



Mr. Joël Lightbound, M.P.
Chair
Standing Committee on Industry and Technology
House of Commons
Ottawa, Ontario K1A 0G6

Dear Colleague:

Pursuant to Standing Order 109 of the House of Commons, I am pleased to submit on behalf of the Government of Canada (the Government) the response to the third report by the Standing Committee on Industry and Technology (the Committee) entitled *The Neo Lithium Acquisition: Canada's National Security Review Process in Action*, which was presented to the House of Commons on March 29, 2022.

The Government extends its gratitude to the members of the Committee for their work in developing the report and preparing the recommendations, and to the witnesses who appeared before the Committee to provide evidence and share their advice. These insights are invaluable to inform how the Government carries out its responsibilities with respect to reviews under the *Investment Canada Act* (ICA), as well as furthering its understanding of the strategic importance of critical minerals development to secure Canada's role in critical supply chains and for Canada's economic future.

The Government Response is the product of collaboration among several federal departments and agencies, including Innovation, Science and Economic Development (ISED), as well as Natural Resources Canada, Public Safety Canada (PS), Global Affairs Canada, and the Canadian Security Intelligence Service (CSIS). The Government has carefully considered the Committee report and its recommendations, and will respond along two themes: 1) the process of national security review under the ICA; and 2) an update on a comprehensive critical minerals strategy.

The process of national security reviews under the ICA (recommendations 1 and 2)

We have heard the Committee's call for greater transparency about the review process for foreign investments, and agree wholeheartedly about the importance of transparency to support Canadians' understanding of the work we do, and to ensure certainty and clarity for investors and Canadian businesses. We are actively advancing steps to improve the administration of Canada's investment review regime. As you are aware, I was mandated

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by the Prime Minister to “[c]ontribute to broader efforts to promote economic security and combat foreign interference by reviewing and modernizing the *Investment Canada Act* to strengthen the national security review process and better identify and mitigate economic security threats from foreign investment.” Your recommendations related to transparency align with our desire to be clearer about our country’s foreign investment review regime, especially in areas of strategic economic importance to Canada’s continued prosperity.

I am happy to provide more detail about our review process herein, including some important considerations that are top of mind for our modernization efforts, such as the need to strike a balance between maintaining Canada’s reputation as an attractive place to invest while also keeping Canada safe.

National Security Review Process

Since the ICA Part IV.1 national security provisions came into force in 2009, foreign investment into Canada is subject to national security review under the ICA from the moment the Minister of Innovation, Science and Industry (Minister of ISI) becomes aware of a potential transaction.

Ultimately, where an investment would be injurious to national security, at the recommendation of the Minister of ISI after consultation with the Minister of PS, the Governor in Council may take any measure deemed necessary with respect to the transaction, to protect national security.

Awareness of an investment may occur in a number of ways, such as a notification or application being filed with ISED, as a result of a regular scan of the investment landscape in Canada, or from a referral of the investment by one of the prescribed investigative bodies (including Canada’s security and intelligence community), which are listed in the *National Security Review of Investments Regulations*. The national security review timeline itself is triggered when an application or notification has been certified as complete by ISED or, in the case where no application or notification is required under the ICA, the investment has been implemented. A review may begin, however, before the statutory clock is triggered, where awareness precedes a formal filing.

When the Minister of ISI, or his designated delegate, becomes aware of an investment, details of the investment are referred to PS who undertakes the coordination of the national security review. PS regularly convenes the relevant investigative bodies, including the security and intelligence community, to review investments for potential to injury Canada’s national security. As I noted, all foreign investments are subject to this process, but not all investments are relevant to all of the prescribed investigative bodies. Some may have specific subject matter expertise, and their views and opinions will be specifically sought, where appropriate.

In general, the national security review process can be thought of in three phases. The first begins when the Minister becomes aware of an investment and lasts at least 45 days. If the Minister of ISI has reasonable grounds to believe that an investment could be injurious, they may issue a notice to the investor under subsection 25.2(1) to continue the review into the second phase, also lasting 45 days. Such a notice has the effect of preventing the implementation of the transaction until the review is complete. At the end of this period, if the Minister of ISI, following consultation with the Minister of PS, considers that an investment could be injurious to national security, a recommendation is made to the Governor in Council (GIC) that an order be issued to further continue the review under subsection 25.3(1). This phase can last for two further periods of 45 days. At the end of this third phase of review, the Minister of ISI, again following consultation with the Minister of PS, may determine that the investment would be injurious to national security, and therefore refer the investment to the GIC. The GIC may then make any final order under section 25.4 setting out any measures in respect of the investment that are considered advisable to protect national security, including not allowing the investment or requiring its divestiture. There is no escalation of investigative powers in this three-step review process—the investigative powers of the prescribed investigative bodies remain the same throughout, but the legal thresholds to be met do increase.

Key Considerations and Decision-Making Factors

The principles of administrative justice would prevent a unilateral decision to engage all phases of the national security review process, without being able to demonstrate that the legal threshold for action in each has been met. Such actions would invite judicial review or trade disputes, and create uncertainty and unpredictability that would reduce Canada's attractiveness as an investment destination. At the same time, an effective review regime must offer needed flexibility to adapt to a changing world. For example, defining and referencing "authoritarian regimes", a fluid and rapidly evolving concept on which there is no international consensus, could negatively impact the review process. The ICA's existing authorities provide a clear and predictable process for investors and Canadian businesses, while ensuring that the Government has sufficient flexibility to move quickly when changes occur to the geopolitical landscape. A recent example of this is the *Policy Statement on Foreign Investment Review and the Ukraine Crisis*, released on March 8, 2022, to address elevated risk from investments into Canada from Russia following the unprovoked invasion of Ukraine.

Some of the factors and other considerations taken into account during the national security review process are publicly available in the *Guidelines on the National Security Review of Investments*. These include, as a consideration, the potential impact of an investment on critical minerals and critical mineral supply chains, e.g., lithium.

Throughout the review process, the investigative bodies assess information and intelligence related to the Canadian asset being acquired or business being established, the terms of the investment, and the foreign investor. They may consult with Canada's allies regarding the investment's potential to cause injury to national security. The Minister of ISI may also require the investor or the Canadian business or entity to provide any information considered necessary for the purposes of the review, to facilitate the investigative bodies' consideration of the transaction. This review process allows for an understanding of the asset, and deepens the Government's understanding of the strategic importance of any given sector, of which critical minerals is a prime example.

By design, the ICA is applied on a case-by-case basis to allow nuance; otherwise, the Government would risk possible reputational effects for Canada as a destination for foreign investment. A wholesale approach to certain categories of investments would not allow for a case-specific analysis, which could open the door to litigation and impair Canada's openness to useful investment. The facts and merits of each case must be assessed to determine the degree of probability of the investment causing injury to Canada's national security. In 2020–2021, all of the 826 investment filings, as well as additional investments not subject to an application or a notification requirement, were reviewed to determine potential national security injury. PS and ISED regularly brief their respective Ministers on the national security review of investments, especially for transactions that are in areas identified in the Guidelines.

The 2021 update to the Guidelines also included a list of non-exhaustive and non-determinative factors that the Government considers when assessing investments for national security injury. These can include the potential impact of the investment on the transfer of sensitive technology and know-how outside of Canada, on critical minerals and critical mineral supply chains, and on the enabling of access to sensitive personal data. The Guidelines also stipulate that some investments into Canada by state-owned enterprises may be motivated by non-commercial imperatives that could harm Canada's national security. Therefore, all foreign investments by state-owned investors, or private investors assessed as being closely tied to or subject to direction from foreign governments, are subject to enhanced scrutiny.

This enhanced scrutiny, as announced in the March 2021 update to the Guidelines, provides a similar signalling effect without the additional risks associated with a determinative policy statement. Considerations under enhanced scrutiny for critical minerals can include: the size, scope and location of the Canadian business; the nature and strategic value to Canada of the mineral assets or supply chain involved; the degree of control or influence an SOE would likely exert on the Canadian business, the supply chain and the industry; the effect the transaction may have on the ability of Canadian supply chains to exploit the asset or access alternative sources (including domestic supply); and the current geopolitical circumstances and potential impact on allied relations.

Moving Forward

Though our modernization efforts are ongoing, the Government recently took steps to improve the administration of the ICA and provide operational guidance to investors and Canadian businesses. The Government pre-published amendments to the *National Security Review of Investments Regulations* in February 2022. These regulations would allow for voluntary filing by those with investments proposals (i.e., minority or non-control) that do not require a filing, a new option to gain pre-implementation regulatory certainty. The proposal will also provide greater visibility of these investments to the security and intelligence agencies that support the ICA national security review process. In addition, the amendments extend the timeframe for the exercise of the Government's authority to act upon such investments that opt not to submit a voluntary ICA notification from the current 45 days post-implementation to five years.

Transparency and certainty are important principles for the Government's modernization efforts where the ICA is concerned, but the Government will continue to act to keep Canadians safe and secure.

Update on the comprehensive critical minerals strategy (recommendations 3)

The Government of Canada supports this recommendation. Indeed, it is aligned with the direction in the Minister of Natural Resources and Minister of Innovation, Science and Industry's mandate letter commitment to develop and launch a Canadian Critical Minerals Strategy to position Canada at the forefront of critical minerals exploration, extraction, processing and manufacturing; improve critical minerals supply chain resiliency; and position Canada as a leading mining nation. This recommendation also aligns with the direction in the Minister of International Trade, Export Promotion, Small Business and Economic Development's mandate letter commitment to continue to advance global leadership on critical minerals by working with international partners and allies to develop and secure critical mineral supply chains needed to enable a transition to a low-carbon economy and support advanced technology and manufacturing.

The Government has begun laying the groundwork to develop Canada's critical minerals industry. On March 11, 2021, the Government announced a list of 31 minerals considered critical for the sustainable economic success of Canada and our allies. The List was developed using a criteria-based approach and in consultation with other federal government departments, provinces and territories, and industry. The List provides greater certainty and predictability to industry, investors, provinces and territories, and Canada's international partners on Canada's mineral priorities; and enables policymakers to target and address key pressure points and opportunities in supply chains.

Further, Budget 2021 established a new Critical Minerals Centre of Excellence (CMCE) at Natural Resources Canada to coordinate federal policy and programs on critical minerals; work with provincial, territorial, and other partners; and will lead the development of a Canadian Critical Minerals Strategy in coordination with provinces and territories, Indigenous communities and governments, industry and academia. The Centre will also coordinate collaboration on critical minerals on behalf of the Government of Canada, both domestically and internationally, including on the Canada-United States (US) Joint Action Plan on Critical Minerals Collaboration. Budget 2022 proposes up to \$3.8 billion over eight years on a cash basis, starting in 2022–2023, to implement Canada’s first Critical Minerals Strategy to grow the production of critical minerals for Canada’s industrial base, supply our allies to support international mineral security and support the transition to a green and digital economy. This includes the following measures:

- \$79.3 million over five years on a cash basis, starting in 2022–2023, for Natural Resources Canada to provide public access to integrated data sets to inform critical mineral exploration and development.
- Up to \$1.5 billion over seven years, starting in 2023–2024, for infrastructure investments that would support the development of the critical minerals supply chains, with a focus on priority deposits.
- \$1.5 billion will be invested by Innovation, Science and Economic Development Canada through the Strategic Innovation Fund (SIF) in critical minerals projects, with a priority focus on manufacturing, processing and recycling applications.
- Up to \$144.4 million over five years, starting in 2022–2023, to Natural Resources Canada and the National Research Council to support research, development, and the deployment of technologies and materials to support critical mineral value chains.
- \$10.6 million over three years, starting in 2024–2025, to Natural Resources Canada to renew the Centre of Excellence on Critical Minerals, which works with provincial, territorial, and other partners, and that will provide direct assistance to help developers of critical minerals navigate regulatory processes and existing support measures.
- Up to \$40 million over eight years, starting 2022–2023, to Crown-Indigenous Relations and Northern Affairs Canada to support northern regulatory processes.
- \$103.4 million over five years, starting in 2022–2023, to Natural Resources Canada for the development of a National Benefits-Sharing Framework for natural resources and the expansion of the Indigenous Partnership Office and the Indigenous Natural Resource Partnerships program. At least \$25 million of this amount will be dedicated to early engagement and Indigenous communities’ capacity building to support their participation in the critical minerals strategy.
- \$70 million over eight years, starting 2022–2023, to Natural Resources Canada to advance Canada’s global leadership on critical minerals.

- The introduction of a new 30% Critical Mineral Exploration Tax Credit for specified mineral exploration expenses incurred in Canada and renounced to flow-through share investors. This will target 15 specified critical minerals, including nickel, copper, cobalt, rare earths and uranium.

The Strategy will build on extensive public and Indigenous consultations for the Canadian Minerals and Metals Plan, as well as multi-stakeholder evidence and recommendations from the February 2022 report of the House of Commons Standing Committee on Natural Resources , *From Mineral Exploration to Advanced Manufacturing: Developing Value Chains for Critical Minerals in Canada*, and the March 2022 report of the House of Commons Standing Committee on Industry and Technology, *The Neo Lithium Acquisition: Canada's National Security Review Process in Action*.

The Strategy will also leverage ongoing collaboration with key international partners. The Canada-US Joint Action Plan on Critical Minerals Collaboration has been advancing our shared interest in securing supply chains for the critical minerals needed for important manufacturing sectors, including communication technology, aerospace and defence, and clean technology. Since 2020, the Action Plan has:

- Convened industry stakeholders from both sides of the border to share information on resiliency challenges in supply chains, including defence, and detailed our respective government programs; promoted greater private investment; and, enabled new business-to-business relationships;
- Advanced geoscience through a Critical Minerals Mapping Initiative to support mineral discovery, including the release of an online portal in June 2021, and to update a *North American Net Import Reliance Study* on critical minerals with the U.S. Geological Survey; and
- Created new researcher connections through virtual workshops to identify joint research and development opportunities such as waste reprocessing and life cycle assessment.

In February 2021, Prime Minister Trudeau and President Biden released a *Roadmap for a Renewed US-Canada Partnership*, which includes a commitment to strengthen the Canada-US Joint Action Plan to target a net-zero industrial transformation, batteries for zero-emissions vehicles, and renewable energy storage. Leaders also agreed to strengthen collaboration on multilateral efforts to improve mining sector governance abroad, including through the US-led Energy Resource Governance initiative.

The Government is also working closely with other key international partners to improve minerals and metals supply chain resiliency through bilateral and multilateral engagements. On June 15, 2021, at the Leader's Summit between Canada and the EU, the

Canada-EU Strategic Partnership on Raw Materials (“Strategic Partnership”) was announced. The Strategic Partnership will see Canada and the EU work collaboratively to reduce supply chain risks for the minerals and metals that are critical to the transition to a climate-neutral and digitized economy. This partnership is established within the mandate of the Canada-EU Comprehensive Economic and Trade Agreement, notably of the bilateral dialogue of raw materials.

Interest in pursuing collective action on critical minerals to support the global clean energy transition is growing within several key multilateral organizations, including at the: OECD; G7/G20, International Energy Agency (IEA); World Bank; International Renewable Energy Agency (IRENA); Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF); and, Energy Resource and Governance Initiative (ERGI). This growing attention on critical minerals in multilateral fora provides an opportunity to advance Canada’s global leadership on critical minerals by leveraging the \$70 million investment announced in Budget 2022.

The Government would like to reiterate its thanks to members of the Committee for their dedication to undertake this review and commitment to accountability to Canadians and to making Canada safe. The Government will take into account the Committee’s recommendations relating to the ICA in our efforts to ensure that the ICA framework is well calibrated to support Canada’s continued prosperity and to face evolving national security challenges. We also look forward to working with all Canadians to position Canada at the forefront of critical minerals exploration, extraction, processing and manufacturing; to improve critical minerals supply chain resiliency; and to position Canada as a leading mining nation.

Sincerely,

A handwritten signature in black ink, appearing to read 'F. Champagne', with a stylized flourish at the end.

The Honourable François-Philippe Champagne, P.C., M.P.