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VIA FEDERAL ERULEMAKING PORTAL

Internal Revenue Service
CC:PA:LPD:PR (Notice 2022-51)
Room 5203
P.O. Box 7604, Ben Franklin Station
Washington, D.C. 20044

The Honorable Lily L. Batchelder
Assistant Secretary for Tax Policy
Department of the Treasury
1500 Pennsylvania Ave., NW
Washington, D.C. 20220

Mr. William M. Paul
Principal Deputy Chief Counsel and Deputy Chief Counsel (Technical)
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20224

Re: Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements under the Act Commonly Known as the Inflation Reduction Act of 2022, Notice 2022-51 (Oct. 5, 2022) – Comments from Canadian Solar Inc. and Request for Meeting

Canadian Solar Inc. ("Canadian Solar") respectfully submits these comments to the U.S. Department of the Treasury ("Treasury") Internal Revenue Service (IRS) in response to the *Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements under the Act Commonly Known as the Inflation Reduction Act of 2022,* Notice 2022-51 (Oct. 5, 2022). Treasury's guidance will be crucial to achieve the intent of the Inflation Reduction Act (IRA) to support growth of the full solar value chain in the United States. We appreciate the Administration's leadership to implement the IRA and would be pleased to meet with you to discuss our plans for expanding Canadian Solar's presence in the United States and the views set forth below.

I. INTRODUCTION TO CANADIAN SOLAR

Canadian Solar is a globally integrated solar company legally domiciled and incorporated in Canada, registered under the laws of the Province of Ontario, Canada, and maintaining its principal

executive office and place of business in Guelph, Ontario, Canada. Canadian Solar is publicly traded on the Nasdaq (CSIQ).

Canadian Solar provides capital, technology, and know-how to support the growth of the U.S. solar market. Canadian Solar has made substantial investments in the United States, totaling approximately $1 billion, including the company's 2015 acquisition of Recurrent Energy LLC (Recurrent) for approximately $260 million. Canadian Solar has made additional investments of approximately $481 million in Recurrent since the acquisition, and has developed more than 2.3 GW of solar projects in the United States and a project pipeline of more than 4.2 GW of solar and 9.2 GW of battery storage. Canadian Solar and its subsidiaries and affiliates have over 200 employees in the United States.

Canadian Solar has been actively pursuing establishment of major U.S. manufacturing operations in the solar supply chain. Treasury's guidance will be critical to ensuring that the IRA facilitates the momentous growth in U.S. solar manufacturing envisioned by the Congress and the Administration. We respond to Treasury's requests for comment on the definition of domestic content below.

II. DOMESTIC CONTENT RULES FOR MANUFACTURED PRODUCTS

QUESTION:

§ .03(2)(c) Does the term "manufactured product" with regard to the various technologies eligible for the domestic content bonus credit need further clarification? If so, what should be clarified? Is guidance needed to clarify what constitutes an "end product" (as defined in 49 C.F.R. 661.3) for purposes of satisfying the domestic content requirements?

RESPONSE:

For purposes of defining the term "manufactured product," Treasury should adopt a definition that first captures the Federal Transit Administration (FTA) definition of "manufacturing process" set forth in 49 C.F.R. § 661.3. FTA has identified several processes of alteration that constitute manufacturing processes, including:

> forming, extruding, material removal, welding, soldering, etching, plating, material deposition, pressing, permanent adhesive joining, shot blasting, brushing, grinding, lapping, finishing, vacuum impregnating, and, in electrical and electronic pneumatic, or mechanical products, the collection, interconnection, and testing of various elements.

Buy America Requirements, 56 Fed. Reg. 926, 929 (Jan. 9, 1991). Each manufactured product (*e.g.*, solar modules) qualifies as "manufactured products" based on this definition, consistent with and supporting Congress's articulation of its policy goals in establishing tax credits for U.S. manufacturing of components.

Second, the adjusted percentage test should be used to determine if a component qualifies as domestic. Specifically, a manufactured product is deemed to be produced in the United States if 40% of the components included in the manufactured product are mined, produced or manufactured in the United States. There is strong legal precedent supporting this interpretation in both (1) the Build America, Buy America section of the Infrastructure Investment and Jobs Act requiring 55% of U.S. component costs, and (2) the Buy American Act, requiring 55% to 75% of U.S. component costs for a product to be deemed to be produced in the United States.

Moreover, the 40% threshold is scheduled to increase up to 55% over the next five years. This phase-in of increased domestic content thresholds over time would incentivize an increase in component production in the United States and gradually increase the American jobs required to manufacture solar modules. At the same time, this approach will allow time for a ramp up of domestic production of components that qualify for IRA tax credits (*e.g.*, solar trackers, backsheet, polysilicon, solar ingots/wafers, solar cells, and solar modules, but not minor subcomponents like aluminum frames).

To calculate the cost of components produced in the United States, Treasury should factor in at a minimum the following component costs for purchased components: (1) the acquisition cost; (2) any transportation costs to the place of incorporation into the end product or construction material; and (3) any applicable duty. For manufactured components the following component costs should include: all costs associated with the manufacture of the component, including: (1) labor; (2) any

transportation costs to the place of incorporation into the end product or construction material; and (3) allocable overhead costs. Additionally, the manufacturer should be able to account for the total value of each manufacturing step completed in the United States.

In applying these rules, Treasury will need to determine what is considered a "component." Specifically, Section 45(b)(9)(B)(iii) of the I.R.C. states that manufactured products shall be deemed to have been produced in the United States if not less than the adjusted percentage of the total costs of all such manufactured products of such facility are attributable to manufactured products (including components) mined, produced, or manufactured in the United States. We submit that it is important for Treasury to reward U.S. component production and use the definition of component as defined in Section 45X(c)(1), thereby providing a greater incentive to those companies that manufacture components in the United States. Section 45X(c)(3), for example, defines a solar energy component as the following: (i) Solar modules; (ii) Photovoltaic cells; (iii) Photovoltaic wafers; (iv) Solar grade polysilicon; (v) Torque tubes or structural fasteners; and (vi) Polymeric backsheets (*See* I.R.C. § 45X (2022)). Adopting this definition will allow Treasury to remain consistent with its definitions throughout the I.R.C. and ensure that manufacturers use domestic components to the maximum extent practicable.

QUESTION:

§ .03(2)(d) Does the adjusted percentage threshold rule that applies to manufactured products need further clarification? If so, what should be clarified?

RESPONSE:

Guidance should confirm that the 40% adjusted percentage is applied with respect to the manufactured end product incorporated into the facility. Guidance should confirm that the 40% adjusted percentage compares – (A) the total costs of all components that are manufactured in the United States, to (B) the total costs of the finished good.

QUESTION:

§ .03(2)(e) Does the treatment of subcomponents with regard to manufactured products need further clarification? If so, what should be clarified?

RESPONSE:

Guidance should confirm that the 40% adjusted percentage in Section 45(b)(9)(B)(iii) requires a comparison or allocation of domestic costs of the manufactured product's components and not its subcomponents (i.e., that 40% of the costs of the components must be manufactured in the United States). Thus, a solar module with domestic component costs that exceed 40% of the total component costs would be deemed to have been produced in the United States. Guidance should also confirm that the origin of the subcomponents is immaterial if the component undergoes a manufacturing process in the United States consistent with Section 661.3, and the costs of its domestic components exceed the 40% adjusted percentage.

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Thank you for your attention to these comments. Please contact the undersigned if there are questions.

Respectfully submitted,

/s/ Thomas Koerner

Thomas Koerner
Corporate Vice President, Global Sales
Canadian Solar Inc.
Thomas.Koerner@csisolar.com