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NICKEL MINING IN NEW CALEDONIA AND THE INFLATION REDUCTION ACT

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ABSTRACT

The passage of the Inflation Reduction Act (IRA) marked a step forward for the United States in incentivizing clean energy and reducing national reliance on fossil fuels. However, the IRA's critical mineral requirement restricts the eligibility of electric vehicles for tax credits based on the origin or processing location of minerals used in electric vehicle batteries. The French territory of New Caledonia contains nickel reserves that would be invaluable to the production of electric vehicle batteries in the U.S. However, under the Inflation Reduction Act's critical mineral requirement, the use of New Caledonian nickel in electric vehicle batteries may inhibit the ability of vehicles containing those batteries to qualify for the IRA's tax credits. This Note argues that the U.S. should enter into a critical minerals agreement with France to remove this trade barrier with New Caledonia.

I. INTRODUCTION

New Caledonia, a French island territory in the South Pacific, is home to large nickel reserves.[1] In 2021, American vehicle manufacturer Tesla announced an agreement to purchase nearly 42,000 tonnes of nickel over five years from New Caledonia's Goro nickel mine for use in electric vehicle batteries.[2] Some commentators view this effort as Tesla's attempt to "take control of its supply chain and ensure that the minerals used for its car batteries are mined in an environmentally and socially responsible fashion."[3] Although New Caledonia is governed by "rigorous European Environmental and Labor standards," many locals and environmentalists oppose the mine because of its historically negative impact on the surrounding environment and the failure of past mine owners to acknowledge the history and needs of New Caledonians.[4] In the past, such local opposition has caused the Goro nickel mine to shut down for extended periods.[5]

Worldwide, mining for materials used in rechargeable batteries raises environmental and social concerns since such mining is often concentrated in developing countries and poses local environmental risks.[6] However, efforts to reduce global carbon emissions require cleaner energy sources like electric batteries. Therefore, it is essential for the U.S. and other developed countries transitioning to renewable energy sources to be cognizant of the impact metal mining has in other countries. One of the ways the U.S. can promote high labor and environmental standards in other countries is by entering into free trade agreements with those countries.

In the U.S., the recently passed Inflation Reduction Act (IRA) provides tax breaks for consumers who purchase electric vehicles as long as certain percentages of the materials used in those vehicles are processed or produced in the U.S. or a country that has a free trade agreement with the U.S. The IRA is meant to encourage domestic production of electric vehicles and to ensure

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[1] Hannah Beech, *Can a Tiny Territory in the South Pacific Power Tesla's Ambitions?*, N.Y. TIMES (Dec. 31, 2021), https://www.nytimes.com/2021/12/30/world/asia/tesla-batteries-nickel-new-caledonia.html. (stating that New Caledonia "may hold up to a quarter of the world's nickel reserves.").

[2] Fred Lambert, *Tesla Still Owns US EV Market but is Losing Market Share, Shows New Data*, ELECTREK (Nov. 29, 2022, 12:04 PM), https://electrek.co/2022/11/29/tesla-owns-us-ev-market-but-losing-market-shares-data/#:~:text=When%20you%20look%20into%20the,present%20to%20159%20by%202025.

[3] Beech, *supra* note 1.

[4] *Id.*

[5] *Id.*

[6] *Developing Countries Pay Environmental Cost of Electric Car Batteries*, UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (July 22, 2020), https://unctad.org/news/developing-countries-pay-environmental-cost-electric-car-batteries.

that the U.S. begins establishing a solid electric vehicle production system. Because New Caledonia does not have a free trade agreement with the U.S., nickel sourced from the Goro nickel mine will not count towards qualifying electric vehicle batteries under the IRA.

This note argues that the U.S. should enter into a critical minerals agreement with France to allow New Caledonian-sourced minerals to qualify under the IRA. New Caledonia has a large portion of the world's nickel reserves, and the Goro nickel mine has recently come under a new ownership structure that prioritizes environmentally conscious mining. Furthermore, the U.S. lacks the requisite mineral resources to support its electric vehicle needs. To better support a transition to renewable energy, the U.S. should encourage the use of New Caledonian nickel in electric vehicle production.

II. NEW CALEDONIA

A. NEW CALEDONIA AND NICKEL AS A POLITICAL CONTROVERSY

The Pacific Island territory of New Caledonia is a French overseas country home to "world-renowned biodiversity"[7] and a large percentage of the world's nickel reserves.[8] In 1853, the French colonized New Caledonia's islands, and today, the indigenous Kanak population makes up about forty-one percent of New Caledonia's population, while European descendants account for around twenty-four percent of residents.[9] In 1988 and 1998, France and New Caledonia negotiated peace accords after years of civil unrest and multiple anti-colonial protest movements between pro-France loyalists and pro-independence groups.[10] Under the 1998 agreement, known as the Nouméa Accord, France agreed to allow the territory increased political power.[11] Additionally, the agreement permitted New Caledonia to issue three referendums on whether the country would like to become independent from

[7] Christophe Chevillon, *New Caledonia's Marine Ecosystem, Among the Healthiest on Earth, Deserves Stronger Protection*, PEW (June 4, 2021), https://www.pewtrusts.org/en/research-and-analysis/articles/2021/06/01/new-caledonia-marine-ecosystem-among-the-healthiest-on-earth-deserves-stronger-protection ("New Caledonia . . . is home to some of the healthiest and most biodiverse coral reefs on Earth, including the world's most diverse concentration of coral species and the second-largest barrier reef on the planet.").
[8] Beech, *supra* note 1.
[9] Ashley Westerman, *New Caledonia's New Government Seen As 'Significant Turning Point' In The Pacific*, NPR (Mar. 11, 2021, 10:03 AM), https://www.npr.org/2021/03/11/975273437/new-caledonias-new-government-seen-as-significant-turning-point-in-the-pacific.
[10] *Id.*
[11] *Id.*

France.[12] All three referenda failed to ensure New Caledonia's independence from France.[13] However, in 2021, the last referendum failed by a particularly narrow margin, resulting in a pro-independence protest.[14]

Many New Caledonians view Caledonia's mining industry, particularly the nickel industry, as intertwined with the territory's history of colonization and, therefore, a further source of political controversy. Today, primarily foreign companies run the New Caledonian mining industry, and a significant portion of the territory's nickel exports are sent to China.[15] Some residents believe that New Caledonians should have more control over mining operations and management.[16] Furthermore, the nickel industry concerns indigenous environmentalists, who point to a history of local chemical spills[17] and the fact that nickel mining is a huge source of carbon emissions.[18] Nickel mines can significantly impact local landscapes when tailings leak acid into the environment.[19] In the past in New Caledonia, "waste mismanagement, land clearing, and sediment run-off into the sea" have reportedly had a destructive effect on the barrier reef that surrounds the island.[20] Therefore,

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[12] *New Caledonia Profile*, BBC NEWS (Oct. 27, 2023), https://www.bbc.com/news/world-asia-pacific-16740838.

[13] *New Caledonia Pro-Independence Parties Reject Referendum Result*, ALJAZEERA (Dec. 13, 2021), https://www.aljazeera.com/news/2021/12/13/new-caledonia-pro-independentists-reject-referendum-result.

[14] *Id.*

[15] *Id.*

[16] Jonathan Barrett, *New Caledonia's Government Collapses over Independence, Nickel Unrest*, REUTERS (Dec. 3, 2021, 1:20 AM), https://www.reuters.com/article/uk-newcaledonia-independence-france/new-caledonias-government-collapses-over-independence-nickel-unrest-idUKKBN2A30OH.

[17] *Goro Nickel Project, South Pacific Island of New Caledonia*, MINING TECH. (Oct. 2, 2020), https://www.mining-technology.com/projects/goro-nickel/#:~:text=of%20nickel%20oxide.-,The%20Goro%20nickel%20mine%20started%20production%20in%20August%202010.,to%205%2C000t%20of%20cobalt. ("Production at the Goro nickel plant . . . was halted in May 2014 following spillage of approximately 100,000 litres of effluent in a creek due to the solution transferring circuit misconfiguration.").

[18] Beech, *supra* note 1. ("New Caledonia is one of the world's largest carbon emitters per capita.")

[19] Alexandra B. Klass & Allison J. Mitchell, *The Energy Transition and Mining: Reconciling the Growth of Renewable Energy with the Need for New Mineral Development*, 67 ROCKY MOUNTAIN MIN. L. INST., *13-30, (2021) (stating that acid mine drainage may "leach into the surrounding watershed, pollut[e] drinking water, kill[] fish and wildlife, and harm[] farm fields.") (available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4077259).

[20] Nick Rodway, *Nickel, Tesla, and Two Decades of Environmental Activism: Q&A with Leader Raphaël Mapou* (June 22, 2022), https://news.mongabay.com/2022/06/nickel-tesla-and-two-decades-of-environmental-activism-qa-with-leader-rapheal-mapou/.

proper mine management activities, like careful waste disposal, are impactful to local New Caledonians.

B. NEW LEADERSHIP IN NEW CALEDONIA

Just months before New Caledonia's 2021 presidential election and before the final referendum vote, "persistent economic issues and unrest over the sale of nickel assets" led to the resignation of five pro-independence politicians, nearly half of the eleven member executive.[21] The resignees pointed to Brazilian mining company Vale's decision to sell New Caledonian nickel assets to non-local entities as a sign that the government "favoured the interests of multinationals over locals."[22] Later, snap elections on February 17, 2021 led to the election of a majority of pro-independence politicians, and in July, Louis Mapou was elected president.[23] Mapou, a member of the pro-independence coalition, *Front de Libération Nationale Kanak et Socialiste* (FLNKS), is the first Kanak president in almost forty years.[24] Before his election, Mapou spearheaded efforts to monitor the environmental impacts of mining in New Caledonia and helped develop the Great South Sustainable Development Pact, which defines "a peaceful framework for relations between industrialist and Indigenous peoples."[25] Despite Mapou's history with the New Caledonian mining industry, he believes that with proper standards and oversight the mining industry can operate sustainably and in a way that benefits locals.

C. THE GORO NICKEL MINE AND TESLA

The Goro Mine, which began production in 2010, is the largest nickel mine in New Caledonia.[26] Since opening, protests by indigenous activists have frequently disrupted the mine's nickel operations.[27] Under Goro's previous owner, Vale, mining operations shut down multiple times due to political protests.[28] In March of 2021, after extensive negotiation between New Caledonian leadership and Swiss buyer Trafigura, a new ownership structure was set up for the Goro mine, leaving fifty-one percent of the mine controlled by the territory's government, Goro miners, and locals.[29] Shortly afterward, Tesla invested in the Goro nickel mine to source nickel directly for

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[21] Barrett, *supra* note 16.
[22] *Id.*
[23] *Id.*
[24] *H.E Louis Mapou*, PAC. ISLANDS F., https://www.forumsec.org/louis/.
[25] Rodway, *supra* note 20.
[26] Beech, *supra* note 1.
[27] *Id.* at 1. ("The legacy of more than a century of stolen land and crushed traditions has left Goro's nickel output at the mercy of frequent labor strikes and political protests.").
[28] *Id.* (describing political protests against the mine, including an incident where indigenous workers stormed the mining complex and cost Vale tens of millions of dollars).
[29] *Id.*

use in electric vehicle batteries.[30] President Mapou stated that the new ownership structure for the Goro mine has allowed Kanaks to regain "possession of [their] mining deposits, which the colonizer [France] and mining companies have confiscated free of charge for more than one hundred and fifty years."[31] Additionally, Tesla's five-year deal "was greeted with jubilation by Kanak political leaders, who [said] that [the deal] would force Goro to adhere to high standards"[32] and hope that this new partnership will increase the role of New Caledonia as "a key source of the world's nickel production."[33]

The new ownership structure, known as Prony Resources, pledged to "halve its carbon emissions by 2030" and to become carbon neutral ten years after that.[34] They plan to accomplish this by replacing their current coal power plant with a large solar farm.[35] Additionally, leftover waste from the mining process—one of the largest discrete environmental concerns involved with mining nickel—will be "filtered and transformed into a less corrosive dry waste."[36] Finally, Tesla requires its metal-producing partners to comply with a mining industry standard called the Initiative for Responsible Mining Assurance (IRMA), so theoretically, Prony Resources must adhere to IRMA requirements. The IRMA standards address various working and production aspects, including waste management and the rights of Indigenous people, and are known to be "tougher than any national mining law."[37]

Unfortunately, despite Tesla's environmental promises and the Goro Mine's new ownership structure, in November of 2022, the mine was forced to reduce production due to a leak of "salt-laden liquid" from its tailings dam.[38] Prony Resources reported that "[t]he corrective measures required by the South Province mean that Prony Resources New Caledonia's nickel

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[30] *Prony, Tesla Strike Nickel Supply Deal,* MINING J. (Oct. 14, 2021), https://www.mining-journal.com/energy-minerals-news/news/1419535/prony-tesla-strike-nickel-supply-deal ("The deal, negotiated by Prony shareholder Trafigura, would make Tesla the miner's [sic] largest customer.").

[31] Rodway, *supra* note 20.

[32] Beech, *supra* note 1.

[33] Rodway, *supra* note 20.

[34] *Id.*

[35] Alan Le Bloa, *En Nouvelle-Calédonie, Tesla et l'électrique propulsent le nickel de Goro* [*In New Caledonia, Tesla and Electricity Propel Goro Nickel*], OUEST-FRANCE (Oct. 12, 2021, 9:00 AM) https://www.ouest-france.fr/monde/nouvelle-caledonie/reportage-en-nouvelle-caledonie-tesla-et-l-electrique-propulsent-le-nickel-de-goro-d955a10a-57bc-11ec-98d9-226f24a3b94d.

[36] Beech, *supra* note 1.

[37] Beech, *supra* note 1.

[38] Mathieu Dion & Jack Farchy, *Tesla-Backed Nickel Miner Cuts Output After Waste Dam Leak*, BLOOMBERG (Nov. 14, 2022), https://www.bloomberg.com/news/articles/2022-11-15/tesla-backed-nickel-miner-cuts-output-after-tailings-dam-leak?leadSource=uverify%20wall.

production will be reduced in the fourth quarter."[39] Furthermore, despite a claim from Goro's CEO that the Goro mine would no longer be powered by coal by 2025, it is unclear whether any progress has been made towards that goal.[40] Whether or not the Goro Mine lives up to its promises of environmentally-conscious mining remains to be seen.

III. THE INFLATION REDUCTION ACT

A. OVERVIEW OF THE INFLATION REDUCTION ACT

In 2022, the U.S. passed the Inflation Reduction Act (IRA). This 750-billion-dollar bill primarily focuses on healthcare and tax issues but also promotes the development of domestic clean energy. The IRA represents a prominent step forward in the U.S.' progress in addressing climate change and requires a forty-percent reduction in greenhouse gas emissions from 2005 by 2030.[41] One of the ways the IRA incentivizes emissions reductions is by providing tax credits for certain domestically sourced battery materials.[42] Section 45X(c)(6) of the IRA identifies fifty "applicable critical minerals"—including nickel—for which mining companies can receive "production credit equal to 10% of production costs."[43] Additionally, the IRA encourages electric vehicle manufacturers "to expand production and sourcing in North America" by allowing purchasers of electric vehicles up to $7,500 in tax credits. To receive the credits, the purchased vehicle must be at least partially assembled in the U.S., and the materials used to make the electric vehicle battery cannot be from or processed by "a foreign entity of concern."[44] Additionally, a certain percentage of the battery materials used may come from a nation with which the U.S. has a free trade agreement.[45] Notably, the U.S. has free trade agreements with twenty countries but does not have a free

[39] *Id.*
[40] Le Bloa, *supra* note 35.
[41] Matt Farmer, *What's in the Inflation Reduction Act for Miners?*, MINING TECH. (Oct. 3, 2022), https://www.mining-technology.com/analysis/whats-in-the-inflation-reduction-act-for-miners/.
[42] Katie Pyzyk, *How the Inflation Reduction Act is Heating up an Already Active Market for Critical Metals in EV Batteries*, WASTE DIVE (Sep. 22, 2022), https://www.wastedive.com/news/battery-recycling-metals-lithium-copper-inflation-reduction-act/631769/.
[43] Farmer, *supra* note 42.
[44] Sarah Zimmerman, *Inflation Reduction Act Encourages EV Battery Sourcing, Production in North America,* SUPPLY CHAIN DIVE (Aug. 17, 2022), https://www.supplychaindive.com/news/biden-signs-inflation-reduction-act-in-boost-to-us-electric-vehicle-product/629854/.
[45] Morgan D. Bazilian & Gregory Brew, *The Inflation Reduction Act is the Start of Reclaiming Critical Mineral Chains*, FOREIGN POL'Y (Sept. 16. 2022, 9:37 AM), https://foreignpolicy.com/2022/09/16/inflation-reduction-act-critical-mineral-chains-congress-biden/.

trade agreement with France.[46] Therefore, the availability of the IRA's tax credits are limited for batteries made with New Caledonian nickel.

B. CONCERNS WITH THE INFLATION REDUCTION ACT

Some critics believe that the IRA's domestic sourcing requirements are "overly ambitious."[47] Two requirements listed in the IRA—the "critical mineral requirement" and the "battery component requirement"—significantly limit which electric vehicles qualify for the subsidy. To meet the critical mineral requirement, a minimum value percentage of the applicable critical minerals within a battery must be either (i) extracted or processed in the U.S. or in any country with which the U.S. has a free trade agreement in effect, or (ii) recycled in North America.[48] Similarly, the battery component requirement requires a minimum percentage of the value of battery components to be manufactured or assembled in the U.S..[49] The applicable percentages for both requirements increase annually, with the minimum percentage for battery components reaching 100% by 2029 and the minimum percentage for critical minerals reaching 80% by 2027.[50]

Because most of the minerals used in battery production currently come from outside the U.S., some parties are concerned about how the IRA's critical mineral requirement will affect the electric vehicle supply chain.[51] Currently, approximately "85% of rare earth metal processing takes place in China," so some experts believe "it may be difficult for automakers to meet the sourcing needs for their vehicles to qualify for credits."[52] Nickel is a critical mineral of particular concern. Although the U.S. is currently the "third largest end user of nickel globally" it contains only 0.1% of global nickel reserves.[53] Additionally, a study by the World Bank projected an approximately 100% increase in global nickel demand by the year 2050 compared to 2018 production figures,[54] and recently, the CEO of Tesla Motors, Elon Musk,

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[46] OFF. OF U.S. TRADE REPRESENTATIVE, EXEC. OFF. OF THE PRESIDENT, FREE TRADE AGREEMENTS, (available at https://ustr.gov/trade-agreements/free-trade-agreements) (last visited Oct. 2, 2023).
[47] Pyzyk, *supra* note 42.
[48] Section 30D New Clean Vehicle Credit 88 Fed. Reg. 23370, 23371 (proposed Apr. 17, 2023) (to be codified at 26 C.F.R. pt. 1).
[49] *Id.*
[50] Pyzyk, *supra* note 42.
[51] *Id.*
[52] Zimmerman*, supra* note 44.
[53] Klass & Mitchell, *supra* note 19, at *13-25.
[54] Kirsten Hund, et al., *Minerals for Climate Action: The Mineral Intensity of the Clean Energy Transition*, WORLD BANK GRP., at 73 (2020), https://pubdocs.worldbank.org/en/961711588875536384/Minerals-for-Climate-Action-The-Mineral-Intensity-of-the-Clean-Energy-Transition.pdf.

stated that nickel production is the company's foremost concern in increasing electric vehicle battery production.[55]

Furthermore, the transition to a renewable, low-carbon energy system is "materially intensive," and because "intensity increases with the level of decarbonization," demand for critical minerals will only continue to increase as developed countries switch to renewable energy sources.[56] However, an increase in electric vehicle production must occur at some point because demand is rising.[57] For production to keep up, current mines must expand, new mines must be constructed, or better mineral recycling programs must be developed.[58]

Unfortunately, the U.S.' role in mineral production has declined rather than grown over the past few decades.[59] Environmental groups often oppose domestic operations due to the environmental impacts of sustained mining, and many of the mineral reserves in the U.S. "are located in ecologically protected or culturally significant areas."[60] While the IRA clearly benefits the American mining industry through its critical minerals requirement,[61] domestic mining companies are concerned that expanding domestic projects will be challenging and not feasible in the time frame set out by the IRA.[62] Some critics point out that the emphasis of the IRA on reducing reliance on non-domestic minerals will stall electric vehicle production in the short run as

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[55] Ben Hernandez, *Elon Musk Makes Plea to Mine More Nickel*, VETTAFI (Apr. 5, 2023), https://www.etftrends.com/gold-silver-investing-channel/elon-musk-makes-plea-to-mine-more-nickel/.

[56] Hund, *supra* note 54, at 71; *see also* Klass & Mitchell, *supra* note 19, at *13-8 (2021) ("[A] typical EV contains six times the amount of minerals as a conventional car.").

[57] Bazilian & Brew, *supra* note 45. ("Registrations for EVs rose 60 percent year-on-year in the first quarter of 2022, and the market for EVs is expected to rise from $24 billion in 2020 to $137.43 billion by 2028.").

[58] Hund et al., *supra* note 54.

[59] Bazilian & Brew, *supra* note 45. ("From 27 percent in 1996, the United States' share of the upstream lithium market fell to only 1 percent in 2020, with only a single mine in Clayton Valley, Nevada, in operation.").

[60] Klass & Mitchell, *supra* note 19.

[61] Jael Holzman, *Mining Companies Strike Gold with New Climate Law*, E&E NEWS (Aug. 18, 2022, 1:10 PM), https://www.eenews.net/articles/mining-companies-strike-gold-with-new-climate-law/ ("The Inflation Reduction Act, which President Joe Biden signed into law Tuesday, is chock full of mining industry benefits — including a large tax break to any mining company that can produce amounts of minerals central to energy transition products like electric vehicles.").

[62] Jose Rodriguez Jr., *The Inflation Reduction Act Could Cut EV Tax Credits But Boost Battery Metals Mining in the U.S.*, JALOPNIK (Aug. 12, 2022, 5:00 PM), https://jalopnik.com/the-inflation-reduction-act-could-cut-ev-tax-credits-bu-1849406617 ("[W]hat's really needed is 'expedited permitting for critical mineral mining and related processing' in the U.S., and some speed would help.").

the U.S. struggles to develop requisite infrastructure.[63] The U.S. justifies these tax incentives by noting the threat to national security posed by an inability to domestically source battery metals, particularly when countries like China dominate the electric vehicle materials market.[64] Some commentators believe that international resource battles over the next century will center around critical minerals needed to fuel the energy transition.[65] The IRA is a sign of the growing role that resource nationalism will play in future U.S. legislation concerning critical mineral extraction.[66] Theoretically, the IRA promotes U.S. energy security by reducing U.S. "dependence on foreign supplies of the minerals needed to support the energy transition."[67]

Finally, in addition to concerns about the U.S.' ability to meet critical mineral demand, some countries believe that the IRA's tax credit system violates the World Trade Organization's (WTO) rules. The European Union (EU), Japan, and South Korea responded to the IRA's tax credit provisions, saying they do not comply with WTO rules because they discriminate "between domestically produced products and imports." [68] European Union policymakers are particularly concerned about the impact of the IRA since the U.S. is the number one destination for EU-built electric vehicles.[69] By allowing mineral sourcing only from free trade agreement countries and requiring the final assembly of cars to occur in the U.S., the IRA may inhibit U.S. sales of electric vehicles made in other countries.[70]

C. CRITICAL MINERALS TRADE AGREEMENTS

Several countries have sought to enter into modified, more narrow free trade agreements with the U.S. in order to benefit from the IRA's tax credits.

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[63] Shihoko Goto, *A Lost Opportunity to Boost US Competitiveness*, WILSON CTR. (Aug. 15, 2022), https://www.wilsoncenter.org/article/wilson-center-expert-analysis-inflation-reduction-act ("What [the Inflation Reduction Act] is lacking is a more far-sighted vision of the United States committed to investing in the vast infrastructure necessary to ensure the proliferation of new energy sources, and ensuring that near-term energy needs are met within and beyond the United States through existing networks.").

[64] Press Release, The White House, FACT SHEET: Securing a Made in America Supply Chain for Critical Minerals (Feb. 24, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/02/24/fact-sheet-securing-americas-critical-supply-chains/.

[65] Bazilian & Brew, *supra* note 45.

[66] Farmer, *supra* note 41.

[67] Bazilian & Brew, *supra* note 45.

[68] Yuka Hayashi, *U.S. Electric-Vehicle Tax Breaks Rile Asian, European Allies*, WALL ST. J. (Oct. 4, 2022, 8:00 AM), https://www.wsj.com/articles/u-s-electric-vehicle-tax-breaks-rile-asian-european-allies-11664883061.

[69] Sean Bray et al., *How the Inflation Reduction Act Affects the Future of U.S.-EU Tax and Trade Cooperation*, TAX FOUND. (Nov. 9, 2022), https://taxfoundation.org/inflation-reduction-act-eu-tax-trade/.

[70] *Id.*

In 2023, the U.S. entered into a limited free trade agreement with Japan governing the trade of certain minerals.[71] The U.S. also announced an equivalent agreement with the U.K. The two critical mineral agreements will only apply to "a small set of minerals that are important to the supply chain for electric vehicle batteries"—including nickel.[72] Furthermore, the critical mineral agreement with Japan contains labor rights and environmental standard commitments, and the U.K. agreement will likely contain similar commitments.[73] It is likely that other countries will try to follow the lead of Japan and the U.K. in passing similar critical minerals agreements.[74] Such agreements will allow the U.S. to expand access to critical mineral sources that are more sustainable and a product of fair labor.[75]

IV. ANALYSIS

A. THE INFLATION REDUCTION ACT DISINCENTIVIZES "GREEN" MINING IN NEW CALEDONIA

The passage of the IRA carries implications for electric vehicle material mining worldwide. Because the U.S. drives a large portion of worldwide demand for electric vehicles, the tax breaks contained in the IRA will impact mining outside of the U.S. The critical mineral requirement—which requires a certain percentage of battery minerals to be extracted or processed in the U.S. or in any country with which the U.S. has a free trade agreement—will impact metal mining globally. By 2027, 80% of critical minerals contained in an electric vehicle battery will have to come from the U.S. or one of the countries the U.S. has a free trade agreement with, meaning that that New Caledonian nickel used in electric vehicle batteries could render those electric vehicles ineligible for tax breaks in the U.S. Since Tesla plans to source a large portion of its nickel from the Goro mine, the IRA unfairly disadvantages Tesla and other involved stakeholders working to mine nickel in a more environmentally conscious way that benefits local communities. Furthermore, Tesla electric vehicles dominate the U.S. electric auto market, and "the US

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[71] Bond et al., *Will the United States' New Critical Minerals Agreements Shape Electric Vehicles Investments?*, WHITE & CASE (June 28, 2023), https://www.whitecase.com/insight-alert/will-united-states-new-critical-minerals-agreements-shape-electric-vehicle.
[72] *Id.*
[73] *Id.*
[74] Kim et al., *Threading the Needle with the Narrow U.S.-Japan Critical Minerals Agreement to Expand the Availability for EV Credits of the Inflation Reduction Act*, COVINGTON (Apr. 12, 2023), https://www.globalpolicywatch.com/2023/04/threading-the-needle-with-the-narrow-u-s-japan-critical-minerals-agreement-to-expand-the-availability-for-ev-credits-of-the-inflation-reduction-act/.
[75] *Id.*

EV market is . . . extremely dependent on Tesla's production . . . ."[76] Therefore, it contradicts the IRA's goal of combatting climate change to withhold powerful tax subsidies from Tesla. Because New Caledonia may hold up to a quarter of the world's nickel reserves, the Goro mine is a ripe opportunity for Tesla, a U.S.-based producer, to streamline electric battery production in an environmentally friendly and community-conscious manner. Additionally, since the U.S. wishes to increase domestic supply as a matter of national security, it does not make sense to disincentivize the mining of some of the largest nickel reserves in the world.

B. THE U.S. SHOULD ADOPT A CRITICAL TRADE AGREEMENT WITH FRANCE TO ENCOURAGE NICKEL PRODUCTION IN NEW CALEDONIA

The U.S. should enter into a critical minerals trade agreement with France to allow New Caledonia to access the IRA's tax subsidies. The U.S. is not yet equipped to increase domestic mineral mining to the extent necessary to adequately keep up with EV demand. Notably, the necessary minerals for electric vehicle batteries remain a liability due to "value chains rife with underinvestment, political risk, and poor governance."[77] Although increasing the domestic supply of minerals for use in renewable energy is a valiant and necessary goal, mining companies in the U.S. are not prepared to help guide the transition to renewable energy as rapidly as is needed to combat climate change. In the meantime, the U.S. should encourage nickel mining in New Caledonia and other countries with valuable mineral reserves. Specifically, Tesla's partnership with the Goro Nickel Mine should be encouraged and rewarded via inclusion under the rebate provisions of the Act.

The U.S. indeed has "strong[er] labor, environmental, and enforcement laws in place" compared to many countries across the globe where nickel is currently produced or processed.[78] Furthermore, if the U.S. is to establish a domestic nickel supply, tax credits such as those established by the Inflation Reduction Act are an important incentive and should be encouraged. However, the U.S, should avoid the hasty implementation of incentives that exclude foreign countries with large quantities of vital metals, like nickel. Such exclusions are counter-productive to the U.S.' efforts to transition to cleaner energy.

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[76] Lambert, *supra* note 2.

[77] Reed Blakemore & Paddy Ryan, *The Inflation Reduction Act Places a Big Bet on Alternative Mineral Supply Chains*, ATL. COUNCIL (Aug. 8, 2022), https://www.atlanticcouncil.org/blogs/energysource/the-inflation-reduction-act-places-a-big-bet-on-alternative-mineral-supply-chains/.

[78] Klass & Mitchell, *supra* note19, at *13-32.

V. CONCLUSION

The U.S. should enter into a critical minerals agreement with France to allow nickel sourced from New Caledonia to count under the critical mineral requirement of the IRA. By modeling an agreement after the current and proposed critical mineral agreements between the U.S. and Japan and the U.K., respectively, the U.S. can ensure that environmental and labor standards are met while securing a nickel supply for electric vehicle batteries in the future. Furthermore, the people of New Caledonia would benefit greatly from a critical mineral agreement that allows nickel mined in New Caledonia to qualify under the IRA. Overall, New Caledonian nickel mines, such as the Goro mine, present a great opportunity for the U.S. to outsource a mineral that is scarce in the U.S., while also promoting economic growth in a territory that has struggled for many years to gain financial independence.