

Biden Blocks Nippon Steel Deal, but CFIUS Expected to Continue Clearing Japanese Investments in the United States

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On January 3, 2025, US President Joe Biden published an order blocking Nippon Steel's proposed acquisition of US Steel, citing the Committee on Foreign Investment in the United States' (CFIUS) finding that the deal would "place one of America's largest steel producers under foreign control and create risk for [US] national security and our critical supply chains." This is the first time in the history of CFIUS that a US president has blocked a Japanese investment in the United States.

President Biden's decision surprised many lawyers with CFIUS experience because Japan is a strong US ally with a long history of investing in the United States, and in similar previous deals, CFIUS has been willing to mitigate availability concerns by entering into a supply assurance agreement with the foreign acquirer. In response, the parties filed a lawsuit against CFIUS, arguing that its decision-making process was subject to procedural irregularities and its national security assessment was tainted by electoral politics. Lawsuits against CFIUS are rarely successful—because the courts usually defer to federal agencies like CFIUS when the case involves national security, and US federal court cases can take years to resolve—so the parties face long odds of succeeding in court and eventually closing the deal.

Nevertheless, it is important for Japanese investors to understand that President Biden's decision resulted from a unique confluence of election-year politics, conflation of economic policy with national security policy, and uncommon process irregularities. As a result, President Biden's decision diverges from CFIUS's usual treatment of Japanese investments. While it is always important to assess the CFIUS risks of potential investments in the United States, it is unlikely that President Biden's decision will fundamentally change the way CFIUS reviews Japanese investments unless they are subject to similar high-profile, political concerns.

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