

THE GLOBAL TRADE LAW JOURNAL

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July–August 2025

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White House Increases Scrutiny on Foreign Investors: Why FOCI Is a Concern for International Businesses

Artie McConnell, Carlos F. Ortiz, and Lana Muranovic*

In this article, the authors explain that, in light of the Trump administration's America First Investment Policy, both U.S. and foreign companies of all sizes need to be mindful of foreign ownership, control, and influence issues.

On February 21, 2025, the White House issued an “America First Investment Policy” Memorandum¹ to the heads of 16 different federal agencies involved in law enforcement, national security, securities regulation and economic policy.² The Memorandum states that “economic security is national security” and describes the potential ramifications of investment from “foreign adversaries,” in particular the People’s Republic of China (PRC), in sectors such as emerging technology, food supplies, pharmaceuticals, natural resources, and critical infrastructure.

In light of this, both U.S. and foreign companies of all sizes need to be mindful of foreign ownership, control, and influence (FOCI) issues.

What Is FOCI?

FOCI refers to a situation where a foreign entity has the power to directly or indirectly influence the management or operations of a company. FOCI can result from legal means like joint ventures and acquisitions or from covert methods like cyber intrusions and espionage.

FOCI has traditionally been a concern for companies involved in sensitive government contracts and was originally designed to prevent foreign access to classified information. In recent years, however, FOCI review has expanded to include unclassified government procurements as well, with the goal of safeguarding

intellectual property, supply chain information, and businesses' operational systems.

As part of their procurement processes, numerous government agencies are required to conduct assessments to determine if a company is "under FOCI." In doing so, the government considers factors including ownership structure, the source of any foreign investment, contractual agreements, and key personnel relationships. As there is no bright-line measure for what constitutes FOCI, U.S. regulators can make determinations based on a subjective analysis that a company may have to refute. Therefore, it is critical to document foreign relationships and to conduct due diligence on the actual beneficial owners of an investment, regardless of an entity's structure on paper.

If a company is identified as having FOCI concerns, it may be required to implement mitigation strategies, such as establishing oversight boards with independent members, restricting access to sensitive information, and enhancing security protocols.

The February 21, 2025, Memorandum—Bringing FOCI to the Forefront

While not explicitly mentioning it as such, the February 21, 2025, "America First Investment Policy" Memorandum makes clear that FOCI is not just an issue for government contractors.

The Memorandum states the PRC is "targeting the crown jewels of United States technology, food supplies, farmland, minerals, natural resources, ports, and shipping terminals." The Memorandum further states that the PRC is using U.S. capital to develop its military capabilities, "exploiting" U.S. investors by "selling ... securities that trade on American and foreign public exchanges; lobbying United States index providers and funds to include these securities in market offerings; and engaging in other acts to ensure access to United States capital and accompanying intangible benefits." While the Memorandum is largely focused on China, it refers to other "foreign adversaries and threat actors" as well.

Not surprisingly, maintaining American primacy in so-called disruptive technologies—such as artificial intelligence, hypersonics, quantum computing, biotechnology, and advanced aerospace—is emphasized.

In response to these concerns, the Memorandum announced several broad FOCI-themed initiatives, including:

- *Restrictions on Foreign Investment in Critical Sectors.* In areas such as technology, infrastructure, healthcare, agriculture, energy, and raw materials, the United States will evaluate a potential foreign investment with heightened scrutiny. Using the traditional FOCI “sliding-scale” methodology, foreign investment from close U.S. allies will be considered low risk, while investments with connections to “foreign countries of concern” (FCOC) like China and Russia will face heightened restrictions in proportion to their perceived FOCI exposure.
- *Outbound Investment Restrictions.* At the same time, the Trump administration will consider new and expanded restrictions on outbound U.S. investment in China relating to semiconductors and disruptive technologies. The goal is to prevent such technologies from being weaponized and used against the United States and its allies.
- *Aggressive Use of CFIUS.* The Committee on Foreign Investment in the United States (CFIUS) will be used to restrict investments from PRC-affiliated entities in strategic sectors. The Trump administration also stated that it will strengthen CFIUS authority over “greenfield” investments, which refers to a type of foreign direct investment where new facilities are constructed from the ground up, effectively starting a new venture rather than acquiring an existing company. The Memorandum further seeks to expand CFIUS jurisdiction to limit foreign access to American “talent and operations in sensitive technologies (especially artificial intelligence)” and “emerging and foundational technologies.”
- *Review of Publicly Traded Companies.* In perhaps its most sweeping edict, the Memorandum outlines several initiatives to be undertaken by some of the government’s most powerful law enforcement and regulatory agencies—including the Treasury Department, the Securities and Exchange Commission (SEC), and the Justice Department—to assess the FOCI risk of public companies. Most notably, the Federal Bureau of Investigation (FBI) is directed to “provide a written recommendation on the risk posed to United States investors based on the auditability, corporate oversight, and

evidence of criminal or civil fraudulent behavior for all foreign adversary companies currently listed on domestic exchanges.” Relatedly, the Labor Department will publish updated fiduciary standards for retirement investments in “public market securities of foreign adversary companies.”

How Should Businesses Respond?

The Memorandum effectively makes FOCI a concern for a variety of U.S. and foreign businesses, from start-ups to publicly traded multinationals. While implementing the Trump administration’s strategic goals will take time, there are steps businesses can take now to address the concerns raised in the Memorandum, minimize potential disruptions to their operations, and avoid future government enforcement actions related to foreign investment.

- *Small and Medium-Sized Enterprises (SMEs).* SMEs, government contractors, and businesses looking to scale abroad should review the guidance put out by the Department of Defense to mitigate FOCI risk.³ This guidance includes general steps that can be taken, including reevaluating joint ventures, subsidiary relationships, and intellectual property licensing with an FCOC or FCOC-related entity; transferring voting rights and board memberships of certain foreign shareholders to a U.S. citizen residing in the United States; limiting foreign supply chain dependence; and removing problematic foreign debt and foreign financial obligations.
- *Larger and Publicly Traded Companies.* While larger companies can take many of the same FOCI mitigation steps that are applicable to SMEs, they must tread carefully when doing so, particularly in light of the FBI’s upcoming review of SEC registrants. Any sort of ownership or equity restructuring that appears pretextual could be considered a violation of securities laws, triggering civil and criminal investigations and penalties.
- *Foreign Businesses.* Foreign businesses, particularly those in China or with significant exposure to the Chinese market, are under heightened scrutiny and will most likely face enhanced due diligence from U.S. companies looking to comply with these increasingly complex regulatory

requirements. Those seeking to conduct business in the United States or with U.S. entities should implement appropriate compliance programs easing their ability to partner with American companies. This is particularly true given the Memorandum's establishment of a "fast-track" process for investments from allied and partner countries in advanced technologies and other important areas.

Conclusion

The Memorandum makes clear that the United States "will continue to welcome and encourage passive investments from all foreign entities . . . provided they do not confer managerial influence or access to sensitive technologies." Nevertheless, FOCI issues—which were previously only applicable to companies involved in sensitive government contracts—should now be considered by the broader business community, both in the United States and abroad. Each company's plan must be individually tailored and situation-specific, with any preventive or remedial actions taken in good faith.

Notes

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1. <https://www.whitehouse.gov/presidential-actions/2025/02/america-first-investment-policy/>.

2. These include Secretary of the Treasury, Secretary of State, Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Labor, the Secretary of Energy, the Secretary of Homeland Security, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, the Director of National Intelligence, the United States Trade Representative, the Chairman of the Council of Economic Advisers, the Director of the Office of Science and Technology Policy, the Assistant to the President for National Security Affairs, and the Director of the Federal Bureau of Investigation.

3. For example, see the Defense Department's Office of Small Business Programs' strategies for mitigating FOCI risk, <https://business.defense.gov/Resources/FOCI/>.