

# Implications of a Second Trump Administration on Trade and Investment between the U.S. and Asia

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Global Minnesota



MNIBC

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# Policy Overview

- Trade Agreements
- Address Trade Deficits
- Grow U.S. Domestic Manufacturing
- Cut Costs, Taxes, Regulations
- Tariffs

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# Recent Developments/China Perspective

- Recent Trump administration actions related to China trade
- Recent Chinese actions related to US trade

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# Implications/Opportunities

- Increase in inbound investment from Asia
- Increase in sponsor M&A volumes
- Reduced anti-trust and regulatory restraints and more favorable M&A environment
- Material currency valuation differentials to fuel cross-board M&A to Asia
- Political clarity in the U.S. and in many countries with recent elections
- Lower taxes for companies making products in the U.S.
- Just-in-time further shifting to just-in-case supply chains

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# Challenges and Headwinds

- Potential for interest rates to be higher for longer
- Stronger USD dampens outlook for many MNCs reducing export demand
- Higher regulatory scrutiny of certain deals
- Immigration policies might also impact availability of skilled labor from Asia
- U.S. economic weakness/global recession concerns

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# Final Outbound Investments Rule (aka Reverse CFIUS)

- Background and Overview
- Current Status
- Scope of the Regulations
- Businesses Affected by the Regulations
- Implications for M&A, VC/PE, Operating Companies and Banks

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# Other Recent China Regulatory Developments

- Foreign Derived Products Rules
- Chip Foundry Due Diligence
- Biotechnology Controls
- Connected Vehicles Rules
- New AI Rules
- Unmanned Aircraft Systems Proposed Rules

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# Steps You Should Take

- Develop and maintain an import/export diligence and compliance program suitable for your business and operations
- Monitor regulatory and policy developments in the US and other countries in which you do business
- Develop contingency plans related to your international operations



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# Overview And Key Concepts

- The new Outbound Investments Rule (aka reverse CFIUS) broadly restricts U.S. investments affecting the use and development of certain advanced technologies in China
- The Outbound Investments Rule applies to certain **covered transactions** in the semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors.
- It imposes separate thresholds for covered transactions that are either **prohibited** or that require **notification** of the Department of the Treasury

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# Covered Transactions

1. § 850.210 Covered transaction. The term **covered transaction** means a U.S. person's direct or indirect:
  - a. Acquisition of an equity interest, a contingent equity interest, debt interest with certain financial or governance rights, conversion of a contingent equity interest into an equity interest in a person that the U.S. person **knows** at the time of the acquisition is a **covered foreign person** (foreclosure on collateral where the debtholder takes possession of the pledged equity is an acquisition of an equity interest);

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# Covered Transactions

- b. Acquisition, leasing, or other development of operations, land, property, or other assets in a country of concern that the U.S. person knows at the time of such acquisition, leasing, or other development will result in, or that the U.S. person plans to result in:
  - i. The establishment of a covered foreign person; or
  - ii. The engagement of a person of a country of concern in a covered activity;

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# Covered Transactions

- c. Entrance into a joint venture, **wherever located**, that is formed with a person of a country of concern, and that the subject U.S. person knows at the time of entrance into the joint venture that the joint venture will engage, or plans to engage, in a covered activity;  
or

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# Covered Transactions

d. **Acquisition of a limited partner or equivalent interest in a venture capital fund, private equity fund, fund of funds, or other pooled investment fund** (in each case where the fund is not a U.S. person) that a U.S. person **knows** at the time of the acquisition likely will invest in a person of a country of concern that is in the semiconductors and microelectronics, quantum information technologies, or artificial intelligence sectors, and such fund undertakes a transaction that would be a covered transaction if undertaken by a U.S. person.

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# Prohibited Transactions

2. § 850.224. The term prohibited transaction means a covered transaction in which the relevant covered foreign person or the relevant joint venture:
  - a. Develops or produces any electronic design automation software for the design of integrated circuits or advanced packaging;
  - b. Develops or produces certain front-end semiconductor fabrication equipment designed for performing the volume fabrication of integrated circuits;

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# Prohibited Transactions

- c. Equipment for performing volume advanced packaging; or
- d. Commodity, material, software, or technology designed exclusively for use in or with extreme ultraviolet lithography fabrication equipment.
- e. Designs or fabricates or provides advanced packaging for integrated circuits exceeding certain specified parameters;

# Prohibited Transactions

- f. Develops, installs, sells, or produces any supercomputer or develops a quantum computer or produces any of the critical components required to produce a quantum computer such as a dilution refrigerator or two-stage pulse tube cryocooler;
- g. Develops or produces any quantum sensing platform designed for, or which the relevant covered foreign person intends to be used for, any military, government intelligence, or mass-surveillance end use;
- h. Develops or produces certain quantum network or quantum communication systems;



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# Prohibited Transactions

- i. Develops any AI system that is designed to be exclusively used for, or which the relevant covered foreign person intends to be used for, any military end use), or combat system logistics and maintenance); or government intelligence or mass-surveillance end use (e.g., through incorporation of features such as mining text, audio, or video; image recognition; location tracking; or surreptitious listening devices);
- j. Develops any AI system that is trained using a quantity of computing power greater than specified thresholds: or

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# Prohibited Transactions

- k. Engages in a covered activity and (without regard to a threshold) is:
  - i. Included on the Bureau of Industry and Security's **Entity List**
  - ii. Included on the Bureau of Industry and Security's **Military End User List**;
  - iii. **Meets the definition of "Military Intelligence End-User"** by the Bureau of Industry and Security;

# Prohibited Transactions

- iv. Included on the Department of the Treasury's list of Specially Designated Nationals and Blocked Persons (**SDN List**), or is an entity in which one or more individuals or entities included on the SDN List, individually or in the aggregate, directly or indirectly, own a 50 percent or greater interest;
- v. Included on the Department of the Treasury's list of Non-SDN Chinese Military-Industrial Complex Companies (**NS-CMIC List**); or
- vi. Designated as a foreign terrorist organization

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# Notifiable Transaction

3. § 850.217 Notifiable transaction. The term notifiable transaction **means a covered transaction (that is not a prohibited transaction)** in which the relevant covered foreign person or, with respect to a covered transaction described in § 850.210(a)(5), the relevant joint venture:
  - a. Designs, fabricates or packages any integrated circuit that is not a Prohibited Transaction;

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# Notifiable Transaction

- b. **Develops any AI system** that is not a Prohibited Transaction and that is:
  - i. Designed to be used for any military end use or government intelligence or mass-surveillance end use
  - ii. Intended by the covered foreign person or joint venture to be used for cybersecurity applications, digital forensics tools, penetration testing tools, the control of robotic systems, or trained using a quantity of computing power greater than  $10^{23}$  computational operations

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# Notifiable Transaction

It is important to note that **there is no de minimis exception** for covered activities. Any amount of a covered activity by a person of a country of concern is sufficient for such person to be defined as a covered foreign person.

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# Knowledge

4. § 850.216 Knowledge. **Knowledge** of a fact or circumstance (the term may be a variant, such as “know”) means:
- i. **actual knowledge** that a fact or circumstance exists or is substantially certain to occur;
  - ii. **an awareness of a high probability** of a fact or circumstance’s existence or future occurrence; or
  - iii. **reason to know** of a fact or circumstance’s existence.

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# Knowledge

The assessment as to whether a U.S. person has or had knowledge of a given fact or circumstance will be made **based on information a U.S. person had or could have had through a reasonable and diligent inquiry.**

A U.S. person that has failed to conduct a reasonable and diligent inquiry by the time of a given transaction may be assessed to have had reason to know of a given fact or circumstance, including facts or circumstances that would cause the transaction to be a covered transaction.



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# Knowledge

In assessing whether a U.S. person has undertaken such a reasonable and diligent inquiry, the Department of the Treasury's considerations will include

- a. The inquiry a U.S. person has made regarding an investment target or other relevant transaction;
- b. The contractual representations or warranties the U.S. person has obtained or attempted to obtain from the investment target or other relevant transaction counterparty;

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# Knowledge

- c. The efforts by the U.S. person as of the time of the transaction to obtain and consider available public and non-public information, including public and commercial databases ;
- d. Whether the U.S. person purposefully avoided learning or seeking relevant information; and
- e. The presence or absence of warning signs.

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# Person Of A Country Of Concern

5. § 850.221 Defines the term person of a country of concern (i.e., China) to include:
  - a. Any individual that:
    - i. Is a citizen or permanent resident of a country of concern;
    - ii. Is not a U.S. citizen; and
    - iii. Is not a permanent resident of the United States.
  - b. **An entity with a principal place of business in, headquartered in, or incorporated in or otherwise organized under the laws of China;**

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# Contact Information



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