한국무역협회 Korea International Trade Association
서울 강남구 무역센터 트레이드타워, Trade Tower, World Trade Center, Gangnam-gu, Seoul 06164, Korea, TEL:+82-2-6000-5114, http://www.kita.net
KITA

November 4, 2022

SUBMITTED ELECTRONICALLY
www.regulations.gov: Notice 2022-46 and Notice 2022-51

RE: Treasury Department Request for Comments Regarding Implementation of IRA Provisions Related to Electric Vehicles and Domestic Content; Comments from the Korea International Trade Association ("KITA")

KITA appreciates the opportunity to submit the following comments in response to the request for public comments regarding implementation of Inflation Reduction Act provisions related to Credits for Clean Vehicles (Notice 2022-46) and Credit Enhancement, including related to domestic content (Notice 2022-51).

Ⅰ. Introduction and Background

KITA is the largest business organization in Korea, representing over 75,000 Korean exporters and importers that have a wide range of business interests in the United States and in the global market. The member-driven association was founded in 1946 to bolster Korea's economic growth through global trade and investment.

The bilateral alliance between Korea and the United States – based on 140 years of diplomatic relations – has served as a linchpin for peace, prosperity and stability in the Indo-Pacific region over the past 70 years. Over these many years, the Korea-U.S. alliance has evolved into a future-oriented and comprehensive strategic alliance, broadening cooperation beyond security and economic issues to include climate change, advanced technologies, and socio-cultural connections.

Since the Korea-U.S. Free Trade Agreement ("KORUS FTA") came into force in March 2012, trade and investment between Korea and the United States have grown significantly. Korean companies have invested $133.7 billion in the United States over the past ten years, creating good-paying jobs and contributing to U.S. economic growth.

Korea is active in a number of global initiatives, including as a leading member of the Indo-Pacific Economic Framework (IPEF), Minerals Security Partnership (MSP), and Chip 4 Alliance, promoting greater global cooperation to establish stable supply chains with major countries including the United States.

On behalf of its membership, KITA is grateful for the valuable opportunity to present the following input on Credits for Clean Vehicles (Notice 2022-46) and and Credit Enhancement, including related to domestic content (Notice 2022-51).

Ⅱ. General Comments Regarding IRA Provisions Related to Clean Vehicles

A. Violation of International Laws

KITA fully understands the underlying intent of the IRA, which aims to reduce the U.S. budget deficit and bring down inflation through the transition to a clean energy economy. However, KITA expresses its grave concerns that some of the IRA provisions could violate the KORUS FTA and WTO rules. In particular, we identify the following four issues.

(1) The IRA domestic preference requirements regarding clean vehicles and clean energy are inconsistent with National Treatment obligations under GATT Article III, affecting the conditions of competition in the market and resulting in unfair treatment for imported products.

(2) Tax credits for electric vehicles can constitute import substitution subsidies, which are categorized as prohibited subsidies under the WTO Agreement on Subsidies and Countervailing Measures (“SCM”).

(3) Clean vehicles tax incentives could violate performance requirements in KORUS FTA Chapter 11 (Investment) as deliberate measures by an invested country’s government that can affect investment decisions.

(4) The IRA may breach the principles of Most-Favored Nation treatment under the WTO given that the IRA limits eligibility for tax credits to EVs assembled in North America and, thus, discriminates against other exporting countries outside of North America.

If the IRA is implemented without regard for international obligations or long-established and committed business relationships, U.S. allies and partners will lose confidence in an administration which has highly valued multilateralism and partnership. Moreover, we are concerned the example set by the IRA will trigger protectionism worldwide, provoking other countries to put their national interests first at the expense of rules and principles of the global trade framework.

B. Decline in EV sales

The purpose of the IRA is to fight climate change through measures to accelerate the adoption of EVs. However, the limited types of vehicles that qualify for tax credits under the new law will have the unintended consequence of a decrease in EV sales.

The United States currently has limited capacity for mining certain critical minerals, as well as limited capacity for production of battery components used in clean vehicles. It will not be easy for Korean automakers and U.S. companies to meet the IRA requirements of “EV battery components manufactured or assembled in North America” and “critical minerals extracted or processed in the U.S. or in any country with which the U.S. has a free trade agreement in effect, or recycled in North America”. In order to ensure the clean vehicles tax credits benefit consumers (and further U.S. aspirations for a clean energy economy), the U.S. government will need to incorporate flexibility in the implementing regulations and guidance related to clean vehicles and sourcing of EV battery components and critical minerals. In doing so, the United States will be able to realize the desired objectives of the IRA, including expanding use of EVs and building a resilient supply chain in the region.

C. EVs Manufactured in Korea Should Qualify for Clean Vehicle Tax Credits

As discussed above, Korea and the United States have for decades maintained a strong, steadfast alliance, contributing to security in the Indo-Pacific region. The KORUS

FTA, an important component of that alliance, has been highly successful at boosting bilateral trade and investment, driving economic growth in both countries, and creating new job opportunities. As a prominent member of the IPEF and MSP, Korea is an important partner to the United States on its path toward achieving energy security, establishing resilient supply chains, and addressing climate change. KITA respectfully requests that the IRA implementing regulations and guidance ensure Korean manufacturers will be able to enjoy the same benefits and opportunities as U.S. companies when it comes to clean vehicle tax credits.

The IRA provides for equal treatment for EV batteries that contain critical minerals extracted or processed in the U.S. or free trade partner countries. Korea shares the United States' commitment to strengthening economic security and tackling climate change. Again, KITA seeks to ensure that Korea's products manufactured or produced in Korea are treated equally as products of the United States.

Ⅲ. Specific Requests Regarding IRA Provisions Related to Clean Vehicles

A. Assembly in North America

KITA requests a delay in the implementation of the North America assembly requirement under IRA sections 30D(d)(5) and 30D(e) for Korean automakers and battery/battery components manufacturers investing or building production facilities in the United States. Currently, the IRA requires clean vehicles to undergo final assembly in North America and EV batteries to be manufactured or assembled in North America.

Korean automakers and battery manufacturers are planning or already making large-scale investments in the United States to produce clean vehicles and EV batteries. The main reasons behind their bold decisions lie in the U.S. government's vigorous support and commitment to the clean energy industry along with the promise of the U.S. market in clean vehicles and EV batteries. However, the IRA may act as a disincentive rather than an incentive for Korean companies investing in the U.S., because of the potentially discriminatory measures that make the business environment even more challenging.

For Korean companies to fulfill their roles in the U.S.'s move to increase EVs and build a supply chain in the region, KITA reiterates its request that Treasury delay the application of “Assembly in North America” provisions for the products manufactured by Korean companies investing in the United States now, or ensure that guidance regarding application of this IRA provision clarifies that a specific commitment to establish U.S. manufacturing of EVs qualifies a manufacturer’s vehicles for the clean vehicles tax incentives.

B. Critical Minerals and Battery Components

KITA believes clarification regarding the definitions of “extracting or processing” of critical minerals is needed. Currently, extracting or processing of critical minerals involves several steps including primary and secondary processing. The implementing regulations or guidance should state clearly which processes would qualify for the IRA tax benefits. Battery manufacturers need to understand which process or processes constitue “extracting and processing” under the IRA in order to qualify for clean vehicle tax incentives and to establish an appropriate, secure supply chain.

A clear definition on “manufacturing or assembling” of battery components is also needed. KITA respectfully requests that the IRS clarify to what extent the process of “manufacturing or assembling” of battery components should occur in North America, put differently whether only partial process of the manufacturing occurring in North America could be regarded as meeting the requirement under the Section 30D(e)(2)(A).

IV. Specific Comments Related to Domestic Content Requirements

The fundamental purpose of the IRA is to promote the development of clean energy projects within the United States. However, these projects are difficult to develop if there are shortages of essential products to build an energy property, such as steel, iron or manufactured products. The domestic content requirements mandate the use of materials manufactured in the United States for construction of energy facilities. However, these requirements could have adverse effects resulting in, for example, a more limited supply of U.S. steel or limited availability of steel products meeting required technical specifications.

Thus, there should be more flexibility in application of the IRA domestic content requirements.

In determining whether a steel product is “produced or made in” the United States, there needs to be more flexibility regarding requirements related to the manufacturing process. The IRA provides that domestic content should be determined in a manner consistent with the definitions of “steel” and “iron” under the 49 CFR § 661.5. However, the definitions under the 49 CFR § 661.5 are tailored to apply in the context of transportation infrastructure projects subject to Buy America rules and federal financial assistance rather than clean energy projects led by private businesses. This critical difference should be taken into consideration when crafting implementing regulations and guidance related to the application of domestic content requirements.

In addition, the implementing regulations and guidance should provide additional clarity related to exceptions under the Buy America regulations. In particular, specific guidance is needed to clarify IRA section 45(b)(10)(D)(i) regarding exceptions to domestic content requirements where: (1) the inclusion of steel, iron, or manufactured products that are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent; and (2) relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

V. Conclusion

The IRA is landmark legislation intended to provide significant benefits to consumers, as well as fight climate change through aggressive actions to restrain inflation and increase production and use of EVs along with building new clean energy infrastructure. In this regard, Korean companies are fully willing and equipped to help the United States achieve these ambitious goals. KITA respectfully requests that the United States seek to ensure a level playing field for Korean and U.S. companies with proper interpretation of the applicable laws, implementing regulations, and guidance that are consistent with national treatment, MFN, and KORUS FTA obligations. A transparent and principled IRA implementation framework will help contribute to stronger bilateral cooperation and economic growth.

KITA appreciates the opportunity to submit its comments regarding the IRA Credits for Clean Vehicles and Credit Enhancement provisions. The U.S. government's thoughtful and positive consideration would be highly valued.

Sincerely,

Christopher Koo
Chairman
Korea International Trade Association