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## U.S.-Japan Critical Minerals Agreement

On March 28, 2023, the United States and Japan signed a critical minerals agreement (CMA) covering five key minerals related to the production of batteries for clean vehicles (commonly referred to as electric vehicles or “EVs”). The U.S.-Japan CMA entered into force immediately upon signature.

The CMA seeks to address Japan’s concerns regarding certain content requirements for the consumer tax credit for new EVs included in P.L. 117-169, known as the Inflation Reduction Act of 2022 (IRA). The IRA requires a certain percentage of critical minerals in EV batteries to be sourced from the United States or U.S. free trade agreement (FTA) partners. Congress has approved all previous U.S. FTAs via legislation and typically set FTA procedures and requirements in Trade Promotion Authority (TPA), which expired in 2021. The United States and Japan do not have a congressionally approved FTA, but subsequent to the signing of the U.S.-Japan CMA, the U.S. Treasury Department issued a proposed rule including Japan as an FTA partner for the purposes of the IRA EV tax credit.

The U.S.-Japan CMA and its designation as an FTA tie into a broader discussion about congressional and executive trade authorities. The CMA also raises issues for Congress regarding the broader U.S.-Japan trade relationship, CMA negotiations with other trading partners, and the implementation of the EV tax credit.

### IRA EV Tax Credit

The IRA provides consumers a tax credit of up to \$7,500 for new EVs (26 U.S.C. §30D). To qualify for the tax credit, vehicles must meet certain overall requirements, including final assembly in North America and retail price caps. Vehicles can qualify for partial credit if they meet content requirements related to the components or critical minerals in the EV battery. Specifically, the \$3,750 critical minerals-related portion of the credit requires a certain percentage by value of an EV battery’s critical minerals (as defined in 26 U.S.C. § 45X(c)(6)) to be extracted or processed in the United States or in a U.S. FTA partner country, or recycled in North America. The percentage requirement increases annually, starting at **40%** as of April 18, 2023, and reaching **80%** on January 1, 2027.

In addition, starting in 2024 and 2025, respectively, EVs cannot qualify for the credit if they contain battery components or critical minerals from “foreign entities of concern,” which includes countries such as Russia and the People’s Republic of China (PRC, or China), a dominant player in the EV supply chain. Treasury has stated that it will issue guidance on the foreign entity of concern provision by the end of 2023. Some analysts have expressed concerns about a high risk for potential disruptions to critical mineral supply chains because current mining and processing is concentrated in a small number of countries,

notably China. Such analysts have commented that this challenge could become more acute as demand for critical minerals grows due to the global transition towards clean technologies. U.S. policymakers crafted IRA EV tax credit requirements that in part reflect concerns over U.S. dependence on PRC EV supply chains.

### FTA Partner Provision and CMA Negotiations

There is no statutory definition for an FTA, but under World Trade Organization (WTO) rules, a regional trade agreement such as an FTA must cover “substantially all trade” between trading partners. The United States currently has 14 such “comprehensive” FTAs—authorized and approved by Congress—with 20 countries. During the Trump Administration, the United States and Japan signed the 2020 U.S.-Japan Trade Agreement (USJTA), which is not a comprehensive FTA. It reduces tariffs on some goods, but not those in the automotive or critical minerals sectors.

Automotive industry groups and U.S. trading partners have urged the Biden Administration to broaden the definition of FTA (e.g., including the WTO Government Procurement Agreement) to allow more trading partners qualify. They have argued that it will be difficult to source adequate supplies of critical minerals from the United States and its comprehensive FTA partners, and that inadequate sourcing could negatively affect the “resiliency” of EV supply chains. The Administration has proposed new trade agreements focusing on critical minerals in EV batteries as a method of addressing the FTA partner requirement. The U.S.-Japan CMA was the first such agreement to be concluded; to date, the United States has also launched negotiations with the EU and the United Kingdom (UK).

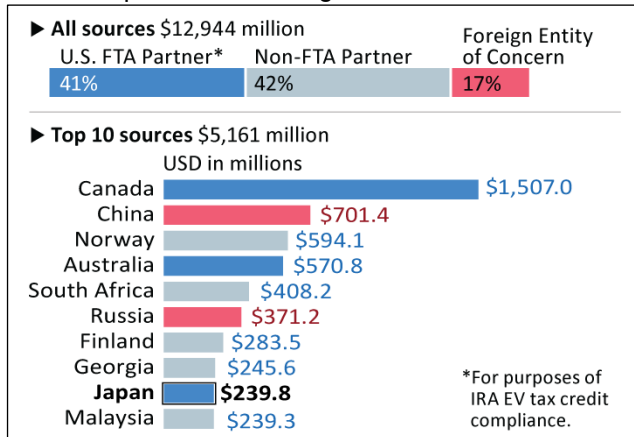
### U.S.-Japan CMA Overview

Japan is the fifth-largest U.S. trading partner, and the automotive sector plays a major role in the U.S.-Japan economic relationship. In 2022, the United States imported \$48.2 billion in vehicles and parts from Japan and exported \$2.2 billion to Japan. Since 1982, Japanese automakers have invested \$60.4 billion in U.S. manufacturing facilities, and have announced various investments in EV and EV battery production following the passage of the IRA and the 2020 United States-Mexico-Canada Agreement (USMCA), which has North American content requirements.

The U.S.-Japan CMA changes neither U.S. law nor existing tariffs, and does not include other market access provisions. In the CMA text, the United States and Japan stated that the agreement’s objective is to “strengthen and diversify critical minerals supply chains” and promote the adoption of EV battery technologies. The CMA defines covered critical minerals as **cobalt, graphite, lithium, manganese, and nickel**—all key EV battery inputs. Among other measures, the United States and Japan agreed to: (1) maintain the “current practice” of not imposing export

duties on critical minerals trade between their countries; (2) confer on measures to address non-market policies and practices affecting critical minerals supply chains; (3) confer on best practices for review of foreign investments in their countries' critical minerals sectors; (4) coordinate on actions related to forced labor and other labor rights connected to critical minerals supply chains; and (5) promote employer neutrality related to unions. The two countries are to review the CMA “at least once within two years” of the agreement’s entry into force, and every two years thereafter, to decide whether to terminate or amend the CMA, including which critical minerals are covered.

**Figure 1. U.S. Critical Minerals Import Sources (2022)**  
Cobalt, Graphite, Lithium, Manganese, and Nickel



**Source:** Produced by CRS using trade data from U.S. Census Bureau. Tariff codes from U.S. Geological Survey and U.S. International Trade Commission.

Japan is not a large source of mined critical minerals but possesses related capabilities, including mineral processing and EV battery production (e.g., Panasonic). In 2022, Japan was the ninth-largest source of U.S. imports of the five covered critical minerals (see **Figure 1**); Japan was the third-largest U.S. source of processed cobalt and lithium. In 2022, the United States was Japan’s third-largest source of processed lithium.

### Stakeholder Reactions to the CMA

Industry groups representing Japanese automakers praised the CMA as recognition of Japan’s status as a key U.S. ally and trading partner. The International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (“United Auto Workers” or “UAW”)—a major union representing workers at Ford, General Motors, and Stellantis—expressed skepticism about the CMA. UAW noted that U.S. imports of Japanese critical minerals are relatively small (see **Figure 1**), particularly compared to the size of U.S. automotive imports from Japan, and the inclusion of Japan as an FTA partner could give “incredibly competitive” Japanese automakers a pathway to receive U.S. subsidies. Some Members of Congress have raised concerns about the lack of binding or enforceable commitments in the CMA, particularly related to labor and the environment. Some Members also have criticized Treasury’s designation of Japan as an FTA partner for the purposes of the EV tax credit, based on the CMA, describing this action as overriding congressional trade authorities and undermining Congress’s intent to build up domestic EV supply chains.

## Issues for Congress

### U.S.-Japan trade relations and congressional trade authority.

Some Members and industry groups continue to push for a comprehensive FTA with Japan (e.g., additional USJTA negotiations or joining the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)). Members may consider whether targeted agreements like the CMA are appropriate substitutes for comprehensive U.S. FTAs. Members might also consider whether to formalize approval and/or implementation processes for CMAs, either through TPA reauthorization or legislation such as P.L. 118-13, which approves the first agreement (signed in June 2023) under the U.S.-Taiwan Initiative on 21st Century Trade and outlines requirements for entry into force and for further deals. President Biden stated that the Administration will treat certain requirements in P.L. 118-13 as “non-binding” in cases where he claims they “impermissibly infringe” on the President’s constitutional authorities. For more information on congressional and executive trade authorities, see CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*.

**Future CMAs and other critical minerals initiatives.** The U.S.-Japan CMA could serve as a template for ongoing and future CMA negotiations. Some critical minerals-producing nations that do not have a comprehensive FTA with the United States (e.g., Indonesia, the Philippines, Argentina, Norway) have expressed interest in qualifying as FTA partners through CMAs or existing trade initiatives. The United States is also engaged in other global critical minerals initiatives; for example, Memorandums of Understanding (MOUs) with Mongolia, the Democratic Republic of the Congo, and Zambia to build capacity and encourage investment in the minerals sector. Additionally, the U.S.-led Minerals Security Partnership, launched in June 2022, convenes various trading partners to discuss public and private investments related to critical minerals. Members may consider whether or not to encourage additional negotiations of CMAs or other critical minerals initiatives, and whether or not these initiatives should be considered as FTAs.

**IRA EV tax credit implementation.** Automakers have expressed concerns that the IRA EV tax credit requirements may limit the number of eligible vehicle models. In addition to concerns about the short timeline for meeting content requirements, some companies have raised concerns about a lack of clarity from Treasury regarding the foreign entity of concern provision. Some Members have expressed concerns that Treasury’s implementation of the provision could allow PRC companies to benefit from U.S. subsidies through arrangements such as licensing agreements. Members may consider whether or not to further define or clarify aspects of the IRA EV tax credit requirements through legislation (e.g., S. 756/H.R. 2951). Members also may conduct oversight related to Treasury’s implementation of the EV tax credit.

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