

THE GLOBAL TRADE LAW JOURNAL

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Editorial Office

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Articles and Submissions

Direct editorial inquiries and send material for publication to:

Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc.,
26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@
meyerowitzcommunications.com, 631.291.5541.

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Decoding U.S. National Security Trends for the Investment Community

Jeremy B. Zucker and Hrishikesh N. Hari*

In this article, the authors explain that, as U.S. national security and economic policy continue to converge, investors that treat national security risk as a strategic variable—rather than as a static constraint—will be better positioned to protect value.

National Security and Capital: From Exception to Operating Environment

In the post–Cold War period, cross-border investment operated against a backdrop of relatively stable expectations about regulatory continuity. That backdrop has shifted. Measures once deployed sparingly in response to acute national security concerns are now applied more routinely, seemingly with less warning and with broader effect.

The first year of the Trump administration’s second term reflects not a departure from that trend, but a further consolidation of national security enforcement as a tool for shaping market behavior and capital formation. At the same time, the administration is navigating between voices advocating for decisive economic decoupling from China and those favoring a more calibrated approach that preserves commercial engagement while managing strategic risk. Striking that balance has been bumpy thus far, and it continues to influence both the rhetoric and the execution of national security policy.

The administration’s National Security Strategy and the earlier America First Investment Policy provide useful context, particularly in their evolving rhetoric toward China. But sophisticated investors should be cautious about reading policy documents as predictive roadmaps. Enforcement reality often diverges from stated tone. What matters most is how authority is exercised in practice—and year one shows an administration comfortable using regulatory uncertainty itself as leverage.

Sanctions Enforcement: Gatekeepers in the Crosshairs

Sanctions remain among the most visible and forceful tools of U.S. foreign policy. The expansion of Russia-related sanctions, including designations targeting major energy companies, underscores a willingness to impose systemic economic pressure to advance geopolitical objectives. For the investment community, however, the more consequential development lies in enforcement actions against financial intermediaries.

The penalties recently imposed on a venture capital firm and a private equity firm illustrate a deliberate strategy to target investment managers as financial gatekeepers. These actions were not merely about technical violations or imperfect screening protocols. They reflect U.S. Department of the Treasury's view that failures at the intermediary level can materially weaken sanctions regimes—and that penalties must therefore be large enough to influence behavior across the market.

For the investment community, including portfolio companies, the message is unmistakable. Sanctions compliance failures carry more actual and headline risk than ever before. Reliance on formal ownership thresholds, complex structuring, or even legal advice will not insulate firms where sanctioned persons retain economic interests or influence.

Export Controls as Negotiating Currency

Export controls increasingly sit at the intersection of national security regulation and trade diplomacy. The anticipated expansion of end-user controls to cover affiliates of listed entities prompted significant compliance investments across the technology sector. The announcement and subsequent one-year suspension of that rule—linked to concessions on critical minerals—demonstrated how quickly those obligations can be recalibrated when geopolitical bargaining intervenes.

A similar dynamic is playing out with advanced artificial intelligence (AI) chips. Congressional efforts to harden restrictions have proceeded alongside executive branch flexibility in permitting certain export transactions. For investors, the lesson is not simply that export controls are unstable, but that volatility itself has

become a policy tool. Rules may be deployed, paused, or revived to advance broader strategic objectives unrelated to any individual company's conduct.

Investors and their portfolio companies should therefore resist assumptions that current export control frameworks will remain intact over a typical investment horizon. Valuations, diligence, and exit strategies increasingly need to account for regulatory reversals that may arrive with little notice.

Outbound Investment Screening: Codified and Resourced

The outbound investment regime is one of the most significant expansions of national security oversight affecting U.S. investors in decades. With the Outbound Investment Security Program (OISP) finalized and now codified—and expanded—by Congress, there is no longer any doubt that this framework is intended to endure.

Congressional action has broadened Treasury's authority, expanded the scope of covered technologies and countries of concern, and signaled an expectation of active administration. Importantly, the regime is designed not only to prohibit certain transactions but also to generate information and influence capital allocation upstream through reporting, disclosures, and public signaling. Expect Treasury to be active with its allocation of \$150 million a year for two years to build out the OISP.

Investors should expect 2026 and 2027 to function as an enforcement inflection point. Early actions are likely to be selective and narrative-driven, aimed at shaping market norms rather than maximizing penalties. Sponsors that wait for headline enforcement before engaging with the regulatory regime risk being caught out as cautionary examples.

Committee on Foreign Investment in the United States: Predictable Process, Rising Political Risk

The Committee on Foreign Investment in the United States (CFIUS) remains largely navigable for sophisticated investors, and most transactions subject to review can still be managed effectively with experienced guidance. That said, the first year of the Trump administration reinforced two persistent risks:

1. The process can be politicized. Transactions implicating domestic employment, industrial policy, or strategic assets may attract scrutiny untethered from traditional national security analysis. Even deals involving close allies can become flashpoints when domestic constituencies mobilize.
2. Jurisdictional missteps carry long-tail risk. Transactions that close without clearance where CFIUS jurisdiction exists remain indefinitely vulnerable to unwinding. Recent actions confirm that this authority is real and actively exercised.

For the investment community, assessment of CFIUS risk therefore must extend beyond technical questions of jurisdiction; rather, it should include a wider aperture that contextualizes national security equities and anticipates other variables, including the political climate.

Foreign Corrupt Practices Act Enforcement: It's Like It Never Left

Following a brief administrative pause, the Department of Justice (DOJ) has made clear that Foreign Corrupt Practices Act (FCPA) enforcement has returned to normal operating tempo. At conferences in recent weeks, senior DOJ officials have made statements that emphasize long-term continuity on FCPA enforcement, with individual accountability framed as the primary deterrent. DOJ officials have pointed to multiple types of recent enforcement activity, including indictments, litigation, and settlements. There is reporting that the DOJ's resumption of FCPA enforcement soon will be made more plain with a substantial settlement involving a Chinese company. At the same time, uncertainty surrounding the future of the Securities and Exchange Commission (SEC's) FCPA unit has created a bifurcated enforcement landscape in which criminal exposure may outpace civil resolution.

For investors, the implication is straightforward. Portfolio companies operating in high-risk jurisdictions should be assumed to face sustained scrutiny, and compliance programs should be calibrated accordingly, even in the absence of visible SEC activity.

Anti–Money Laundering Enforcement: Delay, Then Guidance

After two decades of work, the Financial Crimes Enforcement Network’s (FinCEN’s) investment adviser rules were set to take effect in 2026. However, delayed implementation of the investment adviser rule until 2028 provided temporary relief for covered advisers. But delay should not be mistaken for retrenchment. Recent enforcement actions against financial gatekeepers from the Office of Foreign Assets Control (OFAC), and in the virtual-asset space for FinCEN, underscore that anti–money laundering (AML) obligations are now framed explicitly as national security imperatives.

Notably, FinCEN’s publication of detailed “compliance considerations”¹ alongside an enforcement action mirrors OFAC’s long-standing practice and signals greater convergence across Treasury components. Enforcement is increasingly being used as a vehicle to communicate expectations to entire sectors.

What’s Ahead

The Trump administration’s approach to national security enforcement reflects integration rather than reinvention. Existing tools are being deployed in a coordinated manner, with escalating consequences for institutions that fail to adapt. Regulatory frameworks will remain fluid, and enforcement signaling will often precede formal rulemaking or penalties.

For the investment community, this environment requires a recalibration of risk management. The central question is no longer whether a transaction is permissible at signing, but whether the underlying investment thesis is resilient to policy reversal, geopolitical bargaining, and enforcement actions that may emerge during the whole of the investment term.

As national security and economic policy continue to converge, investors that treat national security risk as a strategic variable—rather than a static constraint—will be better positioned to protect value.

Key Takeaways

- National security enforcement has become a core instrument of U.S. economic statecraft. For the investment

community, sanctions, outbound investment restrictions, AML regulations, export controls, reviews of foreign investment, and anti-corruption compliance obligations now represent persistent market risk—not merely episodic compliance concerns.

- Enforcement against financial “gatekeepers” is deliberate and strategic. Recent sanctions and AML actions demonstrate a focus on investment managers and intermediaries whose compliance failures can undermine U.S. foreign policy objectives.
- Regulatory volatility is now structural. The rapid suspension of the Affiliates Rule shortly after its announcement and shifting approaches to controls on exports of AI chips remind us that national security-based rules may be tightened, relaxed, or repurposed as diplomatic leverage, often with little warning. And such volatility may be a feature, not a bug.
- Outbound investment screening is entering a formative enforcement phase. Following Congressional codification through the National Defense Authorization Act, Treasury is expected to use guidance, disclosures, and selective enforcement to shape investor behavior before penalties become routine.
- CFIUS reviews continue to pose risk, as even transactions involving close allies can become flashpoints when domestic interests mobilize.
- FCPA enforcement pause is over, and AML enforcement continues to converge with national security priorities, particularly in cross-border and virtual-asset contexts.

Notes

* The authors, attorneys with Dechert LLP, may be contacted at jeremy.zucker@dechert.com and hreshikesh.hari@dechert.com, respectively. Summer Oh assisted in the preparation of this article.

1. <https://www.fincen.gov/news/news-releases/fincen-assesses-35-million-penalty-against-paxful-facilitating-suspicious>.