

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

**ANNUAL REPORT  
TO CONGRESS**

**Report Period: CY 2013  
Issued: Feb 2015**

**PUBLIC//UNCLASSIFIED VERSION**

# **CFIUS ANNUAL REPORT TO CONGRESS**

**Report Period: CY 2013  
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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), as amended by the Foreign Investment and National Security Act of 2007, or "FINSAs" (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 Annual Report, "filings" means notices filed under section 721.

## **A. Information on 2013 Covered Transactions**

The classified version of this report contains a table listing all 97 notices of transactions that were filed with CFIUS in 2013 and that CFIUS determined to be covered transactions under section 721. It 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.

- CFIUS conducted a “review” with respect to the 97 notices of covered transactions filed with CFIUS.
- CFIUS also conducted a subsequent “investigation” with respect to 48 of those 97 notices.
- Eight of the notices were withdrawn. In one of these cases, the parties filed a new notice, in 2014.
- Due to a temporary suspension of government operations in October 2013 as a result of the absence of an FY2014 appropriation or a continuing resolution providing funding for the remainder of the fiscal year, CFIUS was unable to complete its review of five transactions, which then proceeded into investigation. CFIUS then completed action on those transactions after the termination of the temporary suspension of government operations.
- For one transaction, the investigation period concluded during the temporary suspension of government operations. CFIUS advised the parties that under 31 U.S.C. § 800.601, all authority available to the President or the Committee under section 721(d), including divestment authority, remained available at the discretion of the President with respect to the covered transaction. The parties to the transaction chose to file a new notice with CFIUS concerning the transaction upon termination of the temporary suspension of government operations and resumption of normal government operations.

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

In the years 2009 through 2013, companies filed 480 notices of transactions that CFIUS determined to be covered transactions under section 721. Forty percent (193 notices) resulted in an investigation. About three percent (17 notices) of all notices were withdrawn during the review stage and eight percent (38 notices) were withdrawn during the investigation stage. Withdrawals of notices are a function of the specific facts and circumstances of the particular transactions reviewed by the committee and are not indicative of a trend.

There was a moderate decrease in the number of notices from 2011 to 2013. As shown in Table I-2, the number of notices increased from 111 in 2011 to 114 in 2012 and decreased to 97 in 2013. The percentage of notices proceeding to investigation remained fairly constant during 2011 and 2012 at 36 percent and 39 percent respectively. However, the percentage of notices proceeding to investigation increased to 49 percent during 2013, due partially to the fact that five cases proceeded to investigation during the government shutdown in October.

Apart from the general correlation of the number of notices with macroeconomic conditions, the information in the table below is not indicative of discernible trends. CFIUS considers each transaction on a case-by-case basis, and the disposition of any particular case – be it withdrawal from review or investigation, closing in review or investigation, or Presidential decision – depends on the unique facts and circumstances of that case.

These figures, and those in the tables below and in Section I.C of this report, reflect the number of notices filed with CFIUS as required by statute 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 Annual Report.

Covered Transactions, Withdrawals, and Presidential Decisions*					
2009 - 2013					
Year	Number of Notices	Notices Withdrawn During Review	Number of Investigations	Notices Withdrawn After Commencement of Investigation	Presidential Decisions
2009	65	5	25	2	0
2010	93	6	35	6	0
2011	111	1	40	5	0
2012	114	2	45	20	1
2013	97	3	48	5	0
<b>Total</b>	<b>480</b>	<b>17</b>	<b>193</b>	<b>38</b>	<b>1</b>

\*Please see Section 1.D below for discussion of reasons parties may seek to withdraw a notice.

**Table I-2: Covered Transactions, Withdrawals, and Presidential Decisions 2008-2013**

## C. Covered Transactions by Business Sector and Country

### 1. Covered Transactions by Business Sector of U.S. Companies: 2009-2013

The notices of covered transactions filed with CFIUS during the 2009 to 2013 period involved a wide range of industrial subsectors.<sup>2</sup> Broadly, more than one third of such notices were in the manufacturing sector (186, or 39 percent), while approximately one third of the notices were in the finance, information, and services sector (165, or 34 percent). The remainder of notices were in the mining, utilities, and construction sector (91, or 19 percent) or the wholesale, retail, and transportation sector (38, or eight percent).

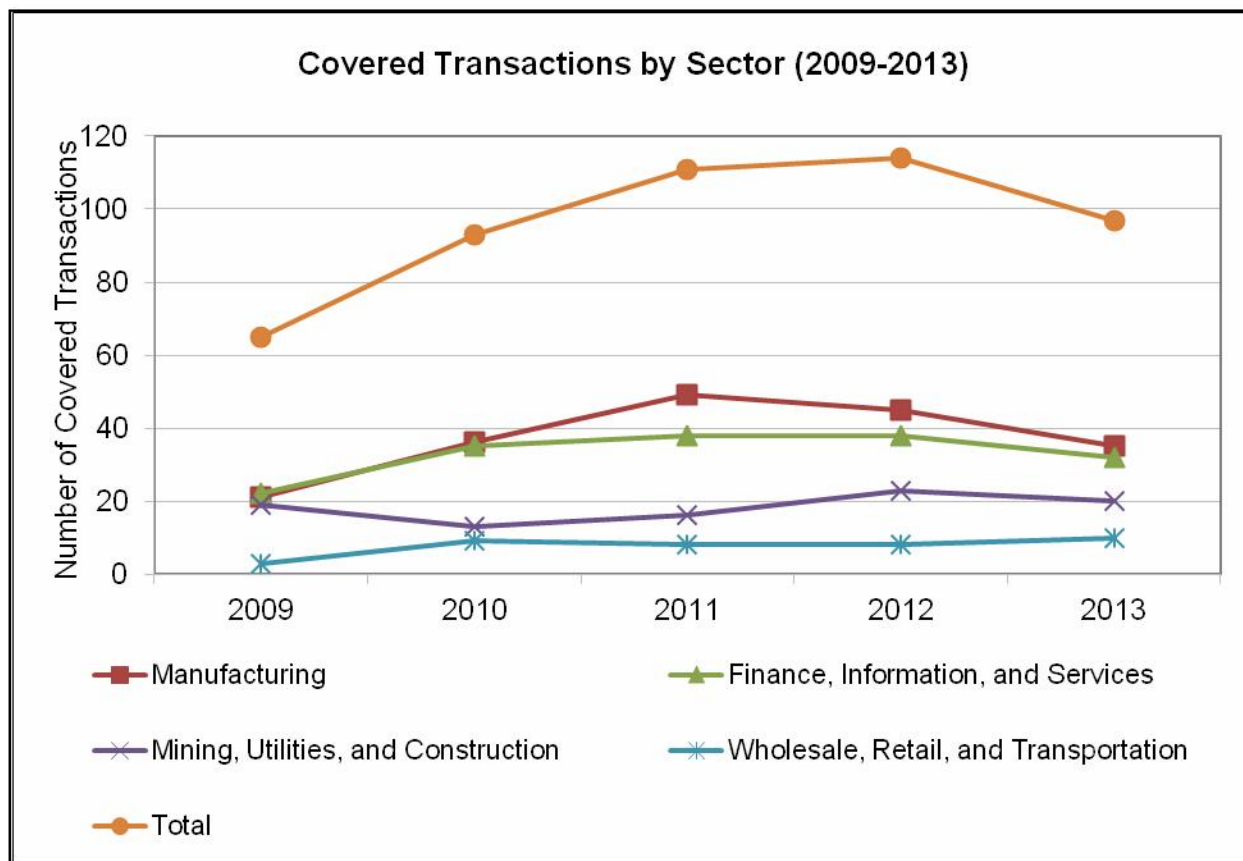
The table and chart below provide a breakdown by sector and by year of the 480 notices of covered transactions cumulatively filed with CFIUS from 2009 through 2013. The data below show that, as in 2012, the greatest number of filings in 2013 occurred in the manufacturing sector and in the finance, information, and services sector. The percentage of notices in the manufacturing sector decreased in 2012 (from 44 percent to 39 percent) and again from 2012 to 2013 (from 39 percent to 36 percent). In 2013, the percentage of notices in the finance, information, and services sector remained constant from 2012 to 2013 (33 percent in both years), which was a slight decline from 2011 (34 percent). The percentage of notices in the mining, utilities, and construction sector increased slightly from 2012 to 2013 (from 20 percent to 21 percent), after a larger increase from 2011 to 2012 (from 14 percent to 20 percent).

Covered Transaction by Sector and Year, 2009-2013					
Year	Manufacturing	Finance, Information, and Services	Mining, Utilities, and Construction	Wholesale, Retail, and Transportation	Total
2009	21 (32%)	22 (34%)	19 (29%)	3 (5%)	65
2010	36 (39%)	35 (38%)	13 (14%)	9 (10%)	93
2011	49 (44%)	38 (34%)	16 (14%)	8 (7%)	111
2012	45 (39%)	38 (33%)	23 (20%)	8 (7%)	114
2013	35 (36%)	32 (33%)	20 (21%)	10 (10%)	97
<b>Total</b>	<b>186 (39%)</b>	<b>165 (34%)</b>	<b>91 (19%)</b>	<b>38 (8%)</b>	<b>480</b>

Table I-3: Covered Transactions by Sector and Year, 2009-2013

<sup>2</sup> Broad sectors are defined using 2012 North American Industry Classification System (NAICS) codes of the target company. The NAICS code assigned to each target company is based upon information provided in the notice.





**Covered Transactions by Sector 2009-2013**

### **Manufacturing Sector**

Manufacturing accounted for 36 percent (35 notices) of all notices filed with CFIUS during 2013. The computer and electronic products subsector continued to be the largest subsector of the manufacturing notices with 12 (35 percent). Other significant subsectors were machinery with six notices and fabricated metal products with five. The transportation equipment subsector continued to decrease as a percentage of manufacturing notices filed over the past three years, down to 15 percent from 18 percent from 2010 to 2012 and 22 percent from 2009 to 2011.

<b>Manufacturing</b>	<b>NAICS Code</b>	<b>Number of Notices 2013</b>	<b>% of Total Manufacturing 2013</b>
Computer and Electronic Product	334	12	35%
Machinery	333	6	18%
Fabricated Metal Product	332	5	15%
Electrical Equipment, Appliance, and Component	335	3	9%
Transportation Equipment Manufacturing	336	3	9%
Plastics and Rubber Products Manufacturing	326	2	6%
Chemical	325	1	3%
Food Manufacturing	311	1	3%
Nonmetallic Mineral Product Manufacturing	327	1	3%

**Table I-4: Covered Transactions from the Manufacturing Sector 2013**

<b>Manufacturing</b>	<b>NAICS Code</b>	<b>% of Total Manufacturing from 2009-2011</b>	<b>% of Total Manufacturing from 2010-2012</b>	<b>% of Total Manufacturing from 2011-2013</b>
Computer and Electronic Product	334	50%	50%	47%
Transportation Equipment	336	22%	18%	15%
Machinery	333	8%	9%	12%
Electrical Equipment, Appliance, and Component	335	9%	11%	11%
Fabricated Metal Product	332	3%	3%	6%
Chemical	325	4%	5%	3%
Plastics and Rubber Products	326	0%	0%	2%
Textile Product Mills	314	1%	2%	1%
Primary Metal	331	1%	1%	1%
Petroleum and Coal Products	324	1%	1%	1%
Leather and Allied Product Manufacturing	316	1%	1%	1%
Miscellaneous	339	0%	1%	1%
Nonmetallic Mineral Products	327	0%	0%	1%
Food Manufacturing	311	0%	0%	1%

**Table I-5: Covered Transactions from the Manufacturing Sector in Past Years**

### **Computer and Electronic Products Subsector**

Of the 12 notices filed in the computer and electronic products subsector in 2013, half were in the semiconductor and other electronic component manufacturing subsector. This subsector also continued to increase as a percentage of notices filed during the past three years, up to 39 percent during 2011 to 2013 from 34 percent during 2010 to 2012 and 26 percent from 2009 to 2011. The navigational, measuring, electromedical, and control instruments manufacturing subsector was a significant contributor in 2012 as well with five notices.

<b>Computer and Electronic Products</b>	<b>NAICS Code</b>	<b>Number of Notices 2013</b>	<b>% of Total Computer and Electronic Products 2013</b>
Semiconductor and Other Electronic Component Manufacturing	3344	6	50%
Navigational, Measuring, Electromedical, and Control Instruments Manufacturing	3345	5	42%
Communication Equipment Manufacturing	3342	1	8%

**Table I-6: Covered Transactions from the Computer and Electronic Products Subsector 2013**

<b>Computer and Electronic Products</b>	<b>NAICS Code</b>	<b>% of Total Computer and Electronic Products 2009-2011</b>	<b>% of Total Computer and Electronic Products 2010-2012</b>	<b>% of Total Computer and Electronic Products 2011-2013</b>
Semiconductor and Other Electronic Component Manufacturing	3344	26%	34%	39%
Navigational, Measuring, Electromedical, and Control Instruments Manufacturing	3345	34%	28%	31%
Communication Equipment Manufacturing	3342	30%	29%	23%
Computer and Peripheral Equipment Manufacturing	3341	8%	8%	5%
Manufacturing and Reproducing Magnetic and Optical Media	3346	2%	2%	2%

**Table I-7: Covered Transactions from the Computer and Electronic Products Subsector in Past Years**



### ***Transportation Equipment Subsector***

Of the three notices filed in the transportation equipment subsector in 2013, two were in the aerospace products and parts manufacturing subsector. This subsector's share of notices filed fell to 53 percent from 2011 to 2013 from 70 percent in 2010 to 2012.

Transportation Equipment	NAICS Code	Number of Notices 2013	% of Total Transportation Equipment 2013
Aerospace Products and Parts Manufacturing	3364	2	67%
Motor Vehicle Parts Manufacturing	3363	1	33%

**Table I-8: Covered Transactions from the Transportation Equipment Subsector 2013**

Transportation Equipment	NAICS Code	% of Total Transportation Equipment 2009-2011	% of Total Transportation Equipment 2010-2012	% of Total Transportation Equipment 2011-2013
Aerospace Products and Parts Manufacturing	3364	70%	70%	53%
Motor Vehicle Parts Manufacturing	3363	22%	22%	21%
Motor Vehicle Manufacturing	3361	9%	11%	16%
Ship and Boat Building	3366	9%	9%	11%

**Table I-9: Covered Transactions from the Transportation Equipment Subsector in Past Years**

### **Finance, Information, and Services Sector**

The finance, information, and services sector accounted for 33 percent (32 notices) of all notices filed with CFIUS during 2013. Professional, scientific, and technical services continued to make up about half of the notices filed in this sector (15 notices). The rental and leasing services subsector made up a significant part of the sector with five notices and continued to increase its share of noticed filed to six percent during 2011 to 2013 from one percent during 2010 to 2012 and zero percent from 2009 to 2011.

<b>Finance, Information, and Services</b>	<b>NAICS Code</b>	<b>Number of Notices 2013</b>	<b>% of Total Finance, Information, and Services 2013</b>
Professional, Scientific, and Technical Services	541	15	47%
Rental and Leasing Services	532	5	16%
Telecommunications	517	4	13%
Administrative and Support Staff	561	3	9%
Publishing Industries (except Internet)	511	2	6%
Data Processing, Hosting, and Related Services	518	2	6%
Credit Intermediation and Related Activities	522	1	3%

**Table I-10: Covered Transactions from the Finance, Information, and Services Sector 2012**

Finance, Information, and Services	NAICS	% of Total Finance, Information, and Services 2009-2011	% of Total Finance, Information, and Services 2010-2012	% of Total Finance, Information, and Services 2011-2013
Professional, Scientific, and Technical Services	541	55%	54%	51%
Telecommunications	517	16%	12%	13%
Publishing Industries (except Internet)	511	19%	16%	11%
Rental and Leasing Services	532	0%	1%	6%
Administrative and Support Staff	561	5%	5%	5%
Real Estate	531	0%	4%	4%
Credit Intermediation and Related Activities	522	1%	1%	3%
Securities, Commodities Contracts, and Other Financial Investments and Related Activities	523	3%	3%	2%
Data Processing, Hosting, and Related Services	518	0%	0%	2%
Motion Picture and Sound Recording Industries	512	0%	1%	1%
Other Information Services	519	0%	1%	1%
Waste Management and Remediation Services	562	1%	1%	1%
Repair and Maintenance	811	0%	1%	1%

**Table I-11: Covered Transactions from the Finance, Information, and Services sector in Past Years**

***Professional, Scientific, and Related Services Subsector***

Of the 15 professional, scientific, and related services notices, the computer systems design and related services subsector accounted for over half, with eight notices. The architectural, engineering, and related services subsector decreased to 22 percent during 2011 to 2013 from 28 percent during 2010 to 2012. The computer systems design and related services subsector moderately increased to 39 percent from 2011 to 2013 from 35 percent during 2010 to 2012.

Professional, Scientific, and Technical Services	NAICS Code	Number of Notices 2013	% of Total Professional, Scientific, and Technical Services 2013
Computer Systems Design and Related Services	5415	8	53%
Architectural, Engineering, and Related Services	5413	3	20%
Management, Scientific, and Technical Consulting Services	5416	2	13%
Scientific Research and Development Services	5417	2	13%

**Table I-12: Covered Transactions from the Professional, Scientific, and Technical Services Subsector 2013**

Professional, Scientific, and Technical Services	NAICS Code	% of Total Professional, Scientific, and Technical Services 2009-2011	% of Total Professional, Scientific, and Technical Services 2010-2012	% of Total Professional, Scientific, and Technical Services 2011-2013
Computer Systems Design and Related Services	5415	44%	35%	39%
Architectural, Engineering, and Related Services	5413	27%	28%	22%
Management, Scientific, and Technical Consulting Services	5416	15%	18%	19%
Scientific Research and Development Services	5417	10%	13%	15%
Other Professional, Scientific, and Technical Services	5419	4%	3%	4%
Specialized Design Services	5414	0%	2%	2%

**Table I-13: Covered Transactions from the Professional, Scientific, and Technical Services Subsector in Past Years**

### ***Telecommunications Subsector***

Of the four telecommunications notices filed in 2013, two were in the wired telecommunications carriers subsector. Wired telecommunications carriers notices accounted for 43 percent of telecommunications notices filed from 2011 to 2013, a large increase from 31 percent of the



telecommunications notices filed from 2010 to 2012, a further increase from 13 percent in the period from 2009 to 2011. The wireless telecommunications carriers subsector made up seven percent from 2011 to 2013, similar to the eight percent of notices filed from 2010 to 2012, and still down from 27 percent in the 2009 to 2011 period.

Telecommunications	NAICS Code	Number of Notices 2013	% of Total Telecommunications 2013
Wired Telecommunications Carriers	5171	2	50%
Wireless Telecommunications Carriers (except Satellite)	5172	1	25%
Satellite Telecommunications	5174	1	25%

**Table I-14: Covered Transactions from the Telecommunications Subsector 2012**

Telecommunications	NAICS Code	% of Total Telecommunications 2009-2011	% of Total Telecommunications 2010-2012	% of Total Telecommunications 2011-2013
Satellite Telecommunications	5174	40%	38%	43%
Wired Telecommunications Carriers	5171	13%	31%	43%
Other Telecommunications	5179	20%	23%	7%
Wireless Telecommunications Carriers (except Satellite)	5172	27%	8%	7%

**Table I-15: Covered Transactions from the Telecommunications Subsector in Past Years**

### **Mining, Utilities, and Construction Sector**

The mining, utilities, and construction sector accounted for 21 percent (20 notices) of all notices filed with CFIUS during 2013. Utilities made up over half of this sector with 12 notices. Other significant subsectors include mining (except oil and gas) with three notices and oil and gas extraction with two notices. The percentage of utilities notices has slightly increased, accounting for 56 percent of notices filed from 2011 to 2013, up from 54 percent filed from 2010 to 2012 and 52 percent of notices filed from 2009 to 2011. Oil and gas extraction increased to fifteen percent during 2011 to 2013 from ten percent during 2010 to 2012. Support activities for mining decreased to seven percent during 2011 to 2013 from thirteen percent during 2010 to 2012.

<b>Mining, Utilities, and Construction</b>	<b>NAICS Code</b>	<b>Number of Notices 2013</b>	<b>% of Total Mining, Utilities, and Construction 2013</b>
Utilities	221	12	60%
Mining (except Oil and Gas)	212	3	15%
Oil and Gas Extraction	211	2	10%
Support Activities for Mining	213	1	5%
Construction of Buildings	236	1	5%
Specialty Trade Contractors	238	1	5%

**Table I-16: Covered Transactions from the Mining, Utilities, and Construction Sector 2013**

<b>Mining, Utilities, and Construction</b>	<b>NAICS Code</b>	<b>% of Total Mining, Utilities, and Construction 2009-2011</b>	<b>% of Total Mining, Utilities, and Construction 2010-2012</b>	<b>% of Total Mining, Utilities, and Construction 2011-2013</b>
Utilities	221	52%	54%	56%
Oil and Gas Extraction	211	8%	10%	15%
Mining (except Oil and Gas)	212	13%	12%	12%
Support Activities for Mining	213	15%	13%	7%
Heavy and Civil Engineering Construction	237	6%	8%	5%
Specialty Trade Contractors	238	4%	4%	3%
Construction of Buildings	236	2%	0%	2%

**Table I-17: Covered Transactions from the Mining, Utilities, and Construction Sector in Past Years**

### ***Electric Power Generation, Transmission, and Distribution Subsector***

The electric power generation, transmission, and distribution subsector accounted for most of the utilities filings in 2012, with 10. This subsector also accounted for a vast majority of utilities filings over the 2011 to 2013 period with 79 percent, up from 71 percent during 2010 to 2012 and 72 percent over the 2009 to 2011 period.

Utilities	NAICS Code	Number of Notices 2013	% of Total Utilities 2013
Electric Power Generation, Transmission and Distribution	2211	10	83%
Water, Sewage, and Other Systems	2213	2	17%

**Table I-18: Covered Transactions from the Utilities Subsector 2013**

Utilities	NAICS Code	% of Total Utilities 2009-2011	% of Total Utilities 2010-2012	% of Total Utilities 2011-2013
Electric Power Generation, Transmission and Distribution	2211	72%	71%	79%
Water, Sewage, and Other Systems	2213	8%	7%	12%
Natural Gas Distribution	2212	20%	21%	9%

**Table I-19: Covered Transactions from the Utilities Subsector in Past Years**

### **Wholesale Trade, Retail Trade, and Transportation Sector**

The wholesale trade, retail trade, and transportation sector accounted for 10 percent (10 notices) of all notices of covered transactions filed with CFIUS during 2013. The support activities for the transportation subsector made up over half of this sector, with six notices. The proportion of notices from this subsector also increased to 48 percent for the period from 2011 to 2013 from 40 percent for the period from 2010 to 2012. The proportion of notices from the merchant wholesalers, nondurables goods subsector remained constant at 11 percent for the 2011 to 2013 period, similar to 12 percent for the 2010 to 2012 period. The proportion of notices for the electronic and appliance stores subsector remained at zero for the 2011 to 2013 period, down from 10 percent in the 2009 to 2011 period.



Wholesale, Retail, and Transportation	NAICS Code	Number of Notices 2013	% of Total Wholesale, Retail, and Transportation 2013
Support Activities for Transportation	488	6	55%
Merchant Wholesalers, Durable Goods	423	2	18%
Merchant Wholesalers, Nondurables Goods	424	1	9%
Pipeline Transportation	486	1	9%
Warehousing and Storage	493	1	9%

**Table I-20: Covered Transactions from the Wholesale, Retail, and Transportation Sector 2012**

Wholesale, Retail, and Transportation	NAICS Code	% of Total Wholesale, Retail, and Transportation 2009-2011	% of Total Wholesale, Retail, and Transportation 2010-2012	% of Total Wholesale, Retail, and Transportation 2011-2013
Support Activities for Transportation	488	30%	40%	48%
Merchant Wholesalers, Durable Goods	423	25%	24%	22%
Merchant Wholesalers, Nondurables Goods	424	5%	12%	11%
Water Transportation	483	10%	8%	7%
Pipeline Transportation	486	10%	8%	7%
Warehouse and Storage	493	0%	0%	4%
Air Transportation	481	5%	4%	0%
Transit and Ground Passenger Transportation	485	5%	4%	0%
Electronic and Appliance Stores	443	10%	0%	0%

**Table I-21: Covered Transactions from the Wholesale, Retail, and Transportation Sector in Past Years**



## **2. Covered Transactions by Country or Economy: 2011-2013**

Table I-22 breaks down the notices of covered transactions from 2011 through 2013 by country or economy and year. Acquisitions by investors from China accounted for the largest share of the notices filed for the three-year period with 17 percent (54 notices), up from 12 percent of all notices for the 2010 to 2012 period. Chinese investors also accounted for the most notices filed in 2012 and 2013 (23 and 21 notices, respectively). Investors from the United Kingdom (UK) were close behind with 15 percent (49 notices, including one notice from an acquirer with UK and German owners), down from 21 percent of all notices for the 2010 to 2012 period. From 2011 to 2013, investors from Canada and Japan accounted for an additional 11 percent each (34 notices). France accounted for an additional nine percent over the period (29 notices). In 2013, notices from Japanese investors doubled from 2012 from nine to 18 percent (nine to 18 notices)

Covered Transactions by Acquirer Home Country/Economy, 2011-2013				
Country/Economy	2011	2012	2013	Total
Australia	4	3	0	7
Bermuda	0	0	0	0
Brazil	1	2	1	4
Canada	9	13	12	34
Cayman Islands	1	0	1	2
Chile	0	0	1	1
China	10	23	21	54
Denmark	0	2	0	2
Estonia	1	0	0	1
Finland	1	0	0	1
France	14	8	7	29
Germany	3	4	4	11
Hong Kong	0	2	1	3
India	1	4	1	6
Ireland	0	0	1	1
Israel	6	4	1	11
Italy	2	1	0	3
Japan	7	9	18	34
Korea	1	2	1	4
Luxembourg	0	0	1	1
Malaysia	1	0	0	1
Mexico	0	0	2	2
Netherlands	7	6	1	14
New Zealand	1	0	0	1
Norway	2	1	1	4
Russian Federation	0	2	1	3
Saudi Arabia	0	0	2	2
Singapore	2	2	3	7
Spain	4	2	1	7
Sweden	6	2	2	10
Switzerland	1	5	3	9
Taiwan	0	0	1	1
United Arab Emirates	0	0	2	2
United Kingdom	25	17	7	49
United Kingdom & Germany	1	0	0	1
<b>Grand Total</b>	<b>111</b>	<b>114</b>	<b>97</b>	<b>322</b>

**Table I-22: Covered Transactions by Country or Economy: 2011-2013**

Table I-23 shows that some countries have a concentration of transactions in certain specific industry sectors that vary noticeably from the overall concentration of CFIUS notices in that sector. For example, while manufacturing accounted for 40 percent of all notices filed from 2011 to 2013, 72 percent (21 of 29) of the notices filed from French acquirers were in manufacturing. Mining, utilities, and construction accounted for 18 percent of all notices filed from 2010 to 2012, while 62 percent (21 of 34) of notices filed from Canadian acquirers and 31 percent (17 of 54) of notices from Chinese acquirers were in this sector.

Covered Transactions by Acquirer Home Country/Economy and Target Sector, 2011-2013					
Country/Economy	Manufacturing	Finance, Information, and Services	Mining, Utilities, and Construction	Wholesale, Retail, and Transportation	Total
Australia	1	3	3	0	7
Bermuda	0	0	0	0	0
Brazil	1	2	0	1	4
Canada	2	7	21	4	34
Cayman Islands	1	0	0	1	2
Chile	0	0	1	0	1
China	24	13	17	0	54
Denmark	0	0	1	1	2
Estonia	0	0	1	0	1
Finland	0	1	0	0	1
France	21	3	1	4	29
Germany	4	7	0	0	11
Hong Kong	1	2	0	0	3
India	3	3	0	0	6
Ireland	0	1	0	0	1
Israel	5	6	0	0	11
Italy	3	0	0	0	3
Japan	17	9	3	5	34
Korea	2	2	0	0	4
Kuwait	0	0	0	0	0
Luxembourg	1	0	0	0	1
Malaysia	0	1	0	0	1
Mexico	0	0	1	1	2
Netherlands	2	8	2	2	14
New Zealand	1	0	0	0	1
Norway	2	1	1	0	4
Qatar	0	0	0	0	0
Russian Federation	1	2	0	0	3
Saudi Arabia	1	1	0	0	2
Singapore	1	1	3	2	7
Spain	2	5	0	0	7
Sweden	3	7	0	0	10
Switzerland	8	1	0	0	9
Taiwan	1	0	0	0	1
United Arab Emirates	1	0	1	0	2
United Kingdom	21	20	3	5	49
United Kingdom & Germany	1	0	0	0	1
<b>Total</b>	<b>131</b>	<b>106</b>	<b>59</b>	<b>26</b>	<b>322</b>

**Table I-23: Covered Transactions by Country or Economy and Target Sector: 2010-2012**

## **D. Withdrawn Notices**

Parties can withdraw an accepted notice of a transaction if 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 where the 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 request to withdraw and re-file their notice to provide themselves with additional time to answer remaining questions or to resolve the remaining national security concerns. In other cases, the parties might request to withdraw and re-file their notice because, a material change in the terms of the transaction warrants the filing of a new notice. In still other cases, the parties might request to withdraw their notice because they are abandoning the transaction for commercial reasons, or because the parties do not want to abide by CFIUS's proposed mitigation, or in light of a CFIUS determination to recommend that the President suspend or prohibit the transaction. 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 2013, CFIUS approved the withdrawal of eight notices. The parties withdrew three notices during the 30-day review period and five notices after the commencement of the 45-day investigation period. In one case, parties re-filed in 2013 a transaction that they had previously notified to CFIUS in 2012, and CFIUS concluded action in that case in 2013.

## E. Mitigation Measures

From 2011 through 2013, 27 cases (eight percent) resulted in the use of legally binding mitigation measures. In 2013, CFIUS mitigation measures were applied to 11 different covered transactions (11 percent). These measures involved acquisitions of U.S. companies engaged in the telecommunications, software, mining, oil and gas, manufacturing, consulting, and technology industries. Four CFIUS agencies served as the U.S. Government (USG) signatories to these measures.

The Committee has adopted procedures to evaluate and ensure that parties to a covered transaction remain in compliance with any risk mitigation measure under section 721 that CFIUS negotiates with or imposes on the parties. For all mitigation measures executed since FINSA became effective, Treasury, as Chair of CFIUS, has designated each 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 also report to CFIUS quarterly on compliance with those measures. As described below, all lead agencies for monitoring mitigation compliance have implemented processes to carry out their responsibilities.

Mitigation measures negotiated and adopted in 2013 required the businesses involved to take specific and verifiable actions, including, for example:

- Ensuring that only authorized persons have access to certain technology and information.
- Establishing a Corporate Security Committee and other mechanisms to ensure compliance with all required actions, including the appointment of a USG-approved security officer or member of the board of directors and requirements for security policies, annual reports, and independent audits.
- Establishing guidelines and terms for handling existing or future USG contracts, USG customer information and other sensitive information.
- Ensuring only U.S. citizens handle certain products and services, and ensuring that certain activities and products are located only in the United States.
- Notifying security officers or relevant USG parties in advance of foreign national visits to the U.S. business for approval.
- Notifying relevant USG parties of any awareness of any vulnerability or security incidents.
- Providing the USG with the right to review certain business decisions and object if they raise national security concerns.

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, individual CFIUS agencies monitor compliance through a number of internal procedures, including:

- 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 Annual 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 had thus far reviewed presented 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. Among the considerations presented by transactions reviewed by CFIUS are the following:

- 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, including potential cyber security concerns, or create vulnerability to sabotage or espionage. This includes consideration of whether the covered transaction will increase the risk of exploitation of the particular U.S. business's position in the supply chain.
  - 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 that involve various aspects of energy production, including extraction, generation, transmission, and distribution; 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 or sensitive government or government contract information, including information about employees.
  - Are in the defense, security, and national security-related law enforcement sectors.
  - Are involved in activities related to weapons and munitions manufacturing, aerospace, satellite, 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.
  - Are in proximity to certain types of USG facilities.



- 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 all relevant national security considerations and the particular facts and circumstances of transactions to determine whether the transaction will pose a national security risk. Among the factors that CFIUS takes into account are the following, 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 one 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 section of the report involved in research, development or production of critical technologies. The Appendix also provides the definition of “coordinated strategy” for purposes of this section of the 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 Finding**

Based on its assessment of transactions identified by CFIUS for purposes of this report, the U.S. Intelligence Community (“USIC”) believes there may be an effort among foreign governments or companies to acquire U.S. companies involved in research, development, or production of critical technologies for which the United States is a leading producer. Information supporting this assessment is provided in the classified version of this report.

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

Using the methodology described in the Appendix, CFIUS identified 85 completed foreign mergers with, or acquisitions of, U.S. critical technology companies involving acquirers from 26 countries and territories. CFIUS agencies and the USIC evaluated all 85 transactions for indications of a coordinated strategy to acquire U.S. critical technologies.

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

Table II-1<sup>3</sup> lists the originating countries for planned and completed acquisitions of U.S. critical technology companies in 2013:

**Table 11-1: Home Country of Foreign Acquirers of U.S. Critical Technology Companies<sup>4</sup>**

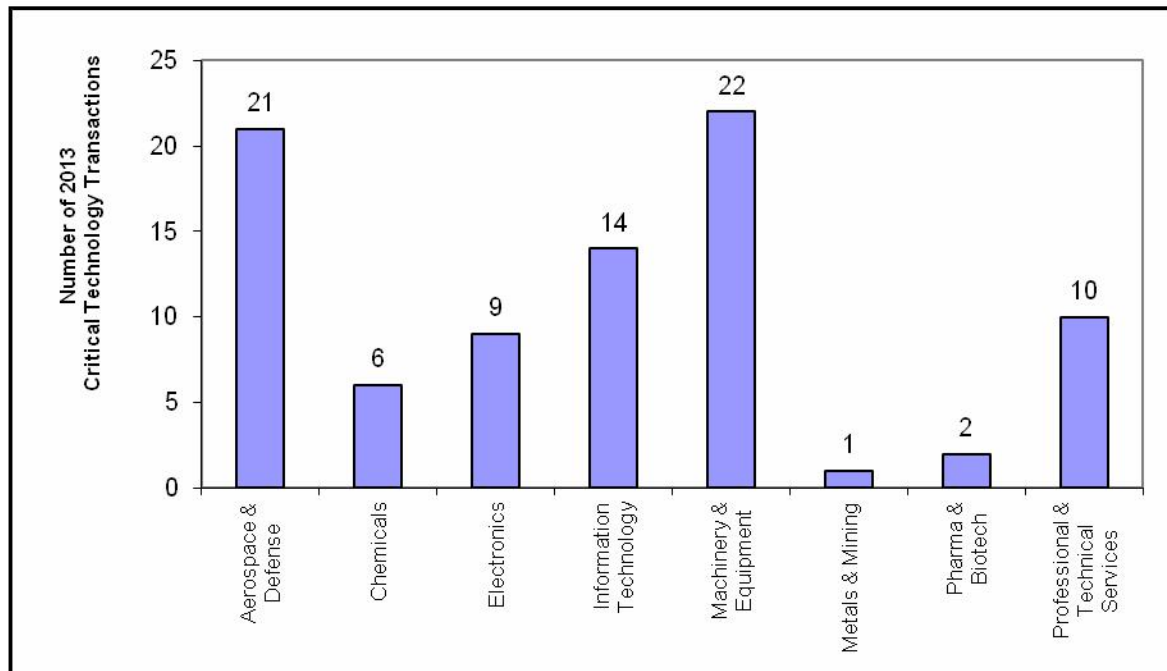
Country	Solo Acquisition	Joint Acquisition	Total
United Kingdom	17	4	21
France	10	0	10
Japan	7	0	7
Canada	7	0	7
China	5	0	5
Germany	1	1	2
Italy	1	0	1
Netherlands	2	3	5
Sweden	5	0	5
Switzerland	5	0	5
Ireland	2	0	2
BVI	2	0	2
India	2	0	2
Israel	1	1	2
Australia	1	0	1
Cayman Islands	1	1	2
Korea	1	0	1
Luxembourg	0	3	3
Singapore	1	0	1
Taiwan	2	0	2
Guernsey	1	1	2
Russia	0	1	1
Norway	1	0	1
Hong Kong	2	0	2
Saudi Arabia	1	0	1
UAE	0	1	1

<sup>3</sup> The number of transactions based on country involvement exceeds the total number of transactions (85) due to some transactions involving more than one country.

<sup>4</sup> The number of transactions in the table appears higher than the number of transactions reviewed for the annual report. This is due to the nature of joint transactions.

As shown in Figure II-1<sup>5</sup>, the largest amount of M&A activity involving foreign acquisitions of U.S. critical technology companies involved targets whose primary activities are in the Machinery & Equipment and Aerospace & Defense sectors.

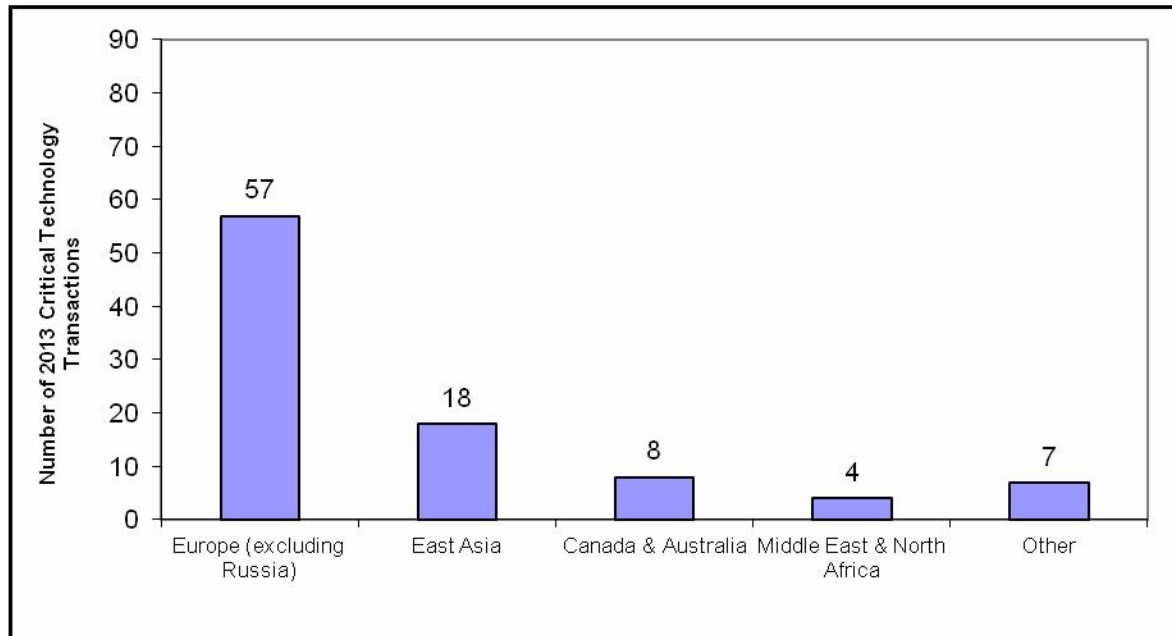
**Figure II-1. Completed Transactions by Sector of U.S. Target Company**



<sup>5</sup> The number of transactions based on country involvement exceeds the total number of transactions (79) due to some transactions involving more than one country.

The data in this report can also be analyzed by the home region of the foreign acquirers. Figure II-2<sup>6</sup> displays the data with the following regional breakdown:

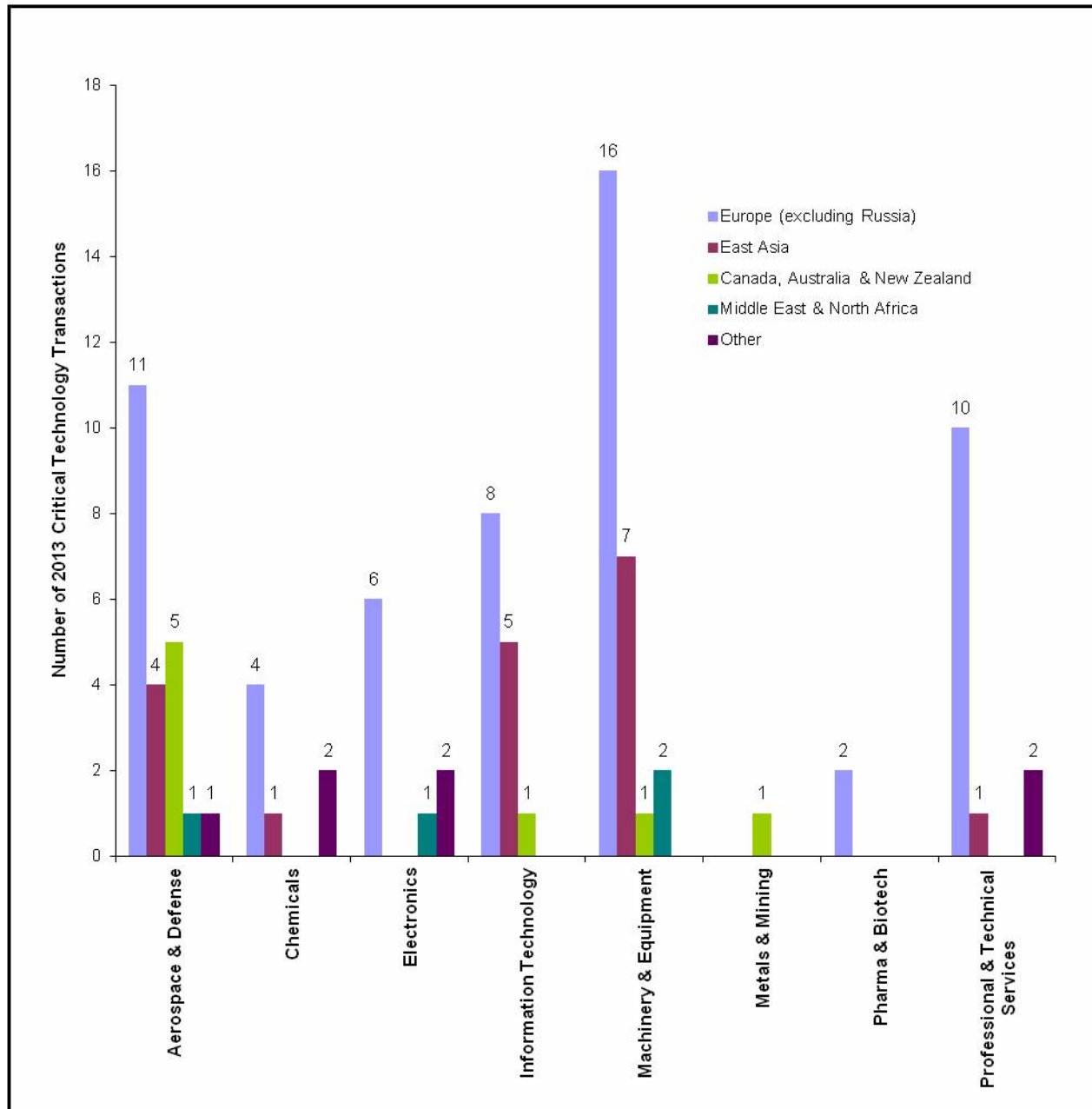
**Figure II-2. Completed transactions in critical technologies by regions**



<sup>6</sup> The number of transactions based on country involvement exceeds the total number of transactions (79) due to some transactions involving more than one country.

Figure II-3<sup>7</sup> 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 all of the identified sectors.

**Figure II-3. Completed transactions by region within each sector**



<sup>7</sup> The number of transactions based on country involvement exceeds the total number of transactions (79) due to some transactions involving more than one country.



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

### **1. Key Finding**

The USIC judges 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 FINSA, which 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, 2013, and December 31, 2013 (CY 2013) (“subject M&A transactions”), represent 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 \$674.9 million. (As described in subsection III.C, not all publicly announced transactions are reported with dollar values, so the actual value of subject M&A transactions is more than \$674.9 million.) The total value of M&A transactions with publicly reported values by *all* foreign investors during CY 2013 exceeded \$122 billion.
- The subject M&A transactions spanned a number of economic sectors.
- With respect to each transaction covered by this report, CFIUS either reviewed and concluded action under section 721 with no unresolved national security concerns; had previously reviewed and concluded action on a transaction that gave the foreign acquirer control of the same U.S. business; or considered the transaction through procedures that CFIUS agencies 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 lists published by the Treasury Department in 2013 pursuant to section 999 of the Internal Revenue Code and the countries identified by the Department of State in reporting to Congress during 2013 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: Algeria, Iran, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Sudan, Syria, 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 2013 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 section of the Annual 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 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>8</sup> as listed in the Thomson ONE database, a recognized commercial/financial database.

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<sup>8</sup> FDI is generally understood to imply ownership of at least 10 percent, a benchmark 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 International Monetary Fund, and the Organization for Economic Cooperation and Development. As noted in the descriptions of the Thomson ONE and S&P Capital IQ

- *Thomson ONE database:* This database is a product of Thomson Reuters. 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 provides 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 section of the Annual Report excluded those that the Thomson ONE 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. Identification of the Subject M&A Transactions

The study identified 11 completed M&A transactions in CY 2013 by investors from countries that comply with any boycott of Israel. These transactions involved investors from Kuwait, Qatar, Saudi Arabia, and the United Arab Emirates.

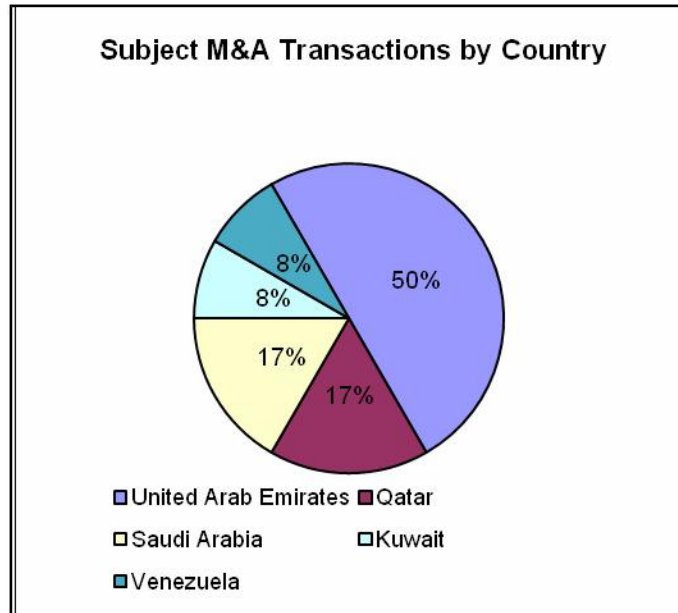
The study did not find any subject M&A transactions by investors from Cuba, Iran, or Syria, which are countries that do not cooperate fully with U.S. antiterrorism efforts and which were subject to stringent economic sanctions during the relevant period. There was one identified M&A transaction by investors from Venezuela, a country that was also designated as not cooperating fully with U.S. antiterrorism efforts.

The combined value of the nine identified transactions with reported values is approximately \$504.1 million. Thomson ONE reports M&A transaction value only in those cases in which the companies announce the value publicly. Thomson ONE did not report, and Treasury staff was unable to determine independently, values for six of the 12 transactions analyzed in this section of the Annual Report. The value of the 12 total transactions, therefore, is necessarily greater than \$674.9 million. Figure III-1 shows the number and aggregate value of the transactions for each of the relevant countries:

Country	Number of Transactions	Known Transaction Value (\$mn)
United Arab Emirates	6	\$52.80
Qatar	2	\$500.00
Saudi Arabia	2	\$118.00
Kuwait	1	\$4.10
Venezuela	1	N/A
<b>Total</b>	<b>12</b>	<b>\$674.90</b>

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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.

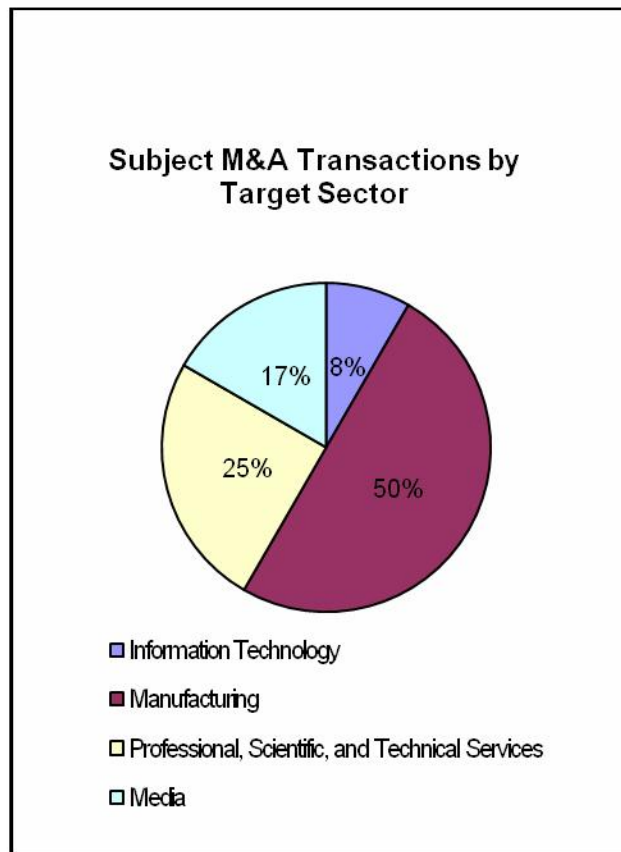


**Figure III-1: Total Transactions by Country of Acquirer**

The subject M&A transactions span several major sectors of the economy. Figure III-2 shows the industries represented by the 12 transactions, noting both the number and value of transactions for each sector. Transactions in the information technology sector – the largest category represented – include transactions in the software, telecommunications, and data processing and hosting industries.

Sector	Number of Transactions	Known Transaction Value (\$mn)
Professional, Scientific, and Technical Services	3	N/A
Media	2	\$500.00
Manufacturing	6	\$170.80
Information Technology	1	\$4.10
<b>Total</b>	<b>12</b>	<b>\$674.90</b>





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

## **2. National Security Effects of the Subject M&A Transactions**

Each of the 12 subject M&A transactions was either formally reviewed by CFIUS under section 721 or considered as part of the non-notified transaction procedures of CFIUS and CFIUS agencies. Pursuant to these procedures, CFIUS 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 contact the parties and request further information about the transaction, partly to help determine whether the transaction is a covered transaction. If CFIUS makes such a determination, it may request that the parties file a notice. In most cases in which CFIUS has made inquiries of parties to transactions, the parties have responded by filing a voluntary notice. Consideration by CFIUS agencies of the subject M&A transactions so far has not resulted in requests for further information from or filings by the parties to the transactions.

## **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**

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 Section II of the Annual 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 the U.S. critical technology companies that were acquired by or received significant investments from foreign investors in 2013. 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 Section II of this Annual 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 regulates robust registration, licensing, and compliance processes 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>9</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>10</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.

### **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 2013, 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.

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<sup>9</sup> The M&A transactions were identified using the Thomson ONE database and S&P Capital IQ database.

<sup>10</sup> The Thomson ONE database and S&P Capital IQ database were used.

- 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 M&A transactions.
- 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 Section II of this Annual 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 and Entities – Critical Technologies Section II**

- 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 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

