2.1 of the TRIMS Agreement.

161. In accordance with Article 19.1 of the DSU, China additionally requests that the Panel recommend that Türkiye bring the measures into conformity with its obligations under the GATT 1994 and the TRIMS Agreement.

¹³⁸ See Appellate Body Report, *EC – Tariff Preferences*, paras. 113-114 and 116-118.

¹³⁹ Appellate Body Report, *Brazil – Taxation*, para. 5.362 (quoting Appellate Body Report, *EC – Tariff Preferences*, para. 117).

¹⁴⁰ Appellate Body Report, *US – Wool Shirts and Blouses*, p. 14.

ANNEX B-2**INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF TÜRKİYE****1 INTRODUCTION**

1.1. This dispute ostensibly concerns a range of measures taken by Türkiye to regulate the motor vehicle sector. However, in reality, this dispute concerns systemic issues that go to the heart of a WTO Member's ability and policy space under WTO law to take trade-related actions in pursuance of its long-term climate and other environmental goals, in particular in its motor vehicle sector. The policy space to pursue these fundamental objectives is especially important when, as in this case, an importing developing WTO Member is faced with an influx of imports that stifle its ability to pursue a green transition, both in the production and in the consumer uptake of alternative fuel motor vehicles.

1.2. In recent decades, the world has grappled with the consequences of climate change and environmental degradation. Türkiye has also had to come to terms with the urgency of protecting its natural resources. Türkiye's environmental policies have evolved considerably over time, reflecting both its domestic priorities and its international commitments.

1.3. Türkiye's approach is shaped by rapid industrialization, urbanization, and growing awareness that sustainable development is crucial for the well-being of future generations. Against this background, a central facet of Türkiye's industrialization has been its vehicle sector. This sector has experienced substantial growth over the past few decades and today plays a pivotal role in the country's economy, by providing jobs, contributing to exports, and shaping the urban development. However, with the rise of vehicle ownership and the expansion of road networks, the environmental impact has also become more pronounced. The transport sector has emerged as one of the largest sources of air pollution in Türkiye, contributing significantly to carbon emissions. These environmental concerns have driven the government to adopt policies aimed at both curbing pollution and promoting sustainable alternatives in the automotive sector.

1.4. In response to the environmental impact of vehicle industrialization, Türkiye has increasingly focused on integrating cleaner technologies, such as electric vehicles (EVs) and hybrid cars, into its national strategy. The government has introduced incentives for EV production and sales, alongside infrastructure developments such as electric vehicle charging stations.

1.5. Despite these efforts, the transition to a greener transport sector faces challenges. These include high costs, limited consumer awareness, and the dominance of traditional internal combustion engine vehicles. The measures challenged in this dispute form part of a comprehensive set of policies to achieve Türkiye's EV industrialization. Türkiye, like other WTO Members, cannot rely exclusively on imports of green technology (including EVs and hybrid vehicles) to achieve its climate goals. Rather, Türkiye needs to develop its own EV industry if it wants to achieve a real and sustainable green transition in its territory.

1.6. Targeted tariffs on green technology imports like EVs and hybrid cars constitute a legitimate policy instrument to accelerate domestic environmental innovation and the development of a national EV industry while fulfilling critical climate objectives. Targeted tariffs on combustion engine vehicles will also contribute to Türkiye's environmental goals, as they restrict domestic consumption of fuel vehicles. In this context, China presents a particular challenge for achieving the green transition of the Turkish car industry: China is by far the largest individual source of non-FTA imports of EVs in Türkiye. It has consistently undertaken notable industrial policy measures that target EV production, including substantive subsidization that has created excess capacity, dominance and distortions in global markets. Even developed economies such as United States, Canada, and the EU have had to address this issue by means of specific measures. It is therefore only natural that Türkiye's additional customs duties reflect a concern about EV imports from sources other than strategic partner countries, including from China. EV import flooding from these sources prevents the development of the Turkish EV industry and the required green transition of the transport sector. Excessive import dependence on EVs undermines national capacity to control this strategic sector,

potentially creating vulnerabilities in supply chains and technological advancement. For all of these reasons, China's challenge against Türkiye's Additional Duties should be rejected.

1.7. Another aspect of this case concerns the ability of a developing importing Member to effectively enforce its internal regulations, especially consumer protection legislation, including by means of measures taken at the border. For this reason, China's challenge against Türkiye's import permit licensing scheme (IPLS) should be rejected. The IPLS is a legitimate means to ensure consumer protection and consumer safety, in an area in which novel technologies pose hitherto unfamiliar risks and require both governmental intervention as well as a particular degree of caution and care on the part of manufacturers and importers to ensure safety of their products and adequate respect for consumer rights.

1.8. The IPLS is designed to bridge the gap in consumer protection between imported and locally manufactured electric and hybrid vehicles. Contrary to China's assertions, the IPLS does not impose any new obligations on importers and their products. Instead, it merely restates the obligations already applicable under domestic legislation, *inter alia*, the After Sales-Services Regulation, as well as the Type Approval and Market Surveillance Regulation for Motor Vehicles (Type Approval Regulation) and the Regulation on Waste Batteries and Accumulators, which together serve as the baseline framework for consumer protection, product safety, and environmental protection. The IPLS aligns seamlessly with Türkiye's broader EV and hybrid vehicle policy framework. By ensuring that imported and locally manufactured vehicles meet the same consumer-protection and other regulatory standards, it supports domestic production and maintains a level playing field. As part of Türkiye's integrated approach, the IPLS complements the Additional Duties by reinforcing the conditions necessary for infrastructure development and consumer uptake, resulting in a comprehensive, coherent policy ecosystem.

2 THE ADDITIONAL DUTIES

2.1 China's claim under Article I of the GATT 1994 is unfounded

2.1. China claims that Türkiye's Additional Duties on electric, hybrid, and combustion engine vehicles are inconsistent with the most-favoured nation obligation under Article I:1 of the GATT 1994.¹

2.2. In its first written submission, China argued that Türkiye's Additional Duties on EVs are inconsistent with Article I:1 of the GATT 1994 because they apply only to EVs from China, while imports from other WTO Members face lower or no such duties.² China also challenged Türkiye's Additional Duties on other vehicles³, claiming that Türkiye imposes higher tariffs on Chinese vehicles than on those from other WTO Members.⁴ China's claims were based on the measures in force at the time of the Panel's establishment, which were Türkiye's Presidential Decisions No. 3350, 3351, and 9392.⁵ For this claim, Türkiye does not dispute the technical inconsistency of the Additional Duties with Article I:1, but argues that the Additional Duties are justified under Articles XX(b) and XX(g), as set out below in section 2.3.

2.3. Following the changes introduced with Presidential Decision No. 10436, China modified the substance of its claim. Although China's claim is still based on Article I:1 of the GATT 1994, China now challenges the fact that Türkiye's RTA partners are not subject to the Additional Duties.⁶ Thus, China requests the Panel to make its findings with respect to the challenged measures as modified by Presidential Decision No. 10436 on the basis of an entirely new rationale and new arguments.

¹ China's first written submission, paras. 87 and 252.

² China's first written submission, para. 87.

³ China defines these "other vehicles" as "vehicles within subheadings 8703.21 through 8703.50" and "plug-in hybrid vehicles within subheadings 8703.60 and 8703.70". (China's first written submission, para. 252).

⁴ China's first written submission, paras. 252-272.

⁵ China's first written submission, section III. China adds other legal instruments to their factual background (Presidential Decisions 5902, 6626, 6886, 8044, 8043, 8639, and 8724), but they have been either superseded by the Presidential Decisions cited above or have no factual relevance for the present dispute.

⁶ China's response to Panel question No. 2, para. 4.

2.4. China requests the Panel to make findings both on the basis of the original measures as they stood at the time of the Panel's establishment, prior to the amendment by Presidential Decision No. 10436, and on the basis of the measures as amended.⁷

2.5. The Panel should reject China's request to rule on the original, now expired version of Türkiye's Additional Duties, given that they are no longer in effect.⁸ Both Türkiye and China agree that the panel has jurisdiction to rule on the amended measures, because they do not change the essence of the original measures and are covered by China's panel request. However, contrary to China's request, a finding on the old, expired version of the measure serves no useful purpose and will not contribute to resolving the dispute.⁹ It is also a well-established principle in WTO practice that, once a panel assesses amended measures, making findings on previous measures that no longer exist "amount[s] to a purely academic exercise"¹⁰ and serves no purpose in resolving a dispute. Accordingly, there is no need to rule on the original form of the measures. At a minimum, China bears the burden of demonstrating why such a ruling would be necessary or relevant, and what practical purpose it would serve. China has not done so. Previous caselaw on this issue demonstrates that, as a basic rule, panels focus on amended measures and generally consider that ruling on the original measures is unnecessary.¹¹

2.6. In any case, for the three categories of vehicles, Türkiye's Additional Duties are not incompatible with the most-favoured nation obligation in Article I:1 of the GATT 1994, because they are justified under Articles XX(b) and XX(g) of the GATT 1994, as explained in section 2.3 below.¹² Moreover, in response to China's newly-formulated claim under Article I:1 of the GATT 1994, Türkiye puts forward a defence under Article XXIV of the GATT 1994 and under the Enabling Clause. This defence and the parties' arguments concerning that defence are set out in section 2.4 below.

2.2 China's claim under Article II:1(b) of the GATT is unfounded

2.7. China claims that Türkiye's Additional Duties on electric vehicles, hybrid, and combustion engine vehicles are inconsistent with Article II:1(b), first sentence, because they exceed the bound rate set out in Türkiye's WTO Schedule of Concessions.¹³ As a result, China claims, the duties are also inconsistent with Article II:1(a) of the GATT 1994.¹⁴ With respect to electric vehicles, China's claim concerns products falling under HS subheadings 8703.80.10.00.21, 8703.80.10.00.29, and 8703.80.10.00.39. With respect to "other vehicles", China's claim concerns two subsets of products: first, hybrid vehicles falling under HS subheadings 8703.40, 8703.50, 8703.60, and 8703.70, and second, traditional combustion engine vehicles falling under HS subheadings 8703.21, 8703.22, 8703.23, 8703.24, 8703.31, 8703.32, and 8703.33.¹⁵ Türkiye addresses both categories in turn.

2.2.1 China's claim under Article II:1(b) for electric vehicles

2.8. On electric vehicles, China's entire claim is premised on the incorrect assumption that the tariff lines for electric vehicles in the Sections of Türkiye's Schedule of Concessions numbered 8703.80.10.00.21, 8703.80.10.00.29, 8703.80.10.00.39 are bound. But, in reality, Türkiye has no tariff bindings for electric vehicles.¹⁶ It is undisputed that subheading 8703.90 in Türkiye's Schedule of Concessions represents a residual or "general" category.¹⁷ Legitimate expectations surrounding a concession are inherently tied to the commercial significance and the technology *as they stood at the time of conclusion of the treaty*, not as they stand today, following the unforeseen and fundamental change in the electric vehicle sector. China's interpretative approach lacks predictability and would elevate "technological neutrality" – acceptance of all technological evolution in the

⁷ China's response to Panel question No. 2, para. 6.

⁸ China's response to Panel question No. 2, para. 6; Türkiye's response to Panel question No. 1, paras. 1.1-1.20.

⁹ Türkiye's second written submission, para. 2.10.

¹⁰ Panel Report, *Thailand – Cigarettes (Philippines)* (Article 21.5 – *Philippines II*), para. 7.473.

¹¹ Türkiye's second written submission, section 2.2.2; opening statement at the second hearing of the Panel, paras. 2.1-2.2.

¹² Türkiye's first written submission, paras. 2.5-2.6; opening statement at the first meeting of the Panel, para. 2.2.

¹³ China's first written submission, para. 119.

¹⁴ China's first written submission, para. 144.

¹⁵ Türkiye's first written submission, para. 2.19.

¹⁶ Türkiye's first written submission, section 2.3.3.1.

¹⁷ Türkiye's second written submission, para. 2.41.

interpretation of treaty terms – over Members' intentions and expectations at the time of conclusion of the treaty. This has never been recognized as an interpretative principle in the WTO.¹⁸ Technological progress that was entirely unforeseen when tariff commitments were entered into cannot be allowed to upend the fundamental commercial and legal balance of Members' concessions and commitments, without giving Members an opportunity for further negotiations and to update those commitments.¹⁹

2.9. Moreover, Türkiye is currently in the process of transposing its Schedule from HS 2002 to HS 2007. The numerous technical questions that need to be resolved in this process are best discussed and resolved in the appropriate setting in the WTO, in the interaction between Türkiye, the WTO Secretariat, and other Members. Accordingly, Türkiye respectfully submits that a WTO panel is not the appropriate setting to address and resolve these questions. A detailed analysis of this issue by the Panel against the background of an ongoing transposition process would necessarily prejudice the outcome of this transposition process and would also interfere with the institutional balance and the division of tasks between different WTO bodies.²⁰ Türkiye does not dispute the Panel's jurisdiction under Articles II:1(a) and (b) of the GATT 1994.²¹ Nevertheless, the Panel should decline to exercise its jurisdiction in this instance, as doing so is unnecessary to ensure a "prompt" and "satisfactory" settlement within the meaning of the DSU.²²

2.10. The HS transposition process is not merely a technical exercise, but may require discretionary decision-making by the transposing Member and, ultimately, by other WTO Members who have to agree to the certification of the resulting schedule. WTO Document G/MA/W/158/Rev.2 confirms that transposition files are released for multilateral review, allowing Members to raise any relevant issues regardless of the HS versions involved.²³ The process is designed to permit discretion rather than being purely mechanistic, as shown by the General Council Decision on HS 2007 transpositions, which provides multiple methodologies for combining tariff lines with different bound rates, with the final choice between them requiring Members' agreement.²⁴

2.11. More generally, the HS transposition process offers a platform to WTO Members to discuss any issue pertaining to their schedules, including concerns about the issues identified by Türkiye, such as technological developments that have effectively rendered the scope of the original tariff concessions obsolete and have fundamentally changed their factual and legal context.²⁵ It was also suggested that Article XXVIII renegotiations could be initiated to address the issue. However, Article XXVIII renegotiations are premised on the idea that a tariff binding exists, but that a Member seeks to change its binding. They also may be initiated only *after* the transposition is completed.²⁶ Accordingly, Türkiye may or may not invoke Article XXVIII renegotiations once that process is finalized, and only if Türkiye wishes to change the scope of its concessions once they have been clarified as part of the transition process.²⁷

2.2.2 China's claim under Article II:1(b) for hybrid vehicles

2.12. Türkiye's WTO goods schedule contains no tariff subheadings that refer to hybrid vehicles. This is because Türkiye's WTO goods schedule is based on HS 2002, whereas hybrid vehicles were introduced into the HS system only in the HS 2017 version.²⁸

¹⁸ Türkiye's second written submission, section 2.3.2.2.

¹⁹ Türkiye's opening statement at the first meeting of the Panel, para. 2.5; opening statement at the second meeting of the Panel, para. 2.6.

²⁰ Türkiye's first written submission, paras. 2.16-2.17; opening statement at the first meeting of the Panel, para. 2.6; second written submission, section 2.3.2.1; opening statement at the second meeting of the Panel, para. 2.8.

²¹ Türkiye's response to Panel question No. 15, para. 1.33.

²² Türkiye's second written submission, section 2.3.2.4.

²³ Türkiye's response to Panel question No. 10, para. 1.38.

²⁴ Türkiye's response to Panel question No. 10, para. 1.21.

²⁵ Türkiye's response to Panel question No. 11, paras. 1.24-1.28; opening statement at the second meeting of the Panel, para. 2.9.

²⁶ General Council Decision WT/L/673, para. 15.

²⁷ Türkiye's response to Panel question No. 11, paras. 1.27-1.28; second written submission, section 2.3.2.1.

²⁸ Türkiye's first written submission, para. 2.25; opening statement at the first meeting of the Panel, para. 2.7; second written submission, para. 2.56.

2.13. When Türkiye's WTO concessions were negotiated in 1995, hybrid vehicle technologies, just like those of EVs, were at a very early technological stage and lacked commercial relevance. Their rapid subsequent development could not have been foreseen. China's arguments that hybrid vehicles are covered by Türkiye's Uruguay Round concessions thus amounts to an attempt to read post-2017 developments retroactively into Türkiye's 1995 Schedule. This disregards the temporal limits of WTO Schedules. Schedules must be read in the light of the drafter's intention prevailing at that point in time.²⁹

2.14. As noted above, Türkiye is currently in the process of transposing its schedule from HS 2002 to HS 2007. Türkiye takes the view that it has no bindings for any tariff lines concerning hybrid vehicles. Numerous questions arise in this currently ongoing process, both technical as well as discretionary, that, for the reasons explained above, need to be resolved in a comprehensive manner. These issues are best discussed in the appropriate setting in the WTO, in the interaction between Türkiye, the WTO Secretariat, and other Members, rather than by a WTO panel.³⁰

2.2.3 China's claim under Article II:1(b) for combustion engine vehicles

2.15. China has also failed to make a *prima facie* case for its claims regarding combustion engine vehicles, because it has not clearly identified the bound tariff subheadings corresponding to those vehicles.³¹ The six-digit subheadings 8703.21, 8703.22, 8703.23 and 8703.24 in Türkiye's WTO goods schedule contain more disaggregated subheadings, some of which are subject to tariff bindings and some of which are unbound. Thus, China's description of the products for which it claims a WTO violation lacks sufficient detail.

2.16. China relies on Exhibit CHN-35 and asserts that the tariff lines listed in Exhibit CHN-35 – specifically, the column labelled "*Correlation with Turkish Schedule of Concessions*" – encompass all bound tariff lines that, according to China, Türkiye has exceeded in relation to "other vehicles", which is a category that includes also combustion engine vehicles.³² However, China still fails to identify the scope of its claim concerning combustion engine vehicles, for two reasons.³³

2.17. First, the tariff subheadings in Exhibit CHN-35 in the column labelled "*Correlation with Turkish Schedule of Concessions*" correspond to a range of combustion engine vehicles. All of these tariff subheadings are bound, but none of them is subject to Additional Duties, under either the expired measures or under the recent amendment. Therefore, Exhibit CHN-35 does not speak to China's Article II claim concerning combustion engine vehicles.³⁴ Second, China itself acknowledges that some tariff lines pertaining to combustion engine vehicles that it has identified are unbound. China refers to six-digit tariff lines that are "entirely or partially " bound and requests the Panel to find a violation for those tariff lines "to the extent" that these tariff lines are bound.³⁵ This language is not enough to identify the relevant tariff lines. A finding of breach under Articles II:1(a) and (b) requires the identification of the specific bound tariff lines and evidence that the applied duties exceed those bound rates. In the absence of any such identification and comparison, China's claim remains unproven.³⁶ In any event, Türkiye has demonstrated that none of the HS subheadings covered by Türkiye's Additional Duties, as applied to combustion engine vehicles, is bound.³⁷

2.3 The Additional Duties are justified under Article XX of the GATT 1994

2.18. In the event that the Panel were to find that the Additional Duties are inconsistent with Article I or II of the GATT 1994, the Additional Duties are nevertheless justified under Articles XX(b) and XX(g) of the GATT 1994. The Additional Duties are part of an integrated policy framework aimed at protecting human, animal, and plant life or health, and at conserving exhaustible natural resources,

²⁹ Türkiye's second written submission, para. 2.56.

³⁰ Türkiye's first written submission, para. 2.26.

³¹ Türkiye's first written submission, paras. 2.20-2.23; opening statement at the first meeting of the Panel, para. 2.8; second written submission, section 2.3.4.

³² China's response to Panel question No. 17, para. 21.

³³ Türkiye's second written submission, para. 2.58.

³⁴ Türkiye's second written submission, para. 2.59.

³⁵ China's response to Panel Question 18, para. 22; China's second written submission, para. 126.

³⁶ Türkiye's second written submission, para. 2.60.

³⁷ Türkiye's second written submission, paras. 2.61-2.62; opening statement at the second meeting of the Panel, para. 2.11.

through the reduction of greenhouse gas (GHG) emissions in the transport sector.³⁸ The duties have thus been adopted in conjunction with domestic measures restricting the use of fossil fuel vehicles and providing incentives for the production and use of EVs. The duties are also necessary and proportionate to the health and environmental objectives pursued. Finally, they are being applied in an even-handed manner that does not constitute arbitrary or unjustifiable discrimination, or a disguised restriction on international trade and, therefore, comply with the requirements of the *chapeau* of Article XX.³⁹

2.19. China consistently ignores this integrated policy framework, although precisely this context is essential to assess properly its necessity and contribution to the attainment of Türkiye's overarching health and environmental objectives.⁴⁰

2.3.1 Justification under Article XX(b) of the GATT 1994

2.3.1.1 The design of Türkiye's measures

2.20. Türkiye's Additional Duties have been designed to protect human, plant, or animal life or health, within the meaning of Article XX(b) of the GATT 1994. Türkiye's measures are aimed at fostering the development and uptake of EVs and hybrid vehicles in Türkiye and are effective in achieving this objective. This means that there is a nexus between these measures and the fight against climate change, which largely satisfies the "not incapable of" standard set out in WTO caselaw. Climate change, of course, has a direct and negative impact on public health and the environment.⁴¹

2.21. The development of a national electric vehicle sector is expected to assist Türkiye in fulfilling its international obligations to reduce the emissions in the transport sector. This, in turn, will contribute to reducing Türkiye's total GHG emissions. Climate change demands unprecedented speed in technological innovation and deployment. The unique characteristics of green technologies – including their extensive positive externalities, steep learning curves, and first-mover advantages – justify temporary measures to nurture domestic industries that will ultimately contribute to favourable environmental outcomes at both the national and the global levels.

2.22. Türkiye's Additional Duties are part of a comprehensive set of policies that includes incentives to encourage EV adoption, such as tax deductions, parking facilities, and credit advantages, as well as incentives to encourage EV production, like state loans, tax reliefs, and grants to support charging infrastructure. All of these measures aim to combat GHG emissions by facilitating the green transformation of the national car industry towards a low-carbon, resource-efficient, and circular economic structure. Türkiye considers that the development of a national electric vehicle brand and charging infrastructure, along with the electrification of shared vehicles, has the potential to contribute significantly to emission reductions.⁴²

2.23. Türkiye, like other WTO Members, cannot rely exclusively on imports of green technology (including EVs and hybrid vehicles) to achieve its climate goals. Rather, Türkiye must develop its own EV industry if a real and sustainable green transition is to be achieved. The development of a national EV industry is key to fostering the development of an adequate charging infrastructure, which, in turn, will make EVs more appealing to consumers. EVs still make up a small percentage of the total Turkish vehicle fleet, and a key element in promoting the acceptance and acceptability of EVs and hybrid vehicles is the availability and reliability of a charging infrastructure.⁴³

2.24. There are many reasons for this link between domestic production, a better charging infrastructure and, ultimately, greater consumer uptake of clean energy cars. A fully import-dependent EV sector lacks the necessary incentives to invest in the charging infrastructure that

³⁸ Türkiye's first written submission, section 2.4; opening statement at the first meeting of the Panel, section 2.1.1; response to Panel question No. 20, paras. 1.58-1.59; second written submission, para. 2.64.

³⁹ Türkiye's first written submission, section 2.4.1.2; opening statement at the first meeting of the Panel, paras. 2.21-2.22; response to Panel question No. 21, paras. 1.90-1.92; second written submission, para. 2.64.

⁴⁰ Türkiye's second written submission, para. 2.67.

⁴¹ Türkiye's first written submission, para. 2.71.

⁴² Türkiye's first written submission, para. 2.73.

⁴³ Türkiye's first written submission, para. 2.74.

consumers require to transition from internal-combustion-engine cars to electric vehicles. Domestic EV production also connects industrial capacity with mobility needs, promotes technological self-sufficiency, and strengthens national climate resilience, thereby laying the foundation for a sustainable transportation ecosystem. Domestic EV production also tends to align with broader economic and environmental goals, encouraging comprehensive strategies that include infrastructure rollout. Moreover, domestic manufacturers are in a better position than foreign-based manufacturers to tailor vehicles to local electrical grids and urban designs.⁴⁴

2.25. Contrary to China's arguments, the "design" test does not imply a detailed assessment of the risk in the particular circumstances of the case at hand, nor an in-depth assessment of the contribution of the measure towards mitigating that risk. Rather, the "design" test is a "rough filter" of sorts, designed to eliminate measures that can, under no circumstances, be said to protect against a particular kind of risk. The design test does not imply, for instance, an assessment of the magnitude or likelihood of the risk, nor a detailed assessment of the measure's contribution to the stated objective or the precise manner in which the measure contributes to the mitigation of a risk. That is part of the "contribution" test, which is an analytical step that follows the "design" test.⁴⁵

2.26. In the case at hand, the relevant risk is the risk that arises for human life or health, and the environment more generally, from high or not reduced GHG emissions, specifically from increasing or non-reduced CO₂ emissions from motor vehicles and an insufficient uptake of EVs or hybrid vehicles.⁴⁶ Even where considered under the much more exacting contribution criterion of the weighing and balancing test, the Additional Duties clearly make a significant contribution to the objective of ensuring increased uptake of alternative fuel vehicles and to limiting the use of combustion engine vehicles. The Additional Duties are "not incapable" of fostering the development and use of electric and hybrid vehicles, thereby supporting efforts to address climate change and its adverse impacts on health and the environment – especially when viewed in the context of Türkiye's broader national policies. Türkiye's measures are therefore much more than just "not incapable" of addressing that risk.⁴⁷

2.27. China objects to Türkiye's description of the "design" test as reflecting the "relationship" between the measure to be justified and the protection of the relevant policy objective. But this "relationship" terminology has been introduced and used by the Appellate Body itself.⁴⁸ Moreover, China appears to seek to eliminate the deference that these terms imply, for the benefit of the responding Member. The Panel should reject these arguments and ensure that the responding Member has sufficient opportunity to invoke Article XX and benefit from the policy space that this provision offers.⁴⁹

2.3.1.2 The necessity test under Article XX(b) of the GATT 1994

2.28. Türkiye's Additional Duties are intended to reduce the country's dependence on imports, thereby fostering the establishment and development of a domestic clean vehicle industry. A robust domestic EV industry is expected to, in turn, support the enhancement of EV charging infrastructure. An improved charging infrastructure will help persuade Turkish consumers to adopt EVs. Greater EV adoption, alongside disincentives for the use and production of more polluting vehicles, will contribute to the overarching goal of reducing CO₂ emissions – an objective that aligns with the protection of human, animal, or plant life or health under Article XX(b).⁵⁰

2.29. China's formulation of the risk does not appear to be fundamentally different from Türkiye's. China refers to a risk "that CO₂ emissions in the transportation sector will increase". Türkiye prefers to refer to the risk that "CO₂ emission in the transportation sector will not decrease in a sufficient manner (as they otherwise would)" or to the risk of "insufficient ability to reduce CO₂/GHG

⁴⁴ Türkiye's first written submission, para. 2.75.

⁴⁵ Türkiye's response to Panel question No. 55.

⁴⁶ Türkiye's responses to the Panel's question Nos. 25-26, para. 1.120.

⁴⁷ Türkiye's first written submission, paras. 2.69-2.78; second written submission, paras. 2.79-2.82; response to Panel question No. 55.

⁴⁸ Appellate Body Report, *Colombia – Textiles*, para. 5.68.

⁴⁹ Türkiye's comments to China's response to Panel question No. 55, para. 1.8.

⁵⁰ Türkiye's first written submission, paras. 2.82 and 2.85-2.88; response to Panel question No. 24.

emissions". Thus, viewed in isolation, the parties do not differ significantly in how they articulate the risk that is at the heart of Türkiye's regulatory effort.⁵¹

2.30. The key difference between the parties is that China appears unwilling to recognize the logic of Türkiye's "causal chain" for hybrid vehicles and EVs. Türkiye is acting upon the fact that the extremely high volume of imported hybrid vehicles and EVs stands in the way of ensuring adequate GHG reduction, because these imported vehicles stymie the establishment and operation of a viable domestic EV producing industry, which in turn has profound implications for the development of an adequate charging infrastructure, which is a *sine qua non* condition for consumers to embrace hybrid vehicles and EVs.

2.31. China ignores this argument and appears to argue that, for Türkiye's measure to be justified as making a contribution to Türkiye's health and environmental goals, the EVs and hybrid vehicles themselves would have to immediately and directly lead to an increase in the amount of CO₂/GHG emissions (by being put into operation on Turkish roads). However, that is incorrect. As the *US – Shrimp* and *Brazil – Retreaded Tyres* disputes demonstrate, the targeted product needs not, directly and immediately, by virtue of its physical characteristics and operation, constitute an immediate risk for the protected interest or policy objective. Rather, the risk that the importation of a product entails for a protected interest or public policy goal may manifest itself in a different manner.⁵² This is precisely the case here. Although the imported EVs do not themselves directly contribute to CO₂/GHG emissions, this risk arises through the causal chain explained by Türkiye, such that the imported hybrid and EV vehicles ultimately prevent Türkiye from achieving its CO₂/GHG emission reduction objective.⁵³

2.32. The contribution of the measure to its stated objective must also be seen against the background of the Türkiye's comprehensive suite of measures aiming at that objective. The *Brazil – Retreaded Tyres* case confirms that a measure need not achieve its objective entirely on its own, as long as it makes a material contribution within a comprehensive, multi-step policy framework aimed at protecting health or the environment.⁵⁴ Türkiye undertakes a broad range of measures that, like the Additional Duties, make a significant contribution to the health- and climate-related objective by promoting the establishment and development of the domestic clean-vehicle industry as well as supporting the enhancement of domestic charging infrastructure and providing incentives for the adoption of hybrid vehicles and EVs by Turkish consumers.⁵⁵ This comprehensive suite of measures – through each measure contributing on its own as well as jointly with synergies – advance the goal of reducing CO₂ emissions, thereby justifying the measure under Article XX(b).⁵⁶

2.33. China assumes that there is no link between import dependence, infrastructure development, and consumer uptake of EVs. As evidence, China cites the example of countries with high EV adoption that are fully import-dependent. In particular, China refers to Norway – a country without any domestic automotive industry – where EVs have accounted for over 80% of vehicle sales in recent years.⁵⁷ To support this claim, China submits the entire IEA *Global EV Outlook 2025* report, without identifying any specific section that substantiates its position.⁵⁸

2.34. This approach is selective and misleading. While it is true that Norway has made significant progress in EV adoption, its situation is unique and not representative of other countries, including Türkiye. Norway has never had or sought to maintain a domestic car industry. Moreover, as one of the wealthiest countries in the world, Norway has the financial capacity to invest heavily in charging infrastructure and consumer incentives without relying on domestic industry participation. Its success, therefore, cannot be taken as evidence against Türkiye's argument, or used to generalize the relationship between import dependence and EV deployment in other contexts.⁵⁹

⁵¹ Türkiye's response to Panel question No. 26.

⁵² Appellate Body Report, *Brazil – Retreaded Tyres*, para. 153 (referring to Panel Report, *Brazil – Retreaded Tyres*, paras. 7.126-7.142), and 155.

⁵³ Türkiye's response to Panel question No. 26.

⁵⁴ Türkiye's first written submission, paras. 2.90-2.91.

⁵⁵ Türkiye's first written submission, para. 2.95; response to Panel question No. 26.

⁵⁶ Türkiye's response to Panel question No. 26.

⁵⁷ Exhibit CHN-37.

⁵⁸ International Energy Agency, "Global EV Outlook 2025", (Exhibit CHN-38).

⁵⁹ Türkiye's response to Panel question No. 23; second written submission, paras. 2.83-2.89.

2.35. In fact, the very IEA report that China submits undermines its position. According to the report, China, the European Union, and the United States – three of the world's largest EV producers – together account for over two-thirds of global EV sales.⁶⁰ Far from refuting Türkiye's point, this data supports the argument that domestic production capacity plays a significant role in facilitating infrastructure development and consumer uptake of EVs.⁶¹

2.36. China alleges incorrectly that the largest EV charging networks in Türkiye are owned by companies that do not manufacture vehicles.⁶² To support this claim, China relies on an excerpt from the website of Eşarj, one of Türkiye's leading investors in charging infrastructure. The excerpt states that Eşarj is wholly owned by EnerjiSA, an energy company. However, this information is incomplete and misleading. EnerjiSA is a subsidiary of Sabancı Holding, which also holds ownership in TEMSA, a Turkish manufacturer of electric vehicles. Thus, contrary to China's assertion, Eşarj is ultimately part of a corporate group that includes an EV manufacturer.⁶³

2.37. China also asserts that Türkiye's Additional Duties increase the cost of EVs in Türkiye, thus discouraging Turkish consumers from switching from fossil fuel vehicles to EVs.⁶⁴ China puts forward no evidence to support its proposition that the Additional Duties will increase EV prices⁶⁵, and puts forward a speculative theory about higher EV prices in order to make the argument that Türkiye's strategy will decrease overall EV uptake. But that is both incorrect as a conceptual point and is also refuted by data from the Turkish market. From the perspective of Turkish consumers, it is not (only) the purchase price of an EV that shapes the decision whether to buy an EV. Rather, it is the *overall cost of operating an EV*, meaning the cost of purchasing, using, and maintaining, an EV. Türkiye is pursuing a comprehensive strategy to promote EV and hybrid uptake, recognising that consumers of a relatively new technology require additional incentives. This is corroborated by the fact that in Türkiye, EV consumption has consistently risen over the past years.⁶⁶

2.38. China also assumes that imports from countries subject to the Additional Duties could simply be replaced by imports from countries not subject to those duties.⁶⁷ But the Additional Duties are highly unlikely to have any significant substitution effect. The industrial reality is that Türkiye's primary RTA partners – most notably the EU – were already the main importers and significant producers in the Turkish EV market prior to the measure. No significant shift toward alternative RTA suppliers is economically plausible under these conditions. This is borne out by China's own import data, which shows that the ratio of imports from RTA vs. non-RTA sources remained the same between 2023 and 2024.⁶⁸

2.39. Although Türkiye's Additional Duties on EVs and other vehicles may have an impact on imported vehicles, they do not constitute a direct trade barrier with restricting or limiting effects on imports like import bans or quotas. In that sense, the measures are significantly less trade restrictive than a range of other conceivable measures. In comparison with bans or quotas, customs duties do not prevent imports from entering the market and do not limit their quantity in any way.⁶⁹ In this dispute, China has supplied no arguments or evidence about the competitive conditions on the Turkish market. Hence, there is no basis for China's assertion that the Additional Duties – by their design – have a "high" trade-restrictive effect. To the contrary, Türkiye submits that the Turkish market for EVs and hybrid vehicles is characterized by limited price elasticity, because at present, EVs and hybrid vehicles are predominantly purchased by higher-income consumers and corporate fleets, whose price sensitivity is relatively low. These buyers typically prioritize technology, brand reputation, operating cost savings, and environmental considerations over the purchase price. In addition, import duties are counterbalanced by factors other than the purchase price that sustain

⁶⁰ International Energy Agency, "Global EV Outlook 2025", (Exhibit CHN-38), pp. 16 and 31-32 (referred to in Türkiye's response to Panel question No. 23).

⁶¹ International Energy Agency, "Global EV Outlook 2025", (Exhibit CHN-38), pp. 14 and 118 (referred to in Türkiye's response to Panel question No. 23).

⁶² China's opening statement at the first meeting of the panel, para. 23.

⁶³ Türkiye's response to Panel question No. 23; Exhibit TUR-95.

⁶⁴ China's opening statement at the first meeting of the Panel, paras. 15-16.

⁶⁵ Türkiye's opening statement at the second meeting of the Panel, para. 2.16.

⁶⁶ Türkiye's response to Panel question No. 56.

⁶⁷ China's opening statement at the first meeting of the Panel, paras. 15-16.

⁶⁸ Türkiye's response to Panel question No. 56.

⁶⁹ Türkiye's first written submission, paras. 2.98-2.100.

both consumer demand and importer interest, such as fuel and energy cost advantages and reduced rates under the Special Consumption Tax Law.⁷⁰

2.40. The second part of the necessity test consists of examining whether a reasonably available alternative measure exists that could achieve the stated objective at the level of protection chosen by the responding Member, but that is less trade-restrictive. In the present case, like Australia in *Australia – Tobacco Plain Packaging* and Brazil in *Brazil – Retreaded Tyres*, Türkiye employs a wide range of measures intended to boost consumer confidence in new clean vehicle technologies, in order to encourage their uptake, thereby pursuing the broader goal of promoting green technologies and a "green transition", and contributing to a successful, cutting-edge climate change policy. Türkiye wishes to note the fundamental importance of analysing the contribution – and the replaceability – of the challenged measures as part of a comprehensive regulatory policy. Finally, any proposed alternative measure must be based on a meticulous analysis of the administrative, financial, and human resource capacities of the Government of Türkiye and must take into consideration the governance and market realities prevailing in Türkiye.⁷¹

2.41. China has put forward two allegedly less trade-restrictive alternatives to Türkiye's Additional Duties. The first alternative is to eliminate customs duties on imported EVs regardless of their origin.⁷² This proposed alternative is not meaningful and therefore not valid, because it ignores the fundamental logic of Türkiye's measures and, for this reason, cannot achieve the same outcome and the same level of protection as the challenged measures. It also fails to replicate the synergies of Türkiye's integrated policy framework, which combines fiscal incentives, production support, and infrastructure development to ensure both effective market transformation and tangible ecological benefits.⁷³

2.42. China's second alternative is to offer tax incentives to investors to build charging stations and to consumers to install charging points at home.⁷⁴ China is proposing a course of action that Türkiye is already undertaking, thereby failing entirely to acknowledge Türkiye's existing extensive efforts to promote the expansion and the functioning of the national charging station network, let alone explain what precisely China believes could be improved in these efforts and how these supposed improvements could function as an alternative to the Additional Duties. China has also failed to explain how the "regulatory gap" left in Türkiye's comprehensive suite of measures would not amount to a weakening of Türkiye's comprehensive overall policy.⁷⁵

2.3.2 Justification under Article XX(g) of the GATT 1994

2.43. Türkiye's Additional Duties are also justified under Article XX(g), as measures that are related to the conservation of exhaustible natural resources.

2.44. First, the Additional Duties fall within the range of policies concerned with the "conservation of exhaustible natural resources".

2.45. As the panel in *EU – Palm Oil (Malaysia)* observed, "global warming and climate change pose one of the greatest threats to life and health on the planet" and the objective of limiting the risk of certain greenhouse gas emissions "relates to ... the conservation of exhaustible natural resources" within the meaning of Article XX(g) of the GATT 1994.⁷⁶ The protection of clean air by reducing CO₂ emissions that contribute to climate change is an objective of the highest importance. The Appellate Body has recognized that "few interests are more 'vital' and 'important' than protecting human beings from health risks, and that protecting the environment is no less important".⁷⁷ Regarding pollutant emissions by motor vehicles, in particular, previous WTO jurisprudence has already recognized the high importance of reducing CO₂ emissions. In *Brazil – Taxation*, the panel expressly found "that the level of importance of the interests pursued by Brazil [inter alia the] reduction of

⁷⁰ Türkiye's response to Panel question No. 65;

⁷¹ Türkiye's first written submission, paras. 2.102-2.107.

⁷² China's opening statement at the first meeting of the Panel, paras. 29-30.

⁷³ Türkiye's second written submission, paras. 2.91-2.92.

⁷⁴ China's opening statement at the first meeting of the Panel, paras. 29-30.

⁷⁵ Türkiye's second written submission, paras. 2.93-2.95.

⁷⁶ Panel Report, *EU – Palm Oil (Malaysia)*, para. 7.284.

⁷⁷ Appellate Body Report, *Brazil – Retreaded Tyres*, paras. 144 and 179.

CO₂ emissions[] is *high*".⁷⁸ The transport sector is responsible for a significant share of worldwide GHG emissions. The development of a national electric vehicle sector – together with the related goal of enhancing the domestic infrastructure – is expected to help Türkiye fulfil its international obligations to reduce the emissions of the transport sector, which will also reduce Türkiye's global GHG emissions.

2.46. Therefore, promoting clean fuel vehicles and eliminating fossil-fuel vehicles is an objective that falls squarely within the range of policies designed to preserve exhaustible natural resources, in particular clean air.

2.47. Next, Türkiye's measures also "relate to" the conservation of exhaustible natural resources. For a measure to "relat[e] to" conservation in the sense of Article XX(g), there must be "'a close and genuine relationship of ends and means' between that measure and the conservation objective of the Member maintaining the measure".⁷⁹ The measure "must ... bear a substantial, close, and real relationship to the conservation objective"⁸⁰, although it need not be *primarily* aimed at conservation. Türkiye's Additional Duties make a significant actual and likely future contribution to the achievement of Türkiye's environmental, climate change-related, and public health objectives, both on their own as well as together with other elements of Türkiye's comprehensive policy. Given that the Additional Duties satisfy the "necessity" standard under XX(b), which is more exacting than the "relating to" standard under Article XX(g), the Additional Duties also logically and necessarily satisfy the "relating to" standard under Article XX(g).

2.48. Third, Türkiye's measures are "made effective in conjunction with" restrictions on domestic production and consumption, as required by Article XX(g). They must *operate jointly* with restrictions on domestic production or consumption.⁸¹ These restrictions "must place effective limitations on domestic production or consumption and thus operate so as to reinforce and complement the restrictions imposed on international trade".⁸² The Appellate Body has also referred to this as an "even-handedness" requirement.⁸³

2.49. Türkiye's environmental policies are rigorously even-handed. In particular, measures that promote the development of the EV and hybrid vehicle industry "operate jointly"⁸⁴ with the promotion of electric and hybrid vehicles, as well as with restrictions on domestic production and consumption of fuel vehicles. Türkiye is a signatory of the Glasgow Declaration, under which it has committed to phase out fossil fuel vehicles. Türkiye has pledged to cease the sale of new fossil fuel-powered vehicles by 2040. Türkiye imposes taxes on fossil fuel vehicles and has implemented recycling programmes for polluting vehicles. These complementary policies work together with the Additional Duties on fossil fuel vehicles towards the goal of restricting domestic production and consumption of fuel-based vehicles and ultimately eliminating them from Türkiye's motor vehicle fleet.

2.50. Thus, Türkiye is not only fostering the development of a national green transport sector, but it is doing so "in conjunction with" restrictions on domestic production and use of fossil fuel-based vehicles, within the meaning of Article XX(g) of the GATT 1994. Türkiye's policy is, therefore, "even-handed"⁸⁵ as it tackles both the domestic development of, and promotes the use of, EVs and hybrid vehicles, while restricting the use of fuel-based vehicles.

2.51. During these proceedings, China has argued that Türkiye should impose comparable restrictions on both EVs and combustion-engine vehicles. This argument misconstrues the nature and purpose of the measures at issue. Combustion engine vehicles and their use have to be *discouraged*, because their emissions are a direct risk to the stated objectives. In contrast, the use of electric and hybrid vehicles has to be *encouraged*. For obvious reasons, incentives and disincentives for the use of different types of vehicles require different policies. China's argument

⁷⁸ Panel Report, *Brazil – Taxation*, para. 7.916. (emphasis added)

⁷⁹ Appellate Body Reports, *China – Raw Materials*, para. 355.

⁸⁰ Panel Report, *China – Rare Earths*, para. 7.283 (confirmed by the Appellate Body Report, at para. 5.114).

⁸¹ Appellate Body Reports, *China – Raw Materials*, para. 356.

⁸² Appellate Body Report, *China – Rare Earths*, para. 5.93.

⁸³ Appellate Body Report, *US – Gasoline*, p. 21.

⁸⁴ Appellate Body Reports, *China – Raw Materials*, para. 356.

⁸⁵ See Appellate Body Report, *US – Gasoline*, p. 20.

thus ignores the fundamentally different objectives that Türkiye pursues with the different types of vehicles and thus cannot succeed.⁸⁶

2.52. Requiring Türkiye to apply equivalent restrictions to EVs would directly contradict the policy's environmental objective to conserve an exhaustible natural resource, clean air, by facilitating the shift away from polluting combustion technologies. It would also disregard the developmental dimension of Türkiye's approach, which seeks to build a self-sustaining domestic EV ecosystem capable of supporting that transition. Such an interpretation would therefore defeat, rather than fulfil, the even-handedness requirement of Article XX(d), which demands that measures operate to advance, not frustrate, their conservation purpose.

2.53. China has also argued that the special consumption tax (SCT) "applies also to imported Chinese vehicles and, therefore, Türkiye imposes a double burden on imported EVs that it does not impose on domestic EVs".⁸⁷ Türkiye does not understand China's argument. In any event, China seems to misunderstand how the SCT functions. The SCT does not impose a "burden" (let alone a "double burden"), but rather seeks to provide incentives to promote EV adoption, by granting reductions from the default SCT tax rate. These reductions are available to those vehicles regardless of origin.

2.54. To the extent that China's argument is related to the "even-handed" requirement under Article XX(g), Türkiye recalls that this requirement applies both in a negative (discouraging) or positive (encouraging) manner, depending on the product at issue. In this particular instance, EVs are subject to positive/"encouraging" measures that seek to promote the consumer adoption of EVs. To the extent that China believes that its vehicles do not enjoy the full benefit of Türkiye's EV incentivizing measures, this is incorrect. The special consumption tax reductions apply regardless of origin and the SCT operates as a neutral fiscal incentive applicable to all producers and consumers. China fails to provide any evidence to the contrary, and its arguments should therefore be rejected.

2.3.3 Justification under the *chapeau* of Article XX of the GATT 1994

2.55. Türkiye's Additional Duties are also applied in a manner that is consistent with the *chapeau* of Article XX of the GATT 1994. The following *chapeau* analysis applies to Türkiye's invocation of both Articles XX(b) and XX(g).

2.56. Under the *chapeau* of Article XX of the GATT 1994, the core question is whether the measure is applied in "good faith"⁸⁸ and whether the regulating Member has struck an adequate "balance"⁸⁹ between its own regulatory prerogatives and the competing interests of other WTO Members.

2.57. In addressing this core question of whether there is a "good faith" attempt that seeks to balance the competing rights and obligations, panels must be mindful of the regulating Member's latitude in identifying the "line of equilibrium" referred to by the Appellate Body. Here, typically, panels and the Appellate Body focus on the criterion of "arbitrary or unjustifiable" "discrimination". The Appellate Body has observed that "discrimination" within the meaning of the *chapeau* of Article XX of GATT 1994 "results ... when countries in which the same conditions prevail are differently treated".⁹⁰ Where this is the case, a panel should examine whether the resulting discrimination is "arbitrary" or "unjustifiable".⁹¹

2.58. Türkiye submits that nothing in its measures runs counter to the principles set out in the *chapeau*. First, there is a perfectly logical rationale that underpins the previous focus of Türkiye's different treatment of China. China cannot be considered as a WTO Member in which the "same conditions prevail" as in Türkiye or other WTO Members. China is by far the world's leading producer of electric vehicles. In 2024, China produced 12.4 million electric vehicles, representing over 70% of global EV production. Currently, China sells over 11 million EVs annually, which is more than half of the global total. China also dominates global battery production, making 80% of lithium-ion

⁸⁶ Türkiye's opening statement at the first meeting of the Panel, para. 2.19.

⁸⁷ China's opening statement at the first meeting of the Panel, para. 34.

⁸⁸ Appellate Body Report, *US – Shrimp*, para. 158.

⁸⁹ Appellate Body Report, *US – Shrimp*, para. 159.

⁹⁰ Appellate Body Reports, *US – Shrimp*, para. 165; and *EC – Seal Products*, para. 5.303.

⁹¹ Appellate Body Reports, *US – Shrimp*, para. 165; *EC – Seal Products*, para. 5.303; and *US – Tuna II (Mexico)* (Article 21.5 – Mexico), fn 1015.

batteries used in EVs. Given its dominance when measured by every major metric (production volume, market share, and battery output), China has the potential to control any EV market in the world.

2.59. As a result, China poses a particular challenge for achieving the green transition of the Turkish car industry because it is the largest individual source of non-FTA imports of EVs in Türkiye. China has consistently undertaken significant industrial policy efforts that target EV production, including for export. From 2009 to 2022, the Chinese government allocated over 200 billion RMB (29 billion USD) to relevant subsidies and tax breaks for EV production. This governmental aid has catapulted Chinese carmakers to the forefront of the global EV industry and, due to its heavily subsidized industry, it can be expected that China's exports will remain a challenge for the foreseeable future. In these circumstances, Türkiye finds it difficult to accept that the "same conditions prevail", within the meaning of the Article XX *chapeau*, in China *vis-à-vis* other countries with EV production. China already accounts for two-thirds of global sales of EVs and its state-led economic system puts it in the unique position to take over the entire global market for electrical and hybrid cars.

2.60. In these circumstances, it is only natural that Türkiye's additional customs duties reflect a particular concern about China's exports. Chinese EV import flooding prevents the development of the Turkish EV industry and the required green transition of the transport sector. EVs represent a critical element and building block for Türkiye's infrastructure for energy security, technological sovereignty, and long-term achievement of Türkiye's climate commitments. Excessive import dependence on Chinese EVs undermines national capacity to control this strategic sector, potentially creating vulnerabilities in supply chains and technological advancement.

2.61. China does not seek to rebut these arguments. Instead, China makes an unsupported claim that its unique position in the international EV and hybrid vehicle market stems from "measures such as early strict targets for energy conservation and emission reduction, fuel efficiency standards, and license plate exemptions for EV buyers in major cities, etc."⁹² It also argues that "[i]t is these policies that helped accelerate adoption and innovation".⁹³ On that basis, China argues, the "reasons given by Türkiye for the discrimination are not rationally related to the policy objective of reducing CO2 emissions".⁹⁴

2.62. China fails to provide any evidentiary basis for its assertions, and its arguments can therefore be rejected on that basis alone. This stands in contrast to the extensive and compelling evidentiary support provided by Türkiye in its first written submission. But even accepting China's unsupported assertions at face value, they are not decisive and do not address the concerns that drove Türkiye to adopt the Additional Duties. The specific reasons for China's dominance of the EV, hybrid vehicle, and EV battery markets, are ultimately of secondary importance. Of course, the scale of China's unprecedented industrial policy effort compounds the commercial, economic security and environmental policy risks for other WTO Members. China has consistently undertaken significant industrial policy efforts that target EV production, including for export. But whatever the ultimate reason, the fact remains that China has the potential to dominate in large measure any EV and hybrid vehicle market. Türkiye's measures have been driven, to a large extent, by concerns about this dominance and the resulting flooding of its market by Chinese-produced vehicles.

2.63. Second, no concerns under the *chapeau* of Article XX arise with respect to the *amended version of the Additional Duties*, which eliminates the exceptional treatment of Chinese-origin vehicles. Needless to say, once the differential treatment of China disappears, by definition any concerns about the consistency of the Additional Duties with the *chapeau* also disappear completely.

2.64. China also fails to assert, let alone demonstrate, that Türkiye's additional duty measures are inconsistent with the Article XX *chapeau* requirements for any reason other than the differential treatment of China. Under the *chapeau* of Article XX of the GATT 1994, the core question is whether the measure is applied in "good faith"⁹⁵ and whether the regulating Member has struck an adequate "balance"⁹⁶ between its own regulatory prerogatives and the competing interests of other WTO

⁹² China's opening statement at the first meeting of the Panel, para. 36.

⁹³ China's opening statement at the first meeting of the Panel, para. 36.

⁹⁴ China's opening statement at the first meeting of the Panel, para. 36.

⁹⁵ Appellate Body Report, *US – Shrimp*, para. 158.

⁹⁶ Appellate Body Report, *US – Shrimp*, para. 159.

Members. Türkiye has diligently sought to strike such a "balance" at all times. Nothing in its measures runs counter to the principles set out in the *chapeau*, and Türkiye's submission provides a detailed explanation of both the factual and the legal rationale of its measures.⁹⁷

2.65. Finally, for the sake of completeness, Türkiye notes that its RTA partners are left outside the scope of the amended additional duty measures, just as they were excluded from the original Additional Duties. This differential treatment is, of course, linked to the RTA-status of those Members. It is axiomatic that RTA partners are to be excluded from the scope of any ordinary customs duties. This also does not interfere with the environmental and public health rationale of these measures, given that, as Türkiye demonstrated, all of its RTAs include extensive consultation and coordination mechanisms that permit the parties to address any environmental and health-related regulatory concerns, such that the urgency and the need for customs duties is significantly less pronounced than for non-RTA parties.⁹⁸

2.4 The Additional Duties are justified under Article XXIV of the GATT 1994 and under the Enabling Clause

2.66. In response to China's revised claim under Article I:1 of the GATT 1994, Türkiye presents a defence under Article XXIV of the GATT 1994 and the Enabling Clause. China's revised Article I:1 claim focusses on the treatment of Türkiye's RTA partners as compared to other WTO Members that are not Türkiye's RTA partners. Türkiye raises its Article XXIV and the Enabling Clause defence by incorporating, by reference, its arguments under Article XXIV and the Enabling Clause in the context of the IPLS. China contests the validity of Türkiye's defence, and the parties' disagreements center on two issues.

2.67. First, China argues that Türkiye did not raise its Article XXIV and Enabling Clause defence in a timely manner, that is, in its first written submission. But Türkiye could not have raised this defence at that point in time, because China's argument in its first written submission was focussed on the treatment of China as compared to all other countries, whether FTA or non-FTA partners. Up until the modification introduced by Presidential Decision No. 10436, China's entire case under Article I focussed on the differential treatment of China *vis-à-vis* the rest of all WTO Members, rather than on the differential treatment of RTA partners vs. non-RTA partners. For instance, China argued that "the lower or nil rate of duty does not apply to imports of EVs from China. Therefore, an 'advantage, favour or privilege' is not immediately and unconditionally accorded to Chinese EVs contrary to Article I:1".⁹⁹ No reasonable reader could have understood China's previous arguments as challenging the Additional Duties as being inconsistent with Article I due to the differential treatment between Türkiye's RTA partners and non-RTA partners. Türkiye's response under Articles XX(b) and XX(g) – and its explanations of the unique challenges posed by China – reflected this focus. China's novel focus on the differential treatment of RTA vs non-RTA parties, therefore, is a shift in its arguments to which Türkiye is entitled to respond.¹⁰⁰

2.68. In contrast, after the enactment of the new Presidential Decision No. 10436, China put forward an entirely different basis for its claim, challenging the differential treatment between Türkiye's RTA partners and Türkiye's non-RTA partners (of which China is one).¹⁰¹ China now compares two different universes of imports, namely, imports from China vs. imports from "other countries"/"other sources".¹⁰² This represents an entirely new thrust and rationale of China's Article I:1 claim.¹⁰³ Should the Panel consider the shift in China's claim under Article I:1 to be permissible, due process requires that Türkiye must be entitled to adjust its response to China's claims by raising a defence under the Enabling Clause and Article XXIV. The Panel should therefore reject China's argument that Türkiye failed to raise this defence in an earlier stage of this dispute.

⁹⁷ Türkiye's first written submission, section 2.4.

⁹⁸ The sole RTA partner with a significant level of exports of vehicles into Türkiye is the European Union, to which Türkiye is bound by a highly integrated customs union with extensive coordination and cooperation mechanisms under which environmental concerns can be addressed by measures other than import duties. (Exhibit CHN-27).

⁹⁹ China's first written submission, para. 116.

¹⁰⁰ Türkiye's opening statement at the second meeting of the Panel, para. 2.5.

¹⁰¹ China's response to Panel question No. 2, paras. 4 and 6.

¹⁰² China's response to Panel question No. 63, paras 20-21.

¹⁰³ Türkiye's second written submission, section 2.2.3.

2.69. Second, China argues that Türkiye was not entitled to raise its RTA-related defence by incorporating by reference its arguments concerning its RTAs and their compatibility with the Enabling Clause and Article XXIV made in the context of China's claim concerning the IPLS.¹⁰⁴ This is incorrect. China is also incorrect to argue that Türkiye could not cross-reference and incorporate by reference its Article XXIV and Enabling Clause arguments from the IPLS context into the Additional Duties context.¹⁰⁵ Türkiye submitted extensive arguments about the WTO-conformity of its RTAs, both under Article XXIV and the Enabling Clause, in the context of the IPLS claims, and there is no reason why Türkiye should have repeated all of these assertions, instead of merely cross-referencing them. Türkiye's Article XXIV or Enabling Clause defence articulated in extensive detail in the context of an "other restrictive regulation of commerce" applies in the very same manner with respect to "duties". Parties routinely cross-reference and incorporate arguments from one part of a submission into another. Türkiye sees no merit in China's suggestion that Türkiye should instead have cut and pasted the argument from the IPLS context into the Additional Duties context.

2.70. As far as the substance of Türkiye's defence is concerned, China does not appear to raise any substantive arguments additional to, or different from, the arguments that it has raised in response to Türkiye's invocation of these same provisions in the context of the IPLS. Türkiye also incorporates by reference its procedural arguments, made in the context of the IPLS, that China has failed to "raise" both the Enabling Clause and Article XXIV.¹⁰⁶

3 THE IMPORT PERMIT LICENSE SCHEME (IPLS)

3.1 China's claim under Article I:1 of the GATT 1994 is unfounded

3.1. China's claim under Article I:1 of the GATT 1994 is directed at the differential treatment of non-RTA partners and RTA-partners under the IPLS. It is undisputed that the IPLS applies only to WTO Members that are not Türkiye's RTA partners. Türkiye does not dispute the (technical) violation of Article I. Instead, Türkiye invokes Article XXIV of the GATT 1994¹⁰⁷ and the Enabling Clause as justifications.¹⁰⁸

3.1.1 China's claim is not properly within the Panel's terms of reference because China has failed to "raise" the Enabling Clause and Article XXIV of the GATT 1994

3.1.1.1 China has failed to "raise" the Enabling Clause

3.2. Türkiye's first argument is that China's claim under Article I:1 of the GATT 1994 is not admissible. China has failed to "raise" both the Enabling Clause and Article XXIV of the GATT 1994 in its panel request or its first written submission. Due to this failure, China has not properly placed its claim under Article I:1 within the Panel's terms of reference. The Panel should therefore reject this claim *in limine*.

3.3. In *EC – Tariff Preferences*, the Appellate Body found that, with respect to certain affirmative defences – most prominently under the Enabling Clause – a complainant is required not only to state a claim of violation, but must also "raise" (mention) any affirmative defence that is a "plain[]" (obvious) legal basis for the challenged measure. The complainant must also explain why, in its view, the specific conditions for the application of the affirmative defence are not satisfied¹⁰⁹, that is, that the documents had to contain a clear and explicit mention of the Enabling Clause.¹¹⁰ Put differently, the complainant was required to *define the parameters* within which the EU as a respondent was expected to justify its reliance on the affirmative defence.¹¹¹ The underlying concern is one of due process and of the fundamental rule that the Enabling Clause plays in the global trading system.¹¹² The complainant could not close its eyes to the reality that the Enabling Clause was the

¹⁰⁴ Türkiye's first written submission, paragraph 2.29.

¹⁰⁵ China's opening statement at the second meeting with the Panel, para. 46.

¹⁰⁶ Türkiye's first written submission, paras. 3.111-3.29.

¹⁰⁷ Türkiye's first written submission, paras. 3.30-3.60.

¹⁰⁸ Türkiye's first written submission, paras. 3.61-3.67.

¹⁰⁹ Appellate Body Report, *EC – Tariff Preferences*, paras. 110 and 113.

¹¹⁰ Appellate Body Report, *EC – Tariff Preferences*, para. 123.

¹¹¹ Appellate Body Report, *EC – Tariff Preferences*, para. 114.

¹¹² Appellate Body Report, *EC – Tariff Preferences*, para. 106.

obvious basis for the EU's measure and could not act, in procedural terms, as if the Enabling Clause did not exist.

3.4. China failed to raise the Enabling Clause even if it is plain that the justification of the IPLS exemption is based on the RTA-status of a territory. This link between the exemption and Türkiye's FTAs or the CU with the EU is explicitly stated in Türkiye's legislation¹¹³, and it is explicitly acknowledged by China.¹¹⁴ It is therefore "plain" – entirely obvious – that the treatment of these countries and territories under Turkish law is driven by, and based on, the exception provisions under WTO law that authorize WTO Members to enter into FTAs or CUs.

3.5. This WTO legal basis is obviously, first and foremost, the Enabling Clause, as the vast majority of Türkiye's FTAs have been concluded with other developing WTO Members. Thus, Türkiye's FTAs and the resulting exemption of FTA partners from the scope of the IPLS have been "plainly taken pursuant" to the Enabling Clause. China was, therefore, aware, when bringing this dispute, that the Enabling Clause was legally highly significant for its claim under Article I, and that it would play an important role in Türkiye's defence and in the Panel's legal analysis. China was also aware that the vast majority of these countries are developing countries. Thus, China was equally aware that Türkiye was likely to raise a defence under the Enabling Clause. Nevertheless, China's panel request and first written submission fail to reflect the complainant's duties in a scenario such as this one, as clarified by the Appellate Body. As a result, Türkiye submits that China's claim should be dismissed for lack of jurisdiction. The Panel should dismiss the claim with respect to all countries and territories for whom Türkiye is entitled to have an FTA pursuant to the Enabling Clause.

3.1.1.2 China has failed to "raise" Article XXIV

3.6. The same jurisdictional flaw also vitiates China's challenge against the exclusion of FTA or CU partners whose agreements do not fall within the Enabling Clause. The Appellate Body's logic and due process concerns underlying the *EC – Tariff Preferences* jurisprudence apply with equal force to an affirmative defence under Article XXIV of the GATT 1994. Article XXIV is just as fundamental to the global trading system as the Enabling Clause, because FTAs and CUs under Article XXIV reduce or eliminate trade barriers, increase trade flows, and thus increase potential economic benefits for developed and developing nations alike.

3.7. Reflecting this fundamental role of Article XXIV, both developed and developing Members have relied on Article XXIV for their preferential trade agreements. Article XXIV is thus closely related to development policy and therefore, just like the Enabling Clause, is part of the developing countries' development toolbox. Therefore, in this case, it was also "plain" that Türkiye's exclusion of the European Union, United Kingdom and EFTA countries was based on their FTA or CU partner status and thus qualifies for an obvious affirmative defence under Article XXIV. The failure of China to mention Article XXIV in its panel request and in its first written submission, and the failure to explain to Türkiye why, according to China, Türkiye's agreements do not conform to the conditions of Article XXIV, also vitiates China's claim under Article I.

3.1.2 Türkiye's exemption of FTA partners from the scope of the IPLS is justified pursuant to Article XXIV:5 of the GATT 1994 and paragraph 2(c) of the Enabling Clause

3.8. Even if the Panel were to disregard Türkiye's jurisdictional objection, the exemption of Türkiye's FTA partners is justified pursuant to Article XXIV:5 of the GATT 1994 and paragraph 2(c) of the Enabling Clause.

3.9. All of Türkiye's RTAs comply with the requirements to which free trade areas and customs unions pursuant to Articles XXIV:5 and XXIV:8 are subject. First, all of Türkiye's RTAs eliminate "duties and other restrictive regulations of commerce" with respect to "substantially all the trade" between Türkiye and its RTA partners, and Türkiye has demonstrated so for each individual agreement. Second, the duties and other regulations of commerce *vis-à-vis* third parties are not higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area or the customs union. Moreover, Türkiye's CU with the European Union is in conformity with Articles XXIV:5(a)

¹¹³ See China's first written submission, paras. 25-42, which reproduces the relevant portions of Türkiye's customs legal instruments.

¹¹⁴ See for instance China's first written submission, para. 28.

and XXIV:8(a), as it constitutes not just a customs union with a harmonized tariff schedule, but in fact an integrated economic space, including harmonization of internal legislation, commercial and competition policy and intellectual property rights.¹¹⁵

3.10. The exemption of RTA partners from the IPLS – under both FTAs and the EU – Türkiye Customs Union – qualifies for the Article XXIV defence, because the IPLS constitutes an "other restrictive regulation[]" of commerce" within the meaning of Articles XXIV:8(a)(i) and XXIV:8(b). The exclusion of imports from FTA and CU partners forms part of the elimination of "other restrictive regulations of commerce", and, therefore, is in principle authorised by Article XXIV:5, provided the relevant substantive conditions for a free-trade area or customs union are fulfilled.

3.11. Similarly, the exemption of developing FTA partners is justified under the Enabling Clause. Türkiye is a developing WTO Member and, as such, covered by the terms of the Enabling Clause. With the exception of the agreements with the UK and the EFTA countries, all of Türkiye's FTAs were concluded with developing WTO Members. The conditions for invoking the Enabling Clause as an affirmative defence to a departure from Article I of the GATT 1994 are satisfied in this dispute. Article 2(c) requires that FTAs between developing countries ensure the "mutual reduction or elimination of tariffs ... on products imported from one another". This requirement is universally read as requiring *some* tariff liberalization, but granting flexibility on the required degree or extent of that tariff liberalization. Thus, this requirement is widely understood as imposing a much less exacting standard than the analogous "substantially all the trade" criterion in Article XXIV.

3.12. All of Türkiye's FTAs have resulted in far-reaching tariff liberalization on both industrial and agricultural products, as well as in the elimination of other restrictive regulations of commerce¹¹⁶ and therefore satisfy the requirements under Article XXIV of the GATT 1994. These FTAs also therefore logically and necessarily comply with the less demanding "mutually reduction or elimination of tariffs" standard under paragraph 2(c) of the Enabling Clause. China's argument that Türkiye may not rely on the Enabling Clause for RTAs that were not notified under the Enabling Clause¹¹⁷ should be rejected. A Member's notification is not dispositive of its WTO rights and obligations, and the Member should not be constrained by its notification for purposes of its arguments in a subsequent dispute. Any other approach is effectively a conflation of substantive rights and obligations with the procedural nature of a notification. Türkiye finds confirmation for this in the Transparency Mechanism for Regional Trade Agreements.¹¹⁸

3.13. Contrary to China's argument, the *Turkey – Textiles* test is not applicable and, in any event, is incorrect as a matter of law. Türkiye's criticism of this test was articulated already by the panel in *US – Line Pipe*, which stated that applying this test to internal liberalization between RTA or CU parties "would lead to absurd results" and that it was "difficult to imagine how [when applying this test] a necessity requirement could ever be fulfilled".¹¹⁹ Türkiye has not seen a rebuttal of this criticism either by China or any of the third parties. Nor is China's criticism of Türkiye's distinction between the "internal" and "external" aspect of an RTA relationship persuasive, because the very same distinction underlies the finding of the *US – Line Pipe* panel.¹²⁰

3.14. Similarly, it is not significant whether Türkiye's RTAs contain Article XX-type provisions that Türkiye allegedly could invoke to justify the application of the IPLS *vis-à-vis* its RTA partners. China's argument appears to be that the existence of these clauses in the relevant RTAs means that the "application of the IPLS would not prevent the formation" of those RTAs, because Türkiye could invoke these exceptions under its RTAs, thereby eliminating the differential treatment of its RTA partners *vis-à-vis* its non-RTA WTO Members.¹²¹ This is incorrect. First, the argument presumes the validity of the *Turkey – Textiles* test and, in particular, the notion that the "substantially all the trade" criterion can be made subject to the "prevent the formation" criterion, which Türkiye has explained is incorrect. Second, the existence of Article XX-type clauses in RTAs grants Türkiye *flexibility*, but cannot impose an *obligation* on Türkiye – whether under WTO law or RTA law – to invoke these clauses. Nor can the existence of these flexibilities under RTAs limit Türkiye's reliance

¹¹⁵ Türkiye's first written submission, paras. 3.56ff.

¹¹⁶ Türkiye's first written submission, paras. 3.44 – 3.48 and 3.55 – 3.60; Türkiye's response to Panel question No. 50, para. 2.97 and fn 256.

¹¹⁷ China's opening statement at the first meeting of the Panel, para. 56.

¹¹⁸ Türkiye's response to Panel question No. 46, para. 2.58.

¹¹⁹ Panel Report, *US – Line Pipe*, fn 137.

¹²⁰ Türkiye's second written submission, paras. 3.14ff.

¹²¹ China's response to Panel question No. 52, para. 81.

on justifications under the WTO Agreement. A government should be free to exercise the flexibility it enjoys under Article XXIV and RTA law to exclude RTA partners. As the Appellate Body found in *Brazil – Retreaded Tyres*, it is not for a WTO adjudicative body to "second guess" a Member's choice whether to invoke this type of clause in its RTA.¹²²

3.15. Furthermore, contrary to what the Panel appears to suggest in its question No. 51, there is no need for RTAs to contain a "specific provision" in order to justify the non-application of measures like the IPLS.¹²³ The text of Article XXIV requires RTA parties to eliminate restrictive regulations of commerce. There is, in principle, no qualification in the text of Article XXIV on this obligation based on whether an RTA contains a "specific provision" authorizing or requiring the non-application of certain measures in the relationship between the RTA parties. The proper legal test should be whether the measure that is being liberalized is actually or potentially trade-restrictive and whether it falls within the category of measures that an RTA is meant to remove.¹²⁴

3.16. Finally, contrary to the arguments of some of the third parties, there is no legal impediment to examining both an Article XXIV and Article XX defence and there is no formal limit, *a priori*, on the ability of a respondent to rely on both Articles XXIV and XX, as argued by the European Union and Australia.¹²⁵ In any event, Türkiye would not object if the Panel were to examine first Türkiye's defence under Article XX, including with respect to any violation of Article I.¹²⁶

3.2 China's claim under Article III:4 of the GATT 1994 is unfounded

3.17. China claims that the IPLS is inconsistent with the national treatment principle under Article III:4 of the GATT 1994. It argues that Notification 2025/7, which sets out the conditions to be granted an import license, imposes five requirements that apply to imported EVs and externally rechargeable hybrid vehicles from non-FTA and non-CU partners, including China, but not to imported EVs and externally rechargeable hybrid vehicles from domestic producers. This, according to China, results in less favourable treatment.¹²⁷

3.18. However, none of the requirements in Notification 2025/7 amounts to less favourable treatment inconsistent with Article III:4. These requirements simply *restate* requirements that already apply to domestic EVs and externally rechargeable hybrid vehicles producers by virtue of other instruments. This provides greater transparency and administrative convenience to importers, by highlighting the rules to which these importers are subject.¹²⁸

3.19. China also argues that the mere fact that the IPLS does not apply to domestic manufacturers is sufficient to make a *prima facie* case of inconsistency with Article III:4.¹²⁹ However, China's approach contradicts the well-established caselaw that clearly states that a mere difference in treatment between domestic and imported products does not necessarily lead to an inconsistency with Article III:4.¹³⁰ Beyond pointing to formal differences, China has not explained why the IPLS requirements amount to less favourable treatment within the meaning of Article III:4.

3.20. The first requirement in Notification 2025/7 is for importers to have 20 service stations in 7 geographical regions.¹³¹ This requirement also exists for domestic manufacturers pursuant to the After Sales-Services Regulation. There is thus perfect symmetry between the requirement applicable to domestic and foreign producers.¹³² China takes issue with the fact that, contrary to domestic

¹²² Appellate Body Report, *Brazil – Retreaded Tyres*, para. 234.

¹²³ Türkiye's second written submission, paras. 3.24ff.

¹²⁴ Türkiye's responses to Panel question No. 50, para. 2.94; and No. 51, para. 2.105.

¹²⁵ Türkiye's response to Panel question No. 47, paras. 2.64-2.71; Australia's response to Panel question 16, para. 27.

¹²⁶ Türkiye's second written submission, paras. 3.7-3.8.

¹²⁷ China's first written submission, paras. 214-221.

¹²⁸ Türkiye's first written submission, paras. 3.74-3.76; second written submission, para. 3.39.

¹²⁹ China's opening statement at the second meeting with the Panel, para. 60; response to the Panel additional advance question No. 6 during the second meeting with the Panel.

¹³⁰ Appellate Body Report, *Korea – Various Measures on Beef*, para. 135. See also Appellate Body Report, *Thailand – Cigarettes (Philippines)*, para. 128; and Türkiye's response to the Panel additional advance question No. 6 during the second meeting with the Panel.

¹³¹ Article 3(2)(a) of Notification 2025/7, (Exhibit CHN-16).

¹³² Türkiye's first written submission, para. 3.81; second written submission, para. 3.56.

producers, importers may not use third parties to establish service stations.¹³³ However, when looking at the proper comparator for the domestic manufacturers – which is the foreign manufacturers and not the importers – it becomes clear that the freedom to establish these service stations either themselves, or via a third party, exists on both sides.¹³⁴ Moreover, importers of vehicles from different manufacturers may use the same service stations for these different brands, and importers may use any pre-existing service stations established for vehicles they are currently importing. These factors significantly reduce any costs of complying with the service stations requirement.¹³⁵

3.21. The second requirement is for the persons responsible for the maintenance and repair of vehicles hold a "certificate of competence" exclusively for the maintenance of EVs or externally rechargeable hybrid vehicles.¹³⁶ This requirement does not impose any additional burden on importers, as the required qualifications that apply to domestic vehicles under the relevant Turkish standards (TS 12047 and TSE K 646) are equally specialized and equally demanding. Even if not identical, they are at a minimum equivalent to the "certificate of competence" required under Notification 2025/7.¹³⁷ Moreover, the personnel's skills and knowledge must comply with very specific standards, such as having electric vehicle specialization and qualifications for electric vehicle maintenance, and the personnel must undergo regular training specifically related to electric vehicles. Thus, there is no basis whatsoever for China to argue that the requirements for the personnel of repair shops of domestic EVs and externally rechargeable hybrid vehicles are less demanding than those applicable specifically for foreign EVs and externally rechargeable hybrid vehicles.¹³⁸

3.22. The third requirement challenged by China is for importers to operate call centres. This requirement is already, as a matter of fact, fulfilled by domestic manufacturers. Moreover, the After Sales-Services Regulation requires domestic manufacturers to be reachable by consumers via telephone, fax, email, or letter.¹³⁹

3.23. The fourth requirement is for foreign manufacturers to have an authorized representative resident in Türkiye.¹⁴⁰ This requirement, of course, does not formally exist for domestic manufacturers, since they are already present in Türkiye. Rather, this requirement is designed to create a bridge between manufacturers and the competent Turkish authorities that does not exist with respect to foreign manufacturers but that naturally already exists for domestic manufacturers.¹⁴¹ Moreover, this is not a new requirement, because, under the Type Approval Regulation, foreign manufacturers of cars sold in Türkiye were already required to have an authorized representative in Türkiye to be able to legally market their cars and for market surveillance purposes.¹⁴² Thus, this requirement does not lead to any additional burden or costs for foreign manufacturers.¹⁴³ In response, China alleges that importers face a "double burden" to appoint an authorized representative under both Notification 2025/7 and the Type Approval Regulation.¹⁴⁴ However, this is an incorrect reading of the relevant provisions of Turkish law. If a foreign manufacturer already has an authorized representative under the Type Approval Regulation (regardless of whether that authorized representative is the importer or another entity), the manufacturer need not appoint a second representative under Notification 2025/7. Thus, the "double burden" alleged by China does not exist.¹⁴⁵ Finally, the cost and administrative effort of fulfilling this

¹³³ China's first written submission, para. 218; opening statement at the first meeting of the Panel, para. 72.

¹³⁴ Türkiye's first written submission, paras. 3.82-3.85; second written submission, paras. 3.56-3.57; opening statement at the second meeting with the Panel, para. 3.2.

¹³⁵ Türkiye's second written submission, para. 3.58; opening statement at the second meeting with the Panel, para. 3.2.

¹³⁶ Article 3(2)(b) of Notification 2025/7, (Exhibit CHN-16). See Türkiye's response to Panel questions 32-34; second written submission, para. 3.60-3.62.

¹³⁷ Türkiye's second written submission, paras. 3.62-3.68.

¹³⁸ Türkiye's second written submission, paras. 3.64-3.68.

¹³⁹ Türkiye's first written submission, paras. 3.97-3.98; second written submission, paras. 3.70-3.71.

¹⁴⁰ Article 3(2)(ç) of Notification 2025/7, (Exhibit CHN-16).

¹⁴¹ Türkiye's first written submission, paras. 3.99-3.103.

¹⁴² Type Approval Regulation, (Exhibit TUR-54). See also Türkiye's response to Panel question No. 27, para. 2.7.

¹⁴³ Türkiye's first written submission, para. 3.102.

¹⁴⁴ China's opening statement at the second meeting with the Panel, para. 3.6.

¹⁴⁵ Türkiye's comment on China's response to Panel question No. 71 after the second meeting with the Panel.

requirement is so minimal that this requirement simply cannot be regarded as affecting the conditions of competition for foreign producers.¹⁴⁶

3.24. The fifth requirement is for importers to make a declaration regarding the monitoring, control, and supervision of battery systems.¹⁴⁷ However, this declaration is nothing more than a transparency tool to remind importers of obligations that already exist by virtue of the Regulation on Waste Batteries and Accumulators.¹⁴⁸ Likewise, domestic manufacturers and importers need to ensure the conformity of motor vehicles, their components, systems, separate technical units with technical regulations contained in the Type Approval Regulation when placing these vehicles in the market, as well as during market surveillance processes.¹⁴⁹ The Type Approval Regulation applies equally to domestically- and foreign-produced vehicles and covers the safety of rechargeable vehicle batteries, including electrical safety.¹⁵⁰ The fact that importers must also explicitly acknowledge their responsibility to comply with safety standards through the declaration does not entail any burdensome administrative procedure or additional costs for the importer that would put it in a less favourable situation than domestic manufacturers.¹⁵¹

3.25. Finally, China takes issue with the fact that domestic manufacturers face monetary consequences for not complying with the Law on Consumer Protection, while importers will be precluded from importing EVs and externally rechargeable hybrid vehicles if they do not comply with the same requirements (e.g. to establish 20 service stations across the seven geographical regions of Türkiye).¹⁵² However, the difference in regulatory consequences in case of non-compliance is perfectly justified by the greater regulatory risk of non-compliance in the case of importers from non-FTA and non-CU partner countries and because of the more limited regulatory oversight that Türkiye exercises over those importers and over the products that these importers import.¹⁵³ Put differently, this difference in the regulatory response restores an inherent asymmetry in the conditions of competition that exist between domestic manufacturers and foreign manufacturers, since the former are subject to continuous oversight by the government.¹⁵⁴

3.26. For these reasons, China has failed to demonstrate that the IPLS requirements amount to less favourable treatment within the meaning of Article III:4 of the GATT 1994.

3.3 China's claim under Article XI:1 of the GATT 1994 is unfounded

3.27. China claims that the IPLS is inconsistent with Article XI:1 of the GATT 1994 because, in its view, it amounts to a restriction within the meaning of that provision.¹⁵⁵ China argues that the IPLS has limiting effects because it conditions the import of EVs and externally rechargeable hybrid vehicles upon the fulfilment of certain requirements and because it entails additional burdens and costs.¹⁵⁶

3.28. Türkiye posits that the issuance of an IPLS import license based on compliance with certain conditions is not a tool to control or restrict the quantity or value of imports, with which Article XI is concerned. Article XI:1 targets measures that operate as prohibitions or restrictions on importation, not ordinary regulatory requirements that involve incidental compliance costs. In contrast, the denial of an import license is merely a method of ensuring adequate compliance by importers with Turkish domestic consumer protection laws that apply to importers and domestic manufacturers.¹⁵⁷

¹⁴⁶ Türkiye's first written submission, paras. 3.99-3.103.

¹⁴⁷ Article 3(2)(d) of Notification 2025/7, (Exhibit CHN-16).

¹⁴⁸ Regulation on Control of Waste Batteries and Accumulators, (Exhibit TUR-83). Türkiye's first written submission, paras. 3.104-3.107; second written submission, para. 3.78.

¹⁴⁹ Type Approval Regulation, complete version, (Exhibit TUR-54bis). See also Türkiye's second written submission, para. 3.78.

¹⁵⁰ Türkiye's second written submission, para. 3.81.

¹⁵¹ Türkiye's first written submission, paras. 3.104-3.107; second written submission, para. 3.81.

¹⁵² China's first written submission, para. 220.

¹⁵³ Türkiye's first written submission, para. 3.109; second written submission, para. 3.85.

¹⁵⁴ Türkiye's second written submission, para. 3.86.

¹⁵⁵ China's first written submission, paras. 182-193.

¹⁵⁶ China's first written submission, paras. 183-187.

¹⁵⁷ Türkiye's first written submission, para. 3.121. second written submission, para. 3.90; opening statement at the second meeting with the Panel, para. 3.10.

3.29. First, the fact that the IPLS ties the issuance of an import license to certain conditions does not automatically mean that the IPLS is an import restriction within the meaning of Article XI:1. As several panels have emphasized, "*not every condition or burden placed on importation ... will be inconsistent with Article XI:1*", but only those that are limiting, that is, those that limit the importation ... of products".¹⁵⁸ The key question is not whether the IPLS imposes conditions on importation, but whether these conditions go beyond "routine" requirements that can be expected, especially in the field of new technologies such as EVs and hybrid vehicles.¹⁵⁹ Thus, China cannot simply point to additional costs arising from satisfying the IPLS requirements to successfully demonstrate that the IPLS has a limiting effect on trade within the meaning of Article XI:1.¹⁶⁰

3.30. Second, importers have full control over the fulfilment of the IPLS conditions. The ability to import is conditioned upon specific and clear requirements. Importers that comply with these requirements will be able to import. This is very different from, for instance, a quota imposed on importation or a restriction on ports of entry, which are typically considered to be inconsistent with Article XI:1.¹⁶¹ China responds that importers have limited control because they could face limited availability of human resources to staff the call centers.¹⁶² However, China has provided no evidence to support its assertion, and sellers of technologically advanced goods such as EVs and hybrid vehicles are normally expected to provide after sales services. Thus, the fulfilment of the IPLS criteria cannot be considered to be outside the control of the importer.¹⁶³ China further argues that importers are not in control because, allegedly, (i) they lack guidance on how and where to submit an IPLS application and (ii) the website for submitting applications is non-functional.¹⁶⁴ Türkiye disagrees with these assertions, as explained in the section about China's Article X:3(a) claim. Moreover, China has not explained how these factors would hinder the importers' control or result in a limiting effect on imports.¹⁶⁵

3.31. Third, the IPLS requirements are not discriminatory. Rather, they are imposed in an equivalent manner on both domestic producers and importers both from FTA partners and the European Union as well as non-FTA partners. This should be taken into account when evaluating the trade restrictiveness of the measure.¹⁶⁶ In response, China argues that Article XI:1 does not require a demonstration of discriminatory treatment.¹⁶⁷ However, China misses the point. Türkiye's argument was simply that the burden on the complainant to demonstrate alleged trade-restrictiveness is higher for non-discriminatory measures than for discriminatory ones.¹⁶⁸

3.32. Fourth, numerous jurisdictions regulate motor vehicles, and, in particular, the more novel electric and hybrid vehicles, in the same manner as Türkiye. This further demonstrates that the IPLS requirements do not go beyond "routine" requirements under national consumer protection regimes.¹⁶⁹ China describes this argument as an "attempt to divert attention by referring to the alleged policies of other WTO Members".¹⁷⁰ However, this criterion is very much relevant to the panel's analysis, as it supports Türkiye's assertion that the IPLS requirements are "routine" or "normal" requirements.¹⁷¹

3.33. China further argues that the IPLS provides no transition period and that the IPLS's requirements are overly rigid and inflexible.¹⁷² However, these factors are not relevant to the Panel's assessment of the IPLS's consistency with Article XI:1 and China quotes no precedent that supports the notion that consistency with Article XI:1 depends on whether a transition period was applied or

¹⁵⁸ Appellate Body Report, *Argentina – Import Measures*, para. 5.217 (emphasis added). See also Panel Report, *Argentina – Import Measures*, paras. 6.252-6.254 (referring to Panel Reports, *India – Autos*, para. 7.270; and *China – Raw Materials*, para. 7.917). See also Türkiye's first written submission, para. 3.115.

¹⁵⁹ Türkiye's first written submission, para. 3.117-3.121; second written submission, para. 3.91.

¹⁶⁰ Panel Report, *Colombia – Textiles (Article 21.5 – Colombia) / Colombia – Textiles (Article 21.5 – Panama)*, para. 7.224. See also Türkiye's first written submission, paras. 3.119-3.130.

¹⁶¹ Türkiye's first written submission, paras. 3.131-3.134; second written submission, para. 3.92.

¹⁶² China's opening statement at the first meeting of the Panel, para. 62.

¹⁶³ Türkiye's second written submission, para. 3.103.

¹⁶⁴ China's opening statement at the first meeting of the Panel, para. 62.

¹⁶⁵ Türkiye's second written submission, para. 3.106.

¹⁶⁶ Türkiye's first written submission, para. 3.135; second written submission, paras. 3.93 and 3.108.

¹⁶⁷ China's opening statement at the first meeting of the Panel, para. 64.

¹⁶⁸ Türkiye's second written submission, para. 3.108.

¹⁶⁹ Türkiye's first written submission, para. 3.136; second written submission, para. 3.109.

¹⁷⁰ China's opening statement at the first meeting of the Panel, para. 66.

¹⁷¹ Türkiye's second written submission, para. 3.109.

¹⁷² China's first written submission, paras. 188-191.

whether the measure is "rigid" or "inflexible".¹⁷³ Rather, as already noted, the relevant legal test is whether the measure at issue has "limiting effects".¹⁷⁴

3.34. Finally, China points to alleged trade effects of the IPLS to support its point. It relies on EV import data for a short period of time (24 months) to argue that imports from China dropped sharply after the imposition of the IPLS.¹⁷⁵ However, more comprehensive import data clearly shows that just before the IPLS was introduced, imports had increased at an exceptionally high rate to an unprecedented level. Thus, the introduction of the IPLS thus did not bring about an artificial reduction in imports, but rather coincided with a return to "business as usual" levels, while maintaining the secular upward trend. Data relating to imports of hybrid vehicles shows a continuous increase in imports from China despite the entry into force of the IPLS. Thus, the data shows that Türkiye's measure has not caused a lasting or substantial disruption to China's imports. The temporary decline in EV imports – from unusually high levels – was quickly reversed, and trade in hybrid vehicles remains robust. These trends support the conclusion that the measure does not have trade-restrictive effect.¹⁷⁶

3.4 China's claim under Article 2.1 of the TRIMs Agreement is unfounded

3.35. China argues that the IPLS is a trade-related investment measure within the meaning of the TRIMs Agreement and that it violates Article 2.1 because it is inconsistent with the provisions of Articles III and XI of the GATT 1994.¹⁷⁷

3.36. Türkiye argues that the TRIMs Agreement does not apply, because the IPLS neither explicitly mentions investment objectives nor is designed to promote investment. It contains no investment-related language, incentives, or objectives. WTO jurisprudence has consistently distinguished between measures that *require* investment to achieve regulatory compliance and those that pursue legitimate regulatory objectives and only *incidentally* entail certain investment.¹⁷⁸

3.37. The IPLS clearly falls within the latter category as it regulates the provision of after-sales and maintenance services. It restates obligations that apply equally to both domestic and foreign manufacturers and that are unrelated to any local production requirement. It does not state either explicitly or implicitly that its objective is to incentivize or otherwise promote investment in Türkiye. Any resulting investment is therefore merely an incidental effect of fulfilling consumer protection and safety requirements and, by any standard, cannot be regarded as a deliberate objective of the measure. If China's expansive definition of "investment measures" were accepted, practically any internal measure would become a TRIMs measure.¹⁷⁹

3.38. In response, China relies on *Indonesia – Autos* to support its point, but this dispute is factually and legally distinguishable to the present dispute.¹⁸⁰ The *Indonesia – Autos* panel examined local content requirements linked to tax incentives and customs duty exemptions under Indonesia's National Car Programme.¹⁸¹ Indonesia itself confirmed that the Programme's objective was to "strengthen overall industrial development"¹⁸², leading the panel to find that the measures possessed clear "investment objectives and investment features", referred to "investment programmes" and sought to expand local manufacturing capacity, thereby affecting investment flows.¹⁸³ The IPLS does not contain any of these features.

¹⁷³ Türkiye has explained in the context of Article X:3(a) that the GATT 1994 provisions invoked by China do not require Members to provide transition period before the entry into effect of a measure. (See Türkiye's first written submission, paras. 3.163-3.172).

¹⁷⁴ Türkiye's second written submission, para. 3.110.

¹⁷⁵ China's first written submission, para. 193.

¹⁷⁶ Türkiye's second written submission, paras. 3.112-3.120.

¹⁷⁷ China's first written submission, paras. 224-228.

¹⁷⁸ See, for example, Panel Reports, *Indonesia – Autos*, para. 14.80; *India – Solar Cells*, para. 7.62; and *Canada – Renewable Energy / Feed-In Tariff Program*, para. 7.111. See also Türkiye's second written submission, para. 3.134.

¹⁷⁹ Türkiye's first written submission, paras. 3.143-3.147; second written submission, para. 3.136.

¹⁸⁰ Türkiye's second written submission, para. 3.133.

¹⁸¹ Panel Report, *Indonesia – Autos*, paras. 14.75-14.77.

¹⁸² Panel Report, *Indonesia – Autos*, paras. 14.78-14.79.

¹⁸³ Panel Report, *Indonesia – Autos*, para. 14.80; Türkiye's second written submission, para. 3.133.

3.39. China also ascribes significance to the fact that the IPLS will not apply to investment certificate holders.¹⁸⁴ In China's view, this means that the IPLS pursues investment objectives. However, whether the IPLS is an investment measure must be discerned from its *design, substance or application*, not from its *non-application* as a result of an entirely different measure. By the same token, if China believes that investment incentives are created by another measure such as the investment incentive scheme, China should challenge that scheme, instead of ascribing investment-promoting effects to the IPLS.¹⁸⁵

3.40. Finally, China's claim under Article 2.1 is a purely consequential claim. Thus, even if the Panel were to find that the IPLS is an investment measure subject to the TRIMs Agreement, the Panel would have to reject China's claim under Article 2.1, because China has not demonstrated that the IPLS is inconsistent with Articles III:4 and XI:1 of the GATT 1994.¹⁸⁶

3.5 China's claim under Article X:3(a) of the GATT 1994 is unfounded

3.41. China's claims and arguments under Article X:3(a) should be rejected. Throughout these proceedings, the parties have exchanged arguments both with respect to the legal standard under Article X:3(a), as well as on specific aspects of the IPLS. Türkiye addresses these arguments in turn.

3.5.1 China's arguments on the Article X:3(a) legal standard should be rejected

3.42. With respect to the legal standard under Article X:3(a), Türkiye stated in its first written submission that the "manner of administration" within the meaning of Article X:3(a) concerns a "pattern of administration".¹⁸⁷ In response, China has argued repeatedly that a "pattern of administration" need not be demonstrated under Article X:3(a) and that, instead, one individual administrative act on its own can also constitute a "manner of administration".¹⁸⁸ In Türkiye's view, this would be a very exceptional scenario, but, in any event, this discussion is irrelevant for the Article X:3(a) claim before the Panel. Türkiye does not argue that any aspect of China's challenge under Article X:3(a) should be dismissed because it is improperly directed at merely one instance of administration, as opposed to a "pattern" of administrative acts. Thus, the Panel need not address this "single act vs. pattern of acts" disagreement.

3.43. Second, the parties have discussed the Implementation Directive and whether China can raise claims under Articles I and III of the GATT 1994 against that Directive. In Türkiye's view, this issue is not controversial and not central to resolving China's allegations under Article X:3(a). The Implementation Directive forms part of the "manner of administration" of the IPLS, and China may challenge it. More generally, as a general proposition, the content of a written measure of an administrative nature can be challenged as a "manner of administration" of a measure (here the IPLS). But China must still invoke the correct legal standard under Article X:3(a). A complainant cannot bring what is functionally a substantive MFN or national treatment complaint under Article X:3(a), as China does. Rather, the complainant must allege and demonstrate that the manner of administering a trade regulation is not "uniform", "reasonable" or "impartial", within the meaning of Article X:3(a). None of these three terms addresses MFN or national treatment-related matters. Specifically, the term "uniform" – invoked by China¹⁸⁹ – concerns inconsistent treatment of legal subjects e.g. over time or in different geographical locations in an authority's administrative practice, and does not permit repeating MFN or national treatment claims put forward under Articles I and III of the GATT 1994.

3.5.2 China's arguments on particular aspects of the IPLS administration should be rejected

3.44. China challenges, first, certain aspects of the entry into force of the IPLS and the allegedly insufficient time that importers were granted to prepare for the operation of the IPLS. For instance, China argues that the IPLS was imposed "suddenly". China also claims that Türkiye imposed the

¹⁸⁴ China's opening statement at the first meeting of the Panel, para. 85.

¹⁸⁵ Türkiye's second written submission, para. 3.137; opening statement at the second meeting with the Panel, para. 3.15.

¹⁸⁶ Türkiye's first written submission, para. 3.149.

¹⁸⁷ Türkiye's first written submission, para. 3.161.

¹⁸⁸ China's opening statement at the first meeting of the Panel, para. 88.

¹⁸⁹ China's first written submission, para. 348.

IPLS "without any justification". However, China fails to articulate a cognizable claim under Article X:3(a), because Article X:3(a) does not regulate the entry into force of trade regulations. The "manner of administration" of a rule does not encompass its entry into force, because only a measure that has already entered into effect can be "administered".¹⁹⁰ It stands to reason that measures that have not yet entered into force are not in operation and therefore cannot be "administered". The administration of a measure relates to "'putting into practical effect or applying' a legal instrument of the kind described in Article X:1"¹⁹¹, as was stated by the panel in *US – COOL*. Contrary to China's arguments, the words "put into effect" were used by the *US – COOL* panel not as synonymous with the entry into force, but rather as synonymous with clarifying, operationalizing or applying the statute to a particular set of facts.

3.45. As another concern surrounding the entry into force of the IPLS, China asserts that Türkiye imposed the IPLS "without any justification", which, in China's view, is also contrary to Article X:3(a).¹⁹² This assertion is also incorrect, as there is no obligation – either under Article X:3(a) or under any other provision of the GATT 1994 – to provide reasons or otherwise explain or disclose the reasons that led the legislative or executive bodies to the creation of any given measure.¹⁹³

3.46. Second, China argues that Türkiye engages in discriminatory treatment between domestic and foreign products or importers, as well as between groups of foreign products or importers. But these arguments simply repeat China's claims under Articles I and III of the GATT 1994. For instance, China argues that "importers of Chinese and non-FTA country EVs and externally rechargeable (plug-in) hybrid vehicles, on the one hand, importers of EU and FTA-country EVs and externally rechargeable (plug-in) hybrid vehicles, on the other hand, are similarly situated and yet are treated very differently".¹⁹⁴ This is nothing but a re-statement of China's claim under Article I:1 of the GATT 1994 in its first written submission. The same applies to China's allegation under Article X:3(a) that Türkiye "favours importers of EU and FTA country EVs and externally rechargeable (plug-in) hybrid vehicles as well as domestic producers" over other market participants.¹⁹⁵ This is an MFN claim that belongs under Article I of the GATT 1994 and a claim of violation of national treatment that should be properly raised under Article III:4 of the GATT 1994. Alleged violations of the MFN and national treatment principles cannot form the basis of a proper claim under Article X:3(a), because they relate to the substance of a trade regulation, whereas Article X:3(a) focuses on its administration.¹⁹⁶

3.47. Third, China argues that the website through which importers can request import authorizations pursuant to the IPLS has not been or is not functional. This is factually incorrect, because the website is fully functional¹⁹⁷, was fully accessible at the time when the Implementation Directive was enacted and has been fully accessible ever since. Indeed, the website predates the Implementation Directive, because it serves as the general gateway for a range of applications that vehicle manufacturers or importers may choose to make to the competent Turkish authorities. The website URL listed in the Implementation Directive was correct, it merely did not contain an extension. It is for this reason alone that clicking on that link generated the "page not found" response that China reflected in its Exhibit CHN-23. At all times, applications have been and are being accepted and processed. To the extent any importer encounters difficulties, the relevant directorates of the Turkish governments can be contacted to find a solution. This is especially so here as many importers would be familiar with the website even prior to the issuance of the Implementation Directive, as noted above, because that website serves as the general gateway for filing applications for other purposes related to motor vehicles.

3.48. China also asserts that the website in question is merely a "general page of the Turkish Standards Institute"¹⁹⁸ and that "Türkiye does not provide a link to the actual online application for an import permit certificate or demonstrate that such online application was available since the

¹⁹⁰ Türkiye's first written submission, paras. 3.164-3.166.

¹⁹¹ Panel Report, *US – COOL*, para. 7.821.

¹⁹² China's first written submission, para. 242.

¹⁹³ Türkiye's first written submission, para. 3.170.

¹⁹⁴ China's first written submission, para. 248.

¹⁹⁵ China's first written submission, para. 249.

¹⁹⁶ Türkiye's first written submission, sections 3.7.3.6 and 3.7.3.8.

¹⁹⁷ Türkiye's first written submission, section 3.7.3.5.

¹⁹⁸ China's opening statement at the first meeting of the Panel, para. 93.

Implementation Directive was adopted".¹⁹⁹ But the website is a gateway for a range of administrative applications from which both importers and domestic manufacturers can choose, including type approval requests, conformity assessment applications and IPLS-related authorizations. Türkiye fails to see why a violation of Article X:3(a) should exist in these circumstances. An importer is perfectly able to navigate its way through the website and locate the application for the IPLS. Türkiye has provided evidence with detailed examples, including screenshots.

3.49. Fourth, China challenges what it portrays as the administration of the IPLS and the administration of Türkiye's investment incentive certificate scheme. Türkiye's response is that this issue is not a matter of the administration of the IPLS, but rather a matter of the administration of the *investment incentive certificate scheme*. The subject matter of China's challenge is thus a different measure that is outside the scope of this Panel's jurisdiction.²⁰⁰

3.50. Fifth, China argues that Türkiye provided insufficient "guidance" concerning the operation of the IPLS. However, contrary to China's allegation, the Implementation Directive provides an adequate level of detail to enable importers to understand and navigate the IPLS.²⁰¹ A degree of flexibility must be maintained in order to enable Turkish authorities to enforce requirements in this technologically novel and dynamic sector.²⁰² As Türkiye explained, there is nothing improper or unusual about a broad-based commitment that covers future developments of the relevant regulation. This is true for any regulatory area, particularly in a field characterized by rapid technological evolution.

3.51. Finally, the parties have exchanged arguments surrounding the entry into force of the Implementation Directive. China appears to argue that Türkiye failed to publish the Implementation Directive when it began applying the IPLS in early 2024. These arguments should be rejected as unsubstantiated and irrelevant. Türkiye has at all times published all of the relevant applicable instruments – whether the IPLS or the Implementation Directive – and China has adduced no proof to the contrary. The Panel should also dismiss China's argument, as Türkiye understands it, that Türkiye should have issued the first version of the Implementation Directive when the IPLS was originally "adopted" – in Notification 2023/22 – on 29 November 2023. That argument is incorrect. Notification 2023/22 entered into effect only at the very end of December 2023, upon which it was replaced by Notification 2024/22, which entered into effect on 1 January 2024. The Implementation Directive entered into effect on 2 January 2024. Thus, both the IPLS and the Implementation Directive entered into effect effectively at the same time.

3.52. In sum, China's claims and arguments under Article X:3(a) are legally incorrect and should be rejected. Türkiye's administration of the IPLS is fully compliant with the obligations of Article X:3(a).

3.6 The IPLS is justified under Article XX(d) of the GATT 1994

3.53. Even if the IPLS were found to violate any of the provisions invoked by China, it is justified as a measure necessary to enforce the consumer protection and safety provisions and objectives enshrined in Türkiye's Law on Consumer Protection and the Type Approval Regulation, within the meaning of Article XX(d) of the GATT 1994.²⁰³

3.54. In particular, the IPLS is designed to secure compliance with Articles 1 and 58 of the Law on Consumer Protection, which aim at protecting the health and economic interests of consumers. There is a clear link between the IPLS and the Law on Consumer Protection. This link is apparent from the fact that the IPLS mirrors the After-Sale Services Regulation, which explicitly refers to the Law on Consumer Protection. The link is also apparent from the obvious overlap in the subject-matter of the IPLS and the Law on Consumer Protection.²⁰⁴ The IPLS is also designed to secure compliance with Articles 13 and 15 of the Type Approval Regulation, which set out the requirements applicable to

¹⁹⁹ China's opening statement at the first meeting of the Panel, para. 93.

²⁰⁰ Türkiye's first written submission, section 3.7.3.7.

²⁰¹ Türkiye's first written submission, section 3.7.3.4.

²⁰² Türkiye's first written submission, para. 3.174.

²⁰³ Türkiye's first written submission, paras. 3.197-3.257; second written submission, paras. 3.193-3.239.

²⁰⁴ Türkiye's first written submission, paras. 3.215-3.220; response to Panel question No. 20, paras. 1.80, 1.83, and 1.87; second written submission, para. 3.207.

authorized representatives, and with Articles 51-56 of that Regulation, which establish the obligation of the authority to ensure that importers take appropriate corrective measures to ensure that a vehicle and its system, component or separate technical unit do not present health or safety risks. Here too, there is a clear overlap in the subject matter of the relevant IPLS requirements and the Type Approval Regulation.²⁰⁵ Nothing indicates that the Law on Consumer Protection or the Type Approval Regulation are in themselves WTO-inconsistent, and China has not suggested otherwise.²⁰⁶

3.55. China seeks to impose an excessively stringent and unprecedented standard for determining whether the IPLS is designed to secure compliance with the relevant laws and regulations of Türkiye.²⁰⁷ For instance, China takes issue with the fact that Notification 2025/7 does not explicitly refer to the Law on Consumer Protection.²⁰⁸ However, there is no textual basis in Article XX(d) to argue that it can justify only a measure that explicitly refers to the law with which it seeks compliance. Rather, what matters is the existence of a *link or relationship* between the measure and the law being enforced.²⁰⁹ Thus, China's argument is misplaced.

3.56. China further takes issue with the fact that the requirements under the Law on Consumer Protection differ from that under the IPLS²¹⁰ and argues that it is not sufficient for Türkiye to demonstrate that the IPLS furthers the objectives of the Law on Consumer Protection.²¹¹ However, China's approach is incorrect. As previous panels and the Appellate Body have stated, the "design" analysis is "not ... particularly demanding" as it requires the respondent to show that the measure at issue is "not incapable" of securing compliance with a law or regulation.²¹² Panels have consistently applied the design test at a general level, focusing on whether the measure and the law share the same subject matter.²¹³ Here, both the IPLS on the one hand, and the Law on Consumer Protection and the Type Approval Regulation on the other hand, address the same subject-matter, i.e. consumer protection and after-sales service obligations and safety, and it *cannot be ruled out* that the IPLS may have a positive impact on consumer protection and safety. This overlap is more than sufficient to establish that the IPLS is "not incapable" of securing compliance with the Law on Consumer Protection and the Type Approval Regulation.²¹⁴

3.57. The IPLS, and any violation it may entail, is also necessary to secure compliance with the Law on Consumer Protection and the Type Approval Regulation. The objective of protecting consumers is of the utmost importance, which China has not denied.²¹⁵

3.58. The requirements in Notification 2025/7 make, or are apt to make, a significant contribution to fostering consumer confidence in new technology vehicles and boost their experience in terms of after-sale services, as well as to the fundamental objective of ensuring battery safety and their environmentally sound handling.²¹⁶ Specifically, the IPLS ensures that foreign manufacturers and entities importing from non-RTA partners provide "after-sales maintenance and repair services" in accordance with Article 58(1) of the Law on Consumer Protection. The IPLS also ensures that foreign manufacturers establish an authorized representative, as required by Article 13(3) of the Type Approval Regulation as well as ensure vehicle and battery safety, as required by Articles 51-56 of the Type Approval Regulation, in particular Article 52(1).²¹⁷

3.59. With respect to the alleged Article I:1 violation, the distinct treatment of RTA partners and non-RTA partners makes a contribution to these objectives, because it permits Türkiye to finetune and calibrate its enforcement measures to products from those territories and to importers of those

²⁰⁵ Türkiye's second written submission, para. 3.204-3.205.

²⁰⁶ Türkiye's first written submission, paras. 3.211-3.214; second written submission, para. 3.206.

²⁰⁷ Türkiye's opening at the second meeting with the Panel, para. 3.12.

²⁰⁸ China's response to Panel question No, 53, para. 83.

²⁰⁹ Türkiye's second written submission, para. 3.209.

²¹⁰ China's opening statement at the first meeting of the Panel, paras. 108-110; opening statement at the second meeting with the Panel, para. 72.

²¹¹ China's response to Panel question No, 53, para. 84.

²¹² See for instance Appellate Body Report, *Colombia – Textiles*, para. 5.70; and Panel Reports, *Indonesia – Raw Materials*, para. 7.212; *Indonesia – Chicken*, para. 7.127; and *Brazil – Taxation*, para. 7.523. See also Türkiye's second written submission, para. 3.207.

²¹³ Türkiye's second written submission, para. 3.210 (referring to Panel Report, *Indonesia – Raw Materials*, paras. 7.226-7.233).

²¹⁴ Türkiye's opening statement at the second meeting with the Panel, para. 3.12.

²¹⁵ Türkiye's second written submission, para. 3.195.

²¹⁶ Türkiye's first written submission, para. 3.225.

²¹⁷ Türkiye's second written submission, para. 3.223.

products that present the greatest risk to consumer protection and after sale services. Any differential treatment between foreign and domestic manufacturers under Article III:4 also contributes to these objectives because of the greater regulatory risks that foreign manufacturers represent. Lastly, with respect to the alleged Article XI:1 violation, not granting an import license provides an adequate and calibrated incentive to comply with the requirements of the IPLS.²¹⁸

3.60. Moreover, the IPLS is not unduly trade restrictive because it does not impose an import ban. Rather, the IPLS permits imports, provided that certain conditions are fulfilled.²¹⁹ The import statistics provided by Türkiye and China also support the proposition that the IPLS is not highly trade restrictive, as explained above in the context of China's claim under Article XI:1. Türkiye fails to see how requirements to provide proper after-sales services and appropriate battery handling, as well as the requirement to establish an authorized representative, can be said to be highly trade restrictive, as China asserts, especially for a new technology like EVs and externally rechargeable hybrid vehicles.²²⁰

3.61. Türkiye argues that there are no less trade-restrictive alternatives to the IPLS.²²¹ China, for its part, argues that applying the penalties under Article 77(10)(b) of the Law on Consumer Protection could constitute a less trade-restrictive alternative to the IPLS.²²² However, this is not a reasonable alternative to the IPLS, because it fails to achieve the level of protection sought by Türkiye. First, foreign manufacturers present a greater risk in terms of consumer protection than domestic producers, because they are subject to a lesser degree of regulatory scrutiny than domestic producers. Second, non-RTA foreign manufacturers present a greater risk than RTA partners in terms of consumer protection, because of the many forms of institutionalized and treaty-mandated cooperation between Türkiye and its RTA partners. Thus, the potentially much graver consequences for Turkish consumers of deficiencies in product safety warrants a stricter regulatory response than a penalty for importers.²²³ Thus, there are no less trade-restrictive alternatives to the IPLS.

3.62. With respect to the requirements of the *chapeau* of Article XX, Türkiye does not apply the IPLS as an unjustifiable or arbitrary discrimination.²²⁴ China argues the contrary because in its view, Türkiye has not demonstrated otherwise and the differences in treatment are unrelated to the objective of the measure.²²⁵ However, contrary to China's assertion, any differential treatment between domestic and foreign manufacturers, or between manufacturers from RTA partners and non-RTA partners, is plainly related to the objective of the measure. In particular, importers of goods from RTA partners represent a significantly lesser risk for the consumer protection objective at issue because of the many forms of institutionalized and treaty-mandated cooperation between Türkiye and its RTA partners. Moreover, domestic cars and domestic manufacturers represent a significantly lesser risk for the consumer protection objective at issue than foreign manufacturers, due to limited oversight over foreign manufacturing standards.²²⁶ Thus, any differential treatment is plainly related to ensure compliance with the relevant consumer protection laws and regulations.

3.63. China further argues that the IPLS constitutes an arbitrary or unjustifiable discrimination because manufacturers that make certain investments may be exempted from the IPLS.²²⁷ However, this exemption, too, is plainly connected to the objective of securing compliance with the Law on Consumer Protection. This is because an exemption from the IPLS may be granted under certain conditions, including if manufacturers establish production in Türkiye. In that case, the Turkish

²¹⁸ Türkiye's response to Panel question No. 20, paras. 1.80, 1.84, and 1.87; second written submission, para. 3.222.

²¹⁹ Türkiye's first written submission, para. 3.226; response to Panel question No. 20, paras. 1.80, 1.84, and 1.87; second written submission, para. 3.227.

²²⁰ Türkiye's second written submission, para. 3.227.

²²¹ Türkiye's first written submission, paras. 3.228-3.233.

²²² China's opening statement at the first meeting of the Panel, para. 116; second written submission, para. 266.

²²³ Türkiye's first written submission, paras. 3.228-3.233; response to Panel question No. 20, paras. 1.81, 1.85, and 1.88; second written submission, para. 3.229.

²²⁴ Türkiye's first written submission, paras. 3.235-3.257.

²²⁵ China's opening statement at the first meeting of the Panel, paras. 119-134.

²²⁶ Türkiye's first written submission, paras. 3.228-3.233; response to Panel question No. 20, paras. 1.82, 1.86, 1.86; second written submission, paras. 3.233-3.238.

²²⁷ China's opening statement at the first meeting of the Panel, para. 131.

government will have the same oversight on these manufacturers as domestic manufacturers, which annuls any need for any more stringent requirements in the IPLS.²²⁸

3.64. Similarly, Türkiye does not apply the IPLS as a disguised restriction on international trade²²⁹, and China has not made any arguments to the contrary.

3.65. For these reasons, the IPLS is necessary to secure compliance with the Law on Consumer Protection and with the Type Approval Regulation within the meaning of Article XX(d), and is applied consistently with the requirements under the *chapeau* of Article XX.

4 CONCLUSION

4.1. For the reasons set out above, Türkiye requests the Panel to reject all the claims brought by China against Türkiye's Additional Duties on EVs and other vehicles, and against Türkiye's IPLS.

²²⁸ Türkiye's second written submission, para. 3.239.

²²⁹ Türkiye's first written submission, paras. 3.228-3.233.

ANNEX C**ARGUMENTS OF THE THIRD PARTIES**

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ANNEX C-1**INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF AUSTRALIA****I. EXECUTIVE SUMMARY OF AUSTRALIA'S WRITTEN SUBMISSION****A. ARTICLE II OF THE GATT AND LEGITIMATE EXPECTATIONS**

1. A tariff concession in a Member's WTO Schedule applies to all products falling under the terms of the concession, as interpreted based on its ordinary meaning when read in context, and in light of the object and purpose of the agreement.¹ This includes "new products that come into existence as a result of technological innovation, and which did not exist at the time that the concession in the Schedule was agreed upon".² To interpret commitments based on the ordinary meaning at the time a Member was bound would substantially undermine the security and predictability of Members' tariff commitments, producing unfavourable results.³

B. ARTICLES XX (B) AND (G) OF THE GATT

2. In Australia's view, measures adopted in order to attenuate global warming and climate change may fall within the scope of Article XX(b) of the GATT.⁴ The term "exhaustible natural resources" in Article XX(g) must be read "in the light of contemporary concerns of nations about the protection and conservation of the environment".⁵ Panels have noted that measures taken to avoid or reduce GHG emissions and climate change fall within the scope of the objective of "the conservation of exhaustible natural resources".⁶

C. "SAME CONDITIONS PREVAIL"

3. Whether the same conditions prevail in different countries is an objective question.⁷ The term "conditions" in the *chapeau* to Article XX can encompass a wide variety of circumstances.⁸ In determining which "conditions" prevailing in different countries are relevant, the subparagraphs of Article XX, and the subparagraph under which a measure has been provisionally justified, provide pertinent context.⁹ The type or cause of the violation found to exist may also inform the determination of which countries should be compared with respect to the conditions that prevail in them.¹⁰ The measure being examined is higher tariffs on Chinese EVs, the alleged violation includes a claim China is not provided with MFN status vis-à-vis tariffs on EVs, the exceptions invoked both relate to climate change mitigation, and a shift from internal combustion vehicles to EVs could assist in climate change mitigation.

¹ Panel Report, *India – Tariff Treatment*, para. 7.63.

² Panel Report, *India – Tariff Treatment*, para. 7.63.

³ Appellate Body Report, *China – Publications and Audiovisual Products*, paras. 396-397.

⁴ Panel Reports, *EU and Certain Member States – Palm Oil (Malaysia)*, paras 7.281, 7.1085 and *EU – Palm Oil (Indonesia)*, paras 7.290, 7.1093 referring to Appellate Body Report, *Brazil – Retreaded Tyres*, para. 151.

⁵ Appellate Body Report, *US – Shrimp*, para. 129.

⁶ Panel Reports, *EU – Palm Oil (Indonesia)*, para 7.286 and *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.277.

⁷ Appellate Body Report, *Brazil Retreaded Tyres*, para. 31.

⁸ Appellate Body Reports, *EC – Seal Products*, para. 5.299.

⁹ Appellate Body Reports, *EC-Seal Products*, para. 5.300 and *Indonesia – Import Licensing Regimes*, para. 5.99.

¹⁰ Appellate Body Reports, *EC-Seal Products*, para. 5.300 and *Indonesia – Import Licensing Regimes*, para. 5.99.

D. ARTICLE XXIV

4. The unique circumstances in *EC – Tariff Preferences*¹¹ dictated a "special approach"¹² to the Enabling Clause and cannot be assumed to automatically translate to Article XXIV.

II. EXECUTIVE SUMMARY OF AUSTRALIA'S ORAL STATEMENT**A. ARTICLES XX (B) AND (G) OF THE GATT**

5. The use of the word "necessary" in Article XX(b) does not mean that the measure must be "indispensable" to the achievement of the objective at issue.¹³ The Panel will need to assess all the relevant factors.¹⁴ There must be a "sufficient nexus" between the challenged measure and a legitimate policy goal under Article XX(g).¹⁵ This excludes from Article XX(g) measures which are "merely inadvertently aimed at a conservation objective".¹⁶ When driven, internal combustion vehicles release GHGs, hybrid vehicles generally release fewer GHGs, and EVs release no GHGs. The Panel will need to consider whether it has been established that additional duties on all three types of vehicles contribute sufficiently to the asserted environmental objectives given that: (1) each type contributes differently to the level of GHGs in the atmosphere when driven; and (2) one type of vehicle contributes no GHGs when driven.

B. "SAME CONDITIONS PREVAIL"

6. The *chapeau* to Article XX does not expressly limit the type of prevailing "conditions" which may be considered. However, context for determining the relevant "conditions" would include: (1) the type or cause of the underlying violation; and (2) the subparagraph(s) of Article XX under which the measure in question is provisionally justified.¹⁷ As to whether China's high share of global EV and EV battery production and industry policy toward the EV industry are relevant prevailing "conditions", the Panel should consider the nature of the relationship between: (1) China's high share of global EV and EV battery production and its industry policy toward the EV industry; and (2) additional duties on Chinese vehicles to protect human, animal or plant life and health and/or to conserve exhaustible natural resources. The closer the relationship, the more likely these factors are relevant prevailing "conditions".

7. In assessing the relationship, the panel will need to consider whether excessive dependence on Chinese EVs could create supply chain vulnerabilities and if Türkiye "needs to develop its own EV industry ... [for] ...a sustainable green transition in its territory". The Panel will also need to consider whether the measures would delay Türkiye's "transition to a cleaner economy ... mitigating global climate change".¹⁸ The Panel should consider whether differential treatment of China is not "arbitrary or unjustifiable" given any established differences in global market shares and industry policies between China and other WTO Members. In considering the additional duties on Chinese internal combustion vehicles, the Panel will also need to consider the relevance – if any – of China's high share of global EV and EV battery production and its industry policy toward the EV industry to those additional duties.

C. ARTICLE XXIV OF THE GATT

8. GATT Article XXIV(5) states the provisions of the GATT "shall not prevent ... the formation of a customs union or ... a free trade area". As to whether the formation of the Türkiye-EU customs union and Türkiye's FTAs would have been prevented if Türkiye were not allowed to introduce the

¹¹ See Türkiye's first written submission, *para.* 3.12, citing Appellate Body Report, *EC – Tariff Preferences*, paras. 110, 113.

¹² Appellate Body Report, *EC – Tariff Preferences*, paras. 106-107.

¹³ Appellate Body report, *Brazil – Retreaded Tyres*, para 150 citing Appellate Body report, *Korea – Various Measures on Beef*, para. 161.

¹⁴ Appellate Body report, *Brazil – Retreaded Tyres*, para 156.

¹⁵ Appellate Body report, *US – Shrimp*, para 133.

¹⁶ Appellate Body reports, *China – Raw Materials*, para 360.

¹⁷ Appellate Body reports, *EC – Seal Products*, paras 5.299-5.301.

¹⁸ China first written submission, para 8.

IPLS, the Panel may need to consider that Article XXIV(8) provides that measures permitted under Article XX do not need to be eliminated to properly form a customs union or FTA. Türkiye has argued in the alternative that the IPLS complies with Article XX(d).¹⁹ The FTAs and customs union which Türkiye relies upon may contain exceptions permitting certain measures necessary to secure compliance with Türkiye's laws or regulations (e.g. Article 11.1 of Türkiye's FTA with the UK).²⁰

¹⁹ Türkiye's first written submission, para. 3.197.

²⁰ See Exhibit TUR-62.

ANNEX C-2**INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF CANADA****I. ARTICLE II OF THE GATT 1994****A. Tariff concessions are not static and a panel is not prevented from addressing and resolving claims under Article II:1 where the respondent is undergoing the transposition process**

1. WTO Members' Tariff Schedules are an integral part of the GATT 1994. New products are not automatically excluded from existing coverage under a Member's Schedule simply because of technological advancements or developments. Rather, "as a general rule", the scope of Members' tariff concessions evolve over time to capture new products that may come into existence as a result of technological innovations.¹

2. Pursuant to Article 3.2 of the Dispute Settlement Understanding ("DSU"), Members' Schedules are to be interpreted in accordance with the customary rules of treaty interpretation. These rules support that the existing coverage of a Member's Schedule can include new technologies or technological developments, and that new products should not automatically be considered "unbound" by existing commitments that were entered into before the product came into existence.

3. The Panel should not refrain from addressing China's Article II:1 claims simply because Türkiye is currently in the process of transposing its Schedule from HS 2002 to HS 2007. Refraining from addressing the relevant claims of the complainant because the respondent was undergoing a transposition process would hinder WTO dispute resolution, deny the complainant its rights, and prevent the Panel from fulfilling its duty under DSU Article 11.²

4. The Harmonized System ("HS") forms the basis of the majority of WTO Members' Schedules and classifies all products, including new products, using internationally harmonized 6-digit codes. As confirmed by the Appellate Body, there is a close link between the HS and the WTO Agreements.³ The HS is relevant context for the purposes of interpreting the WTO Agreements, particularly for determining the classification of products as set out in Member's Schedules.⁴

5. HS correlation tables, published by the World Customs Organization, show the relationships between the subheadings from HS versions and identify overlap in product coverage between the HS updates, thus avoiding changes in the scope of a Member's concessions.⁵ These correlation tables have become an important tool to facilitate the successful implementation of HS amendments and ensure common interpretations. They are a key component of the transposition work for international nomenclatures and agreements, including WTO Tariff Schedules.

II. ARTICLE XX OF THE GATT 1994**A. Legal Standards under Article XX(b) and (g)**

6. The legal standards under subparagraphs (b) and (g) of Article XX are separate and distinct. While there may be instances where a measure can be provisionally justified under both subparagraphs, the legal tests are distinguishable due to the inclusion of different terms: "necessary" in subparagraph (b) and "relating to" in subparagraph (g). Each treaty term is to be interpreted in accordance with the customary rules of treaty interpretation. In applying the rules, a treaty interpreter is able to decipher the meaning of the term intended by the Parties and how its meaning differs from the meaning of other terms. This difference in wording indicates that Members intended

¹ Panel Report, *India – Tariffs on ICT Goods (Chinese Taipei)*, para. 7.66.

² Panel Report, *Turkey – Additional Duties (US)*, para. 6.26.

³ Appellate Body Reports, *EC – Chicken Cuts*, paras. 198-199 and *China – Auto Parts*, para. 149.

⁴ Appellate Body Report, *China – Auto Parts*, para. 164.

⁵ Panel Report, *India – Tariffs on ICT Goods (Chinese Taipei)*, para. 7.179.

the subparagraphs to require different degrees of connection or relationship between a measure and the policy objective sought by the measure.⁶

7. A panel must therefore determine whether the measure in question is provisionally justified under each subparagraph only after applying the distinct legal tests, rather than simply concluding that meeting the purportedly stricter test in one subparagraph is dispositive of meeting a purportedly lower standard in the other.

8. The necessity test under subparagraph (b) involves a weighing and balancing of three factors: the importance of the interests or values at stake; the trade restrictiveness of the measure; and the level of contribution of the measure to its objective.¹⁰ In assessing the level of contribution a measure makes towards achieving the objective, the Appellate Body opined that such a contribution exists where "there is a genuine relationship of ends and means between the objective pursued and the measure at issue".¹¹

9. The "relating to" test under subparagraph (g) does not involve any weighing and balancing of factors, but is rather a determination of whether there is a "close and genuine relationship" between the measure and the policy objective sought by it. If a panel determines that such a relationship exists, the measure would be "relating to" the conservation of an exhaustible natural resource.

10. Under subparagraph (b), a panel considers this relationship in analyzing one of the three factors that is part of the weighing and balancing exercise when applying the necessity test. In contrast, the relationship between the measure and its objective is the only consideration for the Panel in determining whether the "relating to" test in subparagraph (g) has been met.

11. Given the difference in the legal tests, any finding of "necessity" under subparagraph (b) cannot be automatically transposed to a finding of "relating to" under subparagraph (g). A panel must instead apply the distinct legal tests to determine whether the measure in question is provisionally justified under each subparagraph. Further, there is no textual basis for a panel to conclude that one test is more exacting than the other, or that meeting one test implies that the other test is satisfied.

B. Relevance to the Panel of difference in treatment that results in an MFN violation to both the subparagraph and the chapeau of Article XX.

12. Where a panel has determined that a measure violates the MFN obligation due to a difference in the treatment of like products, it is not directly relevant to the Panel's assessment whether the measure is provisionally justified under the Article XX subparagraphs. The measure is assessed on its own including its policy objectives and the relationship the measure has with the objectives.

13. Yet, there could be circumstances where the difference in treatment resulting in an MFN violation might be considered in the analyses under the subparagraphs. The degree of trade-restrictiveness of a measure is a factor weighed and balanced against other factors in the necessity test applied by a panel in some of the subparagraphs in Article XX. As such, the differential treatment that leads a panel to find an MFN violation may be relevant in considering how restrictive the measure is.

14. A panel may also consider the difference in treatment that results in an MFN violation under the chapeau of Article XX, in a particular way. The focus of the chapeau is whether the application of the measure found to be inconsistent with a GATT provision constitutes arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade. In that regard, the nature and quality of the discrimination standard assessed under the chapeau is different from the standard under Article I:1.⁷ In re-affirming this point, the Appellate Body in *EC – Seal Products* noted that this difference "does not mean, however, that the circumstances that bring about the discrimination that is to be examined under the chapeau cannot

⁶ Appellate Body Report, *US – Gasoline*, p. 18.

⁷ Appellate Body Report, *US – Shrimp*, para. 150.

be the same as those that led to the finding of a violation of a substantive provision of the GATT 1994".⁸

C. Relevance of commitments undertaken in other international instruments in the application of Article XX.

15. Canada considers that a WTO Member's commitments under international instruments may not be directly relevant in interpreting Article XX. However, the treaties that contain the commitments can be a relevant rule of international law that a panel may take into account under the customary rules of treaty interpretation. The Appellate Body stated, specifically when interpreting Article XX, that WTO Agreements should not be read in clinical isolation from public international law.⁹ In addition, in accordance with Article 31(3)(c) of the Vienna Convention on the Law of Treaties, relevant rules of international law that are applicable in relation between WTO Members can be considered by panels in interpreting the WTO Agreements.

16. A panel may also consider a WTO Member's international commitments in applying the various factors assessed under Article XX such as the importance of the values or interests at stake behind the measure's policy or whether the application of the measure constitutes arbitrary or unjustifiable discrimination.

17. Türkiye's international commitments with respect to CO2 reduction can assist the Panel in examining the elements that Türkiye must establish under Articles XX(b) and (g), given that both subparagraphs cover policy areas relating to climate change. Likewise, Türkiye's commitments under international climate change instruments can be relevant in the weighing and balancing of the factors under the necessity test in Article XX(b) because international commitments that underpin the challenged measure may confirm the importance of the interests or values at stake for the WTO Member. Furthermore, if the measure at issue is applied pursuant to an obligation in the relevant international instrument, this may inform the panel's assessment of whether the discrimination from the application of the measure is arbitrary.

III. ARTICLE XXIV OF THE GATT 1994

18. Regarding Article XXIV, Canada makes the following five points.

19. First, the failure by a complainant to raise GATT Article XXIV alongside Article I:1 does not result in a "jurisdictional flaw". There is no requirement under DSU Article 6.2 that a complainant must raise any affirmative defences upon which a respondent may rely. Additionally, Canada considers that the Appellate Body's reasoning with respect to the Enabling Clause in *EC – Tariff Preferences* does not apply to Article XXIV. That case, relied upon by Türkiye, involved a very distinct set of circumstances and did not involve a typical exception or defence.¹⁰ Accordingly, the specific circumstances of that case are distinguishable from this dispute and do not support the general proposition that a complainant is required to raise and explain an affirmative defence, here specifically Article XXIV, in the panel request or in its first written submission. It is for the respondent to decide whether to invoke a defence to justify its measure, and therefore the complainant should not be required to anticipate an affirmative defence that may be potentially raised by the respondent. If a complainant was required to raise Article XXIV at the beginning of the dispute, along with an explanation as to why the requirements of that provision are not fulfilled, this would effectively reverse the burden of proof so that the complainant would have the *prima facie* burden to show that the measure in question cannot be justified under Article XXIV.

20. Second, as other third parties in this dispute recalled, the Appellate Body in *Turkey – Textiles* observed that two conditions must be satisfied for the defence under Article XXIV to be available to a respondent: first, whether the measure at issue is introduced upon the formation of a customs union ("CU") that meets the requirements of Article XXIV; and, second whether the formation of the CU would be prevented if it were not allowed to introduce the measure at issue.¹¹ Canada acknowledges that this test was developed in light of the circumstances at issue and was appropriate

⁸ Appellate Body Reports, *EC – Seal Products*, para. 5.298.

⁹ Appellate Body Report, *US – Gasoline*, p. 17.

¹⁰ Appellate Body Report, *EC – Tariff Preferences*, para. 106.

¹¹ Appellate Body Report, *Turkey – Textiles*, para. 58.

in the case of *Turkey - Textiles*. While the two conditions set out by the Appellate Body provide some guidance in analyzing the application of Article XXIV, they should not be strictly applied without careful consideration by a panel of the context of the measure at issue. Canada considers that a panel's interpretive approach to applying Article XXIV should take into account three factors, drawing on the guidance set out by the Appellate Body in *Turkey - Textiles*: (a) the broader context in which CUs and Free Trade Areas ("FTAs") are negotiated and formed; (b) the actual text of Article XXIV, with the chapeau of paragraph 5 providing the basis for invoking Article XXIV and subparagraphs 5(a) and (b) and 8(a) and (b) outlining the requirements for a CU and an FTA, respectively; and (c) the object and purpose of the provision as set out in Article XXIV:4, that is, to encourage WTO Members to lower trade barriers and expand free trade while not raising barriers to the trade with third parties. In sum, in its analysis as to whether Article XXIV is available as a defence, the Panel should determine whether the test established by the Appellate Body in *Turkey - Textiles* can be applied in the same manner in this dispute.

21. Third, a panel is not precluded from considering an Article XXIV defence if a responding Member also makes arguments under GATT Article XX. A respondent in a dispute can invoke Article XXIV:5 to justify a violation of certain GATT provisions provided that the requirements in Article XXIV:5 are met. A respondent in a dispute can also invoke the general exceptions under Article XX of the GATT 1994 to justify a violation of a GATT provision. Both provisions can be invoked in certain circumstances to justify a measure that would otherwise be inconsistent with an obligation. However, clearly, the basis for each justification is different. Measures justified under Article XX are for the public policy objectives set out in the subparagraphs,¹² while measures justified under Article XXIV are for the purposes of enabling the formation of the CU or FTAs into which WTO Members enter.

22. Canada does not see any basis in the text of either Article XX or Article XXIV, including its subparagraphs 8(a)(i) and (b), supporting the position that a panel would be precluded from considering an Article XXIV defence if a responding Member also makes arguments under Article XX. Subparagraphs 8(a)(i) and (b) of Article XXIV and the GATT provisions enclosed in parentheses thereunder¹³ are relevant for determining whether an FTA or CU conforms with the requirement that duties and other restrictive regulations of commerce are eliminated with respect to "substantially all trade" between the constituent territories. This provision does not determine the relationship between Article XX and Article XXIV and thus whether a respondent can invoke Article XXIV as a defence. If a panel were to preclude the application of Article XXIV, it would need to first apply the customary rules of treaty interpretation codified in the Vienna Convention on the Law of Treaties to determine that an Article XXIV defence is not available.¹⁴

23. Fourth, a respondent must refer to specific provisions in all relevant Free Trade Agreements to justify a measure under Article XXIV that is inconsistent with Article I:1 of the GATT. At paragraph 3.33 of its first written submission Türkiye explicitly recognizes that the justification of the exemption from the Import Permit Licensing Scheme under Article XXIV is necessary for its FTAs with non-developing WTO Members and lists the United Kingdom and the EFTA countries, as well as the Customs Union Agreement with the European Union as falling into this category. There are thus several FTAs (as well as the CU with the European Union) at issue under which the exemption appears to be taken by Türkiye. Without commenting on the facts relating to these FTAs, Canada assumes that they are not identical in every aspect and likely have different provisions and conditions built into them. The CU with the European Union presumably has specific requirements of its own that are distinct from those in Türkiye's FTAs. Thus, where Article XXIV is invoked to justify preferential treatment of trading partners under different FTAs, it seems only logical that the specific provisions that form the basis for the challenged measure in each FTA must be specifically referred to by the respondent. Also, the chapeau of paragraph 5 of Article XXIV provides that the provisions of the GATT shall not prevent the formation of "a customs union or of a free-trade area" (emphasis added). This language supports that in a case where Article XXIV is invoked to justify measures that are taken under the specific provisions of more than one FTA or CU, each one of these agreements

¹² Appellate Body Reports, *US - Gasoline*, p. 22 and *Brazil - Retreaded Tyres*, para. 139.

¹³ Referenced by the European Union at paragraph 97 of its third party written submission.

¹⁴ By way of example, the Appellate Body in *China - Raw Materials* applied the customary rules of treaty interpretation to support its conclusion that China did not have recourse to Article XX to justify export duties found to be inconsistent with paragraph 11.3 of China's Accession Protocol, Appellate Body Report, *China - Raw Materials*, para. 307.

should include specific provisions justifying the inconsistent measure and should be stated by the respondent.

24. Fifth, in examining what was introduced at the time of the formation of the relevant FTAs or CU (see Question 20 from the Panel to the third parties following the third-party session), the Panel should consider the relevant obligation that a WTO Member has entered under an FTA or a CU. Canada understands that the Panel's question in this regard concerns a timing element that appears to arise from the Appellate Body's test in *Turkey – Textiles*. The chapeau of paragraph 5 of Article XXIV provides in the relevant part that "the provisions of this Agreement shall not prevent, as between the territories of Members, the formation of a customs union or of a free-trade area [...]" (emphasis added). No terms contained in the chapeau of paragraph 5, nor, for that matter, in any of the paragraphs listed under Article XXIV, mention "measure at issue" or provide any indication that the measures at issue must have been taken at a specific time. Therefore, in examining what was introduced at the time of the formation of the relevant FTAs or CU, the Panel should consider the relevant obligation that a WTO Member has entered under an FTA or a CU. This may be the obligation to apply a particular rate of duties or to refrain from imposing specific measures to imports of those countries. This obligation is part of the formation of the FTA or CU and provides the underlying authority for a potential future measure, *i.e.*, the measure at issue in the dispute. In assessing whether a measure taken pursuant to the authority included in an FTA or CU is justifiable under Article XXIV, further questions addressed by the Panel should be whether the measure at issue is closely connected to the relevant obligation in the FTA or Customs Union Agreement and consistent with the important purpose set out in paragraph 4 of Article XXIV "not to raise barriers to the trade" with third countries.

ANNEX C-3**INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF THE EUROPEAN UNION****1. Introduction**

1. The European Union will briefly summarise the main points that it developed in its Third Party Written Submission and offer some comments on the points raised by other Third Parties in their own written submissions.

2. Order of Analysis

2. The first point that we raised in our written submission relates to the order of analysis that we suggest the Panel should follow. We suggested that the Panel should first examine China's claims and Türkiye's defences under the GATT. If the Panel concludes that China has established *prima facie* that the challenged measures are inconsistent with Türkiye's obligations under the GATT and that they are not justified by Article XX, then the Panel would not need to examine further China's other claims and the corresponding defences raised by Türkiye.

3. We note that other Third Parties agree with our suggestion. Therefore, we are comforted in our suggestion that the Panel should first analyse the parties' claims and arguments under the GATT and then proceed with the analysis of the rest of the claims and arguments only if it concludes that the challenged measures are not inconsistent with the GATT, for example, because they are justified by Article XX(b) or (g) of the GATT.

4. Still, the Panel would need to examine Türkiye's possible justifications based on the requirements laid down in Article XXIV of the GATT 1994 or in the Enabling Clause.

3. Article XX(b) of the GATT

5. In relation to Article XX(b) of the GATT, the European Union has suggested that the Panel should follow the classic analysis as is accepted to constitute a correct interpretation of that provision and which is also reflected in past reports of the Appellate Body. This means starting with the analysis of whether the Panel will have to assess whether the measures contested have the objective to protect the environment, and specifically to reduce the overall CO₂ emissions in the transport sector by fostering the development and use of EVs and hybrid vehicles. The Panel will then have to ascertain the existence of a nexus between the contested measures and the objective of fighting climate change.

6. We note that other Third Parties express similar views. The Panel should then carry out this assessment pursuant to the criteria reflected in the jurisprudence of WTO panels and Appellate Body, as recalled by the United States, according to which, "for Article XX(b), a measure must be indispensable, essential, or requisite to serve the objective—in this case, to protect human, animal, or plant life or health".

7. Therefore, and as Australia has indicated, if the Panel finds that the contested measures are justified under Article XX(b) of the GATT, it should arrive at the conclusion that "measures undertaken to pursue a legitimate climate change mitigation objective can fall within the scope of Article XX of the GATT". The European Union also reiterates that no alternative measures were indicated by China. Therefore, the European Union wants to highlight again its suggestion that the panel should assess whether the contested measure can be justified under Article XX(b) of the GATT and, in this regard, it should also examine whether the requirements of the *chapeau* also be fulfilled.

4. Article XX(g) of the GATT

8. As to the requirement that the contested measures (in this case the increased tariff duties on EVs) relate to the conservation of natural resources, the European Union notes that in the other third Parties' submissions, this is a point that received particular attention, more than the other requirement of even-handedness, also enshrined in Article XX(g) of the GATT.

9. Accordingly, as to that first requirement (of relation to the conservation of natural resources), the European Union agrees with Japan as to the identification of the objective of the increased tariffs on EVs, when it states in its Written Submission that "a policy to reduce the depletion of clean air" can be "a policy to conserve an exhaustible natural resource within the meaning of Article XX(g)".

10. Furthermore, as to the relation of the measures at stake with the said objective, it should also be recalled that, according to Türkiye, as the "necessity" standard under XX(b) would be "more exacting than the "relating to" standard under Article XX(g) of the GATT, measures that satisfy the necessity standard under Article XX(b) also necessarily satisfy the "relating to" standard under Article XX(g).

11. In this regard, the European Union wishes to reiterate that, this reading of Article XX(g) of the GATT 1994 would then entail the need for the Panel to consider not only the actual contribution that the additional tariff duties on EVs and other types of vehicles would make to the achievement of Türkiye's environmental, climate change-related, and public health objectives, but also their "likely future contribution" to achieve those objectives.

12. The European Union notes that other Third Parties share the same interpretation. Clearly enough, the term 'protective oversight' is not inconsistent with a reading of Article XX(g) of the GATT whereby the contribution of the increased tariffs on EVs must be assessed also as regards a future action. Still, also as regards the fulfilment of the conditions under Article XX(g) of the GATT, the European Union considers that the panel should examine whether the other requirements of the chapeau of Article XX are met.

5. Article XX(d) of the GATT

13. Türkiye referred to Article XX(d) of the GATT as regards a possible justification under Article XX of the International Permit Licence Scheme (IPLS) and, in its third-party Submission, the European Union recalled that it would not appear, at least prima facie, that the objective of ensuring consumer protection would be in conflict with any obligation under the GATT 1994.

14. Therefore, we invite the Panel to take this point into consideration in its analysis concerning the possible justification of the IPLS under Article XX(d) of the GATT.

6. The Chapeau of Article XX of the GATT

15. We now move to the chapeau of Article XX of the GATT and to the condition to know whether there is an unjustified discrimination, which, according to the jurisprudence of the Appellate Body, has to be assessed in the sense of establishing whether the country concerned – here Türkiye – would apply the challenged measures in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries "where the same conditions prevail".

16. In relation to the interpretation of the conditions in the chapeau of Article XX, the European Union takes then the view that the Panel should consider the elements recalled above to assess whether those conditions are fulfilled in the case at hand.

7. Article XXIV of the GATT

17. We now move to Article XXIV of the GATT and we consider the condition, set forth in that provision, according to which, in order to be justified a provision that is contrary to the GATT should be introduced "upon the formation of a customs union or" a free trade area, this condition being a necessary requirement to justify a measure under Article XXIV.

18. In this regard, the European Union made the point at paragraph 101 of its Written Submission that the Panel should then clarify whether the 'measures' at issue, i.e. the non-applicability of the IPLS to the EU have been "introduced upon the formation" of the Customs Union between the EU and Türkiye. The European Union notes that Japan shares the same view in this regard.

19. However, the European Union wishes to note that, in order to arrive at the conclusion on whether the IPLS would constitute a measure introduced upon the formation of a customs union or a free trade area, the Panel should consider the argument made by Türkiye, and noticed by the United States, that the IPLS would have been introduced to make imported products compliant with

rules on consumer protection existing as of 1958, to the point that the exclusion of that Scheme for products imported by the European Union would go back to the same date.

20. The European Union considers that, should also the other conditions laid down in Article XXIV be respected, the Panel could take the view that the IPLS is consistent with that provision of the GATT.

8. The Enabling Clause

21. As regards the Enabling Clause, the European Union reinstates its view that the Panel should decide whether the IPLS is a measure based on the Enabling Clause.

22. In this regard, the European Union considers that the case law referred to by Australia in its Written Submission, i.e. in particular the report of the Appellate Body in EC – Tariff Preferences, might be relevant for the Panel to decide whether the Enabling Clause is relevant in the case at hand.

23. The European Union considers it however necessary to recall that, even if the Enabling Clause were deemed as being applicable by the Panel, the provisions contained in paragraph 2(c) of the Enabling Clause do not allow for preferential liberalisation of non-tariff barriers under that Clause, failing a WTO (now General Council) decision on the "criteria" or "conditions" mentioned therein.

ANNEX C-4**INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF JAPAN****I. Türkiye's Additional Duties on EVs and other vehicles originating in China****A. Article XX(b) of the GATT 1994**

1. The Member invoking Article XX(b) of the GATT 1994 must demonstrate: (i) that "the policy in respect of the measures [...] falls within the range of policies designed to protect human life or health"; and (ii) that the measures are "necessary to fulfil the policy objective"¹.
2. The Member invoking the provision has been generally required to demonstrate, among other things, "the existence of the risk to human, animal or plant life or health [...] that the challenged measure aims to reduce"² with "more than a merely hypothetical possibility"³, in other words, with "some degree of probability"⁴. While limiting the risk of greenhouse gas ("GHG") emissions "relates to the protection of human, animal or plant life or health"⁵, a mere reference to the risk of climate change caused by GHG emissions does not always suffice to establish "some degree of probability" of a specified risk⁶. In this case, the Panel should assess whether, and to what extent, Türkiye's dependence on imported electric vehicles ("EVs") and hybrid vehicles would hinder the development of its domestic charging infrastructure and adversely affect its total GHG emissions.
3. If the Panel considers that the specific risk is demonstrated, it must then examine whether the measure is "designed to" protect human, animal or plant life or health by examining "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"⁷. As Türkiye's duties on EVs and hybrid vehicles seem to improve the conditions of competition for the domestic like products against the subject imports from China, and may consequently reduce Türkiye's dependence on imported Chinese products, the Panel will be expected to focus on whether these duties, by modifying the conditions of competition between Chinese and Turkish products, are actually "designed to" reduce GHG emissions.
4. In addition, while Türkiye insists that the additional duties on combustion engine vehicles "restrict domestic consumption of fuel vehicles" and will thus "also contribute to Türkiye's environmental goals"⁸, it is doubtful whether such duties could restrict domestic consumption of fuel vehicles as argued by Türkiye because such duties should improve the competitiveness of the domestic combustion engine vehicles against the subject Chinese vehicles. The Panel should carefully examine this point as well.

B. Article XX(g) of the GATT 1994

5. The Member invoking Article XX(g) of the GATT 1994 must demonstrate: (i) that the measures "relat[e] to the conservation of exhaustible natural resources"; and (ii) that the measures are "made effective in conjunction with restrictions on domestic production or consumption"⁹. While the text of Article XX(g) "suggests a holistic assessment of its component elements", "the provision itself must be applied on a case-by-case basis, through careful scrutiny of the factual and legal context in a given dispute"¹⁰.

¹ Panel Report, *EC – Asbestos*, para. 8.169 (citing Panel Report, *US – Gasoline*, para. 6.20).

² Award of the Arbitrators, *Turkey – Pharmaceutical Products (EU)* (Article 25), para. 6.97.

³ Panel Report, *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.293.

⁴ Panel Report, *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.293.

⁵ Panel Report, *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.281.

⁶ See, for instance, Panel Report, *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.294.

⁷ Award of the Arbitrators, *Turkey – Pharmaceutical Products (EU)* (Article 25), para. 6.96.

⁸ Türkiye's first written submission, para. 2.77.

⁹ Article XX(g) of the GATT 1994.

¹⁰ Appellate Body Reports, *China – Rare Earths*, paras. 5.94-5.95.

6. Regarding the first element, "the generic term 'natural resources' in Article XX(g) is not 'static' in its content or reference but is rather 'by definition, evolutionary'"¹¹. In addition, for a measure to "relate to" conservation in the sense of Article XX(g), there must be "a close and genuine relationship of ends and means" between that measure and the conservation objective of the Member maintaining the measure¹². While the analysis does not require an evaluation of the actual effects of a measure¹³, a measure that is "merely incidentally or inadvertently aimed at a conservation objective" would not satisfy the "relating to" requirement¹⁴.
7. In this case, Türkiye argues that the additional duties on EVs and other vehicles have a close and genuine relationship of ends and means with the conservation of exhaustible natural resources "in particular clean air"¹⁵, given "the significant actual and likely future contribution that the additional duties make to the achievement of Türkiye's environmental, climate change-related, and public health objectives" in the context of the necessity test under Article XX(b)¹⁶.
8. As the Appellate Body found, "a policy to reduce the depletion of *clean air*" can be "a policy to conserve an exhaustible natural resource within the meaning of Article XX(g)"¹⁷. The panel in *EU and Certain Member States – Palm Oil (Malaysia)* also found that the objective of limiting the risk of certain [GHG] emissions "relates to ... the conservation of exhaustible natural resources"¹⁸. Therefore, the central issue should be whether Türkiye's additional duties on EVs and other vehicles are "relating to", or, have "a close and genuine relationship of ends and means" with, the reduction of CO₂ emissions.

II. Türkiye's Import Permit Licensing Scheme ("IPLS")

A. Article III:4 of the GATT 1994

9. With respect to the function of Article III:4 of the GATT 1994, past panel and Appellate Body reports have explained that this provision obliges governments to ensure "effective equality of competitive opportunities"¹⁹ between domestic and imported products, and a complainant has the burden of demonstrating that the measure modifies such equality of competitive opportunities "to the detriment of imported products"²⁰. The Appellate Body also clarified that not every form of differential treatment has a detrimental impact on "equality of competitive opportunities"²¹. Rather, measures intended to promote sound, fair and effective competition may help establish or restore equality of competitive conditions by resolving issues such as market failure, and therefore do not modify the conditions of competition to the detriment of imported products. Japan considers that the determination regarding Article III:4 involves a case-by-case analysis that consists of an assessment of the legitimacy of the objectives pursued by the measure, as well as whether there is a reasonable explanation as to why the measure is chosen to achieve such objective.
10. In this case, Türkiye's domestic "After Sales-Services Regulation" establishes a regulatory framework for the after sales-services of EVs and external rechargeable hybrid vehicles and applies to both manufacturers and importers. The IPLS nonetheless imposes several additional requirements *only on importers*: (i) while the domestic regulation allows for "benefit[ing] from established service stations"²², the IPLS requires importers to establish service stations *by*

¹¹ Appellate Body Report, *US – Shrimp*, para. 130.

¹² Appellate Body Reports, *China – Rare Earths*, para. 5.90 (citing Appellate Body Reports, *US – Shrimp*, para. 136; and *China – Raw Materials*, para. 355).

¹³ See Panel Reports, *China – Rare Earths*, para. 7.379.

¹⁴ Appellate Body Reports, *China – Rare Earths*, para. 5.90 (citing Appellate Body Report, *US – Gasoline*, p. 19, DSR 1996:I, p. 18).

¹⁵ Türkiye's first written submission, para. 2.113.

¹⁶ Türkiye's first written submission, para. 2.115.

¹⁷ Appellate Body Report, *US – Gasoline*, p. 14. (emphasis added)

¹⁸ Panel Report, *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.284.

¹⁹ Panel Report, *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.996.

²⁰ Panel Report, *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.996.

²¹ See, for instance, Appellate Body Report, *Thailand – Cigarettes (Philippines)*, para. 128.

²² Article 5(2) of the After Sales Services Regulation, Exhibit CHN-28.

*themselves*²³; (ii) while the number of required service stations can be changed under the domestic regulation²⁴, the IPLS does not provide the same flexibility; and (iii) although the domestic regulation does not explicitly require the establishment of call centers, the IPLS does²⁵. While Türkiye alleges that the objectives of the requirements in the IPLS are "fostering consumer confidence in new technology vehicles" and "ensuring battery safety"²⁶, the Panel should carefully assess whether these objectives would be legitimate in light of the function of Article III:4, and whether the requirements imposed only on importers could achieve the alleged objectives.

B. Article XX(d) of the GATT 1994

11. As the Appellate Body has regularly emphasized, "the assessment of a claim of justification under Article XX involves a two-tiered analysis in which a measure must first be provisionally justified under one of the subparagraphs of Article XX, before it is subsequently appraised under the chapeau of Article XX"²⁷.
12. First, the provisional justification under Article XX(d) requires a measure at issue to be (i) "designed to" secure²⁸, in other words, not "incapable" of securing²⁹, compliance with laws or regulations that are not themselves inconsistent with some provision of the GATT 1994; and (ii) "'necessary' to secure such compliance"³⁰. Importantly, Article XX(d) "covers measures designed to secure compliance *with laws or regulations as such and not with their objectives*"³¹. "[T]o secure compliance" means "enforcing the obligations stipulated in the laws or regulations and *not securing the attainment of the objectives of those laws or regulations*"³².
13. In this case, Türkiye argues that the IPLS and its requirements are designed and necessary to secure compliance with "Articles 1 and 58 of the Turkish Consumer Protection Law" because the requirements in the IPLS "mirror the requirements of the After Sales-Services Regulation"³³. However, as already explained, the requirements are in fact more stringent than those under the domestic regulations, and a foreign product that does not meet the requirements might still comply with the domestic regulations which also apply to it. Therefore, it is difficult to understand how these more stringent requirements serve to secure compliance *with laws or regulations, i.e., the Consumer Protection Law or the After Sales-Services Regulation*. While Türkiye argues that the requirements in the IPLS are apt to make a significant contribution to "fostering consumer confidence in new technology vehicles" and to "ensuring battery safety and their environmentally sound handling"³⁴, the contribution to the alleged *objectives* of "laws or regulations" such as "consumer confidence" and "battery safety" is irrelevant when examining the measure's contribution to "securing compliance with *specific rules, obligations, or requirements* under the relevant provisions of 'laws or regulations'"³⁵ in the "necessity" test under Article XX(d).
14. It is also doubtful that the exemption of Türkiye's customs union ("CU") or free trade agreement ("FTA") partners from the scope of the IPLS could be considered as being designed or apt to contribute to securing compliance with the domestic regulation. The mutual economic

²³ Article 3-(2)-a) of the Notification on 29 November 2023, Exhibit CHN-13; Article 3-(2)-a) of the Notification on 31 December 2023, Exhibit CHN-14; Article 3 of the Notification on 20 September 2024, Exhibit CHN-15.

²⁴ Article 9(2) of the After Sales Services Regulation, Exhibit CHN-28.

²⁵ Article 3-(2)-c) of the Notification on 29 November 2023, Exhibit CHN-13; Article 3-(2)-c) of the Notification on 31 December 2023, Exhibit CHN-14.

²⁶ Türkiye's first written submission, para. 3.225.

²⁷ Appellate Body Reports, *EC – Seal Products*, para. 5.169 (citing Appellate Body Reports, *US – Gasoline*, p. 22, DSR 1996:I, p. 20; *US – Shrimp*, paras. 119-120; and *US – Gambling*, para. 292).

²⁸ Appellate Body Report, *Korea – Various Measures on Beef*, para. 157.

²⁹ Appellate Body Report, *India – Solar Cells*, para. 5.58.

³⁰ Appellate Body Report, *Korea – Various Measures on Beef*, para. 157.

³¹ Panel Report, *Colombia – Textiles*, para.7.482. (emphasis added)

³² Panel Report, *Colombia – Textiles*, para.7.483. (emphasis added)

³³ Türkiye's first written submission, paras. 3.215-3.234.

³⁴ Türkiye's first written submission, para. 3.225.

³⁵ Appellate Body Report, *India – Solar Cells*, para. 5.59 (citing Appellate Body Reports, *Colombia – Textiles*, paras. 5.71-5.73 and 5.77; and *Korea – Various Measures on Beef*, paras. 162-164). (emphasis added)

cooperation set out in the preambles and general provisions of the CUs or FTAs³⁶ does not guarantee that manufacturers or importers of EVs and external rechargeable hybrid vehicles originating in the CU or FTA partners comply with the relevant rules or requirements.

15. Second, in order for a measure to be applied in a manner which would constitute "arbitrary or unjustifiable discrimination between countries where the same conditions prevail" under the chapeau of Article XX, three elements must exist: (i) the application of the measure must "result in *discrimination*"; (ii) the discrimination "must be *arbitrary* or *unjustifiable* in character"; and (iii) the discrimination "must occur *between countries where the same conditions prevail*", including "not only between different exporting Members, but also between exporting Members and the importing Member concerned"³⁷.
16. An analysis of whether discrimination is "unjustifiable" relates "primarily to the cause or the rationale of the discrimination"³⁸. Therefore, the discrimination will be considered arbitrary or unjustifiable "when the reasons given for this discrimination bear no rational connection to the objective falling within the purview of a paragraph of Article XX, or would go against that objective"³⁹.
17. For the same reasons as elaborated in the previous paragraphs, the additional requirements in the IPLS, along with the exemption of Türkiye's CU or FTA partners, do not seem to bear a rational connection to the alleged objective – securing compliance with the Consumer Protection Law and the After Sales-Services Regulation. Therefore, the measures do not appear to be "necessary" as an initial matter, and they also appear to amount to "arbitrary or unjustifiable discrimination between countries where the same conditions prevail".

C. Article XXIV of the GATT 1994

18. With regard to Article XXIV of the GATT 1994, it may provide justification for measures that are inconsistent with certain other GATT 1994 provisions, only when the invoking Member demonstrates that: (i) "the measure at issue *is introduced upon the formation* of a customs union or FTA that fully meets the requirements of Article XXIV"; and (ii) "the formation of that customs union or FTA would be prevented if it were not allowed to introduce the measure at issue"⁴⁰.
19. In this case, Türkiye argues that the exemption of its CU and FTA partners from its IPLS is justified under Article XXIV⁴¹. However, the exemption of the EU and its FTA partners from the IPLS was not *introduced upon the formation* of a CU or FTA; rather, it was introduced through the IPLS itself under Türkiye's domestic legislation, independent of the timing of each FTA or CU's formation. Chronologically speaking, Türkiye did not impose any import permit scheme for EVs and external rechargeable hybrid vehicles until December 2023. When the formation of the FTAs and CUs at issue predates the introduction of the IPLS in December 2023, the exemption from the IPLS could not logically have been *introduced upon the formation* of the CUs or FTAs.

³⁶ Türkiye's first written submission, paras. 3.250-3.256.

³⁷ Appellate Body Report, *US – Shrimp*, para. 150. (emphasis original)

³⁸ Appellate Body Report, *Brazil – Retreaded Tyres*, para. 229.

³⁹ Appellate Body Report, *Brazil – Retreaded Tyres*, para. 227.

⁴⁰ Appellate Body Report, *Peru – Agricultural Products*, para. 5.115 (citing Appellate Body Report, *Turkey – Textiles*, para. 58). (emphasis added)

⁴¹ Türkiye's first written submission, para. 3.30.

ANNEX C-5**INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF NORWAY****I. THE INTERPRETATION OF A MEMBER'S SCHEDULE OF CONCESSIONS UNDER ARTICLE II OF THE GATT 1994**

1. China claims that Türkiye's additional duties on electric vehicles are inconsistent with Article II:1(b), first sentence, of the GATT 1994, as they exceed the bound rates set out in Türkiye's Schedule of Concessions. Consequently, China also considers the duties inconsistent with Article II:1(a).¹ Türkiye responds that a Member cannot be regarded as having bound itself, at the end of the Uruguay Round, with respect to vehicles incorporating a technology that barely existed at that time and had no commercial relevance in the automobile sector.²

2. In support of its position, Türkiye relies on the panel in *EC – Computer Equipment*, which stated that "the protection of legitimate expectations in respect of tariff treatment of a bound item is one of the most important functions of Article II".³

3. According to Türkiye, WTO Members cannot claim to have legitimate expectations that Türkiye is bound with respect to products whose technological prominence and commercial significance are of a fundamentally different nature, both qualitatively and quantitatively, than was the case at the time Türkiye entered into its WTO tariff commitments.⁴

4. However, as Australia points out in its third party written submission,⁵ the Appellate Body in *EC – Computer Equipment* rejected reliance on such reasoning. The Appellate Body emphasised that a Member's Schedule forms an integral part of the GATT 1994 pursuant to Article II:7. The tariff concessions contained therein are treaty obligations, the interpretation of which must be conducted exclusively in accordance with the general rules of treaty interpretation set out in the Vienna Convention.⁶

5. In Norway's view, an interpretation which would allow a product segment to be released from binding commitments merely because of subsequent technological advancement would seriously undermine the predictability of the multilateral trading system.

6. As confirmed by the panel in *India – Tariff Treatment*,⁷ it is essential to distinguish between, on the one hand, technological advancements leading to genuinely "new products" not captured by the tariff lines at the six-digit level as inscribed in Members' Schedules, and, on the other hand, technological advancements representing developments of products that fall within existing commitments. Norway is not of the view that the development of new technologies or new products as such modifies the scope of tariff concessions in a Member's WTO Schedule.

II. THE LEGAL STANDARDS ARISING FROM THE TERMS "NECESSARY" IN SUBPARAGRAPH (B) AND "RELATING TO" IN SUBPARAGRAPH (G) UNDER ARTICLE XX OF THE GATT 1994

7. Türkiye argues that despite the textual differences between Article XX(b) and (g), the legal tests under these two subparagraphs are, in practice, very similar. Both the "necessity" test and the "relating to" test are said to require, in essence, that the measure at issue bears a genuine relationship to the policy objective pursued. In this regard Türkiye refers to Appellate Body findings in *Brazil – Retreaded Tyres* with respect to Article XX(b) and *China – Raw Materials* with respect to Article XX(g), both of which highlight the need for a "genuine relationship of ends and means".⁸

¹ China's first written submission, para. 144.

² Türkiye's first written submission, para 2.15.

³ Panel Report, *EC – Computer Equipment*, para. 8.23.

⁴ Türkiye's first written submission, para. 2.15.

⁵ Australia's third party written submission, para. 5.

⁶ Appellate Body Report, *EC – Computer Equipment*, para. 84.

⁷ Panel Report, *India – Tariffs on ICT Goods (EU)*, para. 7.63.

⁸ Türkiye's first written submission, para 2.46.

8. The European Union, in its third-party submission, appears to concur with Türkiye insofar as it considers the "necessity" standard under Article XX(b) to be more exacting than the "relating to" standard under Article XX(g). On this basis, Türkiye argues that compliance with Article XX(b) necessarily entails compliance with Article XX(g).

9. Norway takes a different view. In Norway's assessment the different subparagraphs of Article XX establish individualised legal tests, which must be applied separately. Prior Appellate Body jurisprudence confirms that. Although the tests may be conceptually similar, the choice of wording in each subparagraph entails distinct legal standards.

10. Norway agrees to the extent that the "necessity" standard in subparagraphs (a) and (b) establishes a higher threshold than the "relating to" standard in subparagraph (g). Both formulations require that a measure bear a genuine relationship to the objective pursued. However, under subparagraphs (a) and (b), this relationship is only one element of the overall necessity test, which also involves a process of weighing and balancing. By contrast, subparagraph (g) requires no more than a demonstration of a genuine relationship between the measure and the conservation objective.

11. Norway further considers that a measure may legitimately pursue multiple objectives. Where a Member invokes more than one of the subparagraphs of Article XX, the measure must be assessed against each of the applicable tests individually. The fact that a measure fails to meet the test under one subparagraph should not, in itself, preclude it from being justified under another.

III. THE GATT 1994 ARTICLE XX AND DIFFERENCE IN TREATMENT THAT RESULTS IN AN MFN VIOLATION

12. Norway's view is that the same difference in treatment that results in an MFN violation may be relevant both to the chapeau and to the subparagraphs of Article XX of the GATT 1994.

13. The Appellate Body has established that the analysis under Article XX is two-tiered.⁹ First, the measure itself, including its discriminatory aspects, must be examined with respect to the subparagraphs. Secondly, if the said measure, including its discriminatory aspects, is provisionally justified under the subparagraphs, the chapeau imposes additional requirements that must be assessed.

⁹ Appellate Body Report, US-Gasoline, p. 22.

ANNEX C-6**INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF THE RUSSIAN FEDERATION****I. Introduction**

1. As a third party in these proceedings, the Russian Federation provides its observations with respect to Article XX(b) and (g), as well as the chapeau, since these issues are of systemic importance. In making these observations, Russia takes no position with respect to the compliance of the measures at issue with the said provisions.

2. The Russian Federation does not deny the importance of protecting the environment and honoring the commitments made under various international instruments to this end. What is of concern to the Russian Federation, however, is the growing trend among some WTO Members to treat their environmental pledges not so much as a distinct set of commitments additional to other international obligations, but rather as a blanket permission to violate the WTO rules in matters tangentially relating to the environment. "Green" policies should not be viewed as an impenetrable shield for protectionism, and must be developed with careful consideration for Members' WTO obligations.

3. The Russian Federation therefore urges the Panel to carefully consider the Parties' and Third Parties' arguments with respect to Article XX of the GATT in order not to unreasonably expand its scope beyond measures that this Article was initially designed to justify.

4. With this, the Russian Federation recalls that in order to be justified under Article XX, an otherwise GATT-inconsistent measure should fall under one of the paragraphs and satisfy the provisions of the chapeau.

II. Interpretation of paragraphs (b) and (g), as well as the chapeau of Article XX of the GATT*Paragraph (b)*

5. In respect of paragraph (b) of Article XX, the party invoking this provision must prove two elements: (1) that the policy in respect of the measures at issue is within the range of policies designed to protect human, animal or plant life or health; (2) the measures are necessary to fulfil the policy objective.¹

6. First, in *Turkey – Pharmaceutical Products*, the panel rejected the notion that the over-reliance on imported pharmaceutical products will eventually pose a risk to human health.² The panel in that case noted that the risk identified by the respondent is merely hypothetical and so general that it "could be present in any sector and concern any market".³ The Russian Federation therefore urges the Panel to consider the nature of the risk relevant for the protection of human, animal or plant life or health in the situation at hand.

7. The Russian Federation also notes that a mere presence of a certain risk to human, animal or plant life or health is not enough to consider a measure "designed" to address this risk.⁴ Apart from consideration of whether the risk exists, a panel should also examine the design and structure of the instruments implementing the measure to assess whether it was indeed adopted in pursuance of a policy to protect human, animal or plant life or health.

¹ Panel Reports, *US – Gasoline*, para. 6.20; *EC – Asbestos*, para. 8.169.

² Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.177.

³ Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.178.

⁴ See Panel Report, *EC – Tariff Preferences*, paras. 7.201-202.

8. Second, the measure must be "necessary" to achieve the stated policy objective. In this part, the Panel is tasked with determining whether Türkiye's measures make a material contribution⁵ to the stated goal, and with measuring the extent of this contribution,⁶ if the latter is found to exist. Here, the Russian Federation recalls that the panel in *EC – Tariff Preferences*, citing the Appellate Body, held that in the context of paragraph (b) of Article XX, a "necessary" measure is "located significantly closer to the pole of 'indispensable' than to the opposite pole of simply 'making a contribution to'."⁷ Therefore, the Russian Federation calls the Panel to scrutinize whether the measures at issue are close to indispensable in achieving the stated goal. In this regard, Russia would doubt that a mere finding that a measure "is not incapable" of meeting an objective would be enough for establishing the "necessity" under paragraph (b) of Article XX as the European Union seems to suggest in its written submissions.⁸

9. The Russian Federation also notes that the assessment of necessity includes "weighing and balancing" the importance of the objective, the contribution of the measure to this objective and the measure's trade-restrictiveness.⁹ Thus, the Panel shall analyze whether the measure's contribution to the end-goal is so great as to justify its trade-restrictive effect.

Paragraph (g)

10. With respect to paragraph (g) of Article XX, Russia notes that past panels and the Appellate Body agreed that the term "relating to" the conservation of natural resources should be understood as "primarily aimed at".¹⁰ Russia also recalls that it is generally accepted in the WTO dispute settlement practice that in order to satisfy the requirements of paragraph (g) of Article XX, there must be a "close and genuine relationship of ends and means" between the measure at issue and conservation of exhaustible natural resources.¹¹ This means that it is insufficient for a measure to be "merely incidentally or inadvertently aimed at a conservation objective".¹² Therefore, in this case, the Panel will have to assess whether the measures at issue are "primarily" aimed at the conservation of exhaustible natural resources or whether in fact they pursue another goal such as protection of the domestic industry.

11. In *US – Gasoline*, the Appellate Body also noted that paragraph (g) of Article XX required "even-handedness" in imposing restrictions on imported and domestic products.¹³ The Panel is therefore required to assess whether Türkiye places "effective limitations"¹⁴ on internal production and consumption, and whether such limitations "operate jointly"¹⁵ with the trade restrictions introduced by the measures at issue.

Chapeau

12. Finally, as to the chapeau of Article XX, the Russian Federation notes that it has been called an "expression of the principle of good faith" with its primary objective to prevent the abuse of exceptions provided for in this Article.¹⁶

13. Therefore, even if a measure falls under one of the paragraphs of Article XX, it cannot be justified if it constitutes either a "means of arbitrary and unjustifiable discrimination between countries where the same conditions prevail" or a "disguised restriction on international trade".

⁵ Panel Report, *EC – Tariff Preferences*, para. 7.211; Appellate Body Report, *Brazil – Retreaded Tyres*, para. 151.

⁶ Appellate Body Report, *Brazil – Retreaded Tyres*, para. 156.

⁷ Panel Report, *EC – Tariff Preferences*, para. 7.211.

⁸ EU's TPS, para. 28.

⁹ Appellate Body Report, *Brazil – Retreaded Tyres*, para. 182. See also Appellate Body Report, *Colombia – Textiles*, para. 5.92.

¹⁰ Appellate Body Report, *US – Gasoline*, p. 18.

¹¹ Appellate Body Reports, *US – Shrimp*, para. 136; *China – Raw Materials*, para. 355; *China – Rare Earths*, para. 5.90.

¹² Appellate Body Reports, *US – Gasoline*, p. 19; *China – Rare Earths*, para. 5.90.

¹³ Appellate Body Report, *US – Gasoline*, p. 20.

¹⁴ Appellate Body Reports, *China – Rare Earths*, para. 5.94.

¹⁵ Ibid.

¹⁶ Appellate Body Report, *US – Shrimp*, para. 158.

14. In order to determine whether the measures at issue discriminate between countries where the same conditions prevail in an "arbitrary or unjustifiable" manner, the Panel should analyze the cause of these measures and the "rationale put forward to explain [their] existence".¹⁷ Notably, the Appellate Body found that discrimination is arbitrary and unjustifiable "when the reasons given for this discrimination bear no rational connection to the objective falling within the purview of a paragraph of Article XX, or would go against that objective".¹⁸ Thus, in Russia's opinion, the Panel should assess whether discrimination in the present case is connected to the stated objective "rationally" and does not go against this objective.

15. With respect to the "disguised restriction on international trade", Russia recalls that this term encompasses not only a "concealed or unannounced" restriction, but also a restriction "taken under the guise of a measure formally within the terms of an exception listed in Article XX".¹⁹

III. Requirement to justify, under the relevant subparagraphs, each individual inconsistency that has been established to make a valid prima facie case under Article XX

16. Where different elements of a measure have been found inconsistent with different provisions of the GATT 1994, the respondent must demonstrate, under Article XX, that each of those specific elements is justified. When claiming that a GATT-inconsistent measure is permissible under Article XX, the burden on the respondent is to show that this specific measure, in the precise form it has been applied, falls within the scope of this Article. This means that it is not sufficient to demonstrate that a measure, in general terms, pursues a legitimate objective. Rather, the respondent must prove that the particular aspects of a measure that caused the inconsistencies are themselves justified. Only in this way a Panel can be satisfied that this specific measure, and not another one broadly like it, is justified under Article XX.

IV. Role of commitments a WTO Member has undertaken in other international instruments such as the Paris Agreement or the Glasgow Declaration in the Panel's interpretation and application of Article XX

17. In view of the Russian Federation, the commitments undertaken under these instruments are of little relevance to the analysis under Article XX.

18. According to Article 3.2 of the DSU, the dispute settlement of the WTO "serves ... to clarify the existing provisions of [the covered] agreements in accordance with customary rules of interpretation of public international law." The relevant principles of interpretation are set forth in Articles 31 and 32 of the VCLT.²⁰

19. The provisions of different treaties can be relevant to interpret the WTO Agreements, for example, when such treaties are directly referenced in the text of the WTO Agreement. For instance, the TRIPS agreement explicitly incorporates the provisions of the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits. The Agreement on Fisheries Subsidies directly refers to the law of the sea. On the contrary, neither the Paris Agreement, nor the Glasgow Declaration are mentioned anywhere in the GATT. Nor can these instruments qualify as "subsequent agreements" for the purposes of interpretation under Article 31(3)(a) of the VCLT. They neither were intended to modify the obligations of the WTO Members under the GATT, nor constitute an agreement "between the parties", as not all WTO Members are parties to the Paris Agreement or signatories of the Glasgow Declaration.

20. There is a reason why such external instruments are not taken into account for the purposes of interpretation. We cannot disregard a possibility of certain WTO Members concluding a hypothetical agreement, the provisions of which would be fully or partially inconsistent with their WTO obligations. In this case, for the purposes of the WTO proceedings such inconsistent

¹⁷ Appellate Body Reports, *US – Gasoline*, p. 22; *US – Shrimp*, para. 157.

¹⁸ Appellate Body Reports, *US – Tuna II (Mexico)* (Article. 21.5 - Mexico), para. 7.316; *Brazil – Retreaded Tyres*, para. 226; See also Appellate Body Reports, *US – Gasoline*, *US – Shrimp*, *US – Shrimp* (Article 21.5 – Malaysia)).

¹⁹ Appellate Body Report, *US – Gasoline*, p. 25.

²⁰ Appellate Body Reports, *US – Gasoline*, p. 17; *Japan – Alcoholic Beverages II*, p. 10.

arrangements cannot justify the departure by such Members from their WTO commitments, unless the departure is expressly provided for in the WTO Agreements. The examples of these explicit provisions in the GATT are Article XXIV and paragraph (h) of Article XX. It should be noted that paragraphs (b) and (g) of Article XX, unlike paragraph (h), do not provide for such an express reference.

21. Thus, the mere fact that a WTO Member is bound by international obligations under other instruments cannot change the legal test for application of Article XX: a measure must fall within one of the subparagraphs and satisfy the requirements of the chapeau. In this vein, when analyzing the subparagraphs of Article XX, the decisive question is whether the measure bears the requisite nexus to the stated policy objective, and not whether it might contribute to compliance with a non-WTO obligation. In *Brazil – Retreaded Tyres*, the Appellate Body rejected the notion that compliance with a ruling of the MERCOSUR tribunal is a sufficient justification for a measure to fall under Article XX.²¹ In view of the Russian Federation, the existence of obligations under the Paris Agreement or Glasgow Declaration, similarly, will not affect the application of Article XX to the measures at issue.

22. The Russian Federation therefore urges the Panel to take into account these considerations in analyzing the Parties' arguments with respect to Article XX of the GATT in order to strike a balance between the fight against protectionism, one of the primary goals of the WTO, and environmental objectives that Members might pursue in conformity with their WTO obligations.

²¹ Appellate Body Report, *Brazil – Retreaded Tyres*, para. 226.

ANNEX C-7

INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF SINGAPORE

I. INTRODUCTION

1. Singapore is participating in this case because it has a systemic interest in four legal issues that have arisen in the course of these proceedings, namely: (a) whether the GATT tariff bindings of WTO Members cover new goods arising from technological advancements; (b) the applicability of Articles XX(b) and (g) of the GATT 1994; (c) the role of commitments undertaken in other international instruments in the interpretation and application of Article XX of the GATT 1994; and (d) the invocation of Article XXIV:5 for inconsistencies with Article I:1 in respect of measures that can be justified under Article XX of the GATT 1994. Singapore stresses that it is *not* commenting on the substantive merits of the case but will only address the legal issues identified above.

II. EXECUTIVE SUMMARY OF SINGAPORE'S THIRD PARTY ORAL STATEMENT

A. Whether the GATT tariff bindings of WTO Members cover new goods arising from technological advancements

2. The scope of a WTO Member's GATT tariff bindings should in principle not be interpreted as precluding new goods arising from technological advancements, as long as these products can satisfy the terms or descriptions of the tariff concessions.
3. Tariff concessions should be interpreted with reference to the relevant terms of the concessions, and these relevant terms are to be interpreted in accordance with the customary rules of interpretation set out in Article 31 of the VCLT.¹ Singapore addresses two aspects of this rule of interpretation which are pertinent to the dispute.
 - a. First, in examining the **ordinary meaning** of concessions, the Panel in *India – Tariff Treatment* found that a tariff concession applies to all products falling under the terms of the concession, as interpreted based on its ordinary meaning when read in context, and in the light of the object and purpose of the agreement and that this included "new products that come into existence as a result of technological innovation, and which did not exist at the time that the concession in the Schedule was agreed upon". The Panel also found that where a product is classified under a particular HS heading or subheading of a WTO Member's Schedule, that product would also fall within the scope of that WTO Member's obligations unless the Schedule specifies otherwise, including new products that only come into existence following the binding of a WTO Member's commitments with respect to the relevant heading or subheading.²
 - b. Furthermore, the Panel in *EC – IT Products* observed that when making a commitment pursuant to Article II of the GATT 1994, a WTO Member may choose precise, even exclusive, terms and conditions to qualify or limit the scope of coverage. Other WTO Members also have the opportunity to agree or disagree with proposed concessions when they are put forth for incorporation into another WTO Member's Schedule. Accordingly, a panel should not read qualifications into a commitment that are not there.³
 - c. Second, the **object and purpose** of the GATT 1994 as set out in its preamble is the "substantial reduction of tariffs and other barriers to trade." Interpreting tariff concessions as automatically excluding new or evolved products would undermine this object and purpose as this would imply that whenever innovation produces functionally equivalent but technologically novel goods, these goods would never be subject to a WTO Member's tariff bindings.

¹ Panel Report, *EC – IT Products*, para. 7.596.

² Panel Report, *India – Tariff Treatment*, paras. 7.63-66.

³ Panel Report, *EC – IT Products*, para. 7.598.

B. Applicability of Articles XX(b) and (g) of the GATT 1994

4. Measures adopted to mitigate climate change fall within the scope of both Article XX(b) as being "necessary to protect human, animal or plant life or health", as well as Article XX(g) as "relating to the conservation of exhaustible natural resources". This has been recognised in the jurisprudence of the Appellate Body and various Panel Reports.⁴
5. It also recognises the reality that Members must be afforded a certain degree of domestic policy space to adopt climate change mitigation measures in fulfilment of their obligations under international law to address climate change. However, these measures must satisfy the other requirements under Articles XX(b) and (g) of the GATT 1994.

III. EXECUTIVE SUMMARY OF SINGAPORE'S RESPONSE TO PANEL QUESTIONS TO THIRD PARTIES AFTER FIRST SUBSTANTIVE MEETING

A. Response to Question 9 (the role of commitments undertaken in other international instruments in the interpretation and application of Article XX of the GATT 1994)

6. The starting point of the interpretation and application of Articles XX(b) and (g) is the VCLT, in particular the customary rules of treaty interpretation as reflected in Article 31 of the VCLT.
7. While commitments undertaken in other international instruments do not form part of the "context" of the GATT 1994 insofar as that term is used in Article 31 of the VCLT, they could qualify as "relevant rules of international law applicable in the relations between the parties", which must be taken into account together with the context of the GATT 1994 (Article 31(3)(c) of the VCLT).
8. The Appellate Body in *US – Anti-Dumping and Countervailing Duties (China)* considered that Article 31(3)(c) of the VCLT contains three elements: i) "rules of international law", which corresponds to Article 38(1) of the ICJ Statute; ii) such rules "must concern the same subject matter as the treaty terms being interpreted" in order to be relevant; and iii) such rules must be "applicable in the relations between the parties".⁵ On that last element, the Appellate Body in *EC and certain member States – Large Civil Aircraft* noted that while it has not been settled whether "the parties" refers to "all WTO members or just a subset of Members, such as the parties to the dispute", it recognised that "in a multilateral context such as the WTO, when recourse is had to a non-WTO rule for the purposes of interpreting provisions of the WTO agreements, a delicate balance must be struck between, on the one hand, taking due account of an individual WTO Member's international obligations and, on the other hand, ensuring a consistent and harmonious approach to the interpretation of WTO law among all WTO Members."⁶
9. Singapore submits that in the context of the present dispute, the Paris Agreement satisfies the requirements of Article 31(3)(c) of the VCLT: (a) it is a rule of international law as an international convention (Article 38(1)(a) of the ICJ Statute); (b) it is relevant as it concerns the same subject matter as Articles XX(b) and (g) of the GATT 1994; and (c) it is applicable between "the parties" as all WTO Members presently capable of being a party to the Paris Agreement are already parties, such that the "delicate balance" referred to in *EC and certain member States – Large Civil Aircraft* is not disrupted. For completeness, Singapore further notes that Article 31(3)(c) of the VCLT does not require an international instrument to pre-date or be in existence at the time the GATT 1994 was concluded for it to be taken into account.

⁴ Appellate Body Report, *Brazil – Retreaded Tyres*, para. 151; Panel report, *Brazil – Taxation (EU)*, para. 7.880; Panel Report, *EU and Certain Member States – Palm Oil (Malaysia)*, paras. 7.277 and 7.281.

⁵ Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)*, paras. 307-308.

⁶ Appellate Body Report, *EC and certain member States – Large Civil Aircraft*, paras. 844-845.

B. Response to Question 16 (the invocation of Article XXIV:5 for inconsistencies with Article I:1 in respect of measures that can be justified under Article XX of the GATT 1994)

10. Article XXIV:5 of the GATT 1994 can be invoked as long as the requirements of a customs union or free-trade area in Article XXIV:8(a)(i) or (b) of the GATT 1994 are satisfied, and a WTO Member is not precluded from relying on Article XXIV of the GATT 1994 to defend a GATT-inconsistent measure that can otherwise be justified under Article XX of the GATT 1994. This is because:
 - a. First, the phrase in parentheses "except, where necessary, those permitted under Articles XI, XII, XIII, XIV, XV and XX" in Articles XXIV:8(a)(i) and (b) of the GATT 1994 simply provides an exception to this requirement for a "customs union" and "free trade area" to "eliminate duties and other restrictive regulations of commerce with respect to substantially all the trade between the constituent territories of the customs union or free-trade area". A customs union or free-trade area would therefore not fail to qualify as such by virtue of the existence of duties and other restrictive regulations of commerce which are permitted under e.g. Article XX of the GATT 1994.
 - b. Second, the immediate context of this parenthetical exception appears to be the trade between the constituent territories of the customs union or free trade area, and it does not seem to have any bearing on the trade between a constituent territory and a third country.

ANNEX C-8

INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF SWITZERLAND

A. INTERPRETATION OF SCHEDULES OF CONCESSIONS

1. Members' WTO Schedules are an integral part of the GATT 1994 and are thus to be interpreted in accordance with customary rules of interpretation of public international law pursuant to Article 3.2 of the DSU.¹ It follows that "a tariff concession in a Member's WTO Schedule applies to all products, falling under the terms of the concession, as interpreted based on its ordinary meaning when read in context, and in light of the object and purpose of the agreement".² As noted by the panel in *India – Tariffs on ICT Goods*, this also includes "new products that come into existence as a result of technological innovation, and which did not exist at the time that the concession in the Schedule was agreed upon".³ The panel in that dispute also noted that "pursuant to the rules of interpretation of the [Harmonized System] HS, any product at any moment in time must fall within the product scope of a tariff item in the HS nomenclature", necessarily including "new products that come into existence".⁴

2. In a dispute involving a Member's GATS Schedule, the Appellate Body noted that it would undermine the predictability, security and clarity of GATS specific commitments if the ordinary meaning of the terms of the commitments should be limited to the meaning they had at the time the Schedule was concluded.⁵ The same considerations are in our view also relevant for GATT concessions.

B. ORDINARY CUSTOMS DUTIES UNDER ARTICLE II:1(B) OF THE GATT 1994

3. Article II:1(b) of the GATT 1994 distinguishes between "ordinary customs duties" in its first sentence and "all other duties or charges of any kind imposed on or in connection with importation" in its second sentence. The term "ordinary customs duties" is not defined in the GATT 1994.⁶ Panels and the Appellate Body have examined that term in previous disputes.

4. The term "ordinary" has been found to mean *inter alia* "of the usual kind, not singular or exceptional".⁷ The determination as to whether a duty is an "ordinary" customs duty requires an analysis of the characteristics of the measure whereby the duty is applied, including its structure, design and operation.⁸ Switzerland notes that, in *Dominican Republic – Safeguard Measures*, the panel concluded that the duties at issue were "other duties or charges" taking into account the following elements: (i) the fact that the measures were applied on a temporary basis for a limited period of time; (ii) the fact that they co-existed with the MFN tariff and (iii) the fact that they were applied on imports from certain countries only.⁹

5. In *US – Steel and Aluminium Products (Switzerland)*, the panel considered that the additional duties imposed by the United States on steel and aluminium products were more appropriately

¹ Panel Reports, *India – Tariffs on ICT Goods (EU)*, para. 7.63; *India – Tariffs on ICT Goods (Japan)*, para. 7.64; *India – Tariffs on ICT Goods (Chinese Taipei)*, para. 7.63; Appellate Body Reports, *EC – Computer Equipment*, para. 84; Panel Reports, *EC – Chicken Cuts*, para. 7.87; Regarding GATS Schedule, see Panel Report, *China – Publications and Audiovisual Products*, para. 7.1168.

² Panel Reports, *India – Tariffs on ICT Goods (EU)*, para. 7.63; *India – Tariffs on ICT Goods (Japan)*, para. 7.64; *India – Tariffs on ICT Goods (Chinese Taipei)*, para. 7.63.

³ Panel Reports, *India – Tariffs on ICT Goods (EU)*, para. 7.63; *India – Tariffs on ICT Goods (Japan)*, para. 7.64; *India – Tariffs on ICT Goods (Chinese Taipei)*, para. 7.63.

⁴ Panel Reports, *India – Tariffs on ICT Goods (EU)*, para. 7.64; *India – Tariffs on ICT Goods (Japan)*, para. 7.65; *India – Tariffs on ICT Goods (Chinese Taipei)*, para. 7.64.

⁵ Appellate Body Report, *China – Publications and Audiovisual Products*, para. 397.

⁶ Appellate Body Report, *Chile – Price Band System*, para. 265; Panel Report, *US – Steel and Aluminium Products (Switzerland)*, para. 7.39.

⁷ Panel Report, *Chile – Price Band System*, para. 7.51.

⁸ Appellate Body Report, *Chile – Price Band System (Article 21.5 – Argentina)*, para. 189; Panel Report, *Dominican Republic – Safeguard Measures*, para. 7.85.

⁹ Panel Report, *Dominican Republic – Safeguard Measures*, paras. 7.86-7.88.

characterized as "ordinary customs duties" on the basis of the fact that those duties were (i) levied on all imports of the covered steel and aluminum products; (ii) calculated on an *ad valorem* basis; (iii) described as "tariffs" and "ordinary customs dut[ies]" in the relevant Presidential Proclamations; and (iv) operationalized as "ordinary customs dut[ies]" and inscribed in the "Rates of Duty – General" column of the United States' tariff schedule".¹⁰ The panel in that dispute, however, noted that the additional duties also bore other features which could lead to a characterization as "other duties or charges": (i) they had been introduced as "Temporary Modifications Established Pursuant to Trade Legislation", applying in addition to pre-existing tariffs; (ii) although applicable on an MFN basis, there were a number of country exemptions; (iii) there were indications that those duties might not be intended as permanent adjustments to the MFN tariff rate.¹¹ The panel thus examined the consistency of the measures under both Article II:1(b) first sentence and Article II:1(b) second sentence of the GATT 1994.¹²

C. INTERPRETATION OF ARTICLES XX (B) AND XX (G) OF THE GATT 1994

1) Article XX(b)

6. In assessing whether a measure is "taken to" protect human, animal or plant life or health under Article XX(b) of the GATT 1994, "prior panels have often commenced their analyses by determining the existence of the risk to human, animal or plant life or health (health risk) that the challenged measure aims to reduce".¹³

7. In the present case, Türkiye explains that its measures are "not incapable of fostering the development and use of [electric vehicles] EVs and hybrid vehicles" and therefore there is a "nexus" between the measures and the fight against climate change, noting that "climate change, of course, has a direct and negative impact on public health and the environment".¹⁴ Switzerland notes that the panels in the Palm Oil disputes underlined that "global warming and climate change pose one of the greatest threats to life and health on the planet" and considered, in light of reports in previous disputes, that the objective of the measure concerned of limiting certain greenhouse gas (GHG) emissions *prima facie* related to the protection of human, animal or plant life or health.¹⁵

8. Further, according to Türkiye, "[t]he development of a national electric vehicle sector is expected to assist Türkiye in fulfilling its international obligations to reduce emissions in the transport sector, which will, in turn, contribute to reduce Türkiye's GHG emissions" which "will ultimately benefit global environmental outcomes".¹⁶ Thereby, Türkiye seems to establish the existence of a set of "cascading" objectives of the measures at issue.

9. When examining the relationship between the challenged measures, considering their design (including their content, structure, and expected operation) and the proclaimed objective,¹⁷ it will be relevant for the Panel to take into account the existence of such "cascading" objectives. In that regard, it appears relevant first to ascertain the immediate objective, and then to ensure that there is a rational relationship between that objective and each of the "cascading" objectives, such as to ensure that the measure falls within the range of policies designed to protect human, animal, or plant life or health. The Panel should do so by examining how these objectives are reflected in the evidence before the Panel, including the text of the relevant legal instruments, the legislative history, and other evidence regarding the design, structure and expected operation of the measure.¹⁸

¹⁰ Panel Report, *US – Steel and Aluminium Products (Switzerland)*, para. 7.43.

¹¹ *Idem*, para. 7.44.

¹² *Idem*, paras. 7.45-7.46.

¹³ Award of the Arbitrator, *Turkey – Pharmaceutical Products (EU) (Article 25)*, para. 6.97 (citing Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.134); see also Panel Reports, *EC – Asbestos*, para. 8.170; *Brazil – Retreaded Tyres*, para. 7.42; *China – Rare Earths*, para. 7.156; *Brazil – Taxation*, para. 7.859.

¹⁴ Türkiye's First Written Submission, para. 2.71.

¹⁵ Panel Report, *EU – Palm Oil (Indonesia)*, para. 7.1093 and *EU and Certain Member States – Palm Oil (Malaysia)*, para. 7.1085.

¹⁶ Türkiye's First Written Submission, para. 2.73 (emphasis added).

¹⁷ Award of the Arbitrator, *Turkey – Pharmaceutical Products (EU) (Article 25)*, para. 6.91.

¹⁸ Award of the Arbitrators, *Turkey – Pharmaceutical Products (EU) (Article 25)*, para. 6.96 referring to Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.135.

10. If this threshold examination reveals that the measure is incapable of meeting its proclaimed objective, the requirement of the "design" step would not be met.¹⁹ Switzerland notes that the analysis of whether a measure is "taken to" or "designed to" protect human, animal, or plant life or health is less demanding than the assessment as whether a measure "contributes" to the proclaimed objective under the "necessity test". In particular, aspects relating to *how* the measure could contribute to its proclaimed objective should be examined under the "necessity" analysis rather than the "design" analysis. In Switzerland's view, it is important not to blur the distinction between the two analyses.

2) Article XX(g)

11. The party invoking Article XX(g) of the GATT 1994 must demonstrate first that the challenged measure "relates to the conservation of exhaustible natural resources" and second, that it is "made effective in conjunction with restrictions on domestic production or consumption". While the notion of "exhaustible natural resources" is not defined in the GATT, it has been found in past disputes to cover different types of policies, including the protection of clean air.²⁰

12. For the first condition to be satisfied, the responding party must demonstrate that the challenged measure "relates to" the conservation of exhaustible natural resources, i.e. that it has "a close and genuine relationship of ends and means"²¹ to the conservation of exhaustible natural resources. It follows that "a GATT-inconsistent measure that is merely incidentally or inadvertently aimed at a conservation objective would not satisfy the 'relating to' requirement of Article XX(g)".²²

13. The second condition, which has been described as an "even-handedness" requirement,²³ requires that the GATT-inconsistent measure is "made effective in conjunction with restrictions on domestic production or consumption", a restriction being "[a] thing which restricts someone or something, a limitation on action, a limiting condition or regulation".²⁴ This requirement suggests that, in their joint operation towards the conservation objective, the restrictions not only limit international trade, but also limit domestic production or consumption.²⁵ Also, it would not be sufficient for domestic production or consumption to be subject to a *possible* limitation at some undefined point in the future"; it must be "a 'real' restriction on domestic production or consumption".²⁶ In other words, "[s]uch restrictions must place effective limitations on domestic production or consumption and thus operate so as to reinforce and complement the restrictions imposed on international trade".²⁷

14. In the present dispute, the Panel will have to determine in particular whether the restrictions on international trade can be considered to be "made effective in conjunction with restrictions on domestic production or consumption", through measures which, as described by Türkiye, tackle both "the domestic development of EVs and the domestic restriction of fuel-based vehicles".²⁸ In that regard, it is relevant to note that the Appellate Body emphasised that "the burden of conservation [does not need to] be evenly distributed, for example, between foreign consumers, on the one hand, and domestic producers or consumers, on the other hand".²⁹

3) Chapeau of Article XX

15. The *chapeau* of Article XX of the GATT 1994 requires that the measure is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between

¹⁹ Appellate Body Report, *Colombia – Textiles*, para. 5.68; Award of the Arbitrators, *Turkey – Pharmaceutical Products (EU)* (Article 25), para. 6.96 referring to Panel Report, *Turkey – Pharmaceutical Products (EU)*, para. 7.135.

²⁰ Appellate Body Report, *US – Gasoline*, p. 14.

²¹ See e.g. Appellate Body Reports, *US – Shrimp*, para. 136; *China – Raw Materials*, para. 355.

²² Appellate Body Report, *China – Rare Earths*, para. 5.90 referring to Appellate Body Report, *US – Gasoline*, p. 19.

²³ Appellate Body Reports, *US – Gasoline*, p. 20; *China – Rare Earths*, paras. 5.123-5.127

²⁴ Appellate Body Report, *China – Raw Materials*, para. 319; Appellate Body Report, *China – Rare Earths*, para. 5.91.

²⁵ Appellate Body Report, *China – Rare Earths*, para. 5.92.

²⁶ Appellate Body Report, *China – Rare Earths*, para. 5.92.

²⁷ Appellate Body Report, *China – Rare Earths*, para. 5.93.

²⁸ Türkiye's First Written Submission, para. 2.118; see also para. 2.117.

²⁹ Appellate Body Report, *China – Rare Earths*, paras. 5.136. See also para. 5.134.

countries where the same conditions prevail. Switzerland notes that the Appellate Body emphasised that "only 'conditions' that are *relevant* for the purpose of establishing arbitrary or unjustifiable discrimination in the light of the specific character of the measure at issue and the circumstances of a particular case should be considered under the chapeau".³⁰ It further noted that, in assessing which conditions are relevant for purposes of establishing arbitrary or unjustifiable discrimination, pertinent context may be found in the particular subparagraph of Article XX under which a measure has been provisionally justified, and the provisions of the GATT 1994 with which a measure has been found to be inconsistent.³¹

16. Regarding the determination of whether the discrimination is arbitrary or unjustifiable, the Appellate Body underlined that "[o]ne of the most important factors [...] is the question of whether the discrimination can be reconciled with, or is rationally related to, the policy objective with respect to which the measure has been provisionally justified", even though, depending on the nature of the measure at issue and the circumstances of the case at hand, additional factors "may also be relevant to the overall assessment".³²

³⁰ Appellate Body Report, *EC – Seal Products*, para. 5.299.

³¹ Appellate Body Report, *EC – Seal Products*, para. 5.300.

³² Appellate Body Report, *US – Tuna II (Mexico) (Article 21.5 – Mexico)*, para. 7.329, referring to Appellate Body Report, *EC – Seal Products*, paras. 5.306 and 5.321.

ANNEX C-9**INTEGRATED EXECUTIVE SUMMARY OF THE ARGUMENTS OF THE UNITED STATES****EXECUTIVE SUMMARY OF THE U.S. THIRD PARTY SUBMISSION**

1. In this dispute, China challenges three categories of Türkiye's measures: additional duties on electric vehicles ("EVs") from China, additional duties on certain other vehicles from China, and an import permit licensing scheme (the "IPLS") applying to the importation of EVs and externally rechargeable hybrid vehicles from certain countries, including China. China argues that these measures are inconsistent with Türkiye's WTO obligations under Articles I:1, II:1(a) and (b), III:4, X:3(a), and XI:1 of the GATT 1994 and Article 2.1 of the Agreement on Trade-Related Investment Measures (the "TRIMS Agreement").

2. Türkiye disagrees that the measures are inconsistent with Türkiye's WTO obligations, and argues that, with respect to Article I:1 and Article II:1(a) and (b) of the GATT 1994, Türkiye's additional duties are justified under GATT Article XX(b) and (g). Türkiye also disagrees that the IPLS is inconsistent with Articles I:1, III:4, X:3(a), or XI:1 of the GATT 1994 or Article 2.1 of the TRIMS Agreement, and argues in the alternative that the measure is justified under GATT Article XX(d).

Interpretation of Article XX(b) and (g) of the GATT 1994

3. Türkiye argues that the additional duties are justified under Article XX(b) and (g) of the GATT 1994 because "they have the objective to protect the environment, and specifically, to foster the development and use of EVs and hybrid vehicles in Türkiye and thus to reduce the overall CO₂ emissions in the transport sector".

4. Article XX of the GATT 1994 sets out the circumstances in which measures that have been found to be inconsistent with another provision of the GATT 1994 will nevertheless be justified and therefore not be found inconsistent with a Member's WTO obligations. The chapeau of Article XX provides that (1) any measure purportedly justified under an Article XX subparagraph must not be applied in a manner which would constitute "arbitrary or unjustifiable discrimination between countries where the same conditions prevail", and (2) the measure is not a "disguised restriction on trade".

5. Türkiye argues that the additional duties on Chinese EVs are applied in a manner that is consistent with the chapeau of Article XX because they do not constitute arbitrary or unjustifiable discrimination between countries where the same conditions prevail. According to Türkiye, "a perfectly reasonable 'rationale' [. . .] underpins Türkiye's different treatment of China." That rationale is that China cannot be considered a country "where the same conditions prevail" compared to Türkiye or other WTO Members given China's dominance of the global EV market and supply chain in terms of EV production and market share as well as battery production.

6. Furthermore, Türkiye observes that China's "state-led economic system puts it in the unique position to take over the entire global market for electrical and hybrid cars," and points to China's "consistent" use of "notable industrial policy efforts that target EV production, including for export," such as massive subsidies that have created excess capacity and distortions in global markets. According to Türkiye, the resulting "excessive import dependence on Chinese EVs" potentially creates vulnerabilities in supply chains and technological advancement and undermines Türkiye's energy security and other strategic priorities. Given these circumstances, Türkiye argues the additional duties reflect a "particular concern about China".

7. If there are differences in the conditions that prevail in China, it may be entirely logical for Türkiye's measures to take that into account. As a general matter, the United States recognizes that it may be necessary for a Member to take into account another Member's adoption of anti-competitive, non-market-oriented policies and dominance of sectors critical to all Members' economic futures. This may include, for example, that China's non-market industrial policy measures have created excess capacity and distortions in global markets and resulted in China's global

dominance of the clean vehicle sector, creating dependencies and supply chain vulnerabilities. Such a distinction does not appear to be arbitrary.

8. The ordinary meaning of the term "arbitrary" includes "capricious, unpredictable, [or] inconsistent" manner, while "unjustifiable" is defined as "[n]ot justifiable, indefensible." The ordinary meaning of the word "discrimination" includes "[t]he action or an act of discriminating or distinguishing; the fact or condition of being discriminated or distinguished; a distinction made." The ordinary meaning of "discriminate" includes "[m]ake or recognize a distinction, esp. a fine one; provide or serve as a distinction; exercise discernment." The ordinary meaning of "conditions" includes "[s]tate, or mode of being"; and "[n]ature, character, quality; a characteristic, an attribute."

9. Based on these ordinary meanings, the text in Article XX of the GATT 1994 may be understood as prohibiting an exercise of discernment or distinction as between countries that have the same state, mode of being, or nature; and only when exercise of discernment or distinction is unpredictable or indefensible. Accordingly, relevant in this dispute is whether distinctions that Türkiye has exercised with respect to China in the measures at issue are between countries that have the same state, mode of being or nature; and whether those distinctions are unpredictable or indefensible. If there are differences in the conditions that prevail in China, it may be entirely logical for Türkiye to exercise discernment or distinction with respect to China in the application of the measures at issue.

10. Under subparagraph (b) of Article XX, the relevant question is whether the additional duties (1) were adopted or enforced to "protect human, animal or plant life or health"; and (2) are "necessary" to achieve that objective.

11. With respect to whether the additional duties are "necessary" to achieve the objective at issue (*i.e.*, to protect human, animal, or plant life or health), the ordinary meaning of "necessary" includes "[t]hat which is indispensable, an essential, a requisite"; and "[t]hat cannot be dispensed with or done without; requisite, essential, needful". "Requisite", in turn, means "[r]equired by circumstances; appropriate; necessary for a purpose, indispensable." Therefore, for Article XX(b), a measure must be indispensable, essential, or requisite to serve the objective—in this case, to protect human, animal, or plant life or health.

12. Under subparagraph (g) of Article XX, the relevant question is whether the measures (1) "relat[e] to the conservation of exhaustible natural resources", and (2) are "made effective in conjunction with restrictions on domestic production or consumption."

Interpretation of Article XX(d) of the GATT 1994

13. Türkiye argues that the IPLS is justified under XX(d) of the GATT 1994 because it is "a measure that is necessary to enforce the Turkish Law on Consumer Protection".

14. As explained above, the chapeau of Article XX provides (1) that any measure purportedly justified under an Article XX subparagraph must not be applied in a manner which would constitute "arbitrary or unjustifiable discrimination between countries where the same conditions prevail", and (2) that the measure is not a "disguised restriction on trade".

15. As explained above, based on the ordinary meanings of the terms "arbitrary", "unjustifiable", "discrimination", and "conditions", the text in Article XX of the GATT 1994 may be understood as prohibiting an exercise of discernment or distinction as between countries that have the same state, mode of being, or nature; and only when exercise of discernment or distinction is unpredictable or indefensible. Relevant in this dispute is whether Türkiye has exercised distinctions between countries with respect to the measures at issue; whether those distinctions are between countries that have the same state, mode of being or nature; and whether the distinctions are unpredictable or indefensible.

16. Under subparagraph (d) of Article XX, the relevant question is whether the IPLS (1) was adopted or enforced to "secure compliance with 'laws or regulations' that are themselves consistent with the GATT 1994"; and (2) is "necessary" to secure such compliance. Therefore, for Article XX(d), a measure must be indispensable, essential, or requisite to serve the objective—in this case, to secure compliance with Türkiye's identified laws or regulations.

17. Türkiye asserts that the IPLS is designed to secure compliance with its consumer protection law, specifically Articles 1 and 58 of the Turkish Law on Consumer Protection, which are GATT-consistent. The text in Article XX(d) necessitates identifying what constitutes "compliance" with Türkiye's identified laws or regulations and how the challenged measures "secure" such compliance. Understanding which aspect of the "laws or regulations" is implicated will allow the Panel to assess whether those laws or regulations are in fact GATT-inconsistent. Once that has been established, the Panel must assess the relationship between the challenged measures and the laws or regulations with which those measures are designed to secure compliance. In particular, the Panel must assess how the challenged measures are indispensable, essential, or requisite to secure compliance with the identified laws or regulations.

EXECUTIVE SUMMARY OF THE U.S. ORAL STATEMENT

Chapeau of Article XX of the GATT 1994

18. Based on the ordinary meanings of the terms "arbitrary", "unjustifiable", "discrimination", and "conditions", the text of GATT Article XX may be understood as prohibiting an exercise of discernment or distinction as between countries that have the same state, mode of being, or nature when such exercise of discernment or distinction is unpredictable or indefensible.

19. Relevant in this dispute is whether distinctions that Türkiye has exercised with respect to China in the measures at issue are between countries that have the same state, mode of being, or nature, and whether those distinctions are unpredictable or indefensible. If there are differences in the state, mode of being, or nature that prevails in China—such as China's uniquely dominant position in the EV market and supply chain and the extensive government support and other non-market-oriented, trade-distortive policies and practices enabling such dominance—it may be entirely logical, and not inconsistent with the Article XX chapeau requirements, for Türkiye's measures to take that into account.

"Necessary" within the Meaning of Article XX(b) and (d) of the GATT 1994

20. Türkiye argues that the additional duties are justified under, *inter alia*, GATT Article XX(b), which covers measures "necessary to protect human, animal or plant life or health"; and that the IPLS is justified under Article XX(d), which applies to measures "necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of [the GATT 1994]".

21. As explained in the U.S. third party submission, with respect to whether the measures at issue are "necessary" to achieve the relevant objective, the ordinary meaning of "necessary" includes "[t]hat which is indispensable, an essential, a requisite", and "[t]hat cannot be dispensed with or done without; requisite, essential, needful". Therefore, for the purpose of Article XX(b) and (d), a measure must be indispensable, essential, or requisite to serve the relevant objective.

22. In assessing the "necessity" element under Article XX(b) and (d), certain third parties argue that the Panel should apply a balancing test, citing the Appellate Body report in *Brazil – Retreaded Tyres*. However, these arguments rely on statements by the Appellate Body and not on the text of the Agreement.

23. Under the customary rules of interpretation of public international law, as referenced in Article 3.2 of the DSU, "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose." The United States therefore disagrees with the introduction of a balancing test approach which is not only unnecessary (and unhelpful) but also *not* found in the text of GATT Article XX(b) or (d).

24. As explained above, the ordinary meaning of "necessary" includes "[t]hat which is indispensable, an essential, a requisite", and "[t]hat cannot be dispensed with or done without; requisite, essential, needful". Rather than applying a balancing test that strays from the actual text, the Panel's task is to evaluate, based on the ordinary meaning of the terms of GATT Article XX(b) and (d), whether the measures at issue are "necessary" for the relevant objectives.

EXECUTIVE SUMMARY OF U.S. RESPONSES TO PANEL QUESTIONS**U.S. Response to Question 16**

25. We understand that the EU's rationale is that "the references to this provision [GATT Article XX] contained in the brackets of Article XXIV:8(a)(i) and (b) of the GATT confirm"¹ such a view. Article XXIV:8(a)(i) and (b) defines customs union and FTA for purposes of the GATT 1994, including that in a customs union and an FTA, "duties and other restrictive regulations of commerce" are eliminated with respect to substantially all the trade, with the exception of such regulations that are permitted under Articles XI, XII, XIII, XIV, XV and XX, as necessary. The text of Article XXIV:8 does not support the EU's view that a measure that could be justified under Articles XI, XII, XIII, XIV, XV and XX is not permitted to be justified with reference to Article XXIV.

U.S. Response to Questions 19 and 20

26. The U.S. response addresses Questions 19 and 20 together, as they both relate to the Appellate Body's approach in the report in *Turkey – Textiles* regarding GATT Article XXIV. While we agree with Canada's note of caution, we consider it does not go far enough. In our view, the Panel should apply the actual text of Article XXIV, rather than a so-called test which appears susceptible to being applied in a way that takes the text of Article XXIV out of context.

27. Applying Article XXIV:5 to the customs union between Türkiye and the EU, for instance, would mean that the provisions of the GATT 1994—including Article I:1—shall not prevent the formation of that customs union, provided that the duties and other regulations of commerce imposed at the institution of the union in respect of trade with the other WTO Members shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in Türkiye and the EU prior to the formation of the union.

28. The proviso requires an assessment at a particular point in time: for a customs union, "the duties and other regulations of commerce imposed at the institution", and for an FTA, "the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation". However, Article XXIV does not apply only "at the institution" or "at the formation". Rather, Article XXIV:5 establishes that the Agreement shall not prevent "the formation of a customs union or a free-trade area". The GATT 1994 could be understood to prevent such a formation if the Agreement did not impose ongoing requirements and provide a commensurate ongoing exemption. For example, Article XXIV:8 sets out the definition of a customs union and a free-trade area as, in part, the elimination of duties and other restrictive regulations of commerce on substantially all the trade between the parties. If the shield or exemption of Article XXIV only applied to changes "at the institution" or "at the formation", then a party would not be permitted to exempt its agreement partners from new duties or other new restrictive regulations of commerce post-dating the formation of the partnership. This, in turn, could lead to the customs union or free-trade area no longer satisfying the requirements of Article XXIV:8.

29. The better understanding, then, is Article XXIV applies to permit the elimination of duties and other restrictive regulations of commerce both at and after the formation of the customs union or free-trade area where the failure to eliminate such measure would undermine the existence of the union or area, and in that sense prevent its formation.

U.S. Response to Question 21

30. No, it is not necessary to cite to a specific provision in an existing FTA to seek to justify a measure under Article XXIV. A contrary interpretation would mean assuming that each restrictive regulation of commerce is subject to a specific FTA provision or commitment. However, Article XXIV:8 refers to the elimination of duties and other restrictive regulations of commerce, which may be accomplished without elaboration of a specific FTA provision or commitment. It may, however, aid the responding party in justifying the measure, including in light of rebuttal arguments, to identify specific provisions or commitments that demonstrate the need to apply the challenged

¹ EU's Third-Party Submission, para. 97.

measure. Given the very different subject matter covered by the Enabling Clause, a responding party should be able to indicate which provisions are capable of justifying the challenged measure.
