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2D SESSION

S. 5451

To enhance the economic and national security of the United States by securing a reliable supply of critical minerals and rare earth elements through trade agreements and strategic partnerships.

IN THE SENATE OF THE UNITED STATES

DECEMBER 5, 2024

Mr. YOUNG (for himself, Mr. COONS, Mr. CORNYN, and Mr. HICKENLOOPER) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To enhance the economic and national security of the United States by securing a reliable supply of critical minerals and rare earth elements through trade agreements and strategic partnerships.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Securing Trade and
5 Resources for Advanced Technology, Economic Growth,
6 and International Commerce in Minerals Act” or “STRA-
7 TEGIC Minerals Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) APPROPRIATE CONGRESSIONAL COMMIT-
4 TEES.—The term “appropriate congressional com-
5 mittees” means—

6 (A) the Committee on Finance of the Sen-
7 ate; and

8 (B) the Committee on Ways and Means of
9 the House of Representatives.

10 (2) COUNTRY.—The term “country” means—

11 (A) any foreign country or territory, in-
12 cluding any overseas dependent territory or pos-
13 session of a foreign country; and

14 (B) the Trust Territory of the Pacific Is-
15 lands.

16 (3) COVERED FREE TRADE AGREEMENT.—The
17 term “covered free trade agreement” means an
18 agreement with one or more countries that—

19 (A) exclusively focuses on the critical min-
20 erals and rare earth elements sector;

21 (B) reduces barriers to trade among the
22 parties to the agreement;

23 (C) includes enforceable provisions to pre-
24 vent any foreign entity of concern from gaining
25 any benefit from the agreement; and

26 (D) is approved by Congress.

1 (4) CRITICAL MINERAL.—The term “critical
2 mineral” has the meaning given that term in section
3 7002(a) of the Energy Act of 2020 (30 U.S.C.
4 1606(a)).

5 (5) FOREIGN ENTITY OF CONCERN.—The term
6 “foreign entity of concern” has the meaning given
7 that term in section 40207 of the Infrastructure In-
8 vestment and Jobs Act (42 U.S.C. 18741).

9 (6) RARE EARTH ELEMENT.—The term “rare
10 earth element” means cerium, dysprosium, erbium,
11 europium, gadolinium, holmium, lanthanum, lute-
12 tium, neodymium, praseodymium, promethium, sa-
13 marium, scandium, terbium, thulium, ytterbium, or
14 yttrium.

15 (7) TRADE REPRESENTATIVE.—The term
16 “Trade Representative” means the United States
17 Trade Representative.

18 **SEC. 3. BRIEFING ON COVERED FREE TRADE AGREEMENTS.**

19 (a) IN GENERAL.—Not later than 120 days after the
20 date of the enactment of this Act, the Trade Representa-
21 tive, in consultation with the Secretary of State, the Sec-
22 retary of Defense, the Secretary of Energy, and the Sec-
23 retary of the Interior, as appropriate, shall provide to the
24 appropriate congressional committees a classified briefing

1 on the feasibility and advisability of pursuing and adopt-
 2 ing covered free trade agreements.

3 (b) ELEMENTS.—The briefing required by subsection
 4 (a) shall include—

5 (1) an analysis of the most appropriate types of
 6 agreements (bilateral, plurilateral, or multilateral)
 7 for achieving the negotiating objectives set forth in
 8 section 4(d), including considerations of economic
 9 impact, strategic partnerships, negotiation feasi-
 10 bility, and national security implications;

11 (2) recommendations for which type or types of
 12 agreements are most needed to effectively secure
 13 critical minerals and rare earth elements supply
 14 chains in alignment with the national security and
 15 economic interests of the United States; and

16 (3) an assessment of potential challenges and
 17 proposed solutions in pursuing the recommended
 18 type or types of agreement, including legal, regu-
 19 latory, and geopolitical considerations.

20 **SEC. 4. NEGOTIATING AND TRADE AGREEMENTS AUTHOR-**
 21 **ITY FOR COVERED FREE TRADE AGREE-**
 22 **MENTS.**

23 (a) AUTHORITY TO NEGOTIATE AND ENTER INTO
 24 AGREEMENTS.—

1 (1) IN GENERAL.—In order to enhance the eco-
2 nomic well-being, national security, and economic
3 competitiveness of the United States, the President,
4 acting through the Trade Representative, may nego-
5 tiate, enter into, and enforce a covered free trade
6 agreement when the President determines that it is
7 in the national interest to do so.

8 (2) LIMITATION.—The President may not ini-
9 tiate negotiations for a covered free trade agreement
10 under paragraph (1) until the date on which the
11 Trade Representative provides the briefing required
12 by section 3(a) to the appropriate congressional
13 committees.

14 (b) MODIFICATIONS PERMITTED.—The President
15 may proclaim such modification or continuance of any ex-
16 isting duty, or such continuance of existing duty-free or
17 excise treatment, as the President determines to be re-
18 quired or appropriate to carry out a covered free trade
19 agreement entered into under subsection (a)(1).

20 (c) NEGOTIATING OBJECTIVES.—

21 (1) OVERALL NEGOTIATING OBJECTIVES.—The
22 negotiating objectives of the United States for a cov-
23 ered free trade agreement are—

24 (A) to strengthen supply chains of critical
25 minerals and rare earth elements;

1 (B) to reduce or eliminate barriers and dis-
2 tortions that inhibit to trade and investment in
3 critical minerals and rare earth elements;

4 (C) to strengthen international trade and
5 investment disciplines and procedures specific
6 to critical minerals and rare earth elements, in-
7 cluding effective dispute settlement mecha-
8 nisms;

9 (D) to foster economic growth, raise living
10 standards, enhance the competitiveness of the
11 United States, promote full employment, and
12 contribute to the global economy through the
13 development and trade of critical minerals and
14 rare earth elements;

15 (E) to promote policies that advance sus-
16 tainable practices and circularity in the produc-
17 tion and processing of critical minerals and rare
18 earth elements;

19 (F) to encourage the development and
20 adoption of innovative technologies and prac-
21 tices that optimize the use of critical resources;

22 (G) to promote respect for worker rights
23 and the rights of children consistent with core
24 labor standards only as stated in the Inter-
25 national Labour Organization Declaration on

1 Fundamental Principles and Rights at Work
2 and its Follow-Up (1998) and an understanding
3 of the relationship between trade and worker
4 rights;

5 (H) to seek provisions in the agreement
6 under which parties ensure they do not weaken
7 or reduce the protections afforded in domestic
8 environmental and labor laws as an encourage-
9 ment for trade;

10 (I) to afford small businesses equitable
11 trade benefits and to reduce or eliminate trade
12 and investment barriers that disproportionately
13 impact small businesses;

14 (J) to promote universal ratification and
15 full compliance with the International Labour
16 Organization Convention (ILO No. 182) con-
17 cerning the Prohibition and Immediate Action
18 for the Elimination of the Worst Forms of
19 Child Labor, adopted at Geneva, June 17,
20 1999;

21 (K) to promote universal ratification and
22 full compliance with the International Labour
23 Organization Convention (ILO No. 176) con-
24 cerning Safety and Health in Mines, adopted at
25 Geneva, June 22, 1995;

1 (L) to encourage ownership transparency
2 throughout the critical minerals and rare earth
3 elements supply chain to prevent undue influ-
4 ence from foreign entities of concern;

5 (M) to protect legitimate health, safety, es-
6 sential security, and consumer interests, ensur-
7 ing that the agreement does not require
8 changes to United States laws relating to those
9 interests unless expressly agreed upon; and

10 (N) to ensure that the agreement does not
11 require changes to United States statutes or
12 regulations.

13 (2) CONSIDERATION OF EXISTING NEGOTIATING
14 OBJECTIVES.—In conducting negotiations under this
15 section, the President shall take into account the
16 principal trade negotiating objectives set forth in
17 paragraphs (5), (7), and (10) of section 102(b) of
18 the Bipartisan Congressional Trade Priorities and
19 Accountability Act of 2015 (19 U.S.C. 4201(b)), to
20 the extent that those objectives are pertinent to the
21 objectives described in paragraph (1).

22 (d) CONSULTATION WITH AND NOTIFICATION TO
23 CONGRESS BEFORE INITIATING NEGOTIATIONS.—Before
24 initiating negotiations under subsection (a)(1), or issuing
25 a proclamation under subsection (b), the President shall—

1 (1) consult with the appropriate congressional
2 committees regarding the intention to enter into the
3 negotiations or issue the proclamation, as the case
4 may be; and

5 (2) notify the appropriate congressional com-
6 mittees in writing at least 30 days before the initi-
7 ation of the negotiations or the issuance of the proc-
8 lamation, as the case may be, that includes—

9 (A) a statement of the intention to initiate
10 the negotiations or issue the proclamation;

11 (B) in the case of negotiations—

12 (i) an identification of the country or
13 countries with which the President intends
14 to initiate negotiations; and

15 (ii) a description of the specific objec-
16 tives for the negotiations; and

17 (C) an assessment of the potential impact
18 of the negotiations or proclamation, as the case
19 may be, on the economic and strategic interests
20 of the United States.

21 (e) PARTICIPATING COUNTRIES.—

22 (1) IN GENERAL.—Subject to paragraph (2),
23 the President may—

1 (A) determine which countries to negotiate
2 with toward a covered free trade agreement;
3 and

4 (B) after the implementation of any such
5 agreement and as conditions warrant, identify
6 and engage in negotiations with additional
7 countries that wish to accede to the agreement.

8 (2) EXCLUSIVE BENEFITS.—

9 (A) IN GENERAL.—Any covered free trade
10 agreement entered into under subsection (a)(1)
11 shall provide trade benefits, including tariff re-
12 ductions, preferential treatment, or other trade
13 advantages related to critical minerals and rare
14 earth elements, exclusively to countries that are
15 parties to the agreement.

16 (B) STATUS OF NON-PARTICIPANTS.—
17 Countries that are not parties to a covered free
18 trade agreement may not receive the trade ben-
19 efits provided under the agreement, but nothing
20 in this Act shall be construed to impose addi-
21 tional restrictions or penalties on such coun-
22 tries.

23 (3) TREATMENT OF NONMARKET ECONOMY
24 COUNTRIES.—

1 (A) IN GENERAL.—The President may not
 2 negotiate a covered free trade agreement with a
 3 country determined to be a nonmarket economy
 4 country pursuant to section 771(18) of the Tar-
 5 iff Act of 1930 (19 U.S.C. 1677(18)).

6 (B) AFTER ENTRY INTO FORCE.—A coun-
 7 try described in subparagraph (A) that is not
 8 designated as a foreign country of concern (as
 9 defined in section 231.102 of title 15, Code of
 10 Federal Regulations) may accede to a covered
 11 free trade agreement after entry into force of
 12 the agreement if a joint resolution is enacted
 13 into law approving the accession of that country
 14 to the agreement.

15 (f) BILLS QUALIFYING FOR TRADE AUTHORITIES
 16 PROCEDURES.—

17 (1) IN GENERAL.—The provisions of section
 18 151 of the Trade Act of 1974 (19 U.S.C. 2191) (in
 19 this section referred to as “trade authorities proce-
 20 dures”) apply to a bill of either House of Congress
 21 which contains provisions described in paragraph (2)
 22 to the same extent as such section 151 applies to
 23 implementing bills under that section. A bill to
 24 which this subsection applies shall hereafter in this
 25 section be referred to as an “implementing bill”.

1 (2) PROVISIONS SPECIFIED.—The provisions
2 described in this paragraph are—

3 (A) a provision approving a covered free
4 trade agreement and approving the statement
5 of administrative action, if any, proposed to im-
6 plement that agreement; and

7 (B) if changes in existing laws or new stat-
8 utory authority are required to implement that
9 agreement, only such provisions as are strictly
10 necessary or appropriate to implement the
11 agreement, either repealing or amending exist-
12 ing laws or providing new statutory authority.

13 (g) RELATIONSHIP TO BIPARTISAN CONGRESSIONAL
14 TRADE PRIORITIES AND ACCOUNTABILITY ACT OF
15 2015.—A covered free trade agreement, including such an
16 agreement that does not require changes to United States
17 law, shall not enter into force with respect to the United
18 States and an implementing bill that relates to such an
19 agreement shall not qualify for trade authorities proce-
20 dures unless the following requirements of the Bipartisan
21 Congressional Trade Priorities and Accountability Act of
22 2015 (19 U.S.C. 4201 et seq.) are carried out with respect
23 to that agreement, to the same extent as would be required
24 with respect to an agreement entered into under section
25 103(b) of that Act (19 U.S.C. 4202(b)), notwithstanding

1 the expiration of authority to enter into an agreement
 2 under such section 103(b):

3 (1) The congressional oversight and consulta-
 4 tion requirements under section 104 of that Act (19
 5 U.S.C. 4203).

6 (2) The notification, consultation, and reporting
 7 requirements under section 105 of that Act (19
 8 U.S.C. 4204).

9 (3) The implementation procedures under sec-
 10 tion 106 of that Act (19 U.S.C. 4205).

11 (h) TERMINATION OF AUTHORITY.—

12 (1) NEGOTIATION AND AGREEMENTS.—

13 (A) IN GENERAL.—The authority of the
 14 President under subsection (a)(1) to negotiate
 15 and enter into covered free trade agreements
 16 terminates on July 1, 2035.

17 (B) TREATMENT OF MODIFICATIONS.—

18 Substantial modifications to, or substantial ad-
 19 ditional provisions of, a covered free trade
 20 agreement that are entered into after July 1,
 21 2035, are not covered by the authority under
 22 subsection (a)(1).

23 (2) TRADE AUTHORITIES PROCEDURES.—The
 24 trade authorities procedures apply to an imple-

1 menting bill with respect to a covered free trade
2 agreement entered into under subsection (a)(1) if—

3 (A) the agreement is entered into on or be-
4 fore July 1, 2035; and

5 (B) the implementing bill is submitted to
6 Congress not later than one year after the
7 agreement is entered into.

8 (3) ENFORCEMENT.—The authority under sub-
9 section (a)(1) to enforce a covered free trade agree-
10 ment remains in effect after July 1, 2035, notwith-
11 standing the termination under paragraph (1) of the
12 authority to negotiate and enter into such agree-
13 ments.

14 **SEC. 5. INCLUSION OF BUSINESSES OF PARTIES TO COV-**
15 **ERED FREE TRADE AGREEMENTS IN DEFINI-**
16 **TION OF DOMESTIC SOURCE FOR TITLE III**
17 **OF DEFENSE PRODUCTION ACT OF 1950.**

18 Section 702(7)(B) of the Defense Production Act of
19 1950 (50 U.S.C. 4552(7)(B)) is amended—

20 (1) in clause (i)(I)—

21 (A) in item (aa), by striking “; or” and in-
22 serting a semicolon;

23 (B) in item (bb), by striking “; and” and
24 inserting “; or”; and

25 (C) by adding at the end the following:

1 “(cc) subject to clause (iii),
 2 the territory of a party to a cov-
 3 ered free trade agreement (as de-
 4 fined in section 2 of the Securing
 5 Trade and Resources for Ad-
 6 vanced Technology, Economic
 7 Growth, and International Com-
 8 merce in Minerals Act); and”;
 9 and

10 (2) by adding at the end the following:

11 “(iii) ADDITIONAL REQUIREMENTS
 12 FOR PARTIES TO COVERED FREE TRADE
 13 AGREEMENTS.—

14 “(I) IN GENERAL.—A business
 15 concern described in clause (i)(I)(cc)
 16 may be treated as a domestic
 17 source—

18 “(aa) only for purposes of
 19 the exercise of authorities under
 20 section 303(a)(1) relating to min-
 21 erals activities related to minerals
 22 the supply of which in the United
 23 States and Canada is deficient;
 24 and

1 “(bb) only if, for minerals
2 activities carried out pursuant to
3 such exercise of authorities—

4 “(AA) the minerals are
5 processed, beneficiated, or
6 recycled only by entities
7 owned by entities organized
8 under the laws of the United
9 States and not more than 10
10 percent or more of the eq-
11 uity interests of which are
12 owned or controlled, directly
13 or indirectly, by any foreign
14 entity of concern, through
15 any contract, arrangement,
16 understanding, relationship,
17 or otherwise;

18 “(BB) the business
19 concern does not sell or
20 transfer any of the minerals
21 extracted, processed,
22 beneficiated, refined, recy-
23 cled, or otherwise trans-
24 formed, or any revenues de-
25 rived from those minerals, to

1 entities located in the Peo-
2 ple's Republic of China or to
3 entities owned, directly or
4 indirectly, held, or controlled
5 by any foreign entity of con-
6 cern; and

7 “(CC) no mine used for
8 the mining of such minerals
9 is owned, directly or indi-
10 rectly, held, or controlled by
11 any foreign entity of con-
12 cern.

13 “(II) DETERMINATION OF DEFICI-
14 CIENCY.—For purposes of subclause
15 (I)(aa), in determining if the supply
16 in the United States and Canada of a
17 critical mineral or rare earth element
18 is deficient, the Secretary of Defense,
19 in consultation with the Secretary of
20 the Interior and the Secretary of En-
21 ergy, shall consider factors includ-
22 ing—

23 “(aa) current domestic pro-
24 duction levels;

1 “(bb) projected demand for
2 national defense and critical in-
3 frastructure;

4 “(cc) dependence on foreign
5 sources, especially from foreign
6 entities of concern; and

7 “(dd) potential for supply
8 chain disruptions.

9 “(III) COMPLIANCE AND
10 VERIFICATION.—

11 “(aa) GUIDANCE.—The Sec-
12 retary of Defense shall provide
13 guidance to business concerns on
14 compliance with this clause.

15 “(bb) NOTICE OF AND PEN-
16 ALTIES FOR NONCOMPLIANCE.—
17 If a business concern is found to
18 be in violation of this clause—

19 “(AA) the Secretary of
20 Defense shall provide writ-
21 ten notice to the business
22 concern detailing the nature
23 of the violation and the pen-
24 alties to be imposed;

1 “(BB) the business
 2 concern may be required to
 3 repay any funds received
 4 under section 303(a)(1);

5 “(CC) the business con-
 6 cern may be disqualified
 7 from future contracts or fi-
 8 nancial assistance under this
 9 Act;

10 “(DD) the business
 11 concern may be subject to
 12 civil penalties under section
 13 705; and

14 “(EE) the matter may
 15 be referred to the Attorney
 16 General for criminal pros-
 17 ecution under applicable
 18 laws.

19 “(IV) DEFINITIONS.—In this
 20 clause:

21 “(aa) BENEFICIATE;
 22 BENEFICIATION.—The terms
 23 ‘beneficiate’ and ‘beneficiation’
 24 mean the crushing and grinding
 25 of hardrock mineral ore and such

processes as are employed to free the mineral from other constituents, including physical and chemical separation techniques.

“(bb) CONTROL.—The term ‘control’ means having the ability, directly or indirectly, to determine (without regard to whether exercised through 1 or more corporate structures) the manner in which an entity conducts mineral activities, through any means, including—

“(AA) ownership interest;

“(BB) authority to commit the real or financial assets of the entity;

“(CC) position as a director, officer, or partner of the entity; or

“(DD) contractual arrangement.

“(cc) CRITICAL MINERAL.—The term ‘critical mineral’ has

1 the meaning given that term in
2 section 7002(a) of the Energy
3 Act of 2020 (30 U.S.C. 1606(a)).

4 “(dd) DEFICIENT.—The
5 term ‘deficient’, with respect to
6 the supply in the United States
7 and Canada of a critical mineral
8 or rare earth element, means
9 that supply is insufficient to meet
10 national defense and essential ci-
11 vilian industrial requirements, as
12 determined by the Secretary of
13 Defense, in consultation with the
14 Secretary of the Interior and the
15 Secretary of Energy.

16 “(ee) FOREIGN ENTITY OF
17 CONCERN.—The term ‘foreign
18 entity of concern’ has the mean-
19 ing given that term in section
20 40207 of the Infrastructure In-
21 vestment and Jobs Act (42
22 U.S.C. 18741).

23 “(ff) MINERAL ACTIVI-
24 TIES.—The term ‘mineral activi-
25 ties’ means any activity carried

1 out on a mining claim, millsite,
 2 or tunnel site, for, related to, or
 3 incidental to, mining,
 4 beneficiation, processing, refin-
 5 ing, alloying, or recycling activi-
 6 ties for any critical mineral or
 7 rare earth element.

8 “(gg) PROCESSING.—The
 9 term ‘processing’ has the mean-
 10 ing given that term in Treasury
 11 Regulation section 1.30D–
 12 2(b)(37) (or a successor regula-
 13 tion).

14 “(hh) RARE EARTH ELE-
 15 MENT.—The term ‘rare earth ele-
 16 ment’ has the meaning given that
 17 term in section 2 of the Securing
 18 Trade and Resources for Ad-
 19 vanced Technology, Economic
 20 Growth, and International Com-
 21 merce in Minerals Act.

22 “(ii) RECYCLING.—The term
 23 ‘recycling’ has the meaning given
 24 that term in Treasury Regulation

1 section 1.30D-2(b)(43) (or a
2 successor regulation).

3 “(jj) REVENUES.—The term
4 ‘revenues’ includes any income,
5 profits, dividends, royalties, or
6 other financial benefits obtained
7 from the sale, transfer, or other
8 disposition of the minerals pro-
9 duced.

10 “(kk) SELL OR TRANS-
11 FER.—The term ‘sell or transfer’
12 includes any transaction that
13 conveys ownership, possession, or
14 control of minerals produced, or
15 any interest therein, including
16 sales, leases, exchanges, or
17 gifts.”.

○