

The WTO's Reckoning with Clean Energy Incentives

Introduction

The energy transition has become inseparable from industrial strategy and, increasingly, from geopolitical rivalry. As governments compete to anchor clean energy supply chains within their borders, they reach for instruments that sit uneasily with the disciplines of the multilateral trading system. When such tensions crystallize into formal disputes, they are adjudicated by WTO dispute settlement panels: ad hoc tribunals of trade law experts empowered to hear complaints brought by one WTO member against another, interpret the covered agreements, and issue binding recommendations. *US – Certain Tax Credits Under the Inflation Reduction Act (DS623)* forced that tension into the open, asking whether the United States could invoke moral conviction to justify what its own legislative record described as industrial competitiveness. The measures at issue—domestic content bonus credits providing enhanced tax incentives for clean energy projects sourcing steel, iron, and manufactured components domestically—have been factored into financial models across the US renewables sector.

The WTO panel's ruling is the first to adjudicate the Inflation Reduction Act's (IRA's) domestic content provisions, but its implications reach considerably further. At its heart, the case asked whether a state may enlist the vocabulary of morality in defense of a preference for domestic production. The Panel's answer constitutes the most searching examination to date of Article XX(a) in the context of green industrial policy: one that insists on distinguishing genuine moral purpose from the retrospective rationalization of economic interest. This *Insight* briefly summarizes the dispute before diving deeper into

the Panel's analysis of the public morals defense, and concluding with implications for the future design of clean energy policy and the geopolitics surrounding it.

The Measures and Their Vulnerability

On January 30, 2026, the WTO Panel circulated its report. It found that the domestic content bonus credits within the IRA violate core non-discrimination obligations under the General Agreement on Tariffs and Trade (GATT), Trade-Related Investment Measures (TRIMs) Agreement, and Subsidies and Countervailing Measures (SCM) Agreement.¹ The US mounted its entire defense on Article XX(a)—the public morals exception—arguing that the credits were necessary to protect US public morals from China's "non-market and trade distorting behaviour."² The Panel rejected that defense and recommended that the US withdraw the domestic content measures by October 1, 2026, or face Chinese countermeasures on US goods.

The architecture of the IRA's clean energy incentives explains why the domestic content bonus—not the credits themselves—became the point of legal vulnerability. The Investment Tax Credits (ITCs) are credits against federal income tax liability that reduce upfront capital costs for renewable energy projects; the Production Tax Credits (PTCs) are per-kilowatt-hour credits that reward ongoing electricity generation over a facility's first decade. Neither, on its face, offends WTO disciplines.³

China's challenge targeted the domestic content bonus layered atop these base credits.⁴ To qualify for the bonus—an additional 10 percentage point uplift to the base credit—a project must satisfy two cumulative requirements. The Steel and Iron Requirement mandates that 100% of structural steel and iron used in a project originate domestically (that is to say, be melted, poured, and manufactured in the US). The Manufactured Products Requirement stipulates a domestic content threshold for manufactured goods (components such as solar panels, wind turbine blades, and battery cells): 40% before 2025, rising to 55% in 2027. For projects that have incorporated these thresholds into their procurement and financial modelling, the bonus is integral to viability.

The US did not contest that these requirements constitute prohibited local content subsidies.⁵ It mounted its entire defense on Article XX(a), arguing that the bonus credits

were necessary to protect US public morals from China’s conduct in the renewable energy sector, including forced labor, theft, and unfair competition.⁶ Everything turned on whether that moral framing could withstand scrutiny.

The Public Morals Defense

The Panel’s treatment of Article XX(a) is where the report does its most consequential work, interrogating what the trading system recognizes as moral reasoning, and the evidentiary rigor demanded of states that invoke the clause.

Threshold Inquiry: The Standard of Assessment

The Panel resolved a persistent interpretive division over the standard applicable to Article XX(a): does assessing whether a measure is designed, and necessary, “to protect public morals” demand no more than that the measure be “not incapable of” protecting public morals, or does it permit deeper inquiry into a measure’s actual objectives?⁷ The Panel adopted the latter standard, requiring an “objective and independent assessment” grounded in the full evidentiary record, encompassing the measure’s text, its legislative history, and its design, structure, and expected operation.⁸ The Panel reaffirmed the analytical framework articulated in *Turkey – Pharmaceutical Products*.⁹ A state invoking Article XX(a) must demonstrate that the measure was designed to pursue a moral objective; the mere existence of a moral concern proximate to the measure’s subject matter is insufficient. Moral purpose must be embedded in a measure’s design from the outset.

The Content and Coherence of Moral Claims

The Panel accepted “theft” and “forced labour” as public morals under Article XX(a), but declined to extend the same recognition to “unfair competition” and “coercion.”¹⁰ Relying on uncontradicted Chinese evidence, the Panel observed that the US itself pursues policies of sectoral dominance in energy, artificial intelligence, and semiconductors through subsidies and executive orders.¹¹ A state characterizing another’s measures as morally intolerable, whilst engaging in analogous conduct, undermines the very norm it seeks to invoke. Consistency, the Panel implies, is not an evidentiary requirement; it is a condition of moral credibility.

Direct Evidence of Objectives

The IRA's text and implementing regulations are silent on public morals. The silence proved telling. Senior US officials consistently framed the measures as instruments of industrial strategy and economic competitiveness, goals that, the Panel observed, "are not synonymous with or assimilable to the objective of protecting public morals."¹² The evidentiary record thus told a coherent story about industrial competitiveness, not moral conviction.

Design, Structure, and Expected Operation

The Panel's sharpest structural analysis turned on the measures' architecture. Base credits in the IRA remain fully available to facilities sourcing steel from China; the domestic content condition determines only whether the bonus is received. The measures do not stigmatize Chinese products; they still reward their use, albeit at the lower base credit rate. The requirement, the Panel concluded, "does not, and cannot, express any kind of moral disapprobation." Moreover, the requirement equally excludes steel from "like-minded" US allies—nations sharing its commitments against forced labor and theft—a feature irreconcilable with the logic of moral protection.¹³

The Manufactured Products Requirement presented a parallel difficulty. Even at its most restrictive, the threshold permits up to 45% of components to originate from China.¹⁴ The Panel found no rational connection between sliding content thresholds and a moral objective. The defense accordingly failed at the threshold step. The Panel did not proceed to assess necessity or the requirements of the *chapeau* of Article XX: the overarching provision that prohibits invoking an exception as a means of arbitrary or unjustifiable discrimination between countries or as a disguised restriction on trade.

Remedy

The Panel recommended withdrawal of the IRA's domestic content bonus credits by October 1, 2026, consistent with the "without delay" requirement under Article 4.7 of the SCM Agreement.¹⁵ For projects already in development or construction, that timeline introduces material uncertainty into existing procurement and financing arrangements. The One Big Beautiful Bill Act of 2025 already amends certain ITC and PTC criteria,

though neither party treated these changes as material.¹⁶ Neither the US nor China participates in the Multi-Party Interim Appeal Arbitration Arrangement—a mechanism established by participating WTO Members to provide interim appellate review in the absence of a functioning Appellate Body—meaning that no appeal under that mechanism is possible.¹⁷ The US therefore retains the option of appealing “into the void”—lodging an appeal that prevents adoption whilst no functioning Appellate Body exists to hear it. The ruling may thus remain uncomplished with, its legal force suspended in a procedural limbo of the trading system’s own making.

Between Legal Order and Geopolitical Reality

The Panel’s rejection of the public morals defense may incentivize future reliance on the national security exception under Article XXI of the GATT 1994. The standard of review under that exception—following *Russia – Traffic in Transit*¹⁸—affords the invoking state considerably more deference: a more hospitable framework for claims grounded in geostrategic competition than in moral conviction.

Regardless of that possibility, the ruling illuminates an enduring tension. The Panel’s framework subjects a state’s characterization of geopolitical rivalry as existential economic threat to an ostensibly objective legal test: one demanding contemporaneous moral purpose, rational design, and evidentiary consistency. Whether the language of exception can bear the weight of rendering justiciable what are intrinsically political judgments about risk, vulnerability, and global economic integration remains an open question.

Governments retain latitude to structure clean energy incentives, but may not condition them on domestic sourcing. This distinction—between permissible incentive and impermissible conditionality—will shape how governments design clean energy policy for years to come. The EU’s Green Deal Industrial Plan and Carbon Border Adjustment Mechanism may face analogous WTO compatibility questions, although their respective designs are more closely tethered to environmental rather than industrial objectives.¹⁹

For private actors, the ruling introduces immediate uncertainty. Infrastructure investors, project sponsors, and equipment manufacturers that calibrated procurement strategies

for the domestic content uplift now face the prospect of its withdrawal. Where the 10% bonus has been factored into financial models, return assumptions, and offtake pricing, its removal would materially alter the economics of projects already committed on that basis.

Geopolitically, the ruling exposes a fault line between the grammar of non-discrimination that the trading system enforces and the vocabulary of strategic competition in which major economies increasingly conduct their climate and industrial policies. The United States' attempt to recast a domestic content requirement as a morally inflected response to geopolitical rivalry sought to bridge these languages. The Panel's rejection suggests that, under Article XX(a) as currently interpreted, no such bridge exists, and that building one would require something the trading system has so far been unwilling to attempt: a direct reckoning with the relationship between economic security and moral authority.

Conclusion

Perhaps the most enduring contribution of *US – IRA Tax Credits* lies not in the boundaries it draws around the public morals exception, but in the structural inadequacy it reveals: the trading system's existing normative categories—morals, security, necessity—were forged for a world in which states did not need to reframe climate policy in the language of moral conviction, or supply chain diversification as a matter of national conscience. The ruling cannot resolve the tension between a legal order premised on non-discrimination and a geopolitical environment in which discrimination—between partners and adversaries, trusted and untrusted suppliers—has become central to how states conceive their industrial and climate futures. If such concerns are to find legitimate expression within the trading system, the paths are limited: renegotiation of WTO disciplines, plurilateral climate-trade agreements, or exceptions specifically tailored to the demands of the energy transition or the imperatives of geostrategic competition. That tension—between commerce and conscience, as well as between non-discrimination and strategic competition—will persist long after DS623 is appealed, implemented, or quietly ignored. The limits of exception, it turns out, are also the limits of the system itself.

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¹ Panel Report, *United States – Certain Tax Credits Under the Inflation Reduction Act*, WT/DS623/R (Jan. 30, 2026) [hereinafter *US – IRA Tax Credits*], § 8.

² *Id.* § 7.72.

³ Inflation Reduction Act of 2022, Pub. L. No. 117-169, §§ 13701–13702, 136 Stat. 1818 (codified at 26 U.S.C. §§ 45Y, 48E).

⁴ *US – IRA Tax Credits*, §§ 2.1–2.15.

⁵ *Id.* §§ 3.3, 7.3, 7.9.

⁶ *Id.* § 7.2 (Article III:4 GATT 1994), § 7.3 (Article 2.1 TRIMs), § 7.4 (Articles 3.1(b), 3.2 SCM Agreement).

⁷ *US – IRA Tax Credits*, §§ 7.5.2.2–7.5.2.3.

⁸ *Id.* § 7.5.2.3.

⁹ *Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products* (WT/DS583/12 and Add.1).

¹⁰ *US – IRA Tax Credits*, § 7.5.3.2.

¹¹ *Id.* §§ 7.129–7.130.

¹² *Id.* §§ 7.5.3.3.

¹³ *Id.* §§ 7.167–7.171.

¹⁴ *Id.* § 7.5.3.4.2.

¹⁵ *Id.* § 8.

¹⁶ One Big Beautiful Bill Act, Pub. L. No. 119-21 (2025); *US – IRA Tax Credits*, §§ 2.3, 2.7.

¹⁷ See JOB/DSB/1/Add.12 (Apr. 30, 2020).

¹⁸ See Panel Report, *Russia – Measures Concerning Traffic in Transit*, WT/DS512/R (adopted Apr. 26, 2019), §§ 7.101–7.104.

¹⁹ Regulation (EU) 2023/956 establishing a carbon border adjustment mechanism, OJ L 130/52 (May 16, 2023).