

# **Critical Raw Multilateralism-Anemia**

The EU's struggle with Effective Multilateralism in CRM trade

Word count: 16,952

**Arne Cuvelier**

Student number: 01602670

Supervisor: Prof. Dr. Sven Biscop

A dissertation submitted to Ghent University in partial fulfilment of the requirements for the degree of Master of International Relations

Academic year: 2023 – 2024



## Content

I.	Introduction .....	1
II.	Effective Multilateralism .....	3
1.	The Concept of Effective Multilateralism and its decline .....	3
a.	The inefficiencies of global governance frameworks .....	3
b.	Trade multilateralism .....	4
c.	The European Union's Promotion of Effective Multilateralism .....	5
2.	The concept of (Effective) Minilateralism.....	6
a.	Minilateralism .....	6
b.	Critical Raw Material governance .....	6
c.	Hollowing out global governance .....	7
III.	The European Union and its Industrial Policy .....	8
1.	Strategic Autonomy .....	8
a.	The origin of strategic autonomy .....	8
b.	Caught by surprise? .....	8
c.	Open Strategic Autonomy .....	9
d.	Implications for the green transition .....	10
2.	The CRMA .....	11
a.	Background .....	11
b.	The climate factor .....	12
c.	Scope of the CRMA.....	14
IV.	Effective Multilateralism and the CRMA.....	18
1.	Background.....	18
2.	Trade Diversion and the “Spaghetti Bowl Phenomenon” .....	18
3.	The way forward.....	19
a.	Economic Partnership Agreements.....	19
b.	The problems with bilateral trade agreements – the case of Mercosur-EU.....	23
4.	The Critical Raw Materials Club – Effective Multilateralism?.....	26
a.	Background.....	26
b.	Membership .....	27
V.	What with the GATT? .....	28

1.	Background.....	28
2.	Analysis of the EU's actions and compliance with GATT.....	28
a.	Most Favoured-Nation principle.....	29
b.	Quantitative barriers .....	31
c.	Exemptions .....	32
d.	Dispute Settlement.....	34
VI.	Final considerations and policy recommendations.....	35
1.	Conclusion .....	35
2.	Policy recommendations.....	35
VII.	Endnotes.....	38

### **Abstract (ENG)**

This policy report attempts to analyze international trade in Critical Raw Materials from a European perspective by looking at the interaction between two key topics: the concept of Effective Multilateralism, where its decline and slow replacement with “Effective Minilateralism” will be discussed, and the European Union’s Open Strategic Autonomy, leading to the Green Deal Industrial Policy containing the landmark Critical Raw Materials Act. The report will analyze if the Critical Raw Materials Act threatens Effective Multilateralism, despite the European Union being a staunch defender of the principle, and if so, to what extent. This will be done by both looking at the impact on trade and other relations with third party countries, and by comparing some of the key aspects of the Critical Raw Materials Act with the General Agreement on Tariffs and Trade from a more legal perspective. Each chapter will include a short analysis of what the impact is or could be on the existing multilateral framework, and why this is relevant.

### **Abstract (NL)**

Dit beleidsrapport probeert de internationale handel in kritieke grondstoffen vanuit een Europees perspectief te analyseren door te kijken naar de interactie tussen twee belangrijke thema’s: het concept van *effective multilateralism*, waarbij de achteruitgang en langzame vervanging ervan door "effectief minilateralisme" zal worden besproken, en de open strategische autonomie van de Europese Unie, die heeft geleid tot het *Green Deal Industrial Policy* met de historische *Critical Raw Materials Act*. Het rapport zal analyseren of de Critical Raw Materials Act een bedreiging vormt voor *effective multilateralism*, ondanks dat de Europese Unie een fervent verdediger van het principe is, en zo ja, in welke mate. Dit zal worden gedaan door zowel te kijken naar de gevolgen voor de handel en andere betrekkingen met derde landen, als door enkele van de belangrijkste aspecten van de Critical Raw Materials Act te vergelijken met de *General Agreement on Tariffs and Trade* vanuit een meer juridisch perspectief. Elk hoofdstuk bevat een korte analyse van wat de impact is of zou kunnen zijn op het bestaande multilaterale kader, en waarom dit relevant is.

*„Cooperate where you can, push back where you must”*

*Sven Biscop*

## Acknowledgements

With every Thesis, a preface is necessary so its writer can thank people that had an impactful influence on either the Thesis itself or the life choices leading them here. This dissertation is no different; I would, like many have done before me, thank some notable people without whom this piece of work would not have existed, let alone in this state. First of all, I would like to thank my promotor, Professor Doctor Sven Biscop, for quickly accepting me as a thesis researcher and allowing me to explore my subject freely, providing interesting and thought provoking courses on the concept of Grand Strategy and the European stance in the world, but ultimately for allowing me to be a Research Intern at the prestigious Egmont Royal Institute for International Relations; my internship has allowed me to partake in some very interesting and topically relevant formal and informal panels that have both allowed me to gain a deeper understanding of the world around me and also added a significant amount of valuable information to process in this Master's dissertation.

Secondly I would like to express my sincerest thanks to the esteemed experts I met through the Egmont Institute which all have provided their own take on this subject and have answered all of my questions all the while providing valuable insights and ideas which I had not thought of before; a special mention in this regard goes out to Doctor Reinhold Brender, who made me first and foremost think of the direction I needed to go in before actually researching material, as to prevent me aimlessly wandering around the internet only to write something that has been written before. I would like to take time to thank the people from the United Nations Sustainable Energy Division, as even though I am an intern in Environment myself, they have eagerly welcomed me in their office as if I was one of their own.

Lastly, as with any scripture, the author would not be anywhere without the supportive cast of friends, family, and other loved ones. I wish to thank both Pieter Stalpaert and Levi Andries for remaining supportive of my endeavors, especially as both of them are also students that arrived in International Relations after finishing another degree. Secondly, I would like to express my heartfelt thanks to the friends I made during my internship at the United Nations in Geneva; they are some of the most ambitious and inspiring people I have met in my life, and it has been a joy to talk about them regarding my progress or to write my thesis together with some of them. I would of course like to thank my mother for proofreading the final version to check for spelling and grammar mistakes, and my father for providing the necessary moral support through my entire academic journey so far. Finally, I'll end by thanking my girlfriend for being patient and understanding regarding the limited amount of time and attention I could offer her during my last semester of university and being generally supportive of anything I do in life.

## I. Introduction

This policy paper will focus on one of the key areas of multilateralism: trade, but with a special focus on critical raw materials. Ultimately, the scope of this dissertation is in that sense straightforward: to give an overview of the European Union's industrial policy and engagement pertaining to cooperation and problem-solving regarding trade in critical raw materials on a level which supersedes the borders of any single nation-state, or, in case of the Union, its own territory; the focus therein will be the support it gives to the existing multilateral framework regarding critical raw materials, and more concretely, the implications therein of the Critical Raw Materials Act. But, as is often the case, in simplicity lies complexity: the European Union's foreign policy is complex, helmed by its own institutions but steered by its member states. As the first half of the second decade in the 21<sup>st</sup> century is proving to be extraordinarily turbulent, it has become apparent that the peaceful resolution of supernational problems is not as self-evident as was expected when the United Nations were created following what people hoped to be the last World War. The EU must navigate rough waters, all the while trying to find compromise between the standpoints of others and attempting to realize its own role as great power. The topic of foreign trade is herein but one of the problems it must tackle, but it is nevertheless an excessively important one.

Multilateralism has recently lost more and more ground to multipolarity through "great power politics", while the resulting lack of cooperation and destabilization, among other causes, resulted in extensive conflict with seemingly no "satisfactory" end in sight. The EU is currently meandering through a difficult geopolitical landscape while struggling to find a proper role or clear objective for itself and is mostly regarded as a party seeking a compromise between others instead. During its own identity finding, the region is also plagued by instability and conflict surrounding its borders. Many people tend to be absorbed by the primary conflict in the European "backyard", namely the war in Ukraine, a desperate attempt of Vladimir Putin to cling on to great power status while trying to maintain a positive approval rating domestically. However, one could argue that this led to "tunnel visioning": Ukraine might be problematic, but it is not the only issue at hand. The Union is plagued by an increasingly unstable Sahel-region, where an infectious wave of coup d'états is spreading across the width of central Africa and destabilizing nascent democratic systems by replacing them with authoritarianism once more, while causing the local population to reject European influence in favor of geopolitical rivals Russia and China.

There is also the war between Israël and Palestina, where humanitarian atrocities are committed on an almost daily basis, and where the West seemingly fails to reach a conclusion due to historical accountabilities and political arguments. This conflict has caused ripples in the entire region, and as Houthi-rebels attempted to take control of the geoeconomical Red Sea-artery, the EU failed to swiftly take a unified stance on how to protect one of its vital interests, leaving an international “coalition of the willing”, once again led by the United States, to respond with force to the Iran-funded rebel group. These conflicts, and the lack of proper EU response to them, have caused many of the so-called “Global South” to judge the EU for its “double standards”. They wonder why the EU spends so much time and resources backing Ukraine, while they receive only a small amount of development assistance or vocal support in comparison. This, coupled with the “Rise of the East”, have caused countries to look towards China for support. As China’s market share in renewables and critical raw materials keeps rising, and the EU’s dependency on these materials and goods keeps growing, it remains to be seen how much of the diplomatic power of the EU has been damaged.

Given cooperation on the international level to find a solution, preferably in the lap of United Nations institutions, to problems which stretch far beyond the borders of a single nation, is one of the EU’s main foreign policy pillars, UN-based global governance and its rules-based world order are to be preserved and safeguarded. So, what can the EU realistically do?

## II. Effective Multilateralism

### 1. The Concept of Effective Multilateralism and its decline

#### a. The inefficiencies of global governance frameworks

Multilateralism has generally been defined as organizing foreign relations between three or more states, either through ad hoc arrangements or more robust institutions<sup>1</sup>, yet this definition has been proven somewhat incomplete: it only speaks of the number of parties involved, without addressing its effectiveness, or what *Ruggie* meant with “substantiality”<sup>2</sup>. Institutions, no matter how “multilateral”, can prove to be ineffective if they do not achieve what they set out to do; examples of inadequacies can be found aplenty in global environmental governance, where *Dimitrov*<sup>3</sup> alerts the public to the problem of deliberately constructed empty multilateral institutions which by design cannot construct any form of policy. Fortunately, there is no need to claim that the 1940’s multilateral institutions such as the United Nations (UN) or those constructed under the Bretton-Woods system were intentionally made to fail in producing any form of policy, but it has become clear that the Western view on the concept of “effective multilateralism” no longer appropriately meets the needs and wants of non-Western countries.

This decline of relative effectiveness of the multilateral system has been statistically documented: the International Peace Institute’s Multilateralism Index<sup>4</sup> points towards a substantial decrease of performance in four out of five defined “key areas” of multilateral cooperation<sup>1</sup>; only global health governance had an increase due to the lagging support given to the World Health Organization amid the COVID-19 crisis. One of the main problems with the current rules-based, UN-centered international order can be found in the contempt formed towards it by what is called, for lack of a better term, the Global South. The term was coined to surmise a lot of emerging or developing economies playing an increasingly important role in the global system, mostly found in Latin America, the Indo-Pacific and Africa. These regions push for reform of institutions like the UN, not because they wish to be rid of it, but because they feel like they have been denied the possibility to join matters of global governance themselves. This can clearly be seen in the main goals of the 2024 Brazilian G20 Presidency<sup>5</sup>: the third pillar of this year’s G20 track will be the reform of global governance institutions. This idea is largely supported by the EU, which is also promoting a global governance adapted to face the challenges of its time<sup>6</sup>.

---

<sup>i</sup> The 5 defined key areas consist of Environment, Health, Human Rights, Trade and Peace & Security



## b. Trade multilateralism

The decrease of trade multilateralism is as visible as its rising importance; the Multilateralism Index shows that multilateralism-based trade has been on the decline, with parties preferring bilateral Free Trade Agreements (FTA's) compared to multilateral ones, while the amount of voluntary donations to the UNCTAD, United Nations' primary body for (statistical) research regarding trade, development and its barriers, has seen a similar downward trend<sup>7</sup>. The COVID 19-crisis has further enhanced the struggles of trade globalization: worldwide, there were 2608 new trade-inhibiting domestic policies adopted in 2020. And even though by now the shock caused by the pandemic has largely been overcome, the "re-globalization" of trade has been slowed down by geopolitical concerns: the top 3 of State-based interventions that inhibit trade are based on "Strategic Competitiveness", "Climate Change Mitigation" and "Resilience/security of (non-food) supply". Indeed, geopolitics is playing a major role in the actions of states.

The Trade Monitoring Report of the World Trade Organization (WTO)<sup>8</sup> shows that there has a slow growth of global trade since COVID, with 303 trade facilitating measure versus 193 trade inhibiting measures between 2022 and 2023, but for the third time since the creation of the trade monitoring database in the wake of the financial crisis of 2008, states have imposed more export restrictions than import restrictions, pointing towards an increased sense of understanding regarding the importance of certain commodities or resources that only they can offer. The increasing dominance of geopolitics in trade mentioned before plays a major role when it comes to meeting the climate objectives and succeeding in a clean energy transition.

Many aspects therein, such as the increasing importance of renewables, are highly dependent on the supply of Critical Raw Materials (CRMs) and Strategic Raw Materials<sup>9</sup>. This can prove to be a critical bottleneck for the EU's coveted climate leadership if the limited suppliers available on the market choose to implement protectionist measures, causing the Union to fail in gaining access to sufficient supplies to meet its needs. These geopolitical games and the problems they can cause were already observable in 2010 when China restricted the export of its rare earth elements<sup>10</sup>, prompting a WTO ruling. The limitations are further exacerbated by the Union's own lack of minerals, causing a dependency on the few suppliers available on the market. This emphasizes the need for a multilateral approach: on the one hand, institutions like the WTO are necessary to prevent free trade restrictions, while on the other hand, multilateralism facilitates pathways for diversification and cooperation.

### c. The European Union's Promotion of Effective Multilateralism

However, even long before its alleged decline, the European Union has been on the forefront when it came to fighting for its vision of Effective Multilateralism, emphasizing the importance of a rules-based international order centered on institutions like the UN and the WTO. Effective multilateralism is a cornerstone of the EU's external relations<sup>11</sup> and is enshrined in its key strategic documents. The EU views multilateralism not just as a diplomatic tool, but as a means to ensure global stability, prosperity, and adherence to international law. The aforementioned decline of multilateralism is therefore of particular concern for the European Union, perhaps the most advanced form of multilateral cooperation found on the international stage: receiving an albeit weak foreign policy competence under the Maastricht Treaty of 1992, it nonetheless already made UN-based global governance the backbone, with its importance also visible in the Treaty on the European Union (TEU)'s article 21.

The resulting European notion of “effective multilateralism” was mentioned as a vital principle in the 2003 European Security Strategy, where it similarly called for an international, rules-based order with the United Nations and its organs as the central pillar around which most of the global governing should be done. Just like the Multilateralism Index, the TEU provides a summary of what it defines as requiring international cooperation in article 21(2), and those subjects can largely be grouped in a similar way: next to the safeguarding of its own values and interests, it seeks to cooperate on matters of (b) human rights, (c) peace & security, (d) sustainable development (which includes health), (e) trade and lastly (f and g) environment.

It is thus clear that the EU's promotion of multilateralism extends, or at least should extend, to the global trade system, with likely the WTO as the primary forum for negotiating trade rules and resolving disputes. From a European foreign policy perspective, this would reflect the goal of exporting the values it defends under its own Internal Market system, which has traditionally focused on creating a level playing field, emphasizing non-discrimination, transparency, and the rule of law. Recent policy communications of the European Commission still put Effective Multilateralism on the foreground, but as mentioned before, “effective multilateralism” is more than just creating, having or supporting institutions; they also need to be able to produce policy and contribute to international governance.

## 2. The concept of (Effective) Minilateralism

### a. Minilateralism

Minilateralism is a concept that can be defined as “multilateralism but small”; despite the political sciences defining multilateralism as relations between three or more countries and sometimes institutionalized, the general public more easily associates the concept with institutions like United Nations or the World Trade Organization. These big institutions provide fora where most if not all countries in the world can find each other to discuss a myriad of topics of contemporary interest or importance. However, this also means that these bureaucratic giants are often slow and lag behind on what is currently a problem. This is where minilateralism came from; smaller, sometimes regional groups of countries which are often like-minded, band together to tackle the problem in what they consider the best way possible<sup>12</sup>. The unmatched flexibility and speed of these minilateral frameworks also make them ideal tools to pursue geopolitical goals. A clear example is the balancing efforts against Asian regional hegemon China made by the United States with its Asia-Pacific Leadership Network; despite the nonalignment of many countries in the region, it managed to move up from a hub-and-spoke-system to minilateralism with countries that realized an outside major power is necessary as a balancing factor<sup>13</sup>. The main drawback of these is its exclusivity; these organizations often leave out many countries directly affected by the decisions made by these smaller groups, leading to legitimacy issues and exacerbation of global inequalities, as the interests and needs of non-participating nations are often overlooked or underrepresented<sup>14</sup>.

### b. Critical Raw Material governance

With the decline of multilateralism and the subsequent rise of minilateralism, it is not surprise that the practice of forming smaller, exclusive clubs would eventually reach the debate on critical raw materials, given the recent geopolitical tensions and polarization that have caused the usual frameworks like the WTO to become paralyzed until further notice. The European Union’s strategy under the Critical Raw Materials Act (CRMA) is no stranger to this, as it notes how minilateralism can be used to secure essential resources in response to growing global competition and geopolitical shifts. Faced with the need to diversify its supply chains and reduce dependency on countries like China, the EU has turned to bilateral agreements with nations such as Kazakhstan and Namibia, but also minilaterals such as the controversial trade deal with Mercosur, which will be analyzed further on. Through these agreements, the European Union tries to secure its supply of CRMs as efficiently as possible, while trying to find a balance between its ideological values and economic security. This report will point out that standard Free Trade Agreements are not the best method forward; they arguably lack the comprehensive scope that certain other options such as the Economic Partnership Agreements have in order to make them “Effective” Minilateral instruments.

### c. Hollowing out global governance

Minilateralism, by default, is detrimental to the established global governance framework, as it gives those involved an incentive to turn away from the slower multilateral institutions that do not provide them with the tailored solutions to the specific problems they or their bloc are dealing with. This sets a downward spiral in motion: certain countries effectively withdraw from multilateral institutions, causing these institutions to become less adequate to discuss international issues, making other countries lose trust in the global governance system, which makes them in turn also turn away from the institution as well. Eventually the institution is stripped of its usefulness, polarization increases and the possibilities of having proper multilateral relations are jeopardized.

An example of this mechanism is the BRICS-alliance<sup>15</sup>: after the multitude of economic crises followed one after another, countries such as China and Russia became disillusioned with the malfunctioning monetary governance framework which was built under the Western Bretton Woods initiatives. They went on to create their own bloc of partners with similar visions on what financial and monetary governance should look like, while advocating for a reform of voting rights within the IMF and World Bank; this in turn sparked the Global South to support this call and push for a reform of not just these institutions, but the global governance structure as a whole. This example immediately shows the impact these blocs can have; the more powerful its members, the easier it is able to go against the established order and slow down policy output.

Minilaterals also suffer from internal inconsistencies. Firstly, they mostly rely on informal agreements by like-minded countries based on how they would take care of a multilateral problem. This fuels the mechanism's flexibility and speed, but also makes it rely solely on trust without any form of assurance that parties will stay committed, compliant or consistent<sup>16</sup>. Secondly, the membership of these groups is often exclusive, undermining the ability to solve problems on a multilateral basis, leading to the outcomes falling short of what is needed to solve a more global problem in its entirety, as was the case with the Paris Agreement<sup>17</sup>, and preventing trust-building in a geographical region or policy area.

Lastly, while smaller groups of like-minded allies can make faster decisions, these decisions will be very biased towards their views, and since these clubs are exclusive, these solutions will most likely not cover the needs or interests of all who should have been involved. Again, the global financial crisis was mostly "solved" by a minilateral group, but they did not "solve" the call for a reform of monetary governance. As global challenges become more complex and interconnected, the role of minilateralism is likely to grow, but it will need to be managed carefully to ensure that it complements rather than undermines broader multilateral efforts.

### III. The European Union and its Industrial Policy

#### 1. Strategic Autonomy

##### a. The origin of strategic autonomy

The EU's industrial policy did not start with a focus on what happened in other parts of the world. It has its roots in the European Community for Coal and Steel, originally created as an agreement to maintain stability and peace among its members; when it was conceptualized in the 50's, the founding fathers realized that it was these commodities that were responsible for the perpetuation of war and wished to regulate its trade while focusing on post-war reconstruction (Schuette, 2023). The regulation of trade regarding coal and steel eventually integrated more sectors in an ever-increasing snowball effect. Over the decades, this policy evolved into the Single Market in 1993, looking to eliminate barriers to trade and promote economic integration among EU member states. The adoption of the Single European Act and the Lisbon Strategy in the early 2000s further underscored the creation of a knowledge-based economy, with policies aimed at boosting research and development and fostering innovation.

The notion of Strategic Autonomy began to gain traction in the 2010s, particularly in response to global financial crises. Despite this, from a personal conversation with an expert from the Sustainable Energy Division at the United Nations<sup>18</sup>, it seemed that the EU was very much aware of the slow, creeping power of the Chinese economy as it watched China slowly buy up or invest in processing and refinement plants; according to the expert, the Chinese market dominance was already predictable as early as 2005, and so were the risks related to it. Worse yet, the Critical Raw Materials Act is not the first initiative in regards to raw materials; back in 2008, in the wake of the G8 Summit at Heiligendamm<sup>19</sup>, Germany where matters related to import subsidies on CRMs were heavily discussed, the European Union came with the Raw Materials Initiative (RMI) which included similar benchmarks as the Act currently does, with the main difference being that no guiding percentages were given. This shows that the European Union was never unaware of the problems Chinese market dominance was going to cause – it was just too slow to react to it properly, which is not the only time this happened.

##### b. Caught by surprise?

This latent fear of the glaring vulnerabilities which started a while before the economic crises acutely exacerbated during the COVID crisis, where its over-reliance on deliveries of protective masks prevented it from building capacity to produce them in its own territories<sup>20</sup>. The EU, long-standing champion of free trade and apparent supporter of what has been called “hyper-liberalism”<sup>21</sup> suddenly rediscovered what geopolitics entailed, including that not all countries are as keen on the oftentimes overly liberal conditions the EU imposed on its partners. But the rude awakening to geopolitics was also seen in areas which had a much greater impact than facemasks. As the Union had long looked inwards for competitors instead of outwards, the relative peace and positive trade environment left Europe defenseless against the apparent sudden rise in competitiveness coming from other major economies, which had been happening for a long time even if the EU did not want to see it.

The lethargy of the Union regarding industrial policy allowed major economies like China to take control of most of the green transition market; its governance of the Internal Market meant that European companies had a comparative disadvantage in terms of development and production compared to countries that did not put heavy restrictions on state aid, or in some cases, even promoted it; as Di Carlo *et al.* put it: “*in the past, strict supranational enforcement of competition and state aid regulations constrained national industrial policy that selectively aided domestic producers*”<sup>22</sup>. While the EU was preventing Member States’ investments in its automotive industry, the heavily state-sponsored BYD took over a majority of both the European and the international electric car market<sup>23</sup>, with the same happening for wind turbines<sup>24</sup>. This pushed some Member States to beg the Union for a loosening of the anti-subsidy regime, while others pointed towards a future race to the bottom within the EU, providing a huge advantage to the biggest European economies such as Germany and France<sup>25</sup>.

### c. Open Strategic Autonomy

However, it was more than the import and supply sides that were affected; the Union suddenly had to deal with protectionist policies in other states. A concrete example was the introduction of the Inflation Reduction Act (IRA) as a consequence of the China-US trade war; the act indirectly restricted import of green transition products through incentivizing the purchase of products that were made with components sourced from the US or countries which have a FTA with the US (the so called “local content requirement”<sup>26</sup>), referred to as “friend-shoring”<sup>27</sup>, but has the added effect of also hurting other economies without FTAs that are traditionally seen as allies to the US, such as the EU<sup>28</sup>. The IRA was what truly alarmed the EU to the “new era” of geopolitics, tailored to the hot topic of trade and green transition; an era where even advanced economies are capable of installing trade barriers that completely disregard the WTO framework of reference for trade agreements<sup>29</sup>.

For the Union, it became clear that its current course was no longer viable. As a response, the EU made a hard shift towards a policy that had slowly been brewing over the years: the “Open Strategic Autonomy” (OAS). This term, which can be traced back to a Spain-Netherlands “non-paper” titled “Strategic autonomy while preserving an open economy”<sup>30</sup>, can be defined as “the EU’s desire to strengthen its resilience and keep its industries competitive, while remaining open and globally engaged”<sup>31</sup> – or in other words, the EU wishes to join in on the geopolitics but in a way that it does not lose its image of a friendly civil power. One of the key parts of the OAS was a necessary overhaul of the (green) industrial policy, to better adapt to the transition in a way that does not compromise its newfound sovereignty by focusing more on the international aspect, noting the necessity to reduce its dependency on a few countries for critical resources and technologies<sup>32</sup>, instead of once again getting caught in the trap of trying to regulate its own Internal Market while forgetting about external pressure. This basically came down to its own, less aggressive version of “de-risking” and “friend-shoring”, with a strong focus on reciprocity<sup>33</sup>.

#### d. Implications for the green transition

The response of the European Union to both the geo-politicization of green technology trade, energy security and the demand for a strategic autonomy came as a follow-up to the Green Deal and the REPowerEU plans in the form of the Green Deal Industrial Plan (GDIP)<sup>34</sup>. This reactive policy, next to focusing on the use of state aid to support strategic industries and the imposition of trade barriers to protect EU industries from foreign competition<sup>35</sup>, included two legislative acts that could be seen as a direct answer to the Inflation Reduction Act<sup>36</sup>: the Net Zero Industry Act (NZIA)<sup>37</sup> and the Critical Raw Materials Act (CRMA)<sup>38</sup> of which the latter is of particular interest for this paper.

The CRMA, which was referred to by Mario Draghi as an early form of foreign economic policy regarding critical raw materials as it attempts to control the entire supply chain instead of leaving supply to private actors<sup>39</sup>, seeks to govern sourcing those “rare earths” that are both necessary and essential for the production of batteries, renewable energy technologies, and digital devices, which are key to the green energy transition envisioned in the Green Deal. The EU's reliance on a small number of countries, particularly China, for these materials had already been identified as a significant strategic vulnerability during the previous years.

Now, the EU gained a tool to prioritize the diversification of its CRM supply chains and the development of domestic production capabilities to decrease dependencies. The EU's shift towards a more protectionist industrial policy is also evident in its approach to (green transition) trade agreements, where it has increasingly sought to include provisions that protect its strategic industries and ensure access to critical resources. Examples of this include recent trade agreements with countries such as Canada, Japan, and Vietnam include provisions on the sustainable management of CRMs and the protection of EU industries from unfair competition<sup>40</sup>. However, this approach also raises important questions about the balance between national interests and global cooperation. While the CRMA and other measures aimed at securing access to critical raw materials are necessary to protect the EU's strategic interests, they must be implemented in a way that supports rather than undermines the principles of free trade and multilateralism.

## 2. The CRMA

### a. Background

The CRMA is why this policy report exists: the introduction of the Critical Raw Materials Act, potentially undermines the aforementioned stance the EU has on Effective Multilateralism, as it raises questions about the compatibility with the existing trade frameworks under the WTO and the “regulated liberal” trade. The focus on OAS made the Union take on a more protectionist approach which has significant implications for its partners and global critical mineral trade as a whole. The CRMA, as a concrete example of strategic autonomy-policy, imposes conditional supplier restrictions, much like the IRA attempted to do but this time targeting the amount a single supplier can deliver instead of friend-shoring, and prioritizes bilateral FTAs with key resource-rich countries over activating the existing WTO channels.

This has consequences: firstly, on the positive side, it wishes to step away from the glaring weakness of a dependency on one or a few suppliers in its value chain; secondly however, this causes unwanted side effects: it risks undermining the principles of free trade and the rules-based international order through FTA provisions that do not adhere to the multilateral framework, and they can be perceived as exclusionary by many other potential trade partners, thereby denting international trust and constructive dialogue<sup>41</sup>. Should this shift towards protectionism continue, it could lead to increased trade tensions and a fragmentation of the global trading system, particularly if other countries respond with similar measures.

The European Union noted the potential backlash it caused by adopting its policy and explained it could also lead to further enhancement of international cooperation, such as through a “Critical Raw Materials Club” which will be discussed further on. Skepticism is not surprising, which is not to say that examples of effective governance in the critical raw materials trade sector cannot exist; both within and outside of the UN web, examples can be found of global governance on Critical Raw Materials: recently, the UN Framework Classification was formally established as a gold standard for indexation of critical raw materials, and the WTO has picked up on the importance of the Critical Raw Materials global value chain as well. However, the recent adoption of the CRMA has proven to be an internationally questioned policy output which hollows out the principles of the same international trade framework the EU supposedly stands firmly behind.



### *The Raw Materials Initiative*

As discussed above, the CRMA is not the first of its kind. The Raw Materials Initiative set out to achieve the exact same strategic goals<sup>42</sup>, now more than 15 years ago. It seems to be almost forgotten, as not many seem to notice that the benchmarks put forth are eerily similar to the main pillars of the RMI, but this time they are more detailed. Moreover, the RMI introduced the concept of “raw materials diplomacy”, including a Joint Strategy and Action Plan with Africa and ironically pursuing partnerships with China and Russia. This approach was supposed to be backed up by a strategy of Effective Multilateralism, heavily leaning on several United Nations programmes and bodies to raise awareness; another observation drenched in irony is that the Initiative was supposed to promote settlement of issues and disputes at WTO-level. These multilateral considerations were backed by provisions on how there should be more focus on recycling while also striving for a reduction of the demand-side curve through sustainable use. Considering the EU is confronted with the same issues it had predicted and seen develop, one could become curious enough to wonder why it still ended up with a supply disruption causing it to adopt a resolution hastily put together in a year worth of drafting.

#### b. The climate factor

The green energy transition and climate change should be mentioned in the same breath; as part of mitigation measures and related Nationally Determined Contributions under the Paris agreement, many countries have partially or fully invested on switching over to green energy infrastructure, requiring critical raw materials such as lithium and nickel. In the same sense, the Union can nowadays not be mentioned separately from its very prominent and ambitious climate change policy. Although not an immediate priority for other major powers, the EU has nonetheless chosen to pave the way towards what could be seen as a “grand climate strategy”<sup>43</sup>, where it sees potential in taking the lead of a global green transition through exemplary policy making, as can clearly be seen when looking at major pilot legislation such as the European Green Deal which was finalized in 2020. After the disastrous outcome of the COP15 Copenhagen accord, the 2015 Paris Agreement allowed the Union to slowly crawl back towards to the front of the podium, where it seeks to become more than its current role of “leadiator”<sup>44</sup>, which focused more on finding compromises between blocs and looking for partners rather than trying to lead by example and blindly expecting others to follow.

The relevance of this discussion to the overall subject of this paper is easily noticed: one of the main topics of the European Green Deal, and one of the major global subjects when talking about climate change, is a decarbonized and green energy sector and its innovative infrastructure<sup>45</sup>. This means that the demand for CRMs, which are essential for the production of a wide range of high-tech products such as electric vehicles, wind turbines, and semiconductors, creates a dependency on external suppliers for these materials, which poses a significant risk to its industrial competitiveness and technological sovereignty as there remains a high risk of supply disruption. As the global demand for CRMs has surged in recent years, driven by the rapid expansion of these technologies, increased competition among countries for access to these resources did not take long to follow suit, with some nations using trade restrictions, export controls, and other measures to protect their own supplies or to make sure they get their piece of the pie, as can for example be seen with the nationalization of the nickel industry in Indonesia and a complete ban on the export on ore, all so it could move up on the global value chain<sup>46</sup>.


On a sidenote, the EU is not shying away from an attempt at regaining its climate leadership. Even in the more turbulent third decade of the 21<sup>st</sup> century, the EU has continued implementing its climate package with the February 2024 pledge of limiting emissions by 90% of the 1990 emission levels by the year 2040, a logical next milestone after the 2030 *FitFor55* goal of 55%, which the EU is on track to reach. According to EU Commissioner Hoefstra<sup>47</sup>, the EU will attempt to export its knowledge and policies through climate diplomacy, more specifically with a large focus on carbon trading markets (after its own ETS), and ultimately a potential international “clearing house” where all regional carbon markets can become linked; the EU is already doubling down on its future emission trading dream, as it has already answered criticism on potential carbon leakage, for example from the leading Chinese market in green energy infrastructure production, by adopting the controversial Carbon Border Adjustment Mechanism.

In its own territories, it is focused on developing new and innovative projects related to for example hydrogen<sup>48</sup>, but also investing heavily on the modernization and interconnectivity of its energy grid, combined with supply- and demand-side innovations, all heavily reliant on the ability to increase the availability of the necessary raw materials. It is therefore clear that EU's focus on securing access to CRMs is also driven by geopolitical considerations: as global competition for these resources intensifies, particularly in the context of the green and digital transitions, the EU must ensure that it has the necessary materials to maintain its technological edge and achieve its ambitious climate goals. This is of course also reflected in the EU's broader strategic autonomy agenda, which emphasizes the need to strengthen the EU's position in global value chains<sup>49</sup>. In doing so, the EU must navigate past China's increasingly massive market share in green technologies, adapting the Green Deal to withstand geopolitical pressure<sup>50</sup>.


### c. Scope of the CRMA

**European Critical Raw Materials Act Regulation proposal** CRM Act in the version of the Commission Proposal for a regulation from 16 March 2023


**Benchmark targets (Art. 1)**




10%  
domestic  
extraction



40%  
domestic  
processing




15%  
domestic  
recycling




max. 65% sourcing  
from a single  
third country

**Lists of Strategic and Critical Raw Materials**

- Strategic importance
- Demand forecast
- Difficulty of production expansion







Strategic  
Raw Materials  
(Art. 3, Annex I)





Critical  
Raw Materials  
(Art. 4, Annex II)

- Economic Importance
- Supply Risk





**Capacity building**

-  **Strategic projects**  
Criteria for strategic projects (Art. 5, 6, 7, 9) 🏗️
- One-stop-shop and timelines (Art. 6, 7, 8, 10) 🏗️
- Environmental assessment (Art. 7, 11) 🏗️
- Financial aspects (Art. 15, 16) 🏗️
- Information (Art. 13, 17, 33) 🏗️
-  National exploration requirements (Art. 18) 🏗️
-  Planning and zoning (Art. 12) 🏗️
-  Certification (Art. 29, Annex VI) 🏗️


**Circular Economy and Environmental Sustainability**

-  **Circularity**  
Reporting requirements (Art. 25) 🏗️
- List of CRM recovery potentials (Art. 25) 🏗️
- Extractive waste recovery (Art. 26) 🏗️
- Permanent magnets (Art. 27, 28) 🏗️
-  Environmental footprint (Art. 30, Annex V) 🏗️

**Risk Monitoring and Mitigation**

-  Monitoring and stress testing (Art. 19, 20) 🏗️
-  Strategic stocks (Art. 21, 22) 🏗️
-  Joint purchasing (Art. 24) 🏗️
-  Strategic partnerships (Art. 33) 🏗️

Stakeholders: 🧑 Consumers and communities 🏢 Administrations and governments 🏭 Mining, recycling, and manufacturing industries



*Source:* Hool, A., Helbig, C. & Wierink, G. Challenges and opportunities of the European Critical Raw Materials Act. *Miner Econ* (2023). <https://doi.org/10.1007/s13563-023-00394-y><sup>51</sup>

#### Benchmarks

In order to achieve the objective of its Open Strategic Autonomy, the Union adopted the CRMA, a framework regulation that needs to guide the Member States safely through the green energy transition by securing access to critical raw materials without compromising its own interests or economic security. By far the most interesting provisions within Regulation (EU) 2024/1252 are the benchmarks; despite the CRMA being a regulation – which is legally binding in all Member States without the need for adaptation based on EU case law – and the text itself stating that the text in its entirety, as adopted, is legally binding and the benchmarks being part of this text, the proposed percentages in the benchmarks are non-binding. The only purpose they serve is, as stipulated above, to guide the Member States safely through the green transition. The reason why this is relevant, will be discussed under the analysis of conformity with the GATT framework; as an apéritif, it is noteworthy to mention that should these benchmarks be legally binding, they would breach not one but several Articles of the GATT Convention.

Regardless, the benchmarks provide several percentages that ideally shouldn't be crossed to preserve the integrity of the EU's economic security: firstly, at least 10% of the total CRMs consumed on an annual basis should be sourced “locally”, which is to say within the territory of the European Union. This objective requires the EU and its Member States to reinvest in a sector that is not the most environmentally friendly or societally accepted: mining. The enthusiasm for mining is questionable given the dangers it entails, so it remains to be seen if enough political will and community support can be found to realize this objective. Secondly, through strategic stockpiling and “reshoring”, the Union wishes to have at least 40% of its annual consumption of CRMs be processed on European soil.

However, the capacity for upstream processing plants is currently limited and may potentially stay limited given territorial and environmental constraints. Thirdly, the EU wishes to integrate CRM consumption in its circular economy by encouraging Member States to collectively recycle at least 15% of the Union's CRM consumption on an annual basis; despite fulfilling the CRMA goal of lessening the environmental impact, it remains questionable what the return is on CRMs extracted from end-of-life goods<sup>52</sup>, and it will be hard to achieve this benchmark for the EU without the creation of a specialized industrial sector.

### *Diversification*

The last and perhaps most interesting benchmark is a direct answer to the geopolitical pressure the EU felt from external sources. Proposed by the CRMA is a goal that recommends to not have a dependency on a single third partner of more than 65% of the annual consumption with regards to all Strategic Raw Materials, which should be achieved through the culmination of objectives achieved by applying the other benchmarks on one hand and forming strategic partnerships and governance networks with resource-rich countries on the other. The reason why this benchmark is so interesting is because it could potentially entail an indirect breach of the General Agreement on Tariffs and Trade, which will be discussed later. This is the Union's "de-risking bazooka", meant to prevent any more dependencies on single trade partners to ensure diversification and avoid having its dependencies be weaponized. Interestingly, despite the EU needing additional shipping and transport routes to fulfill its diversification goal, little research has seemingly been done on the potentially adverse impacts on the security of supply.

For example, an increase in trade from potential partners in Tanzania, Mozambique or Eritrea can be limited by chokepoints being blocked, both purposefully as was the case with the Houthi rebel attacks in the Hormuz strait, or through human error, recalling the events of the Evergreen freighter "Ever Given" running aground and blocking the Suez Canal for nearly a week. Other dangers include piracy<sup>53</sup> in the same region, but the threat can be felt in the Gulf of Guinea and Strait of Malacca as well<sup>54</sup>. Despite limited research, the problem demands attention; the Union will have to make a choice: either save on financial investments and focus on a few trading routes with the risk of falling prey to certain risks, or diversify the trade routes as much as possible but risk losing a big part of the potential return on investment on shipping costs and maintenance. In any case, the concentration of shipping routes is inversely proportional to the potential of a risk occurring, but commensurate with the maintenance costs.

### *Strategic stockpiling*

The last point of the CRMA that will be discussed under this chapter is the element of strategic stockpiling; the EU wishes to create a reserve of CRMs it can use to close any urgent and immediate gaps originating from supply chain disruptions. In the short term, it is one of the most effective strategies because it requires a lot less in comparison to the benchmarks – other than the initial creation of the physical reserve, there is little to no interaction necessary with actors outside of the EU’s borders. However, this is not to say that absolutely no planning is necessary; a couple of policy choices still present themselves: how far should the strategic stockpiling go? Economically speaking, the more a government paternalistically defends an economy against outside risks, the less the affected sectors will be willing to invest in risk-reducing measures, also known as “crowding out”<sup>55</sup>.

Despite potential impacts on risk aversion, CRM stockpiles can be used in two ways: as mentioned before, they serve to prevent the biggest negative impacts on the value chain when one of the upstream shackles undergoes a supply disruption, but they also serve to temper long-term price volatility by providing the market with an influx of supply when demand gets too high and building investment trust in projects requiring CRMs<sup>56</sup>. A final observation can be made with regards to centralized stockpiling; should the EU manage to create a fully harmonized system, of which the Commission could be in control when it comes to releasing supplies onto the market, the Union would be better able to buy in bulk, and could thus negotiate better prices than individual Member States acting on their own<sup>57</sup>.

### *Feasibility of the benchmarks*

From a private conversation with an expert working for the Sustainable Energy Division of the United Nations<sup>58</sup>, it became clear why the proposed benchmarks are non-binding, even though the CRMA itself is a resolution – which is legally binding without having to be adopted by Member States – including a provision that the text in its entirety is a binding piece of legislation. The first reason is quite straightforward: the targets put forward in the benchmarks are far from attainable. It is logistically impossible to realistically achieve a 65% diversification, and most of the discussion behind how the numbers were construed is based on upholding the image of a resilient and climate-aware European Union, lined up with strategic communication to make the goals seem closer to realism than realistically possible; this is seemingly backed up by the fact the objectives of the RMI were not accompanied by percentages<sup>59</sup>.

Secondly, even though the Commission attempts to play geopolitical games, the debates and working committees which were tasked with drafting the CRMA, were lead partially or fully by the will of the Member States, backed by the Council. IT seems that in the debates surrounding Critical Raw Materials, the Commission is often forced to sideline itself in respect to the whims of the Member States; the expert recounted that a representative from Germany was often the reason why initiatives regarding raw materials were blocked, even though the Commission was often the initiating actor. Thirdly, some aspects of the benchmarks fall outside of the Union's competences. One such example is the domestic sourcing benchmark which states that at least 10% of the raw materials should be sourced from deposits within the European Union; whether or not a Member State wishes to back its mining industry, or wishes to provide a mining company with a permit to open a mine, is a competence entirely left to the sovereignty of the Member States – the Commission has no mandate to force one of the Member States to open a mine just to achieve the 10% benchmark.

All in all, it seems even the negotiations and drafting committees leading up to the CRMA were riddled with holes, and the Act itself is not the most meticulously well-structured or robust resolution the EU has adopted in recent history, which can clearly be seen by how fast it was drafted and adopted. Given these shortcomings, and the arguable failure of the RMI, one can only wonder how effective the CRMA will be at fulfilling that which it was made for.

## IV. Effective Multilateralism and the CRMA

### 1. Background

This policy report presents the challenges that the European policy in regard to trade in critical raw materials is confronted with. So far, it has become clear that the European Union has shifted away from its hyper-liberalist strategy where it disregarded external factors in favor of a level playing field in its own Internal Market, which was replaced with a “Open Strategic Autonomy” that takes geopolitics into account. This approach, which favors strategic bilateral or minilateral partnerships, coupled with the established general decline of multilateral cooperation and the use of global governance frameworks, shows that even the European Union has had to let go of its idea of a liberal and pure form of Effective Multilateralism in which it backs UN and its proxy’s such as the WTO. Within the concept of Effective Multilateralism in regard to trade, the most important implications for the European Union’s Green Deal Industrial Policy come the trade in Critical Raw Materials. As discussed in the previous chapter, the most important policy document that was recently adopted is the Critical Raw Materials Act, containing benchmarks that aim to diversify CRM sourcing and boost local and regional production and recycling where possible. As the UN seems to be less and less fit for the challenges posed by geopoliticization, the European Union nonetheless provided itself some alternatives under its CRM-strategy.

### 2. Trade Diversion and the “Spaghetti Bowl Phenomenon”

Trade diversion is the risk that, through Free Trade Agreements, trade gets canalized through less effective channels below the multilateral framework; this leads to the tricky situation where Free Trade Agreements between countries or even regions could promote liberalization between those parties while also making trade at a multilateral level less liberal. The CRMA, and the Open Strategic Autonomy-policy as a whole, has a strong and deliberate focus on mini- or even bilateralism; such emphases can topple the already wobbling multilateral framework in more than one way: *“by embedding these standards into bilateral agreements, the EU risks creating a patchwork of differing rules that undermine the coherence of global trade governance”*<sup>60</sup>.

The more Free Trade Agreements are signed, the less liberal and thus more ineffective multilateral trade becomes, a problem also known as the “spaghetti bowl phenomenon (SBP)”. The Spaghetti Bowl Effect, on the other hand, explains the scenario where so many Free Trade Agreements exist that the trade relations in a region or with a certain country become tangled and complicated, which is once again detrimental to the liberalization of trade. There is also proof of the contrary: in the case of the APEC bloc<sup>61</sup>, the proliferation of bilateral and minilateral FTAs lead to “trade creation” instead of “trade diversion”; despite the multitude of these agreements, there was limited to no overlap between the agreements and yet there was no negative impacts caused by SBP-induced confusion.

### 3. The way forward

#### a. Economic Partnership Agreements

##### *History*

Economic Partnership Agreements (EPA) were originally put in place under the Lomé Conventions as non-reciprocal, preferential trade agreements between the EU and a multitude of African, Caribbean and Pacific (ACP) countries, with a waiver on export duties and quotas for these countries when exporting goods to the European market. As the WTO found the original format of these agreements discriminatory to non-contracting Party developing nations, these agreements evolved more towards a reciprocal Free Trade Agreement-format under the (post-)Cotonou Agreements, with an increased focus on sustainable development, regional integration and poverty eradication in partner countries.

These agreements provide ideal opportunities for a CRM trade network with mineral-rich countries in a sustainable manner, considering the EU already has EPAs in force<sup>62</sup> with many of the countries with considerable deposits. Moreover, contrary to the EU-Mercosur trade deal, which is mostly focused on establishing a “customs union” and has little to no regard for environmental, climate or sustainability impacts<sup>63</sup>, the Economic Partnership Agreements have a strong focus on sustainable development; one example of this observation can be found in article 2 “Objectives” of the EPA with the EAC economies (Burundi, Kenya, Rwanda, Tanzania and Uganda)<sup>64</sup>: the article clearly mentions that the key objectives of the agreement are based in the sustainable development, just transition and economical and regional integration of the African partners.

##### *Extractivism*

Given the importance of Critical Raw Materials in the current economy, the European Union can achieve a strategic edge over other countries through these EPAs, given that they contain the promise of development aid instead of just vying for a simple trade deal. The African partners, seeking to move away from the neo-imperialist extractivism by climbing the value chain, would also heavily benefit from these Partnership Agreements, should they be done the right way. As it stands, countries in Africa are currently stuck on the lower shackles of the chain, with a forward linkage of 33% and a backward linkage of 20%, meaning that most of the CRMs it digs up or processes are shipped to the higher ends of the chain abroad, with among the lowest share on medium to high level value chain components exported while also having a high level of upstream specialization<sup>65</sup>.

With sufficient investments and support in development of the green infrastructure industry, these countries could easily move up, as there is statistical evidence that proves foreign capital investments have a positive impact on the growth of economies: in South Africa, foreign investments created 58.000 jobs in the transport equipment sector<sup>66</sup>. In order for this to be possible, the industrial policy of the EU should start focusing on having the EU private sector invest in beneficiation<sup>67</sup>, thereby providing an opportunity for local communities to benefit from potential horizontal or vertical linkages and thus improving from just exporting raw, unprocessed ore to refining and even processing it into green energy infrastructure components that can then be exported with a higher price thanks to among others the increase in value added tax incomes.

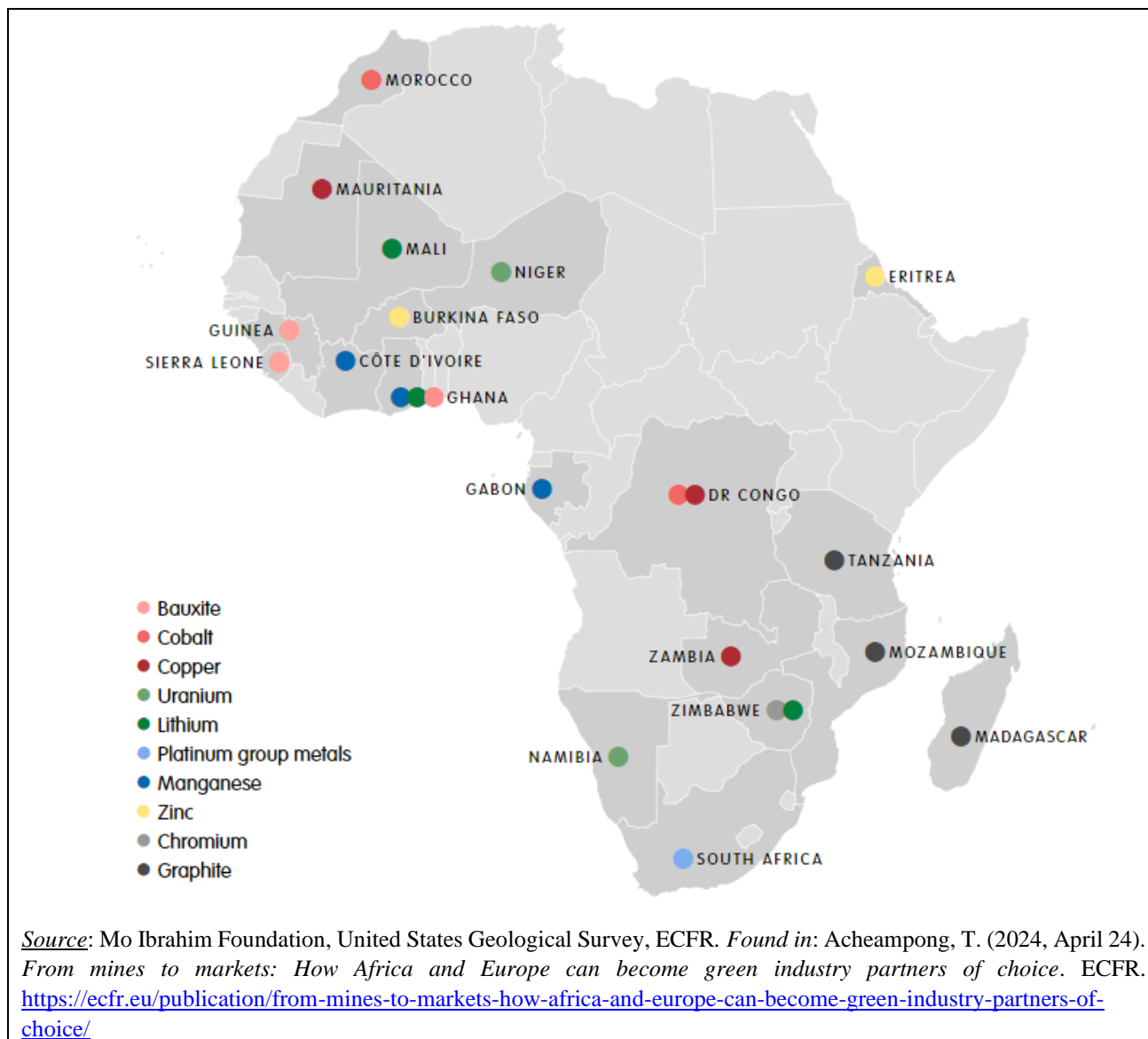


These benefits go both ways. The European Union will not lose a comparative advantage when moving production from the EU to Africa, under the assumption that it supports the African green industrialization, considering the biggest and closest major economy is the European Union, with relatively fast shipping times meaning barely any value is lost in transit<sup>68</sup>; these already comparatively fast shipping routes can be further supported through initiatives like the Lobito Corridor<sup>69</sup>, which poses a win-win situation for both Parties. As African countries no longer wish to solely focus on doing the dirty work, it will be up to the European Union to make the necessary and sometimes risky investments – through EIB support or the Global Gateway<sup>70</sup> objectives – to boost the local industry and give the correct example to other countries in the EU club of CRM friends.

It seems that the European Union is also aware of this, as it has already promised strategic partnerships which include a focus on local refinement and processing<sup>71</sup>. On a sidenote, supporting the growth and development of a region instead of just buying unprocessed ore will also improve the image of the European Union, which might not seem relevant when it comes to trade in critical raw materials, but given the current geopolitical context in other fields and the negative branding of having double standards, the EU should do every little bit it can do to improve said image on the global stage if it wants to gain back the sphere of influence it lost to other major powers. This argument can be supported by discourse, for example statements from the Namibian minister of trade and industry in regard to the signing of an EPA where they are quoted saying:

*“if our needs to add value to raw materials and partake in the European market with finished goods in a competitive manner are included in the EPAs, that is a step in the right direction, if it is the opposite, it makes things more difficult for us to partake in finished goods, and if we do not have the policy space to start developing finished goods, then it will be difficult to sign”<sup>72</sup>*

## Potential partners



As for which regions the EU should focus on, the easy answer is Africa as the region already counts a multitude of existing EPAs with the EU. Prime examples are the EPA with the Eastern and Southern Africa (ESA)-bloc, containing Zimbabwe (Lithium) and the EPA with the Southern African Development Community (SADC)-bloc, containing countries like Namibia (Uranium) and South Africa (Platinum group). These minerals are already recognized as an important aspect of these trade deals, given that for example the SADC-bloc exports 15% of its mineral products to the Union; further integration of the African continent into EPAs could well bump up these numbers, allowing the Union to arm itself against future lithium supply shocks following export bans like those imposed by Indonesia. Ideally the EU should finalize its negotiations with the Democratic Republic of Congo, whom it currently has a Memorandum of Understanding with regarding a strategic partnership on raw materials<sup>73</sup>, to add the increasingly important copper to its value chain.

## *The influence of China*

By now, this report has established the fact that the European Union should focus on friend-shoring with an industrially developed African region; this, however, requires that the EU is on good terms with the countries in this region before they can be called “friends”. This means the Union has to regain its foothold on the continent and prove to the local governments that its partnerships are to be preferred over those of China; the giant economic dragon has slowly but surely dug its fangs deep into the region over the span of two decades worth of investments<sup>74</sup>. According to one source China has invested 108 billion USD in the African continent in the period between 2005 and 2013, with notable investments in Nigeria (15,6 billion USD), South Africa (8, billion USD) and the DRC (7,8 billion USD); 95% of these investments were spread over four sectors: transport (34,3 billion USD), energy (31 billion USD), real estate (21,6 billion USD) and most importantly the mining sector (16,3 billion USD)<sup>75</sup>, causing an extremely significant overlap with the economic interests of the European Union. These investments are mostly infrastructural, but beefing up infrastructure is necessary for industrialization.

Despite China making limited efforts to move the African region up on the global value chain, it is not too late for the EU to push back as the Chinese influence is mostly in the shape of Chinese owned or associated companies<sup>76</sup>, and most if not all of the investments do not take labor standards or human rights into account. During a congressional hearing in 2022<sup>77</sup>, a Congolese civil rights attorney testified with regards to Chinese owned or effectively operated mines – the provided example was the Kasulo cobalt deposit – where child labor or their exposure to radioactive minerals, injuries and diseases is not uncommon. This is not the only testimony either; a report of a 28 year-long mission by a UK humanitarian affairs NGO<sup>78</sup> stipulates multiple human rights infringements in Chinese governed mines, such as physical violence and verbal abuse, with workers being beaten when they were unable to follow instructions for whatever reason, or workers that spoke up being dismissed without pay. The Chinese investments also do not account for environmental standards; reports show that Chinese mining operations cause deforestation, habitat destruction and water pollution due to inadequate tailings retention<sup>79</sup>.

The EU has several avenues where maneuvering past China is still possible. Firstly, it can show local governments and communities that its environmental and social standards promise more respect for workers and habitats, falling back on its long-standing image as climate and environmental spearhead in international relations; the European EPA’s contain the promise of local and regional sustainable development, with the promise that local communities will benefit in more ways than just financially, while it also has proof to show it upholds certain labor laws and environmental standards with the recently adopted Corporate Sustainability Due Diligence Directive<sup>80</sup>. Secondly, China’s investments in global value chain-boosting infrastructure are limited enough to not satisfy the wishes of the African governments. The big difference between China and the Union is that China has no real incentive to move big parts of its mineral value chain to Africa, as it has more than enough capacity to process the CRMs itself while also noticing the geopolitical advantages stockpiling of CRMs has in the current economy; Europe on the other hand has limited capacity for mineral processing, meaning it would benefit more from importing goods that have been through more shackles of the global value chain<sup>81</sup>.

This insight provides a clear path forward: the EU should double down on its EPAs and start focusing on regions where China is not yet (fully) influential, so that it can show the myriad of benefits a strategic partnership with the EU has in store, after which it can slowly but surely push China back in the race for African critical raw materials. In order to achieve effectiveness, this means activating more than just local or foreign mining companies<sup>82</sup>; the EU needs to encourage its own industry to invest in local infrastructure but also allow this infrastructure to remain in the hands of the local communities in order to maximize the positive spill-over of these investments and to ensure the African population will once more consider the European Union its ally instead of a questionable, lethargic actor which chooses to turn its back on injustices when its interests lay elsewhere.

#### b. The problems with bilateral trade agreements – the case of Mercosur-EU

##### *Background*

The EU-Mercosur Agreement, an FTA comprised of the South American countries Argentina, Brazil, Paraguay, and Uruguay in 2019 after more than 20 years, would be one of the European Union's most significant trade agreements to date. This agreement aims to slightly or completely remove tariffs on all but 10% of the goods exported from the EU to its Mercosur partners, with a similar amount of liberalization on goods coming from the other side; as the agreement would encompass a market of 773 million consumers, it would have meant that the EU would have had a significant economic advantage compared to other major powers seeking influence in the region<sup>83</sup>. It was drafted in a way that sustainability plays a central role, to ensure that mining for CRMs is done in an environmentally responsible manner.

EU-Mercosur lines up with the principles of the EU's with the Critical Raw Materials Act's main goal, seeking diversification of CRM trade through international (bilateral) partnerships, but ironically falls short when comparing it to the ideals under the Green Deal's environmental policy. Moreover, one could also argue it has a negative impact on effective multilateralism: for all of the diversification it provides, it does so by sidelining the multilateral trade framework. The agreement eyes a partnership with only a club of specific Latin American countries that do not always correspond to the European Union's values all the while including provisions that do not align with WTO standards. As stated by Palmieri *et al.* "*this move towards bilateralism reflects a broader trend in global politics where countries are increasingly seeking to insulate themselves from global risks through strategic partnerships, often at the expense of multilateral cooperation.*"<sup>84</sup>

The EU-Mercosur Agreement is, as was discussed above, part of the Green Deal Industrial Plan's goals. The EU's dependence on a limited number of suppliers for CRMs, particularly China, has been identified as a significant risk to its economic security. Through its FTA with Mercosur, the EU hopes to get closer to one of the biggest economies in the region, namely Brazil. As one of its biggest economies, Brazil is one of main producers of niobium, a CRM used for the production of a particular kind of steel which is essential for the transports sector<sup>85</sup>. Another member of particular interest is Argentina, as it holds big reserves of lithium, which is slowly becoming one of the most important CRMs in the current transition economy given that it can be used for the production of the batteries used in electric vehicles and renewable energy storage systems.

Next to the diversification of suppliers, the EU had another objective in mind. In forming deeper economic ties with Mercosur, the EU hopes to gain some leverage in Latin America, a region where, just like the African continent, China's political and economic influence has quickly spread through initiatives like the Belt and Road Initiative<sup>86</sup>.

### *Hints of the past*

While the EU's goal of promoting environmental sustainability and social responsibility through its trade agreements is commendable, enforcement of these standards can be perceived as a form of neo-imperialism, particularly by countries in the Global South, considering these provisions seem condescending towards existing national environmental legislation<sup>87</sup>. This dynamic can create friction in international forums, where countries may push back against what they see as the force feeding of external values and standards that do not align with their own development priorities<sup>88</sup>. On top of that, the unwanted perception that the EU is using its economic power to impose its standards on weaker economies will eventually lead to a backlash from other emerging economies, who may see this as a form of neo-colonialism, thus eventually hindering the EU's ability to act as a credible and neutral actor in global trade negotiations<sup>89</sup>, which it already struggles with considering the Union nowadays gets linked to double standards in other policy sectors. Next to this neo-imperialism, one could also argue that there are hints of “eco-imperialism” or “extractivism”<sup>90</sup>, as the focus on securing CRMs from Mercosur could exacerbate economic dependency of Mercosur those countries with weaker economies, where they remain primarily as suppliers of raw materials to more developed economies, without moving up the value chain.

Parallels can easily be drawn with the case of Indonesia, meaning it is not unthinkable that should Mercosur be subjected to extractivist tendencies, they can react in the same way too. By facilitating trade and investment, the EU-Mercosur Agreement should boost economic growth and create new opportunities for businesses in both regions, if the EU allows its partners to share in the benefits of the FTA. Besides these potential hints of neo-colonialism, another significant concern exists: the impact of the EU-Mercosur Agreement on regional integration within Mercosur itself. By prioritizing access to European markets, the agreement may encourage Mercosur countries to focus more on their trade relationships with the EU rather than on deepening integration within their own bloc. This shift could weaken Mercosur as a regional entity, reducing its collective bargaining power in global trade negotiations, and thus effective multilateralism, and undermining efforts to promote regional economic integration<sup>91</sup>. The fact that the agreement will leave behind the other countries within Latin America means that those with weaker economies will surely have even more difficulties staying afloat<sup>92</sup>.

### *Double standards*

Next to the impacts on multilateralism, the agreement suffers from another problem: the environmental impact of increased CRM extraction, particularly in biodiverse regions like the Amazon. The EU-Mercosur Agreement has been criticized for potentially increasing deforestation and biodiversity loss in Brazil, due to the agricultural boom. Environmental groups<sup>93</sup>, civil society<sup>94</sup> and some EU member states<sup>95</sup> have demanded either having the entire deal fall through or provide stronger environmental protections as a condition for ratification. Should these environmental standards not be met, but the deal gets struck regardless, then the EU could just as easily be blamed for its double standards, losing even more credibility in the process. The sustainability provisions within the EU-Mercosur Agreement are intended to address these concerns, but their effectiveness depends on their level of enforcement and implementation, which has been proven troublesome under past legislations such as under ex-president Bolsonaro.

### *Comparison with EPAs*

EPAs and FTAs are similar in the sense that they both focus on facilitation of cross-border trade; the main difference is that EPAs go beyond and take sustainable development into account, as is implied with the addition of “and development” in the description<sup>96</sup>. This development aspect is the reason why EPAs do not demand reciprocity and open markets from the developing nations the EU strikes these deals with, on the same level as the Union would demand reciprocity from its FTA partners. The controversy surrounding Mercosur-EU and the lack of strict environmental and social standards marks the issue of FTAs *sensu stricto* and the tangible difference between an FTA and an EPA: whereas EPAs are focused on sustainability and positive spill-over for people and environment, FTAs are more focused purely on the technical trade facilitation aspect of the relation, meaning they *de facto* are less comprehensive since other provisions are less relevant – regardless of whether the Union ideologically “red lines” them during negotiations. Besides, empirical evidence shows that the benefits of EPAs on the economy of a country are higher than the economic advantages of a full FTA<sup>97</sup>, given the EPA beneficiary has time to gradually adapt its economy to the impact of trading with EU’s supermarket while also reaping the benefits of direct and indirect development assistance.

## 4. The Critical Raw Materials Club – Effective Multilateralism?

### a. Background

The Critical Raw Materials Club was a concept introduced together with the CRMA, to provide an answer to the voices claiming the exclusionary nature of the Act's provisions and the future of the EU raw material trade would further break down the already struggling multilateral framework. The European Union promised that it would spearhead setting up a trading club of like-minded partners, including a pledge to finance 20 billion EUR by 2030<sup>98</sup>, to create some form of global governance regarding the trade and cooperation in resources essential to the green transition while preventing weaponization of dependencies among its members and lessening the risk vis-à-vis external suppliers, a clear application of the Open Strategic Autonomy doctrine considering it does not shy away from international relations but instead creates a controlled environment to work with.

The Club, next to increasing diversification avenues, would benefit from collective bargaining power, allowing its members to negotiate more favorable agreements with suppliers on a more stable, long-term basis<sup>99</sup>, similar to how centralized stockpiling of CRMs under the CRMA could benefit the EU; this time, however, because the potential geographical spread of the members, diversification would be relatively easier than it would be for the EU on its own, considering more trade route options become accessible. The Club could serve as a significant market counterweight to China, should it manage to attract enough members. This could mean that China no longer would have the ability to freely force itself upon partners higher on the upstream of the global value chain, as they would now have the option to not just trade with one country.

The Club would supposedly also put a considerable emphasis on sustainability and ethical sourcing and environmental and social, and governance (ESG) standards, which aligns with global efforts to achieve the United Nations' Sustainable Development Goals, and it would focus on transparency and accountability if one is to go by the certification objectives under the CRMA; by imposing these standards as a requirement for membership to the Club, the EU could once again lead by example and influence other countries to adopt the same environmental standards. This would contribute to a more sustainable and equitable global economy, where the benefits of resource extraction are shared more broadly and responsibly. If done correctly, the club could become a standard-setting environment, where best-in-class countries lead the way towards inclusive, socially just and environmentally friendly mining practices.

## b. Membership

. But with a whole group of countries; however, this also has downsides: the bigger the club gets, the harder it will be to find common ground and speak with a unified voice on how to handle partnerships with suppliers – an issue China will never have – and potentially slowing down negotiations. The biggest problem therefor remains membership. The European Union is ideally looking at its like-minded allies such as the United States, Canada, Australia, Japan and selected countries from the supply side such as potential partners in Africa. However, this is where the need to balance values and interests against the effectiveness of the club becomes a major hampering point if the European Union wants to press the ESG values through; the more it focuses on the binding nature of commitments, the less attractive the club gets. A potential avenue is a “Club light”-approach<sup>100</sup>, which could slowly evolve towards a “strict club” with more binding commitments, but the bigger the a club without at least strong commitments becomes, the more it becomes susceptible to collective action problems such as free-riding; one way to solve this issue would be for the EU to set the stage and make bold funding pledges it actually fulfills so the rest of the members gain enough trust in the system to step in and support the project.

The necessity to cater to several members at once would also entail that the European Union might not be able to push its values through; if the EU wants to open the club to as many countries as possible, it will have to cut back on the amount of strong language and binding environmental provisions it wants to see, *a fortiori* when it wants to include ways to enforce these provisions. On a sidenote, a bigger club also means a higher chance of market disrupting effects on the supply-demand dynamics, causing suppliers to potentially impose retaliatory measures such as export restrictions or extra tariffs. Lastly, it is important to note that the countries listed as potential partners do not seem to account for the growing influence of the Global South; Africa and potentially Latin America are only included because of existing relations and resource-richness as suppliers, but smaller countries in the Global South that do not have the negotiating power to access the CRM market but are forced to import because they do not have the domestic deposits or processing capacity, are once again left behind. It will be important for the European Union and its allies to consider getting them on board, as only then one can truly speak of Effective Multilateralism.



## V. What with the GATT?

### 1. Background

The CRMA has the potential to infringe on several provisions of the General Agreement on Tariffs and Trade (GATT). Its conditionalities and import barriers, built under the notion of diversification and strategic autonomy, do not follow the principles of free trade that were established when the GATT was finalized. The Act favors bilateral or minilateral agreements, which means that either a bilateral trade deal is made that can potentially subvert the Most Favored Nation (MFN)-principle through discriminatory practices, or a minilateral trade agreement is set up which forms a more advanced customs union. These FTAs are allowed under GATT article XXIV and receive exemptions from most of the MFN-principles, but these agreements have a tendency to go beyond MFN and disregard other provisions in favor of an *ad hoc* set of rules that only vaguely fulfill the application criteria. Moreover, the Green Deal Industrial Policy includes European environmental norms and values that will have to be enforced through the FTAs under the CRMA, which can seem condescending towards national environmental legislation in partner countries or will downright be exclusionary towards countries that do not have the capabilities or capacities to adhere to them, causing the Union to lose support in multilateral negotiations.

### 2. Analysis of the EU's actions and compliance with GATT

The General Agreement on Tariffs and Trade, which was originally signed in 1947 and entered into force in 1948, provides a list of articles that are meant to liberalize world trade and minimize direct and indirect trade barriers between countries, as the facilitation of trade and the consequently achieved interconnectedness was thought to contribute to world peace. Eventually, the GATT framework was updated and brought under the in 1994 established WTO, born through the Marrakesh Agreement, which was meant to be the main global governance forum where all matters of international trade would be discussed. However, recent events have shown that Parties to the GATT do not always adhere to the provisions, or choose to willingly block the functioning of the WTO system; this section will attempt to showcase that the CRMA and the EU's minilateralism do not fully adhere to what the GATT framework envisioned – and thus that the European Union has chosen not to blindly support its policy of UN and WTO-backed Effective Multilateralism anymore, at least in regards to critical raw material trade.

## a. Most Favoured-Nation principle

### *Article I*

*“With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation ... any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other **country shall be accorded immediately and unconditionally to the** like product originating in or destined for the **territories of all other contracting parties.**”*

Article I, the backbone of liberal international trade, stipulates that a state should provide any benefits it gives to a trade partner to all its other trade partners as well. Multilateral trade frameworks, such as the one of the World Trade Organization, are ideally designed to create a level playing field in global trade, ensuring that all participating countries adhere to the same set of rules and standards. The GATT was ideologically conceptualized to provide provisions that pave the way towards a liberal trade governance where no party is randomly discriminated and everyone enjoys the highest standards given by trade partners; though bilateral FTAs like the EU-Mercosur already breach this ideology considering the parties involved have basically built up a customs union on certain goods which removes both tariffs and quota from the playing board<sup>101</sup>, one could argue that this practice undermines the spirit of global trade cooperation and trust despite being allowed under Article XXIV. Should all countries prefer these exempted agreements, trade would no longer be globalized and there would be no more mention of trade facilitation.

### *Article XXIV*

*“The contracting parties recognize the desirability of increasing freedom of trade by the development, **through voluntary agreements**, of closer integration between the economies of the countries parties to such agreements.”*

However, there is also another side to this argument. As stated, Article XXIV allows Contracted Parties to deviate from the MFN principle, on several conditions, such as reciprocity and elimination of trade restrictions on “*substantially all trade ... within a reasonable length of time*”; These conditions, being rather strict in their application, were primarily meant to govern North-North trade agreements between Developed Parties that were able to carry the weight of these heavy requirements.

## Enabling Clause

*“Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries<sup>1</sup>, without according such treatment to other contracting parties.”*

As for Developing Parties, the conditionality and reciprocity linked to the FTAs that fall under the scope of Article XXIV would have been too much to bear and would thus limit their development potential. To prevent this, and to stimulate South-South cooperation and regional integration through trade networks, the “Enabling Clause” was adopted<sup>102</sup>. This clause allows for far-reaching flexibility in the reductions on trade-restrictive measures, so that a developing nation does not need to throw its market wide open for its contracting partner. The historical context behind this difference is noteworthy: Article XXIV was originally drafted under the original GATT 1947, in a time where there were little to no North-South trade agreements<sup>103</sup>.

### *Article XXIV versus the Enabling Clause*

However, despite the Enabling Clause potentially being a better fit for developmental purposes, the European Union chooses to bring EPAs under the scope of Article XXIV, because these agreements involve reciprocal trade liberalization, comprehensive coverage of trade sectors, and align with the legal requirements and procedural frameworks provided by Article XXIV<sup>104</sup>

*“The EU's EPAs involve reciprocal trade liberalization commitments, which are characteristic of FTAs and are, therefore, more fittingly governed by Article XXIV, which provides the legal basis for such agreements.”<sup>105</sup>*

Even though the European Union chooses to legally classify its EPAs more under the scope of Article XXIV as FTAs instead of “Trade and Development” and the Enabling Clause, implementation remains just as tricky. On one hand, applying special or preferential treatments to a trade partner risks further pushing the Effective Multilateral framework closer to the brink by eroding the MFN principle and thus the central pillar of trade liberalization, while on the other the application of the principle of “reciprocity” would mean a potentially significant negative impact on economies of developing partner-nations, considering reciprocity has fundamental implications for the production structure and public revenues of these states<sup>106</sup>. From the perspective of the European Union, its strategic interest is to access CRMs without being restricted by trade barriers or customs, thus it prefers the application of Article XXIV; its EPA partners however, feel threatened by the implications of opening their market to the EU’s influence, which is why they prefer to be covered either by a more protectively reformed Article XXIV, or the Enabling Clause.

The EU might want to consider finding a proper compromise between both options if it wants to get its potential partners on board, allowing a more teleological interpretation of Article XXIV where it leaves space for its developing partners to move around in while getting ready to transition their economy towards a green industrialization. Considering the EU has already been found guilty of administering double standards and not fully adhering to multilateralism *pur sang*, it could move up its red line this one time and regain its strategic edge over geopolitical players like China.

## b. Quantitative barriers

### *Article XI*

*“No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party...”*

Article XI of the GATT seeks to eliminate any use of quantitative restrictions such as quotas or import and export bans and limitations. Even though at first glance the CRMA does not include any bans or targeted restrictions, it contains a set of “benchmarks” for its CRM sourcing, including a benchmark on diversification: not more than 65% of the EU annual consumption of each critical raw material, at any stage of processing, should come from a single third country by 2030. Even though this provision is non-binding – it is supposed to serve as a “guideline”<sup>107</sup> – it still incentivizes the Members States to “limit” their imports versus their critical raw materials suppliers. Moreover, the GATT does not specify exactly what is understood under “Quantitative Restrictions”; under the term “other measures”, no exhaustive list is given, and the WTO specifies that any measure of a quantitatively restrictive nature regardless of form falls under the scope of Article XI<sup>108</sup>.

### *Article XIII:1*

*“No prohibition or restriction shall be applied by any contracting party on the importation of any product of the territory of any other contracting party ... unless the importation of the like product of all third countries ... is similarly prohibited or restricted.”*

As for the supposed untargeted nature of the benchmark, despite the way its text is formulated to not focus on any country in particular, the limit is far from feasible when looking at certain market shares in CRM mining and refining; a concrete example of this is China. China is currently dominating the market for processed Heavy Rare Earth Elements with an overwhelming 90% share of global processing<sup>109</sup>. Should the 65%-benchmark be in any way shape or form be implemented in this case, one could argue that China becomes the subject of an import restriction from EU’s side. This means that a case could be made about subjecting the market share domination of China’s Heavy Earth Elements to a 65% ceiling, even if this is a global quota that does not specifically target the country; according to the WTO legal analysis of Article XIII, the Article “establishes the basic principle that no import restriction shall be applied to one Member's products unless the importation of like products from other Members is similarly restricted”<sup>110</sup>. Despite the benchmark being untargeted, one could argue that, considering no other countries have a market share regarding the processing of Heavy Earth Elements, it can be seen as targeted towards China and thus discriminatory.

### Article XIII:2

*“In applying import restrictions to any product, contracting parties shall aim at a distribution of trade in such product approaching as closely as possible the shares which the various contracting parties might be expected to obtain in the absence of such restrictions.”*

This consideration is further strengthened by the next part of the Article, which stipulates that the import restriction must follow the historical distribution of trade as closely as possible compared to the situation where such restrictions would not have been implemented. In the WTO legal analysis for Article XIII, the *US – Line Pipe* case, brought before the Dispute Settlement Body (DSB) of the WTO, was discussed, showing similarities to the current analysis; in the case, the United States imposed a restriction on all imports from each country in excess of 9,000 short tons. The DSB interestingly noted that *“the in-quota import volume originating from Korea, the largest supplier historically to the US market, was reduced to the same level as the smallest – or even then non-existent – suppliers to the US market (9,000 short tons)”*<sup>111</sup>. The considerations made by the DSB in the *US – Pipe Line* case are of particular interest; given the fact that China dominates certain CRM markets, an import restriction on certain CRMs – even untargeted – could be seen as discriminatory under Article XIII as the arbitrary 65% does not account for China’s historical 90% dominance under “normal circumstances”, *in casu* the absence of benchmark-related import inhibitions.

### c. Exemptions

#### Article XX: General exceptions

*“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination ... nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures... essential to the acquisition or distribution of products in general or local short supply...”*

Even though there is no need to call on these at the current time given that the CRMA does not technically contain any provisions that have been flagged as non-conform the GATT agreement, it is nonetheless relevant to mention that this article mentions the possibility to call on this article when a Contracting Party is confronted with a domestic shortage. However, there are some nuances to this article, as illustrated by WTO DSB case law. Firstly, the measures need to be necessary to secure the objective; this means that they not only need to be commensurate, but they should also be able to achieve the goal of protecting the domestic supply against further decline. Measure should not go beyond and should not be restrictive in a way that Contracting Parties are affected more than is absolutely necessary.

Secondly, and more importantly, a “short supply” does not purely refer to a domestic shortage. As long as these domestic shortages can be intercepted by international supply, then a “shortage” is not present. This is of particular relevance for the European Union; it could call upon the exception to stockpile a large number of CRMs and then imposing an export restriction to because it cannot produce CRMs and thus has a domestic shortage. The DSB argued that

*“While the exceptions of Article XX may be invoked as a matter of legal right, they should not be so applied as to frustrate or defeat the legal obligations of the holder of the right under the substantive rules of the General Agreement”<sup>112</sup>.*

This means that, even though countries like China hold most if not all reserves of a certain CRM or Strategic Raw Material, the EU will never be able to call upon this article under any circumstance, unless China itself imposes an export restriction, thus bleeding the international market dry.

#### *Article XXI: Security exceptions*

*“Nothing in this Agreement shall be construed ... to prevent any contracting party from taking any action which it considers necessary for the protection of its essential security interests.”*

The GATT provides many exemptions that allow for countries to deviate from the established provisions for reasons such as a detrimental impact on the environment, public health, and the infamous exception based on national security. When it comes to CRMs, exemptions based on the “essential security interests” of a state will not be uncommon; the United States has already invoked Article XXI several time during its trade war with China, stating that the tariffs on aluminum and steel – which were indirectly but mostly targeted towards China – were in defense of essential security interests, which the DSB did not agree with<sup>113</sup>. It is hard to provide an exact definition of the concept “essential security interest”; technically, a shortage of CRMs could be seen as a problem of national security if a Contracting Party manages to successfully claim that such a shortage would for example endanger electricity production and thus availability in the country for a prolonged period of time.

The United States has already invoked the national security exception during the Trump administration in 2019; in the WTO DSB case, the Panel ruled the invocation of the exception to be inadmissible, and rejected the US claim stating a Contracting Party should be able to determine on its own when a trade restrictive measure is “necessary” as the Agreement states. The Panel stated that the provision does not lend itself to “self-determination”, and that despite it being the sovereign competence of a state to decide when something is an essential security interest, there exists an objective evaluation on whether or not a measure is justified subsection of Article XXI (b)<sup>114</sup>. As for a specific application with regards to CRMs, no case law is available yet, and this will likely remain the case as long as the Appellate Body crisis persists.

#### d. Dispute Settlement

*“When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements ... they shall have recourse to, and abide by, the rules and procedures of this Understanding.”*

Article 23 of the Dispute Settlement Understanding (DSU) nudges Parties to the GATT to bring up any breaches of the Agreement. The provision of a separate dispute settlement body in Free Trade Agreements is technically allowed under Article XXIV, the general exemption for Free Trade Agreements and Custom Unions. However, the ideology behind institutions like the WTO is the facilitation of global governance regarding specific policy sectors, in this case international trade. These institutions provide a framework to the benefit of its members, yet in some cases these Parties do not adhere to Convention provisions or bilateral trade agreements. And even though the WTO has received the special competence to settle disputes through its DSB should any unfair practices rise up, it has become harder and harder for the organization to make an impact in this field, especially since the appellate body crisis. Worse yet, modern Free Trade Agreements have the option to include separate Dispute Settlement Bodies; an example of this is the EU-Mercosur Agreement, which includes a comprehensive dispute settlement mechanism designed to address conflicts that may arise under the agreement. This mechanism, as expected, operates entirely outside of the established WTO dispute resolution framework, creating a parallel system that could undermine the authority and effectiveness of multilateral institutions<sup>115</sup>.

## VI. Final considerations and policy recommendations

### 1. Conclusion

The CRMA represents a significant opportunity for the EU to secure its access to critical raw materials, but it also poses challenges to its relations with other actors and the trust they have in the Union, the principles of effective multilateralism and the efficiency of the global trade system. By more comprehensively aligning the CRMA with multilateral goals and provisions, promoting inclusive and transparent agreements based on its own values, and enhancing global cooperation through the creation of new or the reform of existing multilateral frameworks, the EU can ensure that its pursuit of strategic autonomy does not come at the expense of global cooperation and stability.

The EU's potential leadership in the development of a global governance framework for CRMs, based on the principles of sustainability, transparency, and inclusivity, will be essential in ensuring that the benefits of the CRMA are shared more broadly across the international community, and in particular, with the Global South; the CRMA presents an opportunity to step away from extractivism and focus more on the development of partner countries' economies so that they too can move up on the global value chain. This will also help to ensure that the EU's strategic autonomy goals are not only compatible with its obligations under international trade law but also that its policy contributes to the trust in and the stability and predictability of the global trading system. Based on these observations made and arguments given, following policy recommendations can be made:

### 2. Policy recommendations

**Find the correct balance between self-centered OSA policies and the interests of partners –** Firstly, the EU must balance its pursuit of strategic autonomy with its commitment to global cooperation. While its goals under OSA might seem justifiable given the current geopolitical context, the means to the end are not. It would be recommended for the European Union to approach its newfound strategic autonomy in a nuanced way that recognizes the legitimate concerns of other countries, particularly those in the Global South, so that a more equitable and inclusive global trade system remains the main goal. Care needs to be taken not to fall for the slippery slope that is industrial and economic independence; in the globalized yet polarized world of 2024, autonomy and protectionism often find each other during policy considerations. As attractive as its independence may seem, the Union needs to make sure not to leave potential partners in the Global South behind, while also considering the long-term implications of its strategic autonomy policies on future relations with ex-partners in other policy areas.



**Remain committed to Effective Multilateralism** – Effective multilateralism is far from dead, despite its struggles, and the European Union should keep supporting multilateral reform instead of giving up and joining other nations’ protectionist tendencies. While it is true that the EU has to build its own resilience, it should do so in a way that it adheres to the principles of the existing multilateral frameworks; it has the tools and influence to try and convince other actors to do the same. Supporting effective multilateralism means taking the lead in the forthcoming 2024 Summit of the Future<sup>116</sup>, making use of its specialty “leadiator” role to bring parties to the table and highlight the benefits of the sleeping and paralyzed institutions so it can foster a renewed trust in the international system. The focus on strengthening multilateral frameworks for the governance of critical raw materials, such as continuing its role in the conception and maintenance of global standards for CRM management, as it did during the working groups on the UNFC, or in the lead up to the creation of a new multilateral framework that addresses the specific challenges of CRM supply chains is but one of the requirements to renew interest.

**Link economic interests to the development of trade partners** – The Union should primarily focus on using the EPA toolkit to invest in infrastructure, technology, and capacity building in resource-rich trade partners in the African region instead of desperately trying to close out bilateral Free Trade Agreements that completely disregard certain social and environmental standards in favor of securing economic interests. To ensure that its trade partners can meet global demand for CRMs in a sustainable and reliable manner, the local population and the partner country should be able to reap the benefits of a strategic partnership with the EU; by halting the neo-colonial practice of purely extractivist activities in the Global South, there would be no need for them to take drastic protectionist measures such as nationalizations just to be able to move up the global value chain. Purely providing monetary development aid is however not enough; the EU should involve its key industrial players and encourage them to invest with both capital and know-how while also handing the governance of processing plants to the local communities to make sure that the trade partner can undergo its green industrial revolution.

**Pursue GATT-conform policy interpretations** – Effective multilateralism also means it must reconcile the CRMA with the principles of the WTO, lest the EU be blamed for upholding double standards; this could involve revising the CRMA’s benchmarks and provisions on strategic stockpiling to ensure that they do not constitute arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Such circumstances also create the perfect opportunity for the European Union to show others that the World Trade Organization serves as more than an institution which slams countries for having trade barriers: engagement with the WTO to clarify the application of the CRMA under international trade law is not only necessary, but beneficial for all parties under the framework.

**Continue exploring and exporting EU values** – As the European Union has already done in the past for other policy areas, the Green Deal’s embedded sustainability standards should be extended to its international partnerships. The EU should work with its global partners to promote sustainable mining practices, enhance environmental protections, and ensure that CRM extraction does not contribute to environmental degradation or social injustice<sup>17</sup>. This could involve the development of new international standards for sustainable mining, or the inclusion of sustainability clauses in trade agreements, as is common practice for its EPAs.

**Enhance Global Governance in supply chains** – Of course, many of these policy recommendations make little to no mention of the root cause of the problem in CRM trade, or possible initiatives the EU can take internally. To reduce the risks associated with supply chain disruptions and weaponization of dependencies, the EU should work with its international partners to enhance the resilience of global CRM supply chains. Spearheading initiatives like the Critical Raw Materials Club, where partnering countries can come together and discuss global governance of CRM sourcing and distribution, or the European Raw Materials Alliance, where cross-border Public-Private Partnerships connect leaders directly with the shackles of the global value chain, should become a key component of the industrial policy of the EU and its partners.

**Maintain a correct and commensurate level of strategic autonomy** – Lastly, even though this policy report mentioned the downsides of strict strategic autonomy, it does not mean that the Union’s OAS policy is the wrong path forward. It remains critical under the current geopolitical environment that the EU creates its envisioned strategic reserves of CRMs, similar to what is done under the Energy Charter Treaty in regards to emergency oil reserves in collaboration with global partners, to buffer against supply disruptions; however, this does not mean that the Union should hamster resources in case of a trade disruption. Thanks to the way green energy infrastructure works, stockpiled CRMs would not “fill a void” as is the case for oil supply disruptions: they will be used to create more permanent infrastructure that once built, will operate until damaged or decommissioned, upon which it can be disassembled and recycled – all adding onto the coveted strategic autonomy.

These recommendations should be able to ensure the European Union can stay its Open Strategic Autonomy-course, but in a way which does not hollow out the principles of Effective Multilateralism by involving as many partners as possible and ensuring all actors involved gain the maximum number of benefits possible. A win-win situation in the critical raw material trade is easily obtained if the right policy choices are made, it is only a matter of ridding oneself of the tunnel vision imposed by third party trade wars and geopolitical games and refocusing on finding a middle road between one’s own interests and values and those of potential partners.

## VII. Endnotes

---

<sup>1</sup> Keohane, R. O. (1989). Multilateralism: an agenda for research. *International Journal*, 45(4), 731-764.

<sup>2</sup> Ruggie, J. G. (1992). Multilateralism: the anatomy of an institution. *International organization*, 46(3), 561-598.

<sup>3</sup> Dimitrov, R. S. (2019). Empty institutions in global environmental politics. *International Studies Review*, 22(3), 626–650. <https://doi.org/10.1093/isr/viz029>.

<sup>4</sup> International Peace Institute & Institute for Economics and Peace. (2022, September 16). Multilateralism Index: Pilot Report. *International Peace Institute*. <https://www.ipinst.org/2022/09/multilateralism-index-pilot-report>

<sup>5</sup> G20. (2023, December). *Concept note of the Brazilian G20 presidency*.

<sup>6</sup> Council. (2019). *EU action to strengthen rules-based multilateralism* (Nr. 10341/19). <https://data.consilium.europa.eu/doc/document/ST-10341-2019-INIT/en/pdf>

<sup>7</sup> International Peace Institute & Institute for Economics and Peace. (2022, September 16). Multilateralism Index: Pilot Report. *International Peace Institute*. <https://www.ipinst.org/2022/09/multilateralism-index-pilot-report>

<sup>8</sup> *Global Trade Alerts*. Retrieved March 12, 2024, from <https://www.globaltradealert.org/>

<sup>9</sup> European Commission. (2021). *Trade Policy Review - An Open, Sustainable and Assertive Trade Policy*. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0066>

<sup>10</sup> De Decker, V. (2023). *The CRM Act in a global perspective* (Egmont Papers, No. 121; p. 16). Egmont Institute. <https://www.egmontinstitute.be/the-crm-act-in-a-global-perspective/>

<sup>11</sup> Brender, R. (2023). *Strengthening multilateralism in a multipolar world: On the contribution of this year's G7 and G20 Summits and suggested next steps for the EU* - (No. 311; Egmont Security Policy Briefs, p. 8). Egmont Institute. <https://www.egmontinstitute.be/strengthening-multilateralism-in-a-multipolar-world/>

<sup>12</sup> Moret, E. (2016). *Effective minilateralism for the EU : what, when and how*, European Union Institute for Security Studies. <https://data.europa.eu/doi/10.2815/20196>

<sup>13</sup> Raja Mohan, C. (2023, September 11). *The Nimble New Minilaterals*. Asia-Pacific Leadership Network. [https://www.apln.network/news/member\\_activities/the-nimble-new-minilaterals](https://www.apln.network/news/member_activities/the-nimble-new-minilaterals)

<sup>14</sup> Jaldi, A. (2023). *The Crisis of Multilateralism viewed from the Global South* (No. PP-05/23; p. 28). Policy Center for the New South. [https://www.policycenter.ma/sites/default/files/2023-04/PP\\_05-23%20%28Jaldi%20%29.pdf](https://www.policycenter.ma/sites/default/files/2023-04/PP_05-23%20%28Jaldi%20%29.pdf)

<sup>15</sup> *Ibid.*

<sup>16</sup> Moret, E. (2016). *Effective minilateralism for the EU: What, when and how*. Publications Office. <https://data.europa.eu/doi/10.2815/20196>

<sup>17</sup> Jaldi, A. (2023). *The Crisis of Multilateralism viewed from the Global South* (No. PP-05/23; p. 28). Policy Center for the New South. [https://www.policycenter.ma/sites/default/files/2023-04/PP\\_05-23%20%28Jaldi%20%29.pdf](https://www.policycenter.ma/sites/default/files/2023-04/PP_05-23%20%28Jaldi%20%29.pdf)

- 
- <sup>18</sup> Personal informal communication
- <sup>19</sup> Tiess, G. (2010). Minerals policy in Europe: Some recent developments. *Resources Policy*, 35(3), 190–198. <https://doi.org/10.1016/j.resourpol.2010.05.005>
- <sup>20</sup> Tocci, N. (2021). *European Strategic Autonomy: What It Is, Why We Need It, How to Achieve It* (p. 39). Istituto Affari Internazionali. <https://www.iai.it/sites/default/files/9788893681780.pdf>
- <sup>21</sup> Gray, J. (2018, March 30). Hyper-liberalism: John Gray on a new cult at odds with the progressives of the past. *TLS*. <https://www.the-tls.co.uk/politics-society/politics/problem-hyper-liberalism-essay-john-gray>
- <sup>22</sup> Di Carlo, D., & Schmitz, L. (2023). Europe first? The rise of EU industrial policy promoting and protecting the single market. *Journal of European Public Policy*, 30(10), 2063–2096. <https://doi.org/10.1080/13501763.2023.2202684>
- <sup>23</sup> Bickenbach, F., Dohse, D., Langhammer, R. J., & Liu, W.-H. (2024). *EU Concerns About Chinese Subsidies: What the Evidence Suggests*. 2024(4), 214–221. <https://www.intereconomics.eu/contents/year/2024/number/4/article/eu-concerns-about-chinese-subsidies-what-the-evidence-suggests.html>
- <sup>24</sup> Fappani, V., & Marabini San Martín, B. (2024). *Behind the EU's New Probe Into China's Green Tech Subsidies*. <https://thediplomat.com/2024/04/behind-the-eus-new-probe-into-chinas-green-tech-subsidies/>
- <sup>25</sup> Camps, J. V., & Saz-Carranza, A. (2023). *The EU Response to the U.S. Inflation Reduction Act*. 31. <https://www.esade.edu/faculty-research/en/esadegeo/publication/policy-paper-the-eu-response-to-the-us-inflation-reduction-act>
- <sup>26</sup> Breckenridge, A., Torres, M. P., Unteutsch, M., & Majerus, P. (2024). *The Inflation Reduction Act and what it means for the EU and the UK*. *Frontier Economics*. <https://www.frontier-economics.com/uk/en/news-and-insights/articles/article-i10390-the-inflation-reduction-act-and-what-it-means-for-the-eu-and-the-uk/>
- <sup>27</sup> Majkut, J., Mazzocco, I., & Nakano, J. (2023). *Onshoring and Friend-Shoring in U.S. EV Supply Chains: What Are the Boundaries?* <https://www.csis.org/analysis/onshoring-and-friend-shoring-us-ev-supply-chains-what-are-boundaries>
- <sup>28</sup> Fajeau, M., Garnadt, N., Grimm, V., Jean, S., Kroeger, T., Landais, C., Malmendier, U., Ochsner, C., Paris, H., Philippon, T., Saussay, A., Schnitzer, M., Truger, A., & Werding, M. (2023, October 17). *The US Inflation Reduction Act: How the EU is affected and how it should react*. CEPR. <https://cepr.org/voxeu/columns/us-inflation-reduction-act-how-eu-affected-and-how-it-should-react>
- <sup>29</sup> Kleimann, D., Poitiers, N., Sapir, A., Tagliapietra, S., Véron, N., Veugelers, R., & Zettelmeyer, J. (2023). *How Europe should answer the US Inflation Reduction Act* (No. 04/2023; Bruegel Policy Contributions). Bruegel. <https://www.econstor.eu/handle/10419/274198>
- <sup>30</sup> Ministerie van Buitenlandse Zaken. (2021, March 25). *Spain-Netherlands non-paper on strategic autonomy while preserving an open economy* [Publicatie]. Ministerie van Algemene Zaken. <https://www.rijksoverheid.nl/documenten/publicaties/2021/03/25/spain-netherlands-non-paper-on-strategic-autonomy-while-preserving-an-open-economy>

- 
- <sup>31</sup> Molthof, L., Zandee, D., & Cretti, G. (2021). *Unpacking open strategic autonomy* (Clingendael Reports, p. 54). Clingendael. [https://www.clingendael.org/sites/default/files/2021-11/Unpacking\\_open\\_strategic\\_autonomy.pdf](https://www.clingendael.org/sites/default/files/2021-11/Unpacking_open_strategic_autonomy.pdf)
- <sup>32</sup> *First in-depth review of strategic areas of Europe's interests*. (2021). [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-industrial-strategy/depth-reviews-strategic-areas-europes-interests\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/european-industrial-strategy/depth-reviews-strategic-areas-europes-interests_en)
- <sup>33</sup> Biscop, S. (2023). *Keeping it Together? Realpolitik and Solidarity in a Multipolar World* (No. 28/2023; CSDS Policy Briefs). Centre for Security, Diplomacy and Strategy. <https://csds.vub.be/publication/keeping-it-together-realpolitik-and-solidarity/>
- <sup>34</sup> A Green Deal Industrial Plan for the Net-Zero Age, No. COM(2023)6-final, European Commission (2023). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023DC0062>
- <sup>35</sup> Schuette, L., & Dijkstra, H. (2023). The show must go on: The EU's quest to sustain multilateral institutions since 2016. *JCMS: Journal of Common Market Studies*, 61(5), 1318–1336. <https://doi.org/10.1111/jcms.13466>
- <sup>36</sup> Watts, C. (2023, March 22). *The EU's response to the Inflation Reduction Act*. Rethink. <https://rethinkresearch.biz/articles/the-eus-response-to-the-inflation-reduction-act/>
- <sup>37</sup> Proposal for a Regulation of the European Parliament and of the Council on Establishing a Framework of Measures for Strengthening Europe's Net-Zero Technology Products Manufacturing Ecosystem. COM(2023)161. (2023). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0161>
- <sup>38</sup> Proposal for a Regulation of the European Parliament and of the Council Establishing a Framework for Ensuring a Secure and Sustainable Supply of Critical Raw Materials and Amending Regulations (EU) 168/2013, (EU) 2018/858, 2018/1724 and (EU) 2019/1020, No. COM/2023/160 (2023). <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0160>
- <sup>39</sup> Draghi, M. (2024, April 16). *Mario Draghi: Radical Change—Is What Is Needed*. Groupe d'études Géopolitiques. <https://geopolitique.eu/en/2024/04/16/radical-change-is-what-is-needed/>
- <sup>40</sup> Tagliapietra, S., & Veugelers, R. (2023). Industrial policy in Europe: Past and future. *Sparkling Europe's New Industrial Revolution*, 33, 13–28. <https://www.bruegel.org/system/files/2023-08/Bruegel%20Blueprint%2033%20080823%20web.pdf>
- <sup>41</sup> Barbé, E., & Morillas, P. (2019). The EU global strategy: the dynamics of a more politicized and politically integrated foreign policy. *Cambridge Review of International Affairs*, 32(6), 753–770. <https://doi.org/10.1080/09557571.2019.1588227>
- <sup>42</sup> European Commission. The Raw Materials Initiative — Meeting Our Critical Needs for Growth and Jobs in Europe, COM(2008) 699 (2008). <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0699:FIN:en:PDF>
- <sup>43</sup> Oberthür, S., & Dupont, C. (2021). The European Union's international climate leadership: towards a grand climate strategy? *Journal of European Public Policy*, 28(7), 1095–1114. <https://doi.org/10.1080/13501763.2021.1918218>

- 
- <sup>44</sup> Bäckstrand, K., & Elgström, O. (2013). The EU's role in climate change negotiations: from leader to 'lead actor.' *Journal of European Public Policy*, 20(10), 1369–1386. <https://doi.org/10.1080/13501763.2013.781781>
- <sup>45</sup> European Commission. (2022, April 8). *Energy and the Green Deal*. [https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/energy-and-green-deal\\_en](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/energy-and-green-deal_en)
- <sup>46</sup> Kyunghoon K. (2023, February 20). *Indonesia's uncertain climb up the nickel value chain*. Lowy Institute. <https://www.lowyinstitute.org/the-interpreter/indonesia-s-uncertain-climb-nickel-value-chain>
- <sup>47</sup> Bruegel. (2024, February 13<sup>th</sup>). *2040 goals: where are we on the path to a climate-neutral EU? A conversation with Commissioner for Climate Action, Wopke Hoekstra, on 2040 EU climate target*. <https://www.bruegel.org/event/2040-goals-where-are-we-path-climate-neutral-eu>
- <sup>48</sup> European Commission. (2020). *A hydrogen strategy for a climate-neutral Europe* (COM/2020/301). <https://eurlex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0301>
- <sup>49</sup> Draghi, M. (2024, April 16). *Mario Draghi: Radical Change—Is What Is Needed*. Groupe d'études Géopolitiques. <https://geopolitique.eu/en/2024/04/16/radical-change-is-what-is-needed/>
- <sup>50</sup> De Decker, V. (2024, April 9). *Towards a Geopolitical Green Deal*. Egmont Institute. <https://www.egmontinstitute.be/towards-a-geopolitical-green-deal/>
- <sup>51</sup> Hool, A., Helbig, C. & Wierink, G. Challenges and opportunities of the European Critical Raw Materials Act. *Miner Econ* (2023). <https://doi.org/10.1007/s13563-023-00394-y>
- <sup>52</sup> Nikulski, J. S., Ritthoff, M., & Von Gries, N. (2021). The Potential and Limitations of Critical Raw Material Recycling: The Case of LED Lamps. *Resources*, 10(4), 37. <https://doi.org/10.3390/resources10040037>
- <sup>53</sup> Chibelushi, W. (2024, February 3). *Somalia piracy: Are we witnessing its return off the country's coast?* <https://www.bbc.com/news/world-africa-68155471>
- <sup>54</sup> Righetti, E., & Rizos, V. (2024). Reducing supply risks for critical raw materials: Evidence and policy options. *CEPS In-Depth Analysis*. [https://www.researchgate.net/profile/Edoardo-Righetti-2/publication/377528818\\_Reducing\\_supply\\_risks\\_for\\_critical\\_raw\\_materials\\_Evidence\\_and\\_policy\\_options/links/65aaa25fee1e1951fbc22f91/Reducing-supply-risks-for-critical-raw-materials-Evidence-and-policy-options.pdf](https://www.researchgate.net/profile/Edoardo-Righetti-2/publication/377528818_Reducing_supply_risks_for_critical_raw_materials_Evidence_and_policy_options/links/65aaa25fee1e1951fbc22f91/Reducing-supply-risks-for-critical-raw-materials-Evidence-and-policy-options.pdf)
- <sup>55</sup> Mahul, O., & Stutley, C. J. (2010). Government Support to Agricultural Insurance: challenges and options for developing countries. *World Bank Publications*. 35.
- <sup>56</sup> Wolf, A. (2022). Stockpiling of Critical Metals as a Risk Management Strategy for Importing Countries. *Journal of Resilient Economies*, 2(2). <https://doi.org/10.25120/jre.2.2.2022.3931>
- <sup>57</sup> *Ibid.*
- <sup>58</sup> Personal informal communication
- <sup>59</sup> Tiess, G. (2010). Minerals policy in Europe: Some recent developments. *Resources Policy*, 35(3), 190–198. <https://doi.org/10.1016/j.resourpol.2010.05.005>

- 
- <sup>60</sup> Pickles, S. (2023, September 21). *An alternative narrative on raw material access*. Greens/EFA. <https://extranet.greens-efa.eu/public/media/file/1/8661>
- <sup>61</sup> Chua, A. M. M., Garcia, Y. T., & Andal, E. G. T. (2018). The Spaghetti Bowl Phenomenon in Free Trade Agreements (FTAs) among APEC Economies. *International Academy of Global Business and Trade*, 14(2), 45–59. <https://doi.org/10.20294/jgbt.2018.14.2.45>
- <sup>62</sup> European Commission. (2023, June 16). *Infographic—EU-ACP Economic Partnership Agreements*. CIRCABC. <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/cacca7e8-53e0-4105-bc7f-80a3f1dce44e/details?download=true>
- <sup>63</sup> Palmieri, R., Amice, C., Amato, M., & Verneau, F. (2024). Beyond the Finish Line: Sustainability Hurdles in the EU–Mercosur Free Trade Agreement. *Social Sciences*, 13(7), 362. <https://doi.org/10.3390/socsci13070362>
- <sup>64</sup> European Commission. (2022, October 20). *Text of the Agreement—EU-EAC EPA*. CIRCABC. <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/4f8d4f46-48ba-45d8-a1d2-a1a934b56949/details?download=true>
- <sup>65</sup> Andreonia, A., & Avenyob, E. (2023). *Critical Minerals and Routes to Diversification in Africa: Linkages, Pulling Dynamics and Opportunities in Medium-High Tech Supply Chains*. 70. UNCTAD. [https://unctad.org/system/files/non-official-document/edar2023\\_BP1\\_en.pdf](https://unctad.org/system/files/non-official-document/edar2023_BP1_en.pdf)
- <sup>66</sup> *Ibid.*
- <sup>67</sup> Acheampong, T. (2024, April 24). *From mines to markets: How Africa and Europe can become green industry partners of choice*. ECFR. <https://ecfr.eu/publication/from-mines-to-markets-how-africa-and-europe-can-become-green-industry-partners-of-choice/>
- <sup>68</sup> Cargorouter. (2024, August). *Shipping from Zambia to United Kingdom by sea, road, rail and air freight*. <https://www.cargorouter.com/freight-shipping/Zambia-to-United-Kingdom/>
- <sup>69</sup> Sheehy, T. (2024, August 8). *The Lobito Corridor: A U.S. Bet on Africa’s Critical Mineral Development*. United States Institute of Peace. <https://www.usip.org/publications/2024/08/lobito-corridor-us-bet-africas-critical-mineral-development>
- <sup>70</sup> De Decker, V. (2024, April 9). *Towards a Geopolitical Green Deal*. Egmont Institute. <https://www.egmontinstitute.be/towards-a-geopolitical-green-deal/>
- <sup>71</sup> Agence ecofin. (2023, March 18). *Matières premières critiques: L’Union européenne proposera à l’Afrique des partenariats axés sur le raffinage sur place*. <https://www.agenceecofin.com/actualites/1803-106616-matieres-premieres-critiques-l-union-europeenne-proposera-a-l-afrique-des-partenariats-axes-sur-le-raffinage-sur-place>
- <sup>72</sup> Katjavivi, P. H. (2017). The Economic Partnership Agreements: An African Perspective. In A. Montoute & K. Virk (Eds.), *The ACP Group and the EU Development Partnership* (pp. 135–159). Springer International Publishing. [https://doi.org/10.1007/978-3-319-45492-4\\_6](https://doi.org/10.1007/978-3-319-45492-4_6)
- <sup>73</sup> European Commission. (2023, November 17). *Memorandum of Understanding EU-Democratic Republic of Congo on sustainable raw materials*. [https://single-market-economy.ec.europa.eu/publications/memorandum-understanding-eu-democratic-republic-congo-sustainable-raw-materials\\_en](https://single-market-economy.ec.europa.eu/publications/memorandum-understanding-eu-democratic-republic-congo-sustainable-raw-materials_en)

- 
- <sup>74</sup> Müller, M. (2023). The ‘new geopolitics’ of mineral supply chains: A window of opportunity for African countries. *South African Journal of International Affairs*, 30(2), 177–203. <https://doi.org/10.1080/10220461.2023.2226108>
- <sup>75</sup> Vedio, H. (2017). Chinese mining investments in Africa. *Policy brief*, 1716. <https://www.policycenter.ma/sites/default/files/2021-01/OCPPC-PB1715.pdf>
- <sup>76</sup> Acheampong, T. (2024, April 24). *From mines to markets: How Africa and Europe can become green industry partners of choice*. ECFR. <https://ecfr.eu/publication/from-mines-to-markets-how-africa-and-europe-can-become-green-industry-partners-of-choice/>
- <sup>77</sup> Tom Lantos Human Rights Commission (Director). (2022, July 14). *Child Labor and Human Rights Violations in the Mining Industry of the Democratic Republic of Congo* [Video recording]. <https://www.youtube.com/watch?v=38EAPDfDeKQ>
- <sup>78</sup> Rights and Accountability in Development & Centre d’Aide Juridico-Juridicaire. (2021, November 7). The Road to Ruin? Electric vehicles and workers’ rights abuses at DR Congo’s industrial cobalt mines. *RAID*. [https://raid-uk.org/wp-content/uploads/2023/03/report\\_road\\_to\\_ruin\\_evs\\_cobalt\\_workers\\_nov\\_2021.pdf](https://raid-uk.org/wp-content/uploads/2023/03/report_road_to_ruin_evs_cobalt_workers_nov_2021.pdf)
- <sup>79</sup> Herzer, L., & Doyle, C. (2023, July 18). Examining China’s Impact on Mining in Africa: Critiques and Credible Responses [Wilson Center]. *Africa up Close*. <https://www.wilsoncenter.org/blog-post/examining-chinas-impact-mining-africa-critiques-and-credible-responses>
- <sup>80</sup> De Decker, V. (2024, April 9). *Towards a Geopolitical Green Deal*. Egmont Institute. <https://www.egmontinstitute.be/towards-a-geopolitical-green-deal/>
- <sup>81</sup> Herzer, L., & Doyle, C. (2023, July 18). Examining China’s Impact on Mining in Africa: Critiques and Credible Responses [Wilson Center]. *Africa up Close*. <https://www.wilsoncenter.org/blog-post/examining-chinas-impact-mining-africa-critiques-and-credible-responses>
- <sup>82</sup> Wouters, L. (2023, March 24). *Key players: Why mining is central to the EU’s critical raw materials ambitions in Africa*. ECFR. <https://ecfr.eu/article/key-players-why-mining-is-central-to-the-eus-critical-raw-materials-ambitions-in-africa/>
- <sup>83</sup> European Commission. (2019). *Key elements of the EU-Mercosur trade agreement* [Text]. [https://ec.europa.eu/commission/presscorner/detail/en/qanda\\_19\\_3375](https://ec.europa.eu/commission/presscorner/detail/en/qanda_19_3375)
- <sup>84</sup> Palmieri, R., Amice, C., Amato, M., & Verneau, F. (2024). Beyond the Finish Line: Sustainability Hurdles in the EU–Mercosur Free Trade Agreement. *Social Sciences*, 13(7), 362. <https://doi.org/10.3390/socsci13070362>
- <sup>85</sup> Grohol, M. (2023). *Study on the critical raw materials for the EU 2023: Final report*. Publications Office of the European Union. <https://data.europa.eu/doi/10.2873/725585>
- <sup>86</sup> Roy, D. (2023, June 15<sup>th</sup>). *China’s Growing Influence in Latin America*. Council on Foreign Relations. <https://www.cfr.org/backgrounder/china-influence-latin-america-argentina-brazil-venezuela-security-energy-bri>
- <sup>87</sup> Müller, G. (2023, November 16). *The EU-Mercosur Deal Is About More Than Trade* [Carnegie Endowment]. Strategic Europe. <https://carnegieendowment.org/europe/strategic-europe/2023/11/the-eu-mercoshur-deal-is-about-more-than-trade?lang=en>



- 
- <sup>88</sup> Palmieri, R., Amice, C., Amato, M., & Verneau, F. (2024). Beyond the Finish Line: Sustainability Hurdles in the EU–Mercosur Free Trade Agreement. *Social Sciences*, 13(7), 362. <https://doi.org/10.3390/socsci13070362>
- <sup>89</sup> Demarais, A. (2024, January 15). *The bigger picture: The case for an EU-Mercosur free trade deal*. ECFR. <https://ecfr.eu/article/the-bigger-picture-the-case-for-an-eu-mercotur-free-trade-deal/>
- <sup>90</sup> Gonzalez, A., & Verbeek, B.-J. (2024, May 15). *The EU's critical minerals crusade*. SOMO. <https://www.somo.nl/the-eus-critical-minerals-crusade/>
- <sup>91</sup> Lopez, O. D., & Carvajal, A. (2020). The Trade Effects of Regional Agreements and Economic Integration Processes in Europe, South America, and North America. *Latin American Journal of Trade Policy*, 3(8), 32. <https://doi.org/10.5354/0719-9368.2020.57980>
- <sup>92</sup> Monteagudo, J., & Watanuki, M. (2003). Regional trade agreements for Mercosur: A comparison between the FTAA and the FTA with the European Union: *Économie Internationale*, n° 94-95(2), 53–76. <https://doi.org/10.3917/eoci.094.0053>
- <sup>93</sup> Climate Alliance. (n.d.). *What's behind the EU-MERCOSUR trade agreement*. <https://www.climatealliance.org/activities/advocacy/european-policy/eu-mercotur.html>
- <sup>94</sup> Friends of Europe, Ecologistas en Acción, European Coordination Via Campesina, Collectif national Stop CETA-Mercosur, Aitec, PowerShift e.V. Germany, & Handel Anders. (2023, April 22). Civil society denounce leaked joint instrument on EU-Mercosur deal as blatant greenwashing. *Friends of the Earth Europe*. <https://friendsoftheearth.eu/press-release/breaking-civil-society-denounce-leaked-joint-instrument-on-eu-mercotur-deal-as-blatant-greenwashing/>
- <sup>95</sup> France says EU Commission to end trade deal talks with Mercosur countries. (2024, January 29). *Reuters*. <https://www.reuters.com/world/europe/france-says-eu-commission-end-trade-deal-talks-with-mercotur-countries-2024-01-29/>
- <sup>96</sup> European Commission. (n.d.). *Economic Partnership Agreements (EPAs)*. Access2Markets. <https://trade.ec.europa.eu/access-to-markets/en/content/economic-partnership-agreements-epas>
- <sup>97</sup> Fontagne, L., Laborde, D., & Mitaritonna, C. (2011). An Impact Study of the Economic Partnership Agreements in the Six ACP Regions. *Journal of African Economies*, 20(2), 179–216. <https://doi.org/10.1093/jae/ejq037>
- <sup>98</sup> Flaherty, N. (2023, March 17). EU to form €20bn Critical Materials club. *eeNews Europe*. <https://www.eenewseurope.com/en/eu-to-form-e20bn-critical-materials-club/>
- <sup>99</sup> Lawler, N., & Shin, F. (2023, December 15). The EU needs a buyers' club for critical minerals. Here's why. *Atlantic Council*. <https://www.atlanticcouncil.org/blogs/new-atlanticist/the-eu-needs-a-buyers-club-for-critical-minerals-heres-why/>
- <sup>100</sup> Findeisen, F. (2023, October 31). *The Club Approach: Towards Successful EU Critical Raw Materials Diplomacy*. Jacques Delors Centre. <https://www.delorscentre.eu/en/publications/critical-raw-materials-club>
- <sup>101</sup> Baltensperger, M., & Dadush, U. (2019). *The European Union-Mercosur Free Trade Agreement: Prospects and risks* (Policy Paper No. 11; p. 16). Bruegel. [https://www.bruegel.org/system/files/wp\\_attachments/PC-11\\_2019.pdf](https://www.bruegel.org/system/files/wp_attachments/PC-11_2019.pdf)

- 
- <sup>102</sup> World Trade Organization. *Decision on Differential and More Favourable Treatment, Reciprocity, and Fuller Participation of Developing Countries* (28 November 1979) GATT Document No. L/4903. [https://www.wto.org/english/docs\\_e/legal\\_e/tokyo\\_enabling\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/tokyo_enabling_e.pdf)
- <sup>103</sup> Ochieng, C. M. O. (2007). The EU-ACP Economic Partnership Agreements and the “Development Question”: Constraints and Opportunities Posed by Article XXIV and Special and Differential Treatment Provisions of the WTO. *Journal of International Economic Law*, 10(2), 363–395. <https://doi.org/10.1093/jiel/jgm009>
- <sup>104</sup> Sharp, Ben. (2010). Comparing preferential trade agreement scrutiny under gatt article xxiv and the enabling clause: lessons learned from the gulf cooperation council. *Manchester Journal of International Economic Law*, 7(1), 56-70.
- <sup>105</sup> *Ibid.*
- <sup>106</sup> Ochieng, C. M. O. (2007). The EU-ACP Economic Partnership Agreements and the “Development Question”: Constraints and Opportunities Posed by Article XXIV and Special and Differential Treatment Provisions of the WTO. *Journal of International Economic Law*, 10(2), 363–395. <https://doi.org/10.1093/jiel/jgm009>
- <sup>107</sup> Regulation (EU) 2024/1252 of the European Parliament and of the Council of 11 April 2024 Establishing a Framework for Ensuring a Secure and Sustainable Supply of Critical Raw Materials and Amending Regulations (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1724 and (EU) 2019/1020, Pub. L. No. 1252, Official Journal of the European Union (2024). <http://data.europa.eu/eli/reg/2024/1252/oj/eng>
- <sup>108</sup> World Trade Organization. (n.d.). Article XI of the General Agreement on Tariffs and Trade 1994. *WTO Analytical Index*. [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/gatt1994\\_art11\\_oth.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art11_oth.pdf)
- <sup>109</sup> IEA. (2021). *The Role of Critical Minerals in Clean Energy Transitions*. IEA. <https://www.iea.org/reports/the-role-of-critical-minerals-in-clean-energy-transitions>.
- <sup>110</sup> World Trade Organization. (n.d.). Article XIII. Non-Discriminatory Administration Of Quantitative Restrictions. *GATT 1994 – Article XIII (DS Reports)*. [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/gatt1994\\_art13\\_jur.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art13_jur.pdf)
- <sup>111</sup> World Trade Organization. (n.d.). Article XIII. Non-Discriminatory Administration Of Quantitative Restrictions. *GATT 1994 – Article XIII (DS Reports)*. [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/gatt1994\\_art13\\_jur.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art13_jur.pdf)
- <sup>112</sup> World Trade Organization. (n.d.). Article XX of the General Agreement on Tariffs and Trade 1994. *WTO Analytical Index*. [https://www.wto.org/english/res\\_e/publications\\_e/ai17\\_e/gatt1994\\_art20\\_jur.pdf](https://www.wto.org/english/res_e/publications_e/ai17_e/gatt1994_art20_jur.pdf)
- <sup>113</sup> Pickard, D. (2023, February 10). *National Security Disputes Continue at World Trade Organization*. The Federalist Society. <https://fedsoc.org/commentary/fedsoc-blog/national-security-disputes-continue-at-world-trade-organization>
- <sup>114</sup> Reinsch, W. A., & Caporal, J. (2019). *The WTO’s First Ruling on National Security: What Does It Mean for the United States?* <https://www.csis.org/analysis/wtos-first-ruling-national-security-what-does-it-mean-united-states>

---

<sup>115</sup> Baltensperger, M., & Dadush, U. (2019). *The European Union-Mercosur Free Trade Agreement: Prospects and risks* (Policy Paper No. 11; p. 16). Bruegel. [https://www.bruegel.org/system/files/wp\\_attachments/PC-11\\_2019.pdf](https://www.bruegel.org/system/files/wp_attachments/PC-11_2019.pdf)

<sup>116</sup> Brender, R. (2024). *In Danger of Falling Short: The EU, the Global South, and the Reform of Multilateralism* (No. 127; Egmont Papers, p. 19). Egmont Institute. [https://www.egmontinstitute.be/app/uploads/2024/02/Reinhold-Brender\\_Paper\\_127\\_vFinal.pdf?type=pdf](https://www.egmontinstitute.be/app/uploads/2024/02/Reinhold-Brender_Paper_127_vFinal.pdf?type=pdf)

<sup>117</sup> Jorge-Ricart, R. (2023, March 15). *Geopolitical risk: Raw materials and technological dependence*. Elcano Royal Institute. <https://www.realinstitutoelcano.org/en/commentaries/geopolitical-risk-raw-materials-and-technological-dependence/>