

# U.S.-Japan Critical Minerals Agreement

April 28, 2023

On March 28, the United States and Japan signed a [critical minerals agreement](#) (CMA), which entered into force immediately upon signature without requiring congressional approval. The Office of the U.S. Trade Representative (USTR) [stated](#) that the CMA builds on the 2020 [U.S.-Japan Trade Agreement](#) (USJTA), a limited trade deal.

The U.S.-Japan CMA addresses Japan’s [concerns](#) regarding certain critical mineral content requirements for the clean vehicle (commonly referred to as electric vehicle or “EV”) tax credit included in P.L. 117-169, the Inflation Reduction Act of 2022 (IRA). According to a [Notice of Proposed Rulemaking](#) (NPRM) from the U.S. Treasury Department, released on March 31, and USTR’s [free trade agreement](#) (FTA) list, the Biden Administration is categorizing the CMA as an FTA under a new but separate category for the purposes of the EV tax credit.

This CMA raises issues for Congress regarding the broader U.S.-Japan trade relationship and implications for the debate over [congressional and executive trade authorities](#), particularly related to ongoing negotiations like the [Indo-Pacific Economic Framework for Prosperity](#) (IPEF).

## U.S.-Japan Automotive Trade and Investment Snapshot

The auto sector plays a major role in the U.S.-Japan economic relationship. In 2022, the United States imported \$48.2 billion in vehicles/parts from Japan and exported \$2.2 billion to Japan. Since 1982, Japanese automakers have invested a total of [\\$57.1 billion](#) in U.S. manufacturing facilities. Several Japanese automakers have announced plans to invest in EV and EV battery manufacturing capabilities at both [new](#) and [existing](#) U.S. facilities. These announcements are likely in anticipation of global regulatory and market shifts towards EVs, as well as regional content and assembly requirements in recent U.S. legislation like the IRA and FTAs like the 2020 [United States-Mexico-Canada Agreement](#). The [USJTA](#) covers tariffs on some goods, but not the automotive sector.

## Agreement Background and Overview

The IRA provides consumers a tax credit of up to \$7,500 for new EVs (26 U.S.C. §30D). Vehicles must meet [various requirements](#), including prohibitions on sourcing critical minerals and components used in the EV’s batteries from “foreign entities of concern” (e.g., China, a leading processor of EV critical minerals). In particular, the \$3,750 critical minerals-related portion of the credit requires a certain

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percentage by value, increasing over time, of an EV battery's critical minerals to be extracted or processed in the United States or in a U.S. FTA partner, or recycled in North America.

The CMA defines “critical minerals” as **cobalt, graphite, lithium, manganese, and nickel**—all key EV production inputs. **Japan** is not a major critical minerals source but possesses **processing** and **production** capabilities. Among other measures, including a broad security exemption, the United States and Japan agreed to:

- Maintain the “current practice” of not imposing export duties on critical minerals trade between their countries;
- Confer on potential domestic measures to address non-market policies and practices of other countries affecting critical minerals trade and supply chains;
- Confer on best practices regarding review of critical minerals sector investments within their territories by foreign entities; and,
- Cooperate to discourage the importation of goods containing critical minerals that involve forced labor.

In the NPRM, the Biden Administration is using the following criteria to categorize the new U.S.-Japan CMA as an FTA:

- Reduces or eliminates trade barriers on a preferential basis;
- Commits the parties to refrain from imposing new trade barriers;
- Establishes high-standard disciplines in key areas affecting trade (such as core labor/environmental protections); and/or
- Reduces or eliminates restrictions on exports or commits the parties to refrain from imposing such restrictions.

The guidance went into effect on April 18. The public has until June 16 to submit comments and requests for a public hearing.

Some Members of Congress have raised **concerns** about the CMA, including, for example, the lack of binding or enforceable commitments—particularly on labor and environment—and insufficient consultation with Congress. **Some Members** also criticized the Administration's categorization of the CMA as an FTA without congressional approval. **Some Members** further stated that the Administration's actions undermine incentives to shift supply chains from China—a key driver of the IRA provisions.

**Industry groups** representing Japanese automakers have expressed support for the CMA as important to the U.S.-Japan alliance. American automakers have not commented publicly, but a group representing both U.S.- and foreign-based automakers **supports** a broad definition of FTA that would include partners like Japan and the European Union (EU). Some experts have **commented** that although Japan is working towards increasing non-Chinese critical minerals sources (e.g., Australia and Canada), Japanese automakers may struggle to meet the timeline for the increasingly stringent EV tax credit content value requirements.

## Considerations for Congress

Members may seek to engage on this issue via hearings, letters to the Administration, comments to Treasury, and legislation. Key considerations may include:

- **Congress' role in trade policy.** USTR **stated** that it would consult Congress regarding future CMA talks. It is possible, however, that the Biden Administration may use the U.S.-Japan CMA as a template for potential CMAs with the **EU** and other interested

- parties, like [Indonesia](#). Congress typically had set procedures and requirements for FTAs in [Trade Promotion Authority](#) (TPA), which expired in 2021. Members may consider Congress's role in trade policy as part of future TPA reauthorization debates. They may also consider whether or not to formalize approval/implementation processes for CMAs or other initiatives under negotiation, like IPEF, which the Biden Administration has indicated may not require congressional approval.
- **U.S.-Japan trade relationship.** Some Members and industry groups have continued to push for a [comprehensive trade deal](#) with Japan (e.g., additional USJTA negotiations or joining the [Comprehensive and Progressive Agreement for Trans-Pacific Partnership](#)). Members may consider whether or not agreements like the CMA are appropriate substitutes to address concerns over market access and non-tariff barriers. Members may also consider implications for other trade initiatives, like the [U.S.-Japan Partnership on Trade](#), or multilateral critical minerals discussions (e.g., the [Minerals Security Partnership](#) and the [G7](#)).
- **IRA EV tax credit requirements.** Members may consider whether or not to propose legislation to further define or clarify aspects of the IRA EV tax credit requirements (e.g., S. 756).

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