



Critical Minerals: A U.S.-EU Free Trade Agreement?

April 14, 2023

On March 10, President Biden and European Commission President von der Leyen [announced](#) that the United States and European Union (EU) seek to “immediately begin negotiations on a targeted critical minerals agreement [CMA].” The proposed deal aims to enable critical minerals extracted or processed in the EU to count toward certain electric vehicle (EV) tax credit requirements of P.L. 117-169, commonly referred to as the Inflation Reduction Act of 2022 (IRA). What a deal may entail remains to be seen; a potential reference might be the [U.S.-Japan CMA](#), concluded in late March, which [established](#) “several new [bilateral] commitments and areas for joint cooperation regarding [EV] battery critical minerals supply chains....” The Biden Administration’s current trade initiatives do not seek tariff removal. The U.S.-EU CMA talks come amid renewed [U.S.-EU trade frictions](#) and congressional debate over [Administration trade policies](#). Members of Congress may monitor the negotiations, assess their implications for [U.S.-EU trade relations](#), and consider options to weigh in on a potential CMA.

Background

IRA provisions seek to incentivize purchases of new EVs by offering consumers a tax credit of up to \$7,500. Prior to the IRA’s enactment in August 2022, most U.S. and foreign-manufactured EVs were eligible for tax credits, subject to a cap of 200,000 vehicles per manufacturer. The IRA lifted this cap but imposed new requirements, including assembly and sourcing restrictions. Eligibility for the entire credit is contingent on EV final assembly occurring in North America and two other requirements based on the value and source of the (1) EV battery components and (2) applicable critical minerals.

To be eligible for the critical minerals portion of the tax credit, the percentage of the value of the battery’s critical minerals that are extracted or processed in the United States or in a U.S. free trade agreement (FTA) partner, or recycled in North America, must be at least 40% beginning in 2023, increasing incrementally to 80% by 2027.

The IRA does not define an FTA. Per [Treasury’s draft guidance proposed on March 31](#), qualifying countries include

- *countries with which the United States has “comprehensive FTAs”*—“agreements covering substantially all trade in goods and services between the parties, including trade

Congressional Research Service

<https://crsreports.congress.gov>

IN12145

in critical minerals” (the United States currently has such FTAs with 20 partners, but not with the EU);

- *additional countries* based on certain criteria, including whether the United States has agreements with them to reduce or refrain from imposing trade barriers and/or establish high-standard trade-related disciplines (e.g., labor, environment)—an example cited is Japan, based on the [U.S.-Japan CMA](#). In addition to the EU, the Administration might pursue other CMAs (e.g., with the [United Kingdom \[UK\]](#)).

The EU [has contended](#) that IRA sourcing and assembly provisions are “discriminatory” against European companies and violate certain World Trade Organization (WTO) obligations related to nondiscrimination and prohibitions of certain subsidies. [South Korea](#), the [UK](#), and [others](#) have raised similar concerns. The EU has also expressed [concern](#) that the tax credit scheme could incentivize companies to shift supply chains from the EU and prompt a global subsidies race.

The proposed U.S.-EU CMA follows distinct unsuccessful U.S. efforts previously to conclude a traditional comprehensive FTA with the EU (i.e., the [Transatlantic Trade and Investment Partnership](#) and [U.S.-EU Trade Agreement](#)). In contrast to the possible CMA, these earlier negotiations, in which Congress had a formal role, occurred under [Trade Promotion Authority \(TPA\)](#), and sought removal of both tariff and nontariff barriers. These efforts stalled over U.S.-EU differences on key trade issues.

Some policymakers and others support renewing U.S.-EU FTA negotiations (e.g., S.Res. 134 in the 117th Congress, the [German government](#), and [commentators](#)). The Biden Administration has focused instead on targeted issues and new initiatives. In 2021, the partners reached interim agreements on the WTO [Boeing-Airbus subsidies disputes](#) and [steel and aluminum tariffs](#), and launched the [U.S.-EU Trade and Technology Council \(TTC\)](#) to deepen cooperation.

Issues for Congress

The U.S.-EU CMA negotiations may present oversight and legislative issues.

U.S.-EU Trade Relations. If concluded, the U.S.-EU CMA could give the partners more common ground to address ongoing bilateral trade frictions and global trade and economic issues of shared concern. On the other hand, it could be a lost opportunity for them to make more ambitious commitments through concessions in broader-based trade negotiations. Some Members have called on the Administration to address not only EU concerns regarding U.S. policies, but also U.S. concerns (e.g., with the [EU’s digital trade regulations](#)). Members also may examine how a CMA would relate to the TTC.

WTO Compliance. Some policymakers and [other WTO members](#) might question the extent to which a potential U.S.-EU CMA would be consistent with U.S. and EU WTO commitments, given its contemplated limited scope to trade in EV battery critical minerals. In particular, WTO agreements require that FTAs eliminate duties and other restrictive regulations of commerce on “substantially all the trade” among the parties—something outside the scope of the current CMA negotiations. If U.S. trading partners pursue WTO or other dispute settlement, and the U.S.-EU CMA (and/or the IRA’s tax credit scheme) is found to violate WTO rules, other countries could potentially respond in kind by restricting the importation or sale of U.S. goods, including EVs, in their own markets. U.S. trading partners may also retaliate unilaterally, without WTO authorization.

Congressional Role. Since the 1970s, Congress generally has authorized and passed implementing legislation for U.S. FTAs that lower or eliminate tariff and nontariff barriers (e.g., the [U.S.-Mexico-Canada Agreement](#)). The Administration’s pursuit of CMAs and other initiatives (e.g., the [Indo-Pacific Economic Framework for Prosperity](#)) as executive deals not subject to congressional approval has drawn criticism from some Members, including at the March hearings on the Administration’s trade agenda. In potential TPA renewal or separately, Congress could consider specifying (1) negotiating objectives for a

traditional comprehensive FTA with the EU, (2) criteria for agreements to be considered FTAs generally or in the IRA, or (3) its role in shaping and approving targeted trade agreements. EU lawmakers reportedly have voiced [similar concerns](#) that the European Commission's approach to the CMA could potentially limit the European Parliament's role in approving [EU trade agreements](#).

Author Information

Shayerah I. Akhtar
Specialist in International Trade and Finance

Andres B. Schwarzenberg
Spec Intl Trade/Finance

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.