Testimony

of

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hearing on

American Made: Growing U.S. Manufacturing Through the Tax Code

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On behalf of the members of the United Steelworkers (USW) union, I would like to thank Chairman Wyden, Ranking Member Crapo, and the members of the committee for holding this hearing today and for inviting me to testify.

My name is Anna Fendley and I am the Director of Regulatory and State Policy for USW, the largest manufacturing union in North America. Our members supply almost every sector of the economy and produce a wide array of products, including paper, glass, ceramics, cement, chemicals, aluminum, oil, rubber, and, of course, steel. They do so in some of the most advanced, most efficient, and most environmentally-friendly facilities in the world, and their jobs are the sort of good, family-supporting jobs that built the middle class in this country. These are the jobs that must be retained and created if America is to maintain its position in the global economy.

We appreciate that this Committee has spent many years considering, developing, and overseeing implementation of initiatives to grow U.S. manufacturing through the tax code. Over the last several years and through multiple pieces of legislation, Congress has enacted a once-in-a-generation investment in onshoring and growing the manufacturing base in this country using both supply– and demand-side drivers to incentivize growth. While I will only discuss a few of them in my testimony – those relevant to the tax code – they are only a handful of the interlocking series of policies all being simultaneously implemented by the Biden administration. USW is supportive of the work Congress has done – in a mostly bipartisan fashion – and is excited about the progress that has been made through executive action in implementation of the Bipartisan Infrastructure Law, the CHIPS and Science Act, and the Inflation Reduction Act (IRA).

The efforts by Congress have already led to a boom in spending on manufacturing construction, reaching approximately $225 billion in new spending in January.[1] U.S.-based companies like making investments in their facilities, such as Blue Bird Bus expanding capacity to allow USW-members to make up to 5000 buses annually.[2]Notably, foreign companies are also now choosing to make massive investments in the United States. For example, about a year ago Q-Cells, owned by South Korean company Hanwha, announced plans to invest approximately $2.5 billion to expand its solar module manufacturing capacity in Georgia.[3]

We have worked hard with Congress, the administration, our employer partners, and other stakeholders to help develop and implement these policies and will continue to do so. This is an ongoing process, and the continued focus of the Finance Committee on ensuring success is very much appreciated, as is the Committee's continued interest in the perspective of labor unions like USW.

[1] Federal Reserve Economic Data, "Total Construction Spending: Manufacturing in the United States", Accessed March 7, 2024.
[2] Electrive, "Blue Bird to Produce 5,000 Electric School Buses Per Year", May 26, 2023.
[3] https://www.georgia.org/press-release/qcells-more-double-production-georgia-create-2500-new-jobs

Section 45X Advanced Manufacturing Production Credit

The first provision I would like to highlight is the Section 45X Advanced Manufacturing Production Credit that was enacted in the Inflation Reduction Act. 45X provides a tax credit for the domestic production and sale of certain clean energy products, components, and critical minerals. USW strongly supported, and continues to support, this provision because it presents huge potential to help build the critically-needed stable and resilient domestic supply chains for an array of clean energy technologies that will allow American workers to rapidly scale the deployment of these technologies while protecting our energy security.

Our union was particularly supportive of congressional efforts to create this tax credit to re-shore solar manufacturing capacity after the majority of it was lost to China over decades; to use tax incentives to ensure that a new domestic offshore wind industry is supplied by U.S.-made components; and to boost the production of critical minerals in this country. As the largest mining union, our members are particularly keen to see responsible mining and mineral processing grow in this country to ensure we are supplying our own needs.

We have provided input to the Department of the Treasury (Treasury) since the passage of the IRA in its ongoing regulatory process to implement section 45X. USW is grateful for the careful work being done by the Internal Revenue Service (IRS) to implement this provision so far, including the efforts by the agency to solicit public input on certain key questions in the notice of proposed rulemaking. Although like all iterative regulatory processes in an interim stage, there are certain outstanding and occasional new issues that arise that require more consideration before rulemaking is complete.

An example of what I mean is in the definition of aluminum under 45X, which is of great importance to USW, the primary union in the aluminum industry. USW was one of several stakeholders that sought clarification about the wording of the IRA statutory language that, if interpreted one way, could have inadvertently excluded most primary aluminum production from eligibility. In its proposed rule, the IRS both cleared up some of that confusion while, potentially, introducing a different bit of confusion. Clearly, the IRS had the correct goal in its guidance, which stated that the relevant definition of aluminum "should be interpreted in light of the dynamics of the aluminum industry and the role that critical materials like aluminum play in the renewable energy and energy storage industry". As such, it clarifies the intent of Congress that eligibility should encompass both aluminum oxide (i.e. alumina) and commodity-grade aluminum.

This is a welcome clarification for USW members who work at the only remaining domestic alumina refinery in Gramercy, LA, and for the USW members who work at primary aluminum facilities owned by Alcoa and Century Aluminum in Kentucky, New York, and Indiana.[4] Although, even then, there are still anomalies. For example, the rule states both that "commodity-grade aluminum" means primary production of unwrought aluminum forms, and that it be "in a form sold on international commodity exchanges".

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[4] AL Circle, "Atlantic Alumina welcomes the advancement of 45X advanced manufacturing credits", January 23, 2024.

This creates a different potential ambiguity because while commodity-grade aluminum is produced and sold in several unwrought forms (ingots, t-bars and sows, slab, billet, etc.), only one of those forms (P1020 ingot) is typically sold on the primary international commodity exchange for aluminum (the London Metal Exchange), so if read overly literally this could be restrictive in a way that neither the IRS, nor Congress, intended.

I raise this once again to note the fact that the implementation of this important credit is an iterative, as-yet-incomplete, process. USW is pleased that Treasury and the IRS seem to agree with our recommendation that the definition of primary aluminum include all unwrought primary aluminum smelted from aluminum oxide and that primary aluminum producers should be allowed to include all of their costs of production when calculating the credit.

Getting this right really matters to the domestic aluminum industry and USW members. This industry has struggled significantly in recent years due to low cost imports, high costs of electricity, and other factors that have resulted in the loss of domestic capacity and jobs. This is not news, and governmental support for this critical industry has taken many forms. We continue to work on all of them, and are especially focused on helping the IRS and Treasury get it right with regard to 45X. This credit can be a huge help in re-growing this industry in the United States after decades of predatory trade practices, and other issues, have destroyed so much domestic capacity.

The example of aluminum is just one of several things that are going on in this rulemaking process, many of which USW has also commented on directly with the IRS and Treasury. We have urged Treasury to seek alignment with the Made in America office on methodology to develop clear and transparent origin requirements for the "produced in the United States" aspect of 45X. This is critically important for the credit to achieve the intent of Congress to build a domestic supply chain for these products, components, and minerals.

To that end, we applaud the definition that Treasury has proposed to ensure that eligible components are substantially transformed into a distinct component that will function differently from that, which would result from assembly or superficial modification. This will prevent credit for activities, such as simply painting blades for wind turbines or conducting other superficial work, that do not bring the bulk of the economic activity and job gains to U.S. workers.

However, we have also encouraged further clarification to ensure that there are not unintended consequences, such as improperly excluding critical mineral processors who constitute the bulk of the transformation, but send product to customers without completing the final step of refining.

We have also urged Treasury to consider incorporating direct and indirect material costs, as well as the costs related to critical mineral extraction and mining in the definition of production costs. This is important to achieving the goals of both Congress and our union's many members in mining, that this credit can grow responsible domestic extraction and recycling of critical minerals, and ensure competitiveness of the domestic industry in a global market.

Finally, we have urged Treasury to ensure that there are strong enforcement procedures. We have suggested a risk-based audit model to prevent abuse of this credit.

All this is to say, USW is very excited about the prospect of this credit to help build U.S. domestic manufacturing and supply chains for clean technologies. The transition to a clean energy economy will result in lots of jobs somewhere in the global economy, and we look forward to continuing to work with Congress and Treasury to ensure that these jobs are good, family-supporting, union jobs for American workers.

Section 48C Qualifying Advanced Energy Project Credit

USW also strongly supported the revival of the Section 48C Qualifying Advanced Energy Product credit. We supported 48C when it was originally enacted in 2009 as part of the American Recovery and Reinvestment Act (ARRA), and like many others, were disappointed that it was not replenished when its initial tranche of funding ran out years ago.

The IRA's revival and expansion of 48C provides an exciting opportunity to advance decarbonization efforts through the domestic manufacture of an expanded list of energy technologies and their components, processing of critical minerals, and direct efforts to decarbonize industrial processes.

These efforts will both help build sustainable supply chains in the United States and promote the retention and growth of manufacturing jobs for American workers, although, again, the challenge is again in the implementation. We want these investments to achieve the greatest bang-for-the buck, which requires that applications outline technology, benefits, and risks that are clear, understandable, and predictable.

The appetite for this credit has been as huge as expected, and the first round of applications for the first $4 billion in credit availability attracted concept papers from applicants seeking $42 billion in funding across all the various categories of projects for which 48C can now apply. Needless to say, competition is fierce.

This is not a surprise given how oversubscribed 48C was in its original incarnation under ARRA. Since then, the demand for this credit has only grown and it already seems that the $10 billion authority for 48C in the IRA is not nearly enough.

The IRA's 48C helpfully directs 40 percent of the available funding to designated energy communities, which will ensure that the benefits of the transition to a clean energy economy accrue to those communities that may suffer the most harm from the loss of fossil fuel-related jobs. Those communities are responding with $11 billion worth of projects in energy communities applied for the first $1.6 billion set aside for projects there. This is both due to the extensive outreach done by the administration in those communities and an increasing understanding that these communities are poised to lead the way into the clean energy economy with the right governmental support.

Because awarding of the 48C credit functions more like a grant process than a typical tax credit, I would be remiss not to mention the important role that the Department of Energy (DOE) to assist the IRS in managing the selection process. Our union strongly supports the work that DOE has done to include Community Benefits Plans into the scoring criteria for funding opportunities, including 48C. These plans are based on the following four elements to ensure that government support for a project is broadly shared: (1) Engaging communities and labor; (2) Investing in America's workers through quality jobs; (3) Advancing diversity, equity, inclusion, and accessibility through recruitment and training; and (4) Implementing Justice40.[5]

The implementation of this scoring mechanism shows that there is widespread potential for projects that can catalyze clean energy manufacturing, critical minerals processing, and industrial decarbonization while simultaneously engaging with communities and labor organizations, putting quality jobs first, and helping communities that need assistance.

Our union was proud to support some project applications by USW-employers seeking to make significant investments in the long-term viability and efficiency of their facilities in the first round of applications for 48C funding. The process outlined by DOE helped drive productive conversations between our members and their employers on the shared goal of ensuring that their jobs are there for many decades to come.

Unfortunately, this hearing is being held prior to the announcement of selectees under the first tranche of $4 million of the 48C credit from the IRA. I wish we could collectively celebrate the selected projects specifically today, but that will have to wait to do that until a date in the future.

<u>Demand Side Drivers</u>

The credits I have discussed, 45X and 48C, are both excellent examples of one aspect of how Congress can grow U.S. manufacturing through the tax code, but both work by driving the supply side of the equation. These will help producers build supply chains in clean energy, critical minerals, and drive industrial decarbonization, but in order to be fully effective, producers need certainty that making these investments will be worth it. Even with a tax credit, these projects are not free and undertaking them entails risk for producers.

That risk can be mitigated by ensuring strong demand-side drivers to give producers confidence that, if they make the necessary investments, they will be rewarded with a strong and stable market for their products. These demand-side drivers for American-made products are somewhat new to the tax code, but there are a few already being enacted now. For example, the IRA also included a bonus credit for clean energy

[5] U.S. Department of Energy, "About Community Benefits Plans", Accessed March 7, 2024.

projects that use American iron, steel, and manufactured goods, and the Section 30D tax credit now includes requirements for vehicle assembly in North America and provisions around critical mineral and battery production.

We strongly support these provisions, which are a critical piece of the puzzle that will unlock the potential for companies to take advantage of the supply-side tax credits and to garner private investment.

To illustrate the importance of demand-side drivers and a comprehensive tax and trade agenda, I'll reference back to testimony that USW member Joe Wrona gave before this committee almost exactly three years ago in a hearing titled, "Fighting Forced Labor: Closing Loopholes and Improving Customs Enforcement to Mandate Clean Supply Chains and Protect Workers".[6] In his testimony, Joe told this committee about the $35 million investments that his employer, Ferroglobe, planned to make in their Niagara Falls plant in 2009 to increase production of metal silicate, largely for polysilicon production for solar panels. They expected strong demand from the solar manufacturing industry that never materialized because the growth of China's industry undercut global prices and ultimately harmed workers, like Joe and his colleagues.

The solutions to these problems require a range of policy actions under the Senate Finance Committee's jurisdiction from improved trade enforcement to manufacturing tax credits. We applaud this committee for hearing testimony like Joe's and ensuring that the legislation that followed both helps stand up production capacity and creates a demand for it. Measures such as these ensure that government dollars are not wasted and private investment is not lost.

Path Forward

This is a very exciting time for American manufacturing, and tax policies are key drivers of that excitement. Still, there is a lot of work to be done.

These and other IRA provisions are not yet fully finalized and operational, and more outreach needs to be done in order to educate producers of their benefits and fully implement these credits. Small and mid-sized manufacturers, in particular, have not yet been fully brought into these programs as much as they can be. There needs to be a dedicated outreach strategy to those producers in particular.

The Senate Finance Committee, in its legislative role, should also build on these tax credits. Congress should continue to ensure that our tax code follows our values, like limiting foreign countries of concern use of tax credits, creating demand for American products, and guaranteeing American workers access to their federally guaranteed labor rights without employer interference. The union urges Congress to consider conditioning tax credits to ensure that credit dollars are not used to fight workers' choice to form a democratic union.

[6] U.S. Senate Finance Committee, "Fighting Forced Labor: Closing Loopholes and Improving Customs Enforcement to Mandate Clean Supply Chains and Protect Workers", March 18, 2021.

We look forward to continuing to work with Congress and the administration as they further the implementation of the IRA, build and expand these outreach efforts, and think about the next generation of policies that can grow American manufacturing, both through the tax code and otherwise. Again, thank you to the Committee for allowing us to be a constructive partner in these efforts, and for inviting me to testify today.