

FOREIGN DIRECT INVESTMENT ALERT

KEY FINDINGS OF THE CFIUS ANNUAL REPORT TO CONGRESS

The Committee on Foreign Investment in the United States (CFIUS) recently submitted its unclassified *CFIUS Annual Report to Congress*. The *Annual Report* summarizes the committee's activities for the calendar year 2008 (as well as cumulatively for the period 2006-2008) and, among other things, describes the number, general profile and disposition of "covered transactions" under the Foreign Investment and National Security Act of 2007 (FINSA).¹

We have carefully reviewed the data contained in the *Annual Report* and briefly describe certain key findings below.²

BACKGROUND

The *Annual Report* is required under FINSA and was first submitted to Congress in classified form on September 3, 2009. The unclassified version of the *Annual Report* contains no information with respect to specific transactions notified to the committee in accordance with the legal prohibition against public disclosure of such information.

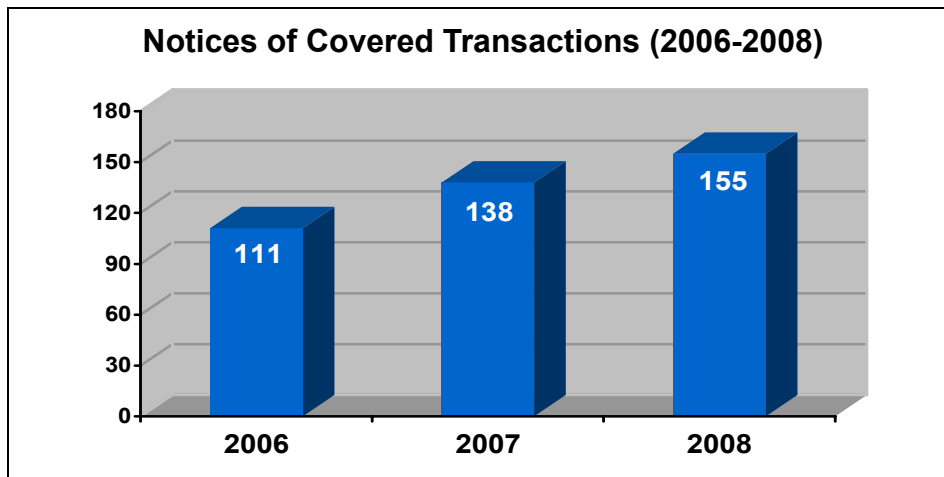
KEY FINDINGS

- **Filings.** There were 155 transactions that were notified to the committee in 2008 that were determined to be "covered

¹ Pub. L. No. 110-49

² Mario Mancuso served as a senior CFIUS reviewing official during 2007-2008. However, this alert is exclusively based on unclassified information available in the *Annual Report*.

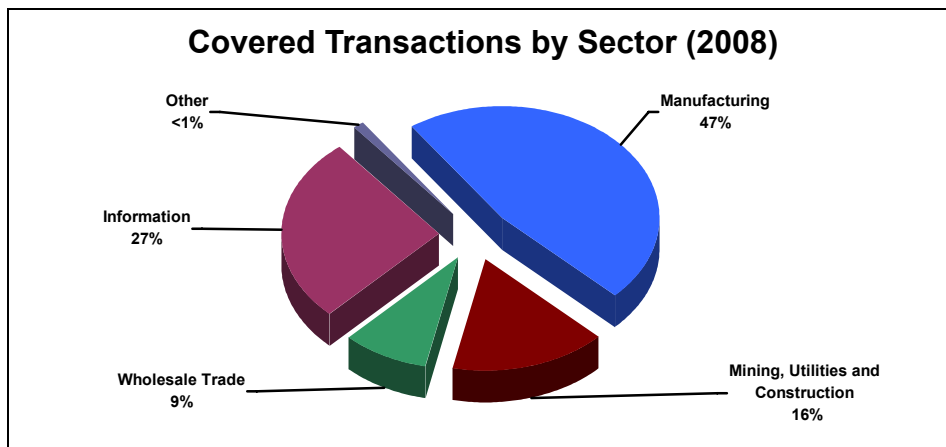
transactions.”³ This number represents a modest increase in covered transactions notified to the committee in each of 2007 and 2006. This number necessarily excludes any transactions that were abandoned by the parties prior to notification in light of identified CFIUS concerns, and any transactions that were pursued outside the committee’s cognizance.⁴



- **Withdrawals.** Of the 155 notices of covered transactions filed in 2008, 23 (15 percent) were withdrawn by the parties. In 20 of these cases, the parties filed a new notice with the committee. In the three remaining cases, the parties abandoned the transaction (2 percent).
- **Blocked Transactions.** The president did not take action to block or prohibit any transactions in 2008.
- **Industry Sectors.** By number of notices filed in 2008, the most active industry sectors were manufacturing (47 percent); information (27 percent); mining, utilities and construction (16 percent); and wholesale trade (9 percent).

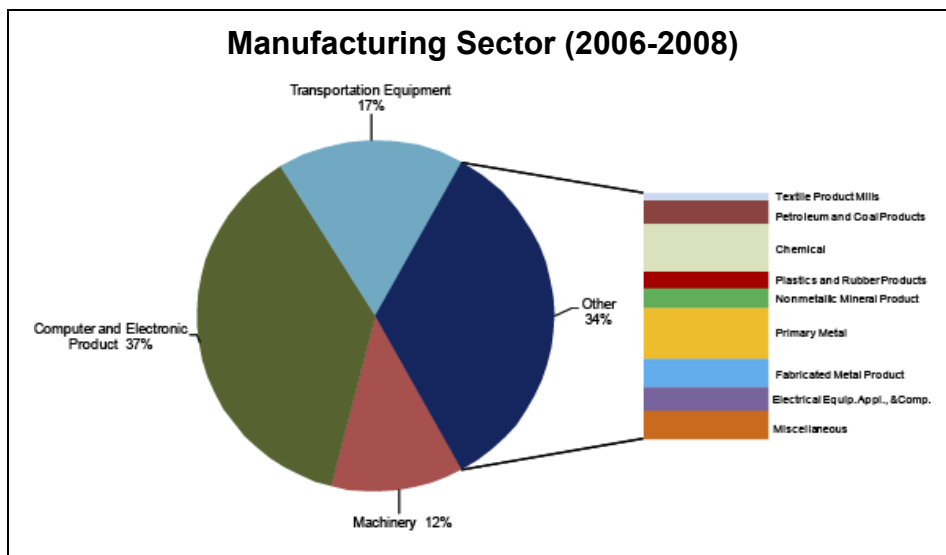
³ This does not necessarily mean that only 155 transactions were notified to the committee, but that, of the notifications filed, 155 were deemed to be within the committee’s jurisdiction.

⁴ The notification of a transaction to the committee is voluntary. However, transactions that are not notified may be independently blocked or unwound by CFIUS, while transactions notified and approved by the committee are generally granted safe harbor from subsequent government action.



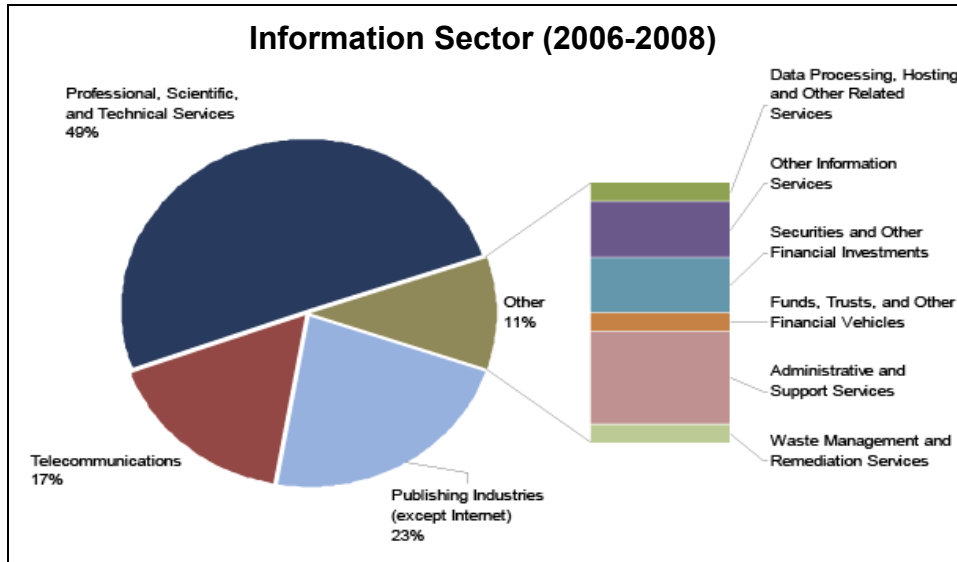
Source: Annual Report

By number of notices filed, the most active segments for each industry sector from 2006-2008 were⁵—

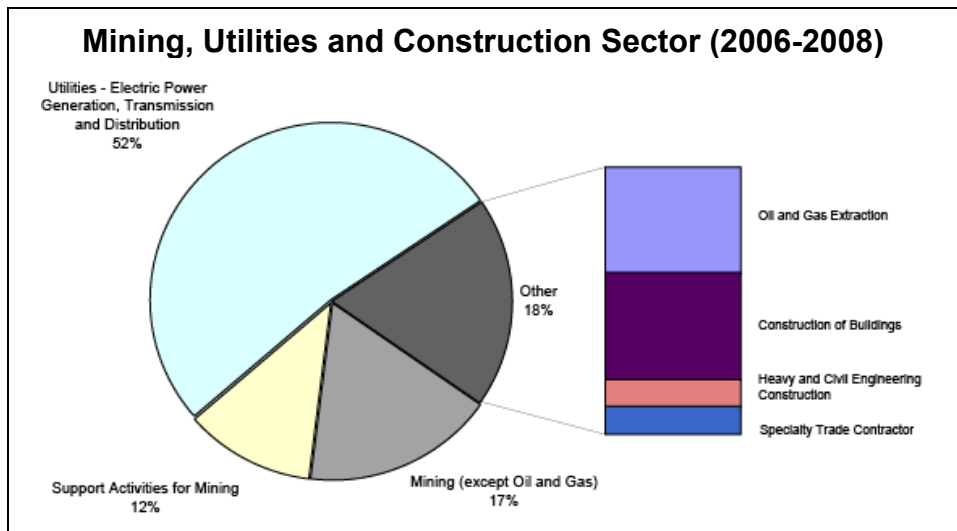


Source: Annual Report

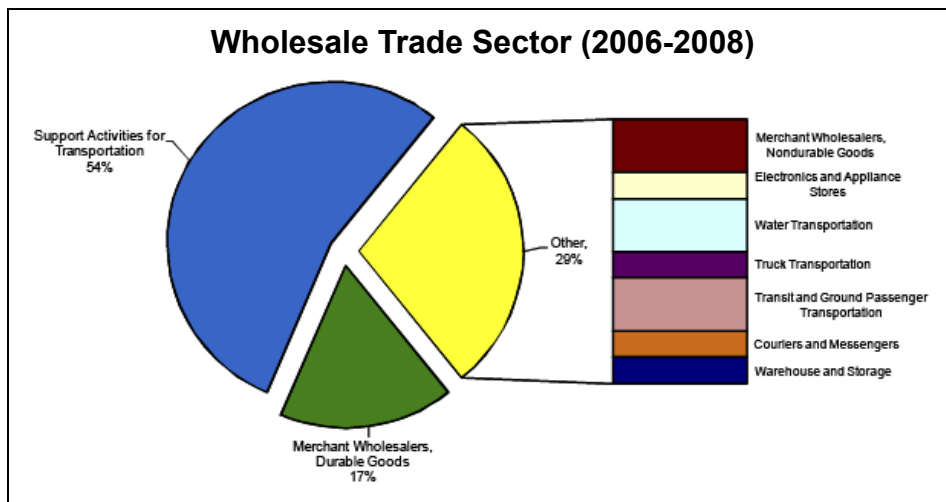
⁵ Single-year data for 2008 is not available at the segment level.



Source: Annual Report



Source: Annual Report



Source: Annual Report

- **Country of Origin.** By number of notices filed in 2008, the top 10 countries were as follows—

Country	2008
United Kingdom	48
France	12
Israel	12
Australia	11
Japan	8
Russia	8
Canada	6
China	6
Switzerland	4
UAE	2

Source: Annual Report

Note: The data in the *Annual Report* do not indicate that acquirers in any given country prefer transactions in a specific industry sector.

- **Mitigation Measures.** In 2008, the committee negotiated two legally binding undertakings to mitigate perceived risks with respect to two notified transactions. The committee uses a variety of means to monitor and enforce such mitigation agreements, including—

- periodic reporting requirements
- on-site compliance reviews by U.S. officials
- third-party audits (when explicitly required).
- **Critical Technology.** Based on its review of the 2008 transaction data, the committee assessed it “unlikely” that there is a “coordinated strategy among one or more foreign governments or companies to acquire U.S. companies involved in research, development, or production of critical technologies for which the U.S. is a leading producer.”
- **Espionage.** The committee assessed it “highly likely” that foreign governments “utilize various collection methods to obtain U.S. critical technologies.”

CONCLUSION

While an evaluation of the historic practice of the committee provides useful context for evaluating the possible CFIUS dimensions of a proposed transaction, we note that every transaction is different. We, therefore, recommend that foreign acquirers and U.S. sellers give due consideration to the specific policy, regulatory and other issues that may arise in a given transaction and diligently assess how these nonmarket factors may impact their particular deal structure, timing, execution mechanics and completion risk.

CONTACT INFORMATION

If you have any questions about the *Annual Report*, or if we can assist you with any related matters, please do not hesitate to contact us.:

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