



November 2, 2023

The Honorable Janet L. Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Ave, NW
Washington, D.C. 20220

The Honorable Danny Werfel
Commissioner
Internal Revenue Service
1111 Constitution Ave, NW
Washington, D.C. 20224

Re: Notice 2023-38, Domestic Content Bonus Credit Guidance under Sections 45, 45Y, 48, and 48E, May 12, 2023

Dear Secretary Yellen and Commissioner Werfel:

We are writing in response to Domestic Content Bonus Credit Guidance (“Guidance”) published by the Department of the Treasury and the Internal Revenue Service describing rules for implementing the domestic content bonus credit requirements for solar and other renewable energy electricity generation projects under the Inflation Reduction Act (IRA). Specifically, we are writing to request that you address a provision of the Guidance which we believe is contrary to Congressional intent.

In enacting the renewable energy credits of the IRA,¹ Congress sought to incentivize the development of the U.S. renewable energy sector. With the domestic content bonus credit,² the intention of Congress was more specifically to incentivize the development of U.S. clean energy supply chains. Toward that end, Congress provided a domestic content bonus credit for projects that meet two requirements:

¹ §§ 45, 45Y, 48, and 48E of the Internal Revenue Code. Public Law 117-169, 136 Stat. 1818 (August 16, 2022).

² Domestic content bonus credit amounts are available under §§ 45(b)(9), 45Y(g)(11), 48(a)(12), and 48E(a)(3)(B) to increase the amount of a credit determined under § 45 (§ 45 credit), § 45Y (§ 45Y credit), § 48 (§ 48 credit), and § 48E (§ 48E credit), respectively, for a taxpayer whose Applicable Project satisfies the domestic content requirement set forth in § 45(b)(9)(B)(i) (incorporated by cross-reference in § 48(a)(12), which is incorporated by cross-reference in § 48E(a)(3)(B)) and in § 45Y(g)(11)(B)(i)... [Guidance, Section 2.01.]

- (i) that all the steel or iron in a project must be produced in the United States (herein, the “steel or iron requirement”), and
- (ii) that an increasing percentage of the manufactured products in a project must be produced in the United States (herein, the “manufactured product requirement”).

In the Guidance, Treasury and IRS apply the steel or iron requirement to components that are structural in function. In general, we believe this decision is in line with Congressional intent.

However, the Guidance departs from this principal in the table included in the “safe harbor” provisions, where Treasury and IRS include in the manufactured products category components that are clearly structural in nature.

We are specifically concerned with the categorization of “photovoltaic tracker” as a manufactured product. A photovoltaic tracker is merely a mounting structure that has the capability to follow, or “track,” the position of the sun, as described in the Department of Energy’s supply chain report on solar photovoltaics in response to Executive Order 14017. The steel structural components of tracking systems, including torque tubes, foundations, and rails, therefore, must be included in the “steel and iron” category, as they are in fixed-tilt ground-mount systems. Torque tubes, while not appearing in fixed-tilt systems, are structural in nature, in that they bear the load of the solar panels, to which they are attached via rails and purlins. The fact that they rotate does not change their structural nature. We do believe that the non-structural components of tracking systems, including bearings, drive train components, and shock absorbers, are properly categorized as manufactured products.

Recognizing the structural nature of tracking systems with this Guidance has great importance, because mounting structures are where the steel and iron in a solar project are concentrated. To include tracking systems in the manufactured products category has the effect of removing as much as 50 percent of the steel and iron used in a project from the “steel and iron” category, where it would be required to be of U.S. origin.

Instead, categorization of tracking systems as manufactured products would permit many of the structural steel components of new solar projects in the U.S. to be imported from China and other countries, so long as the overall project met the percentage domestic content requirement. This was certainly not Congress’s intent.

To avoid this result, we ask that the Guidance, specifically the safe harbor table, be amended to distinguish between the structural steel components and the other components of tracking systems. This can be done by including in the Steel/Iron category, and excluding from the Manufactured Product category, “steel or iron in module rails, support columns, torque tubes, and any other elements that are structural in function.” This change would be consistent overall with the Guidance, which, as we have noted, states, “The Steel or Iron Requirement applies to Applicable Project Components that are construction materials made primarily of steel or iron and are structural in function.”

Correcting this error in the Guidance will help ensure that the steel and iron in solar electricity generation projects is produced in the United States. It also ensures that the IRA does not unwittingly benefit China and other countries that have a history of dumping their excess steel capacity in the U.S. market, to the detriment of U.S. workers and industry.

Thank you for your attention to this important matter.

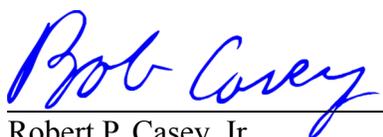
Sincerely,



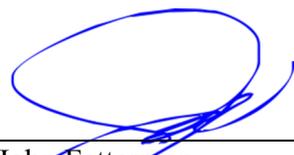
Tammy Baldwin
United States Senator



Sherrod Brown
United States Senator



Robert P. Casey, Jr.
United States Senator



John Fetterman
United States Senator



Tina Smith
United States Senator

cc: Honorable Jennifer Granholm, Secretary, U.S. Department of Energy

Ali Zaidi Assistant to the President and National Climate Advisor to lead the Climate Policy Office