

European and UK Critical Raw Materials (CRM) Supply Chains – Building Resilience – The American Way

June 10th, 2021

President Biden's Executive Order 14017 of 24 February 2021 directed U.S. government agencies to undertake a 100 day comprehensive review of critical U.S. supply chains (including CRM supply chains) to identify risks, address vulnerabilities and develop a strategy to promote resilience. On 8 June 2021, The White House published the findings from the supply chain review in "Building Resilient Supply Chains. Revitalizing American Manufacturing, and Fostering Broad-Based Growth" ("**the Report**").

The Report includes a "Review of Critical Minerals and Materials" prepared by the Department of Defense ("**the CRM Review**"). It also includes a "Review of Large Capacity Batteries" prepared by the Department of Energy. This article is concerned with the CRM Review. The Executive Summary of the Report describes the CRM supply chain issues in the following terms:

"The United States and other nations are dependent on a range of critical minerals and materials that are the building blocks of the products we use every day. Rare earths metals are essential to manufacturing everything from engines to airplanes to defense equipment. Demand for many of these metals is projected to surge over the next two decades, particularly as the world moves to eliminate net carbon emissions by 2050.The United States must secure reliable and sustainable supplies of critical minerals and metals to ensure resilience across U.S. manufacturing and defense needs, and do so in a manner consistent with America's labor, environmental, equity and other values".

The Report found inter-related themes and findings that were common to the four supply chains which are the subject of the Report that contributed to their vulnerability. Whilst these themes and findings that relate to CRM supply chains are focused on the U.S. domestic market, they are also likely to apply to European and UK CRM supply chains:

- Insufficient manufacturing capacity, that in turn has contributed to a loss in innovation policy and critical shortages of skilled workers;
- Misaligned incentives and short-termism in private markets resulting in a "failure to reward firms for investing in quality, sustainability or long-term productivity and resilience";
- Industrial policies adopted by allied, partner and competitor nations in response to the U.S. decline in investment in its domestic industrial base;
- Geographic concentration of key supply chains in a few nations resulting in the U.S. being "dangerously dependent on specific countries" for parts of the CRM value chain; and

- Limited international coordination; “aside from a handful of pilot projects and other comparatively small diplomatic and multilateral initiatives to secure supply chains, the United States has not systematically focused on building international cooperative mechanisms to support supply chain resilience”.

The Report divides the “numerous recommendations to strengthen individual product supply chains” into six categories:

- Rebuilding U.S. production and innovation capabilities;
- Supporting the development of markets with “high road” production models, labor standards, and product quality;
- Leveraging the federal government’s role as a market actor;
- Strengthening international trade rules, including trade enforcement mechanisms;
- Working with allies and partners to decrease vulnerabilities in the global supply chains; and
- Partnering with industry to take immediate action to address existing shortages.

Within these broadly framed recommendations there are specific proposals in relation to large capacity batteries such as:

- Supporting technologies that will reduce the CRM requirements of next generation EV and grid storage technologies;
- Reducing or eliminating CRM for EV or stationary storage, including cobalt and nickel;
- Accelerating battery technology advances; and
- Developing innovative recycling methods and processes to profitably recover and re-introduce CRM to the battery supply chain.

With respect to CRM that are not involved in the battery supply chain, the Report is less specific in its recommendations. Nevertheless, there are some important aspects which will be read with interest by participants in the CRM sector.

The second recommendation (supporting the development of markets with “high road” production models, labor standards, and product quality) advocates a “race to the top” approach through the establishment of “strong domestic standards or the advocating for the establishment of global standards” to create “21st century standards for the extraction and processing of critical materials”.

Specifically this will involve:

- Establishing an interagency team to identify legislative updates to:
 - ensure new mine and processing production in the U.S. meets strong environmental standards throughout the lifecycle of the project;
 - ensure meaningful community consultation and consultation with tribal nations; and

- examine opportunities to reduce time, cost, and risk of permitting without compromising these strong environmental and consultation benchmarks; and
- Requiring federal agencies, led by the Department of Interior to expand sustainable, responsible CRM production and processing in the U.S. through the identification of potential sites where CRM could be sustainably and responsibly produced and processed in while adhering to the “highest environmental, labor, community engagement, and sustainability standards”.

These objectives are also linked to the fifth recommendation (working with allies and partners to decrease vulnerabilities in the global supply chains). The Report notes that “Even as we make investments to expand domestic production capacity for some critical products, we must work with allies and partners to secure supplies of critical goods that we will not make in sufficient quantities at home. Moreover, in an interconnected world, the United States has a strong interest in ensuring its allies and partners have resilient supply chains as well. We must work with America’s allies and partners to strengthen our collective supply chain resilience, while ensuring high standards for labor and environmental practices are upheld”.

As we explained in a [previous article in this series](#), the EU is proposing to introduce ESG due diligence legislation later this year. Companies that want access to the EU market, including those established outside the EU, will have to prove that they comply with the required due diligence obligations in respect to human rights, the environment and good governance. The proposed ESG legislation will require companies to take all proportionate and commensurate measures and make efforts within their means to prevent adverse impacts on ESG from occurring in their value chains, and to properly address such adverse impacts when they occur.

It is interesting to speculate the extent to which the EU Directive expected later this year will influence the U.S. government in relation to legislation and policies to meet the stated objective of ensuring that domestic production of CRM minerals and metals (and associated supply chains) meets the “highest environmental, labor, community engagement, and sustainability standards”.

The CRM Review acknowledges that “The United States maintains strong, informal communication with the EU via diplomatic channels to ensure a consistent exchange of ideas, as well as extensive communication related to prospective legislation under the European Green Deal framework and new EU regulation on “conflict minerals,” a subset of critical minerals on which the United States also has due diligence requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act”. Whilst the CRM Review does not make mention of the proposed EU ESG due diligence law, it is unlikely that the Report was prepared in ignorance of it.

The EU proposal is a regulated process requiring mining and mineral processing companies selling in, or into, the EU to:

- undertake an ESG risk assessment on the likelihood, severity and urgency of potential or actual impacts on ESG;

- undertake “good-faith, effective, meaningful and informed discussions” with a broad range of individuals and organisations (such as tribal nations) whose rights or interests may be affected by potential or actual adverse ESG impacts of the proposed operation;
- establish and effectively implement a due diligence strategy;
- ensure ESG compliance throughout the value chain including by means of agreements, the adoption of codes of conduct or certified and independent audits; and
- put in place a grievance mechanism allowing any stakeholder to voice reasonable concerns regarding the existence of a potential or actual adverse [ESG] impacts,

with the potential for substantial penalties for breach or default. These proposals are designed to ensure that CRM supply chains into the EU meet the “highest environmental, labor, community engagement, and sustainability standards”. The U.S. may need to follow suit.

The CRM Review includes the detailed recommendations of the Defense Department. Whilst not advocating an EU-style ESG due diligence regime, the Department’s final recommendation is noteworthy:

“The President should direct the Attorney General and the Secretaries of State, Treasury, Homeland Security, Department of Labor to provide periodic updates to the National Security Council and the National Economic Council on strategic and critical material due diligence laws, industry best-practices, and recommendations—to include new legislation—to reduce the impact of forced labor, organized crime, and other human rights abuses in strategic and critical material supply chains”.

The Report has one very specific and pointed recommendation that is of particular interest to the rare earth to permanent magnet sector, namely:

“Evaluate whether to initiate a Section 232 investigation on imports of neodymium magnets: Neodymium (NdFeB) permanent magnets play a key role in motors and other devices, and are important to both defense and civilian industrial uses. Yet the U.S. is heavily dependent on imports for this critical product. We recommend that the Department of Commerce evaluate whether to initiate an investigation into neodymium permanent magnets under Section 232 of the Trade Expansion Act of 1962”.

We understand that Section 232 allows the head of any executive branch department or agency to request a Department of Commerce investigation into the effects of specific imports on the national security of the United States. If Department finds, and the president agrees, that national security is threatened, the President is authorized to adjust the level of imports, including through the imposition of tariffs or quotas. A helpful summary of the section provided by Congressional Research Service can be found here <https://fas.org/sgp/crs/misc/IF10667.pdf>

The timing of the Report on the eve of the G7 Meeting in Cornwall, England is interesting:

- Two other members of the G7, the UK and France, have had a long tradition of mining. There are indications in the UK that the resumption of mining of tin and lithium in

Cornwall may be a real possibility, whilst France is currently modernising its mining laws;

- The CRM Review notes that another member, Canada “has substantial resource potential in existing operations and planned projects that could support U.S. needs for cobalt, tantalum, antimony, and twenty additional strategic and critical materials”;
- Japan, also member, is described in the CRM Review as “a vital player in supply chains for strategic and critical materials—as an import destination, a source of project finance, downstream manufacturing, and a materials R&D hub”;
- The remaining members, Germany and Italy, along with France, are powerful and influential member states of the EU. The EU, whilst not a member will be separately represented at a high level the Meeting. The CRM Review notes the EU’s CRM Action Plan released in September 2020 and that “A particularly instructive work for U.S. policy related to strategic and critical materials is the analysis completed by multiple stakeholders across academia, industry, European and non-European governments, and non-governmental organizations through the European Rare Earth Competency Network (ERECON), with some of this work now taken-up by the emerging European Raw Materials Alliance”; and
- Australia (described in the CRM Review as having “vast deposits for a variety of mineral-based strategic and critical materials”) has been invited to attend the Meeting.

Given the common interests amongst the G7 attendees in this area, it may be expected that the U.S. will take the opportunity over the weekend to make progress on the fifth recommendation of the Report - “working with allies and partners to decrease vulnerabilities in the global supply chains”.

The White House’s commitment in the Fact Sheet that accompanied the Report supports this: “The President will convene a global forum on supply chain resilience that will bring together key government officials and private sector stakeholders from across key U.S. allies and partners to collectively assess vulnerabilities, develop common approaches to supply chain challenges, and work to build strength through diversity and shared prosperity”.

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