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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 ties into a broader discussion about congressional and executive trade authorities. Other issues for Congress include implications for U.S.-Japan trade relations, ongoing and future CMA negotiations, 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). U.S. policymakers crafted IRA EV tax credit requirements that, in part, reflect concerns over U.S. dependence on the People’s Republic of China (PRC, or China). China dominates the EV supply chain, including mining and processing of critical minerals and production of EVs and EV batteries. To qualify for the tax credit, EVs must meet overall requirements, including final assembly in North America and retail price caps. EVs 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 **40%** by value of an EV battery’s critical minerals to be sourced from the United States or a U.S. FTA partner. The requirement will be **50%** in January 2024 and increases annually, reaching **80%** in January 2027.

In addition, starting in January 2024 and January 2025, respectively, EVs cannot qualify for the credit if they contain battery components or critical minerals from “**foreign entities of concern**” (FEOC), which includes countries such as Russia and China. In December 2023, Treasury and the U.S. Energy Department proposed rules defining FEOC to include all entities headquartered or operating in a FEOC country. The guidance indicates that FEOC-tied operations in the United States and FTA partner

countries as well as arrangements such as licensing agreements could be either IRA compliant or non-compliant, depending on the specific corporate situation. The guidance also proposes a transition rule (until 2027) that would provide flexibility for certain low-value critical minerals that may be difficult to trace through the supply chain under current industry standards. Some companies have expressed uncertainty about whether current and planned operations will qualify for the credit. The agencies are seeking public comments ahead of finalizing the rules.

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 urged the Biden Administration to broaden the definition of FTA (e.g., including the WTO Government Procurement Agreement) to allow more trading partners to qualify. They argue that it will be difficult to source adequate supplies of critical minerals from the United States and its comprehensive FTA partners within the outlined timeframe. The Administration 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 launched negotiations with the European Union (EU) and the United Kingdom (UK). In November 2023, the United States and Indonesia agreed to develop a “critical minerals action plan” with a view towards future CMA talks.

U.S.-Japan CMA Overview

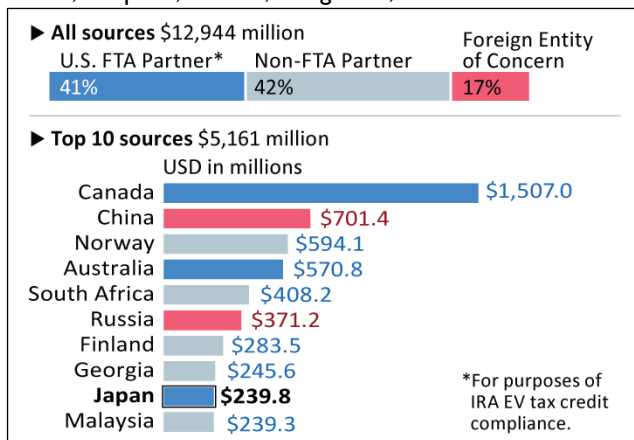
Japan is the fifth-largest U.S. trading partner, and the automotive sector plays a major role in the U.S.-Japan economic relationship. In 2022, the United States imported \$48.2 billion in vehicles and parts from Japan and exported \$2.2 billion to Japan. Since 1982, Japanese automakers have invested \$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. The United States and Japan stated that the CMA’s objective is to “strengthen and diversify critical minerals

supply chains” and promote the adoption of EV battery technologies. The critical minerals covered by the CMA are **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.

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 **Error! Not a valid bookmark self-reference.**); Japan was the third-largest U.S. source of processed cobalt and lithium.

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



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

Stakeholder Reactions to the CMA

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 U.S. union representing workers at Ford, General Motors, and Stellantis—expressed skepticism about the CMA, noting that U.S. imports of Japanese critical minerals are relatively small (see **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 Error! Not a valid bookmark self-reference.); Japan was the third-largest U.S. source of processed cobalt and lithium.**

Figure 1), 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 raised concerns about the CMA’s lack of binding or enforceable commitments, particularly related to labor and the environment. Some Members also criticized Treasury’s designation of Japan as an FTA partner for the purposes of the EV tax credit, based largely 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 FTA and congressional trade authority.

Some Members and industry groups continue to push for a comprehensive U.S. FTA with Japan (e.g., further 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. A related issue is Congress’s role in trade agreements. Members might consider whether to formalize approval and/or implementation processes for CMAs, either through TPA reauthorization or legislation such as P.L. 118-13, which retroactively approves a June 2023 U.S.-Taiwan trade initiative and outlines requirements for future 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, see CRS Report R47679, *Congressional and Executive Authority Over Foreign Trade Agreements*.

Future CMAs and other critical minerals initiatives. It is unclear whether the U.S.-Japan CMA will be a template for other CMAs. Some critical mineral-rich nations without a comprehensive U.S. FTA (e.g., Argentina, Norway, the Philippines) have expressed interest in qualifying as FTA partners through CMAs or existing trade initiatives. The United States is also engaged in capacity-building efforts with countries like the Democratic Republic of the Congo, Mongolia, and Zambia, and plurilateral initiatives such as the Minerals Security Partnership, which convenes governments and private companies to discuss critical minerals projects. Some Members have expressed interest in pursuing additional CMAs and/or strengthening critical minerals supply chains with key partners. At the same time, some Members also have concerns about concluding CMAs with countries like Indonesia over labor and environmental standards, PRC investment ties, and restrictive trade practices. Other issues include the durability of CMAs and how CMAs and other critical minerals frameworks relate to existing trade initiatives.

IRA EV tax credit implementation. Automakers argue that the EV tax credit requirements may limit the number of eligible EV models and increase prices. Some companies have also raised concerns about a lack of clarity regarding the FEOC provision. Some Members have argued that the Administration’s implementation of the credit (e.g., including Japan as an FTA partner, possibly allowing PRC-tied firms to qualify for the critical minerals requirement) undermines congressional intent and potentially allows U.S. taxpayer funds to flow to PRC firms. Others support the Administration’s efforts to balance between derisking

supply chains and promoting EV adoption. Members may consider whether to further clarify the IRA EV tax credit requirements through legislation (e.g., S. 756/H.R. 2951) and/or conduct oversight related to implementation of the EV tax credit. For example, some Members have indicated interest in pursuing a Congressional Review Act resolution related to the implementation of the FEOC provision and supporting lawsuits against the Administration.

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