

# United States Senate

WASHINGTON, DC 20510

October 24, 2023

The Honorable Katherine Tai  
United States Trade Representative  
600 17<sup>th</sup> Street NW  
Washington D.C. 20508

The Honorable Janet Yellen  
Secretary, U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, D.C. 20220

The Honorable Jennifer Granholm  
Secretary, U.S. Department of Energy  
1000 Independence Avenue SW  
Washington, D.C. 20585

The Honorable Gina Raimondo  
Secretary, U.S. Department of Commerce  
1401 Constitution Avenue NW  
Washington D.C. 20230

## **Re: Concerns Regarding a Potential Critical Minerals Trade Agreement**

Dear Ambassador Tai, Secretary Yellen, Secretary Granholm, and Secretary Raimondo,

We write to express concern regarding media reports of a potential critical minerals “limited free trade” agreement between the United States and Indonesia.<sup>1</sup> We understand the Administration’s goal with these sector-specific trade agreements is to expand the number of countries that meet the qualification standards set by Congress in the Section 30D tax credit, as amended by the Inflation Reduction Act (IRA). A full accounting of the domestic sourcing opportunities, both short- and long-term has not been adequately developed, and the sourcing opportunities from countries that presently have a free trade agreement and qualify under the common-sense meaning of that term has not been provided. We also have concerns regarding Indonesia’s standards for labor rights, environmental protection, safety, and human rights. Indonesia also has laws restricting trade in critical minerals, and last year was publicly proposing an OPEC-like cartel for nickel-producing countries – policies that are clearly antithetical to “free trade agreements.”<sup>2</sup>

The Section 30D tax credit, as amended by the IRA, provides subsidies to incentivize the transition to electric vehicles (EVs) in the U.S., and seeks to strengthen the domestic EV and battery manufacturing capability through content sourcing and recycling requirements. Recognizing the substantial scale of mineral supply necessary to achieve its policy ends, Congress included countries with free trade agreements in the Section 30D eligibility requirement for battery raw materials. While additional free trade agreements were contemplated, pursuing additional critical mineral “free trade agreements” without the involvement of Congress, before the development of domestic mineral resources, and without achieving meaningful and enforceable standards for labor and environmental protections would undermine the intent of Congress and undermine the jobs and futures of our workers.

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<sup>1</sup> “Indonesia proposes critical minerals trade deal with US, published on September 7, 2023 <https://www.reuters.com/business/indonesia-proposes-critical-minerals-trade-deal-with-us-2023-09-07/>

<sup>2</sup> “Indonesia Wants an ‘OPEC-like’ Organization for Nickel,” Bloomberg, published on November 16, 2022, <https://www.bloomberg.com/news/articles/2022-11-16/indonesia-wants-an-opec-like-organization-for-nickel#xj4y7vzkg>

Nickel is one of the most significant minerals in the battery supply chain and is also used in several defense applications. The Federal government added nickel to the U.S. critical minerals list in 2020, and nickel has been designated by President Biden under Title III of the Defense Production Act of 1950, as amended, as “essential to the national defense.” By 2050, global nickel demand is expected to range from 2 million metric tons, where 40% of vehicles are electric, to 5.2 million metric tons, where 100% of vehicles are electric – topping the expected demand for other critical minerals.<sup>3</sup> While Indonesia is the world’s largest producer of nickel, it has historically used its low-grade laterite deposits from open pit mines to supply the stainless steel industry.<sup>4</sup> As EVs have increased in demand, the country is increasingly seeking to refine these low-grade ores into high-grade nickel suitable for production of batteries.

These expanding nickel operations in Indonesia raise several concerns regarding a potential critical mineral free trade agreement, including:

***WEAK LABOR PROTECTIONS:*** The nickel mining and refining sector in Indonesia is fraught with labor concerns. In January of this year, a riot broke out on Sulawesi Island at a nickel smelter over poor safety conditions and declining wages, resulting in the deaths of two people.<sup>5</sup> Reports on working conditions include long working hours without breaks, cuts in pay, and lack of proper safety and respiratory gear.<sup>6</sup> In addition, Indonesia has undermined existing labor rights through changes to its Omnibus Law.<sup>7</sup>

***CHINESE DOMINANCE OF INDONESIAN MINING AND REFINING:*** Investment by companies from the People’s Republic of China (PRC) in the nickel sector in Indonesia reached \$3.6 billion in the first half of 2022 alone. Indonesia now has three plants capable of producing 164,000 metric tons/year of Mixed Hydroxide Precipitate (MHP), a nickel intermediate suitable for battery production, and over 25 more such plants have been proposed. All but three involve PRC companies.<sup>8</sup>

***SIGNIFICANT BIODIVERSITY IMPACTS OF OPEN PIT MINING AND LACK OF ENVIRONMENTAL PROTECTIONS IN LAW:*** Nickel mining in Indonesia is done through

<sup>3</sup> “Critical metal needs rise while cars, trucks decarbonize,” Cornell Chronical, published April 11, 2023, <https://news.cornell.edu/stories/2023/04/critical-metal-needs-rise-while-cars-trucks-decarbonize>

<sup>4</sup> “Indonesia’s Electric Vehicle Batteries Dream has a Dirty Nickel Problem,” The Brookings Institution, published on September 21, 2022, <https://www.brookings.edu/blog/up-front/2022/09/21/indonesias-electric-vehicle-batteries-dream-has-a-dirty-nickel-problem/>

<sup>5</sup> “Violence at Indonesia nickel smelter protest kills 2, dozens detained,” Bangkok Post, published January 16, 2023, <https://www.bangkokpost.com/world/2483789/violence-at-indonesia-nickel-smelter-protest-kills-2-dozens-detained>

<sup>6</sup> “Chinese nickel workers file complaint to Indonesia’s rights body over work conditions,” Reuters, published February 24, 2023, <https://www.reuters.com/markets/commodities/chinese-nickel-workers-file-complaint-indonesias-rights-body-over-work-2023-02-24/>

<sup>7</sup> “Indonesia’s emergency labour regulation changes spark worker anger a year out from election, but Jokowi’s government is unwavering,” The Conversation, published January 13, 2023, <https://theconversation.com/indonesias-emergency-labour-regulation-changes-spark-worker-anger-a-year-out-from-election-but-jokowis-government-is-unwavering-197281>

<sup>8</sup> “China Has Sewn Up a Critical Metals Market,” Foreign Policy, published April 17, 2023, <https://foreignpolicy.com/2023/04/17/china-indonesia-nickel-metals-inflation-reduction-act/>

open pit mining of low-grade laterite nickel deposits, which causes deforestation. These mining operations also often lead to landslides and the pollution of drinking water supplies and coastal waters.<sup>9</sup> Earlier this year, a freedom-of-information ruling in Indonesia revealed that two nickel mining entities may have been operating – and polluting a nearby river – without having all the required permits in place.<sup>10</sup> Not only can these practices be very damaging to the environment, but they call into question the ability of the U.S. to enforce proper regulation and oversight of mining operations conducted under a limited free trade agreement.

***WASTE PRACTICES THAT IMPACT OCEAN HEALTH:*** A primary impact of poorly operated open pit mining in the island nation is the pollution run-off into the ocean. Off the coast of the Obi Islands, the sea has become muddied. In addition, fishermen in coastal communities are having to travel further and further out to sea to find fish stocks that are unaffected by the pollution from disposed mine tailings from uplands rivers.<sup>11</sup>

***LACK OF COMMUNITY ENGAGEMENT:*** Local villagers in the main mining and refining regions are expressing concern about the negative impacts they are facing, particularly regarding farming and access to community infrastructure, such as clean water access. Some communities have gone so far as taking shifts to physically guard and protect their farmlands and community infrastructure from the encroachment of new projects.

***SIGNIFICANTLY HIGHER EMBEDDED CO<sub>2</sub> FOOTPRINT OVER U.S., AUSTRALIAN OR CANADIAN NICKEL PRODUCTION:*** From nickel extraction to processing, operations in Indonesia have a significantly higher carbon-footprint than that of the U.S. and existing free trade partners. According to the International Energy Agency, producing EV-grade nickel from laterite ore resources, like those in Indonesia, releases two- to six-times more CO<sub>2</sub> emissions than producing high-grade nickel from sulfide deposits, such as those being produced in the U.S.<sup>12</sup> In addition, nickel processing in Indonesia is also particularly carbon-intensive.

On the other hand, the U.S. and allies such as Australia and Canada are actively scaling domestic nickel production. Domestic and allied nickel producers have pledged and proven to operate under the highest environmental and workforce standards, prioritizing good and fair labor practices, properly managing and recycling waste streams, operating at lower carbon footprints, and working in conjunction with the public and interest groups as well as local, state, tribal and Federal governments, to ensure taxpayers have a say in what happens in their communities.

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<sup>9</sup> “In Indonesian Mining Region, the EV Boom Takes a Heavy Toll,” YaleEnvironment360, published August 22, 2022, <https://e360.yale.edu/features/2022-film-contest-winner-indonesia-nickel-mining>

<sup>10</sup> “FOIA lawsuit suggests Indonesian nickel miners lack environmental licenses,” Mongabay News, published January 24, 2023, <https://news.mongabay.com/2023/01/indonesia-nickel-mining-batteries-ev-environmental-license-foia/>

<sup>11</sup> “‘The trees were all gone’: Indonesia’s nickel mines reveal the dark side of our electric future,” EuroNews, published March 15, 2023, <https://www.euronews.com/green/2023/03/15/the-trees-were-all-gone-indonesias-nickel-mines-reveal-the-dark-side-of-our-electric-future>

<sup>12</sup> “GHG emissions intensity for class 1 nickel by resource type and processing route,” International Energy Agency, accessed July 19, 2023, <https://www.iea.org/data-and-statistics/charts/ghg-emissions-intensity-for-class-1-nickel-by-resource-type-and-processing-route>

We recognize that Indonesia plays a strategic role in the Indo-Pacific region and has the potential to become a partner in an enhanced economic relationship through the Indo-Pacific Economic Framework for Prosperity (IPEF). Minerals and metals from Indonesia currently enjoy full access to the U.S. market, as well as most favored nation tariff status. Indonesian-sourced minerals are fully available to automakers, battery manufacturers, or other energy manufacturers in the U.S. However, given the extraordinary taxpayer resources at play, we strongly believe that eligibility for the critical minerals credit must prioritize domestic producers and existing free trade agreement partners. If expansion is deemed necessary, it should be directed toward countries with strong labor, human rights and environmental standards.

We urge the Administration to include these concerns in its considerations of any expanded access for critical minerals.

Sincerely,



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Tina Smith  
United States Senator



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Kevin Cramer  
United States Senator



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John Fetterman  
United States Senator



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Tammy Baldwin  
United States Senator



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Joe Manchin III  
United States Senator



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Sherrod Brown  
United States Senator

*Amy Klobuchar*

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Amy Klobuchar  
United States Senator

*Lisa Murkowski*

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Lisa Murkowski  
United States Senator

*Bill Cassidy, M.D.*

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United States Senator