

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

**ANNUAL REPORT  
TO CONGRESS**

**Report Period: CY 2018**

**PUBLIC / UNCLASSIFIED VERSION**

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# **CFIUS ANNUAL REPORT TO CONGRESS**

**Report Period: CY 2018**

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# **The Committee on Foreign Investment in the United States (CFIUS)**

## **CFIUS Authority and Composition**

The Committee on Foreign Investment in the United States (CFIUS) is a government body authorized by law to review certain transactions involving foreign investment in the United States. The review is solely to determine the effect of the transaction on the national security of the United States.

CFIUS member agencies include the Departments of Treasury (chair), State, Defense, Justice, Commerce, Energy, and Homeland Security; the Office of the United States Trade Representative; and the White House Office of Science and Technology Policy. The Office of the Director of National Intelligence and the Department of Labor are ex-officio members, and five White House offices are observers. As needed to assess the national security effects of a transaction, CFIUS involves other federal government agencies in its reviews, such as the Departments of Transportation, Health and Human Services, and Agriculture.

## **CFIUS Process**

On August 13, 2018, the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) was enacted. FIRRMA made various amendments and changes to the CFIUS review process and jurisdiction. Certain of the amendments and changes made by FIRRMA took effect immediately upon enactment; the remainder of the law took effect on February 13, 2020. This CFIUS Annual Report (also “Annual Report” or “Report”) covers transactions filed in calendar year 2018, and thus describes the CFIUS process as it existed both prior to, and in part after, certain provisions of FIRRMA became effective.

Generally, prior to FIRRMA, parties voluntarily submitted notices of transactions to CFIUS. CFIUS also has the authority to review pending or completed transactions even absent a voluntary notice if a member of the Committee has reason to believe that the transaction is a covered transaction and may raise national security concerns.

Until FIRRMA’s enactment, CFIUS was required to complete a “review” of a notified transaction within 30 days. CFIUS could initiate an “investigation” that could last up to 45 additional days if CFIUS determined that it needed additional time to complete its assessment following the conclusion of the “review” period. Immediately upon enactment, FIRRMA increased the review period from 30 days to 45 days. The investigation period remained 45 days.

CFIUS will conclude all action with respect to a transaction (i.e., clear it to proceed) if it determines that the transaction does not pose any national security concerns, that any national security concerns are adequately addressed by laws other than section 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (FINSAs) and FIRRMA (hereinafter “Section 721”), and the International Emergency Economic Powers Act (IEEPA), or that mitigation measures agreed to or imposed by CFIUS resolve any national security concerns. If CFIUS determines that the transaction poses national security concerns that cannot be resolved, it will refer the transaction to the President, unless the parties choose to abandon the transaction. The President may suspend or prohibit the transaction, including by requiring divestment. By law, the President has 15 days after completion of CFIUS’s investigation to make a decision. The President must publicly announce his decision.

CFIUS will seek mitigation measures or refer a transaction to the President only after such action is justified in a detailed written analysis of the national security risk posed by the transaction. CFIUS determinations are confirmed at senior levels by all CFIUS member agencies.

With limited exceptions, any transaction submitted to CFIUS for review that CFIUS determines is a “covered transaction” under 31 C.F.R. 800.301 and for which it concludes all action receives “safe harbor.” This means that CFIUS and the President will not subject the transaction to review again, absent certain exceptional circumstances.

By law CFIUS does not publicly disclose information provided to CFIUS by parties to a transaction, nor does it reveal the fact that the parties have submitted the transaction for review.

### **Critical Technologies Pilot Program**

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On October 10, 2018, the Department of the Treasury, as chair of CFIUS, issued temporary regulations to protect U.S. critical technologies and intellectual property from potentially harmful foreign investments (the “Pilot Program”). The Pilot Program implemented authorities provided by FIRRMA that expand the scope of transactions subject to CFIUS review to include certain non-controlling investments in U.S. businesses involved in critical technologies (“other investments”). The Pilot Program also made effective a provision in FIRRMA allowing CFIUS to require declarations, which the Pilot Program requires for transactions that fall within its scope.

The Pilot Program commenced on November 10, 2018, and ended on February 12, 2020, when the final FIRRMA regulations were fully implemented. Under the Pilot Program, CFIUS conducts 30-day assessments of declarations. Upon conclusion of an assessment CFIUS can take one of four actions: (1) conclude all action with respect to a transaction (i.e., clear it to proceed); (2) determine that CFIUS is unable to conclude action; (3) request that the parties to the transaction file a CFIUS notice; or (4) unilaterally file a CFIUS notice.

This Annual Report includes summary data on the Pilot Program at Section H.I below.

# 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, as amended by the Foreign Investment and National Security Act of 2007 (FINSAs) and FIRRMA. Specifically, Section 721(m), as applicable for the reporting period, requires that the annual report provide, for 2018:

- 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, information about any withdrawal from the process, and any decision or action by the President under Section 721;
- 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 Section 721;
- C. information on the time it took the Committee to provide comments on, or to accept, notices submitted under subsection (b)(1)(C)(i);
- D. 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;
- E. information on whether companies that withdrew a notice to the Committee in accordance with Section 721(b)(1)(C)(ii) later refiled such notices, or, alternatively, abandoned the transaction;
- F. 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; and
- G. 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.

FIRRMA includes additional requirements that will become effective on the date that is 18 months after the date of enactment of FIRRMA (i.e., February 13, 2020). CFIUS anticipates these fields will be fully included in the Annual Report for CY2020.

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<sup>1</sup> For the purposes of this Annual Report, "filings" means notices filed under Section 721.

## A. Information Regarding 2018 Covered Transaction Notices

For 2018:

- CFIUS conducted a “review” with respect to the 229 notices of covered transactions that were filed.
- CFIUS conducted a subsequent “investigation” with respect to 158 of those 229 notices.
- CFIUS concluded action on 29 of the 229 notices after adopting mitigation measures pursuant to Section 721 to resolve national security concerns.
- 66 of the 229 notices were withdrawn. In 34 of these instances, the parties filed a new notice in 2018. In eight of these instances, the parties filed a new notice in 2019. In 18 of these instances, the parties withdrew the notice and abandoned the transaction after either CFIUS informed them that it was unable to identify mitigation measures that would resolve its national security concerns or it proposed mitigation measures that the parties chose not to accept. In one of these instances, the parties withdrew the notice and abandoned the transaction because they failed to satisfy CFIUS process requirements. In three of these instances, the parties withdrew their notice and abandoned the transaction for commercial reasons unrelated to CFIUS review. In two of these instances, CFIUS permitted the parties to withdraw their notice subject to certain conditions.
- CFIUS rejected two notices for failing to satisfy CFIUS process requirements.
- CFIUS referred one transaction to the President. The President issued an order prohibiting the acquisition of Qualcomm Incorporated, a Delaware company, by Broadcom Limited, organized under the laws of Singapore.
- No investigations were subject to an extension under subsection (b)(2)(C)(ii) of Section 721.

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

From 2010 through 2018, companies filed 1,343 notices of transactions that CFIUS determined to be covered transactions under Section 721. About 2.5 percent (33) of the notices were withdrawn during the review stage, 15 percent (207) were withdrawn during the investigation stage, and 52 percent (694) resulted in an investigation. Withdrawal of a notice is a function of the particular facts and circumstances of the transaction being reviewed by the Committee and is not necessarily indicative of a trend.

A sustained upward trend has continued from 2010 through 2018 in the number of notices filed. As shown in Table I-1, the number of notices subject to CFIUS jurisdiction increased from 93 in 2010 to 229 in 2018. The proportion of notices proceeding to investigation in 2018 was about 69 percent, down slightly from about 73 percent in 2017.

For notices filed after August 13, 2018, FIRRMA extended the statutory review period from 30 to 45 days. This substantially reduced the proportion of notices proceeding to investigation. For notices filed before August 13, 76 percent proceeded to investigation. For notices filed after August 13, 53 percent proceeded to investigation.

Apart from a general correlation between the number of notices and macroeconomic conditions—that is, when economies are strong, transaction quantity tends to increase—the information in the table below should not be indicative of any particular CFIUS trends. CFIUS considers each transaction on a case-by-case basis, and the disposition of any particular case—be it withdrawal, closing in review or investigation, or presidential decision—depends on the particular facts and circumstances of that case.

**Table I-1. Covered Transactions, Withdrawals, and Presidential Decisions, 2010-2018**

<b>Covered Transactions, Withdrawals, and Presidential Decisions* 2010-2018</b>					
<b>Year</b>	<b>Number of Notices</b>	<b>Notices Withdrawn During Review Phase</b>	<b>Number of Investigations</b>	<b>Notices Withdrawn During Investigation Phase</b>	<b>Presidential Decisions</b>
2010	93	6	35	6	0
2011	111	1	40	5	0
2012	114	2	45	20	1
2013	97	3	48	5	0
2014	147	3	51	9	0
2015	143	3	66	10	0
2016	172	6	79	21	1
2017	237	7	172	67	1
2018	229	2	158	64	1
<b>Total</b>	<b>1343</b>	<b>33</b>	<b>694</b>	<b>207</b>	<b>4</b>

\*Please see Section 1-E on page 24 for a discussion of reasons for which parties may seek to withdraw a notice.

### **C. Information on the Time It Took the Committee to Provide Comments on, or to Accept, Notices**

FIRREA requires that the Annual Report include the following information on the timing of certain processes for notices:

- The average number of business days that elapsed between the date of submission of a draft notice and the date on which the Committee provided written comments on the draft notice;
- The average number of business days that elapsed between the date of submission of a formal written notice and the date on which the Committee accepted or provided written comments on the formal written notice; and
- The median and average number of days required to complete reviews and investigations.

In 2018, the Committee did not have the infrastructure in place to provide the above information on time to comment on draft notices. Over the course of the last year, the Committee has established business processes to collect this information for notices filed in 2019 and future years.

The Committee was able to collect the data necessary to provide the above information on formal written notices. For notices filed in 2018, the average number of business days that

elapsed between the date of submission of a formal written notice and the date on which the Committee accepted the formal written notice was 9 days.

The Committee was also able to collect the data necessary to provide the above information on median and average number of days required to complete reviews and investigations. Two events impacted these figures in 2018: (1) FIRRMA extended the statutory review period from 30 to 45 days for all reviews beginning on or after August 13, 2018; and (2) a lapse in appropriations (“shutdown”) for certain U.S. Government agencies, including Treasury and several other members agencies of CFIUS, meant that reviews and investigations closing on or after December 24, 2018, had their closing date toll into 2019 when funding was restored. The following figures have been calculated so that they are net of days tolled.

**Table I-2. Average and Median Days to Complete Reviews and Investigations**

<b>For Covered Transactions in 2018</b>	<b>Average Calendar Days</b>	<b>Median Calendar Days</b>
Closing in review, pre-FIRRMA	30	30
Closing in review, post-FIRRMA	44	45
Closing in investigation	74	75

## **D. Covered Transactions by Business Sector and Country**

### **1. Covered Transactions by Business Sector of U.S. Companies, 2010-2018**

The notices of covered transactions filed with CFIUS from 2010 through 2018 involved a wide range of industries.<sup>2</sup> About three-fourths of the notices were in either the Manufacturing (533, or 40 percent) or the Finance, Information, and Services sectors (483, or 36 percent). The remainder of the notices were in the Mining, Utilities, and Construction sector (211, or 16 percent) and the Wholesale Trade, Retail Trade, and Transportation sector (116, or 9 percent).<sup>3</sup> These figures, and those in the tables below and in Section I.D.2 of this report, reflect the number of notices filed with CFIUS and are not adjusted to account for those transactions that were the subject of more than one notice—i.e., where the original notice was withdrawn and then refiled, as discussed in Section I.D of this report.

The table and chart on the next page provide data by sector and by year of the 1,343 covered transaction notices filed with CFIUS from 2010 through 2018. In 2018, the relative proportions of notices in each sector did not change dramatically. As in 2016 and 2017, the greatest number of transactions occurred in the Finance, Information, and Services sector, accounting for 38 percent of transactions. The proportion of notices in the Manufacturing sector remained

<sup>2</sup> In this report, industry sectors and subsectors are defined using 2012 and 2017 North American Industry Classification System (NAICS) codes of the target company. Whenever possible, the NAICS code assigned to each target company is based upon information provided in the notice. If no NAICS code was provided, CFIUS determined the most appropriate NAICS code using public Internet searches and the www.naics.com database.

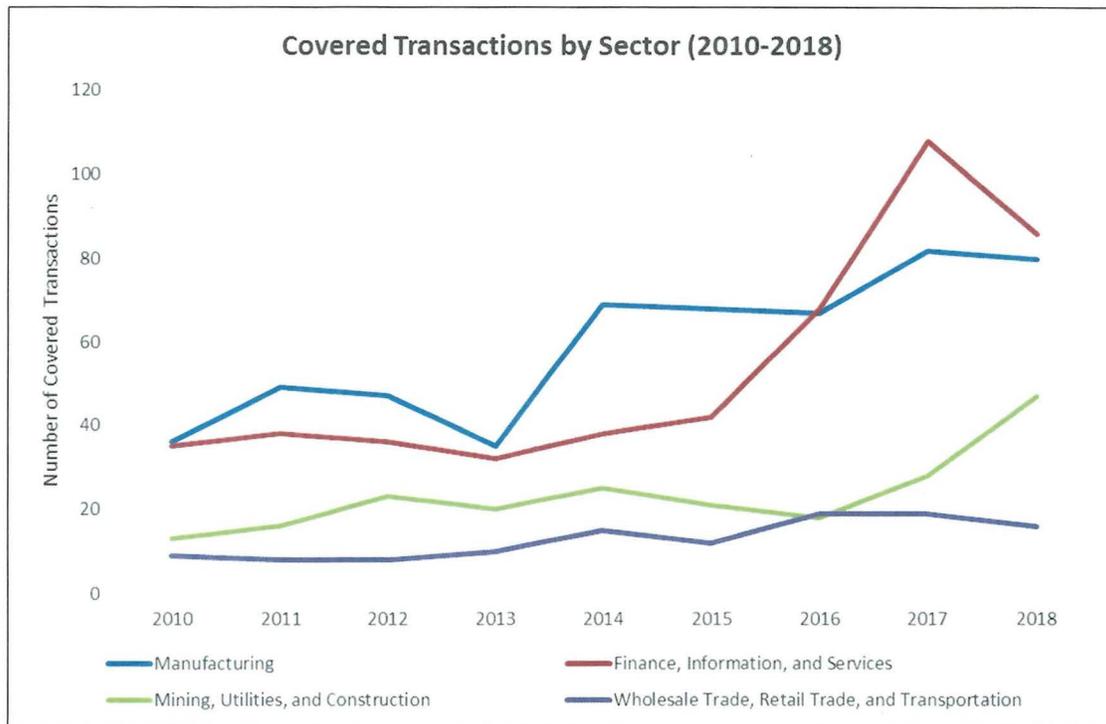
<sup>3</sup> Throughout the Report, figures may not add to 100 percent exactly due to rounding.

constant at 35 percent. The proportion of notices in the Mining, Utilities, and Construction sector increased from 12 percent in 2017 to 21 percent in 2018. The proportion of notices in the Wholesale Trade, Retail Trade, and Transportation sector remained the lowest, at 7 percent in 2018.

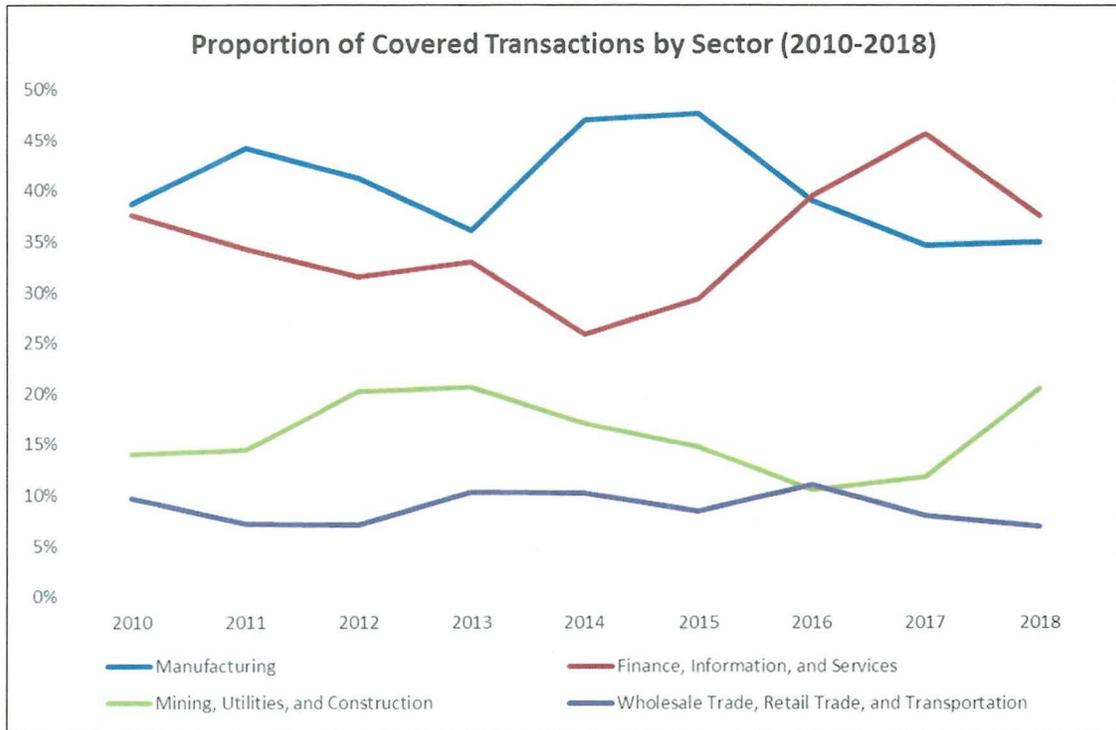
**Table I-3. Covered Transactions by Sector and Year, 2010-2018**

Covered Transaction by Sector and Year, 2010-2018					
Year	Manufacturing	Finance, Information, and Services	Mining, Utilities, and Construction	Wholesale Trade, Retail Trade, and Transportation	Total
2010	36 (39%)	35 (38%)	13 (14%)	9 (10%)	93
2011	49 (44%)	38 (34%)	16 (14%)	8 (7%)	111
2012	47 (41%)	36 (32%)	23 (20%)	8 (7%)	114
2013	35 (36%)	32 (33%)	20 (21%)	10 (10%)	97
2014	69 (47%)	38 (26%)	25 (17%)	15 (10%)	147
2015	68 (48%)	42 (29%)	21 (15%)	12 (8%)	143
2016	67 (39%)	68 (40%)	18 (10%)	19 (11%)	172
2017	82 (35%)	108 (46%)	28 (12%)	19 (8%)	237
2018	80 (35%)	86 (38%)	47 (21%)	16 (7%)	229
<b>Total</b>	<b>533 (40%)</b>	<b>483 (36%)</b>	<b>211 (16%)</b>	<b>116 (9%)</b>	<b>1343</b>

**Graph I-1. Covered Transactions by Sector and Year (2010-2018)**



**Graph I-2. Proportion of Covered Transactions by Sector and Year (2010-2018)**



## **Manufacturing Sector**

In 2018, Manufacturing accounted for 35 percent (80) of all CFIUS notices. The Manufacturing subsector with the most notices was again Computer and Electronic Product Manufacturing with 28 (35 percent). The other significant subsector was Chemical Manufacturing with 14 notices (18 percent).

**Table I-4. Covered Transactions from the Manufacturing Sector, 2016-2018**

Manufacturing	NAICS Code	2018 Notices	% of Total Manufacturing			
			2018	2017	2016	2016-18
Textile Mills	313	5	6%	0%	0%	2%
Paper Manufacturing	322	1	1%	0%	1%	1%
Petroleum and Coal Products Manufacturing	324	0	0%	2%	0%	1%
Chemical Manufacturing	325	14	18%	20%	12%	17%
Plastics and Rubber Products Manufacturing	326	3	4%	2%	3%	3%
Nonmetallic Mineral Product Manufacturing	327	2	3%	1%	0%	1%
Primary Metal Manufacturing	331	3	4%	5%	3%	4%

Manufacturing	NAICS Code	2018 Notices	% of Total Manufacturing			
			2018	2017	2016	2016-18
Fabricated Metal Product Manufacturing	332	1	1%	7%	9%	6%
Machinery Manufacturing	333	8	10%	10%	16%	12%
Computer and Electronic Product Manufacturing	334	28	35%	33%	37%	35%
Electrical Equipment, Appliance, and Component Manufacturing	335	7	9%	7%	7%	8%
Transportation Equipment Manufacturing	336	8	10%	11%	7%	10%
Miscellaneous Manufacturing	339	0	0%	1%	3%	1%

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

In 2018, the Finance, Information, and Services sector accounted for 38 percent (86) of all CFIUS notices filed. Professional, Scientific, and Technical Services continued to be the largest subsector with 25 notices (29 percent). Other significant subsectors included Telecommunications with 15 notices (17 percent) and Publishing Industries with 10 notices (12 percent).

**Table I-5. Covered Transactions from the Finance, Information, and Services Sector, 2016-2018**

Finance, Information, and Services	NAICS Code	2018 Notices	% of Total Finance, Information, and Services			
			2018	2017	2016	2016-18
Publishing Industries (except Internet)	511	10	12%	8%	13%	11%
Motion Picture and Sound Recording Industries	512	0	0%	2%	0%	1%
Telecommunications	517	15	17%	10%	13%	13%
Data Processing, Hosting, and Related Services	518	5	6%	5%	1%	4%
Other Information Services	519	5	6%	4%	1%	4%
Credit Intermediation and Related Activities	522	0	0%	3%	0%	1%
Securities, Commodity Contracts, and Other Financial Investments and Related Activities	523	3	3%	4%	3%	3%
Insurance Carriers and Related Activities	524	3	3%	5%	6%	5%
Funds, Trusts, and Other Financial Vehicles	525	1	1%	2%	1%	2%
Real Estate	531	3	3%	8%	13%	8%
Rental and Leasing Services	532	0	0%	2%	1%	1%

Finance, Information, and Services	NAICS Code	2018 Notices	% of Total Finance, Information, and Services			
			2018	2017	2016	2016-18
Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	533	0	0%	2%	1%	1%
Professional, Scientific, and Technical Services	541	25	29%	37%	29%	32%
Management of Companies and Enterprises	551	4	5%	1%	3%	3%
Administrative and Support Services	561	5	6%	1%	4%	3%
Waste Management and Remediation Services	562	2	2%	1%	1%	2%
Educational Services	611	3	3%	0%	1%	2%
Ambulatory Health Care Services	621	1	1%	3%	0%	2%
Repair and Maintenance	811	0	0%	3%	4%	2%
Personal and Laundry Services	812	0	0%	1%	0%	0%
Religious, Grantmaking, Civic, Professional, and Similar Organizations	813	1	1%	0%	0%	0%

### Mining, Utilities, and Construction Sector

In 2018, the Mining, Utilities, and Construction sector accounted for 21 percent (47) of all CFIOUS notices filed. With 31 notices, the Utilities subsector accounted for two-thirds of the sector, roughly consistent with its 64 percent share in 2017. The Oil and Gas Extraction subsector was next largest, with five notices.

**Table I-6. Covered Transactions from the Mining, Utilities, and Construction Sector, 2016-2018**

Mining, Utilities, and Construction	NAICS Code	2018 Notices	% of Total Mining, Utilities, and Construction			
			2018	2017	2016	2016-18
Animal Production and Aquaculture	112	0	0%	0%	6%	1%
Forestry and Logging	113	0	0%	0%	0%	0%
Oil and Gas Extraction	211	5	11%	18%	6%	12%
Mining (except Oil and Gas)	212	2	4%	0%	0%	2%
Support Activities for Mining	213	3	6%	4%	6%	5%
Utilities	221	31	66%	64%	72%	67%
Construction of Buildings	236	0	0%	4%	0%	1%
Heavy and Civil Engineering Construction	237	3	6%	7%	11%	8%

Mining, Utilities, and Construction	NAICS Code	2018 Notices	% of Total Mining, Utilities, and Construction			
			2018	2017	2016	2016-18
Specialty Trade Contractors	238	3	6%	4%	0%	4%

## Wholesale Trade, Retail Trade, and Transportation Sector

In 2018, the Wholesale Trade, Retail Trade, and Transportation sector accounted for 7 percent (16) of all CFIUS notices filed. The Merchant Wholesalers, Durable Goods, and Support Activities for Transportation subsectors remained the largest, accounting for 44 percent and 25 percent, respectively, of notices filed within the sector.

**Table I-7. Covered Transactions from the Wholesale, Retail, and Transportation Sector, 2016-2018**

Wholesale Trade, Retail Trade, and Transportation	NAICS Code	2018 Notices	% of Total Wholesale Trade, Retail Trade, and Transportation			
			2018	2017	2016	2016-18
Merchant Wholesalers, Durable Goods	423	7	44%	32%	26%	33%
Merchant Wholesalers, Nondurable Goods	424	0	0%	5%	11%	6%
Motor Vehicle and Parts Dealers	441	0	0%	0%	0%	0%
Health and Personal Care Stores	446	1	6%	0%	0%	2%
Nonstore Retailers	454	0	0%	0%	5%	2%
Air Transportation	481	0	0%	5%	0%	2%
Rail Transportation	482	0	0%	5%	0%	2%
Water Transportation	483	0	0%	5%	11%	6%
Truck Transportation	484	0	0%	0%	5%	2%
Pipeline Transportation	486	2	13%	5%	11%	9%
Support Activities for Transportation	488	4	25%	32%	21%	26%
Couriers and Messengers	492	0	0%	0%	0%	0%
Warehousing and Storage	493	2	13%	0%	0%	4%
Accommodation	721	0	0%	11%	11%	7%

**Covered Transactions by Business Sector of  
U.S. Companies, 2016-2018**

Table I-8 on the following pages provides a breakdown by subsector and by the three most recent reporting years for the covered transactions cumulatively filed with CFIUS from 2016 through 2018.

**Table I-8. Covered Transactions by Business Sector of U.S. Companies, 2016-2018**

Business Sector	4-Digit NAICS	3-Digit NAICS	3-Digit NAICS Category	2018 Notices	% of 3-Digit Corresponding NAICS Code <sup>4</sup>			
					2018	2017	2016	2016-18
Hog and Pig Farming	1122	112	Animal Production and Aquaculture	0	N/A	N/A	100%	100%
Oil and Gas Extraction	2111	211	Oil and Gas Extraction	5	100%	100%	100%	100%
Coal Mining	2121	212	Mining (except Oil and Gas)	1	50%	N/A	N/A	50%
Metal Ore Mining	2122	212	Mining (except Oil and Gas)	1	50%	N/A	N/A	50%
Nonmetallic Mineral Mining and Quarrying	2123	212	Mining (except Oil and Gas)	0	0%	N/A	N/A	0%
Support Activities for Mining	2131	213	Support Activities for Mining	3	100%	100%	100%	100%
Electric Power Generation, Transmission and Distribution	2211	221	Utilities	30	100%	83%	85%	90%
Natural Gas Distribution	2212	221	Utilities	0	0%	6%	15%	5%
Water, Sewage and Other Systems	2213	221	Utilities	1	3%	11%	0%	5%
Residential Building Construction	2361	236	Construction of Buildings	0	N/A	100%	N/A	100%
Nonresidential Building Construction	2362	236	Construction of Buildings	0	N/A	0%	N/A	0%
Utility System Construction	2371	237	Heavy and Civil Engineering Construction	2	67%	100%	50%	71%
Land Subdivision	2372	237	Heavy and Civil Engineering Construction	0	0%	0%	50%	14%
Other Heavy and Civil Engineering Construction	2379	237	Heavy and Civil Engineering Construction	0	0%	0%	0%	0%
Highway, Street, and Bridge Construction	2373	237	Heavy and Civil Engineering Construction	1	33%	0%	0%	14%
Foundation, Structure, and Building Exterior Contractors	2381	238	Specialty Trade Contractors	2	67%	100%	N/A	75%
Building Equipment Contractors	2382	238	Specialty Trade Contractors	1	33%	0%	N/A	25%
Fiber, Yarn, and Thread Mills	3131	313	Textile Mills	1	20%	0%	0%	20%
Fabric Mills	3132	313	Textile Mills	4	80%	N/A	N/A	80%

<sup>4</sup> For cells marked "N/A," there were no transactions corresponding to the 3-digit NAICS code for the given time period.

Business Sector	4-Digit NAICS	3-Digit NAICS	3-Digit NAICS Category	2018 Notices	% of 3-Digit Corresponding NAICS Code <sup>4</sup>			
					2018	2017	2016	2016-18
Pulp, Paper, and Paperboard Mills	3221	322	Paper Manufacturing	1	100%	0%	0%	50%
Converted Paper Product Manufacturing	3222	322	Paper Manufacturing	0	0%	N/A	100%	50%
Petroleum and Coal Products Manufacturing	3241	324	Petroleum and Coal Products Manufacturing	0	N/A	100%	N/A	100%
Basic Chemical Manufacturing	3251	325	Chemical Manufacturing	5	36%	6%	25%	21%
Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments Manufacturing	3252	325	Chemical Manufacturing	2	14%	25%	13%	18%
Pesticide, Fertilizer, and Other Agricultural Chemical Manufacturing	3253	325	Chemical Manufacturing	1	7%	25%	25%	18%
Pharmaceutical and Medicine Manufacturing	3254	325	Chemical Manufacturing	6	43%	31%	38%	37%
Paint, Coating, and Adhesive Manufacturing	3255	325	Chemical Manufacturing	0	0%	0%	0%	0%
Other Chemical Product and Preparation Manufacturing	3259	325	Chemical Manufacturing	0	0%	13%	0%	5%
Plastics Product Manufacturing	3261	326	Plastics and Rubber Products Manufacturing	2	67%	100%	100%	86%
Rubber Product Manufacturing	3262	326	Plastics and Rubber Products Manufacturing	1	33%	0%	0%	14%
Glass and Glass Product Manufacturing	3272	327	Nonmetallic Mineral Product Manufacturing	1	50%	0%	N/A	33%
Cement and Concrete Product Manufacturing	3273	327	Nonmetallic Mineral Product Manufacturing	0	0%	100%	N/A	33%
Other Nonmetallic Mineral Product Manufacturing	3279	327	Nonmetallic Mineral Product Manufacturing	1	50%	0%	N/A	33%
Iron and Steel Mills and Ferroalloy Manufacturing	3311	331	Primary Metal Manufacturing	1	33%	25%	0%	22%

Business Sector	4-Digit NAICS	3-Digit NAICS	3-Digit NAICS Category	2018 Notices	% of 3-Digit Corresponding NAICS Code <sup>4</sup>			
					2018	2017	2016	2016-18
Alumina and Aluminum Production and Processing	3313	331	Primary Metal Manufacturing	2	67%	25%	100%	56%
Nonferrous Metal (except Aluminum) Production and Processing	3314	331	Primary Metal Manufacturing	0	0%	25%	0%	11%
Foundries	3315	331	Primary Metal Manufacturing	0	0%	25%	0%	11%
Forging and Stamping	3321	332	Fabricated Metal Product Manufacturing	0	0%	0%	0%	0%
Architectural and Structural Metals Manufacturing	3323	332	Fabricated Metal Product Manufacturing	0	0%	0%	33%	15%
Boiler, Tank, and Shipping Container Manufacturing	3324	332	Fabricated Metal Product Manufacturing	0	0%	0%	0%	0%
Machine Shops; Turned Product; and Screw, Nut, and Bolt Manufacturing	3327	332	Fabricated Metal Product Manufacturing	0	0%	33%	17%	23%
Coating, Engraving, Heat Treating, and Allied Activities	3328	332	Fabricated Metal Product Manufacturing	1	100%	0%	0%	8%
Other Fabricated Metal Product Manufacturing	3329	332	Fabricated Metal Product Manufacturing	0	0%	67%	50%	54%
Agriculture, Construction, and Mining Machinery Manufacturing	3331	333	Machinery Manufacturing	0	0%	13%	27%	14%
Industrial Machinery Manufacturing	3332	333	Machinery Manufacturing	0	0%	38%	55%	32%
Commercial and Service Industry Machinery Manufacturing	3333	333	Machinery Manufacturing	4	50%	50%	0%	32%
Ventilation, Heating, Air-Conditioning, and Commercial Refrigeration Equipment Manufacturing	3334	333	Machinery Manufacturing	1	13%	0%	0%	4%
Metalworking Machinery Manufacturing	3335	333	Machinery Manufacturing	2	25%	0%	9%	11%
Engine, Turbine, and Power Transmission Equipment Manufacturing	3336	333	Machinery Manufacturing	1	13%	0%	0%	4%
Other General Purpose Machinery Manufacturing	3339	333	Machinery Manufacturing	0	0%	0%	9%	4%
Computer and Peripheral Equipment Manufacturing	3341	334	Computer and Electronic Product Manufacturing	6	21%	15%	17%	18%
Communications Equipment Manufacturing	3342	334	Computer and Electronic Product Manufacturing	4	14%	19%	25%	19%

Business Sector	4-Digit NAICS	3-Digit NAICS	3-Digit NAICS Category	2018 Notices	% of 3-Digit Corresponding NAICS Code <sup>4</sup>			
					2018	2017	2016	2016-18
Audio and Video Equipment Manufacturing	3343	334	Computer and Electronic Product Manufacturing	2	7%	7%	0%	5%
Semiconductor and Other Electronic Component Manufacturing	3344	334	Computer and Electronic Product Manufacturing	10	36%	44%	46%	43%
Navigational, Measuring, Electromedical, and Control Instruments Manufacturing	3345	334	Computer and Electronic Product Manufacturing	6	21%	15%	13%	16%
Manufacturing and Reproducing Magnetic and Optical Media	3346	334	Computer and Electronic Product Manufacturing	0	0%	0%	0%	0%
Electric Lighting Equipment Manufacturing	3351	335	Electrical Equipment, Appliance, and Component Manufacturing	0	0%	0%	17%	6%
Electrical Equipment Manufacturing	3353	335	Electrical Equipment, Appliance, and Component Manufacturing	3	38%	17%	50%	39%
Other Electrical Equipment and Component Manufacturing	3359	335	Electrical Equipment, Appliance, and Component Manufacturing	4	50%	83%	17%	56%
Motor Vehicle Manufacturing	3361	336	Transportation Equipment Manufacturing	1	13%	22%	20%	18%
Motor Vehicle Parts Manufacturing	3363	336	Transportation Equipment Manufacturing	1	13%	44%	20%	27%
Aerospace Product and Parts Manufacturing	3364	336	Transportation Equipment Manufacturing	5	63%	33%	40%	45%
Railroad Rolling Stock Manufacturing	3365	336	Transportation Equipment Manufacturing	1	13%	0%	20%	9%
Ship and Boat Building	3366	336	Transportation Equipment Manufacturing	0	0%	0%	0%	0%
Other Transportation Equipment Manufacturing	3369	336	Transportation Equipment Manufacturing	0	0%	0%	0%	0%
Other Miscellaneous Manufacturing	3399	339	Miscellaneous Manufacturing	0	N/A	0%	100%	67%
Medical Equipment and Supplies Manufacturing	3391	339	Miscellaneous Manufacturing	0	N/A	100%	0%	33%
Motor Vehicle and Motor Vehicle Parts and Supplies Merchant Wholesalers	4231	423	Merchant Wholesalers, Durable Goods	0	0%	17%	0%	6%

Business Sector	4-Digit NAICS	3-Digit NAICS	3-Digit NAICS Category	2018 Notices	% of 3-Digit Corresponding NAICS Code <sup>4</sup>			
					2018	2017	2016	2016-18
Professional and Commercial Equipment and Supplies Merchant Wholesalers	4234	423	Merchant Wholesalers, Durable Goods	3	43%	17%	40%	33%
Household Appliances and Electrical and Electronic Goods Merchant Wholesalers	4236	423	Merchant Wholesalers, Durable Goods	4	57%	67%	20%	50%
Machinery, Equipment, and Supplies Merchant Wholesalers	4238	423	Merchant Wholesalers, Durable Goods	0	0%	0%	40%	11%
Farm Product Raw Material Merchant Wholesalers	4245	424	Merchant Wholesalers, Nondurable Goods	0	N/A	0%	0%	0%
Chemical and Allied Products Merchant Wholesalers	4246	424	Merchant Wholesalers, Nondurable Goods	0	N/A	100%	100%	100%
Petroleum and Petroleum Products Merchant Wholesalers	4247	424	Merchant Wholesalers, Nondurable Goods	0	N/A	0%	0%	0%
Health and Personal Care Stores	4461	446	Health and Personal Care Stores	1	100%	0%	0%	N/A
Electronic Shopping and Mail-Order Houses	4541	454	Nonstore Retailers	0	N/A	N/A	100%	100%
Nonscheduled Air Transportation	4812	481	Air Transportation	0	N/A	100%	N/A	100%
Rail Transportation	4821	482	Rail Transportation	0	N/A	100%	N/A	100%
Deep Sea, Coastal, and Great Lakes Water Transportation	4831	483	Water Transportation	0	N/A	100%	100%	100%
Specialized Freight Trucking	4842	484	Truck Transportation	0	N/A	N/A	100%	100%
Pipeline Transportation of Crude Oil	4861	486	Pipeline Transportation	2	100%	100%	0%	60%
Pipeline Transportation of Natural Gas	4862	486	Pipeline Transportation	0	0%	0%	100%	40%
Support Activities for Air Transportation	4881	488	Support Activities for Transportation	1	25%	33%	50%	36%

Business Sector	4-Digit NAICS	3-Digit NAICS	3-Digit NAICS Category	2018 Notices	% of 3-Digit Corresponding NAICS Code <sup>4</sup>			
					2018	2017	2016	2016-18
Support Activities for Rail Transportation	4882	488	Support Activities for Transportation	0	0%	17%	0%	7%
Support Activities for Water Transportation	4883	488	Support Activities for Transportation	3	75%	33%	0%	36%
Support Activities for Road Transportation	4884	488	Support Activities for Transportation	0	0%	17%	0%	7%
Freight Transportation Arrangement	4885	488	Support Activities for Transportation	0	0%	0%	50%	14%
Warehousing and Storage	4931	493	Warehousing and Storage	2	100%	N/A	N/A	100%
Software Publishers	5112	511	Publishing Industries (except Internet)	10	100%	100%	100%	100%
Motion Picture and Video Industries	5121	512	Motion Picture and Sound Recording Industries	0	N/A	50%	N/A	100%
Wired Telecommunications Carriers	5171	517	Telecommunications	0	0%	18%	33%	14%
Wireless Telecommunications Carriers (except Satellite)	5172	517	Telecommunications	0	0%	9%	0%	3%
Wired or Wireless Telecommunications	5173	517	Telecommunications	9	N/A	9%	0%	N/A
Satellite Telecommunications	5174	517	Telecommunications	3	20%	55%	33%	34%
Other Telecommunications	5179	517	Telecommunications	3	20%	9%	33%	20%
Data Processing, Hosting, and Related Services	5182	518	Data Processing, Hosting, and Related Services	5	100%	100%	100%	100%
Other Information Services	5191	519	Other Information Services	5	100%	100%	100%	100%
Activities Related to Credit Intermediation	5223	522	Credit Intermediation and Related Activities	0	N/A	100%	N/A	100%
Securities and Commodity Contracts Intermediation and Brokerage	5231	523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	1	33%	60%	50%	50%
Securities and Commodity Exchanges	5232	523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	0	0%	0%	50%	10%
Other Financial Investment Activities	5239	523	Securities, Commodity Contracts, and Other Financial Investments and Related Activities	2	67%	20%	0%	30%
Insurance Carriers	5241	524	Insurance Carriers and Related Activities	3	100%	100%	100%	100%
Insurance and Employee Benefit Funds	5251	525	Funds, Trusts, and Other Financial Vehicles	0	0%	0%	100%	25%
Other Investment Pools and Funds	5259	525	Funds, Trusts, and Other Financial Vehicles	1	100%	100%	0%	75%
Lessors of Real Estate	5311	531	Real Estate	2	67%	89%	56%	71%
Activities Related to Real Estate	5313	531	Real Estate	1	33%	11%	44%	29%
Automotive Equipment Rental and Leasing	5321	532	Rental and Leasing Services	0	N/A	100%	0%	33%

Business Sector	4-Digit NAICS	3-Digit NAICS	3-Digit NAICS Category	2018 Notices	% of 3-Digit Corresponding NAICS Code <sup>4</sup>			
					2018	2017	2016	2016-18
Commercial and Industrial Machinery and Equipment Rental and Leasing	5324	532	Rental and Leasing Services	0	N/A	0%	100%	67%
Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	5331	533	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	0	N/A	100%	100%	100%
Accounting, Tax Preparation, Bookkeeping, and Payroll Services	5412	541	Professional, Scientific, and Technical Services	0	0%	0%	5%	1%
Architectural, Engineering, and Related Services	5413	541	Professional, Scientific, and Technical Services	7	28%	43%	20%	33%
Computer Systems Design and Related Services	5415	541	Professional, Scientific, and Technical Services	11	44%	25%	35%	33%
Management, Scientific, and Technical Consulting Services	5416	541	Professional, Scientific, and Technical Services	1	4%	0%	5%	2%
Scientific Research and Development Services	5417	541	Professional, Scientific, and Technical Services	3	12%	23%	20%	19%
Advertising, Public Relations, and Related Services	5418	541	Professional, Scientific, and Technical Services	2	8%	3%	0%	4%
Other Professional, Scientific, and Technical Services	5419	541	Professional, Scientific, and Technical Services	1	4%	8%	15%	8%
Management of Companies and Enterprises	5511	551	Management of Companies and Enterprises	4	100%	100%	100%	100%
Employment Services	5613	561	Administrative and Support Services	1	20%	0%	0%	11%
Investigation and Security Services	5616	561	Administrative and Support Services	3	60%	0%	100%	67%
Other Support Services	5619	561	Administrative and Support Services	1	20%	100%	0%	22%
Waste Treatment and Disposal	5622	562	Waste Management and Remediation Services	2	100%	0%	0%	50%
Remediation and Other Waste Management Services	5629	562	Waste Management and Remediation Services	0	0%	100%	100%	50%
Technical and Trade Schools	6115	611	Educational Services	3	100%	N/A	100%	100%
Offices of Physicians	6211	621	Ambulatory Health Care Services	0	0%	67%	N/A	50%
Outpatient Care Centers	6214	621	Ambulatory Health Care Services	0	0%	33%	N/A	25%
Other Ambulatory Health Care Services	6219	621	Ambulatory Health Care Services	1	100%	0%	0%	25%
Traveler Accommodation	7211	721	Accommodation	0	N/A	100%	100%	100%
Electronic and Precision Equipment Repair and Maintenance	8112	811	Repair and Maintenance	0	N/A	33%	33%	33%
Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	8113	811	Repair and Maintenance	0	N/A	67%	67%	67%
Other Personal Services	8129	812	Personal and Laundry Services	0	N/A	100%	N/A	100%

Business Sector	4-Digit NAICS	3-Digit NAICS	3-Digit NAICS Category	2018 Notices	% of 3-Digit Corresponding NAICS Code <sup>4</sup>			
					2018	2017	2016	2016-18
Business, Professional, Labor, Political, and Similar Organizations	8139	813	Religious, Grantmaking, Civic, Professional, and Similar Organizations	1	100%	0%	0%	100%

## 2. Covered Transactions by Country or Economy, 2016-2018

Table I-9 organizes covered transaction notices from 2016 through 2018 by country or geographic economy. Acquisitions by investors from China accounted for the largest proportion of notices filed for the three-year period with 26.5 percent (169). Chinese investors also accounted for the most notices filed each year from 2016 to 2018 (54, 60, and 55, respectively). Investors from Canada, Japan, and France accounted for the second-, third-, and fourth-most notices filed from 2016 to 2018 with 11.4 percent, 10 percent, and 6.7 percent (73, 64, and 43), respectively.

**Table I-9. Covered Transactions by Acquirer Home Country or Geographic Economy, 2016-2018**

Covered Transactions by Acquirer Home Country or Geographic Economy, 2016-2018				
Country/Economy	2016	2017	2018	Total
Australia	4	5	4	13
Austria	1	2	1	4
Belgium	0	3	1	4
Bermuda	1	0	2	3
Brazil	1	1	0	2
British Virgin Islands	6	4	0	10
Canada	22	22	29	73
Cayman Islands	5	8	2	15
China	54	60	55	169
Denmark	0	0	3	3
Fiji	0	0	2	2
Finland	3	0	0	3
France	8	14	21	43
Germany	6	7	12	25
Guernsey	0	1	1	2
Hong Kong	3	0	0	3
Hungary	0	1	0	1
India	1	3	4	8
Ireland	3	3	1	7
Israel	3	4	5	12
Italy	0	2	3	5
Japan	13	20	31	64
Jersey	1	3	1	5
Kuwait	1	2	0	3
Lebanon	1	0	0	1
Liechtenstein	0	1	0	1
Luxembourg	5	2	0	7

Covered Transactions by Acquirer Home Country or Geographic Economy, 2016-2018				
Country/Economy	2016	2017	2018	Total
Malaysia	0	0	1	1
Malta	1	0	0	1
Mexico	1	2	0	3
Netherlands	3	7	5	15
Norway	2	2	0	4
Papua New Guinea	0	1	0	1
Portugal	0	5	0	5
Qatar	0	0	1	1
Russia	0	3	6	9
Seychelles	1	0	0	1
Saudi Arabia	0	1	1	2
Singapore	2	6	5	13
South Africa	0	2	1	3
South Korea	7	6	4	17
Spain	1	1	2	4
Sweden	1	6	9	16
Switzerland	0	7	2	9
Taiwan	1	0	4	5
Turkey	2	0	2	4
UAE	1	2	3	6
United Kingdom	7	18	5	30
<b>Grand Total</b>	<b>172</b>	<b>237</b>	<b>229</b>	<b>638</b>

Table I-10 on the next two pages shows the geographic concentration of notices in each of the four listed industry sectors for the period 2016 to 2018. The Finance, Information, and Services sector accounted for 41 percent of all notices. The Manufacturing sector accounted for approximately 36 percent of all notices. The Mining, Utilities, and Construction sector accounted for approximately 14 percent, and the Wholesale Trade, Retail Trade, and Transportation sector accounted for approximately 8 percent. Notices from Canada, China, and Japan, which accounted for 48 percent of the notices from 2016 to 2018, were generally consistent with this general distribution across sectors. However, China accounted for a higher proportion of Manufacturing sector transactions, while Canada continued to account for a large proportion of Mining, Utilities, and Construction sector transactions.

**Table I-10. Covered Transactions by Acquirer Home Country or Economy  
and Target Sector, 2016-2018**

Covered Transactions by Acquirer Home Country or Geographic Economy, by Target Sector (2016-2018)					
Country/Economy	Finance, Information, and Services	Manufacturing	Mining, Utilities, and Construction	Wholesale Trade, Retail Trade, and Transportation	Total
Australia	8	1	2	2	13
Austria	2	2	0	0	4
Belgium	3	2	0	0	5
Bermuda	0	0	0	2	2
Brazil	0	2	0	0	2
British Virgin Islands	5	2	3	0	10
Canada	26	15	26	6	73
Cayman Islands	9	3	0	3	15
China	58	84	16	11	169
Denmark	1	0	2	0	3
Fiji	2	0	0	0	2
Finland	0	3	0	0	3
France	22	12	5	4	43
Germany	7	15	2	1	25
Guernsey	1	1	0	0	2
Hong Kong	1	1	1	0	3
Hungary	0	1	0	0	1
India	3	5	0	0	8
Ireland	6	1	0	0	7
Israel	4	7	1	0	12
Italy	0	5	0	0	5
Japan	30	23	10	1	64
Jersey	2	3	0	0	5
Kuwait	2	0	0	1	3
Lebanon	0	0	0	1	1
Liechtenstein	1	0	0	0	1
Luxembourg	4	2	1	0	7
Malaysia	1	0	0	0	1
Malta	0	1	0	0	1
Mexico	1	0	0	2	3
Netherlands	6	3	6	0	15
Norway	1	2	0	1	4
Papua New Guinea	0	0	1	0	1
Portugal	0	0	5	0	5
Qatar	0	0	0	1	1
Russia	7	1	0	1	9
Seychelles	0	2	0	0	2
Saudi Arabia	1	0	0	0	1

Covered Transactions by Acquirer Home Country or Geographic Economy, by Target Sector (2016-2018)					
Country/Economy	Finance, Information, and Services	Manufacturing	Mining, Utilities, and Construction	Wholesale Trade, Retail Trade, and Transportation	Total
Singapore	6	5	0	2	13
South Africa	0	1	1	1	3
South Korea	6	5	4	2	17
Spain	3	1	0	0	4
Sweden	9	4	0	3	16
Switzerland	2	2	5	0	9
Taiwan	1	2	0	2	5
Turkey	2	2	0	0	4
UAE	3	2	0	1	6
United Kingdom	16	7	1	6	30
<b>Grand Total</b>	<b>262</b>	<b>230</b>	<b>92</b>	<b>54</b>	<b>638</b>

## **E. Withdrawn Notices**

Parties may withdraw an accepted notice of a transaction if the Committee approves a written request for withdrawal from the parties. Over time, parties have requested withdrawals for a number of reasons. For example, in some cases in which the parties are unable to address all of the Committee's outstanding national security concerns within the initial review period or subsequent investigation period, the parties might request to withdraw and refile their notice to provide themselves with additional time to answer questions or to attempt to resolve the Committee's national security concerns. In other cases, the parties might request to withdraw and refile 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 refer the matter to the President. The Committee has established processes to track, when appropriate, 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 2018, CFIUS approved the withdrawal of 66 notices. The parties withdrew 2 notices during the review period and 64 notices after the commencement of the investigation period. In 34 of these instances, the parties filed a new notice in 2018; CFIUS concluded action in 15 of those cases. In 18 of these instances the parties withdrew their notice and abandoned their transaction after either CFIUS informed them that it was unable to identify mitigation measures that would resolve its national security concerns or it proposed mitigation measures that the parties chose not to accept. In one of these instances, the parties withdrew their notice and abandoned the transaction because they failed to satisfy CFIUS process requirements. In three of these instances, the parties withdrew their notice and abandoned the transaction for commercial reasons unrelated to CFIUS review. In two of these instances, CFIUS permitted the parties to withdraw their notices subject to certain conditions. In eight of these instances, the parties filed a new notice in 2019.

As noted previously, the number of withdrawals is a function of the specific facts and circumstances of the particular transactions reviewed by the Committee.

## F. Mitigation Measures

In 2018, CFIUS concluded action after adopting mitigation measures with respect to 29 notices of covered transactions (approximately 13 percent of the total number of 2018 notices). Five CFIUS agencies served as the U.S. Government (USG) signatories to these measures as well as one non-CFIUS agency.

Committee agencies have 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 at least one 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, in cases where mitigation measures were entered into before FINSA's effective date, signatories 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 2018 required the businesses involved to take specific and verifiable actions, including, for example:

- prohibiting or limiting the transfer or sharing of certain intellectual property, trade secrets, or know-how.
- establishing guidelines and terms for handling existing or future USG contracts, USG customer information, and other sensitive information.
- ensuring that only authorized persons have access to certain technology; that only authorized persons have access to USG, company, or customer information; and that the foreign acquirer not have direct or remote access to systems that hold such information.
- ensuring that only U.S. citizens handle certain products and services, and ensuring that certain activities and products are located only in the United States.
- 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.
- notifying, for approval, security officers or relevant USG parties in advance of foreign national visits to the U.S. business.
- security protocols to ensure the integrity of goods or software sold to the USG.
- notifying customers regarding the change of ownership.
- assurances of continuity of supply for defined periods, and notification and consultation prior to taking certain business decisions, with certain rights in the event that the company

decides to exit a business line. Establishing meetings to discuss business plans that might affect USG supply or national security considerations.

- exclusion of certain sensitive assets from the transaction.
- divestiture of all or part of the U.S. business.<sup>5</sup>

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; and
- investigations and remedial actions if anomalies or breaches are discovered or suspected.

Due to the number and complexity of mitigation measures implemented to date, as a general matter 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; and
- instituting internal instructions and procedures to ensure that in-house expertise is drawn upon to analyze compliance with measures.

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<sup>5</sup> Divestiture of all of a U.S. business is an option parties may consent to in lieu of a referral to the President and typically effectuated through a withdrawal of the notice and abandonment of the transaction. For this reason, such divestitures are not included in data on cases cleared with mitigation.

## G. 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 member agencies 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 thus far reviewed continue to 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. 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 equipment or components that have both commercial and military applications. Such transactions have included, for example, businesses engaged in the design, production, or provision of goods and services involving network and data security.

They have also included businesses that produce semiconductor manufacturing equipment, design integrated circuits, and fabricate integrated circuits, in light of the fact that semiconductors are an enabling technology for a range of national security critical devices, systems, and functions. They have also included businesses that are in the biotechnology sector, given the potential military applications of such technology and the sensitivity of the information such companies may collect.

- 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 a field with significant national security implications where there are few alternative suppliers or where a loss in U.S. technological competitiveness would be detrimental to national security.
- With respect to the various technologies described above, could facilitate their transfer to third parties not directly related to the buyer, to the detriment of national security.
- Have operations or facilities that are in proximity to military or other sensitive USG facilities.
- Hold substantial pools of potentially sensitive data about U.S. persons and businesses that have national security importance. Such businesses could be in any number of sectors, including, for example, the insurance sectors, health services, and technology services.
- Otherwise facilitate foreign intelligence collection against U.S. targets.

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.
- Have a history of doing business in sanctioned countries.

CFIUS reviews all relevant national security considerations and the particular facts and circumstances of a transaction 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):

- 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 [unclassified]; 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 future reporting periods, CFIUS will continue to take into account these national security considerations and to consider whether the transactions may have had the above-listed or any other adverse effects.

## H. Critical Technologies Pilot Program

The critical technologies pilot program commenced on November 10, 2018. The pilot program has two purposes. First, the pilot program expands the scope of transactions subject to review by CFIUS to include transactions subject to a portion of FIRRMA's "other investments" provision. Second, the pilot program makes effective FIRRMA's mandatory declarations provision for transactions that fall within the specific scope of the pilot program.

"Other investments" include direct or indirect investments by a foreign person in an unaffiliated pilot program U.S. business that could not result in control by a foreign person of a pilot program U.S. business, but that still affords the foreign person certain rights.

These declarations were mandatory for investments in U.S. businesses that produce, design, test, manufacture, fabricate, or develop one or more critical technologies, consistent with the definition set forth in FIRRMA.

The program authorized CFIUS to take the following actions after assessment of submitted declarations:

- request that the parties file a written notice;
- inform the parties that the Committee is unable to complete action;
- initiate a unilateral review; or
- notify the parties that the Committee has concluded all action under Section 721.

## Information Regarding 2018 Declarations

For 2018:

- CFIUS conducted an "assessment" with respect to the 21 declarations that were filed with CFIUS in 2018 that CFIUS determined to be covered transactions under Section 721.
- CFIUS cleared two transactions, requested the parties to five transaction declarations to file a written notice, determined that it could not conclude action on 11 transaction declarations, and found that one declaration was not subject to the jurisdiction of the pilot program. The parties withdrew one declaration for business reasons.
- Twelve declarations were determined to be "other investments" (as opposed to control transactions).

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## **SECTION II: CRITICAL TECHNOLOGIES**

### **Introduction**

This section of the Annual Report to Congress has been prepared in accordance with Section 721(m)(3), as applicable for the reporting period. 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.”

(U) Subsection A addresses the requirement laid out in (i), and subsection 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.<sup>6</sup> 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.

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<sup>6</sup> This report reflects the CFIUS process in effect during 2018, the period covered by this report.

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

## 1. Key Judgments

A meaningful summary of the U.S. Intelligence Community (USIC) assessment cannot be provided on an unclassified basis. However, the USIC considered the unclassified data included in this section in conducting its analysis.

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

Using the methodology described in the Appendix, CFIUS reviewed 76 covered transactions involving acquisitions of U.S. critical technology companies in 2018. CFIUS agencies and the USIC evaluated all 229 transactions for indications of a coordinated strategy, as defined for this report, to acquire U.S. critical technologies.

## 3. Frequency of Activity by Countries and Companies

Table II-1 lists the originating countries for covered transactions involving acquisitions of U.S. critical technology companies in 2018:

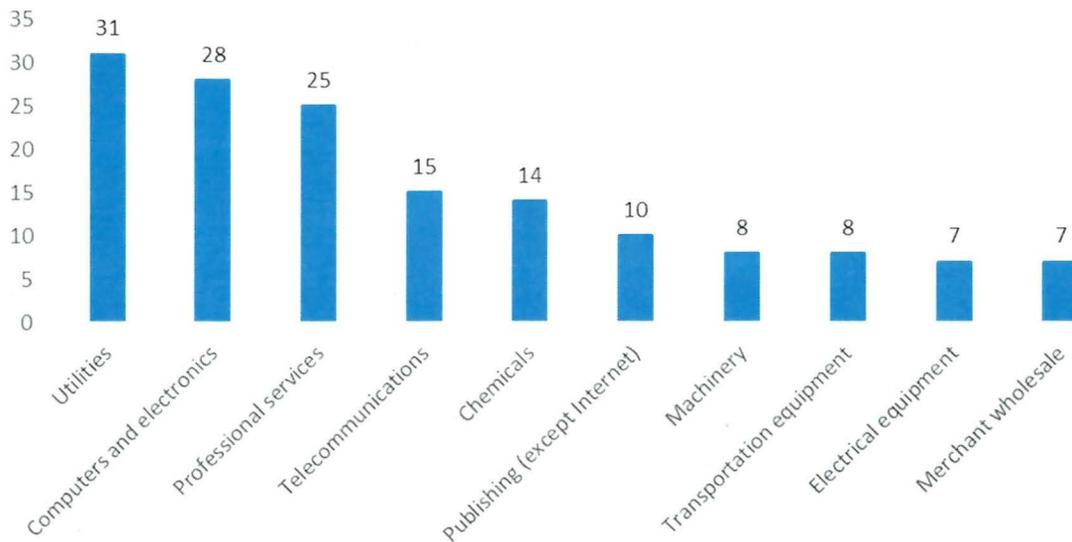
**Table II-1: Foreign Acquirers of U.S. Critical Technology in 2018 CFIUS notices**

Country	2018
Australia	1
Austria	1
Belgium	1
Bermuda	1
Canada	9
Cayman Islands	1
China	8
France	7
Germany	7
India	3
Ireland	1
Israel	3
Italy	3
Japan	9
Netherlands	1
Qatar	1
Russia	3
Singapore	3
South Africa	1
South Korea	1
Sweden	5

Country	2018
Taiwan	1
Turkey	1
United Kingdom	4
<b>Total</b>	<b>76</b>

As shown in Figure II-1, the largest number of completed transactions filed with CFIUS in 2018 involved foreign acquisitions of U.S. companies in the utilities, computers and electronics, professional, technical, and scientific services, telecommunications, and chemicals sectors.

**Figure II-1: Completed Transactions by Sector of U.S. Target Company, 2018**



## **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 use a range of collection methods to obtain critical U.S. technologies.

A 2018 National Counterintelligence and Security Center report to Congress stated that foreign economic and industrial espionage against the United States continues to represent a significant threat to America’s prosperity, security, and competitive advantage. Foreign intelligence services—and threat actors working on their behalf—continue to represent the most persistent and pervasive cyber intelligence threat tied to economic espionage and the potential theft of U.S. trade secrets and proprietary information. Countries with closer ties to the United States also have conducted cyber espionage and other forms of intelligence collection to obtain U.S. technology. Federal research institutions, universities, and corporations are regularly targeted by online actors seeking all manner of proprietary information.

## **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 (codified at 50 U.S.C. § 4565 n.), 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 of Study**

- 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, 2018, and December 31, 2018 (“subject M&A transactions”), represent a small percentage of the total number of such FDI flows into the United States.
- The value of subject M&A transactions with publicly reported values was \$14.4 billion. As described in subsection III.C below, not all publicly announced transactions are reported with dollar values, so the actual value of subject M&A transactions is greater than \$14.4 billion.
- The subject M&A transactions cover several economic sectors.
- With respect to each transaction contained in the study, CFIUS: (i) reviewed and concluded action under Section 721 with no unresolved national security concerns; (ii) previously reviewed and concluded action on a transaction that gave the foreign acquirer control of the

same U.S. business; or (iii) reviewed the transaction through procedures that CFIUS and its member agencies follow regarding those transactions that are not notified to CFIUS (non-notified transactions).

## B. Study Methodology

### 1. Identification of Relevant Countries

To identify those countries that complied with *any* boycott of Israel in 2018, as required by the statute, CFIUS examined the “List of Countries Requiring Cooperation with an International Boycott,” published by the Department of the Treasury (pursuant to section 999 of the International Revenue Code)<sup>7</sup> and reports sent to Congress by the Department of State (pursuant to section 564 of the Foreign Relations Authorization Act, FY 1994-95), as well as public sources of information describing the countries’ observance of a primary boycott of Israel. Based on these sources of information, CFIUS interpreted the reporting requirement under section 7(c)(1)(A) of FINSIA to apply to the following countries: Algeria, Iran, Kuwait, Lebanon, Libya, Qatar, Saudi Arabia, Sudan, Syria, the United Arab Emirates, and Yemen.

To identify those countries that did not ban foreign terrorist organizations in 2018, CFIUS interpreted section 7(c)(1)(B) of FINSIA to apply to countries certified by the Department of State as “not cooperating fully with United States antiterrorism efforts” (pursuant to section 40A of the Arms Export Control Act, as amended). Those countries were Eritrea, Iran, North Korea, Syria, and Venezuela.<sup>8</sup>

### 2. Scope of FDI

CFIUS is authorized to review mergers with, and acquisitions of, U.S. businesses, which are the primary form of FDI into the United States. Accordingly, the following types of transactions are included in the study: (i) transactions notified to CFIUS under Section 721; (ii) M&A transactions that were not notified to CFIUS but that its member agencies reviewed through procedures that each agency has adopted for this purpose; and (iii) M&A transactions that resulted in an ownership stake in a U.S. company of at least 10 percent,<sup>9</sup> as contained in the Thomson ONE database, which is a recognized financial database.

*Thomson ONE database:* This database is a product of Refinitiv. The transaction information contained in this database includes the date of the transaction, the respective countries of origin of both the acquirer and the target company, and the economic sector of the target company. For most transactions, the Thomson ONE database provides the transaction value and the percentage of ownership rights acquired.

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<sup>7</sup> 81 Fed. Reg. 4739 (Jan. 27, 2016), 81 Fed. Reg. 20,720 (Apr. 8, 2016), 81 Fed. Reg. 51,967 (Aug. 5, 2016), 81 Fed. Reg. 87128 (Dec. 2, 2016), 82 Fed. Reg. 15793 (Mar. 30, 2017), 82 Fed. Reg. 36076 (Aug. 2, 2017), and 83 Fed. Reg. 966 (Jan. 8, 2018).

<sup>8</sup> 81 Fed. Reg. 35436 (Jun. 2, 2016), 82 Fed. Reg. 24424 (May 26, 2017), 83 Fed. Reg. 23988 (May 23, 2018); Note: 84 Fed. Reg. 24856 (May 29, 2019) came into effect after the CY18 reporting period and therefore is not applicable to this Report.

<sup>9</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 description of the Thomson ONE database, these sources did not always provide information regarding the acquirer’s total ownership stake that it acquired in the U.S. company. Therefore, some of the transactions analyzed in this study may be portfolio investments rather than FDI.

CFIUS did not include in the study those transactions listed in the Thomson ONE database that resulted in an ownership stake in a U.S. company of less than 10 percent, where data concerning the interest acquired was available.

## C. Detailed Findings of Study

### 1. Identification of the Subject M&A Transactions

The study identified 65 M&A transactions in 2018 involving investors from Kuwait, Lebanon, Qatar, Saudi Arabia, and the United Arab Emirates, which are countries that comply with any boycott of Israel.

The study did not identify any M&A transactions in 2018 involving investors from Iran, North Korea, or Syria, which are countries identified as not cooperating fully with U.S. antiterrorism efforts and which were subject to stringent economic sanctions. However, the study identified one M&A transaction involving investors from Venezuela, a country that was designated as not cooperating fully with U.S. antiterrorism efforts.

50 of the 66 identified transactions had reported values. The combined value of the reported values is approximately \$14.4 billion. Data sources consulted for this study did not report, and Treasury staff was unable to determine independently, values for 16 of the 66 transactions analyzed. As a result, the value of the 66 transactions is necessarily greater than \$14.4 billion. Table III-1 shows the number and aggregate value of the transactions for each of the relevant countries.

**Table III-1. Aggregate Value of Transactions**

Country	2018 Transactions	Known Transaction Value (\$ million)
United Arab Emirates	40	4051
Saudi Arabia	9	1727
Qatar	7	8340
Kuwait	5	250
Lebanon	4	46
Venezuela	1	-
<b>Total</b>	<b>66</b>	<b>14414</b>

The 66 transactions represent several major sectors of the economy. Table III-2 shows the various sectors represented by the 66 transactions, noting both the number and aggregate value of the transactions for each sector. A majority of transactions in the Information Technology sector—the largest category represented—was comprised of transactions in the Application Software Industry.

**Table III-2. Industries Represented**

<b>Sector</b>	<b>2018 Transactions</b>	<b>Known Transaction Value (\$ million)</b>
Information Technology	13	727
Industrials	11	8665
Health Care	11	1600
Financials	8	190
Real Estate	8	1238
Consumer Discretionary	7	1803
Unknown	5	91
Energy	2	-
Utilities	1	100
<b>Total</b>	<b>66</b>	<b>14414</b>

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

Each of the 66 transactions was either formally reviewed by CFIUS pursuant to a voluntary notified transaction or pursuant to procedures followed by CFIUS and its member agencies regarding non-notified transactions. According to these procedures, CFIUS agencies monitor M&A activity and identify those transactions that have not been voluntarily notified to CFIUS, but which may present national security considerations.

If CFIUS believes that a non-notified transaction may raise national security considerations and may also be a covered transaction, CFIUS contacts the parties and requests additional information regarding the transaction. If CFIUS determines, after evaluating this additional information, that the transaction is covered and that it may raise national security considerations, CFIUS requests the parties file a notice. In most instances in which CFIUS has requested additional information regarding a transaction, the parties responded by filing a voluntary notice. However, should the parties decide they will not file a notice after CFIUS requests they do so, any CFIUS agency may initiate a review of the transaction.

## APPENDIX<sup>10</sup>

### 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, as they 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. (U) Methodology and Data Sources Used to Assess Foreign Acquisitions of U.S. Critical Technology Companies

The definition of critical technologies contained in section 800.209 is specific to the CFIUS regulations. Therefore, for purposes of Section II of this Annual Report, CFIUS agencies responsible for administering U.S. export control regulations analyzed all covered transactions filed with CFIUS in 2018, and their agency’s own internal records to identify those U.S. critical technology companies that were acquired by, or received significant investments from, foreign investors in 2018. Because each export control regulation applies to a specific type of critical

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<sup>10</sup> This section describes CFIUS policies before the 2018 passage of FIRRMA, which introduced “emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018” as an additional critical technology category. Final lists of emerging and foundational technologies have not been released; therefore, the Committee did not include this category in its assessment of transactions in 2018 after FIRRMA’s implementation. The Committee anticipates fully including this category in its assessment for the Annual Report for CY2020.

technology, the amount of information that could be analyzed for Section II of this Annual Report was limited.

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 enabled the Department of State to identify covered transactions in 2018 involving 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 paragraph of 31 C.F.R. § 800.209 are not required to register with the Department of Commerce, but, in many cases, must obtain a license from the Department of Commerce 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, the Department of Commerce analyzed all covered transactions filed with CFIUS in 2018 and its internal agency records of export license applications and commodity classification requests.

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 the Department of Commerce. This entailed comparing a list of all covered transactions filed with CFIUS in 2018 against export authorizations issued under 10 C.F.R. part 810 and export license requests issued by the Nuclear Regulatory Commission 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 in this paragraph are generally subject to export controls administered by the Department of Commerce. Accordingly, the methodology used by the Department of Commerce would be the same as that described above.

### **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, as amended, by doing the following.

Analyzing the pattern of M&A of U.S. critical technology companies during 2018, 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 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 – Section II**

### Department of Commerce

- Bureau of Industry and Security
- International Trade Administration
- National Telecommunications and Information Administration

### Department of Energy

### 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

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