Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

How Trump's Trade Policies Are Shaping Foreign Investment

By **David Fagan, Lawrence Barker and Brian Williams** (July 3, 2025, 5:24 PM EDT)

David Fagan

Lawrence Barker

Brian Williams

President Donald Trump's Feb. 21 memorandum titled "America First Investment Policy" was a direct statement setting forth the administration's policy on foreign investment and national security matters.[1]

Among other things, the America First Investment Policy clearly equated national security and economic security, prioritized investment from ally and partner countries, set direction to streamline and reduce barriers to such friendly investment, and articulated an intent to use executive authorities potentially expansively to curb investment from China and other "countries of concern" in a broad segment of sectors identified as central to U.S. national security.

Five months into the Trump administration, investors are beginning to see more concretely the applications of these policies in the processes of the Committee on Foreign Investment in the United States, as well as a more transaction- and headline-focused approach for the administration.

Regulatory Environment Improving For U.S. Ally and Partner Investment

The America First Investment Policy stated the Trump administration's intention to simplify the regulatory environment, streamlining and accelerating national security regulatory processes for trusted investors from U.S. allies and partners.

In the months since the publication of the America First Investment Policy, this has begun to play out on a practical level with CFIUS and other national security regulators increasingly focused on shortening review timelines and reducing the use of mitigation measures except where truly necessary to address unacceptable national security risks.

It is in this context that the U.S. Department of the Treasury announced the CFIUS fast-track pilot program on May 8.[2] The Treasury Department will select a group of "known investors" — likely anywhere from a small handful to a dozen or so — to participate in the program.

The stated goal of the program is "to facilitate greater investment from allies and partners," and, accordingly, participating investors will likely be chosen by the Treasury Department on the basis of their affiliation with countries that are U.S. allies and partners, the frequency with which they file with CFIUS and their history of obtaining approvals, and possibly geographic diversity.

Likely participants include sovereign wealth funds of U.S. allies and other large investors who have appeared before U.S. national security regulators frequently in the past.

The program will launch the "Known Investor portal," which will act as a repository of information from certain participating investors, with the goal of reducing the amount of time it takes for such investors to collect and submit information in connection with associated regulatory filings.

For the time being, the focus of the fast-track pilot program appears to be streamlining this information gathering process. However, the America First Investment Policy contemplates broader efforts to accelerate national security regulatory processes, and we expect that as this policy is pursued more vigorously in the CFIUS context, a broader set of investors trusted by the U.S. national security community will likely benefit from an increasingly swift and efficient regulatory environment.

More Balanced Approach to Enforcement and Case Management

In addition to the Trump administration's efforts to simplify and expedite review processes for trusted investors, there has also been a more general shift in regulators' approach to enforcement.

The last few years saw an exceptionally heavy emphasis on robust regulatory enforcement among U.S. national security regulators, including CFIUS. As a result, agencies spent significant resources on their enforcement efforts, including by proactively seeking out matters against which enforcement actions could be brought.

Such a strong emphasis on enforcement, however, occasionally led to less rapid and efficient case review processes in the first instance.

The Trump administration has sought a more balanced approach, with a focus on progressing and concluding reviews, and allowing transactions to move forward more rapidly and predictably.

Continuing Focus on China

Even as the U.S. regulatory environment has begun to improve for trusted foreign investors, the U.S. government has continued to implement enhanced restrictions on China across a range of national security regulatory regimes affecting investment transactions, reflecting the ever-intensifying economic and geopolitical competition between the two countries.

These include new regulations to review, restrict or prohibit (1) outbound investments by U.S. entities into China, (2) access to U.S. sensitive personal data or U.S.-government-related data by Chinese entities and (3) the import of connected vehicles and related hardware that has certain defined connections to China.[3]

These regulations, which grew in part out of realizations related to CFIUS' jurisdictional limitations, represent a substantial expansion of the types of transactions that the U.S. government can review for purposes of addressing associated national security risks.

In each case, the new regulatory regime explicitly identifies China as a country of concern and aims to limit its access to U.S. data, markets and — through outbound investment restrictions — U.S. capital in sensitive sectors such as artificial intelligence and quantum computing.

Consistent with the America First Investment Policy, we expect the U.S. government will continue to expand its national security regulatory authority with respect to Chinese entities, as the Trump administration shifts away from the Biden administration's "small yard, high fence" regulatory approach to a bigger-yard approach — in other words, expanding the universe of transactions considered as implicating U.S. national security concerns.

Uncertainty for Small, Passive Chinese Investments

The Trump administration's approach to small, passive China investments remains deliberately ambiguous. While the America First Investment Policy pledges to "welcome and encourage passive investments from all foreign persons," it simultaneously threatens to use "all necessary legal instruments … to restrict PRC-affiliated persons from investing in United States technology, critical infrastructure, healthcare, agriculture, energy, raw materials, or other strategic sectors."

This tension reflects competing views within the administration, between economic nationalists advocating for comprehensive decoupling and pragmatists seeking more selective de-risking while encouraging capital flows to the U.S.

At this point, it is not clear which approach, if either, will prevail for the remainder of the administration, as agencies continue to implement the America First Investment Policy and develop through practice U.S. national and economic security regulatory policy.

Benefits and Risks of Headline Transactions

As the U.S. increasingly approaches investment transactionally, there are benefits as well as risks for transaction parties. On the one hand, high-level commitments by investors from allied countries focused on investments in areas of core interest to the U.S. — for example, manufacturing capacity, data centers and AI, biotechnology, and other advanced technologies and areas of core national security and economic competitiveness — can induce support for more streamlined and favorable regulatory treatment, particularly for large dollar value commitments and transactions.

On the other hand, this same transactional approach to regulation can also leave politically sensitive transactions more vulnerable to heightened scrutiny and politicization, and lead to solutions that shift from core national security interests closer to a net benefit or public interest framework.

Key Takeaways for Investors

The current environment is one that creates opportunities for transaction parties but also requires strategic planning and foresight that adapts to the current policy and processes in order to take full advantage of the opportunities and avoid pitfalls.

To be more concrete, the environment is one that, in tandem, presents new opportunities for transactions to be cleared more quickly while sustaining risk aversion related to China and creating potentially different types of political risks.

In this context, our recommendations include the following.

1. Thorough planning to anticipate potential national security interests and how to present and communicate transactions is a must.

2. Where possible, allied investors should begin documenting — and, if necessary, improving — their security practices, including with respect to cybersecurity, supply chain risk management and secure product development lifecycles, to position themselves optimally for fast-track eligibility.

3. Foreign investors may consider turning to joint ventures or minority structures in certain cases — rather than full acquisitions — in order to navigate political and regulatory crosscurrents, and attempt to proactively mitigate associated regulatory risk.

4. All investors, regardless of origin, should conduct early-stage political-risk assessments and strategic planning alongside traditional CFIUS analysis for high-profile targets, recognizing that political sensitivity can now override traditional security considerations in the review process.

5. Given the fluidity of the current regulatory environment, transaction parties will want to build flexibility into their investment strategies and transaction structures. Firms that can navigate both the accelerated pathways for allies and the expanding restrictions on adversaries — while managing heightened political scrutiny and maintaining adaptability for policy pivots — will find significant opportunities in this reshaped landscape.

David Fagan is a partner, Lawrence Barker is an associate and Brian Williams is a senior adviser at Covington & Burling LLP.

[1] https://www.cov.com/en/news-and-insights/insights/2025/02/trump-administration-issues-america-first-investment-policy.

[2] https://home.treasury.gov/news/press-releases/sb0136.

[3] 31 C.F.R. Part 850. See also, https://www.cov.com/en/news-and-insights/insights/2024/11/treasury-department-issues-final-rule-to-implement-outbound-investment-executive-order; https://www.cov.com/en/news-and-insights/insights/2025/01/department-of-justice-issues-final-rule-to-implement-bulk-us-sensitive-personal-data-and-government-related-data-executive-order; https://www.cov.com/en/news-and-insights/insights/2025/01/commerce-department-publishes-final-rule-to-secure-connected-vehicle-supply-chain.