

U.S AND JAPAN SIGN AGREEMENT ON CRITICAL MINERALS SUPPLY CHAIN

On March 28, 2023, the United States and Japan reached an agreement on critical minerals for batteries, including those used to power electric vehicles signing the "Agreement Between the Government of the United States of America and the Government of Japan on Strengthening Critical Minerals Supply Chain" (the "[Agreement](#)").

Although the Agreement does not explicitly say so, it is believed that the Agreement will provide Japanese automakers with access to U.S. tax incentives for their electric vehicles sold in the United States and made with critical minerals sourced in Japan. The tax incentives sought by Japanese automakers are provided under the U.S. Inflation Reduction Act ("**IRA**"). The U.S. Treasury Department is scheduled to put in place new requirements that are expected to mandate battery components and critical minerals be sourced from free-trade agreement nations in order to get the full \$7,500 per vehicle consumer tax credit. Although Japan does not have a Free Trade Agreement with the United States (which would make Japanese automakers eligible for the tax credit), the new Agreement is anticipated to give Japanese automakers the benefit of the tax incentives, if eligible under the expected guidance relating to component material requirements and assembly location requirements. It is noteworthy that this Agreement reflects a more expansive approach to what a free trade agreement traditionally constitutes and so far, is the only one of its kind.

Previously, on April 28, 2022, the Japanese and U.S. governments announced that they had agreed to clarify some of the requirements for U.S. preferential treatment for electric vehicles made in North America. If key minerals processed in Japan are used for the battery and the final assembly of the electric vehicle in North America, Japanese cars will also be eligible for and benefit from the U.S. tax incentives. The Japanese government had submitted a letter of opinion to the U.S. government requesting that the requirements be eased, claiming that the preferential treatment was disadvantageous to Japanese companies. The relaxation of the prerequisite of making final assembly vehicles in North America to be eligible for the tax incentive has not yet been formally agreed.

In the spirit of "facilitating trade in critical minerals," the Agreement also prohibits the two countries from enacting bilateral export restrictions on the minerals most critical for electric vehicle batteries, specifically, lithium, nickel, cobalt, graphite, and manganese, as well as agreeing to not impose export duties. The Agreement also contemplates information sharing and having the parties confer on "*domestic*

measures to address non-market policies and practices of non-Parties affecting trade in critical minerals," as well as investments in the critical minerals sector, and potential supply chain disruptions.

Finally, the Agreement contemplates that the United States and Japan will continue to collaborate in terms of international standards, as well as environmental laws and traceability/transparency in supply chains and responsible sourcing, as well as labor laws. Commitment to these international standards has been a priority of the current U.S. Administration. It is worth noting as well that in January 2023, the United States and Japan Memorandum of Cooperation (**MOC**) to launch a "Task Force on the Promotion of Human Rights and International Labor Standards in Supply Chains."

The Agreement is but one of several developments in the electric vehicle/battery space. For example, in June 2022, the United States announced the "Minerals Security Partnership" with Japan, Canada, Australia, Finland, France, Germany, the Republic of Korea, Sweden, the United Kingdom, and the European Commission, with the goal to "ensure that critical minerals are produced, processed, and recycled in a manner that supports the ability of countries to realize the full economic development benefit of their geological endowments."

The United States (and Japan) are not alone in seeking to secure access to critical minerals for batteries to power the demand for electric vehicles. For example, the European Commission announced a proposal for a new Critical Raw Minerals Act on March 16, 2023. The new proposal is subject to debate in the European Parliament and Council of the EU. The aim of the proposal is to strengthen EU autonomy in the supply of key raw materials required for the green and digital transitions. We wrote about the EU proposal [here](#). And on March 29, 2023, Canada announced what is being characterized as the "answer to the IRA," with a Canadian federal budget that offers CDN\$80 billion in tax credits for clean technology over the next decade.

CONTACTS



Alex Leff
Partner, New York

T +1 212 878 8122
E alexander.leff
@cliffordchance.com



Michihiro Nishi
Partner, Tokyo

T +81 3 6632 6622
E michihiro.nishi
@cliffordchance.com



James Pay
Partner, London

T +44 207006 2625
E james.pay
@cliffordchance.com



Dr. Thomas Voland
Partner, Düsseldorf

T +49 211 4355 5642
E thomas.voland
@cliffordchance.com



Michelle Williams
Partner, Washington DC

T +1 202 912 5011
E michelle.williams
@cliffordchance.com



Janet Whittaker
Senior Counsel,
Washington DC

T +1 202 912 5444
E janet.whittaker
@cliffordchance.com



Gail Orton
Head of EU Public
Policy, Paris

T +33 1 4405 2429
E gail.orton
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 2001 K Street NW,
Washington, DC 20006-1001, USA

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