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Notice 2022-51

COMMENT BY POSCO

1. Background

POSCO is the sixth largest steel producer in the world and has been named by World Steel Dynamics as “the world’s most competitive steelmaker” for the 12th straight year.

POSCO is also an important partner and supplier to U.S. companies. Our high strength, high quality steel products are essential input materials for automakers and auto parts producers in the United States. We are continuously collaborating with customers to upgrade and improve our products for the next generation of vehicles to improve both safety and efficiency. Amidst the global transition to sustainable mobility, we believe that POSCO’s lightweight, high strength steel will significantly contribute to improving vehicle efficiency without undermining safety. POSCO also supplies steel products for home appliances, electricity infrastructure and electronics, and other major U.S. industries. It is not only electric vehicles but also renewable energy industries, including the rapidly expanding wind power industry, in the United States that have high demand for POSCO steel.

Having committed to achieve carbon neutrality by 2050, POSCO is accelerating its effort toward decarbonization and is putting utmost effort to develop and apply low-carbon steelmaking technologies. Recently, we have launched our own brand “Greenable” to address rising steel demand to be used in renewable energy infrastructure and products, such as wind towers and solar panels. POSCO’s steel has become ever more important in the light of U.S. climate policies, including investment in renewable energy.

POSCO is a recognized leader, not only in steelmaking, but in environmental, social and governance (ESG) issues globally. POSCO was selected as a “lighthouse factory” by the Davos World Economic Forum in 2021 for our smart factory platform and usage of artificial

intelligence in production and quality control systems. In the same year, the Korea Corporate Governance Service awarded POSCO with its highest A+ ranking in its annual ESG evaluations, while only 14 companies received the highest ranking among more than a thousand evaluations. Lastly, we are proud that POSCO's management philosophy has been presented as ESG best practice by a Stanford Business School case study in 2021.

2. General Comments on the IRA

The Inflation Reduction Act of 2022 ("IRA") provides significant tax credits and other incentives for clean energy investments that will meaningfully impact energy infrastructure and technology in the United States. These investments have global benefits in speeding the timeline for decarbonization of the U.S. and global economies. As a company committed to decarbonization and leading the way to a green future with net-zero emission steel, POSCO welcomes the U.S. commitment to clean energy investment.

However, the IRA contains complex and often unclear conditions and restrictions on clean energy projects that could slow or prevent the U.S. from realizing the ambitious decarbonization objectives of Congress and the Administration. In particular, an overly restrictive interpretation of domestic content requirements and related waiver provisions, may increase costs for vital clean energy projects and result in fewer such investments. Likewise, it is essential that Treasury provide clear definitions and guidelines for all criteria relevant to clean energy investment and production tax credits. Ambiguous domestic content requirements create uncertainty for investors which will in turn delay projects, increase costs and deter investment.

3. ISSUE-SPECIFIC COMMENTS - Domestic Content Requirement

To receive an additional 10 percent bonus credit, sections 45(b)(9), 48(a)(12), 45Y(g)(11) and 48E(a)(3)(B) of the IRA require that the taxpayer must certify that any iron or steel that is a component of a qualified facility (upon completion of construction) was produced in the United States. These sections refer to 49 C.F.R. 661 – a portion of the U.S. Department of Transportation regulations generally referred to as "Buy America Requirements," which were drafted to govern procurement by government entities, not supply chain decisions for

commercial energy projects made by private sector investors. Thus, Treasury should use caution in interpreting those requirements to apply to investment subsidies and incentives.

POSCO believes inputs from countries that are FTA signatories, including countries currently participating in negotiations for the Indo-Pacific Economic Framework (“IPEF”), should be treated as satisfying the domestic content requirements included in certain sections of the IRA. In other words, any guidance or regulations should specify that inputs, including iron and steel, satisfy the requirements of Sections 45(b)(9), 48(a)(12), 45Y(g)(11) and 48E(a)(3)(B) if the input is from a country that has signed a free trade agreement with the U.S. or from a country that is participating in IPEF negotiations with the United States. Such an interpretation would create consistency with IRA treatment of critical mineral sourcing. According to Section 13401 of the IRA, in order to qualify for the clean vehicle credit, critical minerals used in the vehicle battery should be extracted or processed not only in the United States but also “in any country with which the United States has a free trade agreement in effect.” To create consistency with respect to steel – a critical input to clean energy projects – POSCO respectfully urges Treasury to adopt an analogous treatment of steel inputs. By expanding the eligibility of what qualifies for the domestic content bonus credit, it would ensure that investors would not be undermined due to the difficulty of procuring certain high-quality steel products from domestic sources and secure a more resilient supply chain for U.S. clean energy industries.

POSCO’s response to Treasury’s specific request for comments are as below.

Q) Should the definitions of “steel” and “iron” under 49 C.F.R. 661.3, 661.5(b) and (c) be used for purposes of defining those terms under §§ 45(b)(9)(B) and 45Y(g)(11)(B)? If not, what alternative definitions should be used?

Comment: As noted above, Treasury should implement guidelines that are consistent with U.S. international obligations. To the extent Treasury relies on Section 661.5 to interpret the definitions of “steel” and “iron”, additional guidance is required to define whether energy project inputs are considered as steel and iron products subject to Section 661.5(c) or as manufactured products subject to Section 661.5(d).

The definitions of “steel” and “iron” that appear in 661.3 and 661.5 are tailored to specifically apply in the context of transportation infrastructure projects and cannot easily be applied to

clean energy projects. To determine whether a steel product qualifies as a US-produced product under the relevant provision, the qualification criteria should be clear. Currently, there are ambiguities regarding the definition applicable to defining whether steel is made in the United States. Regarding Section 661.5 of 49 CFR, we request Treasury to articulate a more detailed explanation of the phrase “metallurgical processes involving refinement of steel additives” as it relates to defining the place of production. Clear definitions would guide private sector investors to make purchasing decisions and facilitate the progress of clean energy projects.

Q) What records or documentation do taxpayers maintain or could they create to substantiate a taxpayer’s certification that they have satisfied the domestic content requirements?

Comment: Required documents and processes for taxpayers should be streamlined with clear and unambiguous guidelines. Taxpayers must be able to rely on Treasury Guidance when making determinations about the eligibility of inputs that are considered to be produced in the United States pursuant to Section 661.5.

Q) Does the determination of “overall costs” and increases in the overall costs with regard to construction of a qualified facility need further clarification? If so, what should be clarified?

Comment: It is equally important to provide clear definitions and advanced notice on waivers to the domestic content requirements, whenever possible, including the waiver related to overall costs described above.

There is an exception to the domestic content requirement if “(I) the inclusion of steel, iron, or manufactured products which are produced in the United States increases the overall costs of construction of qualified facilities by more than 25 percent, or (II) relevant steel, iron, or manufactured products are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.”

With respect to overall costs, guidance is required to determine which costs are included in overall costs (e.g., labor cost, expenses, accounting and administrative fees, outsourcing fees, etc.) Clear examples should be provided with the indication of acceptable methods for calculating the 25 percent increase of overall costs.

Q) What factors should the Secretary include in guidance to clarify when an exception to the requirements under section §§ 45(b)(10)(D) and 45Y(g)(12)(D) applies? What existing regulatory or guidance frameworks, such as the Federal Acquisition Regulation (FAR) and Build America Buy America (BABA) guidance, may be useful for developing guidance to grant exceptions under §§ 45(b)(10)(D) and 45Y(g)(12)(D)?

Comment: Treasury guidance should ensure that the exception requirements apply to taxpayers relying on tax credits as well to taxpayers making an election under Section 6417. Since the availability of steel is a significant factor in the development of any energy project, allowing exceptions only for projects relying on Section 6417 elections would limit the scope of projects for which exceptions are available and ultimately hinder the development of clean energy infrastructure. Thus, the scope of eligible taxpayers who may apply for exceptions to domestic content requirements should include any taxpayer otherwise eligible for the IRA's clean energy ITCs and PTCs.

Treasury should clarify whether the application for exception should be completed before the start of a construction project, or whether it is possible to apply while the project is ongoing.

Q) Do the “sufficient and reasonably available quantities” and “satisfactory quality” standards need further clarification? If so, what should be clarified?

Comment: As noted above, it will be essential that Treasury guidance provides investors with clear definitions and easy-to-use information on what products are considered as not available in “sufficient and reasonably available quantities” for the purposes of the statute. Such determinations must be made in a manner that is transparent and equally applicable to all taxpayers. A similar exclusion provision under Section 232 did not provide a clear and objective criteria for determining the sufficiency of quantities and satisfactory quality, but instead in many cases relied on subjective judgements that resulted in differing determinations for similarly situated applicants.

The Buy America requirements contain an enumerated list of goods determined to be not available in the United States. Treasury should compile a similar list of clean energy project inputs and components that are not available in sufficient and reasonable quantities or of a satisfactory quality. That list should be compiled as part of a further notice with a comment

process, in which various stakeholders participate. In addition, Treasury should rely on waivers granted pursuant to the Buy American Act (<https://www.madeinamerica.gov/waivers/>) and the U.S. Department of Commerce list of Generally Applicable Exclusion products to prepare a preliminary list of iron and steel products that are not produced in the United States in sufficient and reasonably available quantities.

A pre-approved list of such products would allow taxpayers to avoid costly and time-consuming efforts to have certain products declared eligible for the exception. Such burden would likely delay or even deter the very investment the IRA is intended to facilitate. The preliminary list would also avoid the need for Treasury to make case-by-case determinations. Lastly, taxpayers seeking determination of exceptions for products not on the list should have access to an efficient approval process with strict timelines for final decisions.