



U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS
1139 LONGWORTH HOUSE OFFICE BUILDING
Washington, DC 20515

September 19, 2023

The Honorable Janet L. Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Yellen:

As Chairman of the Committee on Ways and Means, I write to relay my expectations for the prompt release of regulations regarding the clean vehicle credit provisions of the Inflation Reduction Act (IRA) that include a clear and concise definition of “foreign entity of concern” to prevent certain entities in adversarial nations like China and others from receiving U.S. taxpayer dollars. Delay or ambiguity on this point will cause credits, and thus U.S. taxpayer subsidies, to flow to our foreign adversaries.

While I do not agree with the policy that provides massive taxpayer-funded subsidies for electric vehicles, certainly we should be able to agree that taxpayer funds should not flow in a way that benefits the Chinese Community Party (CCP) or other entities who do not share our aligned interests. Treasury guidance should make clear in the most comprehensive way possible that taxpayer subsidies cannot flow to foreign entities of concern through any structuring mechanism conceivable. Guidance on this topic should be as strict and prompt as possible so there is no ambiguity that the benefit of taxpayer subsidies cannot end up in the hands of our adversaries. President Biden claimed the tax credits for electric vehicles (EVs) made in North America would “strengthen supply chains”¹ and serve as “the largest investment in American manufacturing.”² In addition, U.S. Department of Energy Secretary Jennifer Granholm indicated that her department’s “number one” priority is to avoid having taxpayer dollars flow to China.³

¹ U.S. Department of the Treasury, *Treasury Releases Initial Information on Electric Vehicle Tax Credit Under Newly Enacted Inflation Reduction Act* (Aug. 16, 2022), <https://home.treasury.gov/news/press-releases/jy0923>.

² The White House, *Remarks by President Biden in Roundtable with Business and Labor Leaders on the Inflation Reduction Act* (Aug. 4, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/04/remarks-by-president-biden-in-roundtable-with-business-and-labor-leaders-on-the-inflation-reduction-act/>.

³ James Bikales, *Winds of Change at the World Bank* (Apr. 6, 2023), <https://subscriber.politicopro.com/newsletter/2023/04/winds-of-change-at-the-world-bank-00090702>.

Letter to The Honorable Janet Yellen

September 19, 2023

Page 2

The U.S. Department of the Treasury (Treasury), however, has yet to issue regulations defining “foreign entity of concern.” Issuing guidance on this point should not take this long, as there are no other considerations to weigh against this important goal. I urge you to issue the regulations quickly and in a manner that protects American tax dollars from flowing to foreign adversaries.

Under Section 30D the \$7,500 clean vehicle credit has two separate and distinct qualifying criteria and distinct disqualifying criteria.⁴ Under the first criteria, meeting requirements that battery critical mineral inputs be sourced from either the U.S. or countries with which the U.S. has a Free Trade Agreement qualifies a vehicle for a \$3,750 credit.⁵ Under the second criteria, meeting requirements that battery components were manufactured in North America qualifies a vehicle for a separate \$3,750 credit.⁶ Only vehicles with final assembly in North America can qualify for the credit.⁷ Finally, no credit is available to any vehicle placed in service after December 31, 2024, with respect to which any of the applicable critical minerals contained in the battery of such vehicle were extracted, processed, or recycled by a foreign entity of concern or any vehicle placed in service after December 31, 2023, with respect to which any of the components contained in the battery of such vehicle were manufactured or assembled by a foreign entity of concern⁸. The clean vehicle credit provisions are subject to guidance from the Internal Revenue Service (IRS) and Treasury for vehicles that are placed in service on or after January 1, 2023.⁹

Rather than issuing guidance before the statutory deadline for the proposed rules on the critical mineral and battery component of Section 30D of the IRA, the Biden Treasury and IRS released a white paper that previewed the Administration’s plans for the proposed guidance.¹⁰ Specifically, the white paper proposed a multi-step transition rule to determine compliance with the critical mineral requirements for 2023 and 2024.¹¹ These steps outline various requirements a manufacturer must meet to determine (1) “whether each battery component was manufactured or assembled in North America;” (2) “the incremental value for each battery component;” (3) “the total value of the battery components;” and (4) “the percentage of the value of the components manufactured or assembled in North America.”¹² According to Treasury’s white paper, to qualify for the maximum tax credit available under the IRA, an EV must not have any battery

⁴ The Inflation Reduction Act of 2022, Pub. L. 117-169.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ U.S. Department of Energy, Alternative Fuels Data Center, Electric Vehicle (EV) and Fuel Cell Electric Vehicle (FCEV) Tax Credit, <https://afdc.energy.gov/laws/409>.

¹⁰ Marie Sapirie, *A Closer Look At Forthcoming Tax Guidance On Electric Vehicle Credits*, FORBES (Jan. 23, 2023), <https://www.forbes.com/sites/taxnotes/2023/01/23/a-closer-look-at-forthcoming-tax-guidance-on-electric-vehicle-credits/?sh=6a7879547612>; U.S. Department of the Treasury, Anticipated Direction of Forthcoming Proposed Guidance on Critical Mineral and Battery Component Value Calculations for the New Clean Vehicle Credit, <https://home.treasury.gov/system/files/136/30DWhite-Paper.pdf>.

¹¹ U.S. Department of the Treasury, Anticipated Direction of Forthcoming Proposed Guidance on Critical Mineral and Battery Component Value Calculations for the New Clean Vehicle Credit, <https://home.treasury.gov/system/files/136/30DWhite-Paper.pdf>.

¹² *Id.*

components made or assembled “by a foreign entity of concern.”¹³ These rules, however, have not yet been addressed by the IRS or Treasury.

On February 13, 2023, Ford Motor Company announced it would invest \$3.5 billion to build an EV battery plant in Marshall, Michigan, with the help of China’s Contemporary Amperex Technology Co. Ltd. (CATL)—a major battery manufacturer.¹⁴ A Ford official claimed that the IRA “was incredibly important for us and frankly it did what it intended to do.”¹⁵ Ford’s announcement that it will build the plant in Michigan with the help of CATL has not alleviated concerns. Public reporting shows that Ford has licensed technology from CATL and that “CATL employees will be stationed at the factory and that some materials for construction will be shipped from China.”¹⁶ This arrangement attempts to leverage ambiguity in the IRA rules regarding battery components manufactured or assembled by a “foreign entity of concern.” Guidance should make clear that this or any similar structuring would disqualify the vehicle from federal subsidy. Furthermore, Ford confirmed their dependence on Chinese imports, as they plan to use a licensing agreement for intellectual property and related services with a company that is based in China.¹⁷

A month and a half later, the IRS and Treasury issued proposed regulations addressing some of the IRA’s clean vehicle credit provisions on March 31, 2023.¹⁸ The proposed regulations, however, fail to provide a clear, concise, and useful definition of a foreign entity of concern.

I am alarmed at how Ford structured this project in the context of the IRA’s clean vehicle credits and am concerned that other automakers may seek to use ambiguity currently undefined in the IRA to avoid guardrails meant to protect American enterprise, workers, and taxpayer dollars. Therefore, as part of my oversight authority as the Chairman of the Committee, I wrote to eleven automakers requesting information about their company’s investments and planned investments connected to the IRA’s clean vehicle credits to better understand how those credits are being used and whether they are working as the Biden Administration and congressional Democrats claimed they would.

Based on the information received from these automakers, the lack of clarity coming from Treasury is a significant problem for American automakers. It is of vital importance that Treasury issue strong, concise, guidance on foreign entities of concern within the IRA. New

¹³ Claire Bushey and Aime Williams, *Carmakers try to frustrate US push to cut China from EV supply chain*, FINANCIAL TIMES (Nov. 22, 2022), <https://www.ft.com/content/2bcb1c6b-61aa-4ec7-80ac-2c455fbc8099>. A “foreign entity of concern” is defined in section 40207(a)(5) of the Infrastructure Investment and Jobs Act, 42 U.S.C. 18741(a)(5).

¹⁴ Ryan Felton and Nora Eckert, *Ford Invests \$3.5 Billion in Michigan Battery Plant With Chinese Partner’s Technology*, THE WALL STREET JOURNAL (Feb. 13, 2023), <https://www.wsj.com/articles/ford-invests-3-5-billion-in-michigan-battery-plant-with-chinese-partners-technology-1aed174c>.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Letter from Steven Croley, Gen. Counsel, Ford Motor Company., to The Hon. Jennifer Granholm, Sec’y. U.S. Dep’t., of Energy and The Hon. Janet Yellen, Sec’y., U.S. Dep’t., of Treasury (September 8, 2023).

¹⁸ Section 30D New Clean Vehicle Credit, Reg. 120080-22 (proposed Mar. 31, 2023) (to be codified at 26 C.F.R. pt. 1).

information has also come to light related to Ford's relationship with CATL and CATL's potential connection to the use of forced labor in China¹⁹ – this new information only heightens the need for clear and strong regulatory guidance.

Therefore, I request an update on the status of Treasury regulations regarding foreign entities of concern in the IRAs clean vehicle credit provisions and ask that you respond to the questions below as soon as possible, but no later than 5 p.m. on October 7, 2023.

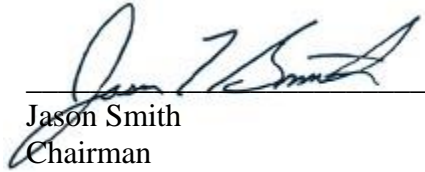
1. Is Treasury currently developing rules to make certain that taxpayer dollars do not flow to entities that are controlled by, or will benefit, foreign adversaries such as China?
2. Will forthcoming Treasury guidance make certain that foreign entities of concern cannot use creative contracting methods, such as using licensing agreements instead of joint ventures, to work around the purpose of the regulations, including licensing agreements for intellectual property and related services with a company that is based in China?
3. What factors and preexisting standards is Treasury considering for how to determine whether an entity is listed as ineligible for tax credits?
4. How often will Treasury reevaluate its standards to account for new methods to secure taxpayer subsidies through circumventing statutory and regulatory efforts?
5. Once Treasury establishes standards for determining whether an entity qualifies as a "foreign entity of concern," will it create a specific audit plan to evaluate and decide whether a specific entity meets those standards?
6. If an audit plan is created, how many people will staff the effort to execute such a plan and where will the funds come from to support this effort?

It is essential that Treasury proposes and finalizes regulations in a timely manner clarifying the clean vehicle credit provisions in the IRA, so that the American people, Congress, and the automakers have clarity regarding the Administration's interpretation of the law. That clarity is also needed for Congress to fully evaluate the impact of the IRA provisions on American workers. If you have any questions about this request, please contact the Majority staff of the Committee on Ways and Means. We thank you for your prompt attention to this matter.

¹⁹ Letter from The Hon. Jason Smith, Chairman, H. Comm. on Ways & Means., The Hon. Mike Gallagher, Chairman, H. Select Comm. on China to James D. Farley, Jr., President & CEO, Ford Motor Company (Jul. 20, 2023), <http://waysandmeans.house.gov/wp-content/uploads/2023/07/7.20.2023-Letter-to-Ford-China-Select-Ways-and-Means.pdf>.

Letter to The Honorable Janet Yellen
September 19, 2023
Page 5

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Smith", is written over a horizontal line. The signature is fluid and cursive.

Jason Smith
Chairman
Committee on Ways and Means