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Trump Walks A Fine Line In Effort To Steer US Steel's Future

By **Al Barbarino**

Law360 (April 11, 2025, 3:42 PM EDT) -- Nippon's hopes of acquiring U.S. Steel were revived when President Donald Trump ordered a fresh national security review of the deal, but he faces a delicate balancing act to strike an agreement acceptable to all parties without giving a foreign power full control of the vital American steelmaker.

Trump on April 7 issued a presidential memorandum instructing the Committee on Foreign Investment in the United States to conduct a fresh review, resurrecting a transaction once thought dead and putting CFIUS — the government's influential foreign investment review body — back in the spotlight.

The journey of Japanese steelmaker Nippon's bid for U.S. Steel illustrates how political winds can shift around high-profile foreign investments, and how the persistence of the two companies could pay off after they quickly filed a lawsuit following former President Joe Biden blocking the deal in early January.

"This is a do-over — and probably the best outcome the companies could have hoped for," said Jeffrey P. Bialos, an Eversheds Sutherland partner and co-head of the firm's global aerospace, defense and security group. "If I were the parties here, I would be heartened by this."

Political Shifts, Legal Battle Shape Unusual Path

In January, Biden officially blocked the acquisition, citing "credible evidence" of national security risks after reports indicated CFIUS itself was split on its recommendation. The companies sued, calling Biden's review a "politically motivated sham" and alleging he had decided to block the merger before even weighing national security risks.

At the time, legal experts had framed the legal challenge as a "Hail Mary" with slim chances of success given the president's broad authority in national security matters.

Trump's order now provides a second chance at approval after he previously pledged he too would block the deal, but later stated he would welcome an investment from Nippon.

The Trump memo explicitly directs the committee to evaluate "whether any measures proposed by the parties are sufficient to mitigate any national security risks identified."

The divided nature of the original CFIUS review suggests that genuine debate exists about the national security implications, creating a potentially legitimate pathway for approval, former government attorneys who are now in private practice told Law360.

"The Trump administration will now own this decision," Bialos said. "They didn't have to — but they chose to."

Bialos, who earlier in his career led review of defense mergers and acquisitions as the deputy undersecretary of defense for industrial affairs, said he never saw evidence that the original CFIUS process was flawed, noting that it appeared "CFIUS gave the parties the process they were due."

However, he said, "it's hard to see a meaningful national security issue here."

While the presidential order may have surprised some after Trump's previous opposition and pledge to block the deal, it seemed to follow a gradual evolution in his stance.

During a press conference in February, Trump suggested he was open to Nippon "investing" in U.S. Steel rather than acquiring it outright, signaling some willingness to consider a restructured arrangement.

"I didn't want it purchased, but investment I love," he said at the time. "And they're going to do a big investment subject to getting the deal done."

On Wednesday, Trump seemed to reiterate that stance despite ordering the CFIUS do-over, reportedly saying, "We don't want [U.S. Steel] to go to Japan or any other place, and we're working with them."

James Brower, a Morrison Foerster LLP litigation partner and former U.S. Treasury Department official who led CFIUS' mitigation monitoring efforts, called the trajectory of the deal "unlike anything I've ever seen before."

Careful Deal Modifications May Offer Path to Approval

Trump's memorandum specifies that CFIUS should conduct its review de novo — meaning completely anew — and report findings within 45 days, including each member agency's position and reasoning.

Brower said that means "everything is still on the table" for CFIUS to review.

"This is a de novo review — they're starting from scratch," he said.

"All the political stakeholders who were part of the decision the first time around are now gone," Brower continued. "Given the nature of the [presidential] action — taking action instead of not — I think perhaps it's more likely we'll see a different outcome. But that's certainly not certain."

For the deal parties, Brower said, the development is "certainly a positive step," but he noted that CFIUS "still has all the tools it had before to shape the deal, approve it, block it or require mitigation."

Industry attorneys previously suggested that a new structure could still provide substantial benefits to all involved, even if it's a minority investment by Nippon.

Nippon would gain significant governance rights and exposure to the U.S. steel market, U.S. Steel would receive needed capital and technological expertise, and the Trump administration could claim credit for preserving American control while facilitating valuable foreign investment.

Nippon had already offered a multitude of concessions, including retaining U.S. representation on the American company's board of directors, keeping its headquarters in Pittsburgh, pumping billions of dollars into U.S. Steel's existing facilities, retaining existing jobs and following U.S. trade regulations.

Brower said additional changes to the structure of the transaction could include agreements regarding offshoring and how Nippon will invest in the U.S.

"There are things that they can do and things they can work with CFIUS on that will maybe ameliorate some of the concerns," he said.

Momentum Shifts Toward Deal Approval

After the transaction was announced in December 2023, it faced a storm of opposition from U.S. lawmakers on both sides of the aisle, who had argued the deal could jeopardize national security and negatively impact trade. The United Steelworkers also opposed the deal.

But lawyers and others have repeatedly questioned the validity of the national security-based arguments against the deal, including former Vice President Mike Pence.

Despite the twists and turns on a deal once thought dead, sentiment about its prospects continues to shift beyond the legal arena.

In one prime example, activist investor Ancora Holdings Group — once a vocal opponent of the Nippon deal that had vied for control of U.S. Steel's board — dropped its campaign Wednesday.

U.S. Steel and Nippon "may have succeeded in having productive conversations with the Trump administration," Ancora said in a statement, suggesting that U.S. Steel must be "increasingly confident about the transaction's approval."

U.S. Steel and Nippon did not respond to Law360's requests for comment on the presidential order.

In a January interview with Law360, Morgan Lewis & Bockius LLP partner David Plotinsky, the former acting chief of the U.S. Department of Justice's Foreign Investment Review Section, accurately noted the parties could wind up getting the new CFIUS review they had pushed for.

On Thursday, he called Trump's re-review order "certainly a positive sign" for the companies, observing that the move reflects the president's broad discretion to revisit national security decisions made by a predecessor.

"I've always begun with the assumption that Biden or Trump could either rescind or amend the blocking order that Biden issued," Plotinsky said, adding that while CFIUS statutes don't explicitly spell this out, it's consistent with how executive orders work generally. "It's a unilateral document … and so somebody else can unwind the same thing."

Still, he agreed that sending a transaction back to CFIUS after a presidential block is "a little atypical."

Plotinsky said any structural changes to the deal will not likely require "an updated merger agreement, such that there would be brand-new CFIUS jurisdiction."

"It would make sense that CFIUS is looking at the same deal they looked at before," he said. "If you needed a new merger agreement because you were restructuring the deal, I don't think you could do that in this re-review."

That could mean that the administration may need to "spin" the revised deal as an investment rather than a purchase — aligning with Trump's own public comments suggesting he favors an "investment" but not an outright sale, Plotinsky said.

"If it's a 100% acquisition, to me, it's very hard to call that investment," he said. "But you could make other changes — including through the board structure, government's rights, things like that — to make it a little more passive, or at least reduce some of the rights that 100% owners would usually have."

"That you could try to spin as effectively an investment — just a very, very big one," he added.

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