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Presidential Action Regarding Nippon Steel Establishes Two New Significant CFIUS Precedents

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In June 2025, following a *de novo* review by the Committee on Foreign Investment in the United States (“CFIUS” or the “Committee”), President Trump signed an Executive Order¹ clearing Nippon Steel Corporation’s (“Nippon Steel”), a Japanese company, acquisition of United States Steel Corporation (“U.S. Steel”) (“President Trump’s Order”), pursuant to Section 721 of the Defense Production Act, as amended. Through this action, President Trump established two new significant precedents for CFIUS: First, it is the first time that a President reopened a CFIUS review that had been closed by a prior President. Second, it appears to be the first instance where an acquiring party was required by CFIUS to grant a perpetual “golden share” for the U.S. Government.

Procedural Background

In December 2023, Nippon Steel announced its plans to buy U.S. Steel, claiming that the acquisition would enhance its growth and expand its presence in the United States.² U.S. Steel made known that securing investment from a new owner was necessary for then-current operations to continue in the United States.

In March 2024, CFIUS received a joint voluntary notice describing the proposed acquisition by Nippon Steel of U.S. Steel (the “Proposed Transaction”).³ In December 2024, CFIUS submitted a referral to President Biden to block the Proposed Transaction, following its review and investigation.⁴

In January 2025, President Biden, following a review and recommendations by CFIUS, issued an Executive Order titled, “Regarding the Proposed Acquisition of United States Steel Corporation by Nippon Steel Corporation” prohibiting the Proposed Transaction (“President Biden’s Order”).⁵ President Biden reasoned that Nippon Steel and its affiliates might take action that could threaten U.S. national security and determined that existing laws, excepting Section 721 of the Defense Production Act and the International Emergency Economic Powers Act (IEEPA), were inadequate to address the national security concerns raised by the Proposed Transaction.⁶

In April 2025, President Trump issued a Presidential Memorandum titled, “Review of Proposed United States Steel Corporation Acquisition”⁷ (the “Memorandum”) directing CFIUS to conduct a *de novo* and confidential review of the Proposed Transaction. The Memorandum states that President Biden’s Order reserved the President’s authority “to issue further orders with respect to the [p]urchasers or U.S. Steel as shall in [the President’s] judgment be necessary to protect the national security of the United States.”⁸ The Memorandum imposed a 45-day timeline for CFIUS to complete its review and submit to President Trump a recommendation describing whether any measures proposed by the parties were sufficient to mitigate any national security risks identified by CFIUS.⁹

As discussed, in June 2025, President Trump issued President Trump’s Order, which involves a National Security Agreement (“NSA”) that requires, among other things, U.S. Steel to issue a “golden share” to the President or his designee. While the NSA is not publicly available, U.S. Steel published a press release summarizing the rights the U.S. Government will obtain through its ownership of the golden share, including, among others:¹⁰

- “The right to appoint one independent director; and
- Consent rights of the President of the United States, or his designee, on specific matters, including:
 - Reductions in the committed capital investments under the NSA;
 - Changing U.S. Steel’s name and headquarters;
 - Redomiciling U.S. Steel outside of the United States;
 - Transfer of production or jobs outside of the United States;
 - Material acquisitions of competing businesses in the United States; and
 - Certain decisions on closure or idling of U.S. Steel’s existing U.S. manufacturing facilities, trade, labor, and sourcing outside of the United States.”

President Trump’s Utilization of a Standard Reservation of Authority Provision to Reopen a Closed CFIUS Case

It is important to understand how, as a procedural matter, President Trump was able to reopen a previously closed CFIUS review that resulted in a presidential prohibition. In short, President Trump utilized the standard reservation of authority language in Section 3 of President Biden’s Order to justify reopening and then reversing a prior administration’s national security assessment and ostensibly final prohibition order. Section 3 of President Biden’s Order reserved the President’s authority to issue further orders as “necessary to protect the national security of the United States.”¹¹ Notably, the CFIUS regulations do not prohibit a President from doing what President Trump did, and Section 3 of President Biden’s Order merely reinforces that the President has the inherent authority to take future action in the interest of national security by modifying existing Executive Orders. While the language in Section 3 of President Biden’s Order was intended to permit modifications in certain changed circumstances, using it to create a regulatory evergreen capability undermines the fundamental principle of finality in regulatory decision-making and risks degrading CFIUS’ reputation for producing largely apolitical national security risk assessments.

President Trump's reversal of a prior President's order demonstrates that two Presidents can view the same transaction facts and reach materially different conclusions with respect to whether a prohibition is warranted. Fortunately, this fact pattern is unlikely to be replicated frequently because it requires (i) a Presidential prohibition order, which is relatively rare, and (ii) a subsequent President who wants to reverse course, which is even more rare. Interestingly, President Trump's Order did not remove the standard reservation of authority provision that he cited as the basis of his authority to reopen President Biden's Order, which means it is also subject to a change or reversal in the future.

President Trump's Novel Use of a "Golden Share" to Protect U.S. Economic Security

President Trump's approval of the transaction was conditioned on the issuance of a "golden share" to the U.S. Government. The British government introduced the concept of golden shares in the 1980s to retain control over newly privatized companies and to protect the former state-owned companies from hostile takeovers by foreign entities against national interests.¹² Golden shares have also been used by other foreign governments, including France, Italy, Germany and Brazil, among others.¹³ European governments' utilization of golden shares declined following the European Court of Justice's determination that a number of cases were illegal because they involved unjustified restrictions on the free movement of capital.¹⁴

In the context of the Nippon Steel acquisition of U.S. Steel, the U.S. Government's golden share is in U.S. Steel rather than Nippon Steel. Thus, the U.S. Government's influence over Nippon Steel will only relate to U.S. Steel – the U.S. business – and not Nippon Steel's foreign operations or locations. Though U.S. Steel may not be state-owned, the U.S. Government is now able to exert some level of control over its operations. As discussed, the U.S. Government's golden share will provide it with the ability to appoint a director and consent rights on specific matters, including changing U.S. Steel's name and headquarters, transfer of production of jobs outside of the United States, and material acquisitions of competing businesses, among other rights.¹⁵ While the use of a "golden share" has limited precedent outside of the U.S., this is the first instance of the U.S. Government adopting such a sweeping measure generally and as part of a CFIUS mitigation agreement specifically.

Perhaps most surprisingly, there is nothing currently limiting CFIUS from requiring the issuance of a golden share via a mitigation term itself (*i.e.*, this power is not specifically reserved for the President). The potential expansion of CFIUS mitigation terms that require the issuance of a "golden share" for an acquisition by a company from an allied country would create significant investor uncertainty by establishing new precedent involving long-term state oversight in cross-border deals.

Conclusion

President Trump established two significant precedents through his actions surrounding Nippon Steel's acquisition of U.S. Steel. First, it marked the first time a President reopened a closed CFIUS review and reserved the outcome based on a political difference of opinion on what is in the United States' best interests with respect to national and economic security. Second, requiring a "golden share" as a CFIUS mitigation condition could increase investor uncertainty by establishing new precedent involving perpetual significant government oversight.

Key Takeaway Points

- The Good: Reversal of a President's order to block a controversial transaction could occur with enough effort, lobbying, promised investment, surrender of key control aspects, and luck.
- The Bad: Even if it is rarely utilized, the ability to reopen a closed CFIUS case undermines the fundamental principle of finality in regulatory decision-making.
- The Ugly: The ability to condition the deal on the issuance of a golden share to the U.S. Government establishes new risk mitigation precedent allowing CFIUS to effectively nationalize any U.S. business with a conceivable nexus to U.S. national or economic security.

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If you have questions concerning the contents of this alert, or would like more information, please speak to your regular contact at Weil or to the authors:

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ENDNOTES

- ¹ See <https://www.whitehouse.gov/presidential-actions/2025/06/regarding-the-proposed-acquisition-of-the-united-states-steel-corporation-by-nippon-steel-corporation/>.
- ² See https://www.nipponsteel.com/common/secure/en/ir/library/pdf/20231218_100.pdf; see also <https://www.csis.org/analysis/understanding-trumps-decision-approve-nippon-steel-deal>.
- ³ See <https://www.whitehouse.gov/presidential-actions/2025/06/regarding-the-proposed-acquisition-of-the-united-states-steel-corporation-by-nippon-steel-corporation/>; see also https://cdn.prod.website-files.com/657c753df917ef83a31f840c/67aa7bdade0cc30bc1e2db2d_CFIUS%20Exhibits%20A-H%20for%20Petition%20for%20Review.pdf.
- ⁴ See <https://www.whitehouse.gov/presidential-actions/2025/06/regarding-the-proposed-acquisition-of-the-united-states-steel-corporation-by-nippon-steel-corporation/>.
- ⁵ See <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2025/01/03/order-regarding-the-proposed-acquisition-of-united-states-steel-corporation-by-nippon-steel-corporation/>.
- ⁶ See <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2025/01/03/order-regarding-the-proposed-acquisition-of-united-states-steel-corporation-by-nippon-steel-corporation/>.
- ⁷ See <https://www.whitehouse.gov/presidential-actions/2025/04/review-of-proposed-united-states-steel-corporation-acquisition/>.
- ⁸ See <https://www.govinfo.gov/content/pkg/DCPD-202500440/pdf/DCPD-202500440.pdf>; see also <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2025/01/03/order-regarding-the-proposed-acquisition-of-united-states-steel-corporation-by-nippon-steel-corporation/>.
- ⁹ See <https://www.govinfo.gov/content/pkg/DCPD-202500440/pdf/DCPD-202500440.pdf>.
- ¹⁰ See <https://www.ussteel.com/newsroom/-/blogs/nippon-steel-corporation-and-u-s-steel-finalize-historic-partnership>.
- ¹¹ See <https://bidenwhitehouse.archives.gov/briefing-room/presidential-actions/2025/01/03/order-regarding-the-proposed-acquisition-of-united-states-steel-corporation-by-nippon-steel-corporation/>.
- ¹² See <https://publications.parliament.uk/pa/cm199798/cmselect/cmintdev/936/93610.htm>.
- ¹³ See https://ec.europa.eu/commission/presscorner/detail/en/ip_03_692, <https://ri.embraer.com.br/en/governance/golden-share/>, <https://ri.embraer.com.br/en/governance/golden-share/>, <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=86557&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=6001777>, and https://ec.europa.eu/commission/presscorner/api/files/document/print/en/speech_03_164/SPEECH_03_164_EN.pdf.
- ¹⁴ See <https://curia.europa.eu/en/actu/communiques/cp02/aff/cp0249en.htm>.
- ¹⁵ See <https://www.ussteel.com/newsroom/-/blogs/nippon-steel-corporation-and-u-s-steel-finalize-historic-partnership>.