Corporate National Identity

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Abstract

What makes a corporation American, Italian, Chinese, or any other nationality – and who gets to decide? In the contemporary global economy, corporate national identity (CNI) can no longer be understood as a fixed legal attribute. Rather, it emerges from the interaction of four interrelated facets – legal, economic, (geo) political, and symbolic – whose relative salience varies across contexts and over time. Classical legal tests such as the jurisdiction of incorporation, real seat doctrine, and corporate control remain important, but they are increasingly insufficient. In a world of weaponized interdependence, data location and access, supply-chain geography, state influence over private firms, and efforts to shape public perceptions of corporate identity now play central roles in determining how firms are classified and treated. Two nascent tests are emerging across these facets: what might be called a "data seat" doctrine that treats data location and access as a marker of CNI, and a government influence test that looks beyond voting equity to assess the degree of state leverage over corporate decision-making. Drawing on case studies involving TikTok, Shein, Pirelli, and Nippon Steel's acquisition of U.S. Steel, the article illustrates how CNI is increasingly contested and actively reconstructed. The result is a potential shift away from a binary world in which cross-border transactions are either permitted or blocked, toward a more intrusive model in which states restructure governance arrangements midstream in the name of national security, while firms seek to strategically shape their identities to navigate this new reality. The article explores new questions CNI contestation and engineering raise for corporate law, investor protection, and cross-border investment.

Keywords: corporate national identity, corporate governance, nationalism, geopolitics, data

JEL Classifications: F23, F52, G38, K22, K33

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Drawing on case studies involving TikTok, Shein, Pirelli, and Nippon Steel's acquisition of U.S. Steel, the article illustrates how CNI is increasingly contested and actively reconstructed. The result is a potential shift away from a binary world in which cross-border transactions are either permitted or blocked, toward a more intrusive model in which states restructure governance arrangements midstream in the name of national security, while firms seek to strategically shape their identities to navigate this new reality. The article explores new questions CNI contestation and engineering raise for corporate law, investor protection, and cross-border investment.

Introduction

Who determines the national identity of a corporation, and on what basis? Is it the lawyers and founders who select the jurisdiction of incorporation? Top management who decides where the administrative headquarters are located? Governments that intervene in a firm's governance on national security grounds? Does the identity of the corporation's controlling shareholder determine the outcome? The location of data generated by the business, or the government that could access this data? Or is corporate national identity the product of a firm's own efforts to shape public perception?

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In today's fractured global economy, no single answer suffices. Indeed, in any given case, the answer could be "any or all of the above." Consider the following examples[1]:

(1) In the United States, legislation enacted in 2024 declared that TikTok is "controlled by a foreign adversary" (namely, China) and must either divest its platform or be banned from the U.S. market. Yet TikTok was founded by a Chinese private citizen who retains voting control over the Cayman Islands parent company, its relevant operating companies are incorporated in the Cayman Islands and the United States, its data is stored locally, and 60% of its shares are owned by globally active institutional investors. In upholding a constitutional challenge to the law, the U.S. Supreme Court focused not on TikTok's jurisdiction of incorporation, equity ownership or corporate control, but on the risk that data generated by the platform could be accessed by Chinese authorities or that content could be manipulated by Beijing to influence American users of the platform. In January 2026, TikTok's U.S. operations were transferred to a new joint venture controlled by U.S. investors, with an Abu Dhabi sovereign wealth fund among the minority investors. ByteDance retains 19.9% of the equity and continues to license the recommendation algorithm that the statute was designed to sever from its control.

(2) In 2019, Nanjing-based fast fashion startup Shein reincorporated under a Cayman parent and relocated its headquarters and intellectual property to Singapore. Its founder became a Singapore citizen, and the company localized data by region. Formally, its corporate identity shifted offshore, yet its production network remained anchored in a difficult-to-replace network of Guangzhou garment factories and a supply chain extending to Xinjiang. Western politicians and advocacy groups associated Shein with its Chinese supply chain, where allegations of human rights abuses are prevalent, helping to defeat the company's attempts to IPO in New York and London. In India, the Shein brand was banned, but later "re-nationalized" through a partnership with a company controlled by India's wealthiest person. Beijing has since pressed its own claim, with Shein's founder publicly affirming the company's Chinese roots before provincial Party leaders in early 2026. Shein's legal and symbolic engineering to reorient its identity was outweighed by its production geography.

(3) In Italy, a controlling equity investment by a Chinese state-owned enterprise in tire maker Pirelli was initially welcomed as a pathway to the adoption of advanced production methods and entree to the Chinese market. Later, amidst concerns that Pirelli's tires, which contain sensors to collect data, would be blocked from the U.S. market, the Italian government invoked its "golden power" to strip Sinochem (corporate successor to the original Chinese investor) of its governance rights in Pirelli. This action effectively shifted control from its largest shareholder – a Chinese state-owned enterprise – to an Italian shareholder who until recently had served as the company's CEO. Pirelli's Italian identity was "restored," not by a change in equity ownership, but by administrative fiat.

(4) After political opposition channeled through the U.S. national security (CFIUS) review process threatened to derail Nippon Steel's proposed acquisition of U.S. Steel, President Donald Trump approved the deal subject to the creation of a "golden share" that grants the

[1] *See infra* Part II for detailed discussions of the four case studies.

U.S. government – during his tenure, President Trump personally – veto rights over key decisions. The arrangement embedded extraordinary governance rights directly into U.S. Steel's corporate charter, granting the government board-level veto and appointment powers. Thus, a private acquisition was transformed – ostensibly on national security grounds (although Japan is a U.S. ally) – into a public display of sovereign protection via contract. U.S. Steel's CEO recently declared that the company is "absolutely" still American and has a "fiduciary duty" to U.S. national security.[2]

Read together, these illustrations reveal that corporate national identity (CNI) now operates as a fluid condition rather than a status fixed by any single test. Traditional legal signifiers of CNI – jurisdiction of incorporation, real seat, or corporate control via equity ownership – are increasingly subject to challenge. Governments seek to maintain influence over corporate nationality through national security reviews and the invocation of golden powers. Economic imperatives influence the location of corporate supply chains and data storage in specific countries. Civil society actors associate firms with the human rights records of the countries in which they produce their products. Founders seek to project cosmopolitan corporate identities or engage in "Singapore washing" to secure market access. In short, CNI, once perceived as a relatively technical question contemplating only a single answer,[3] has become a site of intense contestation.

This article develops a framework for understanding CNI today. The classical corporate law tests remain central for ordering internal governance, but they are increasingly insufficient to understand how CNI is constructed. We argue that CNI is best understood as a product of four interrelated facets: legal, economic, (geo)political,[4] and symbolic. As with natural personal identity, CNI is not unitary or monolithic. The facets of CNI are fluid, overlapping, and highly context dependent. CNI can be shaped by symbolism and strategies to influence public perception. Jurisdiction of incorporation or the real seat of management control may be trumped by corporate control – a test that has a long historical pedigree in the context of war and economic nationalism.[5] But "control" is being redefined beyond equity ownership through what amounts to a new government-influence test that captures the distinct mechanisms by which states exercise leverage over private firms. In parallel, what might be called a "data seat" doctrine is emerging, under which data location and access have become a CNI marker in its own right.

The fluidity and contestability of CNI raise significant implications we explore in this article. These include novel legal questions such as the availability of remedies when CNI is redefined in ways harmful to firm value or to specific shareholders' investments. More far-reaching are questions about how the malleability of CNI will affect cross-border transactions and investments. As our case studies illustrate, the interrelated facets of "nationality" increasingly require companies to reconfigure firm-level corporate governance and operational decisions midstream to meet (geo)political imperatives. This represents a departure from the traditional

[2] Tony Dokoupil, *CEO David Burritt Says U.S. Steel is "Absolutely" Still an American Company after Nippon Steel Acquisition*, CBS Evening News, Jan. 19, 2026.
[3] *See, e.g.*, Geoffrey Jones, *The Rise of Corporate Nationality*, HARV. BUS. REV. (Oct. 2006) (focusing on the real seat doctrine, the author concludes that as of the early 21st century "the nationality of a firm is rarely ambiguous"). Of course, corporate nationality has long been a gameable concept, particularly with respect to taxation. But it has taken on more dimensions and broader significance for the reasons explained in Part I and throughout the article.
[4] Since, as we will explore *infra*, contestation over national identity can also involve rent seeking in the domestic political economy, we will refer to the facet as (geo)political.
[5] *See infra* notes 23-28 and accompanying text.

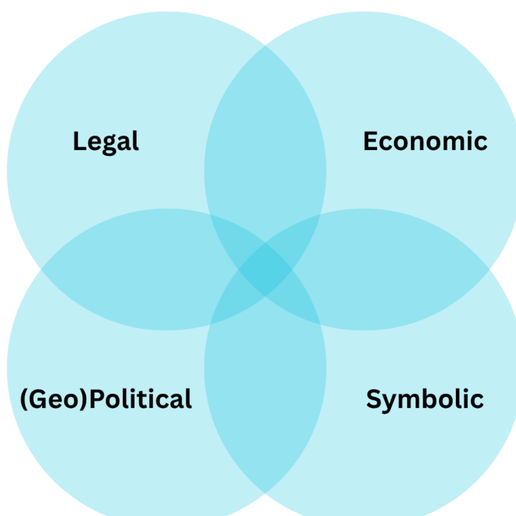
binary approach, in which foreign acquisitions or investments are either permitted or blocked.[6] Drastic midstream reconfigurations of corporate governance are thus an unexplored feature of the current geoeconomic environment, in which states exploit the vulnerabilities of economic networks for national advantage – commonly referred to today as "weaponized interdependence."[7] But what are the long-term consequences for global investment if corporate law's standard tests of nationality are increasingly overridden by ad hoc state action, or regularly thrown into question by a shifting mélange of factors?

The article proceeds in four parts. Part I sets out our four-facet framework for understanding CNI today. Part II illustrates the utility of the framework and its internal dynamics through the case studies introduced above. Part III explores the implications of contestations over CNI for corporate law, governance and policy. Part IV concludes.

I. Facets of CNI

In this section, we explain how CNI is best understood as a product of four interrelated facets: legal, economic, (geo)political, and symbolic. We disaggregate these components of CNI for analytical traction. But they are fluid, overlapping, and continuously evolving – imagine a Venn diagram with partially overlapping and shifting boundaries as shown in Figure 1. We examine each facet in turn.

Figure 1
Facets of Corporate National Identity



[6] Mitigation agreements are often used by the U.S. and other governments to qualify foreign investment approval. But the current midstream governance adjustments discussed here are far more intrusive than those typically required in a mitigation agreement (e.g., divestiture of a line of business).
[7] *See* Henry Farrell & Abraham L. Newman, *Weaponized Interdependence: How Global Economic Networks Shape State Coercion*, 44 INT'L SECURITY 42 (2019).

A. Legal Facet

Legal systems have long employed three different tests to ascribe nationality to corporations for a litany of legal consequences, including the governing law over the corporation's internal affairs, jurisdiction over the corporation, taxation, diplomatic protection, coverage under international investment treaties, and constitutional rights, among others. These tests are (1) the jurisdiction of incorporation, (2) the real seat doctrine, and (3) corporate control through voting equity.[8]

Just as natural persons might hold different nationalities, corporations are not limited to a single CNI from a legal perspective. In fact, corporations can not only hold multiple CNIs, but CNI is arguably far more fragmented than the national identity of individuals. Legal systems often deploy different tests of CNI for different purposes.

1. *Jurisdiction of incorporation*

The jurisdiction of incorporation is the quintessential legal test for attributing CNI. It operates through a bright-line rule, which has the advantage of offering legal certainty and choice, giving rise to well-known dynamics of regulatory competition where parties are free to select their jurisdiction of incorporation. Yet this very quality makes it a thin legal test subject to regulatory arbitrage, unmoored from broader economic and geopolitical dimensions. Consequently, it is often complemented, or even replaced, by other criteria in various contexts, even as it remains the baseline legal framework and the starting point for governance ordering.

2. *Real seat doctrine*

Another popular test is the real seat doctrine, which favors one dimension of economic reality over legal form. In its usual formulation, the real seat doctrine links corporations to states based on the location of the firm's principal place of business, usually denoted by the firm's headquarters or "nerve center." In contrast to the United States and the United Kingdom, which favor the jurisdiction of incorporation, many continental European countries have traditionally resorted to this test for the application of company law.[9] Yet both common law and civil law jurisdictions continue to rely on this test for different purposes.

While the European Court of Justice restricted the scope of the real seat doctrine as violating the freedom of establishment of corporations within the EU, this test continues to have bite in other areas. In 2018, Germany's Federal Constitutional Court rejected the constitutional complaints of the German office of Jones Day on the grounds that the firm was both constituted

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[8] *See*, *e.g.*, James Crawford, *Nationality of Corporations and Assets*, *in* BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 512 (9th ed., 2019) ("Nationality [of corporations] must be derived either from the fact of incorporation, that is, creation as a legal person, within a given system of domestic law, or from links to a particular state such as the centre of administration (*siège social*) or the nationality of the natural or legal persons who own or control the company."); Geoffrey G. Jones, *Nationality and Multinationals in Historical Perspective* (Harvard Business School Working Paper 06-542, 2005), https://www.hbs.edu/ris/Publication%20Files/06-052.pdf, at 8 (describing the state of incorporation as "the main test of nationality" in the Anglo-Saxon world, the company's seat (*siège social*) as the test traditionally adopted in Continental Europe, and "control" as a criterion employed in "wars and geopolitically tense situations.").

[9] CARSTEN GERNER-BEUERLE & MICHAEL SCHILLIG, COMPARATIVE COMPANY LAW 116 (2019) ("Prevalent in continental European jurisdictions, the real seat theory stipulates that the applicable company law is the law of the state where the company's central administration is situated, that is, where the principal management decisions are being made and implement on a day-to-day basis.").

under Ohio law and had its real seat in the United States, which disqualified it as a domestic entity entitled to constitutional protection.[10] Similarly, the principal place of business – or a firm's nerve center – continues to be a central test of corporate citizenship for jurisdiction purposes, together with the state of incorporation, in the United States.[11]

Changing the location of a firm's management headquarters is more costly than reincorporating elsewhere, but often not prohibitively so. Firms relocate their management centers across U.S. states and internationally – as exemplified by various Chinese firms with management headquarters in Singapore – which, as discussed below, can be explained both in terms of legal arbitrage and with reference to (geo)political and symbolic factors. China has begun to push back. Chinese regulators are reportedly demanding that domestic companies listing shares in Hong Kong be incorporated in Hong Kong or on the mainland – a requirement that would foreclose the Cayman Islands holding structures widely used by Chinese technology firms to attract global investors.[12] The demand illustrates that even in a period of heightened geopolitical contestation, the legal facet of CNI retains independent force.

While the jurisdiction of incorporation is a "crystal" with hard edges that leaves little room for interpretation,[13] the definition of the real seat or principal place of business is far less clear cut and is shifting and contested. Prior to the U.S. Supreme Court ruling in *Hertz Corp. v. Friend*,[14] which defined the principal place of business in terms of management's headquarters, several courts focused on where the company's various business activities in a state – including employee headcount and operations – were significantly larger than in the next-ranking state. Moreover, in the international insolvency context, courts have looked into a variety of factors, including operations and employees, to determine the related but distinct test for a company's "center of main interest" (COMI).[15] However, these thicker, multi-factor criteria for identifying the real seat

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[10] Federal Constitutional Court, *Constitutional complaints relating to the search of a law firm in connection with the "diesel emissions scandal" unsuccessful*, Press Release No. 57/2018, July 6, 2018, https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2018/bvg18-057.html.

[11] 28 U. S. C. §1332(c)(1) (providing, for purposes of federal diversity jurisdiction, that "a corporation shall be deemed to be a citizen of any State by which it has been incorporated *and of the State where it has its principal place of business.*"). *See* Hertz Corp. v. Friend, 559 U.S. 77 (2010) (describing the principal place of business as "the place where the corporation's high-level officers direct, control, and coordinate the corporation's activities," a "nerve center" that "will typically be found at a corporation's headquarters.").

[12] *ByteDance is swallowing the internet – in China and beyond*, ECONOMIST (Mar. 23, 2026), https://www.economist.com/business/2026/03/23/bytedance-is-swallowing-the-internet-in-china-and-beyond ("The government does not want China's technology to flow freely overseas, and would prefer jobs and profits remain at home. That could trip up ByteDance's plans for a public listing. The only venue that could satisfy both China's government and the company's foreign investors, which include a number of American venture-capital firms, is Hong Kong").

[13] *See* Carol Rose, *Crystals and Mud in Property Law*, 40 STAN. L. REV. 577 (1987-1988) (using the expression "crystals" to denote hard-edged rules).

[14] Hertz Corp. v. Friend, 559 U.S. 77 (2010).

[15] For instance, the U.K. was deemed to be a firm's COMI even though the company's sole director was American and lived in the U.S. *See*, *e.g.*, Re Videology Ltd [2018] EWHC 2186 (Ch). The European Union's insolvency regime has adopted a closely related approach. The Court of Justice's leading interpretation of the COMI test held that the presumption favoring the registered office could be rebutted only by factors "both objective and ascertainable by third parties," anchoring the legal test in external perception rather than in internal control structures alone. Case C-341/04, *Eurofood IFSC Ltd.*, ECLI:EU:C:2006:281, ¶¶ 33–34 (2 May 2006). The third-party-ascertainability criterion intersects with the symbolic facet of CNI we discuss in Part I.D: the law itself recognizes that outsiders' perceptions can be legally determinative in classifying the corporation.

significantly increase the cost of adjudication and resulting uncertainty, which is why the location of management's headquarters is often preferred in numerous contexts.

Private ordering can also complicate application of the traditional legal tests in determinations of CNI. For instance, only "U.S. companies" are eligible for inclusion in the S&P 500 index, a determination with significant economic consequences.[16] Yet the concept of a U.S. company for these purposes is not determined by a single criterion, but rather by a multifactor test that includes (i) incorporation or registration, (ii) operational headquarters, and (iii) primary stock exchange listing.[17] When the country of incorporation or registration is deemed a "domicile of convenience," only the location of operational headquarters and stock exchange listings are considered.[18] If these conflict, a final determination is made by the Index Committee, which weighs a variety of additional factors including the geographic breakdown of assets and revenues, ownership information, location of officers, directors, employees, and company meetings, functional and reporting currency, company history, and investor perception.[19] As a result of this mélange of considerations, several "U.S." S&P 500 companies are incorporated outside the United States, including Accenture plc (Ireland), Carnival Corporation (Panama), Garmin Ltd. (Switzerland), and LyondellBasell Industries N.V. (Netherlands).

3. *Equity control*

Another longstanding, though less appreciated,[20] legal test for CNI is corporate control – that is, the attribution of controlling shareholders' nationality to the corporation. This is an instance of what one of us has called "veil peeking": a limited disregard of corporate separateness between the corporation and its shareholders for purposes of imputing shareholders' legal rights, duties, or characteristics to the corporation.[21] Corporate control is highly significant from an economic perspective – indeed, it is the defining factor in Oliver Hart's property rights theory of the firm.[22] It is therefore unsurprising that corporate control has long figured as a factor in determining CNI

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[16] Robin Greenwood & Marco Sammon, *The Disappearing Index Effect*, 80 J. FIN. 657(2025) (finding noticeable, yet falling, effects of index inclusion and exclusion).

[17] S&P Dow Jones Indices, *Consultation on Potential Modifications to Global Domicile Policy – Results*, Nov. 25, 2024. For https://www.spglobal.com/spdji/en/documents/indexnews/announcements/20241125-1475576/1475576_global-domicile-policy-results-20241125.pdfthe previous guidance, S&P Global, *S&P Dow Jones Indices Clarifies Domicile Language for U.S. Indices*, July 5, 2023, https://www.spglobal.com/spdji/en/documents/indexnews/announcements/20230705-1465087/1465087_prjuly2023usindicesdomicile10k.pdf.

[18] S&P Dow Jones Indices, *supra* note 17.

[19] *Id.*

[20] This test is often less appreciated among legal scholars because it is not used to determine the company law applicable to the corporation – the traditional focus of conflict-of-laws analysis. It is, however, widely used in geopolitical and nationalistic contexts and has helped shape the development of corporate law. *See* Mariana Pargendler, *The Grip of Nationalism on Corporate Law*, 95 IND. L.J. 533, 538 et seq. (2020) (hereinafter "The Grip of Nationalism") (examining the significance of control nationalism). For the relevance of corporate control in the context of the application of corporate law rules, see Mariana Pargendler, *The New Corporate Law of Corporate Groups*, 14 HARV. BUS. L. REV. 339 (2024).

[21] Mariana Pargendler, *Veil Peeking*, 169 U. PA. L. REV. 717, 731 et seq., 762 et seq. (2020) (examining the issue of attribution of shareholders' nationality to the corporation in a wide variety of contexts).

[22] Oliver Hart, Nobel Prize Lecture: Incomplete Contracts and Control (Dec. 8, 2016), https://www.nobelprize.org/uploads/2018/06/hart-lecture.pdf (mentioning legal cases in which control should define the boundaries of the firm); T. Christopher Borek, Angelo Frattarelli & Oliver Hart, *Tax Shelters or Efficient Tax Planning? A Theory of the Firm Perspective on the Economic Substance Doctrine*, 57 J. L. & ECON. 975 (2014) (arguing that firm boundaries are defined by control, not by separate incorporations).

in nationalistic and geopolitically sensitive contexts, even in jurisdictions, such as the U.K., which generally favor the jurisdiction of incorporation for CNI.

Some early cases relying on control for purposes of CNI arose out of statutory interpretation of wartime and national industry statutes in which the use of the state of incorporation appeared dysfunctional. In the paradigmatic case of *Daimler Co. v. Continental Tyre and Rubber Co. (Great Britain)*, a key question before the U.K. House of Lords was whether a company incorporated in England, but whose directors and nearly all shareholders were German citizens and residents, qualified as an enemy under statutory prohibitions on trading with the enemy enacted during World War I.[23] Although U.K. law generally attributed CNI based on incorporation, the House of Lords concluded that, for purposes of the statute, the analogue to voluntary residence in enemy territory was corporate control.[24] In the same vein, the British sequestered British Petroleum Company Ltd. – which, despite its name, was controlled by Deutsche Bank – as enemy property soon after the war's outbreak.[25]

U.K. courts have similarly determined CNI based on the British nationality of controlling shareholders, rather than incorporation, for economic or cultural protectionism. Under the Cinematograph Films Acts of 1938, which extended quota benefits to "a British subject or a British company," the court disqualified a U.K. subsidiary that was 90% U.S.-owned and lacked significant assets or employees[26] – showing that CNI tests are context-specific, not "one size fits all." Over time, control tests based on specific equity or voting thresholds became a feature of foreign ownership restrictions in sensitive industries around the world through statutes or even constitutional provisions. Yet the control test has not prevailed in all geopolitically sensitive contexts. In the famous international law case of *Barcelona Traction*, the International Court of Justice denied Belgium standing to seek reparation for a Canadian-incorporated company controlled by Belgian nationals, instead insisting on the jurisdiction of incorporation as the relevant legal test for CNI.[27]

Finally, the control test has been used not only to attribute the nationality of the controller to the corporation, but also the enemy character of the controller's nation state to the corporation in times of war, even when the relevant shareholder is a private citizen rather than a state actor.[28] The concept of "adversarial control" is now reappearing, although, as we describe below, traditional control tests based on equity ownership and voting rights are no longer the only possible hook. The control test can also be arbitraged through changes in the controller's own nationality

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[23] [1916] 2 AC 307 (HL) (appeal taken from Eng.).

[24] *Id.* at 340. The court thus refused to endorse "the paradoxical result that the King's enemies, who chance during war to constitute the entire body of corporators in a company registered in England, thereby pass out of the range of legal vision, and, instead, the corporation, which in itself is incapable of loyalty, or enmity, or residence, or of anything but bare existence in contemplation of law and registration under some system of law, takes their place for almost the most important of all purposes, that of being classed among the King's friends or among his foes in time of war."

[25] Jones, *supra* note 8, at 18; GEOFFREY JONES, THE STATE AND THE EMERGENCE OF THE BRITISH OIL INDUSTRY 180 (1981).

[26] Re FG (Films) Ltd. [1953] 1 All ER 615 at 616 (Ch).

[27] Barcelona Traction, Light & Power Co., Ltd. (Belg. v. Spain), Judgment, 1970 I.C.J. Rep. 3, ¶ 1 (Feb. 5).

[28] Earlier tests also attributed enemy character based on incorporation in an enemy state, irrespective of ownership. For a discussion, *see* Ralph A. Norem, *Determination of Enemy Character of Corporations*, 24 AM. J. INT'L L. 310 (1930) (favoring incorporation over control for the attribution of enemy status). *See also* Pargendler, *Veil Peeking*, *supra* note 21, at 731-33.

without changing the underlying equity structure of the firm, as illustrated in our Shein case study below.

There is growing concern about state leverage over private enterprises beyond equity ownership. Just as China's characteristics have challenged the international trade system,[29] they now put pressure on traditional tests focused on equity or voting control. One distinctive feature is China's National Intelligence Law, which requires all Chinese citizens and organizations to "support, assist, and cooperate with" national intelligence efforts.[30] Other features include potential CCP influence on firm-level corporate governance, operating both through formal governance structures and through informal mechanisms.[31] These broader levers for Chinese state influence, in turn, raise concerns for firms which have subsidiaries located in China or Chinese nationals in key positions.[32] However, state leverage over the private sector beyond ownership obviously is not uniquely Chinese, either as a historical matter or contemporaneously.[33]

B. Economic Facet

The location of headquarters and, most importantly, corporate control are highly significant from an economic perspective and captured by some of the traditional legal tests just discussed. Yet other theories of the firm, such as the "nexus of contracts" view, highlight the economic significance of the firm's shareholders, creditors, customers, and suppliers. This perspective typically, if implicitly, treats national boundaries as economically irrelevant.

The location of a firm's assets can also determine CNI in some contexts. The United Nations Conference on Trade and Development (UNCTAD) produces a transnationality index (TNI) which measures the ratio of foreign assets, sales and employment, each expressed as a percentage of the firm's total.[34] Some leading TNI firms such as Nestlé, Anglo American Plc and Anheuser-Busch have, at various points, derived more than 90% of their assets, sales, and

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[29] Mark Wu, *The "China, Inc." Challenge to Global Trade Governance*, 57 HARV. INT'L L.J. 261 (2016) (describing the unforeseen problems posed by China's *sui generis* economic structure).

[30] National Intelligence Law of the People's Republic of China (Adopted June 27, 2017; Effective June 28, 2017; Revised Apr. 27, 2018), Art. 7.

[31] *See*, *e.g.*, Curtis J. Milhaupt, *Party-State, Inc. – Chinese State Capitalism 2.0, in* OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE (Jeffrey N. Gordon & Wolf-Georg Ringe eds., 2d ed., 2025) (describing the panoply of institutional mechanisms enabling CCP influence on corporate governance); Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firm*, 103 GEO. L.J. 665 (2015) (describing how the Chinese model challenges "ownership as the touchstone of corporate governance analysis"). *But see* Zhou Chun, Zhang Wei, & Dan W. Puchniak, *The Overlooked Reality of Shareholder Activism in China: Defying Western Expectations*, 15 HARV. BUS. L. REV. 521, 521 (2025) (arguing that "China has developed a rules-based market for shareholder activism with no evidence of systemic political interference").

[32] *See* Li-Wen Lin & Christopher Chao-hung Chen, *Directors as Geopolitical Risk in Corporate Governance* (Working Paper, 2026) (describing how a wave of new statutes "impose affirmative duties on all Chinese citizens, enterprises, and social organizations to safeguard state security and protect confidential information, thereby integrating the legal responsibility for national security into every level of society").

[33] *See*, *e.g.*, Curtis J. Milhaupt, *Property Rights in Firms*, 84 U. VA. L. REV. 1145 (1998) (showing that the degree to which control rights over firms are held by political actors varies significantly across national corporate governance systems). On contemporary U.S. interventions, *see infra* notes 234-236 and accompanying text.

[34] UNCTAD, WORLD INVESTMENT REPORT: INTERNATIONAL INVESTMENT IN THE DIGITAL ECONOMY 34 (2025) ("The overall transnationality of the top 100 MNEs still increased marginally in 2023.").

employment from outside their home jurisdiction.[35] However, a high concentration of operations or supply chains in foreign jurisdictions is increasingly sensitive in periods of geopolitical risk.[36]

In today's platform economy, data location and access carry enormous economic significance. If the location of management headquarters has been described as a firm's "nerve center," the location of data servers now rivals its importance as the firm's "digital brain." Beyond animating an ever-increasing fraction of firm operations, data is increasingly viewed as an important tool of intelligence gathering, or alternatively, a source of national vulnerability. In the new digital economy, which permeates ever more aspects of organizational life, the location of a firm's data has become increasingly sensitive from a geopolitical perspective, in ways that traditional legal tests do not capture.

Moreover, because shareholder rights may implicate access to data, scrutiny of shareholders' identity now often extends beyond traditional measures of equity control. Following the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), CFIUS review now encompasses not only controlling stakes but also "other investments" that give foreign persons access to material technical information or involvement in substantive decision-making in connection with critical infrastructure, critical technology, or sensitive personal data.[37]

C. (Geo)Political Facet

Corporate national identity also has irreducibly political and geopolitical dimensions. Even in periods of relative geopolitical calm, a corporation's "nationality" matters because foreignness carries a "political deficit."[38] Domestic shareholders, managers, and workers are usually better positioned than their foreign counterparts to command the attention and sympathies of legislators, regulators and the public.[39] This tendency may at times be justified on welfare-enhancing grounds, but it can also serve as opportunistic cover for interest group pressures.[40]

Periods of geopolitical tension or war further heighten the salience of nationality and its intersection with corporate governance and operations. Firm-specific characteristics that once seemed unremarkable, such as the nationality and personal jurisdictional ties of the members of a corporation's board of directors,[41] or the geography of supply chains, can acquire major strategic significance. In this setting, CNI becomes a site of contestation, as policy makers and private actors attempt to align firms with broader projects of national/economic security and statecraft. Particularly in periods of geopolitical tension, a firm's "nationality" cannot be reduced to its jurisdiction of incorporation or real seat. More salient is the economic perspective on issues such

[35] Surender Munjal, Pawan Budhwar & Vijay Pereira, *A perspective on multinational enterprise's national identity dilemma*, 24 SOCIAL IDENTITIES 548, 555 (2018) (describing the 20 largest MNEs by TNI as of 2016).
[36] UNCTAD, *supra* note 34, at 34 (noting that MNE's "are beginning to alter their international footprint, bringing strategic activities closer to home and considering options to de-risk supply chains.").
[37] 50 U.S.C. § 4565(a)(4)(D).
[38] Pargendler, *The Grip of Nationalism*, *supra* note 20, at 535.
[39] *Id.*
[40] *Id.* (describing how "nationalism often can and does serve as a smokescreen for purely private interests"). *See also* criticism of the deal to resolve the TikTok dilemma discussed *infra* Part II.A. as a "bargain for allies of the president [Trump]." *See TikTok is still a danger: America no longer cares*, ECONOMIST, Jan. 21, 2026, https://www.economist.com/business/2026/01/21/tiktok-is-still-a-danger-america-no-longer-cares.
[41] *See* Lin & Chen, *supra* note 32.

as data access, supply chain vulnerability and the identity of key stakeholders (such as a nation's military) who rely upon a company's technology or products.

The TikTok case study below is a prime example. Another is Taiwan Semiconductor Manufacturing Company (TSMC). TSMC is a Taiwanese company, firmly embedded in the country's legal and political order, often referred to as "the sacred mountain protecting the country."[42] Functionally, however, it operates as a critical node in the global economy – supplying advanced semiconductors that underpin the technology of the United States, Europe and advanced Asian economies in their competition with China. Its production capacity is so central to global supply chains that its economic importance transcends a single national affiliation.[43]

Thus, in both the domestic political and geopolitical contexts, the relevant question is not the corporation's nationality as a matter of law, but whose interests it is understood to serve and to which polity it will be loyal, if any, when conflicting pressures mount.

D. Symbolic Facet

As the preceding discussion suggests, corporate national identity also has a symbolic facet. A corporation's nationality is not merely the result of a legal designation or economic circumstances. It is also a social construct. Domestic control, local headquarters, and domestic production can serve as symbols of national power and pride, much as citizens rally around national sports teams.[44] In this sense, firms may be valued (or feared) for what they represent as well as what they produce.

Firms actively construct symbolic national identity in host jurisdictions. For example, Chinese electric vehicle manufacturer BYD markets its Brazilian operations under the tagline "made by Brazilians and for Brazilians."[45] When a Brazilian media outlet described BYD as a Chinese company, BYD initiated legal proceedings – treating the attribution of Chinese national identity as reputationally actionable.[46]

Another example is 7-Eleven, which was established in Dallas as the Southland Ice Company.[47] It continues to be perceived as a domestic firm in the U.S. even though it was acquired

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[42] *TSMC needs government permission for overseas joint ventures, Taiwan minister says*, REUTERS (Feb. 27, 2025), https://www.reuters.com/technology/tsmc-needs-government-permission-overseas-joint-ventures-taiwan-minister-says-2025-02-27/.

[43] TSMC's status as a "global" corporate citizen is underscored by the composition of its board (six of ten are foreign nationals) and its investor base (70% foreign). At the same time, TSMC's status as a Taiwanese national champion is jealously guarded domestically. The company must receive government approval for overseas joint ventures, *id*. and Taiwan has enhanced criminal penalties with extraterritorial application for leakage or transfer (including via employment) of designated core national technologies to foreign actors.

[44] Pargendler, *The Grip of Nationalism*, *supra* note 20, at 538.

[45] *BYD É do Brasil: Feita por Brasileiros para Brasileiros* [BYD Is From Brazil: Made by Brazilians for Brazilians], https://www.byd.com/br/byddobrasil (accessed on Apr. 17, 2026).

[46] Marcus Celestino, BYD processa site jornalístico no Brasil e juíza determina suspensão temporária de reportagem [BYD Sues News Website in Brazil and Judge Orders Temporary Suspension of News Article], TERRA, Feb. 9, 2026, https://www.terra.com.br/mobilidade/carros/byd-processa-site-jornalistico-no-brasil-e-juiza-determina-suspensao-temporaria-de-reportagem,77ead5bd38e8052b25329eb6083e2afan75izy3w.html (describing how the news article questioned by BYD accused the company of "reneging on its Chinese origins").

[47] *7-Eleven*, BRITANNICA MONEY, https://www.britannica.com/money/7-Eleven.

by major Japanese retailer Ito-Yokado in 1991.[48] In Japan, the company's national identity as a cultural symbol extends well beyond ownership. 7-Eleven's *konbini* model of convenience store is viewed as a cornerstone of everyday social life and even as part of the national emergency infrastructure[49] – factors at the forefront of local resistance to an unsuccessful takeover bid by Canadian firm Couche-Tard.

In times of geopolitical conflict, CNI takes on additional significance. A corporation may be publicly viewed either as a "national champion" or as a Trojan Horse of the country where its founder, assets or supply chain are located, despite its legal incorporation elsewhere. The term "Singapore washing" has come to describe efforts of founders to shed the image of their companies as "Chinese" by relocating (personally, legally or administratively) to the city state. Conversely, as in the case of TSMC, a firm may be legally "domestic," yet perceived by investors and policy makers as transcending the home jurisdiction due to its economic footprint and geopolitical significance.

The symbolic dimension of CNI highlights the fluidity of the concept across time and space. The same corporation can be understood differently across historical periods, jurisdictions and constituencies. This feature of CNI means that it is continuously negotiated and managed through public discourse, economic change and geopolitical rivalry. The case studies below illustrate that corporations are not passive objects of national identification. They actively shape their national image through branding and public messaging, board composition, location of key executives, and other measures.

II. Illustrations

This Part applies the framework developed above across four contemporary episodes of CNI contestation. The first two involve Chinese-founded companies – TikTok and Shein – whose legal and economic identities point away from the PRC, yet whose corporate nationality has been contested or reassigned by states and markets. The latter two involve foreign acquisitions of iconic Western companies – Pirelli and U.S. Steel – in which governments deployed novel governance instruments to reconstruct domestic corporate national identity, ostensibly on national security grounds, without blocking the transactions outright.

A. TikTok

1. *The Platform's Identity Crisis*

The TikTok case illustrates the growing complexity of CNI determinations in view of the rise of China and of the data economy. The parent company of TikTok, ByteDance Ltd., is incorporated in the Cayman Islands.[50] Its U.S. operations run through TikTok Inc., a California

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[48] *Ito Yokado completes purchase of majority Southland stake*, UPI, Mar. 6, 1991, https://www.upi.com/Archives/1991/03/06/Ito-Yokado-completes-purchase-of-majority-Southland-stake/3036668235600/.

[49] Eugenie Shin, *The Rise of Japanese Konbini: 50 Years of Convenience*, TOKYO WEEKENDER, Jan. 29, 2025 (describing *konbini* as a cornerstone of Japanese society, which provided "essential disaster relief" following the 2011 earthquake and nuclear disaster).

[50] ByteDance Ltd. is privately held and does not file public financial statements. The corporate structure described in this paragraph is derived from publicly available registry information, media reports, and TikTok's own disclosures,

corporation held via a Delaware intermediary company. Executive management is based in Singapore and Los Angeles. Approximately 60% of ByteDance's equity is held by global institutional investors, including Sequoia and KKR,[51] 20% by employees, and the remaining 20% by co-founder Zhang Yiming, a private Chinese citizen who exercises majority voting control through dual-class shares.[52] Under either the jurisdiction-of-incorporation or real-seat test, TikTok's legal identity points away from the PRC. Although Zhang, an individual Chinese citizen, is the controlling shareholder of TikTok's ultimate parent, characterizing TikTok as Chinese requires imputing corporate control by an *individual* to the *nation* of which he is a citizen – a concept that finds historical precedent in times of war and geopolitical tensions.[53]

Notwithstanding the elements of TikTok's nationality as a non-PRC platform, in 2024 Congress enacted legislation declaring that TikTok is "controlled by a foreign adversary"[54] and requiring its divestiture or removal from the U.S. market. In January 2025, the Supreme Court upheld the constitutionality of the statute.[55] And in January 2026, following more than a year of executive extensions and bilateral negotiation, TikTok's U.S. operations were transferred to a newly established joint venture[56] – majority U.S.-owned but still partially held by ByteDance and reliant on a ByteDance-licensed algorithm. Whether that arrangement satisfies the statute is now the subject of active litigation in the D.C. Circuit.[57]

reflecting the best available information as of early 2026. On the opacity of ByteDance's corporate organization, see Fanny Potkin & Liam Mo, *ByteDance chip design staff suddenly find out they report to Singapore unit, sources say*, REUTERS (Sept. 5, 2025), https://www.reuters.com/world/china/bytedance-chip-design-staff-suddenly-find-out-they-report-singapore-unit-sources-2025-09-05/

[51] *See The Truth About TikTok: Separating Fact from Fiction*, TikTok (Apr. 13, 2023), https://newsroom.tiktok.com/the-truth-about-tiktok?lang=en-AU.

[52] Josh Ye, *TikTok ban bill: What we know about TikTok's Chinese owner*, REUTERS (Mar. 15, 2024), https://www.reuters.com/technology/what-do-we-know-about-tiktoks-chinese-owner-bytedance-2024-03-15/. The January 2026 JV restructured US operations only and likely did not affect Zhang Yiming's position at the ByteDance Ltd. parent level: see *ByteDance Emerges from TikTok Saga with 'Major Win' on US Access*, Bloomberg (Jan. 23, 2026), https://www.bloomberg.com/news/articles/2026-01-23/bytedance-emerges-from-tiktok-saga-with-major-win-on-us-access.

[53] *See* notes 23-25 and 28 and accompanying text.

[54] Protecting Americans from Foreign Adversary Controlled Applications Act, Pub. L. No. 118-50, div. H, §§ 1–3, 138 Stat. 955 (2024) (codified at 15 U.S.C. § 9901 note).

[55] TikTok, Inc. v. Garland, 604 U.S. 56 (2025).

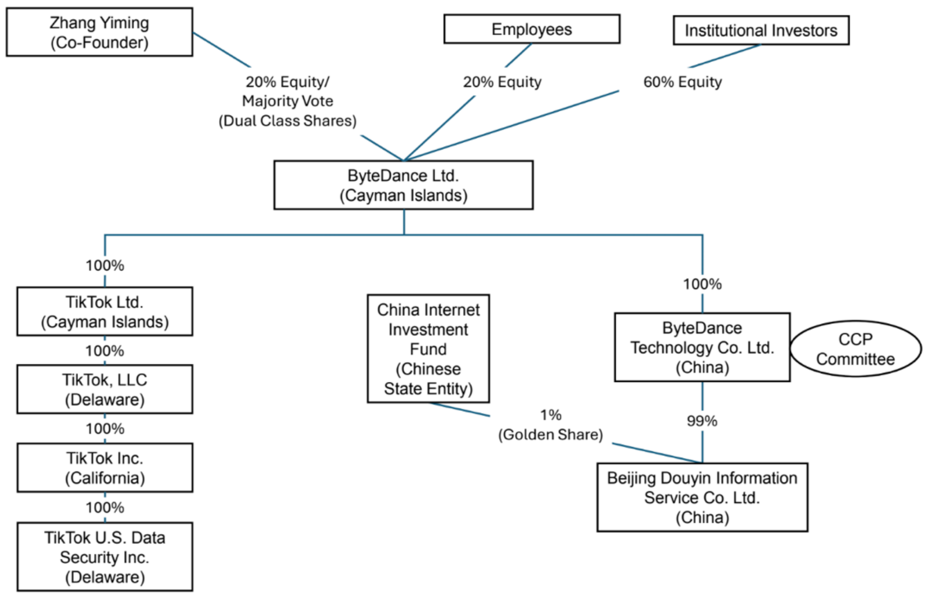
[56] Announcement from the New TikTok USDS Joint Venture LLC (Jan. 22, 2026), https://newsroom.tiktok.com/announcement-from-the-new-tiktok-usds-joint-venture-llc.

[57] Petition for Review, *Tan v. Trump*, No. 26-01047 (D.C. Cir. filed Mar. 5, 2026).

2. *The Limits of Legal Separateness*

Figure 2

TikTok's Legal Corporate Structure[58]



Analysis of TikTok's CNI becomes more complicated once one looks through the corporate structure to the broader ByteDance group. On the PRC side of the corporate group, ByteDance Technology Co., Ltd. – a PRC-incorporated company that oversees ByteDance's Chinese domestic operations – maintains an internal Chinese Communist Party committee, a body mandated by China's Company Law for PRC-incorporated firms.[59] Its subsidiary, Beijing Douyin Information Service Co., Ltd., operates Douyin, the short-video platform available exclusively within mainland China. Through the China Internet Investment Fund, a state investment organ, the Chinese

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[58] The corporate structure described here and depicted in Figure 2 is based on publicly available registry information and corporate disclosures. *See* Curtis J. Milhaupt & Dan W. Puchniak, *TikTok's Identity Crisis: Corporate Personality in a De-Globalizing World*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Jan. 3, 2025), https://corpgov.law.harvard.edu/2025/01/03/tiktoks-identity-crisis-corporate-personality-in-a-de-globalizing-world/. The Cayman Islands incorporation of both ByteDance Ltd. and TikTok Ltd. reflects a common structure for Chinese-founded technology companies seeking to access foreign capital. *See* Chinese Firms Access Foreign Capital in International Tax Havens, NBER Digest (Mar. 2023), https://www.nber.org/digest/20233/chinese-firms-access-foreign-capital-international-tax-havens.

[59] Company Law of the People's Republic of China, art. 18 ("An organization of the Communist Party of China shall, according to the Constitution of the Communist Party of China, be set up in a company to carry out the activities of the Party. The company shall provide necessary conditions to facilitate the activities of the Party organization."). *See also* Milhaupt & Puchniak, *supra* note 58 (observing that "exactly what the internal CCP committee of ByteDance, or any other Chinese firm, does is a matter of speculation, because neither the Company Law nor any other regulation explicitly specifies the role of such committees").

government holds a 1% stake in Beijing Douyin,[60] which grants a representative of the Cyberspace Administration of China a board seat and influence over Douyin's content. This "special management share" arrangement – under which state-backed entities take small equity stakes carrying board representation and content-oversight rights in private technology and media companies – has been applied across China's internet sector.[61]

TikTok was structured as a distinct platform from Douyin – legally separate and geographically partitioned to serve different regulatory jurisdictions and markets.[62] The PRC's direct participation in the corporate group is formally confined to PRC-incorporated subsidiaries serving the domestic Chinese market. Under a traditional corporate-law control test, the Chinese government does not exercise formal control over TikTok's global operations.

But formal separateness does not resolve the functional question that has driven TikTok's reclassification. China's National Intelligence Law obliges organizations and citizens to cooperate with national intelligence work.[63] ByteDance's PRC affiliates maintain a CCP committee and operate under Chinese regulatory jurisdiction. Whether these features create a realistic pathway for Chinese state access to U.S. user data or influence over TikTok's content recommendation algorithm – even absent formal corporate control – is uncertain.

Various economic features of TikTok suggest that the platform should not be characterized as Chinese. The platform derives a majority of its revenues from the United States, Europe, and Southeast Asia. It has never operated in mainland China. Data localization follows the same divide: U.S. user data has been stored in the United States, routed through TikTok U.S. Data Security Inc., a Delaware subsidiary, with Oracle providing cloud infrastructure under a security arrangement known as "Project Texas" since 2022.[64] Yet other economic elements point to China. Algorithmic development has historically drawn on teams based in Beijing, and ByteDance's financial capacity remains linked to Douyin-generated revenues – roughly 80% of the group's total.[65] These continuities show that economic delinking with China is only partial.

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60 *TikTok: Frequently Asked Questions and Issues for Congress*, Congressional Research Service (Feb. 18, 2025), https://www.congress.gov/crs-product/R48023 ("WangTouZhengWen [(Beijing) Technology] financed its stake in Beijing Douyin with funding from the China Internet Investment Fund (CIIF), a PRC government-run investment fund capitalized by joint contributions from the Cyberspace Administration of China (CAC) and China's Ministry of Finance.").

61 For example, China has taken a 1% golden share stake in two Alibaba units – namely, CIIF acquiring a 1% stake in Alibaba unit Guangzhou Lujiao and Zhejiang Media Group took a 1% stake in Alibaba's Youku Film and Television unit: see *China acquires 'golden shares' in two Alibaba units*, Reuters (Jan. 14, 2023), https://www.reuters.com/technology/china-moving-take-golden-shares-alibaba-tencent-units-ft-2023-01-13/.

62 On the role of incorporation as providing regulatory partitioning, *see* Mariana Pargendler, *Regulatory Partitioning as a Key Function of Corporate Personality*, *in* RESEARCH HANDBOOK ON CORPORATE PURPOSE AND PERSONHOOD (Elizabeth Pollman & Robert Thompson eds., 2021).

63 National Intelligence Law of the People's Republic of China, art. 7 (effective June 27, 2017; revised Apr. 27, 2018).

64 TikTok, *Delivering on Our US Data Governance* (June 17, 2022), https://newsroom.tiktok.com/en-us/delivering-on-our-us-data-governance.

65 Milhaupt & Puchniak, *supra* note 58 (noting that "Douyin is ByteDance's crown jewel, generating the bulk of its China revenues, which account for roughly 80% of ByteDance's total revenues"). *See also* Eleanor Olcott & Ryan McMorrow, *ByteDance Posts Record Profit Despite TikTok Losses*, FT (Apr. 9, 2023), https://www.ft.com/content/b990b325-5af1-4713-b8d0-580b823cad3c ("Any forced sale or ban of TikTok would hit ByteDance's potential earnings. Although it generated about 80% of its revenue in China last year and TikTok was lossmaking, it nonetheless represents an important future profit engine.").

3. *From Security Concern to Statutory Reclassification*

The Protecting Americans from Foreign Adversary Controlled Applications Act (PAFACAA), enacted in April 2024,[66] represents a direct legislative intervention in corporate national identity targeting a single company. The statute expressly names ByteDance and TikTok,[67] prohibiting the distribution, maintenance, or updating of the platform within the United States unless a "qualified divestiture" is executed.

The statute's definition of qualified divestiture contains two prongs. The first requires a presidential determination, through an interagency process, that the platform is no longer "controlled by a foreign adversary." The control definition includes a 20% ownership threshold,[68] but is not limited to equity: it also encompasses entities "subject to the direction or control" of designated foreign persons. The second prong – and the one that has generated the most interpretive debate – requires that the divestiture "preclude the establishment or maintenance of any operational relationship" between U.S. operations and any formerly affiliated foreign-adversary-controlled entities, "including any cooperation with respect to the operation of a content recommendation algorithm or an agreement with respect to data sharing."[69]

This second prong moves the statutory test of CNI beyond ownership and formal control to operational dependence. The statute effectively treats algorithm cooperation and data sharing as markers of foreign-adversary affiliation, regardless of who holds equity or sits on the board. As commentators have observed, this represents a shift from investment screening – the CFIUS model, which asks who controls the entity – toward operational entanglement, which asks whether the divested operation remains functionally dependent on a foreign-adversary-linked former affiliate.[70] In the taxonomy of this article, the statute embeds the geopolitical facet, intertwined with an expanded economic facet, into the legal definition of corporate nationality.

In January 2025, the Supreme Court upheld the divest-or-ban statute against a First Amendment challenge.[71] The per curiam opinion accepted the government's national security rationale that China could leverage its relationship with ByteDance to collect sensitive data on U.S. users or manipulate content through algorithmic adjustments,[72] which highlights the interaction between the relevance of data and the distinct modes of government influence provided by the Chinese legal system. Specifically, the Court emphasized that "ByteDance Ltd. is subject to Chinese laws that require it to 'assist or cooperate' with the Chinese Government's 'intelligence work' and to ensure that the Chinese Government has 'the power to access and control private

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[66] Protecting Americans from Foreign Adversary Controlled Applications Act, Pub. L. No. 118-50, div. H, §§ 1–3, 138 Stat. 955 (2024) (codified at 15 U.S.C. § 9901 note).
[67] *Id.* § 2(g)(3)(A).
[68] *Id.* § 2(g)(1)(B)–(C).
[69] *Id.* § 2(g)(6)(B). Because the statute uses "including," most commentators treat the algorithm-cooperation and data-sharing phrases as illustrative examples rather than an exhaustive definition of "operational relationship." *See* Kate Klonick & Alan Z. Rozenshtein, *A TikTok "Deal"?*, LAWFARE (Sept. 26, 2025), https://www.lawfaremedia.org/article/a-tiktok--deal; Anupam Chander, *How to Make Sense of Trump's TikTok Deal*, Tech Policy Press (Jan. 6, 2026), https://www.techpolicy.press/how-to-make-sense-of-trumps-tiktok-deal/.
[70] *See* CELIS Institute, *The "Protecting Americans from Foreign Adversary Controlled Applications Act" (PAFACAA): "TikTok Ban" or New Milestone in US Economic Security Law?* (Sept. 4, 2024), https://www.celis.institute/celis-blog/the-protecting-americans-from-foreign-adversary-controlled-applications-act-pafacaa-tiktok-ban-or-new-milestone-in-us-economic-security-law-2/. On CFIUS generally, see 50 U.S.C. § 4565.
[71] TikTok, Inc. v. Garland, 604 U.S. 56 (2025) (per curiam).
[72] *Id.* at 74–77. *See also* TikTok Inc. v. Garland, 122 F.4th 930, 960–61 (D.C. Cir. 2025).

data' the company holds"[73] – thus pointing to new markers of CNI, notwithstanding TikTok's separate incorporation and data localization measures.

The symbolic dimension of TikTok's classification as Chinese reinforced the statutory approach. A 2024 Senate hearing, during which Senator Tom Cotton repeatedly questioned TikTok CEO Shou Zi Chew – a Singaporean – about his alleged ties to the Chinese Communist Party illustrated how a performative moment can entrench a national label.[74] Surveys conducted in 2024 indicated that a majority of U.S. adults believed the Chinese government uses TikTok to influence American opinion.[75] Internationally, governments of traditional U.S. allies – including the U.K., Australia, and Canada – imposed restrictions on official-network use of TikTok on data-security grounds.[76]

4. *Executive Extensions and the Joint Venture Resolution*

Between January 2025 and September 2025, President Trump issued five executive orders delaying enforcement of the statute while a divestiture framework was negotiated.[77] The statute had contemplated a single ninety-day extension, conditioned on presidential certification to Congress that binding legal agreements were in place.[78] The repeated extensions – none accompanied by the statutory certifications – illustrated the distance between the legislative design and executive implementation, a gap now at issue in litigation.

The divestiture framework was negotiated in the context of broader U.S.-China economic diplomacy. In September 2025, Treasury Secretary Bessent publicly indicated that a TikTok framework had been reached during trade talks with Chinese officials[79] – linking the platform's corporate fate to bilateral tariff negotiations. China's 2020 export-control regulations, which require government approval for algorithm and source-code exports, gave Beijing effective veto

[73] TikTok, Inc. v. Garland, 604 U.S. 56, 64 (2025).
[74] *See* Diba Mohtasham, *Tom Cotton grills Singaporean TikTok CEO: Are you a Chinese Communist?*, NPR (Feb. 1, 2024), https://www.npr.org/2024/02/01/1228383578/tom-cotton-tiktok-ceo-singapore-china; Bhagyashree Garekar, *'No Senator, I'm a Singaporean': TikTok CEO Chew Shou Zi Grilled by US Lawmakers on Chinese Links*, Straits Times (Feb. 1, 2024), https://www.straitstimes.com/world/united-states/no-senator-i-m-a-singaporean-tiktok-ceo-chew-shou-zi-grilled-by-us-lawmakers-on-chinese-links.
[75] *Most Americans See TikTok as Chinese Influence Tool, Reuters/Ipsos Poll Finds*, Reuters (May 1, 2024), https://www.reuters.com/world/us/most-americans-see-tiktok-chinese-influence-tool-reutersipsos-poll-finds-2024-05-01/.
[76] See Stephen Castle, *U.K. Bans TikTok on Government Devices*, NY Times (Mar. 16, 2023), https://www.nytimes.com/2023/03/16/world/europe/uk-ban-tiktok.html; Catherine Luelo, *Direction on TikTok*, Government of Canada, https://www.canada.ca/en/government/system/digital-government/policies-standards/policy-service-digital-announcements/direction-tiktok.html; *Australia bans TikTok on government devices over security concerns*, Reuters (Apr. 4, 2023) https://www.reuters.com/world/asia-pacific/australia-ban-tiktok-government-devices-media-reports-2023-04-03/.
[77] Exec. Order No. 14,166, 90 Fed. Reg. 8,611 (Jan. 30, 2025); Exec. Order No. 14,258, 90 Fed. Reg. 15,209 (Apr. 9, 2025); Exec. Order No. 14,310, 90 Fed. Reg. 26,913 (June 24, 2025); Exec. Order No. 14,350, 90 Fed. Reg. 45,903 (Sept. 23, 2025); Exec. Order No. 14,352, 90 Fed. Reg. 47,219 (Sept. 30, 2025).
[78] Pub. L. No. 118-50, div. H, § 2(a)(3).
[79] *See* Reuters, *U.S., China End First Day of Talks in Spain with Trade, TikTok Deadline* (Sept. 14, 2025), https://www.reuters.com/world/china/us-china-end-first-day-talks-spain-trade-tiktok-deadline-2025-09-14/; Reuters, *Bessent Says TikTok Ban Threat Won Framework Agreement with Chinese* (Sept. 15, 2025), https://www.reuters.com/world/china/bessent-says-tiktok-ban-threat-won-framework-agreement-with-chinese-2025-09-15/.

power over any deal involving the platform's recommendation system.[80] The resulting deal architecture reflected the constraints imposed by both governments.

On September 25, 2025, President Trump issued an executive order determining that a proposed framework agreement constituted a qualified divestiture under PAFACAA.[81] The order stated that the new joint venture would be majority-owned and controlled by U.S. persons, ByteDance and its affiliates would hold less than 20%, and the arrangement would preclude any operational relationship with foreign-adversary-controlled entities.

The transaction closed on January 22, 2026, with the establishment of the TikTok USDS Joint Venture LLC.[82] The announced ownership structure allocated 15% each to Oracle, Silver Lake, and MGX – an investment firm backed by Abu Dhabi's sovereign wealth fund – with the remaining shares distributed among several other investors.[83] ByteDance retained 19.9%, just below the statute's 20% control threshold. The joint venture is governed by a seven-member, majority-American board. Its public announcement stated that U.S. user data and the recommendation algorithm would be secured in Oracle's U.S. cloud environment, that the joint venture would "retrain, test, and update" the algorithm on U.S. user data, and that Oracle would serve as "Trusted Security Partner" for ongoing source-code review.[84]

Three features of the arrangement merit attention. First, the public announcement disclosed that "TikTok Global's U.S. entities will manage global product interoperability and certain commercial activities, including e-commerce, advertising, and marketing"[85] – functions that remain linked to ByteDance's global operations. Second, the arrangement was described as involving algorithm "retraining" rather than full transfer or independent reconstruction, leaving open the question of ongoing technical dependence.[86] Third, the new investors are set to pay approximately ten billion dollars to the U.S. Treasury – a sum the administration characterized as a transaction fee for its role in facilitating the deal, representing roughly 70% of the joint venture's

[80] *Adjustments to the Catalogue of Technologies Prohibited or Restricted from Export* (Ministry of Commerce & Ministry of Sci. & Tech., Aug. 28, 2020), art. 45 (P.R.C.) (adding "personalized information push service technology based on data analysis" to "Information Processing Technology" (No. 056101X)) (unofficial translation). *See also* Reuters, *China Says TikTok Deal Subject to Government Review* (Apr. 9, 2025), https://www.reuters.com/technology/china-says-tiktok-deal-subject-government-review-2025-04-09/.

[81] Exec. Order No. 14,352, 90 Fed. Reg. 47,219 (Sept. 30, 2025). The order conditioned its qualified-divestiture determination on execution of "implementation agreements" that were not publicly disclosed. *Id.* § 2(c).

[82] Announcement from the New TikTok USDS Joint Venture LLC (Jan. 22, 2026), https://newsroom.tiktok.com/announcement-from-the-new-tiktok-usds-joint-venture-llc. *See also* Reuters, *TikTok Reaches Deal for New US Joint Venture to Avoid American Ban* (Jan. 23, 2026), https://www.reuters.com/world/china/tiktok-reaches-deal-new-us-joint-venture-avoid-american-ban-2026-01-23/.

[83] Announcement from the New TikTok USDS Joint Venture LLC, *supra* note 56. *See also Trump Approves TikTok Deal Through Executive Order*, CNBC (Sept. 25, 2025), https://www.cnbc.com/2025/09/25/trump-approves-TikTok-deal-through-executive-order.html.

[84] Announcement from the New TikTok USDS Joint Venture LLC, *supra* note 56.

[85] *Id. See* Adam Conner, *The TikTok Deal Leaves Many Questions Unanswered*, Center for American Progress (Jan. 23, 2026), https://www.americanprogress.org/article/the-tiktok-deal-leaves-many-questions-unanswered/.

[86] Announcement from the New TikTok USDS Joint Venture LLC, *supra* note 56. *See* Klonick & Rozenshtein, *supra* note 69; *see also TikTok Is Still a Danger. America No Longer Cares*, Economist (Jan. 21, 2026) (reporting that ByteDance would lease its algorithm in return for ongoing payments of approximately 20% of the American entity's revenue).

reported fourteen-billion-dollar valuation.[87] The payment appears to be without precedent in the foreign investment context and suggests that CNI reclassification can function not only as a governance mechanism but as a revenue generator – the state capturing direct economic value from its authority to redefine corporate nationality as a condition of continued market access. Notably, the U.S. government did not take an equity stake or golden share in the joint venture – a contrast with the U.S. Steel arrangement examined below.

5. *Contested Compliance*

Whether the joint venture satisfies the statute's qualified divestiture standard is now a live legal question. Investors in Alphabet and Meta filed a petition for review in the D.C. Circuit challenging both the executive extensions to reach a deal and the presidential determination that the deal constitutes a qualified divestiture.[88] The petition argues that three features of the arrangement are prohibited by the statute. First, ByteDance's continued ownership of the recommendation algorithm, which it licenses to the U.S. entity,[89] violates the statutory preclusion of "any cooperation with respect to the operation of a content recommendation algorithm." Second, continued management of e-commerce, advertising, marketing, and global interoperability for the U.S. platform by ByteDance subsidiaries[90] is precisely the kind of operational tie the statute was designed to sever. Third, the inclusion of Shou Zi Chew, CEO of ByteDance's global TikTok subsidiary, on the joint venture's board creates a direct governance link between the divested entity and its formerly affiliated parent.[91]

The litigation presents a novel question of statutory interpretation. The statute's "operational relationship" prohibition – with its specific reference to algorithm cooperation – has no direct precedent in foreign investment or national security law.[92] It represents a legislative attempt to regulate not merely who owns a digital platform, but how it operates and on whose technical infrastructure it depends. Whether courts will defer to the presidential determination or scrutinize the underlying arrangement against the statutory text will shape the reach of this new regulatory instrument.

B. Shein

TikTok's corporate national identity was reassigned by statute. Shein's has been contested in markets and by political actors and activists without any legislative or judicial determinations. It has also been carefully managed through the company's own strategic choices.

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[87] Lauren Hirsch & Andrew Duehren, *TikTok Investors Set to Pay $10 Billion Fee to Trump Administration*, N.Y. TIMES (Mar. 13, 2026), https://www.nytimes.com/2026/03/13/business/trump-tiktok-10-billion-fee.html.
[88] Petition for Review, Tan v. Trump, No. 26-01047 (D.C. Cir. filed Mar. 5, 2026). The petitioners are Zhaocheng Anthony Tan, a shareholder in Alphabet Inc., and Garrett Reid, a shareholder in Meta Platforms, Inc. *Id.* ¶¶ 54–59.
[89] *Id.* ¶¶ 40, 45. *See also* Senator Edward Markey, Letter to President Trump on TikTok (Nov. 24, 2025), https://www.markey.senate.gov/imo/media/doc/letter_to_trump_on_tiktok.pdf.
[90] Petition for Review, Tan v. Trump, *supra* note 57, ¶¶ 41, 46.
[91] *Id.* ¶¶ 42–44.
[92] *See* Klonick & Rozenshtein, *supra* note 69; CELIS Institute, *supra* note 70. *See also* Davide Clementi, *Digital Curtains Descending: Measuring and Comparing Legal Closure over Digital Spheres after TikTok v. Garland* (SSRN Working Paper, July 2025), https://ssrn.com/abstract=5368754.

1. *Borderless Success Story or Chinese Risk?*

Founded in 2012 in Nanjing by Chris Xu (Xu Yangtian), Shein has become the dominant firm in fast fashion in little more than a decade.[93] In the United States, it commands 50% of the fast-fashion market – nearly double the combined sales of H&M and Zara – and is valued at approximately $30 billion.[94] Although most consumers view it as a clothing retailer, Shein is fundamentally a data-and-logistics enterprise.[95] Its model uses algorithms to translate large volumes of consumer data into near-real-time design decisions and executes them through a tightly coordinated network of thousands of small garment producers in China.[96] The company's hallmark "small-order, quick-response" system has transformed the economics of global fast fashion. Shein has repeatedly prepared for an IPO, signaling the next stage of its development.[97]

Despite that success, Shein has not resolved the question of its corporate national identity. In 2021, the *Economist* reported that every American consumer it interviewed recognized the brand, yet none identified it as Chinese – an understandable reaction given that Shein has never sold goods in mainland China and has, from its inception, targeted international consumers.[98] Against the backdrop of U.S.-China tension and the divest-or-ban treatment of TikTok, however, regulators and advocacy groups have made Shein's PRC-linked supply chain a focal point. Their actions transformed the prosaic question of Shein's CNI into a pressing question about the risks posed by the company.

2. *Shein's Legal Identity*

Shein's corporate structure is opaque – public filings are sparse, and leadership keeps a low public profile. As one *Economist* reporter put it, "[t]hey are incredibly secretive – probably the

[93] Shein identifies 2012 as its founding year, though the founder's initial venture dates to 2008. *See* SHEIN, *Sustainability and Social Impact Report 2024*, at 4 (2025), https://cdn.sanity.io/files/44sbcf22/production/60e9418a4a857a58bf787e4fe1f63113a2ab9675.pdf. *See also* Nicholas Kaufman, *Shein, Temu, and Chinese e-Commerce: Data Risks, Sourcing Violations, and Trade Loopholes*, U.S.-China Economic and Security Review Commission (Apr. 14, 2023), https://www.uscc.gov/sites/default/files/2023-04/Issue_Brief-Shein_Temu_and_Chinese_E-Commerce.pdf.
[94] Janine Perri, *Shein Holds Largest U.S. Fast Fashion Market Share*, BLOOMBERG SECOND MEASURE (Jan. 4, 2023), https://secondmeasure.com/datapoints/fast-fashion-market-share-us-consumer-spending-data-shein-hm-zara/ (reporting 50% U.S. fast-fashion market share); *Shein Faces Investor Pressure to Slash Valuation to $30 billion*, BLOOMBERG (Feb. 17, 2025), https://www.bloomberg.com/news/articles/2025-02-17/shein-faces-investor-pressure-to-slash-valuation-to-30-billion-ahead-london-ipo.
[95] Kaufman, *supra* note 93, at 1–2.
[96] Kaufman, *supra* note 93, at 2.
[97] The Business of Fashion & McKinsey & Company, *The State of Fashion 2024*, 72–73 (2024); John A. Deighton, *How SHEIN and Temu Conquered Fast Fashion – and Forged a New Business Model*, HARVARD BUSINESS SCHOOL (Apr. 25, 2023), https://www.library.hbs.edu/working-knowledge/how-shein-and-temu-conquered-fast-fashion-and-forged-a-new-business-model; The Business of Fashion & McKinsey & Company, *The State of Fashion 2025*, 115 (2025) (discussing the small-order, quick-response model). *See also* Robyn Mak & Katrina Hamlin, *Shein IPO Snags Put China-Goes-Global on Notice*, REUTERS (Aug. 20, 2025), https://www.reuters.com/commentary/breakingviews/shein-ipo-snags-put-china-goes-global-notice-2025-08-20/ (on IPO prospects).
[98] *Shein Exemplifies a New Style of Chinese Multinational*, ECONOMIST (Oct. 7, 2021), https://www.economist.com/business/shein-exemplifies-a-new-style-of-chinese-multinational/21805217; *Can Shein Escape its Chinese Roots?*, ECONOMIST (Jan. 21, 2025), https://www.economist.com/podcasts/2025/01/21/can-shein-escape-its-chinese-roots (reporting consumer survey results).

most secretive company I've ever dealt with in China."[99] Nonetheless, registry searches and media reports provide a workable window into its organizational chart.

Before 2019, Shein operated through a conventional offshore holding structure of the kind commonly used by Chinese companies to attract foreign capital – a BVI parent above a Hong Kong intellectual-property and commercial entity and a PRC export-and-supplier-coordination subsidiary – with its operational center of gravity in China (Figure 3).

Figure 3

Pre-2019 Corporate Legal Structure

In 2019, the group restructured. Ultimate control moved to a Cayman Islands holding company; management, headquarters, and intellectual property were relocated to Singapore; and customer-facing retail shifted to regional operating subsidiaries incorporated outside the PRC. The PRC entity footprint was confined to supplier-facing operations serving the Guangzhou production cluster (Figure 4).[100] Under standard place-of-incorporation and real-seat tests, the restructuring shifted Shein's legal identity from PRC-centered to non-PRC-centered.

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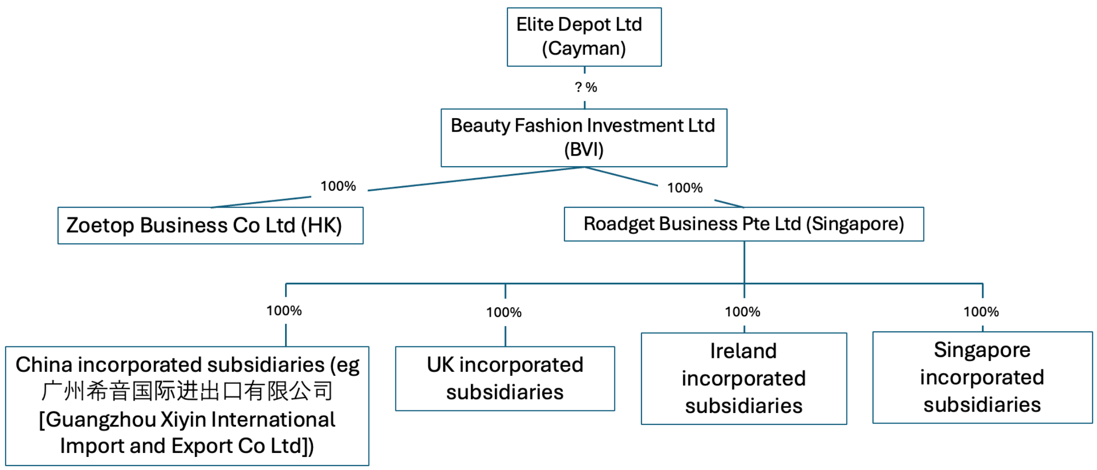
[99] *Can Shein Escape its Chinese Roots?*, *supra* note 98 ("the founder of Shein, has never given a media interview before. As far as we can tell, we've never seen him quoted anywhere. Most of his colleagues don't even know what he looks like.").

[100] Some non-supplier functions, including branding and digital marketing, reportedly continue to be performed in Nanjing and Shanghai. Shein still refers to its Nanjing office as its "global operations centre" in some documents, and two Shanghai subsidiaries employed approximately 500 people at end-2023, working on product design, digital marketing, and influencer relations. *See How Chinese is Shein?*, ECONOMIST (Nov. 19, 2024), https://www.economist.com/business/2024/11/19/how-chinese-is-shein.

Figure 4

Post-2019 Corporate Legal Structure



Corporate control points in the same direction. Xu Yangtian holds approximately 37% of the Cayman parent[101] and he became a Singaporean citizen.[102] The controller's nationality – not the equity structure – determines the result under a control analysis. Xu changed the former without touching the latter – an arbitrage the traditional legal tests of corporate nationality were not designed to anticipate.

3. *Global Revenues, Chinese Production*

Economically, Shein's revenue footprint is overwhelmingly international: no sales in mainland China and a dominant share in the United States.[103] The data infrastructure tilts the same way – U.S. consumer data is housed on U.S. platforms, EU data in Europe, and payments flow through global intermediaries;[104] China-based data primarily concerns supplier management.[105]

The counterweight is production. Shein's core advantage – the small-order, quick-response system – remains anchored in dense supplier clusters around Guangzhou, where thousands of

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[101] Based on a lobbying disclosure form, Xu is reported to own 37% of Shein. Notwithstanding the ambiguity, this Article assumes that "owning Shein" means holding approximately 37% of Elite Depot Ltd. *See* Secretary of the Senate: Office of Public Records, *Lobbying Disclosure*, https://lda.senate.gov/filings/public/filing/9d69c556-867b-40d6-b5fb-c5f7706855f4/print/ (last visited Apr. 11, 2026).

[102] On Xu's Singaporean citizenship, *see* Timothy McLaughlin, *The Mysterious, Meteoric Rise of Shein*, THE ATLANTIC (Sep. 6, 2024), https://www.theatlantic.com/international/archive/2024/09/shein-ceo-chris-xu-fast-fashion/679709/. Singapore law requires a person who acquires citizenship to renounce any prior nationality. *See* Constitution of the Republic of Singapore, Art 127(4). On the CFIUS control test, *see* 31 C.F.R. § 800.208 (2025) (defining "control" for purposes of CFIUS review).

[103] Deighton, *supra* note 97.

[104] Lori Ann LaRocco, *Amazon's Asian Rival Shein Wants to Be Supply Chain Giant, But Some Fear Chinese Cyber Spying Inside Global Trade Links*, CNBC (July 8, 2024), https://www.cnbc.com/2024/07/08/shein-to-build-supply-chain-giant-fear-china-cyber-spy.html.

[105] Sarah Zheng, *China Launches Data Review into Shein Ahead of US IPO, WSJ Says*, BLOOMBERG (Jan. 17, 2024), https://www.bloomberg.com/news/articles/2024-01-17/china-launches-data-review-into-shein-ahead-of-us-ipo-wsj-says.

workshops enable rapid prototyping, micro-batching, and continuous iteration.[106] Physical production networks are sticky in a way software stacks are not;[107] supply chains cannot be relocated overnight. The company has announced steps to localize output beyond China – production in Brazil from 2026, though reporting indicates the initiative has encountered supplier resistance[108] – but such efforts remain incremental relative to the scale produced in China. Thus, several economic indicators read non-PRC; the production geography pulls the other way.

4. *Geopolitics and Shein's Reassigned Identity*

Geopolitics weighs heavily against Shein's legal and economic markers as a non-PRC entity. Western policymakers continue to evaluate the company through a China-risk lens – visible above all in capital-markets access. After exploring a U.S. listing in 2023,[109] congressional criticism over alleged forced labor in Shein's Xinjiang-linked supply chain helped defeat the attempt.[110] The company pivoted to London and, in April 2025, obtained conditional approval from the Financial Conduct Authority[111] – but the FCA's review lengthened amid a threatened challenge by a Uyghur-rights group,[112] and Chinese regulatory sign-offs remained outstanding. By mid-2025, reporting indicated a further turn to Hong Kong amid disclosure and valuation headwinds.[113] As of March 2026, the Hong Kong filing remained stalled, with Beijing's approval widely regarded as the decisive hurdle.[114]

The forced-labor allegations and associated activist pressure now travel with the IPO filing wherever it moves – shaping disclosures, heightening litigation risk, and reinforcing the China-risk lens through which markets read the firm. The episode illustrates that capital-market access can operate as an instrument of CNI contestation without legislation: no statute or regulatory action

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[106] Casey Hall & Sophie Yu, *Shein's Tariff-Busting Shift Hits Home in Chinese Factory Hub*, REUTERS (Apr. 16, 2025), https://www.reuters.com/business/retail-consumer/sheins-tariff-busting-shift-hits-home-chinese-factory-hub-2025-04-16/.

[107] *China Urges Shein to Halt Supply-Chain Shift After Tariffs*, BLOOMBERG (Apr. 8, 2025), https://www.bloomberg.com/news/articles/2025-04-08/china-urges-shein-to-halt-supply-chain-shift-after-tariffs.

[108] Luciana Novaes Magalhaes & Helen Reid, *Shein Tried to Turn Brazil into Production Hub. Local Factories Walked Away*, REUTERS (Feb. 4, 2026), https://www.reuters.com/business/retail-consumer/shein-tried-turn-brazil-into-production-hub-local-factories-walked-away-2026-02-04/; Andre Romani, *Shein Plans to Ship Brazil-made Products around Latin America from 2026*, REUTERS (Oct. 19, 2023), https://www.reuters.com/business/retail-consumer/shein-plans-ship-brazil-made-products-around-latin-america-2026-2023-10-19/.

[109] Kane Wu & Anirban Sen, *China's Shein Files for US IPO in Major Test for Investor Appetite – Sources*, REUTERS (Nov. 29, 2023), https://www.reuters.com/markets/deals/chinese-fast-fashion-shein-files-us-ipo-wsj-2023-11-27/.

[110] Gabrielle Fonrouge, *Lawmakers Ramp Up Scrutiny of Shein, Calls for Proof It Doesn't Use Forced Labor After Retailer Files for IPO*, CNBC (Dec. 5, 2023), https://www.cnbc.com/2023/12/05/shein-ipo-lawmakers-scrutinize-forced-labor.html.

[111] Julie Zhu & Helen Reid, *Exclusive: Shein Gains UK Approval for London IPO, Awaits China Nod, Sources Say*, REUTERS (Apr. 11, 2025), https://www.reuters.com/business/retail-consumer/shein-gains-uk-approval-london-ipo-awaits-china-nod-sources-say-2025-04-11/.

[112] *Shein IPO Faces Judicial Review Challenge from Uyghur Rights Group*, REUTERS (Feb. 3, 2025), https://www.reuters.com/business/retail-consumer/shein-ipo-faces-judicial-review-challenge-uyghur-rights-group-2025-02-03/.

[113] *Shein Mulls Moving Back to China to Facilitate Hong Kong IPO*, BLOOMBERG (Aug. 19, 2025), https://www.bloomberg.com/news/articles/2025-08-19/shein-weighs-moving-back-to-china-to-ease-path-for-hong-kong-ipo.

[114] *See* Mak & Hamlin, *supra* note 97; *Shein Pledges China Supply-Chain Upgrade in Bid to Woo Beijing*, BLOOMBERG (Feb. 24, 2026), https://www.bloomberg.com/news/articles/2026-02-24/shein-pledges-china-supply-chain-upgrade-in-bid-to-woo-beijing.

labels Shein as Chinese, yet the practical effect on capital market access has been functionally comparable to that of more formal intervention.[115]

Shein's newfound attachments to Singapore complicate CNI classification further. With the founder now Singaporean, Shein's identity is read through the city-state's geopolitical stance of not choosing between the United States and China.[116] The *Financial Times* has described a wider trend of China-founded firms domiciling in Singapore as "Singapore-washing" – a label that invites scrutiny over the motive for reorganization.[117] The pattern extends well beyond Shein. Manus, a Chinese AI startup, relocated its staff and headquarters to Singapore before Meta acquired it in early 2026;[118] Megaspeed, a cloud and data-center firm spun off from a Chinese gaming company, established itself in Singapore before becoming the subject of a U.S. congressional investigation into the alleged diversion of restricted Nvidia AI chips.[119]

The strategy has limits. Beijing's Ministry of Commerce opened a review of the Meta–Manus acquisition for potential technology-export-control violations,[120] notwithstanding Manus's Singapore domicile, on the basis that Chinese laws governing technology transfer apply regardless of where the company is legally based.[121] Manus's founders have been summoned by Chinese authorities and have been barred from leaving China as the review unfolds.[122] On April 27, 2026, China's National Development and Reform Commission ordered the parties to withdraw the transaction – the first prohibition issued under the Foreign Investment Security Review

[115] *Compare* PAFACAA, 15 U.S.C. § 9901, which names a specific company and mandates divestiture; Shein's exclusion from capital markets operates through self-regulatory and market pressure rather than legislation.
[116] MINDEF Singapore, *Singapore to Host 22nd Shangri-La Dialogue* (May 29, 2025), http://mindef.gov.sg/news-and-events/latest-releases/29may25_nr2.
[117] James Kynge, Jude Webber & Christine Murray, *China's New Back Doors into Western Markets*, FINANCIAL TIMES (Sep. 5, 2024), https://www.ft.com/content/5583db36-5141-413f-9687-2c3f4968ff07 ("'Singapore-washing' describes a process through which Chinese companies set up a subsidiary or reincorporate in the city state to mitigate the geopolitical risks and scrutiny often directed at China-based entities.").
[118] *See China Reviews Meta's Purchase of AI Startup Manus, FT Reports*, REUTERS (Jan. 7, 2026), https://www.reuters.com/world/china/china-reviews-metas-purchase-ai-startup-manus-ft-reports-2026-01-07/;
Xinghui Kok & Claire Fu, *As Global Scrutiny Grows, Chinese Firms Look to Call Singapore Home*, REUTERS (Dec. 19, 2025), https://www.reuters.com/world/china/global-scrutiny-grows-chinese-firms-look-call-singapore-home-2025-12-19/.
[119] Max A. Cherney, *U.S. Senator Seeks Commerce Department Investigation into Megaspeed*, REUTERS (Oct. 14, 2025), https://www.reuters.com/world/asia-pacific/us-senator-seeks-commerce-department-investigation-into-megaspeed-2025-10-14/. For the broader trend, *see* Xinghui Kok & Claire Fu, *As Global Scrutiny Grows, Chinese Firms Look to Call Singapore Home*, REUTERS (Dec. 19, 2025), https://www.reuters.com/world/china/global-scrutiny-grows-chinese-firms-look-call-singapore-home-2025-12-19/; Ministry of Trade and Industry Singapore, *Written Reply to PQ on Trend of Foreign Technology Companies Re-Domiciling In Singapore To Mitigate Geopolitical Regulatory Risks* (Feb. 3, 2026), https://www.mti.gov.sg/newsroom/written-reply-to-pq-on-trend-of-foreign-technology-companies-redomiciling-in-singapore-to-mitigate-geopolitical-regulatory-risks/.
[120] *China Reviews Meta's Purchase of AI Startup Manus, FT Reports*, REUTERS (Jan. 7, 2026), https://www.reuters.com/world/china/china-reviews-metas-purchase-ai-startup-manus-ft-reports-2026-01-07/.
[121] *Chinese Commerce Ministry on Manus-Meta Deal: Enterprises Must Comply with Chinese Laws*, CHINA DAILY (Jan. 8, 2026), https://global.chinadaily.com.cn/a/202601/08/WS695f7bd9a310d6866eb32b94.html. *See also* Zijing Wu, Cheng Leng, & Ryan McMorrow, *China's Fear of 'Selling Young Crops' Spurred Review of Meta's Manus Deal*, FINANCIAL TIMES (Jan. 23, 2026), https://www.ft.com/content/9496e2bc-f67a-4db7-b5af-f760fedeb666.
[122] Zijing Wu & Hannah Murphy, *Inside China's probe of Meta's 'conspiratorial'$2bn Manus deal*, F.T. (Apr. 17, 2026), https://www.ft.com/content/30383351-763e-4863-a8aa-12cac1dec4c2?syn-25a6b1a6=1.

Measures.[123] For firms with deep operational roots in China, re-domiciliation may shift legal identity without extinguishing the regulatory claims of the state left behind.

India has taken a distinctive approach to Shein. Amid heightened Sino-Indian tensions following the June 2020 border clashes, the government banned Shein on sovereignty and data-security grounds.[124] In February 2025, the brand re-entered the domestic market through a licensing partnership with Reliance Retail – a division of Reliance Industries, controlled by billionaire Mukesh Ambani. The partnership localized operations and data and embedded the supply chain domestically.[125] By June 2025, reporting indicated plans to export India-made Shein garments abroad, alongside rapid expansion of the Indian supplier base.[126] The arrangement effectively domesticates Shein's identity for the Indian market. It also provides another example of how CNI framing on national security grounds can create space for domestic rent-seeking.[127]

5. *Symbolic Signals, Political Labels*

Symbolically, Shein has presented itself as borderless and online-only: sales via app and website, no retail in mainland China, and until late 2025 no permanent brick-and-mortar stores.[128] That posture shifted in November 2025 when Shein opened its first permanent retail store inside Le BHV Marais in Paris[129] – a location that carries unmistakable symbolic associations with European fashion rather than Chinese manufacturing.[130] Nonetheless, the store opening was met with protests over its labor practices, environmental impact, and a scandal over products sold on the website.[131]

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[123] Measures for the Security Review of Foreign Investment (Nat'l Dev. & Reform Comm'n & Ministry of Commerce, Dec. 19, 2020), arts. 3, 16 (P.R.C.). *See China Blocks Meta's $2 Billion Acquisition of AI Firm Manus*, BLOOMBERG (Apr. 27, 2026), https://www.bloomberg.com/news/articles/2026-04-27/china-blocks-meta-s-2-billion-acquisition-of-ai-startup-manus; *Xi Tests China's Reach by Blocking Meta Deal that's Already Done*, BLOOMBERG (Apr. 27, 2026), https://www.bloomberg.com/news/articles/2026-04-27/xi-tests-china-s-reach-by-blocking-meta-deal-that-s-already-done.

[124] *Bans on Chinese Apps, Including TikTok, Surprises India Content Makers*, BBC (July 1, 2020), https://www.bbc.com/news/world-asia-india-53232486.

[125] Niharika Mandhana & Newley Purnell, *Modi's Vision for India Rests on Six Giant Companies*, WALL ST. J. (June 21, 2023), https://www.wsj.com/world/modi-india-economy-reliance-industries-adani-group-tata-d2c4f89e; Dhwani Pandya & Helen Reid, *Exclusive: Shein and Reliance Aim to Sell India-made Clothes Abroad Within A Year*, REUTERS (June 9, 2025), https://www.reuters.com/world/china/shein-reliance-aim-sell-india-made-clothes-abroad-within-year-sources-say-2025-06-09/.

[126] Pandya & Reid, *supra* note 125.

[127] *See* Pargendler, *The Grip of Nationalism*, *supra* note 20, at 534 (documenting the use of corporate law mechanisms to ensure domestic control of strategic industries).

[128] Vauhini Vara, *Fast, Cheap, and Out of Control: Inside Shein's Sudden Rise*, WIRED (May 4, 2022), https://www.wired.com/story/fast-cheap-out-of-control-inside-rise-of-shein/; James Kynge, Jude Webber & Christine Murray, *China's New Back Doors into Western Markets*, FINANCIAL TIMES (Sep. 5, 2024), https://www.ft.com/content/5583db36-5141-413f-9687-2c3f4968ff07.

[129] Osmond Chia, *Shein Picks France to Open Its First Permanent Outlets*, BBC (Oct. 2, 2025), https://www.bbc.com/news/articles/ckg2p87de58o.

[130] *French Department Store BHV to Open New Shein Stores in More French Cities*, REUTERS (Feb. 24, 2026), https://www.reuters.com/business/retail-consumer/french-department-store-bhv-open-new-shein-stores-more-french-cities-2026-02-24/.

[131] *Shein Opens First Permanent Store Amid Heavy Police Presence*, LE MONDE (Nov 5, 2025), https://www.lemonde.fr/en/france/article/2025/11/05/shein-opens-first-permanent-store-in-paris-amid-heavy-police-presence_6747136_7.html

A more surprising symbolic CNI twist has recently emerged. On February 24, 2026, Xu Yangtian made his first ever major public appearance at a conference organized by the Guangdong provincial government.[132] No photographs of Xu had previously been released by the company. Before provincial government and Party leaders, business executives, and rolling cameras that livestreamed the event, Xu declared that Guangdong was "where Shein's roots are, and is where our striving began."[133] He pledged RMB 10 billion in supply-chain investment in the province and credited the Chinese Communist Party's leadership in Guangdong for the company's success.[134] He made no mention of Singapore or Shein's years of positioning itself as a global platform.[135]

The contrast with the company's prior CNI positioning is stark. In 2024, Shein's executive chairman Donald Tang had told a U.S. think-tank audience that the company could simultaneously be Chinese because of its supply chains, Singaporean given its headquarters, and American by ethos[136] – a formulation designed to hold multiple national identities at once. Xu's speech appears to have abandoned that effort.[137] The volte-face in CNI symbolism was widely read as driven by a single imperative: securing Beijing's approval for Shein's stalled Hong Kong IPO – (geo)politics reshaping corporate identity in real time.

Political labelling in the United States reinforces the Chinese CNI association from a different direction. Senators and state officials routinely describe Shein as Chinese in hearings, letters, and press – without engaging with the company's state of incorporation or commercial footprint.[138] Shein's years of cultivating a global, borderless image have been undercut both by its own founder and by political actors who assign a national label for policy and political ends.

6. *Shein's Composite National Identity*

Shein presents a composite national identity. Legally, the group's incorporated entities, the real seat of its management, and the (adopted) nationality of its controlling shareholder all push outside the PRC.[139] Economically, sales are overwhelmingly ex-PRC while production remains in

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[132] Osmond Chia, *Shein's Elusive Boss Hails Chinese Roots in Rare Public Appearance*, BBC (Feb. 25, 2026), https://www.bbc.com/news/articles/c39wdgy3gmvo. *See also* William Langley, *Shein Founder Emerges from Shadows to Hail Chinese Roots*, FINANCIAL TIMES (Feb. 24, 2026), https://www.ft.com/content/76976a62-44cf-4e45-8d26-b19db5283831.

[133] Joyce ZK Lim, *Singapore-based Shein Tried to Shed Its Chinese Roots. Now, It Has Done A U-Turn*, STRAITS TIMES (Feb. 25, 2026), https://www.straitstimes.com/asia/singapore-based-shein-tried-to-shed-its-chinese-roots-now-it-has-done-a-u-turn.

[134] *Shein Pledges China Supply Chain Upgrade in Bid to Woo Beijing*, BLOOMBERG (Feb. 24, 2026), https://www.bloomberg.com/news/articles/2026-02-24/shein-pledges-china-supply-chain-upgrade-in-bid-to-woo-beijing.

[135] Lim, *supra* note 133.

[136] James Kynge, Sun Yu & Ryan McMorrow, *Shein Tries to Suppress Chair's Claim That Fashion Retailer Is 'American'*, FINANCIAL TIMES (Jun. 14, 2024), https://www.ft.com/content/6ecb58d1-2582-48ae-8503-773b228da57e.

[137] Lim, *supra* note 133.

[138] Rick Scott & Robert P. Casey Jr, *Letter to Chair Friedman and Chair Bowen*, US Senate (Jan. 3, 2024), https://www.rickscott.senate.gov/services/files/579BBA62-2AA6-4E5B-B273-4DCA1C1FBB05 (Shein is a "China-founded e-commerce giant that has tremendous influence not only in fashion and textiles, but also in data collection and supply chain logistics").

[139] Mak & Hamlin, *supra* note 97.

southern China.[140] Geopolitically, states relabel the firm to serve policy aims.[141] Symbolically, the brand was for most of its history carefully curated as borderless – a posture seemingly abandoned by its founder in a recent attempt to signal fidelity to Chinese regulators.

Data has been an important national identity marker for Shein. The company's choices regarding data location appear intentional: consumer-facing data is housed outside the mainland and segmented market-by-market. Yet national security considerations in the United States and India focus on whether Chinese authorities could obtain access to supplier or production-related data under PRC law regardless of where the company is legally based.[142] The threat of potential access to data by a nation's adversaries outweighs national allegiance indicated by corporate charters and organizational charts.

C. Pirelli

The first two cases involve companies whose Chinese origins drove CNI contestation. Pirelli presents a different pattern: an Italian company whose national identity was destabilized not by its own origins but by the identity of its largest shareholder – a Chinese state-owned enterprise (SOE).

1. *Transnational Ownership of Pirelli: The Neutral Capital Ideal (2015–2022)*

Pirelli, the famous Italian manufacturer of premium tires founded in 1872, had its own history of fluid CNI, as the use of a Swiss holding company allowed the firm to avoid sequestration of its international operations during World War II, as the Allies accepted its Swiss identity.[143] In 2015, China National Chemical Corp. (ChemChina), an SOE, entered an industrial partnership with Pirelli, which culminated in ChemChina's tire division, China National Tire and Rubber Corporation (CNRC), holding 37% of Pirelli's equity via an Italian-registered investment vehicle called Marco Polo International (MPI).[144] The deal, which made ChemChina Pirelli's largest

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[140] In the UK, Shein reported a pretax profit of 38.25 million pounds in 2024, a 56.6% increase: *see* Helen Reid, *Fast Fashion Retailer Shein's UK Sales Surged to $2.8 Billion in 2024*, REUTERS (Aug. 15, 2025), https://www.reuters.com/business/retail-consumer/fast-fashion-retailer-sheins-uk-sales-surged-28-billion-2024-2025-08-15/; Hall & Yu, *supra* note 106.

[141] Katherine Masters & Arriana McLymore, *Shein IPO Raises Fresh Questions on Alleged Forced Labor in Supply Chains*, REUTERS (Nov. 29, 2023), https://www.reuters.com/markets/deals/sheins-ipo-raises-fresh-questions-alleged-forced-labor-its-supply-chain-2023-11-28/; Vara, *supra* note 128.

[142] Cybersecurity Law of the People's Republic of China 2017, Art 37 ("Critical information infrastructure operators that gather or produce personal information or important data during operations within the mainland territory of the People's Republic of China, shall store it within mainland China. Where due to business requirements it is truly necessary to provide it outside the mainland, they shall follow the measures jointly formulated by the State cybersecurity and informatization departments and the relevant departments of the State Council to conduct a security assessment; where laws and administrative regulations provide otherwise, follow those provisions.").

[143] Jones, *supra* note 8, at 19; ALBERTO PIRELLI, LA PIRELLI: VITA DI UNA AZIENDA INDUSTRIALE 65 (1946) (noting that, although the U.K. and U.S. governments respected the Swiss identity of the holding company, the Brazilian government sequestered the shares of its Brazilian subsidiary, with the dispute ultimately resolved through the admission of a Brazilian shareholder group and a reduction in the holding's participation).

[144] Eric Sylvers, *ChemChina to Buy Controlling Stake in Pirelli*, WALL ST. J. (Mar. 22, 2015), https://www.wsj.com/articles/china-national-chemical-corp-to-buy-controlling-stake-in-pirelli-1427065364. In the original deal, ChemChina acquired Camfin's 26% stake and then launched a mandatory offer for all of the remaining shares. The offer succeeded and Pirelli was delisted. See Pirelli, *2015 Annual Report: Every Mark is Unique* 19 (2015). Pirelli returned to the Milan Stock Exchange in 2017, and subsequent adjustments in the ownership structure left ChemChina with 37%.

shareholder, appeared to solve several pressing issues for Pirelli. CEO Marco Tronchetti Provera[145] was seeking a partner for his investment vehicle, Camfin – Pirelli's largest shareholder at the time[146] – to protect the company against a hostile takeover by a global competitor such as Continental or Michelin. Pirelli also needed funds for R&D and to build out its global distribution network to compete in emerging markets, especially China. In view of Pirelli's needs, ChemChina was an attractive partner, offering capital, low-cost manufacturing prowess, and entrée into the Chinese market.[147]

The investment was structured to preserve operational independence and the Italian identity of Pirelli. Camfin retained its substantial minority stake. A shareholders' agreement between Camfin and ChemChina provided that the ownership structure would be maintained through 2023. Tronchetti would remain CEO, while Pirelli's headquarters and the center of its R&D activity would remain in Milan.[148] These were important conditions that made the deal acceptable to the unions and the Italian government. In short, the deal with ChemChina promised important synergies without diluting Pirelli's Italian identity.

In a 2021 restructuring, the Chinese government merged ChemChina with Sinochem Group, placing them under Sinochem Holdings, a parent company wholly owned and supervised by the State-owned Assets Supervision and Administration Commission (SASAC),[149] a government organ directly under the Chinese State Council. Thus, the restructuring did not alter the fact that the entity controlling the largest percentage of Pirelli's shares (now Sinochem Holdings) is subject to Chinese government control and supervision.[150]

The transaction made economic sense under the apolitical logic of shareholder capitalism that had come to prevail by the turn of the twenty-first century. Foreign capital, even when state-affiliated, was assumed capable of coexisting in national corporate governance systems without threatening either the operational autonomy of the companies in which it was invested or the strategic interests of home governments. Yet in the case of Pirelli, this assumption would be challenged by drastic changes in the geopolitical climate several years after the deal closed.

2. *Italy's Golden Power Intervention (2023)*

The shareholders' agreement designed to maintain Pirelli's control structure was renewed in 2022. By that point, geopolitical tensions between China, the European Union, and the United States had escalated significantly, leading to the widespread reevaluation of foreign direct investment (FDI) in sensitive sectors or involving critical technology. Against this backdrop,

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[145] Tronchetti Provera married (and later divorced) the great-granddaughter of Pirelli founder Giovanni Battista Pirelli: see Sylvers, *supra* note 144.
[146] Camfin is controlled by Marco Tronchetti Provera & C. S.p.A. (MTP), Tronchetti's personal holding company. At the time of ChemChina's investment, Camfin owned 26% of Pirelli's shares.
[147] See Pirelli Annual Report, 6-7, 18, (2015).
[148] *Id*, at 18.
[149] See Press Release, Sinochem Group Co. Ltd, Announcement on Obtaining Approval of the Joint Restructuring of Sinochem and ChemChina (Mar. 31, 2021), http://www.sinochemhx.com/shxsen/zxzx/gsxw/2025/1/I1331294845376921600.html.
[150] See Sinochem Group Co., Ltd, *Corporate Profile*, https://www.sinochem.com/zhjtwapen/AboutUs/CorporateProfile/A048010001Gone1.html.

triggered by renewal of the shareholders' agreement,[151] in 2023 the Italian government invoked its so-called Golden Power[152] with respect to Pirelli. The Golden Power grants the state authority to impose conditions on foreign investments in strategic businesses and assets. It was devised as a more transparent and procedurally robust alternative to Italy's prior Golden Share regime,[153] which had been ruled an infringement on the free movement of capital and freedom of establishment by the European Court of Justice.[154]

In invoking the Golden Power, the Italian government deemed that Pirelli holds "critical technology of national strategic importance."[155] The technology in question is its tire sensor system ("Cyber Tyre") that collects data on tire wear, load, friction, road surface conditions, and similar information. The data are relayed to the vehicle's electronic control unit to improve vehicle handling and can be fed into external networks, such as the cloud.[156] Pirelli envisions development of the Cyber Tyre as a key component of autonomous vehicles. Data derived from the technology can also be used to create algorithms for state-of-the-art use cases such as smart cities.[157]

Under its Golden Power authority, by decree the Italian government imposed a series of extraordinary measures on Pirelli, Sinochem, ChemChina and their affiliated entities in the investment chain.[158] The measures aim to safeguard Pirelli's managerial autonomy and protect its strategic technologies and information beyond the measures included in the renewed shareholders' agreement. CNRC is prohibited from managing Pirelli, while Pirelli is required to refuse "to implement any managerial or organizational initiative that originates from parties attributable to the Chinese SASAC."[159]

The renewed shareholders' agreement, reinforced by the Golden Power decree, gave Camfin significant influence over Pirelli's board composition and appointment of the CEO. Specifically, Camfin was entitled to nominate four of the fifteen board members, with the remaining slate drawn from a majority shareholder list. Additionally, the CEO was to be drawn from the majority shareholder list and designated by Camfin. The Executive Vice Chairman – the

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[151] The renewal agreement, between MTP, Camfin, CNRC and MPI grants substantial governance rights to MTP and Camfin, including the right to appoint Tronchetti as Executive Vice Chairman, in whom significant power is vested with respect to Pirelli's budget and strategic plans.
[152] Decreto-Legge 15 marzo 2012, n. 21, in G.U. Mar. 15, 2012, n. 63 (It.), converted into law by L. 11 maggio 2012, n. 56 (It.).
[153] The Golden Share was a share held by the Italian government in privatized companies such as ENI and Telecom Italia, granting the state veto power over certain transactions and strategic decisions even after privatization. The Golden Power is based on the state's regulatory authority rather than share ownership, and can apply to any firm, not simply those that have been privatized or in which the state holds shares. The statute providing the legal basis for the Golden Power is tailored to comply with the EU proportionality and transparency rules.
[154] Case C-58/99, Commission v. Italy, 2000 E.C.R. I-3811; Case C-326/07, Commission v. Italy, 2009 E.C.R. I-2291.
[155] *Italy opens procedure against China's Sinochem for possible breach of Pirelli governance*, AP NEWS, Nov. 7, 2024, https://apnews.com/article/italy-golden-power-china-pirelli-sinochem-67a3276b8e391fe0c7903ae8ea9cbc8b.
[156] Press Release, Pirelli, Pirelli: Cyber Tyre Awarded as the most Innovative Tyre Technology at the Autotech Breakthrough Awards 2025 (Oct. 17, 2025), https://press.pirelli.com/pirelli-cyber-tyre-awarded-as-the-most-innovative-tyre-technology-at-the-autotech-breakthrough-awards-2025/; Pirelli US, *Cyber Tire*, https://www.pirelli.com/tires/en-us/car/tech-and-knowledge/cyber-tire.
[157] Pirelli & C. S.p.A., *2024 Annual Report* 29 (2024).
[158] *"Golden Power" for Pirelli: Green Light from the Government with Provisions to Protect Strategic Asset*, Italian Government: Presidency of the Council of Ministers (June 16, 2023), https://www.governo.it/en/articolo/golden-power-pirelli-green-light-government-provisions-protect-strategic-asset/22952.
[159] Pirelli & C. S.p.A., *2023 Annual Report* 247 (2023).

position held by Tronchetti – held delegated authority to propose the removal or replacement of the CEO, and together with the CEO, oversee the implementation of the business plan and budget; further, key managerial positions were reserved for their appointment and could only be overridden by a supermajority of at least four-fifths of the Board. To protect Pirelli's technology, the Golden Power decree required Strategic Industrial Security Clearance, which imposed strict limits on access to Pirelli's knowhow and intellectual property, and prevented data sharing with parties traceable to the Chinese government. Implementation of the decree was monitored by the Ministry for Enterprises and Made in Italy.[160]

These extraordinary interventions reoriented the governance of Pirelli from a purely private law framework – albeit one in which a major participant is a Chinese SOE group – to one deeply entangled with Italian state interests.

3. *Subplot: A Putative Italian National Champion Fails to Materialize (2020-2024)*

Beginning in March of 2020, Italian high-performance brake manufacturer Brembo[161] began acquiring shares in Pirelli, eventually reaching a 5% stake by the middle of the year. Dubbed the "Italian connection" by trade publication *Asphalt & Rubber*, the investment fed speculation that a merger of Pirelli and Brembo would create an all-Italian automotive heavyweight.[162] Brembo's acquisition of Pirelli shares was cast as an added counterweight to China's influence over the firm.[163] *Milano Finanza* reported that Brembo's investment was "seen as an additional guarantee of *Italianity*, a tricolor bloc [a reference to the Italian flag] to safeguard Pirelli's valuable technology."[164] In 2023, Brembo entered into a shareholder consultation agreement with Camfin, under which the two major shareholders would consult on the exercise of voting rights in shareholders meetings and purchases of additional shares. Signed in the wake of the Golden Power decree, the agreement renewed speculation of the creation of an Italian automotive components national champion.

In the end, however, a marriage between Brembo and Pirelli – once envisioned as a "wonderful thing" by Brembo's leader Alberto Bombassei[165] – would not come to pass. Brembo sold its entire stake of 55 million Pirelli shares in 2024 at a 5% discount via an advanced book building process. Camfin acquired an additional 2.5% of Pirelli shares in the sale.

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[160] *Id,* at 246-247.

[161] Brembo was founded by Emilio Bombassei in 1961. The company, still controlled by the Bombassei family, rose to prominence when Enzo Ferrari asked Emilio to create brakes for his race cars.

[162] Jensen Beeler, *The Italian Connection: Brembo Buys a Portion of Pirelli*, ASPHALT & RUBBER (Apr. 2, 2020), https://www.asphaltandrubber.com/news/brembo-buys-pirelli-stock/.

[163] Gabriella Bruschi, *Pirelli, Patto di Consultazione tra Tronchetti Provera e Brembo* [*Pirelli: Consultation Pact between Tronchetti Provera and Brembo: The Italian Group Locks in 20% against China's 46%*], FIRSTONLINE (Mar. 1, 2023), https://www.firstonline.info/en/pirelli-patto-di-consultazione-tra-tronchetti-provera-e-brembo-il-polo-italiano-blinda-il-20-a-fronte-del-46-cinese/.

[164] Nicola Carosielli and Andrea Deugeni, Pirelli, *Ecco Perche Brembo Esce dal Capitale, Camfin Rafforza il Controllo* [*This is Why Brembo Disposed of Pirelli Capital, Reinforcing Camfin's Control*], MILANO FINANZA (Oct. 2, 2024), https://www.milanofinanza.it/news/pirelli-brembo-esce-dal-capitale-in-vendita-il-5-5-del-colosso-degli-pneumatici-202410011906546126.

[165] Francesco Bertolino and Daniella Polizzi, *Brembo, Addio a Pirelli: Vende il 5.6% e sfuma il Polo Italiano dei Componeti per Auto* [*Brembo, Farewell to Pirelli: Sells 5.6% Stake, Italian Auto Components 'Champion' Fades*], CORRIERA DELLA SERRA (Oct. 1, 2024), https://www.corriere.it/economia/finanza/24_ottobre_01/brembo-addio-a-pirelli-vende-il-5-6-e-sfuma-il-polo-italiano-dei-componenti-per-auto-f4fcbaa7-0d7e-4012-b1c9-5a1188d42xlk.shtml.

Although the consultation agreement between Brembo and Camfin was signed after imposition of the Golden Power decree, the Italian government's intervention in Pirelli's governance was likely a significant factor in Brembo's exit. By effectively neutering Sinochem's influence in Pirelli's corporate governance, the Golden Power decree likely diminished Tronchetti's appetite for sharing control with Brembo via a merger. For its part, Brembo had its own considerable commercial interests in the Chinese market to protect. Essentially functioning as little more than an ally of Camfin in its role as a shareholder of Pirelli, Brembo would have been left to navigate the tensions between Sinochem and Tronchetti. Such a role would scarcely serve to advance Brembo's interests in China.

Thus, a new Italian national champion did not emerge. And in a final subplot twist, roughly contemporaneously with the sale of its Pirelli shares, Brembo surrendered its (legal) Italian identity, reincorporating in the Netherlands via a cross-border share conversion.[166] Brembo's ambitions for global growth were facilitated by more flexible Dutch corporate law, which also allowed Bombassei to maintain control over the firm.

4. *Control Re-examined (2024–2025)*

In November 2024, Italian authorities initiated a formal administrative procedure under the Golden Power rules to determine whether Sinochem and related parties had violated the governance restrictions by exerting de facto control or influence over Pirelli.[167] In September 2025, the Presidency of the Council of Ministers determined that the allegations of prohibited organizational-functional links between Pirelli and CNRC were not substantiated.[168] The finding demonstrated that the Golden Power restrictions had functioned as designed – Sinochem had complied. Yet the ruling did not stabilize the relationship. Within days, Reuters reported that Sinochem was open to bids for its Pirelli stake if offers were made at a premium.[169]

Encouraged by Camfin and Pirelli executive Tronchetti, in April 2025 the Pirelli board adopted a resolution providing that Sinochem no longer exercised control over the company.[170] This legal repositioning was not based on a reduction in Sinochem's shareholding, which Tronchetti had unsuccessfully encouraged, but rather on the effect of Golden Power restrictions, which had curtailed Sinochem's governance rights to the extent that functional control had ceased.[171] The board emphasized the importance of this move for Pirelli's strategic realignment

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[166] Press Release, Brembo S.p.A., *Press Release: Brembo Approves Cross-Border Conversion to the Netherlands* (Apr. 24, 2024), https://www.brembogroup.com/en/media/news/brembo-cross-border-conversion.
[167] *Italy Opens Procedure Against Sinochem Over Pirelli Governance Breach*, REUTERS (Nov. 6, 2024), https://www.reuters.com/business/autos-transportation/italy-opens-procedure-against-sinochem-over-pirelli-possible-governance-breach-2024-11-06/.
[168] Press Release, Pirelli, Pirelli: Dismissal of the Administrative Proceedings for Possible Violation by CNRC of the Requirements Contained in the Golden Power Law (Sept. 29, 2025), https://press.pirelli.com/pirelli-dismissal-of-the-administrative-proceedings-for-possible-violation-by-cnrc-of-the-requirements-contained-in-the-golden-power-law/.
[169] *Pirelli stake sale among options for Sinochem in governance disputes – sources*, REUTERS, Oct. 1, 2025, https://www.reuters.com/world/china/pirelli-stake-sale-among-options-sinochem-governance-dispute-sources-2025-09-30/.
[170] *Pirelli Board Says Sinochem No Longer Controls Tyremaker*, REUTERS (Apr. 28, 2025), https://www.reuters.com/sustainability/sustainable-finance-reporting/pirelli-board-says-chinas-sinochem-no-longer-controls-tyremaker-2025-04-28/.
[171] *Id.*

with U.S. regulatory frameworks, particularly those banning Chinese-linked technology providers from participating in the connected and autonomous vehicle supply chain.[172]

5. *Unraveling (2025–2026)*

The regulatory catalyst arrived from Washington. In January 2025, the Commerce Department's Bureau of Industry and Security finalized a rule prohibiting transactions involving connected-vehicle hardware and software developed or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of the PRC or Russia.[173] The rule does not employ ownership thresholds; its "foreign interest" definition extends to intellectual property embedded in covered components. Pirelli's Cyber Tyre – tire-mounted sensors transmitting real-time data to vehicle electronic control units and external networks – is a vehicle connectivity system component within the rule's scope. With approximately 25% of Pirelli's revenue derived from North America, continued association with its largest shareholder, a Chinese SOE, risked exclusion from Pirelli's most important growth market.

Against this backdrop, the shareholders' agreement between Camfin and CNRC – renewed in 2022 for a term expiring May 18, 2026 – became untenable. On January 23, 2026, Camfin formally announced it would not renew the agreement due to "the impossibility…of finding solutions with Sinochem…to adapt Pirelli's governance in a timely manner to the requirements of American law."[174]

Sinochem responded to this notice with a proposal to ringfence Pirelli's U.S. market activities by limiting Sinochem's voting rights and board representation with respect to those operations – in essence, a TikTok-like solution.[175] Pirelli's board rejected the proposal, voting nine to five against "any project or initiative that might lead to any form of compartmentalization, separation and/or segregation, even only partially, and of any nature."[176] The five dissenting votes came from the Chinese-appointed directors.

Camfin notified the Italian Prime Minister's Office of the non-renewal, triggering a new Golden Power procedure.[177] Golden Power hearings before the Presidency of the Council of

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[172] Silvia Sciorilli Borrelli, *Pirelli Strips China's Sinochem of Control in Attempt to Avert Exclusion by Trump in US*, FIN. TIMES (Apr. 28, 2025), https://www.ft.com/content/d9805000-fb2c-4fe4-a67f-6a9ba5d0c614?syn-25a6b1a6=1. *See also* Press Release, Pirelli & C. S.p.A., Press Release (Apr. 28, 2025), https://press.pirelli.com/press-release-28-04-2025/ (stating that dialogue with main shareholders would continue "to align governance with USA regulations").
[173] Securing the Information and Communications Technology and Services Supply Chain: Connected Vehicles, 90 Fed. Reg. 5360 (Jan. 16, 2025) (codified at 15 C.F.R. pt. 791, subpt. D) (effective Mar. 17, 2025).
[174] Press Release, Camfin, Camfin Announces that it will not Renew Pirelli Shareholder Agreement with Sinochem (Jan. 23, 2026), http://www.gruppocamfin.it/comunicati/2026/cs_Camfin_%2023%20gennaio%202026_ENG.pdf.
[175] Daniele Lepido, *Pirelli's Chinese Investor Proposes Plan to Address US Concerns*, BLOOMBERG (Jan. 26, 2026), https://www.bloomberg.com/news/articles/2026-01-26/pirelli-s-chinese-investor-proposes-plan-to-address-us-concerns; *China's Sinochem says it proposed solution to end governance spat with Pirelli*, MARKETSCREENER (Jan. 26, 2026), https://www.marketscreener.com/news/china-s-sinochem-says-it-has-proposed-solution-to-end-governance-spat-in-pirelli-ce7e5bdbdf8df124.
[176] Press Release, Pirelli & C. S.p.A., Pirelli Board Majority Agrees with CEO Casaluci's View that Cyber Tyre Activities Should not be Compartmentalized, Separated and/or Segregated (Feb. 5, 2026), https://press.pirelli.com/pirelli-board-majority-agrees-with-ceo-casalucis-view-that-cyber-tyre-activities-should-not-be-compartmentalized-separated-andor-segregated/.
[177] Under the 2023 Golden Power decree, changes to the governance framework – including non-renewal of the shareholders' agreement – must be notified to the Presidency of the Council of Ministers.

Ministers were convened with all three parties – Pirelli, Camfin, and Sinochem.[178] The decree by the Italian government, released in April 2026, imposes new governance constraints on Sinochem and restricts Pirelli's ability to share information with its Chinese shareholder.[179] The decree provides that until Sinochem's equity stake in Pirelli falls below 9.99%, it may not appoint more than three directors to the board, two of whom must be independent. None of Sinochem's appointees may serve as chairman or CEO. Pirelli must refuse to implement managerial or operational initiatives attributable to SASAC and may not share R&D information or intellectual property with Sinochem. Pirelli must also prevent data obtained from the Cyber Tyre system from being transferred outside the EU or shared with the Chinese government. In response, Sinochem threatened legal action against the Italian government's "blatant discrimination," and Chinese analysts have predicted that the decree will undermine Chinese investors' confidence in the Italian market.[180]

6. *Ownership Without Control?*

Proponents of the Golden Power regime argue that it reclaims public control over strategic assets and addresses asymmetries in global investment regimes, especially when democratic governments face state-capitalist entities.[181] From this perspective, the protection of data, technology, and governance autonomy is cast as essential to national security. Critics raise concerns about the erosion of legal certainty and investor confidence, particularly in cases where restrictions are imposed ex post or without clear breaches of law.[182] Sinochem continues to hold 34% of Pirelli, but it is now effectively excluded from the company's governance, raising questions about de facto expropriation and the limits of lawful state intervention. Moreover, as suggested by Tronchetti's lobbying to dilute Sinochem's influence over Pirelli even further, ad hoc state intervention in private business enterprises invites strategic maneuvering and rent seeking by other affected parties.

The Italian government has moved cautiously, wary of damaging broader diplomatic or commercial relations with China.[183] Its caution is compounded by a concurrent EU challenge: in November 2025, the European Commission opened formal infringement proceedings against Italy's use of the Golden Power to block a banking merger, on grounds that the legislation permits

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178 *Pirelli, attesa per il verdetto Golden Power* [*Pirelli, waiting for the Golden Power verdict*], IL SOLE 24 ORE RADIOCOR (Mar. 18, 2026), https://www.ilsole24ore.com/art/pirelli-attesa-il-verdetto-golden-power-AIrqic0B; *Pirelli, il mercato punta sulla svolta nella governance* [*Pirelli: The market is banking on a change in governance*], IL SOLE 24 ORE RADIOCOR (Mar. 14, 2026), https://www.ilsole24ore.com/art/pirelli-mercato-punta-svolta-governance-AIuFEzwB.

179 *See* CBA Studio Legale, *Pirelli "Golden Power" and the New Boundaries of Foreign Investment*, LEXOLOGY (Apr. 20, 2026), https://www.lexology.com/library/detail.aspx?g=3abbddd5-be6b-4d4f-ab5a-8a8c4803c768.

180 *Spent 55 billion spent to "save the day" back then, now completely sidelined: Sinochem faces blatant discrimination at Pirelli,* CHEMNET (Apr. 21, 2026), https://news.chemnet.com/news-4612.html.

181 Italy Opens Procedure, *supra* note 167; Regulation (EU) 2022/2560 of the European Parliament and of the Council of 14 December 2022 on Foreign Subsidies Distorting the Internal Market, 2022 O.J. L 330/1.

182 *Italy Resisting Calls to Tighten Curbs on Sinochem*, REUTERS (June 4, 2025), https://www.reuters.com/world/china/italy-resisting-calls-pirelli-tighten-curbs-chinese-shareholder-sources-say-2025-06-04/.

183 *See Italy and Pirelli Try to End Chinese Investment in Tyre Maker,* FINANCIAL TIMES (Jan. 5, 2026), https://www.ft.com/content/c81c84de-f746-4d22-bda2-8c43ccd8c8d7?syn-25a6b1a6=1.

unjustified restrictions on the free movement of capital.[184] The Meloni government is thus defending the Golden Power against EU legal challenge in the financial sector while deploying the same instrument in the Pirelli case.

7. *Implications for Corporate National Identity*

Italy's use of the Golden Power demonstrates how national sovereignty now intersects with corporate law. Shareholder rights – long considered fundamental in private law systems – have become subordinate to the logic of strategic autonomy. In this respect, the Pirelli-Sinochem conflict exemplifies a broader trend: the corporatization of geopolitics, and the geopolitical redefinition of the "nationality" of the corporation.

Italy's Golden Power was invoked to protect state interests in a private company that, except for its temporary delisting in connection with the ChemChina investment, has been continuously listed on Borsa Italiana (now part of Euronext) for more than 100 years. Moreover, unlike the operation of a golden share or even a mitigation agreement under an FDI screening regime such as CFIUS, the state's intervention in Pirelli's governance and operations occurred years after ChemChina's investment, rather than with ChemChina's full knowledge at the time it purchased the shares.

Among the cases examined here, Pirelli presents a distinctive mode of CNI engineering by restricting governance rights ex post without affecting equity ownership. As the external geopolitical and regulatory situation shifted, the same governmental authority was invoked again – raising the distinct possibility that continued equity ownership by the Chinese actor would become untenable. That pattern raises important questions about predictability and remedies inherent in CNI engineering we explore in Part III.

D. U.S. Steel

Italy's Golden Power law was used in Pirelli to constrain the governance rights of a Chinese investor ex post. By contrast, a golden share granting numerous approval rights to the U.S. government, introduced via a bespoke charter provision, was used to facilitate the acquisition of U.S. Steel by Nippon Steel amid strong union opposition and potential national security concerns.

1. *Shareholder Support, Union and Bipartisan Opposition*

An iconic American company that was once the largest firm in the United States, U.S. Steel was created through the merger of various steel enterprises by Gilded Age titans Andrew Carnegie, Charles Schwab, and J.P. Morgan.[185] In July 2023, U.S. Steel received an acquisition offer from Cleveland-Cliffs, its U.S. rival, for $7.25 billion.[186] The bid represented a 43% premium

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[184] European Commission, *Incompatibility of discretionary powers in bank mergers with EU law in Italy*, INFR(2025)2152, Letter of Formal Notice (Nov. 21, 2025), https://ec.europa.eu/implementing-eu-law/search-infringement-decisions/?langCode=EN&version=v1&typeOfSearch=byDecision&refId=INFR(2025)2152&page=1&size=10&order=desc&sortColumns=decisionDate&memberState=IT. The proceedings concern Italy's use of the Golden Power to impose conditions on UniCredit's bid for Banco BPM.

[185] United States Steel, *Our History: An Industry Leader from the Start*, https://www.ussteel.com/about-us/history; Lainey Newman, *The Art of a Foreign Acquisition: Understanding Opposition to the Proposed Sale of U.S. Steel to Nippon Steel* (unpublished manuscript, on file with the authors, 2024).

[186] Cleveland Cliffs, *Cleveland-Cliffs Proposes to Acquire U.S. Steel*, Aug. 13, 2023, https://www.clevelandcliffs.com/news/news-releases/detail/600/cleveland-cliffs-proposes-to-acquire-u-s-steel.

over the market price and had the support of the United Steelworkers union.[187] U.S. Steel, however, promptly rejected the bid and revealed that it was reviewing strategic alternatives after receiving several unsolicited offers.[188] In December 2023, U.S. Steel announced that it had agreed to be acquired by Nippon Steel for $14.9 billion, more than twice the price of the Cleveland-Cliffs offer.[189] The transaction announcement highlighted Nippon Steel's commitments to honor all collective bargaining agreements with United Steelworkers, drive the global steel industry toward decarbonization, and retain the U.S. Steel name and headquarters in Pittsburgh.

Despite the substantial premium, the transaction faced significant union opposition in a key swing state and attracted strong bipartisan backlash.[190] In January 2024, Donald Trump vowed to block the deal if reelected.[191] Republican Senator JD Vance described the deal as "auctioning off" a "critical piece of America's defense industrial base" to foreigners,[192] while Democratic Senator Sherrod Brown urged President Biden to "protect the American steel industry, American steelworkers, and our national and economic security."[193] In March 2024, President Biden publicly opposed the deal, stating: "I told our steel workers I have their backs" and that "it is vital for [U.S. Steel] to remain an American steel company that is domestically owned and operated."

Notwithstanding these union and political concerns, in April 2024, the deal, which represented a premium of 142% over the unaffected market price prior to the strategic review announcement,[194] was approved by 98% of U.S. Steel shareholders voting on the transaction.[195] In contrast to strong shareholder support, the transaction divided workers. Despite strong union

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[187] *Id.*

[188] United States Steel, *U.S. Steel Announces Strategic Alternatives Process*, Aug. 13, 2023, https://www.ussteel.com/perspective-detail/-/blogs/u-s-steel-announces-strategic-alternatives-process?_com_liferay_blogs_web_portlet_BlogsPortlet_redirect=/perspective-detail.

[189] United States Steel, *Nippon Steel Corporation (NSC) to Acquire U. S. Steel, Moving Forward Together as the 'Best Steelmaker with World-Leading Capabilities'*, Dec. 18, 2023, https://www.ussteel.com/newsroom/-/blogs/nippon-steel-corporation-nsc-to-acquire-u-s-steel-moving-forward-together-as-the-best-steelmaker-with-world-leading-capabilities-.

[190] The USW's opposition extended beyond collective bargaining terms. The union questioned the enforceability of Nippon's commitments beyond the existing agreement's September 2026 expiration, expressed concern that production would shift from unionized integrated mills to the non-union Big River Steel facility, and characterized Nippon as a "serial unfair trader" whose ownership of a major domestic producer would undermine trade enforcement. *See* Letter from David McCall, Int'l President, USW, to Scott Bessent, Sec'y of the Treasury (Apr. 21, 2025), https://usw.org/wp-content/uploads/2025/04/04-21-25-USS-Nippon.pdf.

[191] Joe Deaux & Stephanie Lai, *Trump Says He Would 'Absolutely' Block Nippon-US Steel Deal*, BLOOMBERG, Jan. 31, 2024.

[192] Olafimihan Oshin, *JD Vance Opposes Sale of US Steel to Nippon*, THE HILL (Dec. 18, 2023), https://thehill.com/homenews/senate/4366486-jd-vance-opposes-us-steel-nippon-sale/.

[193] Anne O. Krueger, *America's Steel Madness*, PROJECT SYNDICATE (Feb. 16, 2024), https://www.project-syndicate.org/commentary/nippon-steel-acquisition-of-us-steel-will-boost-american-productivity-competitiveness-by-anne-o-krueger-2024-02?barrier=accesspaylog.

[194] United States Steel Corporation, Preliminary Proxy Statement (Feb. 26, 2024), https://www.sec.gov/Archives/edgar/data/1163302/000110465924006070/tm243679-1_prem14a.htm(hereinafter "Preliminary Proxy Statement").

[195] Chris Isidore, *US Steel's Shareholders Just Voted to End More Than A Century of American Ownership. It May Not Matter*, CNN (Apr. 12, 2024), https://edition.cnn.com/2024/04/12/business/us-steel-nippon-steel-deal.

opposition, U.S. Steel workers also rallied in support of the deal, expressing concern with the company's survival in the absence of significant investment.[196]

Following initial concern expressed by the Committee on Foreign Investment in the United States (CFIUS) about a reduction of U.S. production, Nippon Steel countered that the deal "would create a stronger global competitor to China grounded in the close relationship between U.S. and Japan."[197] U.S. Steel executives, in turn, publicly warned of plant closings and relocation of the Pittsburgh headquarters if the transaction were blocked[198] – a posture that Democratic Senator Elizabeth Warren attributed to the $72 million in golden parachutes that the executives expected to receive if the transaction went through.[199] CFIUS failed to reach internal agreement upon the expiration of its review deadline and referred the matter to the White House.[200] President Biden subsequently blocked the transaction based on "credible evidence" that Nippon Steel "might take action that threatens the national security of the United States."[201]

2. *Industry and Nationalistic Background*

The backlash against the acquisition of U.S. Steel shows that the most recent wave of nationalism in cross-border transactions is not limited to China or to the data and artificial intelligence sectors. Actions that could alienate Japan – a major ally in Asia – are surprising if viewed exclusively from the perspective of U.S.-China geopolitical competition. The contemporary relevance of the steel sector, and of U.S. Steel, to U.S. national security has also been questioned, given the military's limited needs and the size of the company as the third largest U.S. producer.[202]

The fact that both companies reflect their national identities in their names added to the symbolic significance of the transaction.[203] Tensions between the U.S. and Japanese steel industries have deep historical roots. The decline of the U.S. steel industry has long been attributed to foreign competition, particularly alleged "dumping" by Japanese firms, which resulted in the imposition of anti-dumping duties on Japanese steelmakers.[204] Reflecting on the Nippon Steel acquisition, a United Steelworkers (USW) union representative recalled how imports from Japan,

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[196] Newman, *supra* note 185; Evan Robinson-Johnson, *Workers Rally for Deal*, PITTSBURGH POST-GAZETTE, Dec. 13, 2024 (quoting a third-generation steelworker as saying that "90% or more of the steelworkers are for the sale").
[197] *Id.*
[198] *US Steel CEO says company likely to close steel mills if proposed $14B sale to Nippon Steel falls through*, FOX BUSINESS, Sep. 4, 2024.
[199] Letter from Elizabeth Warren, U.S. Senator, & Sherrod Brown, U.S. Senator, to David Burritt, President & Chief Executive Officer, U.S. Steel (Oct. 2, 2024).
[200] David J. Lynch & Jeff Stein, *Panel's Deadlock on U.S. Steel Sale Leaves Final Decision to Biden*, Wash. Post (Dec. 23, 2024), https://www.washingtonpost.com/business/2024/12/23/nippon-steel-us-steel-biden/.
[201] President Biden issued Executive Order Regarding the Proposed Acquisition of United States Steel Corporation by Nippon Steel Corporation, 90 Fed. Reg. 2605 (Jan. 3, 2025).
[202] Stephen Heifetz, *The Nippon-U. S. Steel Deal, a Golden Share, and Magic Beans*, COUNCIL ON FOREIGN RELATIONS (July 16, 2025), https://www.cfr.org/article/nippon-u-s-steel-deal-golden-share-and-magic-beans; *World Steel Association, World Steel in Figures 2025*, at 12 (2025) (ranking U.S. Steel as the 29th world's largest producer, ranking behind U.S. competitors Nucor (16th) and Cleveland-Cliffs (22nd)); Memorandum from Sec'y of Def. to Sec'y of Commerce, at 1 (Feb. 19, 2018) ("the U.S. military requirements for steel and aluminum each only represent about 3% of U.S. production").
[203] Kiminori Yamaguchi, *Letter: Japanese M&A is well placed for renewed growth*, F.T., Jan 2, 2024.
[204] Jeffrey Bonior, *Steelworkers Remember When Imports from Japan Caused a Crisis – and Draw Parallels to Today*, ALLIANCE FOR AMERICAN MANUFACTURING, Dec. 10, 2021.

rather than China, precipitated the industry's major layoffs.[205] Japanese direct investment in U.S. automobile manufacturing has historically provided mostly non-union jobs, contrasting sharply with domestic competitors.[206]

The characterization of steel as critical to national security also has a long historical pedigree. In 1952, President Truman attempted to nationalize the entire steel industry in response to a threatened nationwide strike during the Korean War, citing national security concerns,[207] though the measure was struck down by the U.S. Supreme Court.[208]

Foreign takeovers in the steel industry have prompted nationalistic responses elsewhere. The hostile takeover of French giant Arcelor by India's Mittal in 2006 catalyzed legislation permitting shareholder rights plans to deter takeovers (dubbed "*bons patriotes*") and the openly protectionist *loi Florange*, which expanded government power by creating default double voting rights for long-term shareholders.[209] Even earlier, a fear of hostile takeovers had prompted Nippon Steel and South Korea's Posco to establish cross-shareholdings as "a mutual antitakeover alliance."[210] Although concerns about foreign hostile takeovers once predominated, golden parachutes now create strong incentives for management not to resist hostile bids,[211] strengthening the case for state responses outside the traditional corporate law rules of general application. These new responses go beyond the binary of simply approving or blocking transactions, taking two forms: (i) increasingly stringent systems of national security reviews of foreign investments, allowing corporate governance changes as mitigation measures;[212] and (ii) negotiated commitments from foreign acquirers that often go beyond national security to cover broader stakeholder or "economic security" considerations.

3. *Dealmaking through Revamped Golden Shares*

Despite his previous opposition to the deal, once in office, President Trump directed CFIUS to conduct a de novo review of the transaction. In June 2025, he approved the transaction subject to mitigation measures, including what has been described as "the novel use of a 'golden share' to protect U.S. economic security."[213]

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[205] *Id.*
[206] LAINEY NEWMAN & THEDA SKOCPOL, RUST BELT UNION BLUES: WHY WORKING-CLASS VOTERS ARE TURNING AWAY FROM THE DEMOCRATIC PARTY 96-97 (2023) ("As of 2021, no foreign automaker had plants in the United States represented by UAW or any other union").
[207] President Truman issued Executive Order 10340, Directing the Secretary of Commerce to Take Possession of and Operate the Plants and Facilities of Certain Steel Companies, 17 Fed. Reg. 3139 (April 8, 1952).
[208] *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).
[209] For a discussion, *see* Mariana Pargendler, *The Grip of Nationalism on Corporate Law*, 95 IND. L.J. 533, 543 (2020).
[210] PETER NOLAN, CHINA AND THE GLOBAL ECONOMY: NATIONAL CHAMPIONS, INDUSTRIAL POLICY AND THE BIG BUSINESS REVOLUTION 116 (2002).
[211] Marcel Kahan & Edward B. Rock, *How I Learned to Stop Worrying and Love the Pill: Adaptive Responses to Takeover Law*, 69 U. CHI. L. REV. 871, 899 (2002) (arguing that executive compensation schemes have significantly reduced managers' incentives to resist takeover bids offering a substantial premium).
[212] Shiv Pandya, *A Controlling Interest: Corporate Governance and National Security Across Global FDI Regimes*, 57 GEO. J. INT'L L. (forthcoming 2026) (providing a comparative analysis of FDI review mechanisms across 11 jurisdictions and highlighting the centrality of corporate governance in these regimes through both control determinations and remedial measures).
[213] Shawn Cooley, Christina Carone & Sisi Liu, *Presidential Action Regarding Nippon Steel Establishes Two New Significant CFIUS Precedents*, WEIL FOREIGN INVESTMENT AND TRADE ALERT, July 17, 2025.

The golden share in U.S. Steel takes the form of a single non-economic share of Class G Preferred Stock issued to the U.S. government upon the transaction's closing in June 2025.[214] In November 2025, President Trump published a letter in the Federal Register formally stating that he "hold[s] the Class G Preferred Stock (Golden Share) in U.S. Steel," designating an Under Secretary of Commerce to exercise the enumerated charter authorities on his behalf, and appointing a named individual as the government's Class G Director.[215]

Golden shares were first introduced during the British privatizations of the Thatcher era to grant the UK government veto rights over major corporate decisions – chiefly to prevent foreign acquisitions of critical firms.[216] The concept spread and took different forms, including board appointment rights, as governments in continental Europe, Brazil and elsewhere undertook subsequent waves of privatization.[217] However, several decisions by the European Court of Justice invalidated golden share schemes as unlawful restrictions on the EU principle of free movement of capital.[218]

The U.S. Steel golden share departs from the first generation of golden shares in several important respects. First, it grants government powers in the governance of a company that was previously in private, rather than public, hands, thereby expanding, rather than reducing, government control over private enterprise. Second, the scope of U.S. Steel's golden share is significant, encompassing not only standard national considerations such as the retention of headquarters and board appointment rights, but also purported guarantees of future investment and employment levels. Finally, the resulting arrangement breaks new ground by seemingly providing for a different approval process based on the *identity* of the President, with the powers being exercised by Donald J. Trump himself or his designees while he is in office, and by the CFIUS monitoring agencies when he is no longer in office.

Although unprecedented in numerous respects, this golden share offers a new iteration of tailored contractual solutions to reduce political resistance to foreign acquisitions. Following Pfizer's failed takeover attempt of AstraZeneca due to political opposition, the U.K. Takeover Panel amended its Takeover Code to allow acquirers to make credible commitments to stakeholders through "post-offer undertakings," thereby easing political resistance.[219] The mechanism was subsequently used in various acquisitions, including Japan's SoftBank US$32

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[214] United States Steel Corp., 2025 Annual Financial Statements, Note 1 (Feb. 5, 2026) (stating that "[u]nder the requirements of the NSA, the Company issued one non-economic share of Class G Preferred Stock (the 'Golden Share') to the U.S. Government").

[215] Letter from President Donald J. Trump to Scot Duncan, Senior Vice President, General Counsel & Secretary, United States Steel Corp., 90 Fed. Reg. 54,223 (Nov. 25, 2025).

[216] Daniel Yergin & Joseph Stanislaw, Commanding Heights (PBS excerpt, 1998), https://www.pbs.org/wgbh/commandingheights/shared/minitextlo/ess_privatization.html (describing how Chancellor Nigel Lawson came up with the idea of a golden share to "enable the government to prevent control of the company from falling into unsuitable hands" – with "unsuitable" serving as a "euphemism for foreign.").

[217] Luca Enriques, Henry Hansmann, Reinier Kraakman & Mariana Pargendler, *The Basic Governance Structure: Minority Shareholders and Non-Shareholder Constituencies*, *in* THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH 95-96 (3rd ed., 2017).

[218] *See supra* note 154 and accompanying text.

[219] Pargendler, *The Grip of Nationalism*, *supra* note 20, at 551. A few years earlier, the acquisition of iconic U.K. confectionery firm Cadbury by U.S. multinational Kraft caused significant commotion after Kraft reneged on its promise to refrain from closing a local factory. *Id.* at 550.

billion buyout of U.K. chip designer ARM Holdings, which promised to double ARM's U.K. headcount and maintain its Cambridge headquarters for five years.[220]

Yet golden shares have emerged as a potentially more potent and durable alternative. Recent uses – including the U.K. government's golden share in Royal Mail as a condition of its 2024 sale – have been described as serving to enable rather than block acquisitions, granting the government greater powers than the previous status quo to compensate for the shift to concentrated foreign ownership.[221]

Despite the unusual use of the golden share, Japanese media has speculated whether Nippon Steel "may have gotten the deal it wanted all along."[222] However, the unique golden share provision allowed President Trump to frame the deal as a "partnership," despite Nippon's acquisition of 100% of the shares and to misrepresent "the golden share [w]hich I control or president controls" as amounting to "total control, 51% ownership by Americans." President Trump also announced on Truth Social that, "after much consideration and negotiation, U.S. Steel will REMAIN in America, keep its Headquarters in the Great City of Pittsburgh" – even though Nippon Steel had proposed this condition from the beginning. For these reasons, the Nippon Steel golden share has been described as "optical magic beans."[223]

The golden share's significance became concrete within months. In September 2025, U.S. Steel announced plans to idle Granite City Works, affecting 800 workers. Commerce Secretary Lutnick invoked the golden share authority, which specifically prohibits the closure or idling of Granite City Works before June 18, 2027,[224] to block the shutdown; the company reversed course.[225]

Nippon Steel owns 100% of U.S. Steel's equity. Under the control test – historically the corporate law test used to look through legal form to the nationality of the controlling shareholder – U.S. Steel is a Japanese company.[226] Yet in a January 2026 interview, CEO Burritt declared that

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[220] *Id.* at 551-552.
[221] In 2024, the UK government negotiated a golden share in Royal Mail as a condition for its acquisition by Czech billionaire Daniel Kretinsky, requiring government consent for changes to headquarters location, tax residency, and the universal service obligation. Press Release, Royal Mail Remains Based in UK in Deal to Bolster Key Services (Dec. 16, 2024), https://www.gov.uk/government/news/royal-mail-remains-based-in-uk-in-deal-to-bolster-key-services. *See also* Chris Hughes, *The Golden Share Makes a Dubious Comeback*, BLOOMBERG (Jul. 4, 2025), https://www.bloomberg.com/opinion/articles/2025-07-04/golden-shares-make-an-unwelcome-comeback?embedded-checkout=true.
[222] Francis Tang, *Nippon Steel May Have Gotten the Deal It Wanted All Along*, JAPAN TIMES (Jun. 16, 2025), https://www.japantimes.co.jp/business/2025/06/16/companies/nippon-steel-golden/.
[223] Heifetz, *supra* note 202.
[224] Fifth Amended and Restated Certificate of Incorporation of United States Steel Corp., Art. VI, § 1(d)(A) (June 18, 2025).
[225] Marc Levy, *The White House Says It Blocked US Steel's Decision to Stop Processing Steel at Illinois Plant*, ASSOCIATED PRESS (Sep. 23, 2025), https://apnews.com/article/us-steel-trump-nippon-steel-granite-city-7d9acc7f1a1b08b971b374c40574beec. Sources differ on whether the government formally exercised a charter veto right or communicated a threatened exercise that prompted the reversal before formal invocation was required. *See also Trump Invokes 'Golden Share' to Block U.S. Steel Plans for Illinois Plant, WSJ Reports*, *REUTERS* (Sept. 19, 2025), https://www.reuters.com/business/trump-invokes-golden-share-block-us-steel-plans-illinois-plant-wsj-reports-2025-09-19/.
[226] U.S. Steel's jurisdiction of incorporation (Delaware) and headquarters (Pittsburgh) continue to point to the United States – the latter now guaranteed by the charter's consent requirements. Fifth Amended and Restated Certificate of Incorporation of United States Steel Corp., Art. VI, § 1(b) (June 18, 2025).

U.S. Steel is "absolutely" still American and that the company has "a fiduciary duty to national security" – a concept without foundation in Delaware corporate law, under which directors owe duties to the corporation and its stockholders, not to the state or national welfare.[227] The golden share is the mechanism making such a claim symbolically credible to an American audience: it enables the CEO of a wholly Japanese-owned company to project an American corporate national identity, grounded not in ownership or incorporation, but in a governance instrument held by the President of the United States.

4. *Implications for Corporate National Identity*

In the U.S. Steel case, the legal facet has two dimensions: U.S. Steel remains a Delaware corporation headquartered in Pittsburgh, but the control test – 100% equity ownership by a Japanese corporation – points away from the United States. The economic facet reinforces the foreign picture: the company is a wholly owned subsidiary of a Japanese corporation, and the acquisition was financed in part through Japanese government-backed lending.[228] Yet the golden share was used to reconstruct an American corporate national identity through the (geo)political facet, embedding sovereign governance rights directly into the company's charter. And the symbolic facet completes the reversal: the CEO has declared that the company is "absolutely" American, while asserting that he has a fiduciary duty to U.S. national security.

The golden share is distinctive among the instruments examined in this article. The TikTok statute and the Pirelli golden power are both direct acts of the state – one legislative, the other administrative. The U.S. Steel golden share, by contrast, takes the form of a corporate law instrument: a class of preferred stock created under a Delaware charter, with rights specified in a certificate of incorporation. Yet its content is dictated by a confidential national security agreement, and its exercise is reserved to the President or designated federal officials – not to a shareholder pursuing economic returns. These are not ordinary corporate governance provisions; no equity holder would ordinarily embed pricing floors, sourcing constraints, or mandated investment schedules in a corporate charter. The charter has become a conduit through which the (geo)political facet – encompassing both geopolitical rivalry and domestic political economy – penetrates corporate governance, overriding the legal and economic facets that would otherwise define the company's national identity.

The case also illustrates the pattern of iterative state involvement that recurs across the case studies examined in this article. The U.S. government did not act once and withdraw. CFIUS review led to a presidential blocking order; the blocking order was superseded by a de novo review; the de novo review produced a conditional approval and a national security agreement; the golden share was issued and a government director appointed; and within months, the golden share authority was invoked to prevent a plant closure. The sequence bears no resemblance to the binary model – approve or block – that has traditionally characterized foreign investment screening. In this sense, the outcome is conditional engagement rather than decoupling. Yet the price of

[227] Tony Dokoupil, *CEO David Burritt Says U.S. Steel Is "Absolutely" Still an American Company After Nippon Steel Acquisition*, CBS NEWS (Jan. 19, 2026).
[228] In March 2026, Nippon Steel secured loans totaling 900 billion yen (approximately $5.7 billion) from the Japan Bank for International Cooperation and major Japanese private lenders to finance the acquisition. *See Nippon Steel Secures $5.7 Billion of Loans for U.S. Steel Takeover*, REUTERS (Mar. 18, 2026), https://www.reuters.com/world/asia-pacific/nippon-steel-secures-57-billion-loans-us-steel-takeover-2026-03-18/. The charter permits JBIC financing. Fifth Amended and Restated Certificate of Incorporation of United States Steel Corp., Art. VI, § 1(h) (June 18, 2025).

continued engagement is a permanent governance overlay whose full terms remain confidential and whose exercise rests, for the duration of the current presidency, with a single individual.

III. Implications and Questions

The illustrations and analysis in the preceding Part suggest that contestation over CNI is not episodic noise, but rather an emerging trend that generates pressing new questions for corporate law, governance and policy. We explore these questions here, not with a view to resolving them – this era of CNI controversies is likely only in its infancy – but to mark the territory for further research as CNI contestation and engineering become a more common feature of weaponized interdependence.

A. Corporate Law and Governance Implications

CNI contestation places great stress on corporate law. While incorporation and real seat still order governance in many respects, they are insufficient to predict increasingly frequent identity contests generated by geopolitical tension. Without attempting an exhaustive analysis, we briefly discuss the most pressing questions raised by this development.

1. *Emerging new tests* – Across our case studies, two new tests for CNI have begun to take shape, cutting across different facets. The first is what we term a "data seat" doctrine, under which the location of and access to data marks CNI. PAFACAA's "operational relationship" prong (treating data sharing and algorithm cooperation as markers of foreign-adversary control), the Italian Golden Power decree restricting Cyber Tyre data flows to China, and the Commerce Department's connected-vehicle rule each treat data location and access as a CNI marker.[229]

The same case studies also show the emergence of a government-influence test, which moves away from equity voting control toward a multi-factor inquiry into state leverage. Relevant mechanisms include statutory cooperation duties (the Chinese National Intelligence Law), Chinese Communist Party committees in PRC subsidiaries, special management shares carrying board-appointment and content-oversight rights, state laws and regulations reshaping firm-level governance, and even a new generation of golden shares written into corporate charters. Both tests are nascent and will likely evolve, but each already raises pressing questions for corporate law – to which we now turn.

2. "*Corporate control*" – How will corporate law respond to the potential conceptual expansion of "corporate control" from equity ownership or indirect influence on board decision-making to operational factors such as the location or accessibility of data, or to political factors

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[229] The "data seat" framing is best understood as a composite marker rather than a single regulatory logic, since the territorial location of data is often attenuated given the mobility and fragmentation of data, as well as the disconnect between data access and data location. *See* Jennifer Daskal, *The Un-Territoriality of Data*, 125 YALE L.J. 326 (2015). On the regulatory side, three distinct logics co-exist. Some regimes attach consequences to physical location of data within the jurisdiction (the EU's General Data Protection Regulation is the leading example). Others impose extraterritorial obligations based on corporate affiliation or control regardless of physical storage (e.g., the U.S. CLOUD Act of 2018 and China's 2017 National Intelligence Law). Still others, including PAFACAA's "operational relationship" prong, treat data flows and algorithmic cooperation as markers of foreign-adversary control. The "data seat" doctrine as we describe it captures the cumulative effect of these distinct logics on CNI determinations, rather than a single anchor.

such as the presence of CCP committees in Chinese corporations? Should the already indistinct concept of a "state-owned enterprise" be expanded to include companies like U.S. Steel or Pirelli, over which the government has exercised extraordinary forms of influence in their governance? The answer may be important in a variety of regulatory contexts.[230] Might the label also be applied to erstwhile private Chinese companies such as ByteDance in which Beijing has taken a "special management share"?

These developments highlight, and further blur, the continuum between state-owned enterprises – traditionally defined in terms of state equity ownership – and private companies. Traditionally, an advantage of golden shares was that they did not implicate the state's financial interests and therefore avoided the conflicts of interest the state faces as a regulator when it is also a shareholder.[231] Yet the new generation of golden shares goes beyond traditional models focused on granting discrete veto rights over fundamental corporate decisions such as acquisitions and relocations. The U.S. Steel golden share aims to guarantee certain thresholds of U.S. employment and investment levels, while the special management share in the subsidiary of ByteDance grants state entities the right to appoint or dismiss the company's "editor in chief"[232] – thus expanding the scope of potential state extraction of "(geo)political private benefits of control."[233]

Another example of the shifting contours of this continuum is the U.S. government's acquisition (at no cost) of a 10% non-voting stake in Intel in a transaction that the company acknowledged as "dilutive to existing shareholders."[234] Outside of bailouts, this arrangement is unprecedented in the U.S. context, which has long been hostile to mixed ownership[235] and traditionally focused on shareholder primacy, by substituting state equity for cash subsidies originally promised to Intel. Intel has also warned shareholders of the legal implications of the transaction for the company's CNI: because foreign sales represented 76% of Intel's revenue, having the government as a large shareholder could subject the company to additional regulations or restrictions in other countries.[236]

3. *Corporate Purpose and Fiduciary Duty* – In today's geopolitical environment, many companies have effectively become national security partners of their home governments.[237] This

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[230] *See, e.g.*, Curtis J. Milhaupt & Wentong Zheng, *Beyond Ownership: State Capitalism and the Chinese Firm*, 103 GEO. L.J. 665 (2015).

[231] For a discussion, *see* Mariana Pargendler, *State Ownership and Corporate Governance*, 80 FORDHAM L. REV. 2917, 2967 (2012). For how Singapore has constructed a successful system to deal with this issue, *see* Tan Cheng-Han, Dan W. Puchniak & Umakanth Varottil, *State-Owned Enterprises in Singapore: Historical Insights into a Potential Model for Reform*, 28 COLUM. J. ASIAN L. 61 (2015); Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 305–10 (2017).

[232] *China moves to take 'golden shares' in Alibaba and Tencent units*, IRISH TIMES, Jan. 13, 2023. This arrangement also differs from a traditional golden share by involving a 1% equity stake in the company and granting approval rights to state-controlled enterprises rather than to the government itself.

[233] For a discussion of political benefits of control in the context of SOEs, *see* Curtis J. Milhaupt & Mariana Pargendler, *Related Party Transactions in State Owned Enterprises: Tunneling, Propping, and Policy Channeling*, *in* THE LAW AND FINANCE OF RELATED PARTY TRANSACTIONS 245 (Luca Enriques & Tobias Tröger eds., 2019).

[234] A shareholder derivative suit has been filed against the Intel board, alleging that it "caved to the government's extortion" in granting the shares without "meaningful consideration." *Paisner v. Tan et al.*, Del. Ch. No. 2026-0307 (March 11, 2026).

[235] Pargendler, *supra* note 231, at 2927.

[236] Intel Corp., Current Report (Form 8-K) (Aug. 22, 2025), https://www.sec.gov/Archives/edgar/data/50863/000005086325000129/intc-20250822.htm.

[237] Curtis J. Milhaupt, *Corporate Governance in an Era of Geoeconomics*, 25 J. Corp. L. Stud. 1 (2025).

raises important questions about corporate purpose and the development of corporate law. Does this alignment of private and public interests on national security and data security complicate the perennial question about the "purpose" of the corporation? Does it expand the scope of board and officer fiduciary duties (as suggested by the CEO of U.S. Steel)? Could a shareholder successfully claim that a board failed to consider the national security implications of its corporate strategy or to oversee geopolitical risk, causing reputational harm or leading to government intervention that diminishes corporate value?[238] Do directors' fiduciary duties require them to resign if their national identity is deemed to affect CNI in ways harmful to the corporation? These questions may have seemed farfetched until recently, but the growing sensitivity of CNI considerations makes them less so today.

4. *Remedies for State Action* – What remedies, if any, are available to a shareholder or acquirer if state intervention in a company's corporate governance on national security or industrial policy grounds reduces firm value or the rights of specific shareholders? The Intel case discussed above raises this question directly. Even putting to one side the question of how to quantify harm, a claimant would appear to face an uphill battle in seeking redress through legal processes. If the claimant is an investor protected by a bilateral investment treaty (BIT), it might bring an arbitral claim against the intervening host government for discriminatory or arbitrary action harmful to the foreign investor. Such a claim may have traction only if the BIT lacks a self-judging "essential security" provision.[239] In the absence of BIT coverage between the investor and the foreign state, private litigation appears to be the only potential avenue of relief. But the state action doctrine, together with the large degree of discretion courts typically grant to the executive in the realm of national security, would effectively close the courthouse door to erstwhile plaintiffs in many contexts.

5. *Private Ordering* – Given the difficulty of pursuing remedies for state action just discussed and the apparent dearth of effective corporate law responses, private ordering strategies might be crafted to respond to CNI-related interventions. Transaction planners can include a "national security put" or redemption provisions in certificates of incorporation or shareholder agreements to protect the value of investments if states engage in specified actions affecting corporate governance. For example, media and airline firms such as Paramount and easyJet have adopted charter provisions allowing the company to demand shareholders' information regarding citizenship, suspend shareholders' voting rights, or force transfers or redemptions to ensure compliance with regulations imposing foreign ownership restrictions.[240]

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[238] *Cf.* The Japanese Ministry of Economy, Trade and Industry released National Economic Security Guidelines in January 2026, covering issues such as geopolitical risk management, supply chain dependencies, and public-private partnership for national security. Although the Guidelines state that compliance is not mandatory, they assert that following the Guidelines will support a finding that a board of directors has fulfilled its fiduciary duty [*zenkan chui gimu* in the Japanese formulation].

[239] Such a provision permits a host state to take measures it deems necessary to protect its own essential security interests. See, e.g., 2012 U.S. Model Bilateral Investment Treaty, Art. 18. If the relevant BIT has such a provision, investors likely have little recourse against a government that intervenes on national security grounds. In the absence of such a provision, the outcome will be heavily fact dependent. The tribunal may determine whether the BIT has been breached by assessing the bona fides of the measure in the exercise of the state's regulatory power, or it may look to customary international law for guidance on whether a breach is excused, for example, under the doctrine of necessity.

[240] *See*, *e.g.*, Amended and Restated Certificate of Incorporation of Paramount Global, effective February 16, 2022, Article X; Articles of Association of Easyjet PLC, as adopted by special resolution passed on 23 December 2020, Section 39.

The shareholder agreement between Grab and Singtel relating to their joint venture in the GXS Bank, a digital bank, contains detailed provisions on CNI, defined broadly to include both legal and symbolic dimensions. It contains detailed indemnification provisions and call options associated with the "Loss of Singaporeaness."[241] For Grab's parent company, this term is defined broadly, to include not only the loss of headquarters and principal place of business in Singapore, but also ceasing to "publicly identify Singapore as its home country" and no longer having a Singaporean citizen as its controlling shareholder or chief executive officer.[242]

In the preceding examples, private ordering was used to anticipate potential compliance issues arising under existing regulatory regimes. Private ordering could also respond to a government's midstream governance intervention. For example, returning to the Pirelli case study, if put options had been included in relevant agreements when ChemChina acquired its stake in the Italian tire maker, its corporate successor Sinochem may have been entitled to exit the investment at a specified valuation or to receive compensation for the loss of its control rights. Not only would this have provided compensation to foreign shareholders, but it also would have mitigated the moral hazard problem that emerges when a large domestic shareholder stands to gain from the disenfranchisement of a foreign investor and lobbies its government accordingly.

6. *Board Strategy* – Our research suggests that boards of directors will increasingly undertake CNI engineering as a form of geopolitical risk management. Companies have long manipulated their national identities for purposes of regulatory and tax arbitrage. Increasingly, they do so in view of geopolitical risk, as exemplified by growing instances of "Singapore washing." Companies may attempt to engineer their external identity through operational decisions on data and IP location, supply chain geography, as well as the nationality and location of directors and other key personnel. Branding and public perception strategies, longstanding features of corporate communications and marketing, may now also be integral to geopolitical risk management. Of course, there is no guarantee that such strategies will be successful. But a well-advised board today is likely to consider CNI contestation and midstream governance interventions as material risk factors and take steps to protect its preferred external identities.

B. Policy Implications

Our case studies suggest that corporate governance is an unexplored dimension of the current geoeconomic environment, in which states are addressing perceived vulnerabilities to geopolitical rivals through direct intervention in the internal governance of corporations rather than by completely unwinding economic ties. In three of our cases, governments addressed real or perceived geopolitical risks via direct, midstream interventions in corporate governance rather than by blocking access to their markets. The TikTok platform will remain operational in the U.S. under its new organizational structure, and ByteDance will remain a large shareholder in the TikTok group with appointment rights. Nippon Steel was permitted to complete its acquisition of U.S. Steel after the golden share was taken by the U.S. government. And Pirelli's data-generating tires remain available in the U.S. market notwithstanding Sinochem's large equity stake in the firm. By contrast, the pushback against Shein's IPO in the U.S. and the U.K. reflects a new form of human

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[241] Amended and Restated Shareholders' Agreement of GXS Bank Pte. Ltd., dated as of October 17, 2021, Section 8.5 (Actions to Maintain Singaporeaness). https://www.sec.gov/Archives/edgar/data/1855612/000119312521300606/d496451dex1020.htm.
[242] *Id.*, Section 1.1 (Definitions).

rights and geopolitical considerations shaping foreign listings, even though the U.S. is the largest market for Shein's products.[243]

The pattern extends beyond foreign direct investment within a given state's borders. States are increasingly subjecting *outbound* investment by their own firms to national security review – scrutinizing not only who invests domestically but where domestic capital flows abroad.[244] The United States has begun screening outbound investments in sensitive technology sectors. China, which had previously permitted – if not actively encouraged – the outward migration of its technology firms, has recently reversed course, resisting corporate relocation of the kind undertaken by Shein and ByteDance.[245] Taiwan's requirement that TSMC obtain government approval for overseas joint ventures reflects yet another variant of the same logic. CNI contestation, in this sense, is bidirectional: it shapes both the terms on which foreign capital enters and the conditions under which domestic firms deploy capital abroad.

Nevertheless, these very forms of continued engagement may create serious problems of their own. Predictability is the bedrock of the global investment regime. If ad hoc, midstream governance reconfigurations of the sort illustrated by the TikTok and Pirelli cases become a standard feature of geoeconomic statecraft, they may undermine this fundamental precondition to investment. CNI contestation effectively operates as a tax on investment, generating new risks and deal frictions. Private ordering and CNI engineering might restore some degree of lost predictability. But much will depend on the behavior of governments and other factors beyond the control of corporate planners and boards of directors.

IV. Conclusion

Corporate national identity cannot be understood as a fixed legal attribute derived from a single organizing principle such as incorporation, real seat, or equity control. As this article has shown, it increasingly emerges from the interaction of four interrelated facets – legal, economic, (geo)political, and symbolic – whose relative salience varies across contexts and over time. Two new tests for CNI have begun to crystallize across these facets: a "data seat" doctrine, under which data location and access mark CNI, and a new government-influence test that measures state leverage through mechanisms beyond voting equity. Neither test is fully formed, and both are likely to develop – and to interact with the four facets in unexpected ways – as CNI contestation likely increases. The central implication is that corporate nationality is not a unitary or immutable status, but a contingent, contested, and shifting construct.

The contemporary episodes examined here underscore this transformation. In each case, traditional legal indicia of nationality proved insufficient to determine how firms were classified and treated. Instead, states, markets, and other actors redefined corporate identity by reference to data access, supply chains, governance structures, and perceived geopolitical risk. The result is a

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[243] Helen Reid, *Fast fashion retailer Shein hikes prices ahead of IPO*, REUTERS, June 13, 2024,https://www.reuters.com/business/retail-consumer/fast-fashion-retailer-shein-hikes-prices-ahead-ipo-2024-06-13/.

[244] Ashley Deeks & Kristen Eichensehr, *National Security and the New Command Economy*, 18 HARV. NAT'L SEC. J. (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6432538, 16–19.

[245] *See, e.g.*, Manus decision, *supra* note 123 (Apr. 27, 2026 NDRC order requiring withdrawal of Meta–Manus acquisition).

departure from a binary framework in which foreign investment is either permitted or prohibited, toward a more intrusive and dynamic mode of intervention by which corporate governance is reconfigured and corporate nationality itself is actively reconstructed for cross-border economic activity to continue.

This reconceptualization carries significant consequences for corporate law and global economic integration. As the boundaries of CNI become more fluid and contested, boards of directors must navigate an environment in which legal form no longer reliably anchors identity, and where economic, geopolitical and symbolic considerations can override formal corporate structures. The enduring role of traditional legal tests thus lies not in their determinacy, but in their interaction with a much broader set of forces that together define the globally active corporation's national affiliation.

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