Harris vs. Trump: Inbound FDI Regulation

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*This is the latest in a series of TAG memos examining how the outcome of the U.S. presidential election could shape U.S. policy toward the Indo-Pacific region in 2025. The most recent brief in this series, on Trump and Harris' respective approaches to U.S.-India policy, can be found **here**.*

Key Takeaways

Inbound FDI Regulation	Trump	Biden-Harris
Motivations	• Aimed at curbing threats to infrastructure, privacy, and technology • Sought to elevate CFIUS as a platform for countering China	• Expanded Trump-era policies to block technological advancement of China's military and intelligence • Pursued broad toolkit for economic security beyond CFIUS
Implementation	• Narrow, entity-based approach targeting foreign ICT and semiconductor companies • Worded with Congress to broaden CFIUS authorities	• Broadened Trump policies into a sector-oriented approach • Expanded CFIUS scope to cover threats to supply chains and cybersecurity

- Regardless of the election outcome, U.S. businesses – especially in the technology sector – should expect additional expansion of the scope and rigor of restrictions on inbound foreign direct investment (FDI) from China and other "countries of concern."

- The Trump administration supported Congressional efforts to expand the statutory authority of the Committee on Foreign Investment in the United States (CFIUS) to curtail China's "Military-Civil Fusion" (MCF) and address threats to privacy, infrastructure, and critical technology. Trump pursued a more narrow, entity-based regulatory strategy that publicly elevated CFIUS and blocked specific foreign information and communications technology (ICT) and semiconductor firms from acquiring U.S. assets.

- The Biden-Harris administration built upon Trump-era measures to mold a broader, sector-oriented targeting strategy, including by expanding CFIUS' scope to consider the implications of mergers on supply chain resilience, cybersecurity, and U.S. leadership in critical technologies. The administration sought to curtail the technological advancement of China's defense-intelligence apparatus and developed a "whole-of-government" approach to economic security that expanded beyond CFIUS.

- A re-elected Trump may be open to retaining many of the Biden-Harris regulatory innovations that built on his previous measures, especially since U.S. lawmakers have expressed openness to granting the Executive Branch even more power to pursue sectoral controls. A Harris administration is also likely to maintain and intensify such measures, with a particular emphasis on preserving and building out its "whole-of-government" approach.

The Status of Inbound FDI in the United States

The United States is the world's largest recipient of FDI. From 2005-2022, the value of foreign-owned U.S. assets quadrupled, reaching a total stock basis value of approximately USD 5.39 trillion in 2023 due to a "post-pandemic boom." Europe is currently the United States' top foreign investor, accounting for USD 3.4 trillion (63 percent) of the country's total inbound investment. The Asia Pacific, meanwhile, trails at a distant second with USD 0.99 trillion in U.S. assets (18 percent), followed by Canada with USD 0.67 trillion (12 percent). Most foreign-owned assets in the U.S. are linked to manufacturing – especially chemicals and semiconductors – although communications equipment, computer systems, financial services, and transportation are also attractive sectors for foreign capital.

While overall FDI flows to the U.S. have grown over the past few years, investments by Chinese entities in U.S. companies have shrunk considerably. Since 2016, annual net inbound FDI flows from China have dropped from USD 46 billion to less than USD 5 billion in 2022, and China has fallen from its former position as a top-five investor to number 11, surpassed by Canada, Germany, Japan, South Korea, and six others. Factors contributing to this decline include tighter scrutiny from federal regulators and increasing uncertainty in U.S.-China relations. Chinese investments – made by SOEs, sovereign wealth funds, and private entities – are spread across multiple sectors. Major target industries include financial services, consumer goods, real estate, health, and agriculture.

The Candidates in Comparison

Trump

Motivations: During his first term, Trump aimed to counter China's "Civil-Military Fusion" (CMF) policy and shield U.S. infrastructure and technology against espionage or intellectual property theft without undermining the United States' open investment environment. Concerns about vulnerabilities in the existing U.S. inbound FDI control regime had been percolating in Washington long before Trump entered office. U.S. policymakers were especially worried that foreign companies – particularly those from China – could manipulate acquisitions to transfer sensitive technologies, collect private data, and eventually outcompete U.S. firms. Nevertheless, previous administrations elected to prioritize other issue areas, leaving existing regulatory tools underutilized. Trump's national security strategy drove policy momentum to direct earlier discussions into tighter inbound FDI controls.

Upon entering office, Trump took three major steps to deepen regulations on inbound FDI. This first was developing and supporting the Foreign Investment Risk Review Modernization Act (FIRMMA), which Trump signed into law in May 2018 after two years of building the case that existing controls could not keep pace with new threats. FIRRMA significantly overhauled the Committee on Foreign Investment in the United States (CFIUS), expanding its jurisdiction and empowering it to investigate "non-passive" investments that could grant foreign entities access to sensitive information. FIRMMA also empowered CFIUS to more closely scrutinize novel investment areas, including critical technologies, infrastructure, personal data, and real estate acquisitions near military and government facilities. Through FIRRMA and the subsequent disputes over TikTok and WeChat – which featured assertive statements by government officials – Trump elevated the role of CFIUS in technology competition with China, encouraging a more restrictive investment environment.

In addition to FIRRMA, Trump issued two Executive Orders (EOs) to curb inbound investments from China's state-owned enterprises, especially in the telecommunications industry. During May 2019, he enacted EO 13873, "Securing the Information and Communications Technology and Services Supply Chain." This EO implicitly targeted Chinese firms such as Huawei and ZTE by empowering the Secretary of Commerce to ban transactions involving ICT that posed risks of sabotage or exploitation by foreign adversaries. He then passed a second EO (13913) in April 2020, "Establishing the Committee for the Assessment of Foreign Participation in the United States Telecommunications Sector." The move created a formal committee ("Team Telecom") to assess foreign participation in the telecommunications sector, focusing on entities that could control or influence critical infrastructure.

Implementation: President Trump's approach to inbound FDI regulation was characterized by an aggressive, entity-focused strategy that targeted specific Chinese semiconductor and telecommunications companies identified by the National Security Council and a handful of other advisors such as Secretary of State Mike Pompeo and U.S. Trade Representative Robert Lighthizer. In total, Trump leveraged referrals from the newly-empowered CFIUS to block foreign transactions four times between 2017-2020. Prior to the Trump administration, U.S. presidents had only blocked three transactions since 1990.

Most of the acquisitions Trump prevented were linked to software and advanced technologies and tended to either target Chinese acquirers or prevent foreign technological superiority. In 2017, the Chinese-backed Canyon Bridge Capital Partners' attempt to purchase Lattice Semiconductor was blocked over concerns about potential intellectual property transfer and the security of the U.S. semiconductor supply chain. In 2018, Trump prohibited Singapore-based Broadcom from acquiring Qualcomm, citing risks to U.S. leadership in 5G technology. Concerns about U.S. citizens' data security led to the blockage of Beijing Shiji Information Technology's acquisition of hotel management software company StayNTouch in 2020. That year, Trump also ordered ByteDance to divest from social media giant TikTok's U.S. operations for similar reasons.

Looking ahead, Trump may be more open to retaining many of the Biden-Harris regulations even though he is well-known for his more transactional approach to export controls, tariffs, and other adjacent policy areas. First, the current suite of inbound FDI controls implemented by the Biden-Harris administration represent even more stringent and cross-cutting versions of his own measures. Second, the overall policy attitude in Washington seems to favor granting the Executive Branch more power to pursue sectoral restrictions. Finally, Trump's preferred approach of targeting specific entities can be implemented alongside, rather than instead of, the current sector-based controls.

Harris

Motivations: The Biden-Harris administration's primary goal was to curb the technological advancement of China's military-intelligence apparatus and integrate existing inbound FDI regulations into a broader suite of policies intended to protect economic security. Biden-Harris officials were especially worried that U.S. acquisitions could enable Chinese entities to use, develop, and export technologies that would advance China's military capabilities and facilitate human rights abuses abroad. Accordingly, the Biden-Harris administration built upon prior reforms granted by Congress to ensure that companies from "countries of concern" could not side-step the older regulatory regime they had inherited. This larger strategy, predicated on a more expansive economic statecraft toolkit, drew less public attention to CFIUS's role in the U.S. regulatory process, in contrast to the public pushes for action by Trump and his officials.

The Biden-Harris administration's most significant revision to U.S. inbound FDI regulation was EO 14083 ("Ensuring Robust Consideration of Evolving National Security Risks by the Committee on Foreign Investment in the United States"), issued in September 2022. This EO expanded the range of factors CFIUS was required to consider while reviewing foreign investments to include supply chain resilience, U.S. leadership in critical technologies, and cybersecurity. Although EO 14083 did not add to CFIUS's jurisdiction and authority, it clarified the prioritization of relevant risks with more detailed guidance for review processes.

The Biden-Harris administration also proposed several other updates to CFIUS processes in April 2024, marking the first major set of revisions to the Committee since FIRRMA. Recommendations included expanding CFIUS's information and subpoena powers, increasing penalties for violations, and extending transaction party response timelines. If implemented, the new rules would also require transaction parties – including those involved in non-notified transactions – to supply more detailed information, as well as broaden the circumstances under which civil penalties could be imposed.

Recently, the Biden-Harris administration has also leveraged CFIUS authorities in ways that could support its domestic political agenda, including blocking Nippon Steel's friendly takeover of Pittsburgh-headquartered U.S. Steel on "national security" grounds – a move likely to appeal to the leadership of the United Steelworkers union. This specific case is tied to the importance of the state Pennsylvania in the November 2024 presidential election. Presidential candidate Trump has also promised to block the deal.

Implementation: The Biden-Harris administration's implementation strategy for FDI restrictions focused on building out its predecessor's policies and consolidating them into "whole-of-government" approach that also included export controls, outbound investment restrictions, and supply-chain protections. The result was an expansion of Trump's entity-based targeting into a broader, sector-based approach. This transformation was an organic evolution of earlier structures which had paved the way for a broader plan by identifying strategic sectors in need of greater protection.

The Biden-Harris administration's approach to ICT-related FDI is especially illustrative of its shift from Trump's entity-focused strategy. In June 2021, Biden issued EO 14034 ("Protecting Americans' Sensitive Data from Foreign Adversaries"), which called upon the Secretaries of Commerce, State, and Defense to evaluate the risks associated with foreign apps and software. While this order built on Trump's EO 13873, it retracted Trump's executive orders specifically targeting TikTok, WeChat, and other Chinese apps, opting instead for an industry-wide approach evaluating software risks rooted in concerns around foreign control, potential for espionage, cybersecurity threats, and data scope.

Another important point of departure between the Biden-Harris administration and its predecessor was the frequency with which CFIUS referrals were used to prohibit foreign acquisitions. Although CFIUS was further empowered by Biden under EO 14083 to evaluate a wider range of potential risks, Biden only blocked one deal - a real estate transaction in 2024 involving the Chinese-owned MineOne Partners Limited, which sought to purchase property near a U.S. Air Force base. Looking ahead, a Harris administration is likely to maintain and intensify Biden's sector-based, "whole-of-government" approach to inbound FDI controls, especially if Harris retains several of Biden's key advisors who also hold chairs on CFIUS.

What Businesses Should Watch

- **CFIUS' autonomy:** Multinational firms should prepare for flexible and purposive definitions of "covered transaction" and "U.S. businesses" used as the threshold to warrant CFIUS intervention. Regardless of the election outcome, CFIUS will continue to leverage its broad mandate to assert jurisdiction over any transaction that it views as potentially threatening to national security priorities.

- **Further expansion of CFIUS' jurisdiction:** Some U.S. lawmakers have advocated for further expansions to CFIUS' jurisdiction. Those revisions include removing CFIUS' statutorily country-agnostic targeting; granting further authority over greenfield and "elevated-risk" real estate investments; and providing new powers to enforce or monitor mitigation agreements involving entities affiliated with foreign adversaries. Neither Harris nor Trump have commented extensively on those recommendations.

- **International standardization:** Thus far, the United States has not asked its allies and partners to standardize their inbound FDI regulations with U.S. procedures as Washington has done with export controls. However, the Treasury Department, which chairs CFIUS, has supported over 30 other countries' proposals, revisions, or enactments of similar inbound investment screening mechanisms. Trump or Harris could conceivably encourage international harmonization of inbound FDI screening measures, potentially raising the burden of compliance for non-U.S. companies interested in acquiring stock in U.S. allies and partners.

- **The CHIPS Act and the IRA:** The CHIPS Act includes several provisions that could affect inbound FDI – especially guardrail measures intended to prevent technology and innovation funded by the program from being misused by adversaries. Any entity receiving CHIPS Act funding must agree not to engage in a "significant transaction" with a "foreign country of concern," including acquisitions. Meanwhile, although the Inflation Reduction Act (IRA) does not explicitly mention China, the benefits it provides for products manufactured without involvement from U.S. adversaries raises the cost of partnership with Chinese entities for U.S. firms.

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