Before the Internal Revenue Service (IRS), Treasury Docket Number REG-120080-22

Comments from 350.org, Citizens Trade Campaign, Earthworks, Global Exchange, Green America, Greenpeace USA, Institute for Agriculture and Trade Policy, Interfaith Power & Light, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Maryknoll Office for Global Concerns, Mighty Earth, NETWORK Lobby for Catholic Social Justice, Presbyterian Church (USA) Office of Public Witness, Public Citizen, and Sierra Club

Regarding the Section 30D New Clean Vehicle Credit

June 16, 2023

Our organizations welcome the opportunity to provide comments in response to proposed regulations for the electric vehicle (EV) federal income tax credits under the Inflation Reduction Act of 2022 (IRA). The proposed rule includes guidance to ensure compliance with the Critical Minerals Requirement throughout supply chains. In particular, we offer comment on the proposed criteria for identifying countries with which the United States has "free trade agreements" in effect in § 1.30D–3(c)(7)(i), other potential approaches for identifying those countries, and the list of countries set forth in proposed § 1.30D–3(c)(7)(ii).

There is an urgent need to source critical minerals for electric vehicle batteries if the U.S. is to be successful in rapidly increasing the number of electric vehicles on the road. However, if we want to achieve a clean energy transition that is both just and equitable, it is critical that, in the process of sourcing those minerals, we do not contribute to worker exploitation and environmental degradation in the communities where these minerals are located. It is also important that the IRS and Treasury not undermine the intent of Congress in designing the legislation to onshore supply chains for technologies of the future.

The IRA requires that, to meet the Critical Minerals Requirement, a certain percentage of the value of critical minerals used in an EV battery must be extracted or processed in the United States or in any country with which the United States has a free trade agreement in effect, or recycled in North America.

The proposed criteria for determining qualifying free trade agreements in the IRS and Treasury guidance is both vague and inadequate, raising serious concerns both for the substance and process of negotiating such agreements. If adopted without significant changes, this guidance would promote minerals mined under dirty and dangerous conditions to be processed in a third country with a "free trade agreement" and then qualify for IRA tax credits.

The U.S.-Japan Critical Minerals Agreement (CMA), which is listed in the proposed guidance as a qualifying free trade agreement under Treasury's criteria, raises grave concerns. **The text of this CMA that refers to labor rights and environmental protections is not binding or enforceable**.

The agreement's relevant provisions are phrased as the party only "confirms its intention to" or "shall endeavor to" or the parties "recognize."[1] The only binding "shall" language in the text concerns a vague commitment to coordinate and to share information on labor protections "to the extent permissible under the laws of each Party." Even this limited requirement is missing from the section on environmental protections.

And none of these vague provisions is subject to any enforcement mechanism.

This represents a worrying step backward from the already insufficient labor and environmental standards and enforcement mechanisms that have been included in U.S. Free Trade Agreements for the past two decades. Any IRS guidance that permits agreements with weak and unenforceable standards to qualify a country's minerals for tax credits means the U.S. government directing taxpayer dollars to incentivize dirty, dangerous, and/or exploitative mining practices.

While one of the four criteria identified for a qualifying free trade agreement "establishes high-standard disciplines in key areas affecting trade (such as core labor and environmental protections)," this language is far too vague to ensure that strong and enforceable standards would need to be included in an agreement to qualify. Indeed, Treasury's claim that the U.S.-Japan CMA meets this criterion, when it does not include binding or enforceable language, threatens to undermine the progress made in recent years in inserting binding and enforceable labor standards into trade deals. Even more problematic in the guidance is the fact that only one of the four criteria must be met to qualify as a free trade agreement ("and/or"), meaning a pact that does not even mention labor and environmental standards could qualify as a free trade agreement under the proposed guidance.

There are numerous well-documented instances of labor and environmental abuse in both the mining and processing of critical minerals. Since 2015, mining has consistently been the most dangerous sector for human rights defenders globally. Battery makers who supply to companies like Volkswagen and Samsung source their minerals from mining subsidiaries who use child labor, which the International Labour Organization (ILO) has documented remains a grave concern across the entire industry. Numerous incidents of human and environmental rights violations have been documented in nickel mines in Indonesia and the Philippines. Lithium mining in Latin America has been linked to the illegal depletion of scarce water supplies, threatening one of the most critical ecosystems in the world with no

[1] Eg. "2. Each Party confirms its intention to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection with respect to critical minerals and confirms its intention to continue to improve its respective levels of environmental protection with respect to the critical minerals lifecycle and trade in critical minerals. 3. The Parties recognize the importance of traceability and transparency throughout critical minerals supply chains to ensure responsible sourcing of critical minerals."

redress for impacted communities. Toxic chemicals like lead and mercury are used in metals mining, posing significant threats to both public health and the environment. Industry experts are clear that mining requires more regulation and oversight. And yet the language in the Treasury guidance is weak, allowing CMAs to move forward without any enforceable labor or environmental standards. In practice, this would allow corporations to essentially "launder" critical minerals through countries with these qualifying "free trade agreements" despite having extracted and/or processed them under exploitative and coercive circumstances.

In addition to these serious substantive concerns, the U.S. Japan CMA was rapidly concluded without meaningful stakeholder or congressional involvement. Allowing the U.S.-Japan CMA and any other CMAs under negotiation that follow its template to qualify would set a worrying precedent that so-called "free trade agreements'' can be concocted out of thin air, with no public or congressional scrutiny, to appease other countries unhappy with our domestic legislation. **The process under which the U.S.-Japan CMA was negotiated and announced has raised even more serious concerns** than those raised over many years with respect to the lack of transparency and civil society participation in U.S. trade policymaking. There was no prior announcement that the negotiations were even happening, no public comment period or meaningful congressional oversight, and a rushed announcement of a final deal just prior to the release of Treasury's IRA guidance. Congressional leaders on a bipartisan basis have strongly criticized the U.S.-Japan CMA, as they consider it an unacceptable attempt to skirt their constitutional authority over trade agreements.

By signing such CMAs that lack binding and enforceable standards in our EV supply chain, the U.S. government could further incentivize the abuse of vulnerable populations in the Global South while also undermining the intent of the IRA to bolster job opportunities for U.S. workers by outsourcing to countries with atrocious labor conditions, questionable human rights records and weak environmental standards. To ensure a clean energy transition that is both just and equitable, the IRA tax credits should instead incentivize a race to the top by requiring strong and enforceable labor, environmental, and human rights standards from the extraction and processing of raw materials to all stages of manufacturing.