

# INVESTMENT

# PERSPECTIVES

## Collective Bargaining in International Economic Law: Critical Minerals, Regional Integration, and Value Addition

**Iza Camarillo**

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### **Introduction**

Contemporary governance of critical minerals increasingly relies on negotiations between resource-rich Global South states and developed economies. Trade agreements, investment treaties, and bilateral partnership frameworks seek to secure mineral supply and govern extraction, processing, and export. Existing debates focus on regulatory standards, environmental safeguards, and industrial policy, while development outcomes and policy space are often shaped by economic or political power asymmetries rather than negotiation design. When negotiations occur bilaterally, producing states negotiate alone with larger economies and face pressure to accept their terms. By contrast, regional integration can function as collective bargaining, enabling governments to preserve regulatory autonomy for domestic industrial development.

## Bilateral Negotiations and Structural Power Asymmetries in Critical Minerals Governance

Trade and investment agreements governing mineral access appear reciprocal but operate unevenly. Many disciplines export management, local processing incentives, performance requirements, and investment regulation, tools historically central to industrial development strategies aimed at shifting production from raw materials to value-added manufacturing. Developed economies can diversify suppliers, while producing states depend on market access, financing, and investment flows. In recent years, the United States [expanded bilateral mineral access arrangements](#) to secure supply. Some instruments are legally binding, while others rely on expectations tied to financing, investment protection, or market access. Even where restrictive measures remain permissible, governments may face commercial or diplomatic pressure not to use them once agreements are in place.

### Constraints on Value Addition in Mineral Supply Chains

For resource-rich states, critical minerals offer development potential but also risk continued dependence. Participation in mineral supply chains often generates limited gains because the highest-value segments occur after extraction, [during refining, component production, and manufacturing of end-use technologies](#). Many producing states remain concentrated in raw mineral extraction while processing and technology production occur elsewhere. Mineral exports therefore generate revenue but limited industrial upgrading, leaving domestic economies [capturing little supply-chain value](#).

The concentration of value addition outside producing states is not explained solely by capital or infrastructure constraints. [Intellectual property rights](#) and control over [proprietary processes and technical know-how](#) govern many technologies using processed minerals. Debates over the proposed [waiver of TRIPS obligations during the COVID-19 pandemic](#) illustrate that production capacity location can itself be negotiated within the trade regime. Participation in later value-chain stages, therefore, depending not only on resource access but also on bargaining over the [regulatory conditions governing production](#).

Governments pursuing industrial upgrading have sought entry into value-added activities through [downstream processing requirements, export management, and investment conditions](#) supporting the domestic industry. Yet mineral access agreements make these strategies difficult to sustain because [investment, financing, and market access depend on maintaining reliable supply relationships](#). Policies [delaying exports or requiring local processing](#) can carry economic and political costs even when lawful. The practical effect reinforces specialization in upstream extraction and constrains policy space for value addition.

This persistence reflects how mineral access is negotiated. [Critical mineral arrangements are typically bilateral](#), leaving producing states to negotiate individually. Negotiating alone [reduces outside options](#) and increases pressure to accept commitments restricting industrial policy tools, much as individual workers bargaining separately secure weaker terms than those negotiating collectively.

Aspiring to attract investment and enter global supply chains, producing states have often accepted foreign investment protections, including [investor–state dispute settlement \(ISDS\)](#). Once in force, [policy change can carry legal consequences](#). [Investment arbitration in the extractive sector has repeatedly arisen](#) when the regulatory or contractual frameworks governing mining projects evolve. Governments

may hesitate to pursue industrial upgrading policies that could trigger [costly arbitrations](#). ISDS converts initial bargaining asymmetries into durable commitments difficult to revise unilaterally.

The organization of mineral access negotiations affects the [regulatory space](#) available once projects are established. Commitments embedded in access arrangements influence whether governments can adopt [labor and environmental protections](#) alongside industrial upgrading policies. Bargaining structure thus shapes both value distribution within mineral value chains and governance conditions of extraction.

## **Regional Coordination and Collective Bargaining for Industrial Policy Space**

Regional coordination can alter this dynamic by increasing leverage during the treaty-design, allowing states to [limit or exclude such protections](#). When governments act collectively, they negotiate supply and investment conditions from a different baseline. Shared positions on export management, processing requirements, and investment protections expand options and reduce pressure to accept restrictive commitments individually. Coordination expands policy space only when structured to prevent [internal hierarchies](#) and maintain common standards. Otherwise, larger markets may reproduce the asymmetries that coordination seeks to counter. Well-structured regional cooperation can strengthen [regulations, support domestic processing, and reduce exposure to investment and trade disputes](#), enabling [shared infrastructure](#) and regional production networks, facilitating [processing, skills, and diversification](#). Collective action has sometimes enhanced bargaining power globally. Coordinated Global South resistance influenced the trajectory of the [World Trade Organization's Doha expansion](#) agenda, and regional coordination shaped negotiations over the [Free Trade Area of the Americas](#), demonstrating that bargaining power can shift when states negotiate together rather than individually.

Despite these advantages, mineral access negotiations rarely occur collectively. Agreements are typically offered to individual governments and linked to project financing, infrastructure development, and purchase commitments contingent on timely approval. Where benefits are negotiated separately and investments are location-specific, [accepting a bilateral arrangement becomes rational](#) even when [shared negotiating position](#) could yield greater leverage. Although producing states share interests in value addition and regulatory autonomy, factors including divergent development models, fiscal needs, and geopolitical alignments [complicate cooperation](#). Effective coordination also requires [institutional infrastructure and enforcement capacity](#) that many regional frameworks struggle to sustain. Consequently fragmented negotiation dynamics persist, critical minerals governance is therefore not only a question of which trade and investment rules apply, but how commitments are negotiated. When access is arranged through isolated agreements, temporary bargaining asymmetries become durable legal constraints shaping government policies. Like individual labor bargaining, fragmented state negotiation weakens outcomes because negotiation structure constrains what can be secured. Coordinated negotiation expands outside options when commitments are formed.

The difficulty many resource-rich states face in maintaining value addition reflects not only economic structure or regulatory capacity but the organization of bargaining itself. Attention to bargaining architecture helps explain why industrial upgrading policies often erode once agreements enter into force and why development strategies based on value addition prove difficult to sustain.

**Iza Camarillo** ([izac@uci.edu](mailto:izac@uci.edu)) is a lawyer and researcher specialized in global trade, international investment law, and labor rights. She is the Research Director of the Labor Center at the University of California, Irvine.

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