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Resource Nationalism's New Frontier: Lithium, Rare Earths, and the Legal Map Ahead

*By Patrick W. Pearsall and Robert Spano**

In this article, the authors explain how the legal terrain is shifting for lithium and the rare earth elements – and that the strategies that protected investors during the last commodities cycle will not be sufficient for the next.

Resource nationalism has moved well beyond royalty disputes. In 2025 and 2026, it has come to include export bans, quota systems, processing mandates, and extraterritorial technology controls. For lithium and the rare earth elements, the legal terrain is shifting as quickly as the political one—and the strategies that protected investors during the last commodities cycle will not be sufficient for the next.

A NEW WAVE, ON BOTH SIDES OF THE SUPPLY CHAIN

The most visible recent move came from Beijing. On October 9, 2025, China issued export controls on five additional rare earth elements and on a broad set of related materials and technologies, with extraterritorial reach extending to items containing as little as 0.1 percent Chinese-origin content—an architecture clearly modeled on the U.S. Foreign Direct Product Rule.¹ On November 7, 2025, those controls were suspended for one year as part of the Xi-Trump understanding to roll back tariffs and trade barriers.² The suspension is not a repeal: the framework remains on the books, the licensing apparatus has been built, and the leverage now exists in perpetuity even when the controls are dormant.

Africa has produced the most recent consequential producer-side precedent. The Democratic Republic of the Congo banned cobalt exports in February 2025, then in October 2025 lifted the ban in favor of an annual quota of 96,600 metric tons for each of 2026 and 2027—less than half of recent global production—with ten percent of future volumes reserved for “strategic national projects.”³ Glencore endorsed the regime; CMOC opposed it; both had

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¹ See China Briefing, China's Rare Earth Export Controls—Impact on Businesses and Industries (updated Nov. 2025), available at <https://www.china-briefing.com/news/chinas-rare-earth-export-controls-impacts-on-businesses/>.

² Id. The suspension runs through November 10, 2026.

³ See ARECOMS Regulatory Notices, September–October 2025; Investing News Network, DRC to End Cobalt Export Ban, Move to Quota System (Sept. 22, 2025), available at <https://investingnews.com/drc-ends-cobalt-export-ban/>.

previously declared force majeure under their offtake arrangements.⁴ The DRC quota model is being studied as a template across other producing jurisdictions.

Lithium and other battery metals have generated their own catalogue. Vietnam in December 2025 amended its Law on Geology and Minerals so that only government-approved companies may mine, process, or utilize rare earths, and the export of raw rare earth materials is now prohibited.⁵ Indonesia's nickel ore export ban, in force since January 2020 and reinforced by escalating downstream processing requirements through 2025, has become the canonical producer-side template—and one increasingly cited by Vietnam, Chile, and the DRC as they design their own regimes.⁶ In Chile, the inauguration of President José Antonio Kast on March 11, 2026, has produced a more market-friendly tone, but lithium remains non-concessionable under Decree Law No. 2886 and access continues to depend on a state contract or special operation contract (CEOL). The state-centric model still governs.

Consuming states are responding in kind. On February 2, 2026, the United States launched “Project Vault,” a strategic critical minerals reserve, and two days later the State Department convened a ministerial of fifty-four countries and the European Commission, at which the administration announced a preferential trade zone using “adjustable tariffs” to maintain a price floor.⁷ The November 2025 National Security Strategy named critical mineral supply chains a matter of national security.⁸ The European Union's Critical Raw Materials Act and the United Kingdom's emerging framework pull in the same direction.

LEGAL CONSEQUENCES

Several legal exposures move in tandem with these developments.

Investment Treaty Protection

Most resource-nationalist measures will be tested against the network of bilateral investment treaties, free trade agreement investment chapters, and the

⁴ Id.

⁵ Law on Geology and Mineral Resources (Vietnam, as amended Dec. 2025). See generally China-CEE Institute, *The Manifestations, Causes, and Impacts of the Resurgence of Resource Nationalism*, China Watch Vol. 6, No. 21 (May 2026).

⁶ See also, e.g., Namibia critical minerals export ban (June 2023); Ghana Green Minerals Policy (2023); Zimbabwe export ban on unprocessed lithium (Dec. 2022).

⁷ See Center for Global Development, *A Coming Clash Over Critical Minerals?* (Feb. 2026); remarks of Vice President J.D. Vance, *Critical Minerals Ministerial* (Feb. 4, 2026).

⁸ National Security Strategy of the United States of America (Nov. 2025).

Energy Charter Treaty. Expropriation claims today rarely involve outright seizure; they involve indirect expropriation through export bans, license revocations, or quota systems that strip economic value. Fair and equitable treatment claims remain the most flexible vehicle, particularly where legitimate expectations were created by license terms, ministerial assurances, or stabilization commitments.

Stabilization and Renegotiation

Many concession and investment agreements signed during the last commodities cycle contain stabilization or freezing provisions. These are about to be tested in a wave of state-led renegotiations. Investors should expect host states to invoke public-order or essential-security exceptions and should expect tribunals to scrutinize those defenses closely.

Force Majeure, Hardship, and Change of Law

The DRC episode confirms that export bans and quotas can trigger force majeure declarations under upstream offtake contracts. Validity depends on the contractual language, the duration of the measure, and the foreseeability test in the governing law. Counterparty disputes about whether a quota system—as distinct from an outright ban—qualifies as a force majeure event are already in arbitration.

Export Controls and Secondary Sanctions

The Chinese rare earth framework and its U.S. counterparts—the Bureau of Industry and Security’s evolving entity list and foreign direct product rule, OFAC’s expanded use of secondary sanctions on third-country traders, and the Department of the Interior’s accelerated review processes—create overlapping and at times conflicting compliance obligations. Companies caught between the two regimes will require formal opinions and contingency licensing strategies.

Foreign Investment Screening and Antitrust

Friend-shoring is producing a wave of joint ventures, sovereign-linked equity investments, and offtake-for-equity arrangements. These face increasing scrutiny under CFIUS, the EU FDI Regulation, the UK National Security and Investment Act, and analogous regimes, in addition to ordinary merger control review.

IMMEDIATE NEXT STEPS FOR BUSINESSES

Boards and general counsel with exposure to lithium, rare earths, or adjacent supply chains should consider five near-term actions.

First, Map Treaty Protection

Identify the holding-company structures through which each material asset is owned and confirm whether they qualify as protected investors under an

applicable BIT, multilateral instrument, or investment chapter. Restructure before, not after, a measure is announced; the abuse-of-process doctrine forecloses post-dispute restructuring designed to acquire treaty rights.

Second, Audit Contracts for the New Risk Profile

Offtake agreements, joint operating agreements, and concessions drafted for a 2015 commodities environment frequently do not address quota systems, technology export controls, or price-floor tariffs. Force majeure, change-of-law, indemnity, dispute resolution, and stabilization provisions all deserve targeted review.

Third, Assess Political Risk Insurance and Export Credit Support

MIGA, the U.S. International Development Finance Corporation, the European Bank for Reconstruction and Development, and several private carriers have meaningfully expanded critical-minerals coverage, and many recent financings now treat political risk coverage as a structural prerequisite.

Fourth, Engage With the New Architecture

Project Vault, the Forum on Resource Geostrategic Engagement, the European Union's Critical Raw Materials Club, and the bilateral memoranda negotiated at the February 4 ministerial create avenues for shaping the rules rather than reacting to them.

Fifth, Reassess Processing and Offtake Geography

The most durable hedge against export restrictions is to be on the right side of them. Investment in midstream processing in producer countries, or in third-country processing aligned with the consuming bloc, increasingly carries the character of insurance.

The questions in this area are not novel; the volume, the speed, and the political stakes are. The producers and investors who fare best will be those who treat critical-minerals exposure as a permanent feature of their compliance and disputes function rather than as a temporary disruption.