Simpson Thacher

Report from Washington

Trump's "America First Investment Policy" Promises to Streamline Investment Reviews While Increasing Scrutiny on Investments Involving China and Other U.S. Foreign Adversaries

February 24, 2025

On February 21, 2025, President Trump released a memorandum entitled "America First Investment Policy" that lays out the administration's approach to foreign investment in the United States. The memorandum seeks to ease investment by U.S. allies and partners by broadly pursuing an open investment environment, including to help ensure that artificial intelligence and other emerging technologies are created and produced in the United States. At the same time, the memorandum warns of the threat posed by China and other U.S. foreign adversaries[1] and signals stronger measures to prevent these countries from using foreign investment to access U.S. know-how and degrade the competitive advantage of the United States.

Encouraging Investment From U.S. Allies and Partners

The memorandum lays out several specific measures the administration will undertake to encourage investment by U.S. allies and partners and to expedite the review of such investments, including:

- Creating a "fast-track" process based on objective standards, such as requiring investors not to partner with foreign adversaries, to facilitate investment by U.S. allies and partners, including to facilitate investment in key sectors like advanced technologies;
- Expediting environmental reviews for any investment over $1 billion in the United States;
- Ceasing the use of "overly bureaucratic, complex, and open-ended" mitigation agreements by the Committee on Foreign Investment in the United States ("CFIUS"), in favor of mitigation agreements that consist of concrete actions companies can complete within a specific time;
- Encouraging passive investments from foreign persons, including "non-controlling stakes and shares with no voting, board, or other governance rights" and where the investment does not "confer any managerial influence, substantive decision-making, or non-public access to technologies or technical information, products, or services."

[1] The memorandum defines "foreign adversaries" as including the People's Republic of China, including the Hong Kong Special Administrative Region and the Macau Special Administrative Region; the Republic of Cuba; the Islamic Republic of Iran; the Democratic People's Republic of Korea; the Russian Federation; and the regime of Venezuelan politician Nicolás Maduro.

The memorandum also calls for attracting investments from allied and partner sovereign wealth funds, signaling that the administration will be receptive to investment by governmental investment vehicles such as those common in the Middle East.

Combatting the Exploitation by Foreign Adversaries of U.S. Inbound and Outbound Foreign Investment

While broadly encouraging foreign investment in the United States, the memorandum warns of the threat posed by U.S. adversaries to exploit foreign investment and U.S. capital to access sensitive U.S. technologies, critical infrastructure, and personal data, and reduce U.S. military and economic advantages. The memorandum focuses on China in particular, citing China's targeting of U.S. technology, food supplies, farmland, minerals, natural resources, ports, and shipping terminals, and its exploitation of U.S. and capital markets and outbound U.S. investment to modernize its industries at the expense of the United States.

While not setting forth any specific new requirements in this regard, the memorandum signals that restrictions on foreign investment will "ease in proportion to their verifiable distance and independence from predatory investment and technology acquisition practices" of China and other foreign adversaries. The memorandum calls for leveraging all necessary legal authorities to address this threat from foreign adversaries, including:

- Seeking additional authorities to increase CFIUS oversight over "greenfield" investments, restrict foreign adversary access to U.S. talent and operations in sensitive technologies, and expand the scope of "emerging and foundational" technologies that may be addressed by CFIUS;
- Establishing rules to further deter U.S. persons from investing in China's military-industrial sector, including through the use of sanctions authorities under the International Emergency Economic Powers Act and potentially expanding restrictions around Chinese Military Industrial Complex companies, currently governed by Executive Order (E.O.) 13959, as amended by E.O. 14032;
- Potentially expanding outbound investment restrictions promulgated by the Biden administration under E.O. 14105, which are currently under review; such expanded rules could include sectors such as biotechnology, hypersonics, aerospace, advanced manufacturing, and directed energy, and could focus on investments by pension funds, university endowments, and other limited partner investors;
- Exploring whether changes are needed to auditing standards for companies covered by the Holding Foreign Companies Accountable Act, which requires public companies listed in the United States to disclose to the Securities and Exchange Commission information related to jurisdictions that prevent the Public Company Accounting Oversight Board from conducting inspections;
- Reviewing variable interest entity and subsidiary structures used by foreign adversaries to trade on U.S. exchanges and that limit rights and protections for U.S. investors; and
- Restoring the fiduciary standards under the Employee Retirement Security Act of 1974 by seeking to ensure foreign adversary companies are ineligible for pension plan contributions.

Finally, the memorandum recommends investigating whether to suspend or terminate the 1984 United States-The People's Republic of China Income Tax Convention, which the memorandum cites as a contributing factor—along with China's admission into the World Trade Organization and the accordance to China of Most Favorable Nation treatment—to the deindustrialization of the United States and China's military modernization.

As most of these items will require further agency or congressional action, we expect that the administration will promulgate further guidance, memoranda, or executive orders related to the implementation of these items in the coming months. We will provide updates as these issues develop.

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