



November 4, 2022

**VIA REGULATIONS.GOV**

Hon. Lily L. Batchelder, Treasury Department  
Mr. William M. Paul, Internal Revenue Service  
1500 Pennsylvania Ave. NW  
Washington, DC 20220

**Re: Request for Comment on Inflation Reduction Act Domestic  
Content Incentives – Docket No. IRS-2022-0051**

Dear Assistant Secretary Batchelder & Deputy Chief Counsel Paul:

We hereby respond on behalf of Maxeon Solar Technologies, Ltd. (Maxeon) to Treasury's above-captioned request for public comment.<sup>1</sup> Maxeon spun out of SunPower Corporation (SunPower) in August 2020, becoming the owner of SunPower's solar photovoltaic (PV) cell and module manufacturing facilities around the world. Maxeon is NASDAQ-listed and has its heritage in Silicon Valley; earlier this year Maxeon confirmed that its next major factory serving the U.S. market, with a production capacity of at least 3 GW/year of PV cells and modules, will be located inside the United States.<sup>2</sup> Maxeon is proud to be part of the supply response to the recently-enacted incentives in the Inflation Reduction Act of 2022 (IRA).

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<sup>1</sup> *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 (Dep't Treas. 2022).

<sup>2</sup> *See Maxeon Solar Technologies Announces Second Quarter 2021 Financial Results*, available at <https://www.prnewswire.com/news-releases/maxeon-solar-technologies-announces-second-quarter-2021-financial-results-301354589.html>; *Maxeon Solar Technologies Announces Second Quarter 2022 Financial Results*, available at

While Notice 2022-51 invites public input on various matters, our comment focuses on the domestic content requirements applicable to bonus credits under IRC Sections 45(b)(9), 48(a)(12), 45Y(g)(11) and 48E(a)(3)(B).<sup>3</sup> We address, in turn, the appropriate outcome in the case of solar projects, and then the legal/analytical path by which Treasury and the IRS can reach that outcome.

### **Appropriate Outcome**

In the case of a solar project, where modules account for the largest share of spending on non-iron & steel manufactured items, modules should help the project developer (taxpayer) qualify for the extra 10% bonus credit if they result from U.S. assembly of cells fabricated in the United States. This represents an intermediate approach, between the most permissive extreme (allowing module assembly alone to help the developer qualify) and the most restrictive extreme (requiring that U.S. manufacturing begin with a domestically-sliced wafer).

It is evident in the relevant IRA provisions and their legislative history that Congress sought to balance, and intended Treasury/IRS implementation to balance, two objectives: (1) bringing the adder credit “alive” in a reasonably speedy timeframe, especially in relation to the limited lifespan of the new 45X credit, and (2) driving investment along the PV value chain, upstream of module assembly which already enjoys a foothold in the United States. The only approach that serves both objectives is an intermediate one, requiring domestically-fabricated cells but not requiring domestically-sliced wafers.

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<https://www.prnewswire.com/news-releases/maxeon-solar-technologies-announces-second-quarter-2022-financial-results-301608865.html>.

<sup>3</sup> See Notice 2022-51 at 13-16.

A value-added analysis provides useful context.<sup>4</sup> Cells fabricated in the United States using imported wafers and a typical amount of other imported inputs (such as chemicals) would, at the time transferred to a U.S. modco, have roughly 50% U.S. value-added. Domestic assembly of those cells, using a typical amount of imported materials (such as solar glass) in the modco, would bring U.S. value-added of the finished modules up to roughly 62%. The similarity between these numbers and the 40% (rising to 55%) domestic sourcing threshold in the IRA is instructive. By contrast, domestic assembly of imported cells, using a typical amount of imported materials in the modco, would yield finished modules with **less than 30%** U.S. value-added. Congress could not have intended the adder credit to incentivize, or to be available by reason of, the use of panels with so little U.S. value-added.

As Treasury and IRS are surely aware, the process of manufacturing a cell from a wafer is complex, technology-heavy and skilled-labor-reliant. Implementing the adder credit in the manner we recommend would help secure – and drive domestic investment in – this important component of the supply chain.

### **Analytical Pathway**

The legislated language in the IRA points toward, and provides ample flexibility for implementing agencies to reach, the result described above. The questions posed by Treasury and IRS underscore this point. Notice 2022-51 asks, in relevant part:

- which regulations under 49 C.F.R. 661 are relevant in determining whether a manufactured product, present at a qualified facility upon completion, was produced in the United States;

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<sup>4</sup> These estimates are informed by the analysis and modeling performed by Maxeon in the context of its planned U.S. manufacturing investment.

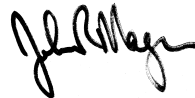
- whether various terms need further clarification, including “component of a qualified facility,” “total costs,” and “mined, produced, or manufactured”; and
- whether further clarification is needed for the adjusted percentage threshold rule that applies to manufactured products, and for the treatment of manufactured products’ subcomponents.<sup>5</sup>

Other commenters are, we understand, intending to address the relevant Federal Transport Administration precedents in detail. Simplifying for purposes of our comment, the essential steps under 49 C.F.R. §661 are (1) identifying those end products which are manufactured and are not made of steel or iron, and (2) applying the appropriate test to the components of those end products. We believe this rubric allows Treasury and IRS to reach the appropriate outcome described above whether they define the end product to be the solar facility as a whole or some smaller/included item such as an array.

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This Public Document is being filed electronically through [www.regulations.gov](http://www.regulations.gov). Please contact the undersigned with any questions.

Respectfully submitted,



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*Counsel to Maxeon*