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# Trump's "America First Investment Policy"

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*Torys' Canadian and New York offices will be providing regular briefs on the legal ramifications of the tariffs and other cross-border policy developments on the horizon.*

On February 21, President Trump issued a memorandum titled the "America First Investment Policy". This policy aims to strengthen the United States' economic and national security by encouraging foreign investment from friendly sources, while addressing "new and evolving threats" from adversaries in key infrastructure and technology sectors. Although primarily targeting China (and other putative adversaries of the U.S.), the policy represents an expansion of President Trump's economic measures beyond tariffs and has notable implications for investors in the U.S., Canada and abroad.

**New restrictions on investment by China and other "foreign adversaries"**

Aligned with President Trump's statement that "economic security is national security", he has set a goal of positioning the U.S. as the most attractive destination for the world for investment dollars, but indicated that "investment at all costs is not always in the national interest".

The primary target of this policy is China, which he calls out for its "national Military-Civil Fusion strategy". Additional scrutiny of, and restrictions on, investment by China and other "foreign adversaries" are proposed, including establishing new rules to stop U.S. companies and investors from supporting industries that advance China's military endeavours and related civilian collaboration in military endeavours, and restricting China-affiliated persons from acquiring critical U.S. businesses and assets.

The President directs the use of all necessary legal instruments, including the Committee on Foreign Investment in the U.S. (CFIUS), to restrict Chinese investments in strategic sectors such as critical infrastructure, healthcare, agriculture, energy, raw materials, or other strategic sectors; protect farmland and real estate near sensitive facilities; and strengthen CFIUS authority over "greenfield" investments and emerging technologies. CFIUS is understood to scrutinize such Chinese investments already, so the scope of concrete changes pursuant to this policy remain uncertain.

For investments in "critical technology, critical infrastructure, personal data and other sensitive areas," the policy suggests that foreign investment restrictions should be calibrated to an investor's "distance and independence from the predatory investment and technology-acquisition practices" of China and "other foreign adversaries and threat actors," which includes Russia at this time.

**Restrictions on outbound U.S. investment in China**

President Trump has ordered a review of potential new or expanded restrictions on U.S. outbound investment in China, including potential sanctions, particularly in the sectors of semiconductors, artificial intelligence, quantum, biotechnology, hypersonics, aerospace, advanced manufacturing, and directed energy. The review will consider applying restrictions on a broad array of investment types including from private equity, venture capital, greenfield investments, corporate expansions, and investments in publicly traded securities, from sources including pension funds, university endowments, and other limited-partner investors. The review also includes potential suspension or termination of the 1984 United States-China Income Tax Convention.

**Invitation to, and heightened obligations on, friendly investors**

Trump's "America First Investment Policy" represents a "stick" to be wielded against China and other foreign adversaries. Yet, it also includes a "carrot" to encourage and facilitate investment into the U.S. from friendly foreign countries, including:

- *Fast-track process*: Agencies are directed to create an expedited "fast-track" process to facilitate investments from allied and partner nations in U.S. businesses, particularly those involved in advanced technology and other strategic areas.

- *Expedited environmental reviews*:The policy mandates expedited environmental reviews for investments over $1 billion to streamline the investment process and encourage significant foreign investments.

However, the policy indicates that friendly investors will be subject to greater scrutiny, including for ties to countries that the United States considers its adversaries—although this too is already a feature of CFIUS reviews. Similar to the intention of U.S. "secondary sanctions" that threaten non-U.S. persons who transact with U.S.-sanctioned persons, it appears that this policy intends to force investors to "pick a horse". In particular, friendly investors may be subject to "appropriate security provisions, including requirements that the specified foreign investors avoid partnering with United States foreign adversaries". This may have implications for investors with significant investments across a range of countries and industries.

The U.S. government will continue to encourage passive non-controlling investments from foreign persons, holding shares with no voting, board, or other governance rights and that do not confer managerial influence, substantive decision-making, or non-public access to technologies or technical information, products, or services.

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