

Trump Administration's America First Investment Policy

by Lawrence Ward and Justin T. Huff

On February 21, 2025, President Trump issued his *America First Investment Policy* (the "Policy") that has the potential to drastically alter cross border investments, particularly those involving the United States and the People's Republic of China.^[1] Although it will take some time for the required Congressional, agency, and regulatory actions to occur to implement the Policy, President Trump outlines his strategy with respect to foreign inbound investment and U.S. outbound investment. The key takeaway from the Policy is that, under the Trump Administration, *all foreign investment will not be treated equally*. More pointedly, investment from Chinese companies in the United States, and from U.S. persons in Chinese companies, will be scrutinized more heavily than they already are and, in some instances, may be blocked entirely.

In Section 1 of the Policy, President Trump notes that foreign investment strengthens U.S. private and public capital markets, and he reiterates the nation's commitment to a "strong, open investment environment." However, President Trump makes clear that not all foreign investment is in the U.S. national interest. President Trump identifies certain foreign adversaries,^[2] notably the PRC, that "systematically direct and facilitate investment in [U.S.] companies and assets to obtain cutting-edge technologies, intellectual property, and leverage in strategic industries."

President Trump further rallies against the PRC in Section 1 of the Policy by noting that "PRC-affiliated investors are targeting the crown jewels of [U.S.] technology, food supplies, farmland, minerals, natural resources, ports, and shipping terminals." Concurrently, President Trump states that U.S. investment in the PRC is allowing it "to develop and modernize its military, intelligence, and other security apparatuses, which poses significant risk to the United States homeland and Armed Forces of the United States" worldwide. For years, the U.S. Government has primarily used sanctions to address the PRC's so-called "Military-Civil Fusion strategy" and the Policy makes clear that the Trump Administration hopes to further combat that strategy.

In Section 2 of the Policy, President Trump outlines a series of points related to foreign

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inbound investment, U.S. outbound investment, and sanctions that his Administration will use to target the PRC.

Foreign Inbound Investment

Although many of the provisions of the Policy as to foreign inbound investment are mere platitudes, some of the provisions signal that there will be significant changes to the assessment, review, and investigation processes of the Committee on Foreign Investment in the United States (“CFIUS”). In Sections 2 (f) and (g) of the Policy, President Trump focuses on foreign inbound investment.

- In Section 2(f), President Trump:
 - Indicates that CFIUS and other legal instruments will be used to restrict “PRC-affiliated persons from investing in United States technology, critical infrastructure, healthcare, agriculture, energy, raw materials, or other strategic sectors;”
 - Announces a need for further protections around U.S. farmland and real estate near sensitive U.S. Government facilities;
 - Calls on the U.S. Congress to strengthen CFIUS’s jurisdiction as to so-called “greenfield” investments; and
 - Seeks to “expand the remit of ‘emerging and foundational’ technologies addressable by CFIUS.”
- In Section 2(g), in an effort to increase government efficiency, President Trump notes that his Administration “will cease the use of overly bureaucratic, complex, and open-ended ‘mitigation agreements’ for [U.S.] investments from foreign adversary countries.”^[3] Although President Trump mentions no specific existing mitigation agreements, many mitigation agreements have been in effect for years and burden U.S. companies with significant cost to ensure compliance. President Trump envisions mitigation agreements that contain concrete actions that can be completed “within a specific time, rather than perpetual and expensive compliance obligations.”

With respect to certain other provisions in the Policy relating to foreign inbound investment, it is unclear what changes may occur. For example, in Section 2(b), President Trump notes that “restrictions on foreign investors’ access to” assets involving so-called TID U.S. businesses^[4] “will ease in proportion to their verifiable distance and independence from the predatory investment and technology-acquisition practices of the PRC and other foreign adversaries or actors.” Although CFIUS implemented a mandatory filing process with respect to certain investments in TID U.S. businesses over four years ago, that process is largely tied to export controls, foreign government ownership/control, and other measurable factors that already eliminate any mandatory filing burden on investors from trusted allied nations in most cases, and currently fast-track those filings that are mandated involving “friendly” investors. Thus, it is unclear how any specific changes to the existing process might be helpful.

Outbound Investment

President Biden’s Executive Order 14105 (“[EO 14105](#)”) Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern (the “Outbound Order”) significantly reshaped U.S. outbound investment policy

toward the PRC by providing a new framework for restricting investments in China, and to other countries that may be designated as “countries of concern” in the future (the “Outbound Program”). EO 14105 focused on three key technology areas that impact U.S. national security: (a) semiconductors and microelectronics; (b) quantum information technologies; and (c) artificial intelligence (“AI”).

President Trump’s Policy indicates that his Administration intends to further expand the Outbound Program, which just went into effect on January 2, 2025. In Sections 2 (e), (i), and (j) of the Policy, President Trump focuses on outbound investment.

- In Section 2(e), President Trump indicates that the United States “will establish new rules to stop [U.S.] companies and investors from investing in industries that advance the PRC’s national Military-Civil Fusion strategy and stop PRC-affiliated persons from buying up critical American business and assets.”
- It is unclear what rules are necessary particularly given that the United States already uses a number of sanctions programs to restrict investment in Chinese military-civil fusion companies. In fact, Section 2(i) of the Policy seems to acknowledge that fact and indicates that the Trump Administration will review various actions taken by President Biden through Executive Order. Importantly, Trump also indicates that additional sanctions under the International Emergency Economic Powers Act (“IEEPA”) and other authorities may be imposed.
- Last December at its Outbound Program conference, the Treasury Department signaled that there was a distinct possibility that the program would expand to include other technology sectors eventually. In Section 2(j) of the Policy, President Trump identifies several areas for new or expanded restrictions under the Outbound Program including “semiconductors, artificial intelligence, quantum [computing], biotechnology, hypersonics, aerospace, advanced manufacturing, directed energy, and other areas implicated by the PRC’s national Military-Civil Fusion strategy.”

Additional Changes

In addition to the above regarding inbound/outbound investment, President Trump also indicates:

- Under Section 2(d) of the Policy, his Administration will expedite environmental reviews for any investment over \$1,000,000,000.
- Under Section 2(k) of the Policy, the United States will consider suspending or terminating the Reagan-era 1984 U.S.-PRC Income Tax Convention. President Trump views this as a means to have U.S. investors invest in the “future of America, not the future of the PRC.”
- Finally, under Section 2(l), President Trump indicates that his Administration will: (i) review whether “adequate financial auditing standards are upheld for companies covered by the Holding Foreign Companies Accountable Act;” (ii) review various structures used by foreign companies to trade on U.S. stock exchanges; and (iii) restore fiduciary standards under the Employee Retirement Security Act of 1974 ensuring that “foreign adversary companies are ineligible for pension plan contributions.”

President Trump’s Policy memo is directed to the Secretaries of the Treasury, State, Defense, Commerce, Labor, Energy, and Homeland Security; the Attorney General, the Administrator of the Environmental Protection Agency, the Directors of the Office of

Management and Budget, National Intelligence, the Office of Science Technology and Policy, and the Federal Bureau of Investigation; the U.S. Trade Representative, the Chairman of the Council of Economic Advisers, and the Assistant to the President for National Security Affairs.

President Trump calls upon the whole of government to take programmatic and budgetary steps necessary to implement his priorities set forth in the Policy. While the Policy does not provide any clear timelines towards implementation, the Policy signals that Trump 2.0 will be even more hawkish on the PRC than before.

[1] Under the Policy, the People's Republic of China (the "PRC") includes Hong Kong and Macau.

[2] Under the Policy, Cuba, Iran, North Korea, Russia, and Venezuela are also considered foreign adversaries but because of robust existing sanctions programs against each of those countries, the Policy focuses on the PRC.

[3] Over the last several years, CFIUS has spent significant resources building out and fully staffing its Office of Monitoring and Enforcement ("Monitoring and Enforcement"). One of the tasks of Monitoring and Enforcement is to ensure that parties comply with the terms of mitigation agreements entered into with CFIUS.

[4] A TID U.S. business is any U.S. business that "(a) produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies; (b) performs [certain] functions...with respect to [certain] critical infrastructure; or (c) maintains or collects, directly or indirectly, sensitive personal data of U.S. citizens."