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Internal Revenue Service
RE: Notice 2022-49
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

RE: ***Notice 2022-47, Request for Comments on Energy Security Tax Credits for Manufacturing Under Section 48C and 45X***
Notice 2022-50, Request for Comments on Elective Payment of Applicable Credits and Transfers of Certain Credits

Introduction

Meyer Burger Americas appreciates the opportunity to comment on Treasury's implementation of the Section 45X Advanced Manufacturing Production Credit and the direct pay and transferability provisions necessary to make the manufacturing credit reliable and effective. As a world leader in solar energy technology, we understand the importance of incentives to promote American energy security.

Meyer Burger is currently in the process of constructing a large solar module manufacturing facility in Goodyear, Arizona, our first in the United States. Once at full capacity, the facility will manufacture 1.5 GW of patented heterojunction SmartWire modules, making it Meyer Burger's single largest solar module manufacturing facility in the world when completed in 2024. This very substantial investment in American energy manufacturing capability is an indication of the priority we place on the U.S. as a place to do business and expand. The provisions of the Inflation Reduction Act (IRA), particularly the Section 45X manufacturing credit coupled with direct pay, will be critical to our ability to make America the epicenter of our solar energy manufacturing efforts in the years to come.

While new to the U.S., Meyer Burger has positioned itself as the leading solar cell and module producer in Europe. We have cell manufacturing facilities in Bitterfeld-Wolfen Germany, and module manufacturing in Freiberg Germany. These areas, known as the "Solar Triangle," are where solar began its first real revolutionary growth; utilizing technology and partnerships developed in the U.S. Today, we sit and the beginning of the next wave; at a time when the world needs it most; and it is being led right here in America. We have publicly stated we intend to get to 7 GW by 2027. With the aggressive leadership and innovation embodied in the Inflation Reduction Act, we believe 1.5 GW in Arizona could be just the start.

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Meyer Burger strongly supports the Section 45X Advanced Manufacturing Production Credit enacted as part of the IRA. We appreciate the opportunity to offer our insights as to how this new credit can be implemented in a way that makes it an effective tool for encouraging solar energy manufacturing in America. Below are what we believe to the most critical implementation issues facing Treasury, as well as how we would suggest Treasury approach them.

<u>Sales to a Related Party For Further Manufacturing</u>

Meyer Burger supports the provision of Section 45X that allows a U.S. manufacturer to treat a sale to a related party as if it were a sale to an unrelated party if the related party utilizes the component to assemble a new eligible component for sale to a third party. This is important in the context of solar cells that are U.S. manufactured and then further transformed into solar modules in the U.S. by the same company. So long as the end product, the module, is sold to an unrelated third party, Treasury regulations should clarify that the manufacturer in this example is eligible to receive the Section 45X credit on both the cell and module. Such treatment will support vertical integration of American energy manufacturing, which will improve U.S. energy security over the long run.

<u>Calculating Module Capacity</u>

The credit amount for solar modules is calculated as 7 cents multiplied by the capacity of such module (expressed on a per direct current watt basis) in Section 45X(b)(E). We believe that Treasury should work with the Department of Energy, and any other relevant government agencies, to standardize the testing of eligible components to ensure that all manufacturers are claiming the credits on an equal basis. We would urge Treasury to issue guidance on how a watt is measured for purposes of the credit and to issue guidance on testing standards that businesses can follow when testing eligible components.

<u>Sales to Foreign Affiliates</u>

An important component of America's energy manufacturing renaissance in the future is likely to be exports to foreign markets. In some cases this will involve exports of an input to be further manufactured into a finished product in a foreign market. To the extent that a U.S. manufacturer exports an eligible component to a foreign affiliate to be manufactured into a finished product to then be sold to an unrelated third party, Treasury should clarify that the U.S. manufacturer qualifies for the credit. Treasury's guidance should recognize the global nature of supply chains and the importance of manufacturing cooperation with America's allies in Europe and around the globe. This is critical as the U.S. seeks to re-establish itself as a manufacturing leader in the solar global supply chain.

Combating Fraud and Abuse

We believe it is important that Treasury take reasonable steps to combat the potential for fraud and abuse. However, we would urge Treasury to narrowly tailor any requirements in this area to avoid create an undue burden on taxpayers utilizing the credit. We urge Treasury to avoid creating unnecessary compliance burdens by only requesting information that is necessary to prevent duplication, fraud, improper or excessive credit amounts.

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As a new entrant to the U.S. market, Meyer Burger believes that the opportunity to monetize credits through direct pay and transferability will be critical to our growth and success as a U.S. manufacturer in the coming years. We urge Treasury to implement these provisions in as expansive a manner as possible, consistent with the statute, and we are pleased to provide our recommendations below.

Direct Pay Term

While the statute clearly provides an election to receive direct pay for a period of 5 consecutive years, the statute does not limit a manufacturer to a single 5-year period. As such, we urge Treasury to clarify that a U.S. taxpayer eligible to receive the Section 45X credit is allowed to elect an additional 5-year period of direct pay once the initial period has expired. Such treatment would more effectively support U.S. energy manufacturing through 2032, the full duration of the Section 45X incentive.

Facility-By-Facility Election

The statute is not clear as to how the direct pay election is made in a situation where a taxpayer may have multiple U.S. manufacturing investments at different stages of development. We urge Treasury to clarify that elections can be made on a facility-by-facility basis as opposed to an election covering the taxpayer's total operations. This is important so that each line of production in the U.S. can receive the benefit of the full 5 years of direct pay. It would be a perverse result, and clearly in contrast to the intent of the IRA to boost domestic solar manufacturing, if a U.S. manufacturer was incentivized to delay production of another manufacturing line so as to restart the 5-year direct pay clock. In this context a facility could be a separate production location or it could be a new production line within the same facility.

More Frequent Direct Pay Elections

The statute also delegates to Treasury the authority to determine the "time and manner" that the election will be made. We would urge Treasury to consider allowing for quarterly elections such that U.S. manufacturers will receive the value of their credits sooner. We believe that Treasury could authorize taxpayers to use the quarterly excise tax reporting mechanism to claim payments every quarter.

<u>Provide a Ramp Up Period</u>

The statute does not contemplate that manufacturing will often include a period where production is ramping up but is not at full capacity. In this scenario, manufacturers may wait until the facility is at full capacity to begin claiming the credit so as to delay starting the 5-year clock. In order to prevent this scenario, we would urge Treasury to provide a ramp up period that would allow a manufacturer to begin claiming the credit but would delay start of the 5-year clock for some period of time, perhaps as long as a year. This ramp up period is unnecessary if Treasury clarifies that the manufacturer can elect a 2nd 5-year period of claiming direct pay.

Thank you for the opportunity to provide our views. We look forward to implementation of the IRA that will assist Meyer Burger in our efforts to expand American energy manufacturing capacity and create good-paying U.S. jobs.

Sincerely,

Ardes Johnson
President
Meyer Burger Americas