

**COMMITTEE ON  
FOREIGN INVESTMENT  
IN THE UNITED STATES**

**ANNUAL REPORT  
TO CONGRESS**

**Report Period: 2009 (Calendar Year)  
Issued: November 2010**

**PUBLIC/UNCLASSIFIED VERSION**



# **CFIUS ANNUAL REPORT TO CONGRESS**

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## **SECTION I: COVERED TRANSACTIONS**

### **Introduction**

This section of the CFIUS Annual Report to Congress has been prepared in accordance with section 721(m) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(m)(2)), as amended by the Foreign Investment and National Security Act of 2007, or “FINSA” (Pub. L. No. 110-49). Section 721(m)(2) requires the annual report on covered transactions to provide:

“(A) A list of all notices filed and all reviews or investigations completed during the period, with basic information on each party to the transaction, the nature of the business activities or products of all pertinent persons, along with information about any withdrawal from the process, and any decision or action by the President under this section.

(B) Specific, cumulative, and, as appropriate, trend information on the numbers of filings<sup>1</sup>, investigations, withdrawals, and decisions or actions by the President under this section.

(C) Cumulative and, as appropriate, trend information on the business sectors involved in the filings which have been made, and the countries from which the investments have originated.

(D) Information on whether companies that withdrew notices to the Committee in accordance with subsection (b)(1)(C)(ii) have later re-filed such notices, or, alternatively, abandoned the transaction.

(E) The types of security arrangements and conditions the Committee has used to mitigate national security concerns about a transaction, including a discussion of the methods that the Committee and any lead agency are using to determine compliance with such arrangements or conditions.

(F) A detailed discussion of all perceived adverse effects of covered transactions on the national security or critical infrastructure of the United States that the Committee will take into account in its deliberations during the period before delivery of the next report, to the extent possible.”

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<sup>1</sup> For purposes of this report, “filings” means notices filed under section 721.

## **A. Information on 2009 Covered Transactions**

The classified version of this report contains a table listing all 65 notices of transactions that were filed with CFIUS in 2009, and that CFIUS determined to be covered transactions under section 721. That table sets forth information on the acquirer and the U.S. business acquired, including the nature of their business activities or products, and details on any withdrawal. While that table is not included here because of the disclosure prohibition in section 721, provided below is aggregate information regarding those 65 notices:

- CFIUS conducted both a review and an investigation with respect to 25 of the 65 notices.
- Seven of the notices were withdrawn. In three of these cases, the parties filed a new notice. In three other cases, the parties abandoned their transaction. In one case, the party withdrew its notice with the intention of re-filing in 2010.
- The President did not take action to block or prohibit any transactions in 2009.

## **B. Specific, Cumulative, and Trend Data on Covered Transactions, Withdrawals, and Investigations**

In the years 2007 through 2009, companies filed 358 notices of transactions that CFIUS determined to be covered transactions under section 721. Roughly nine percent (33 cases) of such notices were withdrawn during the review stage, three percent (12 cases) were withdrawn during the investigation stage, and 15 percent (54 cases) resulted in an investigation. There were no transactions that resulted in a Presidential decision.

There was a modest upward trend in the number of notices from 2007 to 2008, followed by a noted decline in 2009. As shown in Table B-1 on the next page, the number of notices of covered transactions increased from 138 in 2007 to 155 in 2008. By 2009, the number of notices had dropped to 65. The percentage of notices that were withdrawn from review fell in 2009 compared to 2008, but represented a slight increase when compared to 2007. The percentage of investigations shows an overall increasing trend from 2007-2009, while the percentage of notices withdrawn during the investigation stage declined slightly. In 2007, seven percent (10 cases) were withdrawn during review, four percent (five cases) were withdrawn during investigation, and four percent (six cases) resulted in investigation. In 2008, 12 percent (18 cases) were withdrawn during review, three percent (five cases) were withdrawn during investigation, and 15 percent (23 cases) resulted in investigation. In 2009, eight percent (five cases) were withdrawn during review, three percent (two cases) were withdrawn during investigation, and 39 percent (25 cases) resulted in investigation.



Covered Transactions, Withdrawals, and Presidential Decisions 2007 - 2009					
Year	Number of Notices	Notices Withdrawn During Review	Number of Investigations	Notices Withdrawn During Investigation	Presidential Decisions
2007	138	10	6	5	0
2008	155	18	23	5	0
2009	65	5	25	2	0
<b>Total</b>	<b>358</b>	<b>33</b>	<b>54</b>	<b>12</b>	<b>0</b>

Table B-1: Covered Transactions, Withdrawals, and Presidential Decisions 2007-2009

## C. Covered Transactions by Business Sector & Country

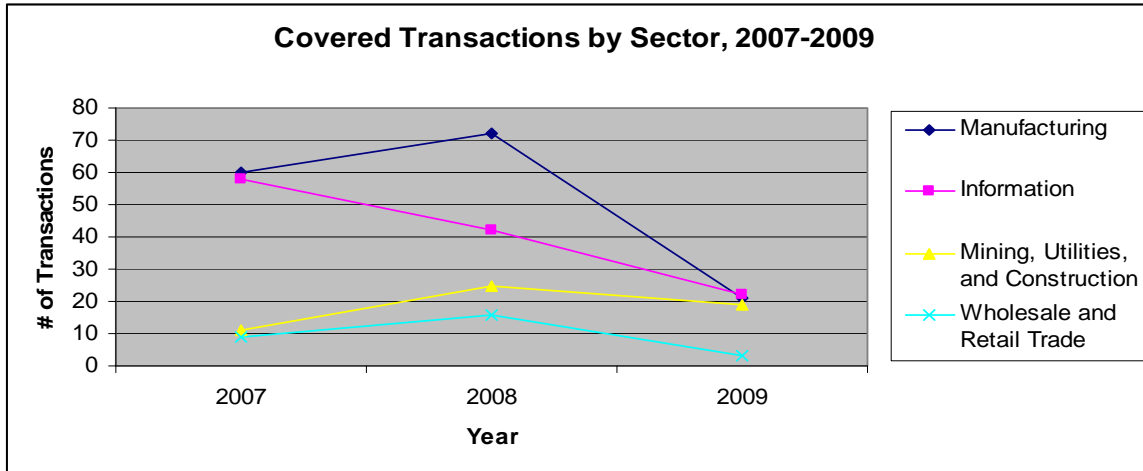
### 1. Covered Transactions by Business Sector of U.S. Companies: 2007-2009

The notices of covered transactions filed with CFIUS during the 2007-2009 period involved several industrial sectors and a wide range of subsectors. Almost half of such notices were in the manufacturing sector (153, or 43 percent), while just over one third of the notices were in the information sector (122, or 34 percent).

The tables and charts below provide a breakdown by sector and by year of the 358 notices of covered transactions cumulatively filed with CFIUS for 2007 through 2009. The data below show that the greatest number of filings occurred in the manufacturing and information sectors, although there was no clear trend in the number of notices filed within each of these sectors as a percentage of total notices filed each year. The percent of notices in the manufacturing sector increased slightly from 2007-2008, then declined in 2009. Notices in the information sector declined notably as a percentage of annual transactions in 2008 and then increased in 2009. Transactions as a percentage of yearly totals in the mining, utilities, and construction sectors have shown a steady upward trend since 2007.

Covered Transaction by Sector and Year, 2007-2009					
Year	Manufacturing	Information	Mining, Utilities and Construction	Wholesale and Retail Trade	Total
2007	60 (43%)	58 (42%)	11 (8%)	9 (7%)	138
2008	72 (46%)	42 (27%)	25 (16%)	16 (10%)	155
2009	21 (32%)	22 (34%)	19 (29%)	3 (5%)	65
Total	153 (43%)	122 (34%)	55 (15%)	28 (8%)	358

Table C-1: Covered Transactions by Sector and Year, 2007-2009

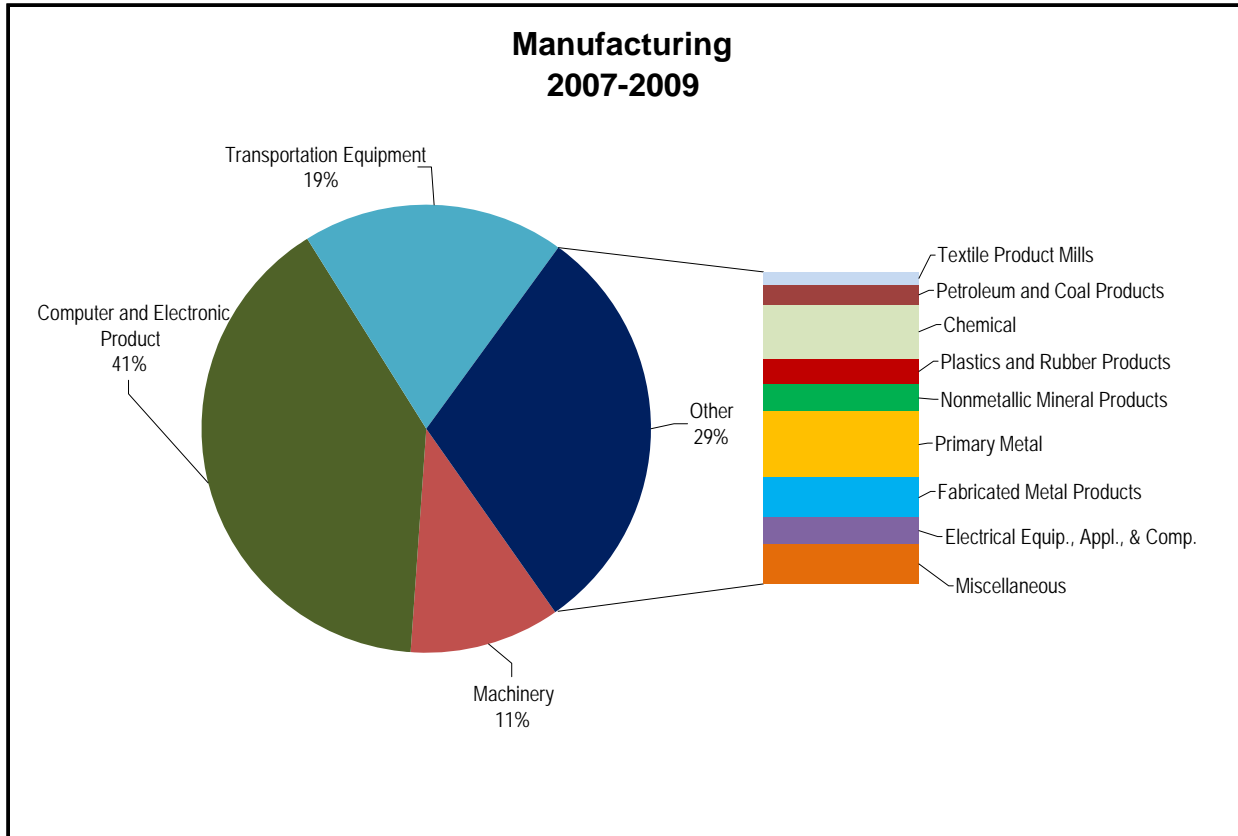


**Figure C-1: Covered Transactions by Sector 2007-2009**

Manufacturing accounted for 43 percent (153 notices) of all notices filed with CFIUS from 2007 through 2009. The computer and electronic products subsector comprised 41 percent (62 notices) of the 153 manufacturing sector notices during the period. The transportation equipment subsector accounted for another 19 percent (29 notices) of the notices in the sector.

Manufacturing, 2007-2009	NAICS Code	Number of Transactions	% of Total Manufacturing
Textile Product Mills	314	2	1%
Petroleum and Coal Products	324	3	2%
Chemical	325	8	5%
Plastics and Rubber Products	326	4	3%
Nonmetallic Mineral Products	327	2	1%
Primary Metal	331	10	7%
Fabricated Metal Products	332	6	4%
Machinery	333	17	11%
Computer and Electronic Products	334	62	41%
Electrical Equip., Appl., & Comp.	335	4	3%
Transportation Equipment	336	29	19%
Miscellaneous	339	6	4%

**Table C-2: Covered Transactions from the Manufacturing Sector**

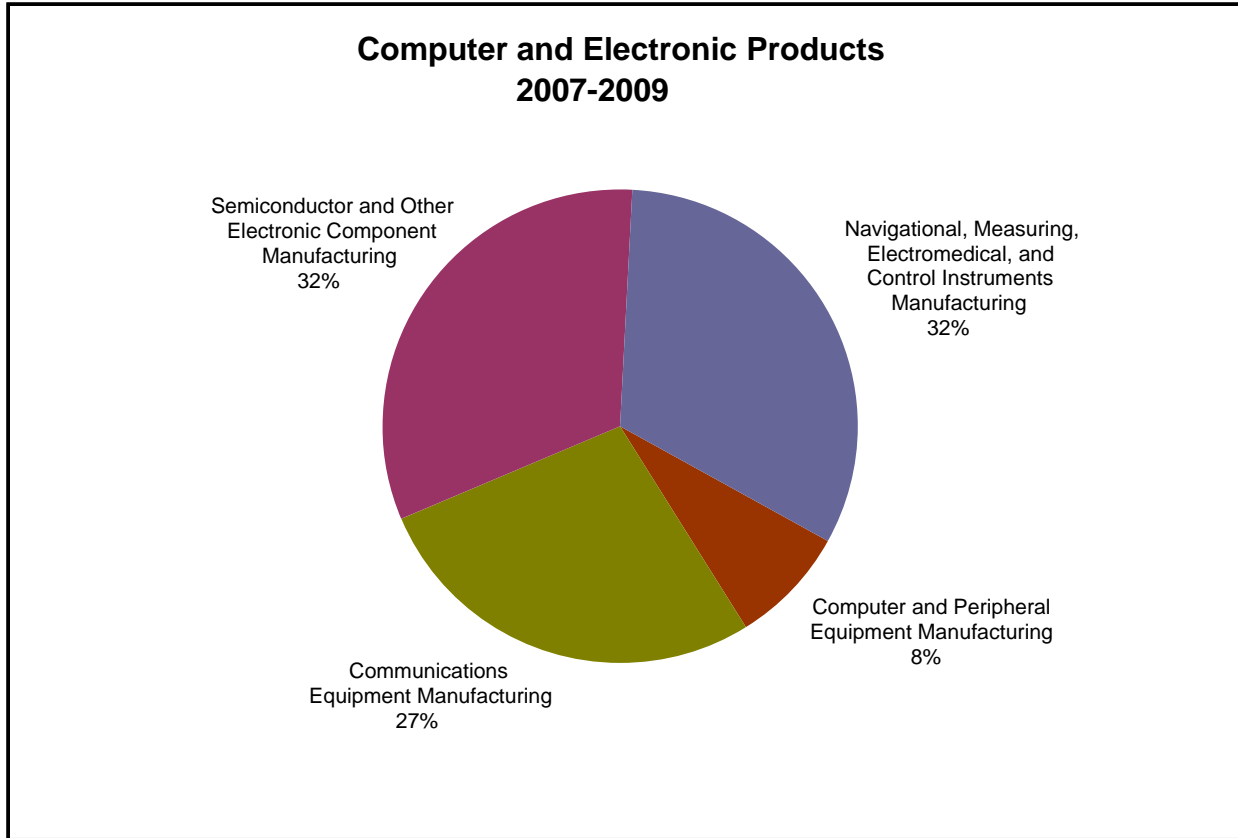


**Figure C-2: Covered Transactions from the Manufacturing Sector**

Semiconductor and other electronic component manufacturing accounted for 32 percent (20 notices) of the 62 notices in the computer and electronic products subsector from 2007 through 2009. Navigational, measuring, electro-medical, and control instruments manufacturing also accounted for 32 percent of the notices in this subsector.

<b>Computer and Electronic Products, 2007-2009</b>	<b>NAICS Code</b>	<b>Number of Transactions</b>	<b>% of Total Computer and Electronic Products</b>
Computer and Peripheral Equipment Manufacturing	3341	5	8%
Communications Equipment Manufacturing	3342	17	27%
Semiconductor and Other Electronic Component Manufacturing	3344	20	32%
Navigational, Measuring, Electromedical, and Control Instruments Manufacturing	3345	20	32%

**Table C-3: Covered Transactions from the Computer and Electronics Subsector**

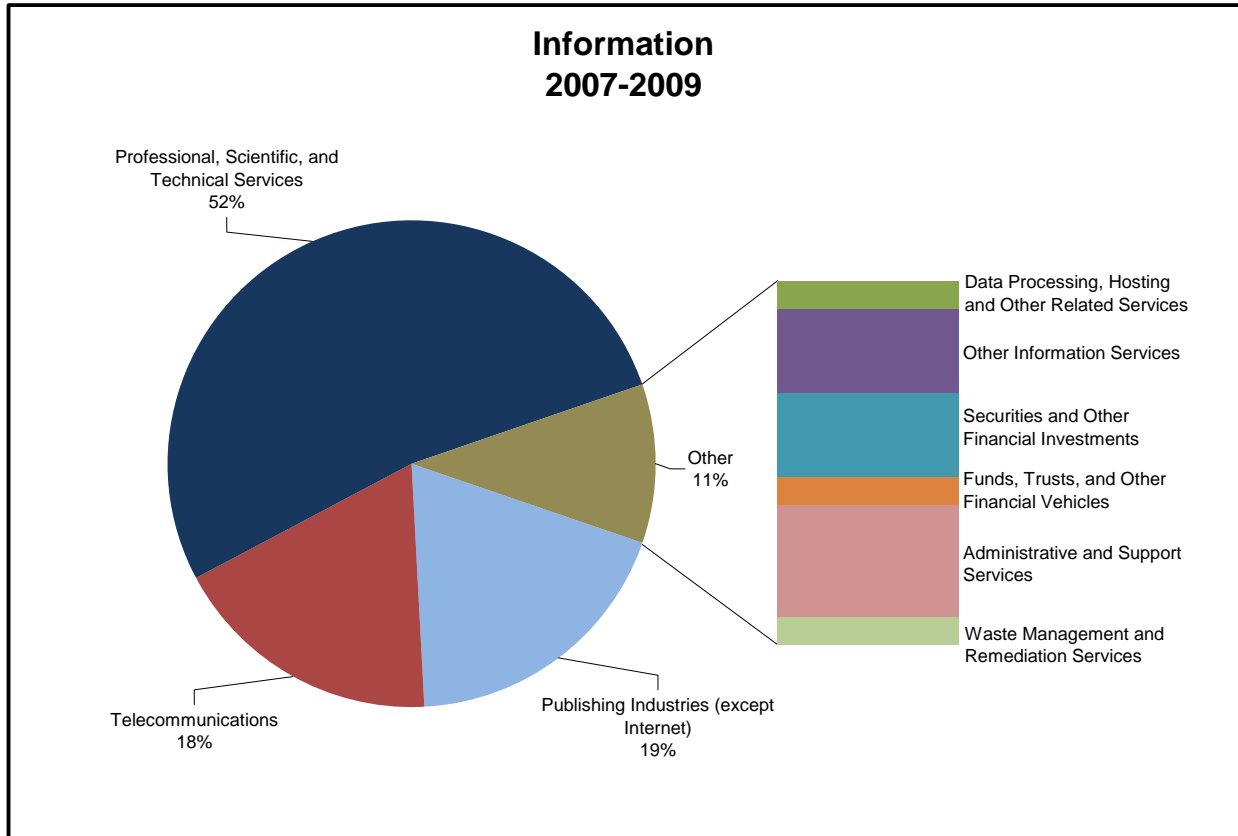


**Figure C-3: Covered Transactions from the Computer and Electronics Subsector**

The information sector accounted for 34 percent (122 notices) of all notices of covered transactions filed with CFIUS from 2007 through 2009. The professional, scientific, and technical services subsector accounted for 64 notices, over half of the information sector notices during the period. The publishing industries (except Internet) subsector accounted for another 19 percent (23 notices) of information sector notices.

Information, 2007-2009	NAICS Code	Number of Transactions	% of Total Information
Publishing Industries (except Internet)	511	23	19%
Telecommunications	517	22	18%
Data Processing, Hosting and Other Related Services	518	1	<1%
Other Information Services	519	3	3%
Securities and Other Financial Investments	523	3	3%
Funds, Trusts, and Other Financial Vehicles	525	1	<1%
Professional, Scientific, and Technical Services	541	64	52%
Administrative and Support Services	561	4	3%
Waste Management and Remediation Services	562	1	<1%

**Table C-4: Covered Transactions from the Information Sector**

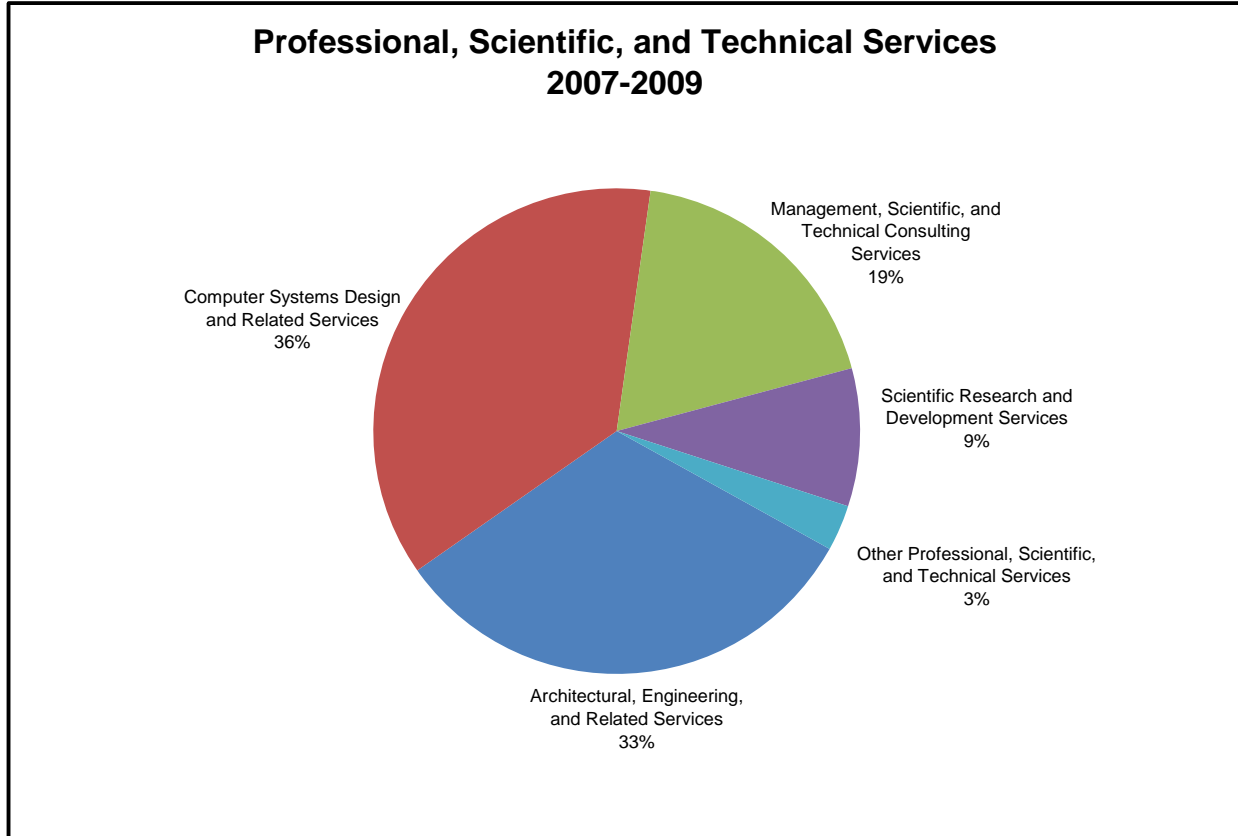


**Figure C-4: Covered Transactions from the Information Sector**

Within the professional, scientific, and technical services subsector, computer systems design and related services accounted for 36 percent (23 notices) of the subsector's 64 notices, while architectural, engineering, and related services accounted for 33 percent (21 notices) of the notices.

Professional, Scientific, and Technical Services, 2007-2009	NAICS Code	Number of Transactions	% of Total P-S-T Services
Architectural, Engineering, and Related Services	5413	21	33%
Computer Systems Design and Related Services	5415	23	36%
Management, Scientific, and Technical Consulting Services	5416	12	19%
Scientific Research and Development Services	5417	6	9%
Other Professional, Scientific, and Technical Services	5419	2	3%

**Table C-5: Covered Transactions from the Professional, Scientific & Technical Services Subsector**

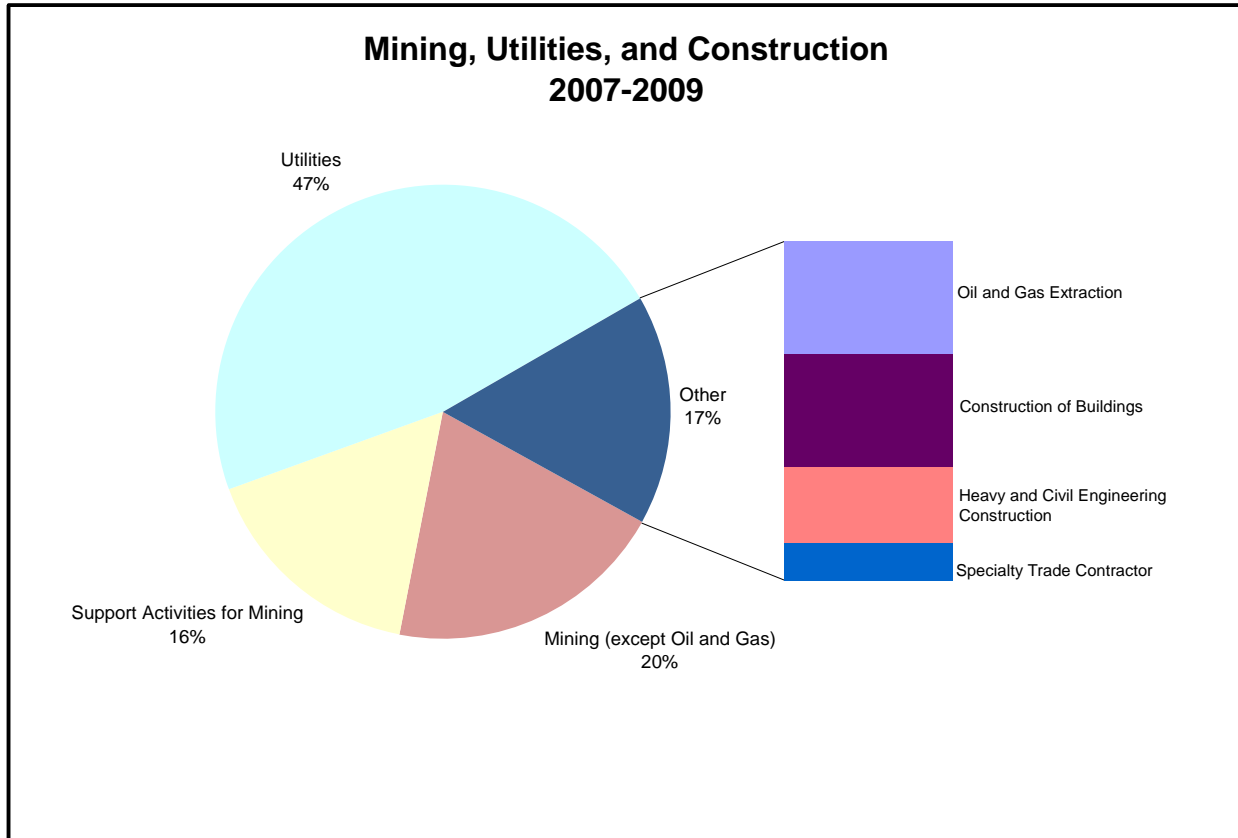


**Figure C-5: Covered Transactions from the Professional, Scientific and Technical Services Subsector**

The mining, utilities, and construction sector accounted for 15 percent (55 notices) of the notices of covered transactions filed with CFIUS from 2007 through 2009. In this sector, the largest percentage of activity involved the utilities subsector, which accounted for 47 percent (26 notices) of the notices in this sector. Ninety-two percent of the transactions in the utilities subsector related to electric power generation, transmission and distribution.

Mining, Utilities and Construction, 2007 - 2009	NAICS Code	Number of Transactions	% of Total M, U & C
Oil and Gas Extraction	211	3	6%
Mining (except Oil and Gas)	212	11	20%
Support Activities for Mining	213	9	16%
Utilities	221	26	47%
Construction of Buildings	236	3	6%
Heavy and Civil Engineering Construction	237	2	4%
Specialty Trade Contractor	238	1	2%

**Table C-6: Covered Transactions from the Mining, Utilities & Construction Sector**



**Figure C-6: Covered Transactions from the Mining, Utilities & Construction Sector**

Wholesale trade accounted for eight percent (28 notices) of the notices of covered transactions filed with CFIUS from 2007 through 2009. Support activities for transportation accounted for 46 percent (13 notices) of the 28 wholesale trade sector notices during the period. Merchant wholesalers of durable goods, water transportation, and electronics and appliance stores accounted for another 11 percent each (three notices each) within the sector.

Wholesale and Retail Trade, 2007-2009	NAICS Code	Number of Transactions	% of Total Wholesale Trade
Merchant Wholesalers, Durable Goods	423	3	11%
Merchant Wholesalers, Nondurable Goods	424	2	7%
Electronics and Appliance Stores	443	3	11%
Water Transportation	483	3	11%
Truck Transportation	484	1	4%
Transit and Ground Passenger Transportation	485	2	7%
Support Activities for Transportation	488	13	46%
Warehouse and Storage	493	1	4%

**Table C-7: Covered Transactions from the Wholesale Trade Sector**

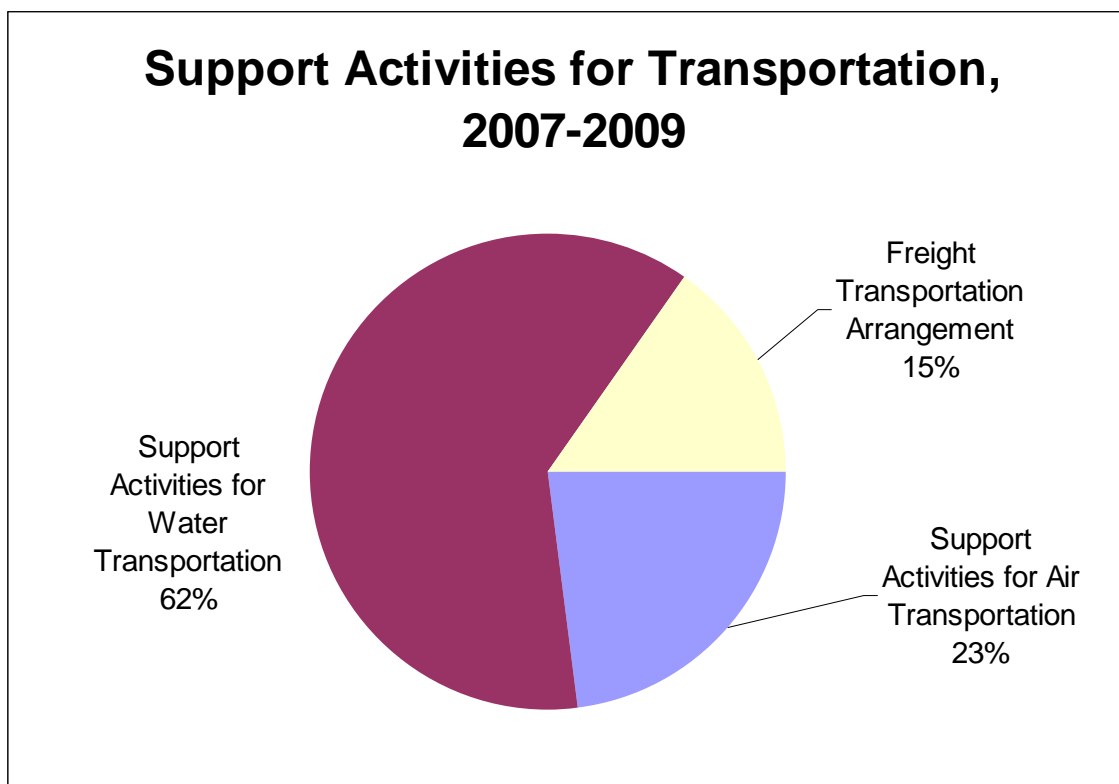


**Figure C-7: Covered Transactions from the Wholesale Trade Sector**

Support Activities for Transportation (SAT), 2007-2009	NAICS Code	Number of Transactions	% of Total SAT
Support Activities for Air Transportation	4881	3	23%
Support Activities for Water Transportation	4883	8	62%
Freight Transportation Arrangement	4885	2	15%

**Table C-8: Covered Transactions from the Support Activities for Transportation Subsector**





**Figure C-8: Covered Transactions from the Support Activities for Transportation Subsector**

**2. Covered Transactions by Country: 2007-2009**

The first table that follows (C-10) breaks down the notices of covered transactions from 2007 through 2009 by country and year.<sup>2</sup> There is no clear trend in the breakdown of transactions by year. Acquisitions by investors from the United Kingdom accounted for 27 percent of notices for the three-year period (97 notices) and represented the largest number of notices each year. Canada, France, Israel, and Australia together accounted for an additional 30 percent of the total notices over the period (106 notices) and were among the leading countries each year (with the exception of Australia, which was a leading country from 2007-2008, but had only one transaction in 2009).

The second table that follows (C-11) shows that there is no clear tendency of companies in any one country to prefer transactions in a specific industry sector. Acquisitions by investors from countries that accounted for multiple notices typically also involved multiple sectors.

<sup>2</sup> The figures in this table reflect the number of notices filed with CFIUS and are not adjusted to account for the fact that some transactions were the subject of more than one notice, where the original notice was withdrawn and then re-filed, as discussed in Section I.D of this report.

<b>Covered Transactions by Acquirer Home Country, 2007-2009</b>				
<b>Country</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>Total</b>
Australia	9	11	1	21
Australia & United Kingdom		1		1
Austria	1	2		3
Bahrain	1			1
Belgium	1	1		2
Brazil	1	2		3
Canada	21	6	9	36
Canada & Singapore		1		1
Channel Islands			1	1
China	3	6	4	13
Finland	1			1
France	7	12	7	26
Germany	6	3	1	10
Greece		1		1
Hong Kong	1	1	1	3
Hungary		1		1
Iceland		1		1
India	5	1		6
Ireland	1	2		3
Israel	6	12	5	23
Italy	3	5	2	10
Japan	1	8	4	13
Kuwait	2		2	4
Lebanon		4		4
Luxembourg		1		1
Malaysia	1			1
Netherlands	7	2	4	13
Netherlands & France			1	1
Norway	1	2		3
Qatar	1		1	2
Russia		8		8
Saudi Arabia	1	1		2
Singapore	1	1		2
South Africa	1			1
South Korea		2		2
Spain	6	1		7
Sweden			3	3
Switzerland	6	4		10
Taiwan	3		1	4
United Arab Emirates	7	2	2	11
Ukraine		2		2
United Kingdom	33	48	16	97
<b>Grand Total</b>	<b>138</b>	<b>155</b>	<b>65</b>	<b>358</b>

**Table C-9: Covered Transactions by Country 2007-2009**

Covered Transactions by Acquirer Home Country and Target Sector, 2007-2009					
Country	Manu- facturing	Mining, Utilities & Construction	Wholesale & Retail Trade	Information	Total
Australia	1	4	7	9	21
Australia & United Kingdom		1			1
Austria	3				3
Bahrain	1				1
Belgium	2				2
Brazil	2	1			3
Canada	6	10	1	19	36
Canada & Singapore		1			1
Channel Islands		1			1
China	7	2	1	3	13
Finland				1	1
France	14	4	3	5	26
Germany	2	2	2	4	10
Greece		1			1
Hong Kong	3				3
Hungary	1				1
Iceland			1		1
India				6	6
Ireland	1	1		1	3
Israel	15		1	7	23
Italy	9		1		10
Japan	2	5	1	5	13
Kuwait	1	2		1	4
Lebanon			4		4
Luxembourg				1	1
Malaysia	1				1
Netherlands	6	1	2	4	13
Netherlands & France	1				1
Norway	2			1	3
Qatar		2			2
Russian Federation	6	1		1	8
Saudi Arabia	2				2
Singapore	1			1	2
South Africa				1	1
South Korea		2			2
Spain		5		2	7
Sweden	1			2	3
Switzerland	5			5	10
Taiwan	4				4
UAE	7		2	2	11
Ukraine		2			2
United Kingdom	47	7	2	41	97
<b>Grand Total</b>	<b>153</b>	<b>55</b>	<b>28</b>	<b>122</b>	<b>358</b>

**Table C-10: Covered Transactions by Country 2007-2009**

## **D. Withdrawn Notices**

Parties cannot withdraw an accepted notice of a transaction unless the Committee approves a written request for withdrawal from the parties. Parties have requested withdrawals for a number of reasons over the years. For example, in some cases, parties are unable to address all of the Committee's outstanding national security concerns within the initial 30-day review period or 45-day investigation period. The parties might then choose to submit a request for withdrawal, either to provide additional time to answer remaining questions or to resolve remaining national security concerns. In other cases, the parties may withdraw a notice because they are abandoning the transaction or because a material change in the terms of the transaction warrants the filing of a new notice. When appropriate, the Committee has established processes to track the status of a withdrawn transaction or interim protections to address specific national security concerns identified during the review or investigation of the withdrawn transaction.

In 2009, CFIUS approved the withdrawal of seven notices. The parties withdrew five notices during the 30-day review period and two during the 45-day investigation period. Three of the notices were re-filed after withdrawal, and CFIUS concluded action in those cases. In three cases, the parties abandoned the transactions that were the subject of the notices. In one case the notice was withdrawn during the investigation period but with the intention of re-filing in 2010.

## **E. Mitigation Measures**

From 2007 through 2009, 21 cases resulted in the use of mitigation measures. Mitigation measures have included a number of different types of legally binding undertakings. These range from national security agreements (NSAs), which are complex documents that seek to address a number of perceived risks, to letters of assurance, which are simpler documents appropriate for less complex cases or where the risks posed by the transaction are relatively few and easier to mitigate.

In 2009, CFIUS agencies negotiated, and parties adopted, mitigation measures for five different covered transactions. These measures involved acquisitions of U.S. companies in the computer software, telecommunications, and energy sectors. Four CFIUS agencies served as the USG signatories to these measures.

The measures required the businesses involved to take specific and verifiable actions, including, for example:

- establishing a Corporate Security Committee and the position of security officer;
- complying with guidelines for handling existing USG contracts and USG customer information, and with terms of USG access to specific protected products;
- notifying relevant USG parties of any material introduction, modification, or discontinuation of a product or service, as well as any awareness of any vulnerability or security incidents.

The Committee has adopted procedures to evaluate and ensure that parties to a covered transaction remain in compliance with any risk mitigation measure entered into with CFIUS agencies under section 721. For all mitigation measures executed since FINSA became effective, Treasury, as Chair of CFIUS, has designated each U.S. Government (USG) signatory to a mitigation measure as a lead agency for monitoring compliance with that measure. Lead agencies carry out their monitoring responsibilities on behalf of the Committee and report back to the Committee on at least a quarterly basis. In addition, signatories to mitigation measures that were entered into before FINSA's effective date report to CFIUS quarterly on compliance with those measures. All lead agencies for monitoring mitigation compliance have implemented processes to carry out their responsibilities.

CFIUS agencies use a variety of means to monitor and enforce compliance by the companies that are subject to the measures, including:

- periodic reporting to USG agencies by the companies;
- on-site compliance reviews by USG agencies;
- third-party audits when provided for by the terms of the mitigation measures;
- investigations and remedial actions if anomalies or breaches are discovered or suspected.

In light of the number and complexity of mitigation measures implemented to date, CFIUS agencies have taken a variety of actions to maximize their ability to monitor compliance, including:

- increasing USG staffing levels and assigning staff responsibilities for the monitoring of compliance;
- designing tracking systems to monitor required reports;
- instituting internal instructions and procedures to ensure that in-house expertise is drawn upon to analyze compliance with measures.

## **F. Perceived Adverse Effects of Covered Transactions**

Section 721(m) requires that this report include a discussion of all perceived adverse effects of covered transactions on the national security or critical infrastructure of the United States that the Committee will take into account in its deliberations during the period before delivery of the next report, to the extent possible. In reviewing a covered transaction, CFIUS evaluates all relevant national security considerations identified by its members during the review and does not conclude action on a covered transaction if there are unresolved national security concerns.

As discussed in the Guidance Concerning the National Security Review Conducted by CFIUS, which CFIUS published in the *Federal Register* on December 8, 2008, the transactions that CFIUS has reviewed present a broad range of national security considerations. CFIUS examines the national security considerations to determine whether, in light of the specific facts and circumstances related to the transaction, the transaction would adversely affect national security and pose a national security risk. Such transactions, which have presented a wide range of national security considerations, have involved, for example:

- Foreign control of U.S. businesses that:
  - Provide products and services to an agency or agencies of the U.S. Government, or state and local authorities, that have functions that are relevant to national security.
  - Provide products or services that could expose national security vulnerabilities or create vulnerability to sabotage or espionage.
  - Have operations, or produce or supply products or services, the security of which may have implications for U.S. national security, such as businesses that involve infrastructure that may constitute critical infrastructure, businesses in the energy sector, businesses that affect the national transportation system, and businesses that could significantly and directly affect the U.S. financial system.
  - Have access to classified information.
  - Are in the defense, security, and national security-related law enforcement sectors.
  - Are involved in activities related to weapons and munitions manufacturing, aerospace, and radar systems.
  - Produce certain types of advanced technologies that may be useful in defending, or in seeking to impair, U.S. national security, which may include businesses engaged in the design and production of semiconductors and other equipment or components that have both commercial and military applications, or the design, production, or provision of goods and services involving network and data security.
  - Engage in the research and development, production, or sale of technology, goods, software, or services that are subject to U.S. export controls.
- Acquisition of control by foreign persons that:
  - Are controlled by a foreign government.
  - Are from a country with a record on nonproliferation and other national security-related matters that raises concerns.
  - Have historical records of taking or intentions to take actions that could impair U.S. national security.

CFIUS reviews these national security considerations and the particular facts and circumstances of transactions to determine whether the transaction will pose national security risk. In doing so, CFIUS is concerned with potential adverse effects posed by the transaction, with respect to the following factors, listed in section 721(f) of the Defense Production Act of 1950:

- (1) domestic production needed for projected national defense requirements;
- (2) the capability and capacity of domestic industries to meet national defense requirements, including the availability of human resources, products, technology, materials, and other supplies and services;
- (3) the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States to meet the requirements of national security;
- (4) the potential effects of the proposed or pending transaction on sales of military goods, equipment, or technology to any country –

- (A) identified by the Secretary of State -
    - (i) under section 6(j) of the Export Administration Act of 1979, as a country that supports terrorism;
    - (ii) under section 6(l) of the Export Administration Act of 1979, as a country of concern regarding missile proliferation; or
    - (iii) under section 6(m) of the Export Administration Act of 1979, as a country of concern regarding the proliferation of chemical and biological weapons;
  - (B) identified by the Secretary of Defense as posing a potential regional military threat to the interests of the United States; or
  - (C) listed under section 309(c) of the Nuclear Non-Proliferation Act of 1978 on the “Nuclear Non-Proliferation-Special Country List” (15 C.F.R. Part 778, Supplement No. 4) or any successor list;
- (5) the potential effects of the proposed or pending transaction on United States international technological leadership in areas affecting United States national security;
  - (6) the potential national security-related effects on United States critical infrastructure, including major energy assets;
  - (7) the potential national security-related effects on United States critical technologies;
  - (8) whether the covered transaction is a foreign government-controlled transaction, as determined under subsection (b)(1)(B) of Section 721;
  - (9) as appropriate, and particularly with respect to transactions requiring an investigation under subsection (b)(1)(B) of Section 721, a review of the current assessment of—
    - (A) the adherence of the subject country to nonproliferation control regimes, including treaties and multilateral supply guidelines, which shall draw on, but not be limited to, the annual report on “Adherence to and Compliance with Arms Control, Nonproliferation and Disarmament Agreements and Commitments” required by section 403 of the Arms Control and Disarmament Act;
    - (B) the relationship of such country with the United States, specifically on its record on cooperating in counter-terrorism efforts, which shall draw on, but not be limited to, the report of the President to Congress under section 7120 of the Intelligence Reform and Terrorism Prevention Act of 2004; and
    - (C) the potential for transshipment or diversion of technologies with military applications, including an analysis of national export control laws and regulations;
  - (10) the long-term projection of United States requirements for sources of energy and other critical resources and materials; and
  - (11) such other factors as the President or the Committee may determine to be appropriate generally or in connection with a specific review or investigation.

In the transactions that CFIUS will review during the next reporting period, it will continue to take into account the national security considerations noted above. CFIUS will consider whether the transactions may have the above-listed or any other adverse effects in determining whether the transactions pose national security risk.

## **SECTION II: CRITICAL TECHNOLOGIES**

### **Introduction**

This section of the Annual Report to Congress has been prepared in accordance with section 721(m)(3) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(m)(3)), as amended. Section 721(m)(3) requires the annual report to include:

“(i) an evaluation of whether there is credible evidence of a coordinated strategy by 1 or more countries or companies to acquire United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer; and

“(ii) an evaluation of whether there are industrial espionage activities directed or directly assisted by foreign governments against private United States companies aimed at obtaining commercial secrets related to critical technologies.”

Subsection II-A addresses the requirement laid out in (i), and subsection II-B addresses the requirement laid out in (ii).

### **Definitions & Methodologies**

The definition of “critical technologies,” which includes technologies subject to certain U.S. export controls, is set forth in 31 C.F.R. § 800.209, Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons (the “CFIUS regulations”), published in the Federal Register on November 21, 2008. See the Appendix for this definition. “Critical technology companies” are U.S. companies that CFIUS identified for this report involved in research, development or production of critical technologies. The Appendix also provides the definition of “coordinated strategy” for purposes of this report, describes the methodology and data sources used to identify transactions involving critical technology companies (“critical technology transactions”), and the approach used to conduct the analyses required by Section 721 related to critical technologies. Finally, it lists the agencies and other entities that participated in preparing this section of the report.

### ***II-A. Whether There Is Credible Evidence of a Coordinated Strategy to Acquire Critical Technology Companies***

#### **1. Key Findings**

Based on our assessment of 2009 activity, we judge it unlikely that there is a coordinated strategy among one or more foreign governments or companies to acquire United States companies involved in research, development, or production of critical technologies for which the United States is a leading producer.



Indications of a coordinated strategy may go unobserved due to limitations on intelligence collection, or may be hidden or misconstrued because of foreign denial and deception activities.

## **2. Summary of Foreign M&A Activity in the United States**

Using the methodology described in the Appendix, CFIUS identified 98 completed foreign mergers with, or acquisitions of, U.S. critical technology companies involving acquirers from 26 countries and territories. CFIUS agencies and the intelligence community evaluated all 98 transactions for indications of a coordinated strategy to acquire U.S. critical technologies.

## **3. Frequency of Activity by Countries and Companies**

Identifying acquirers' home countries may provide useful initial insights into the analysis of foreign acquisitions of U.S. critical technology companies. Table II-1 on the following page lists the originating countries for planned and completed acquisitions of U.S. critical technology companies in 2009:

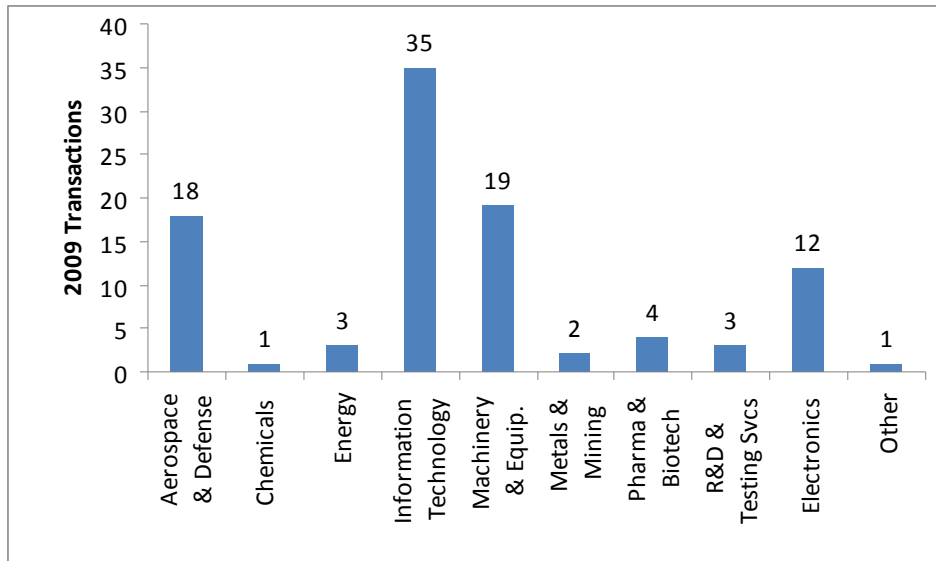
<b>Country</b>	<b>Number of Transactions</b>
United Kingdom	29
Canada	12
France	8
Israel	8
Japan	7
Germany	4
Italy	4
China	3
Netherlands	3
Luxembourg	2
Sweden	2
Switzerland	2
Argentina	1
Australia	1
Austria	1
Cayman Islands	1
Channel Islands	1
Finland	1
India	1
Ireland	1
Norway	1
Saudi Arabia	1
South Korea	1
Spain	1
Taiwan	1
United Arab Emirates	1
<b>TOTAL</b>	<b>98</b>

**Table II-1: Home Country of Foreign Acquirers of Critical Technology Companies**

Thirty percent of the 98 critical technology transactions identified by CFIUS for this report originated in the United Kingdom (UK), by far the largest single originating country. Canada, France, Israel and Japan together accounted for another 36 percent.

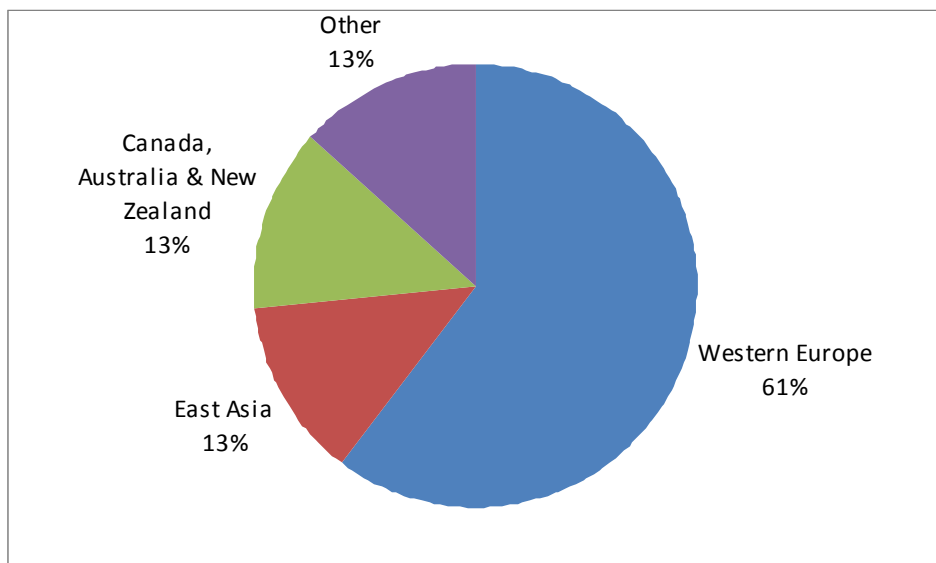
The foreign companies that are considered the most active in acquiring U.S. critical technology companies are those that have completed three or more transactions. Of the foreign companies that have done so in 2009, one is based in Italy and acquired four critical technology companies and the other two are based in France and the United Kingdom, each having acquired three critical technology companies.

As shown in Figure II-1, the largest amount of M&A activity involving foreign acquisitions of U.S. critical technology companies involved targets whose primary activities are in the information technology sectors.



**Figure II-1: Completed Transactions by Sector of U.S. Target Company**

The data in this report can also be analyzed by the home region of the foreign acquirers. Figure II-2 displays the data with the following regional breakdown: Western Europe; East Asia; Canada, Australia & New Zealand; and Other. Western Europe accounts for over 60 percent of the transactions.



**Figure II-2: Completed transactions in critical technologies by regions**

Figure II-3 shows the regional breakdown of activity by number of transactions in each sector. Western European investors were the most active acquirers of U.S. critical technology companies in eight of the 10 identified sectors.

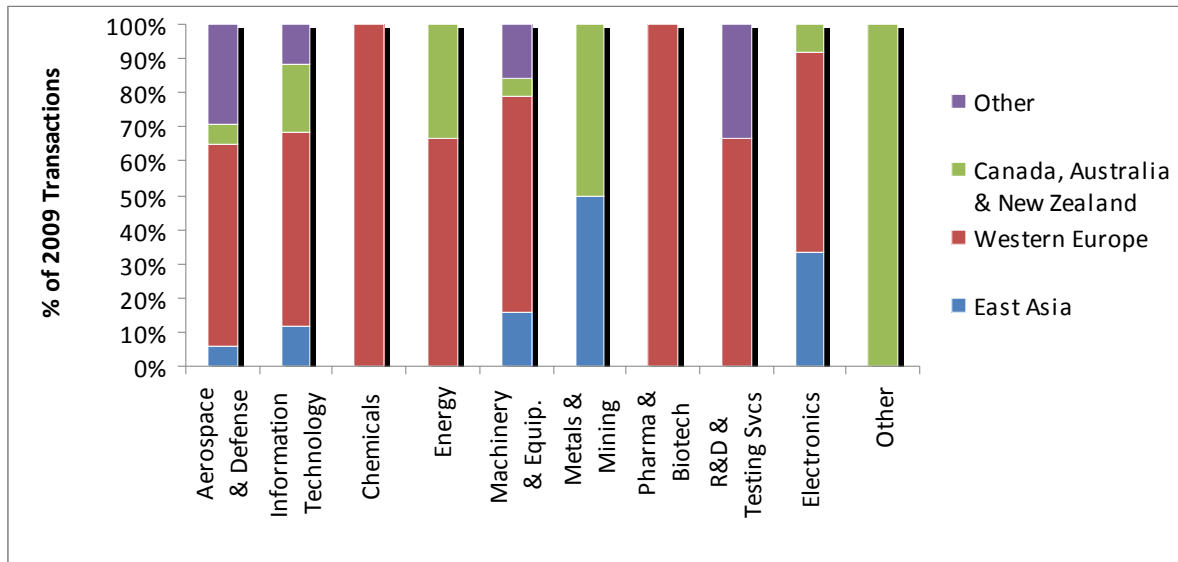


Figure II-3: Completed transactions by region within each sector

## ***II-B. Whether Foreign Governments Used Espionage Activities to Obtain Commercial Secrets Related to Critical Technologies***

### **Key Finding**

We judge that foreign governments are extremely likely to continue to use a range of collection methods to obtain critical U.S. technologies.

## **SECTION III: FOREIGN DIRECT INVESTMENT IN THE UNITED STATES BY COUNTRIES THAT BOYCOTT ISRAEL OR DO NOT BAN TERRORIST ORGANIZATIONS**

### **Introduction**

This section of the CFIUS Annual Report to Congress has been prepared in accordance with section 7(c) of the Foreign Investment and National Security Act of 2007, or “FINSA” (Pub. L. No. 110-49). Section 7(c) of FINSA provides:

“(1) **STUDY REQUIRED.**—Before the end of the 120-day period beginning on the date of enactment of this Act and annually thereafter, the Secretary of the Treasury, in consultation with the Secretary of State and the Secretary of Commerce, shall conduct a study on foreign direct investments in the United States, especially investments in critical infrastructure and industries affecting national security, by—

(A) foreign governments, entities controlled by or acting on behalf of a foreign government, or persons of foreign countries which comply with any boycott of Israel; or

(B) foreign governments, entities controlled by or acting on behalf of a foreign government, or persons of foreign countries which do not ban organizations designated by the Secretary of State as foreign terrorist organizations.

“(2) **REPORT.**—Before the end of the 30-day period beginning upon the date of completion of each study under paragraph (1), and thereafter in each annual report under section 721(m) of the Defense Production Act of 1950 (as added by this section), the Secretary of the Treasury shall submit a report to Congress, for transmittal to all appropriate committees of the Senate and the House of Representatives, containing the findings and conclusions of the Secretary with respect to the study described in paragraph (1), together with an analysis of the effects of such investment on the national security of the United States and on any efforts to address those effects.”

### **A. Summary of Findings and Conclusions**

- Mergers with and acquisitions of U.S. companies (M&A), the main form of foreign direct investment (FDI) into the United States, by investors from the countries described in section 7(c)(1) of FINSA that were completed between January 1, 2009 and December 31, 2009 (CY09) (subject M&A transactions) represents a small percentage of the total of such FDI flows into the United States.
- The value of subject M&A transactions with publicly reported values was \$3.2 billion. (As described in subsection C, not all publicly announced transactions are reported with dollar values, so the actual value of subject M&A transactions is over \$3.2 billion.) The total value of M&A transactions with

publicly reported values by *all* foreign investors during CY09 exceeded \$116 billion.

- The subject M&A transactions spanned a number of economic sectors.
- For the transactions covered by this report, CFIUS either reviewed and concluded action under section 721 with no unresolved national security concerns, or determined that a transaction was not a covered transaction under section 721(a)(3), or CFIUS agencies considered the transaction through procedures that they have put in place for transactions that are not notified to CFIUS.

## **B. Study Methodology**

### **1. Identification of Relevant Countries**

To identify relevant countries that comply with *any* boycott of Israel, as required by the statute, CFIUS considered the list published by the Treasury Department pursuant to section 999 of the Internal Revenue Code and the countries identified by the State Department in reporting to Congress under section 564 of the Foreign Relations Authorization Act, FY 1994-95, as well as information about the countries' observance of a primary boycott of Israel. Based on these considerations, CFIUS interprets the reporting requirement under section 7(c)(1)(A) of FINSA to apply to the following countries: Iraq<sup>3</sup>, Iran, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Syria, Sudan, the United Arab Emirates, and Yemen.

To identify relevant countries that do not ban foreign terrorist organizations, CFIUS interpreted section 7(c)(1)(B) of FINSA to apply to countries that were certified in 2009 as "not cooperating fully with United States antiterrorism efforts," pursuant to section 40A of the Arms Export Control Act, as amended. Those countries are Cuba, Eritrea, Iran, North Korea, Syria, and Venezuela. (The same countries received this certification last year.)

### **2. Scope of FDI**

Mergers with and acquisitions of U.S. companies are the main form of FDI into the United States and the form of FDI that CFIUS is authorized under section 721 to review. This report considers the following transactions: (i) transactions notified to CFIUS under section 721; (ii) M&A transactions that were not notified to CFIUS (non-notified transactions) that CFIUS agencies considered through procedures that each agency

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<sup>3</sup> In Iraq, the current requirement under Iraqi law remains unclear. Efforts to harmonize a national position on the Arab League Boycott (ALB) have been slowed by differing opinions on Iraqi trade laws and regulations as they apply to the boycott. While the Government of Iraq's review of ALB-specific regulation continues, the changing business environment and continued implementation of the U.S. Embassy in Baghdad's action plan to address boycott-related concerns contributed to a decline in requests by the Iraqi government for firms' compliance with the ALB. Most Iraqi ministries and state-owned enterprises have agreed not to comply with or have discontinued regulations enforcing the ALB. The Ministry of Health, however, continues to intermittently request compliance with the ALB and has not removed a requirement to follow the boycott from its tender documents.

has adopted for this purpose; and, (iii) those M&A transactions that resulted in an ownership stake in a U.S. company of at least 10 percent<sup>4</sup>, as listed in the Thomson ONE Banker and Capital IQ databases, two recognized commercial/financial databases.

- *Thomson ONE Banker database*: This database is a product of the Thomson Financial division of Thomson Corporation. The information on transactions provided in the database includes the date of the transaction, the respective countries of origin of the acquirer and the target company, and the sector of the target company. In most cases, the database provided the transaction value and the percentage of ownership rights acquired through the transaction, and, in some cases, the acquirer's total ownership stake after the transaction. The transactions considered for this report excluded those that the Thomson ONE Banker database shows resulted in an ownership stake in a U.S. company of less than 10 percent.
- *Capital IQ database*<sup>5</sup>: This database is a Standard and Poor's business that provides detailed profiles of M&A, private equity, venture capital, spin-offs, initial public offerings, bankruptcies, share buyback programs, and equity/debt public offering transactions. The information on transactions provided in the database includes the date of the transaction, the respective countries of origin of the acquirer and the target company, and the sector of the target company. The database provides, in most cases, the transaction value and the percentage of ownership rights acquired through the transaction, and, in some cases, the acquirer's total ownership stake after the transaction. The transactions considered for this report excluded those that the Capital IQ database shows resulted in an ownership stake in a U.S. company of less than 10 percent, where data on the interest acquired was available.

## C. Detailed Findings

### 1. Quantification of FDI into the United States from the Relevant Countries

The study identified 15 completed M&A transactions in CY09 by investors from countries that comply with any boycott of Israel. These transactions involved investors from Kuwait, Saudi Arabia, and the United Arab Emirates.

The study did not find any subject M&A transactions by investors from Cuba, Iran, and Syria, which are countries that do not cooperate fully with U.S. antiterrorism efforts and which were subject to stringent economic sanctions during the relevant period. There

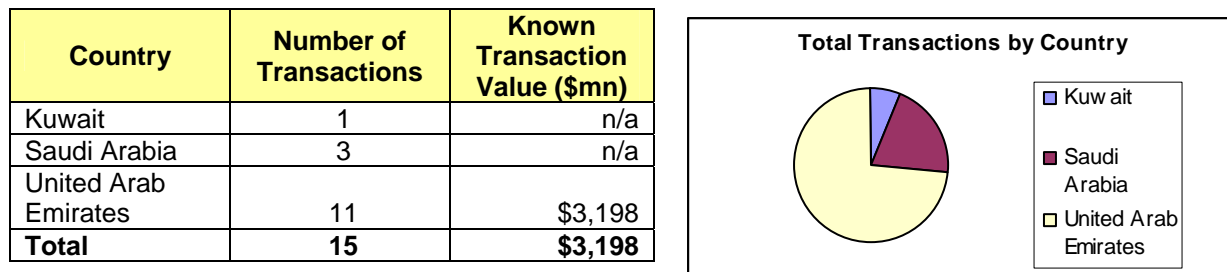
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<sup>4</sup> FDI is generally understood to imply ownership of at least 10 percent, and is used by many statistical agencies around the world including the Department of Commerce's Bureau of Economic Analysis, the Council of Economic Advisors (Economic Report of the President), the IMF, and the OECD. As noted in the descriptions of the Thomson ONE Banker and Capital IQ databases, these information sources did not always provide information regarding the acquirer's total ownership stake in the U.S. company after the transaction. Therefore, some of the transactions covered by this review may be portfolio investments rather than FDI.

<sup>5</sup> Although it was not cited, Capital IQ was also used in last year's report as a secondary source of M&A transactions.

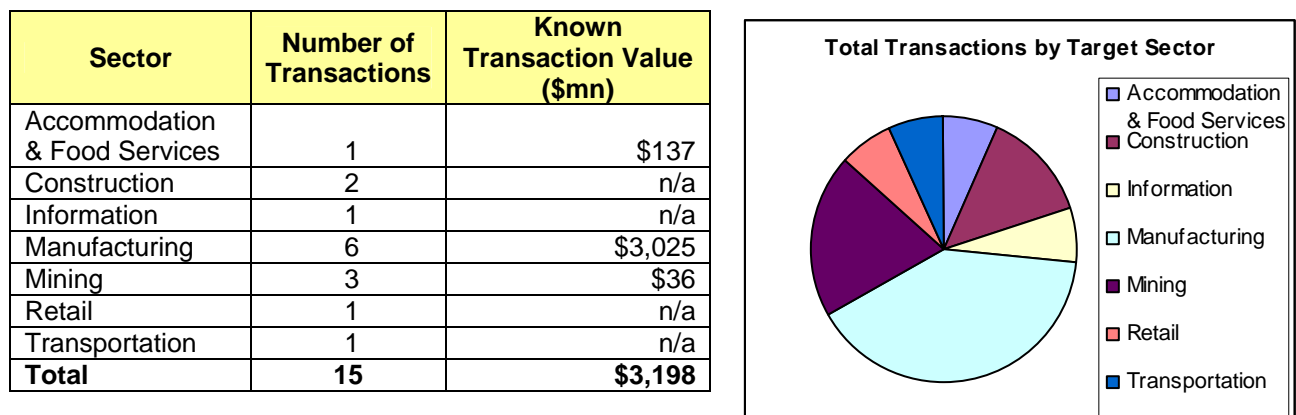
also were no subject M&A transactions by investors from Eritrea, North Korea, or Venezuela -- three countries that were also designated as not cooperating fully with U.S. antiterrorism efforts.

The combined value of the 15 identified transactions with reported values is \$3.2 billion. Thomson and Capital IQ report M&A transaction value only in those cases in which the companies announce the value publicly. Thomson and Capital IQ did not report, and Treasury staff was unable to determine independently, values for 10 of the 15 transactions from the Thomson database analyzed in this report. The value of the 15 total transactions, therefore, is necessarily greater than \$3.2 billion. Figure C-1 shows the number and aggregate value of the transactions for each of the relevant countries:



**Figure C-1: Total Transactions by Country of Acquirer**

FDI into the United States from the relevant countries during CY09 spans numerous major sectors of the economy. Figure C-2 shows each of the sectors represented by the 15 transactions presented in Figure C-1, noting both the number and value of transactions for each sector. Transactions in the manufacturing sector -- the largest category represented -- include transactions in the aircraft, automobile, biotechnology, pharmaceutical, and semiconductor industries.



**Figure C-2: Economic Sectors of U.S. Companies Acquired**



## **2. National Security Effects of FDI in the United States from the Relevant Countries**

Each of the 15 identified transactions was either formally reviewed by CFIUS under section 721, determined to be not a covered transaction under section 721(a)(3), or considered as part of the non-notified transaction procedures of CFIUS and CFIUS agencies.

### **a. Transactions Notified to CFIUS Under Section 721**

Three of the 15 completed transactions identified in Table C-1 were notified to CFIUS, with a total value of approximately \$3 billion. All three transactions originated in the United Arab Emirates.

CFIUS concluded action on the covered transactions after reviewing the national security considerations posed by the transaction and determining that there were no unresolved national security concerns.

### **b. Transactions Considered Under Non-Notified Transaction Procedures**

CFIUS agencies considered the remaining transactions under their respective “non-notified transaction” procedures. Pursuant to these procedures, CFIUS member agencies monitor M&A activity, identify transactions that have not been voluntarily notified to CFIUS but may present national security considerations, and assess whether additional information regarding the transaction or the authority of section 721 is required to identify or address any national security concerns.

When a CFIUS agency believes that a non-notified transaction may be a covered transaction and may raise national security considerations, the agency may self-initiate a review of the transaction under section 721. Alternatively, if CFIUS believes that the transaction may raise national security considerations and may be a covered transaction, CFIUS may request the parties to provide the information necessary to determine whether the transaction is a covered transaction. In cases where such information was requested in the past, the parties to the transaction have responded by filing a voluntary notice. If CFIUS determines that the transaction is covered, it may request that the parties file a notice. When appropriate, CFIUS exercises this authority to request information and has in the past done so with respect to acquisitions that have not been notified to CFIUS by investors that are the subject of section 7(c) of FINSA. Consideration by CFIUS agencies of non-notified transactions from the relevant countries have so far not resulted in requests that CFIUS seek further information from or filings by the parties to the transaction.

## **APPENDIX**

### **A. Definition of “Critical Technologies”**

The Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons (the “CFIUS regulations”), published in the Federal Register on November 21, 2008, and codified at 31 C.F.R. part 800, defines “critical technologies” with reference to U.S. export control regulations, which were determined to be the most reliable and accurate means of identifying critical technologies:

#### **“§800.209 Critical technologies.**

The term *critical technologies* means:

- (a) Defense articles or defense services covered by the United States Munitions List (USML), which is set forth in the International Traffic in Arms Regulations (ITAR) (22 C.F.R. parts 120-130);
- (b) Those items specified on the Commerce Control List (CCL) set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 C.F.R. parts 730-774) that are controlled pursuant to multilateral regimes (*i.e.*, for reasons of national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology), as well as those that are controlled for reasons of regional stability or surreptitious listening;
- (c) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology specified in the Assistance to Foreign Atomic Energy Activities regulations (10 C.F.R. part 810), and nuclear facilities, equipment, and material specified in the Export and Import of Nuclear Equipment and Materials regulations (10 C.F.R. part 110); and
- (d) Select agents and toxins specified in the Select Agents and Toxins regulations (7 C.F.R. part 331, 9 C.F.R. part 121, and 42 C.F.R. part 73).”

### **B. Methodology and Data Sources Used to Identify U.S. Critical Technology Companies Acquired by Foreigners**

Because the definition of critical technologies used in the CFIUS regulations is specific to those regulations, there is no single source that lists all U.S. critical technology companies acquired by foreign persons. Therefore, for purposes of this report, CFIUS agencies responsible for administering U.S. export control regulations used a combination of publicly available information, non-public data on M&A transactions that CFIUS reviewed, and their own internal records to identify 98 U.S. critical technology companies that were acquired by or received significant investments from foreign investors in 2009. The specific data sources and methodology used varied, depending on the records maintained pursuant to the particular export control regulations that pertain to the different critical technology categories. The dataset used for this report is therefore limited. The various methodologies are described below.

31 C.F.R. § 800.209(a): This paragraph pertains to defense articles or defense services covered by the United States Munitions List (USML), which is set forth in the International Traffic in Arms Regulations (ITAR) (22 C.F.R. parts 120-130).

Under the provisions of the ITAR, the Department of State maintains a robust registration, licensing, and compliance process for any person, whether U.S. or foreign, involved in the export or temporary import of a defense article or defense service controlled by the ITAR. This approach assists in the identification of foreign acquisitions of U.S. critical technology companies that produce defense articles or services covered under the ITAR.

31 C.F.R. § 800.209(b): This paragraph pertains to those items specified on the Department of Commerce's Control List (CCL), which is set forth in Supplement No. 1 to part 774 of the Export Administration Regulations (EAR) (15 C.F.R. parts 730-774). The items on the CCL are controlled pursuant to multilateral regimes (i.e., for reasons of national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology), as well as for reasons of regional stability or surreptitious listening.

Firms producing items under the regulations specified in this paragraph of 31 C.F.R. § 800.209 are not required to register with the Department of Commerce (Commerce), but, in many cases, must obtain a license from Commerce in order to export those items (including "deemed exports" to foreign nationals in the United States). To identify acquisitions of companies producing items that fall under this part of the definition, Commerce used a combination of publicly available information on M&A transactions,<sup>6</sup> information on non-publicly announced M&A transactions notified to CFIUS, and its internal records of export license applications.

31 CFR § 800.209(c): This paragraph pertains to specially designed and prepared nuclear equipment, parts and components, materials, software, and technology specified in the Assistance to Foreign Atomic Energy Activities regulations (10 C.F.R. part 810), and nuclear facilities, equipment, and material specified in the Export and Import of Nuclear Equipment and Materials regulations (10 C.F.R. part 110);

The Department of Energy used a similar approach to that adopted by Commerce, which entailed checking a list of publicly announced M&A transactions<sup>7</sup> against its records of export authorizations under 10 C.F.R. part 810 and the Nuclear Regulatory Commission's records of export license requests under 10 C.F.R. part 110.

31 C.F.R. § 800.209(d): This paragraph pertains to select agents and toxins specified in the Select Agents and Toxins regulations (7 C.F.R. part 331, 9 CFR part 121, and 42 C.F.R. part 73).

The agents and toxins specified under these regulations are generally subject to export controls administered by Commerce. To this extent, the discussion above regarding Commerce's methodology applies to transactions involving these critical technologies, as well.

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<sup>6</sup> The M&A transactions were identified using the ThomsonONE database and Capital IQ's database of M&A transactions.

<sup>7</sup> The list of M&A transactions was drawn from the Capital IQ database.

### **C. Analyzing the Acquisitions of U.S. Critical Technology Companies**

CFIUS agencies addressed parts (i) and (ii) of section 721(m)(3) of the Defense Production Act of 1950 (50 U.S.C. App. 2170(m)(3)), as amended, by doing the following:

- Analyzing the pattern of M&A of U.S. critical technology companies during 2009, while also considering transactions in prior years, as appropriate.
  - CFIUS agencies concentrated on foreign direct investment through M&A of companies involved in all critical technologies, regardless of industry.
  - CFIUS agencies did not attempt to evaluate issues relating to other avenues of foreign access to U.S. critical technologies, such as licensing, contracting, or other arrangements that are not mergers or acquisitions.
- Assessing illicit attempts by government intelligence services of major economic competitors to obtain military and dual-use critical technologies.
  - CFIUS agencies did not attempt to evaluate foreign espionage in areas other than dual-use, military, or other U.S. critical technologies, or against companies not headquartered in the United States.
  - In addition, CFIUS agencies reviewed available information about other countries that have historically sought information on critical technologies through the use of those countries' intelligence services.

### **D. Defining “Coordinated Strategy” for Purposes of this Report**

CFIUS agencies continue to use the following definition of “coordinated strategy”:

- A plan of action reflected in directed efforts developed and implemented by a foreign government, in association with one or more foreign companies, to acquire U.S. companies with critical technologies. The efforts of a single company in pursuit of business goals, absent indications of specific government direction, were not considered to be a coordinated strategy. Individual company strategies encompass such business goals as: entry into the U.S. market; increased market share; increased sales; access to new technologies; and diversification out of mature industries.
  - Examples of suspect behaviors that could be evidence of a coordinated strategy include:
    - A pattern of actual or attempted acquisitions of U.S. firms by foreign entities;
    - Evidence that specific completed or attempted acquisitions of companies with critical technologies had been ordered by foreign governments or foreign government-controlled firms; or
    - The provision of narrowly targeted incentives by foreign governments or foreign-controlled firms (*e.g.*, grants, concessionary loans, or tax breaks), especially those that appear to market observers to be disproportionately generous, to acquire U.S. firms with critical technologies.

## **E. Participating Agencies & Entities -- Critical Technologies Section**

- Department of Commerce
  - Bureau of Industry and Security
  - International Trade Administration
  - National Telecommunications and Information Administration
- Department of Defense – Defense Technology Security Administration
- Department of Justice
- Department of State
  - Bureau of Economic, Energy, and Business Affairs
  - Bureau of Political-Military Affairs
  - Bureau of International Security and Nonproliferation
- Department of the Treasury
- Intelligence Community Elements
  - Office of the Director of National Intelligence, National Intelligence Council
  - Air Force Office of Special Investigations
  - Army Counterintelligence Center
  - Central Intelligence Agency
  - Defense Intelligence Agency
  - Federal Bureau of Investigation, National Security Branch
  - Department of Energy, Office of Intelligence and Counterintelligence
  - Department of Homeland Security, Office of Intelligence and Analysis
  - Department of State, Bureau of Intelligence and Research
  - Department of the Treasury, Office of Intelligence and Analysis
  - Marine Corps Intelligence Activity
  - Office of the National Counterintelligence Executive, Community Acquisition Risk Section
  - National Counterterrorism Center
  - National Geospatial-Intelligence Agency
  - National Security Agency
  - Naval Intelligence (Office of Naval Intelligence and Naval Criminal Investigative Service)
- Executive Office of the President
  - Council of Economic Advisors
  - National Security Council
  - Office of Science and Technology Policy

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