Before the United States Trade Representative

Docket Number USTR-2026-0034

"Request for Comments on the Design of a Plurilateral Agreement on Trade in Critical Minerals and Policy Actions to Strengthen the Resilience of Critical Mineral Supply Chains"

Written Comments from Rethink Trade

March 19, 2026

Rethink Trade thanks the United States Trade Representative (USTR) for the opportunity to submit comments with regard to the design of a plurilateral agreement on trade in critical minerals and policy actions to strengthen the resilience of critical mineral supply chains.

Rethink Trade is a program of the American Economic Liberties Project (AELP). AELP, a non-profit research and advocacy organization, is a thought leader in the anti-monopoly movement and promotes policy changes to address today's crisis of concentrated economic power. Rethink Trade's mission is to replace decades of corporate-captured trade policies with those that can deliver broader public interest outcomes. This includes creation and support of good union jobs with workers empowered to earn decent wages, the public health and safety delivered by strong consumer and environmental protections, resilient supply chains and fair markets with more American firms producing domestically and diversified imports, and the ability for those who will live with the results to decide the policies affecting their lives.

We concur with the Trump administration's interest in a radical rethink of the existing international trade system. The neoliberal model, exemplified in U.S. policy by the World Trade Organization (WTO) and various free trade agreements (FTAs) approved by Congress, left the United States with a chronic and growing trade deficit in goods,[1] significantly lower employment in manufacturing,[2] and a loss of manufacturing capacity to mercantilist countries around the globe, most prominently China.

Mercantilist practices have eroded U.S. industrial capacity in high-tech sectors such as semiconductors; aerospace; transportation; and computer, communications, and clean energy generation and storage equipment as well as medicines, active pharmaceutical ingredients, and medical supplies. This has contributed to the concentration of critical mineral extraction and

[1] U.S. Census Bureau and U.S. Bureau of Economic Analysis, "Trade Balance: Goods and Services, Balance of Payments Basis," retrieved from Federal Reserve Bank of St. Louis, accessed March 16, 2026, https://fred.stlouisfed.org/series/BOPGSTB.

[2] U.S. Bureau of Labor Statistics, "All Employees: Manufacturing," Employment, Hours, and Earnings from the Current Employment Statistics Survey, accessed March 16, 2026, https://data.bls.gov/timeseries/CES3000000001.

processing that underpins many of these and other technologies. According to the International Energy Agency's (IEA) Global Critical Minerals Outlook 2025, for 19 of 20 important strategic minerals, China controls an average of 70% of global refining market share.[3] IEA also predicts that geographical concentration of refining is on track to continue, with China projected to "supply over 60% of refined lithium and cobalt, and around 80% of battery-grade graphite and rare earth elements" in 2035.[4] In addition to its control over rare earths processing, China mines 70% of the globe's rare earth concentrates.[5] Having production of critical minerals, rare earths, and related goods, such as rare earth magnets, concentrated in *any* one country poses serious risks to the U.S. economy and our resilience and security, and even more so in the case of China.

The dangerous concentration of critical minerals production highlights a key failure of the neoliberal trade order, which led U.S. policymakers to focus on an alleged efficiency measured by low prices generated from offshoring production to low-wage countries and other countries' subsidies, while other nations pursued industrial policies to secure control over key nodes in global supply chains.

This is why antimonopoly principles and policies intended to reverse the concentration of production must be at the core of the post-neoliberal U.S. trade policy. Rethink Trade and the American Economic Liberties Project commend the Trump administration for recognizing this reality. By negotiating an international agreement with like-minded countries that share concerns about China's dominance in this sector, the United States could lead an alliance to reduce the People's Republic of China's (PRC) control over critical mineral supply chains. Such an arrangement should focus on ensuring fair competition for producers in participating countries, including by shielding them from predatory practices and coercion. In that regard, USTR's proposal to negotiate minimum prices and common external tariffs to support demand for fairly traded minerals is well-founded.

However, such an agreement should go beyond these demand-side measures and include provisions to prevent countries from gaining artificial advantages through regulatory arbitrage, by exploiting legal loopholes and weak enforcement of labor and environmental standards. Finally, it is important to avoid reverting to elements of the previous trade model that enabled regulatory arbitrage by empowering investors and corporations to challenge public-interest policies through supranational investment tribunals.

Critical minerals present one example of problematic concentration in supply chains, but certainly not the only one. Thus, the success of this agreement could pave the way for other initiatives related to markets that would benefit from diversifying production, including pharmaceuticals and semiconductors.

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[3] International Energy Agency, "Global Critical Minerals Outlook 2025," IEA, May 21, 2025, https://www.iea.org/reports/global-critical-minerals-outlook-2025.

[4] International Energy Agency, "Global Critical Minerals Outlook 2025: Overview of Outlook for Key Minerals," IEA, May 21, 2025, https://www.iea.org/reports/global-critical-minerals-outlook-2025/overview-of-outlook-for-key-minerals.

[5] Luís Pinheiro de Matos, "China's Alchemy: How It Transforms Critical Minerals into Global Power," Caixa Bank Research, January 15, 2026, https://www.caixabankresearch.com/en/economics-markets/commodities/chinas-alchemy-how-it-transforms-critical-minerals-global-power; Harry Dempsey, Camilla Hodgson, and Jamie Smyth; "How Critical Minerals Became a Flash Point in US-China Trade War," *Financial Times*, April 24, 2025, https://www.ft.com/content/aa03e3b0-606d-4106-97dc-bac8ad679131.

This submission reflects that:

- Any agreement on trade in critical minerals must exclude problematic elements of the old model, particularly limitations on investment policy and investor-state dispute settlement (ISDS); and
- Strong, enforceable labor and environmental standards in an agreement on trade in critical minerals would assist in countering regulatory arbitrage.

1. Any Agreement on Trade in Critical Minerals Must Exclude Problematic Investment Elements of the Old Model, Particularly Investor-State Dispute Settlement.

Reducing the PRC's dominance over critical mineral supply chains will require substantial private investment, guided by government policies that ensure such investment advances diversification and resilience objectives. In this context, broad constraints on government oversight of investors and investments embedded in both existing and prospective trade and investment agreements could undermine these efforts.

Beginning with the WTO's Agreement on Trade-Related Investment Measures (TRIMS), trade and investment agreements negotiated during the neoliberal heyday have restricted countries' ability to condition foreign investment, including by banning local content requirements for firms investing in their territory. Investment chapters in free trade agreements (FTAs) and Bilateral Investment Treaties (BITs) have expanded restrictions on investment regulation, including by limiting performance requirements and conditions on profit reinvestment.[6] These terms prioritize investor control of capital over development and resilience and are anathema to the level of government direction needed to ensure that investment in critical minerals supply chains supports diversification and resilience objectives.

Countries such as Indonesia and Namibia—both strong candidates for participation in a critical minerals trade agreement—have adopted policies requiring mining companies to reinvest a share of their earnings in domestic productive capacity and to meet local content requirements that support downstream development.[7] These measures are consistent with the objectives outlined by USTR and should not be treated as trade barriers to be eliminated.

An agreement on trade in critical minerals must especially exclude ISDS mechanisms. ISDS terms empower foreign corporations to sue for massive compensation from countries before ad hoc tribunals operating outside of domestic legal systems.

ISDS mechanisms enable corporations to seek compensation for the actions or decisions of national governments, local authorities, or courts that supposedly affect their economic interests and potentially conflict with expansive and vague investor rights provided in ISDS-enforced trade and investment agreements. Only foreign investors have rights under the ISDS regime, and only foreign investors can initiate claims. Only governments have obligations, namely, to

[6] Jose Miguel Ahumada and Ha-Joon Chang, "A New International Economic Order for the Twenty-First Century: An Agenda for Industrial and Trade Policies from the Global South," *Review of Keynesian Economics* 13, no.4 (2025): 562–580, https://soas-repository.worktribe.com/output/823923/a-new-international-economic-order-for-the-twenty-first-century-an-agenda-for-industrial-and-trade-policies-from-the-global-south.

[7] Martin Dietrich Brauch, Laura Garcia Cancino, Ben Baraga, Behzad Vaziri, and D.R. Nagaraj, "Market Assessment on Critical Minerals Innovation in Developing Countries," United Nations Industrial Development Organization, 2024, https://a2dfacility.unido.org/sites/default/files/2025-01/Full%20Report_Critical%20Minerals%20Market%20Assessment.pdf.

provide special protections and rights, including those that extend beyond domestic law, to foreign investors. No appeals are permitted on the merits of ISDS tribunals' decisions, and there are no limits on the award amounts that tribunals can order governments to pay investors.

These mechanisms also grant corporations the ability to seek compensation not only for the actual capital they invested, but also for potential future profits they claim that they could have hypothetically earned. Highly profitable corporations have used ISDS provisions to attack and undermine numerous countries' policies that set the sorts of terms on investors that successful critical mineral industrial polices would require.

In essence, ISDS offers corporations a form of government-subsidized, cost-free political risk insurance to move their capital across borders, and it does so largely irrespective of the investors' motives or the impacts of their investments.[8] Including ISDS terms in critical minerals agreements would undermine a central goal of U.S. critical minerals policy, which is to boost *processing* capacity domestically.

With respect to critical minerals extraction, contrary to the corporate talking points, in fact, ISDS "protection" is not necessary or even determinative of willingness to invest in mining. Especially with respect to mining and other natural resource extraction investment, firms will go where the resources are. Providing ISDS privileges will only undermine the policy space available to the U.S. government and the governments of partner countries in a critical minerals agreement.

The risk of ISDS interfering with governments' regulatory abilities and subsidizing production offshoring was a major concern of the first Trump administration. During a congressional hearing on his plan to renegotiate the North American Free Trade Agreement (NAFTA), then-USTR Robert Lighthizer explained Republican opposition to ISDS:

> "We are skeptical about ISDS for a variety of reasons which I would like to go into if I have a second to do it. Number one, on the U.S. side there are questions of sovereignty. Why should a foreign national be able to come in and not only have the rights of Americans in the American court system but have more rights than Americans have in the American court system? (...)
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> On the outgoing side, there are many people who believe that in some circumstances, and I can discuss the varieties, that in some circumstances it's more of an outsourcing issue. So what is it? It's a situation where somebody says, 'I want to move a plant from Texas and I want to put it in Mexico; and when I go down there, I don't want to take the political risk that AMLO is going to win in Mexico and change my bargain. So I want the U.S. government essentially to buy political risk insurance for me.'"[9]

Corporations have extracted billions of dollars from countries through ISDS proceedings while countries have been unable to regulate investment activity effectively to meet public-interest goals. Investment terms in a trade agreement on critical minerals must turn from the status quo and allow investment regulation to ensure the resilience and diversification objectives of such a

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[8] Lise Johnson, Jesse Coleman, Brooke Güven, and Lisa E. Sachs, "Clearing the Path: Withdrawal of Consent and Termination as Next Steps for Reforming International Investment Law," Columbia Center on Sustainable Investment, 2018, https://scholarship.law.columbia.edu/sustainable_investment_staffpubs/154/.

[9] "Brady-Lighthizer ISDS Exchange," International Economic Law and Policy Blog, last modified March 21, 2018, https://ielp.worldtradelaw.net/2018/03/brady-lighthizer-isds-exchange/.

pact are met. Accordingly, USTR must refrain from reverting to elements of the FTA–BIT agenda and could use these negotiations to reduce exposure to ISDS claims among participating countries, including through terminating BITs, amending FTAs to remove investment chapters, or bilaterally withdrawing consent to ISDS arbitration.[10]

2. Strong, Enforceable Labor and Environmental Standards in an Agreement on Trade in Critical Minerals Would Assist in Countering Regulatory Arbitrage.

A core feature of the neoliberal trade model is a "race to the bottom" through which countries are positioned to compete to attract increasingly mobile investment capital by backsliding environmental safeguards and undermining workers' wage gains and/or their efforts to fight for better wages. In response, legislators, unionists, small business leaders, independent farmers, and civil society representatives worldwide have demanded the inclusion of standards related to the production of traded goods and services that reverse these trends and guarantee "a floor of decency" undergirding commercial relationships that reflects the commitment sovereign nations have made domestically and through the International Labor Organization (ILO) Conventions, multilateral environmental agreements, and other treaty instruments.

An agreement on trade in critical minerals must be constructed on such a floor of required conduct that incorporates and reinforces the obligations for workers and the environment to which countries have committed. These obligations and those related to countries' human rights, health, and other public-interest protection treaty obligations must be included and enforced throughout any agreement on critical minerals trade. And, nothing in the agreement must limit countries' abilities to enact and enforce strong labor, environmental, health, or other public-interest standards.

The Trump administration has announced that a goal of such an agreement is to counter "regulatory arbitrage" by parties and non-parties. Addressing this issue both in extraction and processing is essential to the development of resilient critical mineral supply chains. The Department of Labor in 2024 named 12 critical minerals at risk of being produced by child labor or forced labor.[11] The World Resources Forum's 2025 Responsible Mining Index Report found, among 25 large mining companies' policies and practices, large gaps between commitments and real actions to improve working conditions and environmental responsibility.[12] Existing mining operations in countries with significant mining industries including Indonesia, the Democratic Republic of the Congo, Niger, Chile, and more have been found to profit from child labor, forced labor, and/or environmental abuses.[13]

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[10] Daniel Rangel, Lori Wallach, Ladan Mehranvar, Alvaro Santos, and Mario Osorio, "Turning the Tide: How to Harness the Americas Partnership for Economic Prosperity to Deliver an ISDS-Free Americas," Rethink Trade, October 25, 2023, https://rethinktrade.org/isds-freeamericas-paper/.

[11] Bureau of International Labor Affairs, "From Mines to Markets: Exposing Labor Exploitation in Critical Mineral Supply Chains," U.S. Department of Labor, accessed March 18, 2026, https://www.dol.gov/agencies/ilab/supply-chain-research/from-mines-to-markets-exposing-labor-exploitation-in-critical-mineral-supply-chains.

[12] World Resources Forum, "Responsible Mining Index: RMI+ Report 2025," World Resources Forum, 2025, https://www.wrforum.org/resources/responsible-mining-index-rmi-report-2025/.

[13] Iza Camarillo, "The Deadly Cost of Nickel Mining in Indonesia," Public Citizen Global Trade Watch and Satya Bumi, December 2025, https://gtwaction.org/the-deadly-cost-of-nickel-mining-in-indonesia/; Iza Camarillo, Sarah Stevens, and Maurice Carney, "The Deadly Cost of Cobalt Mining in the Congo," Public Citizen Global Trade Watch, October 2024, https://gtwaction.org/the-deadly-cost-of-cobalt-mining-in-the-congo/; Bureau of International Labor Affairs, "Child Labor and Forced Labor Reports: Niger," U.S. Department of Labor, accessed March 18,

In light of these well-documented abuses, negotiations on a critical minerals trade agreement present an opportunity to establish strong, facility-specific enforcement mechanisms to address these practices and promote compliance with international standards. The United States-Mexico-Canada Agreement (USMCA) offers a model of how to design and implement such enforcement tools in trade agreements. In addition to bringing improved labor standards to the core of the text, USMCA has innovative facility-specific labor enforcement provisions called the Rapid Response Mechanism (RRM) conceived to deal with violations of the rights to free association and collective bargaining.

The USMCA RRM targets goods- and services-producing firms, which can face fines and tariffs and lose market access if they violate labor rules. Penalties that hit firms incentivize them to improve conditions. The lesson from the USMCA is that facility-specific enforcement can leverage real improvements, but this enforcement is also difficult to scale up to have broad impact. Including facility-specific enforcement tools on a broader scale than three neighboring countries raises thorny questions about administration of an enforcement regime.

One option is to incorporate facility-specific enforcement of labor and environmental standards into a critical minerals trade agreement, drawing on the experience of the 1999 U.S.–Cambodia Textile Agreement (UCTA) and the 2013 Accord on Fire and Building Safety in Bangladesh (Bangladesh Accord). The UCTA, in force from 1999 to 2004, linked Cambodian exporters' access to the U.S. apparel market to their compliance with national and international labor standards. Importantly, the governments enlisted the ILO to conduct facility-specific compliance monitoring, which added both credibility and transparency to the enforcement of the agreement. Throughout the duration of the agreement, the ILO published reports with aggregated data; however, when a factory failed to remedy identified violations, it also issued facility-specific reports to draw attention to the problems and force compliance.[14] Regarding the Bangladesh Accord, this private sector agreement was established in the aftermath of the 2013 Rana Plaza building collapse in Bangladesh, which killed more than 1,100 people and injured over 2,000. In response, the Accord created a system to improve factory safety standards. It proved highly successful, leading to inspections of more than 1,600 factories with over 90% of remediation works completed by 2018. For the purposes of this submission, it is particularly relevant that the Accord relies on an independent Secretariat staffed with technical experts capable of impartially assessing compliance with safety standards. The Secretariat's assessments are fully transparent, and parties may challenge them through arbitration. To date, only two cases have reached arbitration, both resolved with substantial awards (including one of $2.3 million).[15] These experiences, together with the RRM, could inform the design of an independent body tasked with investigating mineral production and processing facilities and sharing its findings with relevant

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2026, https://www.dol.gov/agencies/ilab/resources/reports/child-labor/niger; Sol Meckievi and Lorena Zenteno Villa, "Chile's Lithium Boom: A Green Revolution or Environmental Ruin?," Sabin Center for Climate Change Law, Columbia Law School, May 6, 2025, https://blogs.law.columbia.edu/climatechange/2025/05/06/chiles-lithium-boom-a-green-revolution-or-environmental-ruin/.

[14] Sandra Polaski, "Combining Global and Local Forces: The Case of Labor Rights in Cambodia," *World Development* 34, no. 5 (May 2006), https://doi.org/10.1016/j.worlddev.2005.04.019. .

[15] UNI Global Union, "Bangladesh Accord Arbitration Cases—Resulting in Millions-of-Dollars in Settlements—Officially Closed," UNI, accessed March 18, 2026, https://uniglobalunion.org/news/bangladesh-accord-arbitration-cases-resulting-in-millions-of-dollars-in-settlements-officially-closed/.

stakeholders, including governments, unions, and investors. Such a body could also be empowered to authorize sanctions against non-compliant facilities and firms.

Conclusion

Depending on the countries involved and the agenda pursued, a plurilateral agreement on trade in critical minerals could deliver on the urgent goals of diversification and resilience outlined by USTR. The neoliberal trade regime which has been the norm for multiple decades has left brittle, dangerously concentrated supply chains in several goods vital for U.S. national security, including critical minerals. A trade agreement in critical minerals could create a model for future initiatives to address supply chain concentration. Such an agreement must commit to fair competition for producers in signatory countries, prevent regulatory arbitrage which could create artificial advantages via the exploitation of legal loopholes and weak enforcement of labor and environmental standards, and exclude ISDS terms which enabled regulatory arbitrage by allowing corporations to challenge public-interest policies.