

Investment Reviews, Sanctions, Exports, and More: The Enforcement Outlook Under ?Trump

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With an array of unprecedented executive orders and other policies, the Trump administration's "America First" trade strategy is beginning to take shape. As we monitor these developments, it is becoming increasingly clear that enforcement in these key areas will be ramping up, with just a few possible exceptions, such as CFIUS reviews involving allies and partners.

For updates on the tariff front, please see this [companion piece](#).

Changes to CFIUS

The February 21, 2025, America First Investment Policy [memorandum](#) points to a number of possible changes to reviews by the Committee on Foreign Investment in the United States (CFIUS), in particular:

- **The administration “will cease the use of overly bureaucratic, complex, and open-ended” CFIUS mitigation agreements for investments from “foreign adversary countries.”** Relatedly, they will “restrict PRC-affiliated persons” from investing in U.S. “technology, critical infrastructure, healthcare, agriculture, energy, raw materials, or other strategic sectors.” Taken together, these statements suggest that CFIUS will be even less receptive than it has been in the recent past to allowing Chinese investments in the U.S. However, the memo does state that the administration will allow “only those investments that serve American interests,” indicating that there may still be opportunities on a case-by-case basis to obtain CFIUS clearance for Chinese or other “foreign adversary” investments.
- **Create a “fast-track” CFIUS process for investments from specific allies and partners in U.S. businesses involved with “advanced technology and other important areas,” subject to “appropriate security provisions.”** This suggests that CFIUS will continue to be open to mitigation agreements for investments from allies and partners in sensitive areas. Exactly what the “fast-track” will involve is not clear at this point. The CFIUS statute sets out maximum timelines for declarations (up to 30 days after being accepted by CFIUS) and notices (45 days or more, depending on whether the case must go through an additional investigation). While the administration could decide to expedite the process for these types of cases, the current timelines are already quite short. Additionally, CFIUS currently does not have jurisdiction over non-controlling investments or real estate transactions where the investors are from “excepted” foreign states, which today consist of the Five Eye allies: Australia, Canada, New Zealand, and the UK. So any additional “fast-track” process that may be created would presumably only apply where CFIUS currently has jurisdiction, *i.e.*, where an excepted investor is seeking to obtain control over a U.S. business, or where the investor is from another ally or partner country. In many cases, other regulatory processes (*e.g.*, the ITAR in the defense sector) impose longer foreign investment approval timelines that may negate or diminish the impact of any new CFIUS “fast-track”.
- **Seek consultation with Congress on “strengthening” CFIUS’s authority over greenfield investments.** The topic of greenfield investments has long been a concern for some in the U.S. government, as foreign

investors have been able to avoid CFIUS jurisdiction by creating a new business with no acquisition of existing business assets or rights. But, at the same time, these investments have been viewed as generally lower risk from a national security perspective and more economically attractive. Accordingly, we would expect this proposal to generate controversy.

- **Expand the definition of “emerging and foundational” technologies addressable by CFIUS.** This could affect when a mandatory filing is required. However, the definition is already quite broad, covering nearly every type of technology subject to U.S. export controls, and it is not clear how the administration may expand it, other than marginally by including the few remaining export-controlled technology types, which are generally of low sensitivity.
- **Protect U.S. farmland and other real estate near “sensitive facilities.”** CFIUS already has jurisdiction to review foreign investments in real estate (including farmland) near certain sensitive facilities. While quite unclear, this proposed policy could possibly signal an expansion of the current CFIUS real estate provisions. We note that certain states — including Florida and Texas — already have broader statutes in place restricting certain types of foreign investment in real estate, which are currently being challenged in the courts on constitutional grounds.

Expansion of the Outbound Investment Program

The America First Investment Policy memo also points to changes to the new [Outbound Investment Security Program](#), which just took effect on January 2, 2025. The current program, enacted by executive order under the Biden administration, prohibits or requires notification of outbound investments by U.S. persons into certain China-linked entities involved in semiconductors, quantum information technologies, or artificial intelligence.

The [America First Trade Policy Memorandum](#) issued by President Trump on January 20, 2025, tasked the Treasury Department with assessing whether the current Outbound program “includes sufficient controls to address national security threats.” Similarly, the America First Investment Policy memo states that the administration will “consider new or expanded restrictions on United States outbound investment in the PRC,” including in the three already-covered sectors and also in biotechnology, hypersonics, aerospace, advanced manufacturing, directed energy, “and other areas implicated by the PRC’s national Military-Civil Fusion strategy.” These sectoral categories are quite broad and will require further refinement and clarification in order to become a workable expansion of this new regulatory program.

All of this indicates that the Trump administration plans to double down on this new regulatory regime, despite vociferous opposition from some Republicans, but that it has not yet decided on exactly how to do that.

Forced Labor

One bipartisan issue that we expect to continue receiving [support](#) from this administration is the Uyghur Forced Labor Prevention Act (UFLPA), which was signed into law in 2021. A co-sponsor of this legislation was former Senator Marco Rubio, currently the Secretary of State, leading one of the key member agencies of the Forced Labor Enforcement Task Force (FLETF). The law restricts goods from entering the U.S. if they were mined, produced, or manufactured wholly or in part in China’s Xinjiang Uyghur Autonomous Region (XUAR), or by an entity on the UFLPA Entity List. The FLETF reviews and approves entities for designation on the UFLPA Entity List. We would expect continued expansion of the UFLPA Entity List and, accordingly, the scope of these import restrictions.

Sanctions and Export Controls

We expect an increase in restrictions and enforcement efforts in this area, with a few possible exceptions, as detailed below.

Updated Regulations: The Trump administration has signaled an intent to close loopholes relating to advanced technology exports to China in particular. For example, the America First Trade Policy memo directs the government to recommend ways “to maintain, obtain, and enhance our Nation’s technological edge and how to identify and eliminate loopholes in existing export controls — especially those that enable the transfer of strategic goods, software, services, and technology to countries to [sic] strategic rivals and their proxies.” It also directs the agencies to look at “export control enforcement policies and practices, and enforcement mechanisms to incentivize compliance by foreign countries, including appropriate trade and national security measures.” This last bit indicates that more aggressive extraterritorial policies and enforcement approaches are in the cards.

However, the [reported](#) forcing out of two key export control policy makers could stymie the new administration’s ability to craft effective regulations in the short-term, as they take decades of experience out the door with them. President Trump’s nominees to lead the Commerce Department’s Bureau of Industry and Security (BIS), both the [Under Secretary of Commerce for Industry and Security](#), and the [Assistant Secretary for Export Administration](#), do not have significant experience with export controls. Secretary of Commerce Howard Lutnick has made confusing [statements](#) seeming to conflate tariffs and export controls, though again expressing a desire to be tougher on China. Therefore, we would expect the new team to take time to develop the expertise needed to manage and update these complex regulations. But the direction of travel, at least as far as China is concerned, is clear.

Enforcement: Senior enforcement officials at BIS have indicated that they are maintaining their tough enforcement posture and the same priorities as they had under the Biden administration, focused on adversaries such as China, Russia, and Iran, and with the “Disruptive Technology Strike Force” still operating as before. The recently departed former head of export controls enforcement at BIS [stated](#) that major cases are nearing resolution and should be announced soon.

So, despite the headlines relating to the recent bureaucratic changes at the Department of Justice’s (DOJ) National Security Division (NSD), such as the dissolution of its Corporate Enforcement Unit, the Attorney General’s direction to focus on cartel-related cases, the unwinding of the Russia-focused Task Force KleptoCapture, and the disbanding of the Criminal Division’s Kleptocracy Asset Recovery Initiative, one should not bet on any decrease in export controls or sanctions enforcement. The new administration has emphasized this explicitly in a number of recent policy documents focused on China and Iran in particular.

Where there likely will be significant changes at NSD over the next four years is in enforcement of the Foreign Agents Registration Act (FARA) and related laws. Additionally, anti-corruption enforcement at DOJ may change, as we explained in an [earlier advisory](#). Finally, a new focus on enforcement related to Latin American drug cartels is expected, as described in this [advisory](#).

Below we go through some potential changes in this area for key country programs.

Russia: Depending on how the Trump administration’s Russia policy develops, those that have been listed as Specially Designated Nationals (SDNs) by the Treasury Department’s Office of Foreign Assets Control (OFAC)

under its Russia-related authorities should consider submitting delisting requests if they believe they were wrongly identified, the circumstances underlying their designation are no longer applicable, or perhaps even if a case can be made that their removal would promote current U.S. policy objectives. We would expect that the U.S. government may look for attractive SDN delisting cases to use as possible diplomatic tools in engaging with Russia. Otherwise, any significant changes in U.S. export controls or sanctions on Russia appear unlikely in the short-term. See our recent [advisory](#) on the most recent major Russia sanctions package.

China: The [pause](#) that has reportedly been placed on the issuance of certain new export licenses by BIS has not been officially acknowledged or explained, but suggests that the administration is reassessing its export control licensing approach toward China in particular, likely to make it more restrictive, after years of criticism by leading Republicans. In addition, the America First Investment Policy memo states that the U.S. will “use all necessary legal instruments to further deter United States persons from investing in the PRC’s military-industrial sector,” including the imposition of sanctions. So, along with a strengthened Outbound Investment Security program, as discussed above, more sanctions in this area should be expected.

Venezuela: The Trump administration just [announced](#) that it would revoke the OFAC authorization for Chevron to continue to produce oil in Venezuela. Secretary of State Marco Rubio later posted on X that he was issuing “foreign policy guidance to terminate all Biden-era oil and gas licenses that have shamefully bankrolled the illegitimate Maduro regime.” So, while there were initial indications that a rapprochement with Venezuela may be in the cards based on a hoped-for deportation agreement, the administration appears to have done a sharp 180, reverting to the traditional approach of the Republican Party when it comes to Venezuela.

Iran: While a Trump-led “Iran nuclear deal 2.0” is unlikely in the short-term, there is some chance of real engagement with Iran under the Trump administration that will be worth watching. In the meantime, the administration has set out a renewed “maximum pressure” campaign that will see a ramp-up in enforcement against Iran and those doing business with Iran.

Syria: While the EU has begun relaxing certain sanctions on Syria, the Trump administration has not yet prioritized this area.

Other China-Focused Tech and Data Restrictions

The America First Trade Policy Memo directs the Secretary of Commerce to review BIS’s Information and Communications Technology and Services (ICTS) connected vehicle rulemaking and also to “consider whether controls on ICTS transactions should be expanded to account for additional connected products.” BIS previously [indicated](#) that there will soon be another ICTS rulemaking on cloud computing products and services and data center products and services. So more restrictions in this area are in the works and will continue to roll out of BIS’s new ICTS office. For a detailed look at BIS’s ICTS regulations, see [here](#) and [here](#).

The Trump administration has still shown no sign that it intends to change the DOJ NSD’s China-focused data security rules, which are still slated to take effect on April 8, 2025. See our [advisory](#) on this topic for more detail on how to prepare.

Conclusion

If your company may be impacted by any of these developments, contact the authors of this article.

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