Comment from Wind Tower Trade Coalition

On behalf of the Wind Tower Trade Coalition, we hereby submit the following comments in response to the Department of the Treasury's and the Internal Revenue Service's request for comments on the prevailing wage, apprenticeship, domestic content, and energy communities requirements under the act commonly known as the Inflation Reduction Act of 2022. The WTTC supports the recent enactment of the Act, which is intended to support domestic manufacturers and American workers in the renewable energy industries, including the wind tower industry. The WTTC welcomes the opportunity to submit the following comments to assist Treasury and the IRS in applying the IRA's provisions in a manner that best effectuate the intent of the statute and maximize the benefits provided to the U.S. wind towers industry. Please see attached narrative.

wiley

PUBLIC DOCUMENT

November 4, 2022

VIA REGULATIONS.GOV

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

Re: ***IRS-2022-51: Comments of the Wind Tower Trade Coalition on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022***

To Whom It May Concern:

On behalf of the Wind Tower Trade Coalition (the "WTTC"), we hereby submit the following comments in response to the Department of the Treasury's ("Treasury") and the Internal Revenue Service's ("IRS") request for comments on the prevailing wage, apprenticeship, domestic content, and energy communities requirements under the act commonly known as the Inflation Reduction Act of 2022 ("IRA").[1] The WTTC supports the recent enactment of the Act, which is intended to support domestic manufacturers and American workers in the renewable energy industries, including the wind tower industry. The WTTC welcomes the opportunity to submit the following comments to assist Treasury and the IRS in applying the IRA's provisions in a manner that best effectuate the intent of the statute and maximize the benefits provided to the U.S. wind towers industry.

[1] *See 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).

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As background, the WTTC is comprised of Arcosa Wind Towers, Inc. ("Arcosa") and Broadwind Towers, Inc. ("Broadwind"), two of the largest manufacturers of utility scale wind towers in the United States. Ventower Industries ("Ventower"), another U.S. manufacturer of utility scale wind towers, also joins the WTTC in making these comments. Arcosa manufactures wind towers in facilities in Clinton, Illinois, Newton, Iowa and Tulsa, Oklahoma; Broadwind manufactures wind towers in Manitowoc, Wisconsin and Abilene, Texas; and Ventower manufactures wind towers in Monroe, Michigan. Together, the three companies employ more than 700 American workers. The WTTC is hopeful that the IRA's provisions, if implemented as intended, will allow Arcosa, Broadwind, Ventower and other U.S. wind tower producers to continue operating, expand operations and hire more workers. Wind towers are of vital importance to America's clean energy future, making it critical that domestic manufacturing capabilities for wind towers are maintained and expanded.

In general, Treasury should interpret the domestic content requirement provisions and other IRA provisions to ensure that the benefits of these provisions flow to U.S. producers and not unfairly traded foreign sources. The U.S. wind tower industry knows firsthand the detrimental effects of unfairly traded imports. Over the past decade, U.S. wind tower producers have brought numerous trade remedy cases to address unfair competition from dumped and subsidized wind towers that left the domestic industry in a severely injured state. However, with each successful case, foreign wind tower producers opened new facilities in neighboring countries and continued to direct unfairly traded wind towers to the United States. The IRA is an important step towards addressing this unfair competition and ensuring the United States' clean energy future is made in the United States. However, implementing the statute correctly is critical to make sure the benefits

of provisions designed to support U.S. manufacturing do not leak to foreign producers and circumvent the IRA's intent while undoing years of trade actions and domestic industry recovery.

Demand for wind energy necessarily drives demand for wind towers. The U.S. Wind Turbine Database estimates there were a total of 72,130 operating turbines in the United States at the end of July 2022.[2] The U.S. Department of Energy estimates that combined onshore and offshore wind production will grow from 110.66 GW of installed capacity in 2020 to 224.07 GW by 2030.[3] This enormous potential for wind energy also presents an opportunity for domestic producers in the wind tower industry to strengthen the U.S. supply chain and convert this demand into domestic manufacturing jobs. Indeed, the IRA is intended not only to promote new clean energy generation facilities, but to also ensure the facilities are supported by reliable, clean, American manufacturing.

Wind turbines consist of three primary elements: the wind tower, the nacelle, and the blades. Wind towers support a wind turbine's blades and nacelle, and each tower is designed and produced according to specific turbine specifications. The wind tower accounts for most of the finished turbine's weight, as it is primarily made of cut-to-length ("CTL") steel plate. U.S. manufacturers predominantly purchase these steel plates from U.S. steel producers and ship the plate directly to their facilities in "wind corridor" states, including Iowa, Texas, Oklahoma, and Wisconsin. Once these plates arrive at the facility, the tower manufacturer cuts the plates to size and rolls them into large cylinders that are then welded to create a "can." Multiple wind tower cans are then welded end-to-end to create a complete tower section, and multiple sections (typically,

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[2] Ben Hoen, James Diffendorfer, Joseph Rand, Louisa Kramer, Chris Garrity & Hannah Hunt, US Wind Turbine Database Summary at 3 (Oct. 12, 2022), https://eta-publications.lbl.gov/sites/default/files/uswtdb_v5_1_20220729_memo.pdf.

[3] Dep't of Energy, Map: Projected Growth of the Wind Industry From Now Until 2050, https://www.energy.gov/maps/map-projected-growth-wind-industry-now-until-2050 (last visited Nov. 3, 2022).

three, four or five sections), in turn, make a complete tower. Flanges are welded to the end of each section, which will allow the tower sections to be assembled at the wind project site. A door is cut into the base section of the tower and the manufacturer welds in internal bracketing and subcomponents, such as ladders and platforms. Each section is blasted, painted, and coated for weather resistance. The tower customer then transports the towers to the installation site and assembles the tower with the blades and the nacelle. Note that wind tower customers generally contract to purchase entire towers from a single producer.

The U.S. industry is ready and willing to supply towers to meet increasing wind energy demand and has remained resilient, despite years of competition against unfairly traded imports. In June 2012, there were thirteen U.S. wind tower producers. Today, there are only six. As demand for wind energy grew in the late 2000s and early 2010s, producers from China and Vietnam—both nonmarket economies—began flooding the U.S. market with dumped and subsidized wind towers. Imports of towers from China and Vietnam grew 41 percent from 2009 to 2011.[4] By the first half of 2012, imports from these two countries were up nearly 193 percent, as compared to the first half of 2011, and total imports from China and Vietnam exceeded total U.S.-producer tower sales.[5] The Department of Commerce ("DOC") determined that Chinese producers, including the Chinese affiliate of CS Wind Corporation, sold towers dumped at rates of at least 44.99 percent[6] and subsidized at rates of at least 21.86 percent.[7] For Vietnam, DOC calculated a dumping rate at 51.50

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4 *Utility Scale Wind Towers from China and Vietnam*, Inv. Nos. 701-TA-486, 731-TA-1195-1196, USITC Pub. 4372 (Feb. 2013) (Final) at C-3 (Table C-1) ("USITC Pub. 4372").

5 *Id.*

6 *Utility Scale Wind Towers From the People's Republic of China*, 77 Fed. Reg. 75,992, 75,996 (Dep't Commerce Dec. 26, 2012) (final deter. of sales at less than fair value).

7 *Utility Scale Wind Towers From the People's Republic of China*, 77 Fed. Reg. 75,978, 75,979 (Dep't Commerce Dec. 26, 2012) (final affirmative countervailing duty deter.).

percent for CS Wind, a Korean multinational company with global production facilities including in China and Vietnam.[8] [9] Antidumping and countervailing duty orders were eventually imposed in February 2013.[10]

For many wind tower producers, however, the damage had already been done. From the beginning of 2012 to the end of 2014, major U.S. wind tower manufacturers SIAG Aerisyn, Katana, Martifer-Hirschfeld, Johnson Plate and Tower Fabrication, and DMI all either exited the wind tower industry or filed for bankruptcy.[11] Those that had been able to withstand the influx of unfairly traded products did so by lowering prices, causing the U.S. International Trade Commission (the "ITC") to find "a causal nexus between the subject imports and the poor performance of the domestic industry."[12] Nevertheless, with the orders in place on China, the domestic industry began to recover within a fairly traded market. U.S. producers were able to again charge fair prices for wind towers and could make the necessary investments to update aging facilities.

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[8] *Utility Scale Wind Towers From the Socialist Republic of Vietnam*, 77 Fed. Reg. 75,984, 75,988 (Dep't Commerce Dec. 26, 2012) (final deter. of sales at less than fair value).

[9] A decision from the U.S. Court of International Trade released CS Wind's Vietnam producer from the original antidumping order. *Utility Scale Wind Towers From the Socialist Republic of Vietnam*, 82 Fed. Reg. 15,493 (Dep't Commerce March 29, 2017) (notice of ct. decision not in harmony with the final deter. of less than fair value investigation and notice of amended final deter. of investigation). As a result, Vietnamese wind towers were once again sold at unfairly traded prices, and the domestic industry brought a countervailing duty case and a new antidumping duty case to address these practices. DOC calculated an even higher dumping rate of 65.96 percent. *Utility Scale Wind Towers From Canada, Indonesia, the Republic of Vietnam*, 85 Fed. Reg. 52,546 (Dep't Commerce Aug. 26, 2020) (antidumping orders).

[10] *Utility Scale Wind Towers From the Socialist Republic of Vietnam*, 78 Fed. Reg. 11,150 (Dep't Commerce Feb. 15, 2013) (amended final deter. of sales at less than fair value and antidumping duty order); *Utility Scale Wind Towers From the People's Republic of China*, 78 Fed. Reg. 11,152 (Dep't Commerce Feb. 15, 2013) (countervailing duty order); *Utility Scale Wind Towers From the People's Republic of China*, 78 Fed. Reg. 11,146 (Dep't Commerce Feb. 15, 2013) (antidumping duty order).

[11] *Utility Scale Wind Towers from China and Vietnam*, Inv. Nos. 701-TA-486, 731-TA-1195-1196, USITC Pub. 4888 (Apr. 2019) (Review) at III-2.

[12] USITC Pub. 4372 at 30.

Unfortunately, this recovery was short lived. CS Wind was released from the Vietnam antidumping order after appeal and once again began selling products in the United States at unfairly traded prices. Simultaneously, producers from other countries also began ramping up production and shipping large volumes of unfairly traded wind towers to the United States. Domestic producers once again experienced significant economic impacts and were forced to bring another set of cases to remedy dumping and subsidization in July 2019 against CS Wind's Vietnam subsidiary and producers in Canada, Indonesia, and South Korea.

Imports from these three countries grew 59 percent from 2017 to 2019, while total U.S. production increased by less than 5 percent during the same time period.[13] As a result, subject imports rapidly increased their market share at U.S. manufacturers' expense, during a time when all companies should have been able to succeed. The ITC attributed this to the foreign producers' "pervasive underbidding" and "underselling," which had significant adverse price effects on the domestic industry and drove the domestic industry's lackluster financial performance.[14] The ITC and DOC made affirmative findings in each case and imposed dumping and subsidy orders on wind towers exported from Canada, Indonesia, South Korea, and Vietnam (CS Wind).

Imports from these countries began to decline once the orders leveled the playing field in the U.S. market. However, yet again, dumped and subsidized imports began flooding the market from alternative sources, as producers ramped up production in non-subject countries. This included wind towers from Malaysia produced by CS Wind Malaysia, as CS Wind quickly shifted production to a market without a U.S. trade remedy order. Accordingly, imports from India, Malaysia, and Spain increased 127 percent from 2018 to 2020 and gained more than 18 points of

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[13] *Utility Scale Wind Towers from Canada, Indonesia, Korea, and Vietnam*, Inv. Nos. 701-TA-627-629, 731-TA-1458-1461, USITC Pub. 5101 (Aug. 2020) (Final) at 32, C-4 ("USITC Pub. 5101").

[14] *Id.* at 39, 45-46.

market share.[15] The ITC also found that a substantial amount of available domestic production capacity was going unused in 2018, 2019, and 2020 due to the influence of subject imports.[16] The U.S. industry brought its third set of successful AD/CVD cases to prevent further deterioration of the U.S. industry. Yet U.S. producers still maintain significant underutilized and completely unutilized capacity, with U.S. wind tower manufacturing facilities sitting idle as original equipment manufacturers continue to import towers sold at dumped and subsidized pricing.

These three rounds of trade cases demonstrated the attractiveness of the U.S. market for foreign imports. The investigations also highlighted an emerging practice of using partially foreign tower sales to leverage down costs and dumping margins—a practice that could also frustrate the IRA's goal of spurring domestic production. Pursuant to this practice, foreign-headquartered manufacturers have established wind tower production facilities in the United States that can produce complete towers. However, the facility instead focuses on producing only certain sections (*e.g.*, top sections, mid sections, or base sections) that it will then combine with tower sections produced at facilities outside of the United States at a project site in the United States.

For example, Marmen Inc., a Canadian wind tower manufacturer, also produces wind towers in the United States as Marmen Energy Co. Marmen's U.S. customers can import top sections from Marmen's Canadian facilities and middle and base sections from Marmen's South Dakota facility to make a complete tower, leveraging down the final price of the full tower by using the imported section.[17] As a result, the ITC noted that "{a}t the beginning of the period in 2017, the majority of U.S. shipments of wind towers imported from Canada were sold as full

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[15] The imports' market share is defined here as the total imports from India, Malaysia, and Spain divided by the total U.S. market consumption. Subject imports' market share grew from 28.2 percent in 2018 to 46.8 percent in 2020. *Utility Scale Wind Towers from Malaysia*, Inv. No. 701-TA-661, USITC Pub. 5215 (July 2021) (Final) at C-4.

[16] *Id.* at 36, II-7 (Table II-2).

[17] USITC Pub. 5101 at 13.

towers, but by the end of the period in 2019, the majority of U.S. shipments of wind towers imported from Canada were sold as partial towers."[18] This trend is likely to continue as additional foreign-based wind tower producers establish production facilities in the United States. Recently, CS Wind purchased Vestas' Pueblo, Colorado wind tower manufacturing facility to begin producing tower sections in the United States. Without guidance prohibiting it, CS Wind will follow Marmen's lead, produce only some tower sections in the United States, and supplement that production with dumped and subsidized tower sections produced in its global facilities, including in China, Vietnam and Malaysia.[19] U.S. manufacturers do not object to foreign producers who want to establish manufacturing bases in the United States but it must be true tower production, and not simply a means to profit from the use of unfairly traded foreign tower sections.

In addition, major U.S.-based wind tower producers primarily procure plate from domestic steel manufacturers, while many foreign produced towers use Chinese-made plate. The United States maintains significant antidumping and countervailing duties on CTL steel plates from China.[20] By incorporating this plate into foreign-made wind towers that are subsequently exported to the United States, Chinese producers have a readymade avenue to evade duties. The European Steel Association similarly recognizes that "{m}any types of steel from China are already subject to anti-dumping measures, including on the heavy plate and electrical steel used to build wind

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[18] *Id.* at E-3.

[19] It appears from bill of lading data that CS Wind has already entered numerous tower sections from China into the United States, which sit near Houston, Texas, not yet formally entered for consumption.

[20] DOC has found Chinese plate to be dumped at rates of 68.27 percent and subsidized at rates of 251 percent. *See Certain Carbon and Alloy Steel Cut-to-Length Plate From the People's Republic of China*, 82 Fed. Reg. 8,510 (Dep't Commerce Jan. 26, 2017) (final affirmative deter. of sales at less than fair value); *Certain Carbon and Alloy Steel Cut-to- Length Plate From the People's Republic of China*, 82 Fed. Reg. 14,346 (Dep't Commerce Mar. 20, 2017) (countervailing duty order).

towers with dumping margins found to be up to 54.9% and 127.6% respectively in each case."[21] In December 2021, the European Commission imposed antidumping duties on wind towers from China.[22]

Steel plate produced in countries like China and India, often used by foreign wind towers manufacturers, is also higher-emission and more carbon-intensive than U.S.-produced plate. The IRA must not be interpreted in a manner that encourages the use of this higher-emission foreign steel, thereby offsetting the environmental gains of renewable energy production. Of the major steel-producing countries, the United States is among the most carbon efficient.[23] American steel emissions are lower per ton of steel produced than key trading partners like Canada, Mexico and the EU, and American emissions are substantially lower than China, India, Japan, and Korea.[24] Specifically, U.S. emissions are 37 percent lower than Europe.[25] This is largely because domestic steel production is predominantly EAF-based, with approximately 70 percent of American crude steel being made through EAF processes.[26] In contrast, less than 30 percent of global steel production is EAF. [27] In the United States, EAF production generates 78 percent fewer greenhouse gas emissions per ton of steel than typical blast furnace-basic oxygen furnace production.[28] Rewarding the producers that combine U.S.-made sections with foreign-produced sections also

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21 Press Release, Eurofer, *Dumping of wind towers from China highlights the need for adequate trade enforcement – entire EU value chains at risk* (Oct. 20, 2020), https://www.eurofer.eu/press-releases/dumping-of-wind-towers-from-china-highlights-the-need-for-adequate-trade-enforcement-entire-eu-value-chains-at-risk/.

22 *See generally Imposing a definitive anti-dumping duty on imports of certain utility scale steel wind towers originating in the People's Republic of China*, 2021 O.J. (L450) 2021/2239 (Dec. 15, 2021).

23 Ali Hasanbeigi, *Steel Climate Impact*, Global Efficiency Intelligence (Apr. 2022) at 3.

24 *Id.*

25 CRU, Emissions Analysis Executive Summary (June 14, 2022) at 7.

26 *Id.*

27 Ali Hasanbeigi, *Steel Climate Impact*, Global Efficiency Intelligence (Apr. 2022) at 14.

28 CRU, Emissions Analysis Executive Summary (June 14, 2022) at 7.

rewards the foreign producers of higher-emission, dumped and subsidized steel plate and imperils both the domestic steel industry and the domestic wind tower industry. Treasury should interpret its regulations to ensure that credits intended for domestic producers do not leak out to foreign producers.

The application of the IRA provisions in a manner that supports U.S. wind tower producers and ensures that the entire tower is produced in the United States is an important and necessary step to help rebuild, expand and re-shore America's clean energy products supply chain and ensure that the United States maintains core manufacturing capabilities for wind towers. It is also consistent with Administration policy. In his first week of office, President Biden signed Executive Order 14005, *Ensuring the Future is Made in All of America by All of America's Workers*, which states that "the United States Government should, whenever possible, procure goods, products, materials, and services from sources that will help American businesses compete in strategic industries and help America's workers thrive."[29] More recently, the Administration announced its Federal Buy Clean Initiative to "support American leadership on clean manufacturing."[30]

Thus, consistent with the Act and the Administration's policy objectives, the WTTC urges Treasury and the IRS to ensure that all guidance issued regarding the IRA's implementation, including with regard to the domestic content requirements in the IRA for taxpayers to qualify for bonus credit amounts, serves the goal of strengthen U.S. supply chains and increasing the manufacturing of critical renewable energy products like wind towers in the United States. The

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[29] Exec. Order No. 14,005, 86 Fed. Reg. 7,475, 7,475 § 2(b) (Jan. 28, 2021) ("Ensuring the Future Is Made in All of America by All of America's Workers").

[30] The White House, *Fact Sheet: Biden-Harris Administration Advances Cleaner Industrial Sector to Reduce Emissions and Reinvigorate American Manufacturing* (Feb. 15, 2022).

WTTC further addresses some of the agencies' specific questions with regard to the domestic content requirements below.

> **(1) Sections 45(b)(9)(B) and 45Y(g)(11)(B) provide that a taxpayer must certify that any steel, iron, or manufactured product that is a component of a qualified facility (upon completion of construction) was produced in the United States (as determined under 49 C.F.R. 661).**
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> > **(a) What regulations, if any, under 49 C.F.R. 661 (such as 49 C.F.R. 661.5 or 661.6) should apply in determining whether the requirements of section §§ 45(b)(9)(B) and 45Y(g)(11)(B) are satisfied? Why?**
> >
> > **(c) 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?**

While "steel" is not explicitly defined in under 49 C.F.R. § 661, the WTTC believes that the example list of end products contained in Appendix A to 49 C.F.R. § 661.3 is instructive as to how "steel" should be defined for purposes of the domestic content requirements in the IRA. Specifically, Appendix A to 49 C.F.R. § 661.3 defines "steel and iron end products" as "items made primarily of steel or iron." Wind towers are "items made primarily of steel or iron," with steel plate comprising, in the WTTC's experience, approximately 70 to 80 percent of the total raw materials costs of wind towers.[31] Thus, for purposes of the domestic content requirements for qualified facilities to obtain bonus credits, wind towers should be considered "steel" and subject to the requirements set forth in Section 45(b)(9)(B)(ii) of the Internal Revenue Code. In other words, "all manufacturing processes" for the steel "must take place in the United States, except metallurgical processes involving refinement of steel additives."[32] This requires that wind towers be fully produced with steel that has been melted and poured in the United States for their use in a

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[31] *See also* USITC Pub. 4952 at 24. ("Steel plate is the primary raw material used in making wind towers, along with flanges, paint, and interior parts") (emphasis added).

[32] *See* 49 C.F.R. § 661.5(b), *as incorporated by* 26 U.S.C. § 45(b)(9)(B)(ii).

qualified facility to satisfy the IRA's domestic content requirements, as further set forth in the comments on this Notice submitted by Nucor Corporation.

> **(2) Sections 45(b)(9)(B)(iii) and 45Y(g)(11)(B)(iii) provide that manufactured products that are components of a qualified facility upon completion of construction will be deemed to have been produced in the United States if not less than the adjusted percentage of the total costs of all of such manufactured products of such facility are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States.**
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> > **(a) Does the term "component of a qualified facility" need further clarification? If so, what should be clarified and is any clarification needed for specific types of property, such as qualified interconnection property?**

With regard to wind energy generation facilities (*i.e.*, wind farms), the manufactured products that are components of the facility are not significantly varied or numerous. The vast majority of a qualified wind facility is comprised of the wind towers, nacelles and blades (operating as a wind turbine). Treasury and the IRS should ensure that the qualified facility is not defined unduly broadly in an attempt to dilute the adjusted percentage domestic content standards for manufactured products comprising the facility.

> > **(b) Does the determination of "total costs" with regard to all manufactured products of a qualified facility that are attributable to manufactured products (including components) that are mined, produced, or manufactured in the United States need further clarification? If so, what should be clarified? Is guidance needed to clarify the term "mined, produced, or manufactured"?**

(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?

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

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

As discussed above, the WTTC believes that wind towers are "steel" products that should be subject to the domestic content requirement applicable to steel (*i.e.*, "all steel . . . manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives"[33]).

However, should the agencies instead determine that wind towers are "manufactured products" for purposes of the IRA's domestic content requirements, further clarification may be helpful with regard to the interpretation of this phrase as it relates to wind towers. It is critical that the "manufactured products" utilized in a wind energy generation facility be defined in manner as to require the use of U.S.-produced wind towers for eligibility for the domestic content bonus credits. A failure to do so would have the unintended effect of encouraging the import of foreign wind towers (many of which have already been determined to violate international trade laws in multiple rounds of trade remedy cases),[34] seriously harm an already injured U.S. wind towers industry, and directly undermine the IRA's and the Administration's goals of creating "a clean

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[33] *See* 49 C.F.R. § 661.5(b), *as incorporated by* 26 U.S.C. § 45(b)(9)(B)(ii).

[34] *See, e.g.*, *Utility Scale Wind Towers From Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam*, 85 Fed. Reg. 52,546 (Dep't Commerce Aug. 26, 2020); *Utility Scale Wind Towers from Spain*, 86 Fed. Reg. 45,707 (Dep't Commerce Aug. 16, 2021) (antidumping duty order); *Utility Scale Wind Towers from the People's Republic of China*, 78 Fed. Reg. 11,146.

energy boom that's made in America" by American workers.[35] For example, defining "end products" too broadly (to include, *e.g.*, an entire electricity generation system) could significantly lessen the impact of the domestic content requirements, by resulting in the classification of many of the products utilized as only "subcomponents." Thus, the WTTC requests that Treasury and the IRS issue guidance clarifying that, if the "manufactured product" provisions apply to wind towers, they require use of fully U.S.-manufactured towers in order to satisfy the domestic content provisions.

The WTTC understands that there are at least two options for defining "manufactured products" in a manner consistent with the statutory intent. First, the relevant "manufactured product" can be considered to be the wind tower itself – a fully finished product produced by tower-specific manufacturers in facilities that manufacture towers. Wind tower blades and nacelles[36] would also be considered a separate "manufactured product." The IRA itself appears to contemplate that each of these products are separate manufactured products, by providing Advancing Manufacturing Production credits under Section 45X to producers of each of wind towers, blades and nacelles.

With the wind tower as the "manufactured product," the entire wind tower and its component sections would need to be produced or manufactured in the United States, in order for its costs to contribute to meeting the adjusted percentages set forth in Sections 45(b)(9)(C) and

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35 *Remarks by President Biden on the Bipartisan Infrastructure Law {and Inflation Reduction Act}*, The White House (Oct. 19, 2022), https://www.whitehouse.gov/briefing-room/speeches-remarks/2022/10/19/remarks-by-president-biden-on-the-bipartisan-infrastructure-law-6/.

36 It is not clear that nacelles fit the definition of "manufactured product" at all, as it does not appear that nacelles undergo "the application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials." 49 C.F.R. § 661.3. Nacelles are better understood as an assembly of various other elements, including the generator and the gear box.

45Y(g)(11)(C). In other words, the wind tower itself, and all sections of the wind tower, would need to be manufactured in the United States using U.S.-manufactured (*i.e.*, melted and poured) steel. Simply, the entire wind tower production process, for all sections (*e.g.*, plate cutting, bending / rolling, welding, blasting, painting, and internals installation) would need to occur in the United States.

In the alternative, if the entire wind turbine is determined to be the manufactured product, the turbine itself and each of its components (including the wind tower, nacelle and blades) would be required to be produced or manufactured in the United States to fulfill the domestic content requirements. For the wind tower component to be considered U.S.-produced, the entire wind tower (*i.e.*, each section comprising the wind tower) would need to be manufactured in the United States, including each of the production processes referenced in the preceding paragraph. As set forth in the WTTC's comments on the Section 45X credit,[37] this understanding is consistent with the definition of "wind tower" in the IRA. Further, as referenced in the Nucor comments, based on the construction of the statute, the FTA regulations may not apply to Section 45(b)(9)(B)(iii) of the Act.

The clear intent of the IRA is to accelerate achieving America's clean energy future by supporting the domestic clean energy supply chain, including domestic wind tower manufacturers like Arcosa, Broadwind, and Ventower. It would contradict that intent if the IRA could be interpreted in any way that foreign wind tower manufacturers were to benefit to the detriment of the WTTC. In sum, any definition of the "manufactured products" utilized in a wind energy

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[37] *See* Letter from Wiley Rein LLP to Internal Revenue Service, re: *IRS-2022-47: Comments of the Wind Tower Trade Coalition on Advanced Manufacturing Production Credits (§ 45X) Under the Act Commonly Known as the Inflation Reduction Act of 2022* (Nov. 4, 2022).

generation facility must be defined in manner as to require the use of U.S.-produced wind towers to satisfy the domestic content bonus credit requirements.

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Thank you in advance for your consideration of these comments and please do not hesitate to contact the undersigned if you have any questions.

Respectfully submitted,

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