

RECENT EVENT

TOOLS OF STATECRAFT — GOLDEN SHARES — PRESIDENT TRUMP ACQUIRES THE UNITED STATES’S FIRST-EVER GOLDEN SHARE. — White House Secures Corporate Governance Interest in the United States Steel Corporation.

President Trump is invoking new tools to bolster American economic and national security.¹ His recent approval of Nippon Steel Corporation’s (Nippon Steel) acquisition of the United States Steel Corporation (U.S. Steel) provides a paradigmatic example of this policy shift in practice.² As a condition of that approval, President Trump obtained the U.S. government’s first-ever golden share³ — a special corporate security that grants the government the right to decide certain aspects of U.S. Steel’s operations.⁴ Despite its novelty, this golden share — which lets the federal government veto, among other things, the closure of U.S. Steel plants⁵ — stands on solid legal ground and asserts a welcome new tool for advancing American economic and national security.

In December 2023, Japan’s Nippon Steel announced its intent to acquire U.S. Steel.⁶ At fifty-five dollars per share, Nippon Steel’s offer represented a forty-percent premium above U.S. Steel’s going market price⁷ and a nearly sixty-percent premium above an earlier offer from

¹ See, e.g., Ana Swanson, *\$10 Billion and Counting: Trump Administration Snaps Up Stakes in Private Firms*, N.Y. TIMES (Nov. 25, 2025), <https://www.nytimes.com/2025/11/25/us/politics/trump-intel-steel-minerals-china.html> [<https://perma.cc/T3MR-ZRBS>]; see also WHITE HOUSE, NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA 17 (2017), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf> [<https://perma.cc/R9KY-Q87P>] (attributing to President Trump the view that “[e]conomic security is national security”). For a similar statement from the Biden Administration, see WHITE HOUSE, INTERIM NATIONAL SECURITY STRATEGIC GUIDANCE 22 (2021), <https://bidenwhitehouse.archives.gov/wp-content/uploads/2021/03/NSC-1v2.pdf> [<https://perma.cc/V7HC-YUW9>] (“[T]raditional distinctions . . . among national security [and] economic security . . . are less meaningful than ever . . .”).

² See *Nippon Steel Corporation and U. S. Steel Finalize Historic Partnership*, NIPPON STEEL CORP. & U.S. STEEL CORP. (June 18, 2025) [hereinafter *Acquisition Finalized*], https://www.nipponsteel.com/en/newsroom/news/2025/pdf/20250614_100.pdf [<https://perma.cc/Q4G7-CQMN>].

³ See *id.*; *America’s First Golden Share*, FIN. TIMES (June 19, 2025) [hereinafter *America’s First*], <https://www.ft.com/content/15e191d2-8d73-4147-926a-4dff8b657f71> [<https://perma.cc/F57Y-P4KZ>].

⁴ See Sarah Bauerle Danzman, *Did Trump Effectively Nationalize US Steel with His “Golden Share”?*, ATL. COUNCIL: NEW ATLANTICIST (June 16, 2025), <https://www.atlanticcouncil.org/blogs/new-atlanticist/did-trump-effectively-nationalize-us-steel-with-his-golden-share> [<https://perma.cc/W4JV-9YKH>].

⁵ *America’s First*, *supra* note 3.

⁶ See *Nippon Steel Corporation (NSC) to Acquire U. S. Steel, Moving Forward Together as the “Best Steelmaker with World-Leading Capabilities”*, U.S. STEEL CORP. (Dec. 18, 2023), <https://www.ussteel.com/media/newsroom/-/blogs/nippon-steel-corporation-nsc-to-acquire-u-s-steel-moving-forward-together-as-the-best-steelmaker-with-world-leading-capabilities-> [<https://perma.cc/E6NC-DM5H>].

⁷ *Id.*

one of U.S. Steel's American competitors.⁸ In April 2024, a supermajority of U.S. Steel voting shares approved the acquisition pending regulatory approval.⁹

The acquisition faced intense political headwinds. The United Steelworkers union opposed the acquisition, citing its desire to keep U.S. Steel “domestically owned and operated.”¹⁰ Then-President Biden, Vice President Harris, and candidate Trump joined in objecting to the deal, with each determined to block it.¹¹ Nevertheless, U.S. Steel insisted the acquisition posed no threat to national security — as President Biden claimed — and was essential to maintain its operations.¹²

The deal also faced formal investigation. Section 721 of the Defense Production Act of 1950¹³ (Section 721) authorizes the Committee on Foreign Investment in the United States (CFIUS) to review foreign acquisitions of U.S. businesses to determine whether they pose a threat to national security.¹⁴ When an acquisition threatens national security, CFIUS may impose conditions to mitigate that threat.¹⁵ CFIUS reviewed Nippon Steel's proposed acquisition of U.S. Steel and determined it did threaten national security.¹⁶ But the Committee was

⁸ See Greg Roumeliotis, *Cleveland-Cliffs Argued Its US Steel Bid Was Worth More Than Nippon Steel's, Filing Shows*, REUTERS (Jan. 24, 2024, at 11:59 ET), <https://www.reuters.com/markets/deals/cleveland-cliffs-argued-its-us-steel-bid-was-worth-more-than-nippon-steels-2024-01-24> [<https://perma.cc/9MAM-M73U>]. Cleveland-Cliffs offered U.S. Steel thirty-five dollars per share in August 2023. *Id.* After rejecting this offer, U.S. Steel commenced a “[s]trategic [a]lternatives [p]rocess,” inviting better offers. See *U. S. Steel Announces Strategic Alternatives Process*, U.S. STEEL CORP. (Aug. 13, 2023), <https://www.ussteel.com/prereleases/-/blogs/u-s-steel-announces-strategic-alternatives-process> [<https://perma.cc/9GSX-W6XK>].

⁹ See *U. S. Steel Stockholders Approve Transaction with Nippon Steel Corporation (NSC)*, U.S. STEEL CORP. (Apr. 12, 2024), <https://www.ussteel.com/media/newsroom/-/blogs/u-s-steel-stockholders-approve-transaction-with-nippon-steel-corporation-nsc> [<https://perma.cc/EV8T-Q4SZ>].

¹⁰ *USW Slams Nippon Plan to Acquire USS*, UNITED STEELWORKERS (Dec. 18, 2023), <https://usw.org/press-release/usw-slams-nippon-plan-to-acquire-us> [<https://perma.cc/X5CD-79A3>]; see also Brief of Petitioners at 3–4, *U.S. Steel Corp. v. Comm. on Foreign Inv. in the U.S.*, No. 25-1004 (D.C. Cir. filed Feb. 3, 2025) (suggesting that United Steelworkers union leadership preferred U.S. Steel be acquired by an American company).

¹¹ See Grace Eliza Goodwin, *Harris, Trump, and Biden All Want to Block US Steel's Sale. Now the Steelmaker Is Playing Hardball in Pennsylvania*, BUS. INSIDER (Sep. 5, 2024, at 10:17 ET), <https://www.businessinsider.com/us-steel-biden-harris-trump-oppose-sale-nippon-2024-9> [<https://perma.cc/AA7M-UKNS>].

¹² See *id.*

¹³ 50 U.S.C. § 4565.

¹⁴ *Id.* § 4565(b)(1).

¹⁵ *Id.* § 4565(l)(3)(A). Alternatively, the President may mitigate such threats by altogether prohibiting or suspending the acquisition. *Id.* § 4565(d).

¹⁶ See Alexandra Alper & Katya Golubkova, *President Biden to Decide Fate of Nippon Steel's \$15 Billion Bid for US Steel*, REUTERS (Dec. 23, 2024, at 23:33 ET), <https://www.reuters.com/markets/deals/cfius-unable-reach-consensus-nippon-steels-us-steel-bid-wapo-reports-2024-12-24> [<https://perma.cc/XWH4-E3AR>].

divided on the appropriate mitigation measure.¹⁷ As a result, it chose to refer the matter to President Biden for action.¹⁸ President Biden proceeded to block the acquisition, but included an express reservation permitting his successors to revisit his decision.¹⁹

Shortly thereafter, U.S. Steel and Nippon Steel sought to resurrect the deal. The companies challenged President Biden's decision in federal court;²⁰ Japan's Prime Minister publicly lobbied President Trump;²¹ and, behind closed doors, congressional Republicans did the same.²² The campaign succeeded in April 2025 when President Trump ordered CFIUS to conduct a de novo review of the acquisition,²³ reopening the door for regulatory approval.

In June 2025, the parties reached a deal with the federal government to enable the acquisition's regulatory approval.²⁴ Despite his initial opposition, President Trump announced that the deal would proceed subject to the terms of a CFIUS national security agreement.²⁵ To address the Trump Administration's national security concerns, the agreement provides that Nippon Steel will invest \$11 billion in U.S. Steel's operations and not interfere with U.S. Steel's trade actions.²⁶ It also provides that U.S. Steel will remain incorporated in the United States, maintain its domestic steel production capacity, and place U.S. citizens on its board of directors and in key management roles.²⁷

The national security agreement also grants the federal government a "noneconomic" golden share in U.S. Steel.²⁸ This golden share gives the government the rights to: (1) appoint one independent director to U.S. Steel's board of directors and (2) veto certain U.S. Steel business

¹⁷ See Alexandra Alper, *Exclusive: Despite Revamped Proposals, Nippon Steel Deal On Track to Be Blocked, Letter Shows*, REUTERS (Dec. 18, 2024, at 16:18 ET), <https://www.reuters.com/markets/commodities/despite-revamped-proposals-nippon-steel-deal-track-be-blocked-letter-says-2024-12-18> [<https://perma.cc/U6QE-8L5U>].

¹⁸ See Alper & Golubkova, *supra* note 16.

¹⁹ Regarding the Proposed Acquisition of United States Steel Corporation by Nippon Steel Corporation, 90 Fed. Reg. 2605, 2606 (Jan. 3, 2025) (reserving the authority of the Office of the President of the United States to issue further orders on the matter).

²⁰ See Brief of Petitioners, *supra* note 10, at 8–9.

²¹ See Bernd Debusmann Jr., *Trump Says Nippon Steel Will "Invest Heavily" in US Steel, Drop Takeover Bid*, BBC (Feb. 7, 2025), <https://www.bbc.com/news/articles/cvglzqdw20> [<https://perma.cc/3GUG-X2BK>].

²² See Ari Hawkins & Meredith Lee Hill, *Inside the GOP Pressure Campaign to Flip Trump on Nippon Steel*, POLITICO (May 30, 2025, at 05:00 ET), <https://www.politico.com/news/2025/05/30/nippon-steel-trump-00375096> [<https://perma.cc/YM67-YNQ2>].

²³ Regarding the Proposed Acquisition of United States Steel Corporation by Nippon Steel Corporation, 90 Fed. Reg. 26185, 26185 (June 13, 2025).

²⁴ *Acquisition Finalized*, *supra* note 2.

²⁵ Regarding the Proposed Acquisition of United States Steel Corporation by Nippon Steel Corporation, 90 Fed. Reg. at 26186. Section 721 imposes confidentiality requirements, see 50 U.S.C. § 4565(c), so the agreement has not been made public. But Nippon Steel has disclosed key provisions. See *Acquisition Finalized*, *supra* note 2.

²⁶ *Acquisition Finalized*, *supra* note 2.

²⁷ *Id.*

²⁸ Danzman, *supra* note 4.

decisions.²⁹ Most notably, the federal government can veto reductions to Nippon Steel's \$11 billion investment in U.S. Steel's operations, the relocation of U.S. Steel's headquarters, transfers of U.S. Steel jobs to other countries, acquisitions of other competing businesses, and the "closure or idling" of already-existing U.S. Steel facilities and trade.³⁰ This golden share exists in perpetuity,³¹ and these rights are enforceable.³²

Within months of the acquisition's regulatory approval, the Trump Administration exercised its new golden share rights. Despite claiming that the acquisition was necessary to keep its plants open,³³ U.S. Steel announced in September 2025 it would close its Granite City, Illinois, steelworks — eight hundred employees would soon be out of work.³⁴ But the Trump Administration intervened, exercising its right to veto such plant closures.³⁵ As of publication, U.S. Steel has abided by this veto.³⁶

The U.S. Steel golden share stands on solid legal ground and asserts a welcome new tool for advancing American economic and national security. There are multiple vectors for challenging Section 721 actions like the golden share. But both the text of Section 721 and the D.C. Circuit's opinion in *Ralls Corp. v. CFIUS*³⁷ — the only binding decision addressing the legal boundaries of Section 721³⁸ — suggest such challenges would likely fail. And this may well be for the best — golden shares offer unique benefits that other government tools do not.

Generally, executive branch interventions under Section 721 — like the U.S. Steel golden share — are well insulated from judicial review. Section 721 requires that the executive branch first determine that an acquisition "threatens to impair the national security of the United

²⁹ See *Acquisition Finalized*, *supra* note 2.

³⁰ *Id.*

³¹ See Howard Lutnick (@howardlutnick), X (June 14, 2025, at 12:28 ET), <https://x.com/howardlutnick/status/1933924525265043774> [<https://perma.cc/8JTS-8WXT>] (detailing the terms of the golden share).

³² See 50 U.S.C. § 4565(b)(6)(D). But see Danzman, *supra* note 4 (arguing "[t]he enforcement options of the US government are relatively weak").

³³ See Goodwin, *supra* note 11.

³⁴ See *Report: Trump Uses "Golden Share" to Stop U.S. Steel Plant Closure in Illinois*, PITT. POST-GAZETTE (Sep. 20, 2025, at 12:20 ET) [hereinafter PITT. POST-GAZETTE], <https://www.post-gazette.com/business/powersource/2025/09/20/nippon-us-steel-trump-golden-share/stories/202509200054> [<https://perma.cc/6C2D-UW3N>].

³⁵ See *id.*; SQUAWK ON THE STREET, (CNBC television broadcast, aired Sep. 11, 2025), *re-published as Watch CNBC's Full Interview with U.S. Commerce Secretary Howard Lutnick*, CNBC, at 26:12 (Sep. 11, 2025, at 11:24 ET), <https://www.cnbc.com/video/2025/09/11/watch-cnbc-full-interview-with-u-s-commerce-secretary-howard-lutnick.html> [<https://perma.cc/UA6M-YDVQ>] (describing the practical mechanics of the government's veto in this instance).

³⁶ PITT. POST-GAZETTE, *supra* note 34.

³⁷ 758 F.3d 296 (D.C. Cir. 2014).

³⁸ See *Ralls and U.S. Government Settle Only CFIUS Suit in History*, STEPTOE (Oct. 14, 2015), <https://www.stepto.com/news-publications/international-compliance-blog/ralls-and-us-government-settle-only-cfius-suit-in-history.html> [<https://perma.cc/XNH2-7BN9>].

States” before the government can intervene.³⁹ But this is a low bar — the President can shape what counts as a threat to national security,⁴⁰ and Section 721 expressly makes his finding of a threat judicially unreviewable.⁴¹ The *Ralls* court implicitly affirmed this understanding in dicta, characterizing these findings as political questions “for which the Judiciary has neither aptitude, facilities nor responsibility.”⁴² Thus, under Section 721, the executive branch appears free to intervene without meaningful second-guessing from courts.⁴³

Section 721 does not, however, preclude judicial review of the terms of CFIUS national security agreements⁴⁴ — though it leaves little room for challenging them. The executive branch may “negotiate, enter into or impose, and enforce *any* agreement or condition.”⁴⁵ Still, the agreement must also “resolve[] the national security concerns posed by the [acquisition].”⁴⁶ But, given that the executive branch gets to define the national security concern courts would use to evaluate the validity of any CFIUS agreement,⁴⁷ this requirement poses little obstacle. And because the executive branch’s CFIUS authority comes from an explicit statutory delegation, its “authority [to impose any remedy] is at its maximum.”⁴⁸

CFIUS national security agreements can still be challenged on constitutional grounds. In *Ralls*, the court found no “clear and convincing” evidence that Congress intended to preclude constitutional challenges to CFIUS actions.⁴⁹ Accordingly, the terms of CFIUS agreements may be struck down if they violate a constitutional right.⁵⁰ However, the terms of the U.S. Steel golden share do not appear to implicate either of the

³⁹ See 50 U.S.C. § 4565(b)(2)(B)(i)(I), (d)(1).

⁴⁰ See *id.* § 4565(f) (identifying factors the executive branch may consider when determining whether there is a threat to national security, including “[any] other factors as the President . . . may determine to be appropriate”).

⁴¹ See *id.* § 4565(e)(1) (“[T]he findings of the President . . . shall not be subject to judicial review.”); cf. H.R. REP. NO. 110-24, pt. 1, at 15 (2007) (Conf. Rep.) (“The Committee expects, however, that such determinations will be objective . . .”).

⁴² See *Ralls*, 758 F.3d at 314 (quoting *People’s Mojahedin Org. of Iran v. U.S. Dep’t of State*, 182 F.3d 17, 23 (D.C. Cir. 1999)).

⁴³ But the *Ralls* court rejected the government’s argument that all presidential actions under 50 U.S.C. § 4565 are unreviewable. See *id.* at 306.

⁴⁴ Contrast 50 U.S.C. § 4565(e)(1) (exempting the President’s actions from judicial review), *with id.* § 4565(l)(3) (providing no such exemption for national security agreements fashioned by the Committee).

⁴⁵ 50 U.S.C. § 4565(l)(3)(A)(i) (emphasis added).

⁴⁶ *Id.* § 4565(l)(3)(C) (providing the agreement must “(i) be effective; (ii) allow for compliance . . . and (iii) enable effective monitoring of compliance”).

⁴⁷ See *id.* § 4565(b)(2)(B)(i)(I), (d)(1).

⁴⁸ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

⁴⁹ See *Ralls Corp. v. CFIUS*, 758 F.3d 296, 308–12 (D.C. Cir. 2014) (considering both Section 721’s text and legislative history in applying the clear and convincing standard).

⁵⁰ The *Ralls* court declared that procedural due process challenges to CFIUS actions are permissible but failed to assert the same for substantive constitutional challenges. *Id.* at 311. A narrow reading of *Ralls* could rule out all substantive constitutional challenges to CFIUS actions, but this question is unsettled.

two most proximate constitutional issues: unconstitutional conditions and procedural due process.⁵¹

First, in the case of the U.S. Steel golden share, its terms do not appear to impose any conditions that violate U.S. Steel's constitutional rights.⁵² The Court has long acknowledged that various constitutional rights extend to corporations.⁵³ But none of the terms of the U.S. Steel golden share appear to implicate any substantive constitutional right that the Court has extended to corporations.⁵⁴ Accordingly, while an unconstitutional condition could make a golden share vulnerable to challenge, the U.S. Steel golden share appears free from this concern.

Second, the process by which the Trump Administration acquired the golden share appears to have complied with procedural due process. In *Ralls*, the court held that due process requires “at the least, that an affected party be informed of the official action, be given access to the unclassified evidence on which the official actor relied and be afforded an opportunity to rebut that evidence.”⁵⁵ CFIUS proceedings are largely confidential,⁵⁶ but nothing suggests procedural due process was not satisfied here.⁵⁷ And, even if it were not satisfied, *Ralls* suggests such

⁵¹ Other unresolved CFIUS cases advanced additional arguments challenging the legality of various CFIUS agreements. See, e.g., Complaint for Injunctive and Declaratory Relief at 4–5, *TikTok Inc. v. Trump*, 490 F. Supp. 3d 73 (D.D.C. 2020) (No. 20-cv-2658) (arguing, inter alia, a CFIUS action was ultra vires and violated the Takings Clause of the Fifth Amendment). It is not clear those challenges would be appropriate here.

⁵² For a discussion of why such conditions are impermissible, see Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1413, 1415–21 (1989) (“The doctrine of unconstitutional conditions holds that government may not grant a benefit on the condition that the beneficiary surrender a constitutional right” *Id.* at 1415.). It is possible that other parties besides U.S. Steel, such as its officers or employees, may have standing to bring suit should a provision of the golden share violate their constitutional rights, but such challenges are beyond the scope of this analysis.

⁵³ See Brandon L. Garrett, *The Constitutional Rights of Corporations in the United States*, in UNDERSTANDING THE COMPANY: CORPORATE GOVERNANCE AND THEORY 167, 167–69 (Barnali Choudhury & Martin Petrin eds., 2017) (identifying constitutional rights under which corporations may litigate, including: “the First Amendment, Fourth Amendment, Fifth Amendment, Sixth Amendment, . . . Seventh Amendment, the Due Process Clauses of the Fifth and Fourteenth Amendments, and the Equal Protection Clause of the Fourteenth Amendment,” *id.* at 167). But the doctrine is evolving in a more corporation-friendly direction. See Elizabeth Pollman, *The Supreme Court and the Pro-Business Paradox*, 135 HARV. L. REV. 220, 228 (2021) (“The Roberts Court has recognized the most expansive scope of corporate constitutional rights in U.S. history.”).

⁵⁴ See Garrett, *supra* note 53, at 167 (identifying corporate constitutional rights recognized by the Court).

⁵⁵ *Ralls*, 758 F.3d at 319.

⁵⁶ See 50 U.S.C. § 4565(c).

⁵⁷ U.S. Steel and Nippon Steel, however, did accuse the Biden Administration — but not the Trump Administration — of violating its procedural due process rights. See Brief of Petitioners, *supra* note 10, at 1–3 (arguing President Biden decided to block the acquisition before any CFIUS investigation took place, thus violating procedural due process).

deficiencies can be cured through further proceedings.⁵⁸ In summary, despite there being multiple vectors for challenging it, this golden share appears to stand on solid legal ground.

Separately, this episode has prompted criticism of golden shares on policy grounds. Commentators have claimed the U.S. Steel golden share represents a worrying exercise of government power.⁵⁹ But these critiques are misplaced. Golden shares follow from the government's long-accepted history of market intervention,⁶⁰ particularly in the realm of national security.⁶¹ Like other CFIUS national security agreements, they can be obtained only with the consent of the regulated business.⁶² And many of the same terms imposed by the U.S. Steel golden share have also been terms of other CFIUS agreements over the years.⁶³ In other words, the terms of the U.S. Steel golden share are not that different from past accepted CFIUS practices.

Golden shares do, however, offer distinct benefits that traditional CFIUS agreements do not. First, they establish something akin to a principal-agent relationship between the government and the regulated

⁵⁸ See *Ralls*, 758 F.3d at 325. Such further proceedings may result in a different outcome, but this is far from certain. After all, the executive branch retains its judicially unreviewable authority to assert the existence of a threat to national security no matter how compellingly a party rebuts the evidence the government uses to substantiate said finding. See *id.* at 314 (recognizing parties have a right to rebut the government's evidence, but that the government's finding of a threat is nonetheless unreviewable).

⁵⁹ Some suggest the deal is an unprecedented exercise of government power. See, e.g., Stephen Heifetz, *The Nippon-U. S. Steel Deal, a Golden Share, and Magic Beans*, COUNCIL ON FOREIGN RELS. (July 16, 2025, at 15:11 ET), <https://www.cfr.org/articles/nippon-u-s-steel-deal-golden-share-and-magic-beans> [<https://perma.cc/L2BQ-EQKU>]. Others consider it a step toward fascism. See, e.g., Andy Kessler, Opinion, *Trump's Golden-Share Mistake*, WALL ST. J. (June 22, 2025, at 15:31 ET), <https://www.wsj.com/opinion/trumps-golden-share-mistake-98181f2d> [<https://perma.cc/4KTJ-Q2JU>]. Some are worried about the potential for misuse and abuse. See, e.g., Scott Lincicome, *Yes, Trump Just Nationalized U.S. Steel*, THE DISPATCH (June 18, 2025), <https://thedispatch.com/newsletter/capitolism/trump-administration-nationalizes-us-steel-nippon> [<https://perma.cc/K55B-BLT5>]. And still others are concerned it may deter foreign investment. See, e.g., Stephen Bainbridge, *Trump's Golden Share in US Steel*, BAINBRIDGE ON CORPS. (June 17, 2025), <https://www.bainbridgeoncorporations.com/trumps-golden-share-in-us-steel> [<https://perma.cc/J6KM-WLFN>].

⁶⁰ See Jon D. Michaels, Essay, *We the Shareholders: Government Market Participation in the Postliberal U.S. Political Economy*, 120 COLUM. L. REV. 465, 467, 469–71 (2020).

⁶¹ See, e.g., Joel Dodge, *Economic Security Is National Security: The Future of the Defense Production Act*, AM. AFFS. (2025), <https://americanaffairsjournal.org/2025/05/economic-security-is-national-security-the-future-of-the-defense-production-act> [<https://perma.cc/95HA-LKCV>].

⁶² See Peter E. Harrell, *The Legal Bases for Government Stakes in Private Firms*, LAWFARE (Aug. 28, 2025, at 08:00 ET), <https://www.lawfaremedia.org/article/the-legal-bases-for-government-stakes-in-private-firms> [<https://perma.cc/8892-9ZQ3>]. Regulated businesses always retain the right to abandon their proposed transaction to avoid governmentally imposed conditions. See *id.*

⁶³ See Kristen E. Eichensehr, Essay, *CFIUS Preemption*, 13 HARV. NAT'L SEC. J. 1, 6–7 (2022) (acknowledging CFIUS's past practices of requiring corporations to fill certain roles with U.S. citizens, conduct certain activities in the United States, and permit the government to appoint certain corporate officers).

business.⁶⁴ This helps mitigate the problem that arises when the government and a company have different priorities. Normally, the government interfaces with private enterprise as a customer or third-party regulator, but a golden share places certain obligations on the corporation to act loyally in the interest of the government-as-stockholder. By exercising its veto, the government requires that a business put the national interest before its own. Second, golden shares preserve optionality.⁶⁵ Traditional CFIUS agreements typically impose bright-line restrictions on what a company can and cannot do.⁶⁶ In contrast, golden shares create an ongoing dialogue between the federal government and the regulated business, providing a chance for the regulated business to convince the federal government *not* to exercise its veto prerogative on a particular action. In short, golden shares offer regulated parties more flexibility in exchange for greater interdependence, enabling greater responsiveness to ever-evolving national security and market realities than traditional CFIUS agreements may otherwise allow.

Even so, golden shares may only rarely be the right solution. Greater flexibility may not be appropriate for those acquisitions that pose the most significant risks to national security.⁶⁷ If an acquisition poses too much risk, ongoing government involvement in corporate governance may not cure the national security defects. And if an acquisition poses little risk, the possibility of ongoing government involvement may deter the acquisition altogether.⁶⁸ Golden shares, then, fit somewhere in the middle. But safeguarding national security is complicated, and hard-and-fast rules regarding when to obtain new golden shares may risk being both over- and underinclusive. Until Congress puts more guardrails on the CFIUS process, the decision to acquire new golden shares will remain a case-by-case analysis in the executive branch's discretion.

The world and the threats within it are changing. Against this backdrop, the United States's tools for safeguarding its national security must change too. The U.S. Steel golden share stands on solid legal ground and asserts a welcome new tool capable of meeting this moment. The golden share ably expands the United States's toolkit for protecting American economic and national security interests. And, perhaps most importantly, it stands for the important, apolitical proposition that the United States need not rely on tools of the past when confronting the economic and national security threats of the future.

⁶⁴ Cf. Sean Gailmard, *Accountability and Principal-Agent Theory*, in THE OXFORD HANDBOOK OF PUBLIC ACCOUNTABILITY 90, 91 (Mark Bovens et al. eds., 2014) ("In principal-agent models . . . [t]he principal, for its part, can make decisions that affect the incentives of the agent to take any of its various possible actions.").

⁶⁵ See *Acquisition Finalized*, *supra* note 2.

⁶⁶ See Eichensehr, *supra* note 63, at 6–7 (detailing examples of several restrictions imposed by CFIUS national security agreements that offer no optionality or flexibility).

⁶⁷ See *id.*

⁶⁸ See Danzman, *supra* note 4.