

# Following *De Novo* CFIUS Review, U.S. Government Approves Nippon Steel's Proposed Acquisition of U.S. Steel with Potentially Groundbreaking Conditions

On June 13, 2025, President Trump issued an order approving, with potentially groundbreaking conditions, the proposed acquisition of U.S. Steel Corporation ("U.S. Steel"), the third-largest domestic steel producer, by Nippon Steel Corporation ("Nippon Steel"), a global steelmaker headquartered in Japan.<sup>1</sup>

## BACKGROUND

Then-President Biden initially prohibited the transaction in January 2025 after a nine-month review and investigation by the Committee on Foreign Investment in the United States ("CFIUS" or the "Committee").<sup>2</sup> President Biden found credible evidence that Nippon Steel might take action that threatens to impair U.S. national security, and that such threatened impairment could not be adequately mitigated.<sup>3</sup>

In a statement accompanying the prohibition, President Biden explained that "[a] strong domestically owned and operated steel industry represents an essential national security priority" and that placing one of America's largest steel producers under foreign control would "create risk for our national security and our critical supply chains."<sup>4</sup>

President Biden's decision was based, at least in part, on CFIUS's view that "...it is possible Nippon Steel might in the future make decisions that could lead to a reduction in domestic steel production capacity due to considerations stemming from its global operations."<sup>5</sup> More specifically, CFIUS warned that "[a]s a global company with widespread operations in many jurisdictions, Nippon Steel faces a different set of commercial incentives than does U.S. Steel today"<sup>6</sup> and that, post-closing, U.S. Steel would be "...vulnerable to Nippon Steel's different motivations and potentially divergent priorities as a foreign-owned entity...."<sup>7</sup>

U.S. Steel and Nippon Steel immediately challenged the Biden order in the U.S. Court of Appeals for the District of Columbia Circuit, alleging that the order was politically motivated and violated the parties' constitutional rights to due process and equal protection under the law.<sup>8</sup> On April 7, 2025, during the preliminary stages of the litigation, President Trump ordered CFIUS to conduct a *de novo* 45-day review of the transaction.<sup>9</sup>

## CFIUS REVIEW AND TRUMP'S CONDITIONAL APPROVAL

President Trump's April order explicitly directed CFIUS to consider "whether any measures proposed by the parties are sufficient to mitigate any national security risks identified by CFIUS."<sup>10</sup> The Committee did so, and submitted a confidential recommendation to President Trump on May 21, 2025.

Based on CFIUS's recommendation, President Trump re-affirmed President Biden's finding that Nippon Steel, through the transaction, might take action that threatens to impair U.S. national security.<sup>11</sup> President Trump did not, however, agree with President Biden's finding regarding mitigation. Rather, President Trump found that the threat arising from the transaction can be adequately mitigated if the parties enter into, and comply with, a national security agreement.<sup>12</sup>

A national security agreement, or NSA, is a contract between the parties to a CFIUS-reviewed transaction and the U.S. Government in which the parties agree to certain conditions in order to obtain CFIUS approval. Entering into an NSA is the most common method of resolving concerns identified by CFIUS, and in 2023 (the most recent year for which statistics are available) approximately 20 percent of the distinct notices filed with CFIUS resulted in conditional approvals.<sup>13</sup>

As of the date of this client alert, neither U.S. Steel nor Nippon Steel have disclosed the full contents of their NSA. That said, the parties released a statement on President Trump's conditional approval indicating that the NSA includes: (1) commitments to make approximately \$11 billion in new investments by 2028, including the initial investment in a greenfield project that would be completed after 2028; (2) commitments relating to governance, including a "Golden Share" to be issued to the U.S. Government; (3) commitments relating to domestic production; and (4) commitments relating to trade matters.<sup>14</sup>

With respect to the "Golden Share," media reports have indicated that the NSA requires the parties to issue the U.S. Government one share of Class G (for "gold") preferred stock that cannot be sold or transferred and confers no economic benefit, but nevertheless affords the U.S. Government extraordinary governance rights with respect to U.S. Steel.<sup>15</sup>

More specifically, Commerce Secretary Howard Lutnick posted on social media that the "perpetual" Golden Share will prevent any of the following from occurring without the consent of the President of the United States or the president's designee:

- relocating U.S. Steel's headquarters from Pittsburgh, Pennsylvania;
- redomiciling U.S. Steel outside the United States;
- changing the name of the company from U.S. Steel;
- reducing, waiving or delaying the \$14 billion of near-term investments into U.S. Steel;
- transferring production or jobs outside the United States;
- closing or idling plants before certain timeframes (other than normal-course temporary idling for safety, upgrades, etc.); and
- other protections regarding employee salaries, anti-dumping pricing, raw materials and sourcing outside the United States, acquisitions, and more.<sup>16</sup>

In addition, media reports have indicated that the U.S. Government will have the right to directly appoint one of U.S. Steel's three independent directors, and will have an approval right with respect to the other two.<sup>17</sup>

## KEY TAKEAWAYS

Although President Trump's conditional approval of the proposed transaction is the result many market commentators and CFIUS observers espoused as the "right" outcome for a transaction involving a Japanese buyer that presents no obvious national security concerns, the introduction of a "Golden Share" into an NSA marks a significant departure from CFIUS norms.

Historically, it has not been uncommon for the U.S. Government to condition CFIUS approval on the parties granting the U.S. Government certain rights, including board-related rights and veto rights over certain operational matters.

For example, when CFIUS identifies a national security concern relating to domestic production capacity or supply chain resilience, the Committee routinely requires parties to enter into mitigation agreements that, among other things, obligate the parties to notify and consult with the U.S. Government prior to taking certain actions (*e.g.*, shuttering plants or exiting certain business lines) and reserve certain rights for the U.S. Government in the event the parties seek to take such actions.

In these scenarios, NSAs frequently include governance rights for the U.S. Government, including requiring the parties to appoint U.S. Government-approved officers or board members and requiring them to adopt security-related corporate policies and procedures. Therefore, if President Trump and the parties had agreed to such CFIUS mitigation terms, the conditional approval could have been viewed as an ordinary-course outcome following a highly unusual process.

By contrast, if media reports are correct that the NSA requires the parties to provide the U.S. Government with preferred stock in U.S. Steel that confers a direct board appointment right (as opposed to a veto right over party-nominated board candidates) and veto rights over a broad range of corporate activities (as opposed to a veto right over a limited set of corporate actions directly related to domestic production capacity or supply chain resilience), that would be a significant departure from CFIUS precedent.

Among other things, CFIUS would no longer be limited to enforcing NSAs by assessing monetary penalties for violations and pursuing other post-hoc

remedies based in CFIUS's authorizing statute or contract law. Rather, the U.S. Government would be an active shareholder with the ability to decide a range of important matters affecting the business that is the subject of the NSA.

It is too early to assess the full implications of the deal the parties have struck with CFIUS. We expect that more details regarding the NSA may be made public in the coming days and weeks, which should help market participants understand whether CFIUS's resolution of the U.S. Steel / Nippon Steel transaction truly signals a new era in the U.S. Government's approach to foreign investment reviews.

- 1 Executive Order, *Order Regarding the Proposed Acquisition of United States Steel Corporation by Nippon Steel Corporation*, The White House (June 13, 2025), <https://www.whitehouse.gov/presidential-actions/2025/06/regarding-the-proposed-acquisition-of-the-united-states-steel-corporation-by-nippon-steel-corporation/> (the "Trump June Order").
- 2 Executive Order, *Order Regarding the Proposed Acquisition of United States Steel Corporation by Nippon Steel Corporation*, The White House (January 3, 2025), <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/>.
- 3 *Id.*
- 4 Press Release, *Statement from President Joe Biden*, The White House (January 3, 2025), <https://bidenwhitehouse.archives.gov/briefing-room/statements-releases/2025/01/03/statement-from-president-joe-biden-13/>.
- 5 Letter from CFIUS to U.S. Steel Corp. and Nippon Steel Corp. (December 14, 2024) at 11, Exhibit G to Pet. for Review, *U.S. Steel Corp. v. Comm. on Foreign Inv. in the United States*, No. 25-1004 (D.C. Cir. Jan. 6, 2025).
- 6 *Id.*
- 7 *Id.* at 16.
- 8 Press Release, *Nippon Steel and U.S. Steel File Multiple Lawsuits in Response to Wrongful Interference with the Proposed Acquisition of U.S. Steel*, Nippon Steel Corporation and U.S. Steel Corporation (January 6, 2025), <https://investors.ussteel.com/news-events/news-releases/detail/709/nippon-steel-and-u-s-steel-file-multiple-lawsuits-in>.
- 9 Presidential Memorandum, *Review of Proposed United States Steel Corporation Acquisition*, The White House (April 7, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/review-of-proposed-united-states-steel-corporation-acquisition/>.
- 10 *Id.*
- 11 Trump June Order.
- 12 *Id.*
- 13 U.S. Dep't of the Treasury, *Comm. on Foreign Inv. in the U.S., Annual Report to Congress for Calendar Year 2023*, 30 (2024), <https://home.treasury.gov/system/files/206/2023CFIUSAnnualReport.pdf>.
- 14 Press Release, *President Trump Approves Historic Partnership between U.S. Steel and Nippon Steel*, Nippon Steel Corporation and U.S. Steel Corporation (June 13, 2025), <https://www.businesswire.com/news/home/20250613643688/en/President-Trump-Approves-Historic-Partnership-between-U.-S.-Steel-and-Nippon-Steel>.
- 15 Ana Swanson and Lauren Hirsch, 'Golden Share' in U.S. Steel Gives Trump Extraordinary Control, N.Y. Times (June 15, 2025, 4:20 PM), <https://www.nytimes.com/2025/06/15/business/economy/golden-share-us-steel-nippon-trump.html>.
- 16 Howard Lutnick (@howardlutnick), X.com (June 14, 2025, 12:28 PM), <https://x.com/howardlutnick/status/1933924525265043774>.
- 17 Ana Swanson and Lauren Hirsch, 'Golden Share' in U.S. Steel Gives Trump Extraordinary Control, N.Y. Times (June 15, 2025, 4:20 PM), <https://www.nytimes.com/2025/06/15/business/economy/golden-share-us-steel-nippon-trump.html>.

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