

# Critical raw materials in EU external policies

## Improving access and raising global standards

### SUMMARY

Lithium and cobalt (used in rechargeable batteries) and rare earth elements (used in wind turbines) are some of the critical raw materials (CRMs) – raw materials of critical importance – for the EU. Global demand for CRMs is rising, yet the export restrictions imposed by the resource-rich countries intensify the competition for these materials. To boost its access to CRMs, the EU has a dedicated strategy based on three pillars: two internal ones (increasing domestic sourcing and circularity) and an external one, which is mostly about securing supply from third countries.

The external pillar of the EU CRMs policy is implemented across a number of other policies, mainly that on trade and development. It also involves deploying raw materials diplomacy. Through its trade policy, the EU seeks to implement its priorities by eliminating trade barriers through bilateral, regional and multilateral agreements, and safeguarding its interests through more assertive tools such as WTO dispute settlement and trade defence instruments. Through its development policy, the EU seeks to secure and diversify its access to CRMs, while promoting sustainable standards, good governance and responsible sourcing. It is also advancing its agenda through international fora (e.g. the UN and the OECD) and dialogues with numerous partners. The EU has also passed laws that help to make global supply chains and finance in the extractive sectors more transparent.

In 2020, the European Commission adopted a CRMs action plan mostly based on existing strands of external action. It introduces several novel ideas, notably launching new strategic partnerships with both developed and developing nations, which are focused on extraction, processing and refining of CRMs. In its recent strategies, the EU has also clearly indicated its interest in greening the supply chains and achieving open strategic autonomy as regards CRMs. The success of these will also depend on global cooperation, adequate funding and reconciling differences with resource-rich countries.



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## The global context

Global extraction, trade and consumption of natural resources have been increasing over the past four [decades](#). This is also true for raw materials, the use of which is [forecasted](#) to steadily grow over the next 40 years. This is not only because the traditional industrial economies, such as the EU, the US and Japan, require large quantities of raw materials as inputs, but also because many emerging and developing economies, particularly China, keep increasing their demand. The EU is a net importer of raw materials, and in 2018 its [trade deficit](#) stood at €31 billion. Since the beginning of the 21st century, the development of high-tech industries and low-carbon energy technologies has led to a particularly robust increase in the demand for certain metals and minerals. The EU regards 30 of those as '[critical raw materials](#)' (CRMs): while they are strategically important to its economy and industry, their supply involves elevated risks, since almost all of them are imported from a limited number of third countries.<sup>1</sup> Moreover, the EU is heavily dependent on these third countries: only three of its CRMs are more than 50 % sourced within its territory, and for 17 CRMs – including lithium used in car batteries, indium used in semiconductors and cobalt used in jet turbines – its reliance on imports is higher than 80 %.

While they are less than 1 % of the total import value of goods, CRMs are crucial inputs in key industrial and strategic [sectors](#), such as digital technologies, renewable energy, electric mobility, health, defence and aerospace, both in the EU and worldwide. To meet the demand for clean energy technologies alone, a [World Bank Group report](#) estimates that the production of minerals, such as graphite, lithium and cobalt, could increase by nearly 500 % by 2050. At the same time, these minerals are available in only a handful of countries, some of which are known to have a challenging business and political [environment](#). One may say that there is an inherent [tension](#) between two groups of states: on one hand, the generally wealthier but CRMs-dependent countries seek to secure their access to those materials in order to meet their ever-growing demand at advantageous prices. On the other hand, CRMs-rich countries, which are often less developed, seek to generate maximum revenues from those materials and to employ both to pursue their own goals, which may vary from support for local development to increased geopolitical influence. These tensions have led to numerous disputes at the WTO level, as discussed in this briefing.

Another [dynamic](#) is also coming into play: a growing number of countries are likely to increase their demand for CRMs as the new technologies are embraced worldwide. Already, many of the CRMs-rich countries consider it strategically [important](#) to shift away from the status of raw material exporters to that of manufacturing economies that use their domestic resources and export finished or semi-finished products. This trend is likely to fuel global competition for CRMs, which is already fierce, and keep it strong in the future. What makes the situation even more challenging is that mining some CRMs, like rare earths, has a [high environmental impact](#), and has been largely unregulated in countries like China.

## Export restrictions and the WTO

The picture gets even more complicated by the fact that supply has been and is being limited by [export restrictions](#) imposed by major suppliers for various reasons, such as preference to deliver to domestic producers or a desire to influence global prices or to increase government revenue (see Table 1).<sup>2</sup> The OECD has defined as many as 13 types of [export restrictions](#) relevant to raw materials: export tax, fiscal tax on exports, export surtax, export quota, export prohibition, licensing requirements, mandatory minimum export prices, reduction of VAT rebates, restrictions on customs clearance points, list of qualified exporters,

Table 1 – Export restrictions on CRMs in the world

Restrictions	Occurrences
Export prohibition	3
Export tax	34
Non-automatic licensing	50
Other measures	10

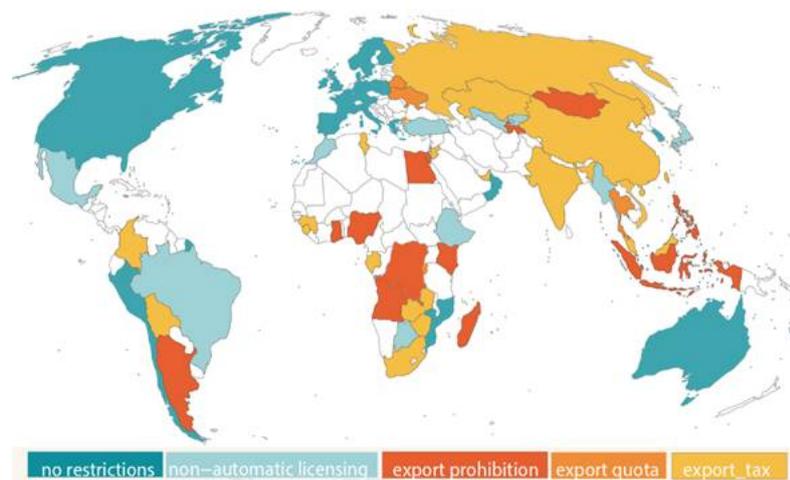
Source: Author's calculations based on the OECD's [All commodities – trade restrictions](#), 2019.

domestic market obligation, captive mining and other measures. They are deployed by many CRMs-sourcing and producing countries.

The [OECD](#) sees this trend as getting stronger, saying that the markets are going through 'a marked expansion in efforts to regulate the supply and export flows of these materials through the use of export restrictions around the globe. Experience shows that export controls can trigger similar actions in other supplier countries, driving up prices further, making price volatility worse, and creating a crisis of confidence that spreads from one resource to the next.' The [WTO](#) has also underlined that since trade is essential for securing access to raw materials – with no country being fully self-dependent – export restrictions can have a negative effect on global welfare.

Figure 1, created with information from the [OECD](#) database, shows various levels of trade restrictions on commodities, including CRMs, deployed in 2019. While the EU, US, Canada, Australia and South Korea kept their markets open, many of the CRMs-sourcing countries located in Asia, Africa and South America erected trade barriers of varying strength. This is in line with the OECD findings that the restrictions were mostly used by emerging and developing countries.

Figure 1 – Trade restrictions on industrial raw materials in the world



Source: OECD, [Commodities trade restrictions](#), 2019.

## WTO framework

The prevalence of export restrictions is explained by the lack of a strong legal framework prohibiting such practices. While generally trade measures are notified to the WTO, due to the variability in the type of [export restrictions](#), they are not comprehensively notified to any international body or fed into any global database. The [OECD](#) puts it bluntly: 'why do policymakers use this trade policy instrument to address domestic policy challenges? One reason is simply because they can. Under WTO rules, member economies are obliged to notify their use of export restrictions, but implementation to date has been patchy'.<sup>3</sup>

To start with, there is no specific [framework](#) dedicated to raw materials; consequently, the application of members' obligations depends on both the general WTO disciplines (rules) and the WTO members' individual commitments. The WTO has raised this as a [point of concern](#) for the trade in minerals, stating that: 'there are fewer disciplines in the WTO system dealing exclusively with exports restrictions than with import barriers'. Article XI of the 1994 General Agreement on Tariffs and Trade (GATT) prohibits only quantitative restrictions (quotas). There are three main provisions relevant to export restrictions, two in Article XI and one in Article XX.

Firstly, [Article XI:1](#) does not prohibit export taxes, duties or other charges on exportation or sale for export (qualitative restrictions). This is because they constitute, generally speaking, an [important lever](#) for developing countries to protect their natural resources and avoid [depleting](#) them. Export quotas are in principle prohibited, but there are exceptions. These are stipulated in Article XI:2 a), which says that '*export prohibitions or restrictions*' are allowed if '*temporarily* applied to prevent or relieve *critical shortages* of ... [p]roducts *essential* to the exporting contracting party'. The [WTO Analytical Index](#) (official interpretative guide), explains that these notions have been interpreted in WTO case law, particularly in [China - Raw Materials](#), DS395.<sup>4</sup> Then there is the general exception laid

out in [Article XX](#), which stipulates a number of specific instances in which WTO members may be exempted from GATT rules. In the context of the CRMs, two paragraphs are particularly relevant: i) the first saying that WTO members may adopt policy measures that are inconsistent with GATT disciplines but necessary for 'the conservation of exhaustible natural resources' (paragraph g); and the second highlighting the need for ii) 'protecting human, animal or plant life or health (paragraph b).' As pointed out by the [OECD](#), the exceptions from Articles XI:2 and XX have been used to successfully justify many export restrictions on raw materials. An exception modelled on Article XX is included in the EU free trade agreements (FTAs).

As regards individual commitments, WTO-acceding members are often agreeing to commitments that are more stringent than those applied to the original members (also known as WTO-plus commitments). As argued by [legal analysts](#), 'some Members that acceded to the WTO in or after 1996 have accepted limitations on their right to impose export duties in their accession protocols. The precise nature and scope of these limitations vary'. For example, in two landmark cases on raw materials, *China-Raw Materials* and *China-Rare Earths* (DS432, concerning exports of rare earths and tungsten) one of the arguments used was that China's obligation in Article 11.3 (which concerns export taxes and charges) of its Accession Protocol is not subject to the general exceptions in Article XX, and as such export restrictions cannot be justified on the grounds laid out in Article XX. The panel also found that export quotas were inconsistent with Article XI of the GATT. In both cases China had to lift export restrictions.

## EU policy in a nutshell

As a result of the surge in commodity prices in the 2000s and its growing awareness of the mounting difficulties in obtaining CRMs, the EU has put in place a dedicated policy to respond to this situation.<sup>5</sup> The policy was launched in 2008 together with the [Raw Materials Initiative](#) (RMI), and is broadly based on three pillars: i) ensuring access to resources in third countries; ii) increasing supply of raw materials within the EU; and iii) improving the efficiency of resource use, [substitutionability](#) and recycling. So far, the most [advances](#) have been made in the last pillar. Since 2011, an important part of this policy has been the publication of a [CRMs list](#) every three years. Back then, the list contained 14 materials, which had increased to as many as 30 in 2020.

The external pillar of the EU CRMs policy is being implemented across a number of strands: mainly through EU trade and development policy, and through efforts to increase the transparency of supply chains and finance in the extractive sectors. It also involves deploying [raw materials diplomacy](#), based on coordination and coherence among all the EU external policies.

### US policy – External aspects

The US [strategy](#) on CRMs was launched in 2010. Its main strands are similar to the EU's: boosting domestic production, increasing recycling and reuse, and developing alternative materials. It also mentions encouraging other countries to 'expedite alternative supplies'. Diversifying global supply chains is considered essential for reducing the supply risk, but unlike the EU Raw Materials Initiative, the US strategy does not specifically mention the use of international investment and trade policies to secure access to raw materials. However, the US has been successful in incorporating the commitment to eliminating all forms of export restrictions in its FTAs.

In June 2019, an updated [federal strategy](#) emphasised the role of the trade and investment policy toolbox in securing [access](#) to CRMs (called 'critical minerals'), mentioning specifically international trade and cooperation as possible fields of action. In line with this strategy, Washington has focused on forming alliances with partner nations and allies. It has also launched the [Energy Resource Governance Initiative](#) with the aim of promoting the global development of rare earths and other CRMs such as lithium and cobalt. This [network](#) is expanding and includes several CRM-rich countries.

The American Sustainability Accounting Standards Board's ([SASB](#)) standards from 2020 have started to include CRMs as a compulsory item in sustainability reporting for industrial machinery and some other sectors. This means that companies like [Toyota](#) now include CRMs in their annual sustainability reporting. The Biden administration has called for an [immediate review](#) of vulnerabilities in the supply chains for CRMs and asked the Secretary of Defense for policy recommendations to address these risks. In April 2021, the US announced its partnership with [Japan](#) on sensitive supply chains, including on semiconductors.

## Trade policy

The EU deploys the trade policy for CRMs using bilateral, regional and multilateral approaches. The policy focuses mostly on ensuring well-diversified and undistorted, secure access to global markets. To achieve this access, the EU is using its trade toolbox, which involves staying active on two main fronts, as described below.

### Tackling trade barriers with legislation

Firstly, the EU is tackling trade barriers through dialogues and other more assertive tools. As past cases show, the EU stands ready to challenge measures that violate WTO or bilateral trade agreements, using all mechanisms and instruments available, including enforcement through the use of [WTO dispute settlement](#) or potentially similar dispute settlement provisions in bilateral free trade agreements. In addition, for situations where the international dispute settlement mechanisms are blocked, the EU can resort to the [Enforcement Regulation](#). In the above-mentioned cases against China, where the EU was one of the complainants, numerous issues were cleared. Apart from establishing that there was no link with Article XX, the WTO determined that export duties on raw materials, which include taxes and charges imposed on exports, violate Paragraph 11.3 of China's Protocol of Accession, (which stipulates the conditions for applying export duties).<sup>6</sup> Furthermore, the [panel](#) ruled that export quotas are forbidden by Article XI:1 of the GATT 1994 and that China did not successfully prove that these quotas were 'temporarily applied' in order to 'prevent or relieve a critical shortage'. [Experts](#) argue that these cases had a major impact on China's industrial policy, as they 'put an end to a practice that partly aimed to protect rising domestic demand for raw materials while restricting the exports in order to protect the environment'.

The EU's raw materials export-restriction case against China, [DS 509](#), was again based on China's Protocol of Accession and WTO-inconsistent export duties. A panel was established in November 2016, following which China informed the EU that the measures that had been the subject of the complaint had not been renewed for 2017. The case concerned antimony, cobalt, graphite, indium, magnesium and tantalum. It has not been formally settled at WTO level.

A 'geopolitical' use of CRMs by China is nonetheless a reality. The Chinese leader, Deng Xiaoping, famously remarked back in 1992, that 'There is oil in the Middle East; there is rare earth in China'. The country is the largest supplier of CRMs to the EU, accounting for almost half of its imports (44 %). China's rare earth supply policy is currently undergoing a [review](#), which many commentators link to the country's efforts to broaden its sphere of influence through initiatives such as the [One Belt, One Road](#). Clearly, any tightening of supply chains is likely to become a [double-edged sword](#) in today's highly interconnected world.

To address unfair trading practices and protect domestic producers (for example, with regard to [lithium, cobalt and graphite](#)), the EU sometimes deploys [trade defence measures](#). There are a number of anti-dumping measures for raw material imports, including for [silicon metal](#), a CRM. The [Market Access Partnership](#) and the [Trade Barriers Regulation](#) are both very useful instruments for collecting information on trade-distortive measures.

### Tackling trade barriers with trade agreements

The EU trade policy is built upon promoting new rules and agreements on fair and sustainable access to raw materials and ensuring compliance with international commitments (focused on eliminating export restrictions) at all levels. These include WTO accession negotiations, FTAs, investment treaties (rules for pre- and post-establishment for foreign direct investment), regulatory dialogues and [non-preferential agreements](#).<sup>7</sup> Accordingly, in its 2015 [Trade for all](#) strategy, the EU declared that it would propose an energy and raw materials chapter in each trade agreement. Below is a summary of the main developments in trade that have taken place since 2008 - the year in which the RMI has been launched - and in which the EU has played a role. In its 2021 [Trade Policy Review](#),

the EU committed to strengthening the resilience and sustainability of global supply chains. The position of the EU is to eliminate, or if that is impossible, to maintain the export restrictions at the same level and to limit the exceptions used for justifying the export restrictions.

## WTO accession protocols

In [China – Raw Materials](#), (DS395) it was established that the terms of a country's WTO accession protocol are an integral part of its WTO agreement and are enforceable in dispute settlement proceedings. While many members have agreed to commitments on quantitative export restrictions, these have most frequently been reiterating or making clear existing provisions in the WTO agreements. However, 16 members have also accepted commitments on export duties in their accession protocols. As they are pertinent to CRMs, some of them are worth mentioning.

[Russia](#), which joined in 2012, has its concessions outlined in Part V of the Goods Schedule, which stipulates that it: 'undertakes not to increase export duties, or to reduce or to eliminate them ... and not to reintroduce or increase them beyond the levels indicated in this schedule, except in accordance with the provisions of GATT 1994'. The Commission, in addition to these commitments, secured an [additional agreement](#) on non-introduction of export duties for a large number of raw materials. Russia still has the export tax on tungsten and [non-automatic licensing](#) restrictions on the platinum group metals. Importantly, it produces 40 % of the global palladium supply (it is one of the six precious metals belonging to the platinum group metals group).

[Tajikistan](#), which is rich in antimony and fluorspar, joined the WTO in 2013, agreeing that it 'shall not introduce and shall eliminate all duties, taxes, fees and charges applied to exports, unless specifically provided for in ... this Protocol or applied in conformity with the provisions of Article VIII of the GATT 1994'. During the [WTO accession of Tajikistan](#), the EU secured a commitment on the prohibition of export duties or taxes on raw materials, with the exception of some that had a bound rate.<sup>8</sup> The country has non-automatic [licensing restrictions](#) on antimony.

[Afghanistan](#), the most recent member of the WTO (2016), is a country with very promising [potential](#) for CRMs extraction and sourcing. It keeps selected export duties on its CRMs, some of which will be reduced by mid-2021 (five years after accession). These CRMs are magnesium, beryllium, borates, fluorspar, niobium, antimony and rare earths - duties vary between 1 % and 10 %. Accession negotiations with both Tajikistan and [Afghanistan](#) resulted in the two countries' commitment not to impose export duties, except on a limited number of products. Apart from these, two interesting cases of countries that have no export restrictions on CRMs are: [Kazakhstan](#) (a member since 2015), which provides 72 % of all the [phosphorus sourcing](#) to the EU, and [Ukraine](#) (member since 2008), which is rich in scandium, titanium and graphite.<sup>9</sup>

## Bilateral and regional agreements

The EU policy is also aimed at inserting trade disciplines on export restrictions of raw materials into the EU's multilateral and bilateral trade agreements. Recent examples are outlined below. The [EU-Korea FTA](#) effectively prohibits duties, taxes or other fees on the export of CRMs. Currently, Korea accounts for 21 % of global production of indium. The [EU-Vietnam FTA](#), which entered into force on 1 August 2020, secures the prohibition of duties or taxes on a number of CRMs. The [EU-Singapore FTA](#) includes the prohibition of duties, taxes or measures of an equivalent effect on the export of raw materials. Singapore produces 8 % of the world's fluorspar.

A non-preferential [EU-Mongolia](#) partnership and cooperation agreement entered into force in 2017. Mongolia has large deposits of minerals, including rare earths, tungsten and fluorspar, and the two sides regularly conduct dialogues aimed also at establishing closer cooperation on raw materials. Both have the right to resort to [appropriate measures](#) in case a more restrictive trade regime on raw materials export is introduced. Mongolia applies an export tax on coking coal (3 %) and fluorspar.

In its [FTA with Colombia and Peru](#), and in an association agreement with [Central America](#), the EU secured a horizontal ban on both existing and future export duties while accepting certain transition

periods or minor exceptions. The [EU–Mexico FTA](#) eliminates all [export restrictions](#) in bilateral trade. Mexico provides 25 % of the EU's fluorspar. The [EU–Mercosur FTA](#) (still awaiting ratification and therefore not yet applicable) reduces or eliminates export taxes for raw materials and prohibits import and export price requirements as well as import and export monopolies. Mercosur countries (namely Argentina, Brazil, Paraguay and Uruguay) produce many CRMs, including 92 % of the global supply of niobium.

The recent comprehensive agreement on investment between [EU and China](#) contains limitations on EU companies' market access. These limitations, which are of a quantitative nature, concern the production capacity and the establishment of enterprises for rare earth smelting and separation. Foreign investors are also prohibited from investing in the exploration, exploitation or ore dressing of rare earth, and may not invest in the exploration or exploitation of tungsten.

Interestingly, the press reports that [lithium](#) has become a challenging [issue](#) during the ongoing efforts to modernise the [EU and Chile](#) association agreement. Reportedly, the latter wishes to offer a preferential price for the metal to attract companies to be based in Chile, and use lithium for producing a higher value-added products (rather than the raw material) there. The EU proposes setting lithium prices that do not discriminate between Chile's domestic market and that of the EU. Lithium is crucial for success of the [European Battery Alliance](#), which creates an EU battery [value chain](#) to reduce dependence on foreign supplies.

The EU is also involved in a number of economic partnership agreements ([EPAs](#)), which are trade and development agreements negotiated between the EU and African, Caribbean and Pacific (ACP) countries and regions.<sup>10</sup> As a general approach, the EU seeks to eliminate and prohibit both export taxes and quantitative restrictions in these EPAs. A European Parliament [study](#) on export restrictions in the EU's EPAs shows that the [EU–Cariforum EPA](#) has the farthest-reaching provisions banning export taxes. In the EU's other EPAs, introducing new export taxes is generally forbidden, as is increasing the existing ones, with specific temporary exceptions and caveats. While existing export taxes may be maintained, new export taxes are allowed only by some EPAs.<sup>11</sup> This is done temporarily and for a limited number of products, for a number of reasons: to support the development of domestic industries, to cover revenue needs, to ensure food security and environmental protection, or to protect the domestic currency. Quantitative restrictions are not allowed. The only exceptions are related to addressing physical shortages of certain goods, or issues such as the application of standards or regulations relevant to commodities in international trade. All these provisions and mainly the fact that those exceptions are forbidden or limited, make the EPA rules stricter than those of the WTO.

## Outreach and dialogues

At the international level, the EU prioritises raw material discussions through all possible avenues. This is done using [raw materials diplomacy](#) – reaching out through strategic partnerships and policy dialogues to both the resources-rich countries, so as to improve the EU's access, and the other CRMs-buying countries to tackle common problems and coordinate positions on the international fora. The EU has relations with many important partners, such as Argentina, Brazil, Canada, Chile, China, Colombia, Greenland, Japan, Mexico, Myanmar, Peru, Russia, the United States, Uruguay, the Southern Neighbourhood and EuroMed countries, and the African Union.

The nature of the EU's cooperation with its partners on CRMs changes according to the individual international fora. The [Commission](#) explains that these include: 'the OECD (conflict minerals, guidance on raw materials, responsible sourcing), the United Nations (global outlook, environmental pressures, resource management, and mineral governance), the WTO (market access, technical barriers, and export restrictions) and the G20 (resource efficiency)'. There are also regular trilateral [EU–Japan–US](#) meetings covering topics such as CRMs, promoting cooperation (particularly on extraction), use efficiency, and recycling.

## Development policy

The EU development policy also plays an important role as regards CRMs. An analysis points to a number of broad [goals](#) that the EU pursues when engaging with developing countries: to diversify its CRMs supplier portfolio, to increase an uptake of standards for a responsible global production based on a fair sharing of benefits and burdens, and to boost the sector's contribution to broader economic and sustainable development goals (SDGs), such as the UN SDGs.

The Raw Materials Initiative specifies that EU involvement in development policy takes place on three levels. Firstly, through strengthening good governance in economic, social, environmental and political terms. This is based on capacity-building, improving economic, financial, fiscal and judicial governance, contributing to sound public finances, addressing specific issues in natural resources management, and achieving transparency in mining deals and mining revenues. EU assistance has also been used to support transport infrastructure projects, carried out in ACP countries, as a way to ensure sustainable mining. Secondly, EU development policy is used to promote a transparent legal and administrative framework as a prerequisite for increasing investment in the CRMs sector and ensuring that mining activities contribute fairly to the public revenues and that CRMs supply is increased in a sustainable way. Thirdly, the EU promotes sustainable management of raw materials, by helping its partner countries to advance their social and environmental standards, improve their human rights conditions and eradicate child labour.

### UN Sustainable Development Goals

CRMs also play role in achieving the UN SDGs, which embody a vision for a future based on sustainability. The 17 [goals](#) and 169 targets of the SDG agenda concern the ecological, economic and social aspects of sustainability and require joint action from both developed and developing countries. The EU has encouraged policymakers at all levels to make the SDG principles an important part of their strategies. While the UN SDGs framework does not set a specific goal regarding raw materials, it has a direct or indirect [influence](#) on all goals. A JRC [study](#) on the SDGs and raw-materials policy underlines that while the production of raw materials can have negative environmental and social impacts, their use (for example, many are needed for [green technologies](#)) demonstrates that they are crucial for economic development and well-being.

The EIB plays a role by financing CRM-related mining projects but also supporting related transport, energy and environmental infrastructure: between 2003 and 2018, it spent 78 % of its [direct investment portfolio](#) amounts under the [ACP Investment Facility](#) on the mining and industry.

The [Partnership Instrument](#), and specifically, its annual implementing programme – [Policy Support Facility](#) – funded the [EU-Latin America Mineral Network Development Platform](#). The objective was to boost cooperation between authorities, industry, business (including SMEs), academia, geological surveys and other organisations from the EU and Latin America (Argentina, Brazil, Chile, Colombia, Mexico, Peru and Uruguay) for the extractive industries across the mineral value chains.

Cooperation on matters related to raw materials has also been on the [agenda](#) of the joint [EU-Africa strategy](#) and has been supported by the [Pan-African programme](#) and the [European Development Fund](#) (through, for instance, good governance programmes). The EU and the African Union cooperate in three [main areas](#): governance, investment and infrastructure and geological knowledge and skills. The EU has used its [indicative programmes](#) for direct project funding in the mining sector, and has also provided such funding through initiatives launched by its partner organisations (such as the UN [Stones for Development](#) project, which supported the small-scale mining sector in Africa). Considering that raw materials are the largest group of goods the EU imports from Africa, issues such as their transparent management and responsible mineral sourcing also make it to the agendas of top-level discussions such as the [EU-Africa summits](#).<sup>12</sup> The 2014 summit produced a commonly agreed [roadmap](#) under which the EU committed to supporting the African mineral sector and delivering assistance to African geological surveys and mineral resource governance, as well as to joint cooperation on investments and infrastructures. [PANAFGEO](#), an EU-funded geological cooperation programme, has provided training for more than 1 000 geologists from 45 African countries to build the capacity of the continent to manage its own extractive sector.

In March 2020, the Commission proposed a vision for the new comprehensive [EU-Africa strategy](#). It offered to help the continent in its transition to a more sustainable economic model, based on preserving the value of products, materials and resources; establishing a clean circular economy; and reducing waste. The Commission document outlining the strategy underlines that this requires 'enhanced cooperation between the EU and Africa on a responsible raw materials sector, secure and clean industrial value chains, respecting ambitious environmental and climate standards'.

## Transparency and due diligence

### Financial transparency

To increase transparency in the global extractive sector, the EU revised the [Accounting and Transparency Directives](#). Accordingly, listed and large unlisted extractive companies now need to disclose their payments above €100 000 to the governments on a per country and per project basis. The aim is to inform citizens of the resource-rich countries about government income from licensing such activity, so that they have a better idea if the cost to society from exploiting or depleting the natural resources is adequately compensated. The Commission tabled these legislative proposals on the request of the European Parliament.

These requirements complement the Extractive Industries Transparency Initiative ([EITI](#)), which is a global coalition of governments, companies and civil society organisations. EITI also seeks to improve the transparency and accountability of natural resources management by implementing a standard of full disclosure, in an annual report, of the taxes and other payments made by the mining companies to the governments. The Commission provides financial and political support.

### Supply chain transparency

Provisions on responsible sourcing of raw materials exist in the [specific area](#), of 'conflict minerals', which includes two CRMs (tungsten and tantalum). The Conflict Minerals Regulation, focused on conflict minerals, has been applicable since 1 January 2021. According to its rules, EU importers must ensure that what they are purchasing has not been produced in a way that funds conflicts or other illegal practices. These rules concern CRMs coming from conflict-affected and high-risk areas. The regulation requires importers to self-certify, following a five-step framework, which the OECD has laid out in its [guidelines](#) on 'Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas'. Member States are responsible for checking compliance by examining documents and audit reports. They can also carry out on-the-spot inspections of the minerals importers' premises. The Parliament secured many important [amendments](#) to this regulation, such as making this due diligence process mandatory.

The EU does not yet have universal rules on mandatory due diligence linked to environmental and human rights protection, which is often negatively affected by the extractive industries in the developing countries. There is growing pressure, particularly from the Parliament, to introduce a horizontal EU law seeking to further improve supply chains transparency. The Commission is preparing a [legislative proposal](#), which is to be published in the second quarter of 2021.

A legislative-initiative ([INI report](#)) by the JURI committee, adopted in March 2021 in plenary, calls on the Commission to propose legal requirements for ensuring that all companies operating in the EU (including non-EU firms) comply with the human rights and environmental standards in their supply chains. The Parliament insists that companies be obliged to identify, address and remedy aspects of their value chain that could or already do have a negative impact on the environment, human rights, and good governance. Companies would be held liable for their actions and possibly fined unless they can prove that they have acted according to their due diligence obligations and taken preventive measures. The laws, if enacted in their proposed broad scope, would also cover the CRMs value chains. Point 14 of the report proposes that the Commission would 'collect and publish trade and customs data on origins of raw materials ... and information on human rights, environmental

and governance potential or actual adverse impacts risks'. The new EU [batteries regulatory framework](#) is also a significant proposal to influence transparency of global supply chains.

## Next steps

The importance of CRMs is only set to [increase](#) in the future, and their sourcing from abroad will remain a prominent trend in the medium to long term also. The current Commission set the [green and digital transition](#) of economy and society as one of its main objectives, and focused on this being also a key element of the [recovery](#) from the pandemic. CRMs are key to achieving this and are also pivotal to the [strategic autonomy](#) of the EU. Taking all this into account, the Commission launched in 2020 a [CRMs action plan](#), containing 10 policy initiatives to be implemented by 2025. The plan tables significant new initiatives to increase domestic supply and improve recycling and circularity, while the actions in external policies are still based on the reinforced use of EU trade policy tools, focus on CRMs in negotiating FTAs, and working with international fora to advance EU interests.

There are, however, some novelties. One is the possibility of enhanced enforcement with regard to non-respect of international obligations by third countries through the new [Chief Trade Enforcement Officer](#) (CTEO). One aspect of this stronger enforcement is the EU's recent (first time) use of bilateral FTA dispute settlement (a case of an [export ban](#) on wood products from Ukraine to the EU). The EU will also strive to increase the role of the euro in payments for CRMs to reduce price volatility. In terms of funding, it seems that the Neighbourhood, Development Cooperation and International Partnership Instrument's Policy Support Facility may be used more actively.

The Commission also proposes to engage in dedicated 'strategic partnerships' with resource-rich countries, both highly developed (e.g. Australia and Canada) and developing ones (in Latin America and Africa). Engagement with the latter group will promote the fundamental values of the EU's CRMs external policy: good governance, sustainable mining and responsible sourcing. The partnerships will cover CRMs extraction, processing and refining, with potential pilot partnership projects in 2021 to be launched with Canada, interested countries in Africa and the EU neighbourhood.

In this context, the EU development policy may need some recalibrating in the longer term. This concerns the priorities of the EU and the developing countries, which, according to some [experts](#), vary: the former is interested in removing obstacles to free trade and securing access to CRMs, while the latter would like to export intermediate and finished goods rather than raw materials. Better reconciliation of these interests may become increasingly important in the future. A good start was made with the 2018 [EU-Africa Alliance](#), when the Commission announced that it would support economic integration and the development of value chains both at the intra-African level and at the level of strategic linkages between the EU and Africa. This would be based on support for the policy frameworks, the core enabling infrastructure, and possibly partnerships with EU industry.

### European Parliament

In 2011, the Parliament called on the Commission to ensure [coherence](#) between the EU's policies on development and raw materials. It also stated that 'In order to respect countries' resource sovereignty, the Commission should balance opposition to export taxes in developing countries by employing a differentiated approach taking account of the various national contexts so that development goals and industrialisation of developing countries are not put at risk'. Similarly, in 2021 it highlighted that 'one of the main challenges for developing countries is to climb up the global value chain through economic diversification', and called for the EU to 'refrain from adopting a [trade policy](#) that as a general rule prohibits African countries from levying export taxes on raw materials'. In 2020, in the context of the new industrial strategy for Europe, it stressed the importance of forming strong [alliances](#) with third countries to address the scarcity and sustainable sourcing of resources and raw materials.

Currently, the Parliament is preparing an own-initiative opinion on 'A European strategy for critical raw materials'. An INTA committee draft report from April 2021 has called for future FTAs to include a specific focus on raw materials, and to enhance enforcement so as to ensure CRMs trade commitments are met by all partners. The report underlined the need to diversify supply sources and to strengthen cooperation on sustainable sourcing with third countries using all available policies and instruments.

A trend that is also likely to shape the CRMs policy over the coming years has found reflection in the [European Green Deal](#), which supports setting the global value chain standards in line with EU environmental and climate ambitions, while ensuring reliable access to CRMs. An important issue here will be the final shape of the new horizontal due diligence laws. The 2021 EU [trade policy review](#) underlines that supply chains that are sustainable are also more resilient. It will be of fundamental importance that this push for greener supply chains is reinforced by a broader global shift to a more sustainable and environment-friendly future – as the [US](#) and [China](#) indicate.

It will also be important to see how the issue of CRMs supply chains resilience, which broadly underpins the resilience and autonomy of the EU's industrial, defence and security sectors, will be addressed in the context of building open strategic autonomy. The topic is gaining ground in the [debate](#) on the new orientation of the EU, and there are useful initiatives such as the [European Raw Materials Alliance](#), which aim to increase industrial resilience. However, CRMs strategy still seems scattered across various policies and programmes, often as a part of broader instruments, not unlike the [industrial policy](#). The May 2021 [update of the EU industrial strategy](#) could be a step in the right direction. Recent challenges, such as the [semiconductors shortage](#), underline that the EU is experiencing strategic dependencies on third countries. The pandemic exposed these vulnerabilities and led some countries, such as the US, to reassess their positions in global value chains, also as regards CRMs.

The Commission carried out six [in-depth reviews](#) of strategic areas, including on raw materials, batteries, and semiconductors. The next step will be to bring together the Member States, industry and social partners for a deeper analysis and ways to address the strategic dependencies identified in these reviews (later, through the technologies key to the twin transition). This may be a clear signal of a strategic shift in the EU. On the global scene, the US made the need to build up supply chain [resilience](#) a strategic, long-term goal, not only because CRMs are indispensable for green technologies but also because the US [defence industry](#) is [involved](#) in the sourcing policy while also [dependent](#) on CRMs – their [application](#) includes jet fighter engines, missile guidance systems, antimissile defence, drones and satellite and communication systems. The EU [defence industry](#) is just as dependent on CRMs, a fact underlined by the [JRC foresight study](#), which recommended that the EU, Member States and firms start formulating resource-specific security strategies in their management planning. Certainly, success of initiatives such as the [Future Combat Jet System](#) and broadly, of the EU [integrated defence industry](#), hinge on access to CRMs. Increasing importance of the EU [security and defence policy](#) and the new quest for building resilient supply chains will provide further opportunities to develop the CRMs policy of the future.

Finally, it remains to be seen how the growing ambitions for [open strategic autonomy in CRMs](#) and reshaping of the global supply chains will play out vis-à-vis the realities of funding. Despite the shift towards a stronger [geopolitical](#) role of the EU and the growing need for effective and robust external policies in an increasingly assertive world, [funding](#) for external actions in the 2021-2027 MFF has only been marginally increased compared to the 2014-2020 period. The agreed amount is way below what the [Parliament](#) called for.

## MAIN REFERENCES

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## ENDNOTES

- <sup>1</sup> The list, updated in September 2020, includes: antimony, hafnium, phosphorus, barite, heavy rare earth elements, scandium, beryllium, light rare earth elements, silicon metal, bismuth, indium, tantalum, borate, magnesium, tungsten, cobalt, natural graphite, vanadium, coking coal, natural rubber, bauxite, fluorspar, niobium, lithium, gallium, platinum group metals, titanium, germanium, phosphate rock, and strontium.
- <sup>2</sup> The OECD does not monitor all 30 CRMs. Nevertheless, this data gives a good indication, as 22 CRMs are covered: antimony, barite, rare earth elements, beryllium, light rare earth elements, tantalum, borate, magnesium, tungsten, cobalt, natural graphite, vanadium, coking coal, bauxite, fluorspar, niobium, lithium, platinum, titanium, germanium, phosphate rock, and strontium.
- <sup>3</sup> The EU monitors the trade barriers on raw materials markets through the Market Access Advisory Committee (MAAC) and various working groups composed of representatives of the Member States.
- <sup>4</sup> This landmark trade case concerned, among others, four CRMs: fluorspar, magnesium, silicon metal, and phosphorus. The WTO declared that the challenged export restrictions (i.e. export duties, export quotas, export quota administration and allocation and export licensing requirements, the latter with a few exceptions) were [inconsistent](#) with WTO law, since they could not be justified by any of the GATT exemption clauses.
- <sup>5</sup> It is worth noting that the first efforts of the EU to actively engage with the CRMs exporters date to the 1980, when the [SYSMIN](#) instrument was established. It was created because of price fluctuations and issues with the security of supplies of minerals. It also sought to help address the [challenges](#) facing the mining industry in the ACP countries.
- <sup>6</sup> Article 11.3 of the [Accession Protocol](#) states that China shall eliminate all taxes and charges applied to exports unless specifically provided for in Annex 6, which contains 84 tariff lines with maximum levels of export duties. Of the 30 CRMs, antimony, tungsten and phosphorus are included with a maximum allowed export tax of 20 %, and niobium, tantalum and vanadium with a maximum allowed export tax of 30 %.
- <sup>7</sup> The pre- and post-establishment rules refer to both the entry conditions and the conditions under which an investment operates. Usually, foreign investors and their investments should be treated on terms no less favourable than those applicable to domestic investors (national treatment) or those from third countries (most-favoured-nation treatment).
- <sup>8</sup> The bound rates are those listed in members' schedules or lists of commitments.
- <sup>9</sup> Both also have specific, deeper relations with the EU: Ukraine has an [association agreement](#) and Kazakhstan an [enhanced partnership and cooperation agreement](#).
- <sup>10</sup> Currently, there are seven EPAs with [31 partners](#). These are under (provisional) application. Two others, with West Africa and the East African Community, have been concluded but not yet ratified.
- <sup>11</sup> For example, the EAC EPA allows keeping existing export taxes. In the SADC EPA, existing export taxes are allowed, but new taxes are prohibited, with some important exceptions. [Article 26](#) authorises SADC countries, after consultation with the EU, to introduce temporary export duties in exceptional circumstances for revenue needs, for the protection of infant industries or the environment, or to ensure food security (for a very limited number of products).
- <sup>12</sup> Responsible sourcing means obtaining the CRMs in ways that respect human rights, protect human and environmental health, and address unwanted phenomena such as forced labour, child labour, human trafficking, slavery and proceeds fuelling armed conflicts.

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