

To read the Executive Order, please [click here](#).

To read the President's Statement accompanying the Order, please [click here](#).

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## Report from Washington

### Biden Blocks Japanese Buyer From Acquiring U.S. Steel for National Security Reasons

January 7, 2025

On January 3, 2025, President Biden issued an Executive Order (the "Order") prohibiting Japan's Nippon Steel from acquiring U.S. Steel on national security grounds. The Order was issued pursuant to the Defense Production Act, the implementing legislation for the Committee on Foreign Investment in the United States ("CFIUS" or the "Committee"). The Order follows reports that CFIUS, the U.S. government body tasked with reviewing acquisitions of and investments in U.S. businesses by foreign parties for national security reasons, was unable to reach consensus in its consideration of the proposed \$14.9 billion merger. In a statement accompanying the Order, Biden emphasized the significance of maintaining domestically-owned steel production given its importance to the country's infrastructure, automotive industry, and defense industrial base. Incoming President Trump also publicly expressed opposition to the deal.

CFIUS risk is increasingly top of mind for dealmakers and institutional investors pursuing cross-border transactions, and Biden's decision is noteworthy for several reasons.

- First, the Order continues the recent trends within the U.S. government to treat economic security as a core component of the country's national security. We can expect the U.S. government increasingly to rely on these authorities to protect certain sectors and supply chains considered critical to the domestic economy, even if not traditionally associated with national security.
- Second, the decision demonstrates the U.S. government's willingness to block a well-known firm from Japan, a country traditionally considered a key ally and diplomatic partner. While each transaction requires an individualized assessment of the potential national security and CFIUS risks, Biden's decision is the latest example of how even investors from lower-risk jurisdictions can sometimes face deal risk.
- Third, Nippon Steel and U.S. Steel filed a petition on January 6, 2025 with the U.S. Court of Appeals for the District of Columbia Circuit challenging the legality of the Order. The petition alleges Constitutional violations, as well as unlawful political influence, and asks the Court to set aside the Order. Separately, Nippon Steel and

U.S. Steel filed a lawsuit against steelmaker Cleveland-Cliffs, its CEO, and the president of the United Steelworkers union claiming they illegally conspired to undermine the transaction, although that lawsuit does not directly challenge the President's decision. Determinations by CFIUS and the President are rarely litigated—the Defense Production Act states that actions by the President to prohibit a transaction shall not be subject to judicial review. Efforts seeking judicial relief in the present case will provide courts with a rare opportunity to consider the contours and limits of the President's national security authorities.

In short, while the outcome of Biden's determination was largely expected based on media reporting and public statements from the Administration over the last few months, the Order underscores the need to carefully evaluate CFIUS and other regulatory matters closely and without limit to traditional national security concerns.

Simpson Thacher & Bartlett LLP is experienced in navigating the complexities of the CFIUS review process and analogous FDI regimes worldwide, and continues to monitor relevant regulatory developments. We are available to discuss further questions on request.

For further information about this Report, please contact one of the following members of the Firm's [National Security Regulatory Practice](#):

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