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America First Investment Policy: Presidential Memorandum Spells Out the Administration's Priorities for Inbound and Outbound Foreign Investments

Robert A. Friedman, Antonia I. Tzinova, Andrew K. McAllister, Libby Bloxom, Marina Veljanovska O'Brien, and Cynthia Liu*

In this article, the authors discuss a National Security Presidential Memorandum issued by President Trump titled "America First Investment Policy."

President Donald Trump has issued a National Security Presidential Memorandum (NSPM) titled "America First Investment Policy,"[1] outlining the administration's priorities regarding inbound and outbound investments. The NSPM focused on reducing regulatory burdens for investments from U.S. allied and partner countries, as well as enhanced scrutiny on investments and other transactions with foreign adversaries—namely, China (including Hong Kong and Macau), Cuba, Iran, North Korea, Russia and the Maduro regime in Venezuela—with the focus of making it harder for these countries to gain access to certain sensitive technologies.

The NSPM directed various U.S. government agencies to implement the policies described in the NSPM, including through the promulgation of rules and regulations. As such, though there are no immediate effects on the various inbound and outbound investment screening regimes at this time, companies should expect imminent regulatory and policy changes and possibly a move to change the statutory authority for the Committee on Foreign Investment in the United States (CFIUS).

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"Fast-Track" Process of CFIUS Reviews for U.S. Allies and Partners

The NSPM states that the administration intends to maintain the open investment environment in the United States and outlines President Trump's plans to facilitate foreign investment into the United States from allies and partners[2] by reducing regulatory burdens. Some of the measures considered include:

- Creation of a "fast-track" process to facilitate investment from specified allied and partner countries in U.S. businesses in advanced technology and other important areas; investors and cross-border dealmakers should be mindful of partnering with a foreign adversary, as access to the U.S. market will be proportionate to such investors' "verifiable distance and independence" from China and other foreign adversaries; and
- Expedited environmental reviews for any investment of more than $1 billion.

CFIUS Mitigation Agreements

The NSPM underscores a Trump administration priority to devote fewer resources to mitigation agreements, which are legally binding commitments that foreign investors must negotiate with the U.S. government before CFIUS will approve a transaction. The NSPM proposes to end "overly bureaucratic, complex, and open-ended" CFIUS mitigation agreements and directs administrative resources to monitor these agreements toward facilitating investments rejecting "perpetual and expansive compliance obligations" in favor of "concrete actions" that can be completed within a set time frame.

Interestingly, despite the focus on restricting investments from China and other foreign adversaries, the NSPM makes clear that passive investment from all foreign investors is encouraged and welcomed.

CFIUS Call to Arms

The NSPM proposes enhanced restrictions on certain types of investments into the United States and calls on CFIUS to:

- Restrict Chinese investment in U.S. technology, critical infrastructure, healthcare, agriculture, energy, raw materials, and other strategic sectors (the NSPM also refers to U.S. technology, food supplies, farmland, minerals, natural resources, ports, and shipping terminals as the "crown jewels" of the United States);
- Protect U.S. farmland and real estate near sensitive facilities; and
- Strengthen CFIUS authority over greenfield investments (i.e., investments that do not involve an existing U.S. business but the development of a U.S. business) to restrict foreign adversary access to U.S. talent and operations in sensitive technologies—especially artificial intelligence (AI)—and expand CFIUS's scope of authority over "emerging and foundational" technologies.

Although the president, under existing CFIUS authorities, can determine whether an investment would implicate national security interests of the United States, expanding the jurisdiction of CFIUS to review additional categories of greenfield investments or expanding the scope of technologies subject to its jurisdiction would likely require congressional action.

Expanded Scope of Outbound Investment Restrictions

The NSPM also proposes expanding the recently implemented outbound investment rules. In particular, the NSPM builds on the Trump administration's mandate in the "America First Trade Policy" Memorandum[3] to the U.S. Department of the Treasury to determine whether the outbound investment rules adequately address national security risks posed by China.

- *New Sectors to Be Added*. The NSPM proposes the expansion of sectors covered by outbound investment rules to biotechnology, hypersonics, aerospace, advanced manufacturing, directed energy, and any other area implicated by China's national military-civil fusion strategy. Currently, the covered sectors include semiconductors and microelectronics, quantum information technologies, and AI.

- *New Type of Investments Covered*. The NSPM calls for expanding the coverage of the outbound investment rules to private equity, venture capital, greenfield investments, corporate expansions and investments from pension funds, university endowments, and other limited-partner investors.
- *Increased Scrutiny on China*. The NSPM also calls for more scrutiny of publicly traded Chinese and other foreign adversary company securities by the U.S. Securities and Exchange Commission (SEC) and heightened restrictions by U.S. investors, including the call for the use of diverse legal instruments such as sanctions to deter U.S. persons from investing in China's military-industrial sector.

The current outbound investment screening regime was introduced during the Biden administration through an executive order under the authority of the International Emergency Economic Powers Act (IEEPA). In that sense, it functions similarly to an economic sanctions program and falls within the broad authority delegated to the president under IEEPA to take any measures to address a declared national emergency. The proposed changes to the outbound investment screening regime would not require congressional action.

In Summary

- The NSPM issued by President Trump titled "America First Investment Policy" outlined new policies regarding inbound and outbound investment review regimes, suggesting a revamp of CFIUS procedures and the recently implemented U.S. outbound investment security program. Although the NSPM does not create or impose any immediate rights or obligations on companies, significant and wide-ranging changes implementing such policies are expected.
- The NSPM directs the creation of an expedited "fast-track" process to ease investment reviews for allies, while focusing resources to make it harder for foreign adversaries—defined as China (including Hong Kong and Macau), Cuba, Iran, North Korea, Russia, and the Maduro regime in Venezuela—to gain access to sensitive technologies.

- The NSPM highlights the Trump administration's view that economic security is national security and specifically identifies food supply, farmland, minerals and natural resources as part of the U.S. critical infrastructure.
- The NSPM further directs the U.S. Department of the Treasury to consider extending restrictions on outbound investment to China into new sectors, including biotechnology, hypersonics, aerospace, advanced manufacturing, directed energy, and other areas implicated by China's Military-Civil Fusion strategy, as well as expanding coverage over more types of transactions, including publicly traded securities from sources such as pension funds university endowments and limited partners in investment funds.

Key Takeaways

- *Economic Interests in Focus*. The NSPM explicitly states what has been the practice of CFIUS in the past few years, that economic security is national security. This suggests that CFIUS will pay close attention to U.S. economic interests in its reviews (a *Nippon Steel*-steel-type philosophy).
- *Increased Scrutiny in Chinese Inbound and Outbound Investment*. Expect an across-the-board increase in scrutiny of Chinese investments in diverse industries to include agriculture, energy, and raw materials, as well as U.S. investments in China and particularly in China's military-industrial sector.
- *Reinterpretation of Critical Infrastructure and Critical Technologies*. Expect a more expansive approach to national security risks that touch U.S. infrastructure resources (broadly conceived) and as applied to control investments and potentially an expansion of the list of "critical infrastructure" assets expressly listed in the CFIUS regulations for purposes of noncontrolling investments. In addition, the definition of "critical technologies" could be expanded to capture additional technology.
- *Expanded CFIUS Jurisdiction Over Greenfield Investments*. The Trump administration may propose amendments to the Foreign Investment Risk Review Modernization Act to include enhanced jurisdiction over greenfield investments

by foreign adversaries—beyond what would already be captured in CFIUS real estate jurisdiction—or go further to seek outright restrictions on certain categories of such investments.

- *Mitigation Agreements*. The NSPM states that the Trump administration will ease the use of complex and open-ended mitigation agreements for U.S. investments from foreign adversary countries and instead focus on actions that can be completed within a specific time.
- *All Passive Investments Welcome*. Despite the NSPM's call for restrictions on investment from foreign adversaries, it makes clear that passive investment from everyone is welcome.
- *More Money, Fewer Restrictions*. The call for expedited environmental reviews for any investment of more than $1 billion signals that the Trump administration will ease regulatory burdens for large investments.
- *Greater Distance from China, Fewer Restrictions for Allies*. A "fast-track" process to ease investment reviews for certain allied and partner countries will also require "verifiable distance and independence" from China and other foreign adversaries.

Notes

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1. https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/.

2. President Trump includes a reference to allies and partners with "tremendous sovereign wealth funds," which further pushes his agenda to create a sovereign wealth fund of the United States.

3. https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/.