

Nippon-US Steel Redo Under Trump Could Be A Win-Win

By **Al Barbarino**

Law360 (February 12, 2025, 6:01 PM EST) -- After President Donald Trump said he wants Japan's Nippon Steel to "invest" in U.S. Steel and not buy it outright as originally planned, experts say the steelmakers could still arrive at a win-win transaction if they are willing to go back to the drawing board.

Then-President Joe Biden blocked the original planned \$14.9 billion merger in January, prompting the steelmakers to file a lawsuit seeking a reversal of the decision and a new review from the Committee on Foreign Investment in the United States.

But Trump extended a potential new lifeline to Nippon on Friday in a press conference featuring Japanese Prime Minister Shigeru Ishiba. The two world leaders seemed to agree that Nippon had a future as an investor in U.S. Steel instead of as a full owner.

"I didn't want it purchased, but investment I love," Trump said, according to a transcript of the conference. "And they're going to do a big investment subject to getting the deal done."

If both Nippon and U.S. Steel are interested in restructuring the deal, they will need to reconvene to hash out new terms — and what would likely be a minority stake for Nippon, experts told Law360.

While Nippon could strike some of the original concessions it made when it tried to win approval for the original, controversial plan, a new deal could still ultimately be beneficial for all parties involved, including Trump, experts said.

Even a minority stake could give Nippon significant say over the governance of U.S. Steel and a piece of its future upside — federal regulations state that a so-called dominant minority can allow for rights tied to board representation, proxy voting, contractual arrangements and more — while Trump would be able to take credit for renegotiating a deal that his predecessor completely shut down, attorneys explained.

Meanwhile, U.S. Steel would get access to a much-needed capital infusion and superior manufacturing technology, while Nippon would gain a stake in an American steel producer buoyed by Trump's new 25% steel tariffs, said Arman Kuyumjian, a partner at Baker Botts LLP and co-head of the firm's cross-border mergers and acquisitions practice.

"The tariffs could increase the demand for U.S. steel, potentially allowing the U.S. manufacturer to sell its steel for more as compared to foreign producers and capture that extra margin," he said. "So because

of that, it may make the company generally more valuable."

Nippon originally agreed to acquire Pittsburgh-based U.S. Steel in an all-cash transaction worth \$55 per share, but it's hard to say where the new price tag will land, Kuyumjian said. On one hand, the tariffs would make American steel more valuable on the world stage, potentially demanding a higher premium for the company. But if Nippon is forced into a minority ownership structure it may not be willing to pay as much because of the loss of a so-called control premium, he said.

But when compared to no deal at all, any new deal is likely to be viewed as being in the best interest of the U.S., given the significant cash infusion and investment in the business it would involve, Kuyumjian said.

In response to request for comment on Trump and Ishiba's comments that the deal will become an "investment" and not a sale, a U.S. Steel spokesperson told Law360 in a statement Tuesday that the company "applauds President Trump's bold leadership on tariffs to defend American steelmaking."

"Tariffs paired with innovative technology and investment will have U.S. Steel poised to lead a new Golden Age of American steelmaking," the statement said. "America must aggressively confront the global threat posed by Chinese dominance in steel production."

Nippon did not immediately respond to a request for comment Wednesday.

According to a Reuters report, Japan's Chief Cabinet Secretary Yoshimasa Hayashi said Monday that Nippon Steel "is considering a bold proposal that is completely different from anything it has done in the past," even though Nippon itself hasn't indicated that it plans to revise its original proposal.

The original December 2023 deal would have seen Nippon pay \$14.9 billion to acquire the storied U.S. steelmaker and invest billions of additional funds into its facilities, along with a long list of additional agreements and concessions made to appease the Biden administration.

While Trump had repeatedly stated that he too would have blocked the transaction, a renegotiation of terms with Nippon became plausible in recent weeks as the president, backed by his affinity for dealmaking, appeared more intent than ever before on shaking up the status quo.

As Ishiba spoke at the conference Friday of broader plans to "elevate Japan's investment in the United States to an unprecedented amount of \$1 trillion," he echoed Trump's pivot in the plans for U.S. Steel.

"Investment is mutually beneficial, so be it with U.S. Steel, as Mr. President says, it is not acquisition, it is investment," according to the transcript. "So, the Japanese technology will be provided, and the better-quality products will be manufactured in the United States and U.S. Steel will make products which will contribute not only to the United States and Japan, but also to the whole world."

In the January lawsuit, Nippon and U.S. Steel claimed that Biden and CFIUS had violated the steelmakers' constitutional due process and statutory rights. They claimed the government review was a politically motivated "sham process," because Biden "made his decision to block the merger before ever considering any possible national security risks."

If Nippon ends up renegotiating and restructuring the deal, the company may wind up getting a new CFIUS review that could address some of the alleged defects in the previous review that are being

challenged in the litigation, said David Plotinsky, a Morgan Lewis & Bockius LLP partner and the former acting chief of the U.S. Department of Justice's Foreign Investment Review Section.

"A restructured deal is a different animal, and so CFIUS would have jurisdiction and would have to look at it separate and apart from any further White House involvement," Plotinsky said.

If Nippon decides to move forward and seeks to obtain certain investor rights that give it a "dominant minority" of U.S. Steel under CFIUS's fairly broad definition of "control," the committee would gain jurisdiction over the new deal, in turn giving the White House continued influence over the deal, Plotinsky said.

Nippon had made a number of promises in an attempt to appease a range of bipartisan critics of the original plan. However, "If Nippon needs to sacrifice complete ownership, it may want to significantly alter some of the terms from the original deal, which could include potentially pulling back on labor and commercial aspects of the original Nippon commitments," Plotinsky said.

Among other commitments, the company had pledged to retain U.S. representation on U.S. Steel's board of directors, keep U.S. Steel headquarters in Pittsburgh, invest billions of dollars into U.S. Steel's existing facilities and retain existing jobs and follow U.S. trade regulations.

In addition, Kuyumjian said, if the new steel tariffs drive a potentially higher price for Nippon, the company could consider requesting protections against future changes in or even the elimination of the tariffs, which might include post-closing adjustments to the consideration.

In deciding whether a minority investment is still good enough, Nippon will have to carefully consider minority protections and other shareholder arrangements that would be negotiated, including board nomination rights, he added.

"If Nippon chooses to renegotiate, this would be good for them — just not as good as it would have been if they had got to buy the whole thing," Kuyumjian said.

--Editing by Alanna Weissman and Emily Kokoll.