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November 13, 2023

The Honorable Janet Yellen
Secretary of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Dear Secretary Yellen:

I write with regard to the Department of the Treasury's long-overdue guidance on the term "Foreign Entity of Concern" (FEOC) within the Inflation Reduction Act's (IRA) Section 30D Clean Vehicle Credit. Specifically, I urge you to impose the strictest possible standards for FEOCs to ensure the minerals in electric vehicles are, to the greatest extent possible, sourced in the United States or from legitimate allies.

While the definition of FEOC in the IRA is clear, your formal interpretation of it is crucial to meeting the IRA's goals of strengthening our domestic mineral security, increasing electric vehicle production and manufacturing within our country, and building stronger partnerships with our reliable allies and partners abroad. Maintaining the strictest possible standards for FEOCs will safeguard American energy security, encourage domestic industry, and ultimately protect American taxpayer dollars.

As you might expect, I am incredibly concerned by recent reports that suggest Chinese battery companies are actively pursuing business opportunities and arrangements, including joint ventures and investments, in South Korea and Morocco to take advantage of the IRA. The incentives Congress provided in the IRA for domestic manufacturers, and our friends and allies with which the United States has free trade agreements, cannot be allowed to be hijacked by adversaries engaging in "mineral laundering."

China's long history of circumventing our trade laws and preying upon global markets must be stopped—that was the precise purpose of the sourcing requirements the IRA added to the Section 30D credit. China has routinely shown a blatant disregard for fair competition, unfairly leveraged state-sponsored investments, and wielded their market domination in key industries as a cudgel. China is currently responsible for 74 percent of the world's cathode production, 92 percent of anode production, and 76 percent of lithium-ion battery cell production. They have cornered the market, and their recently announced export controls and reporting for rare earths, graphite, germanium, and gallium show they are ready and willing to weaponize that control to the detriment of the United States and the free world.

The IRA, implemented properly, will help end China's domination of various mineral commodities and supply chains. When drafting the legislation, Congress included the North American assembly pre-requisite along with strong sourcing requirements for the minerals and manufacturing of batteries for this very reason. Nowhere in the IRA is there a "value added test" or "de minimis" exception to create loopholes that would allow a Foreign Entity of Concern to participate in any portion of the mining, processing, or manufacturing of electric vehicles. Both the law and congressional intent are clear on this, and it would be unconscionable to reward bad actors through a loose or deliberately weak interpretation of one of the core requirements to qualify for the IRA's production incentives.

The IRA's sourcing requirements extend to both critical minerals and battery components, including intellectual property and technology licensing for batteries and battery components. Thankfully, the Department of Commerce has recently published a useful starting point for Treasury's FEOC guidance. The recent FEOC standards issued in response to the CHIPS and Science Act ("Preventing the Improper Use of CHIPS Act Funding," 88 FR 17439) should be the minimum standard Treasury considers—but I urge your Department to go a step further and use the strictest metrics possible to ensure there are no loopholes that will lead to the laundering of minerals and materials from China or other nations of concern.

America created the automotive industry through innovation and hard work. The IRA provided tools to continue that legacy, if this administration is willing to use them in accordance with the law. The industry is at a new, critical juncture, and we must retain our position at the vanguard rather than ceding this opportunity.

Thank you for your attention to this matter. I stand ready to work with you to ensure the Section 30D credits are implemented the way they were intended.

Sincerely,



U.S. Senator Joe Manchin III