

KIRKLAND ALERT

March 2016

CFIUS Annual Report to Congress: What Dealmakers Should Know

Recently, the Committee on Foreign Investment in the United States (“CFIUS”), an inter-agency committee authorized to review transactions that could result in the control of a U.S. business by a foreign person (“covered transactions”) in order to determine the effect of such transactions on the national security of the United States, released its unclassified [Annual Report](#) to Congress for the 2014 calendar year (the “Annual Report”).¹

As we discussed on last week’s [client conference call](#), the Annual Report’s findings help frame emerging themes in U.S. foreign direct investment, including the sharp rise in Chinese investment in the United States and the national security importance attached by CFIUS to a wide variety of industries not self-evidently related to U.S. national security interests (e.g., semiconductors, real estate).

Here is what dealmakers should know about the Annual Report:

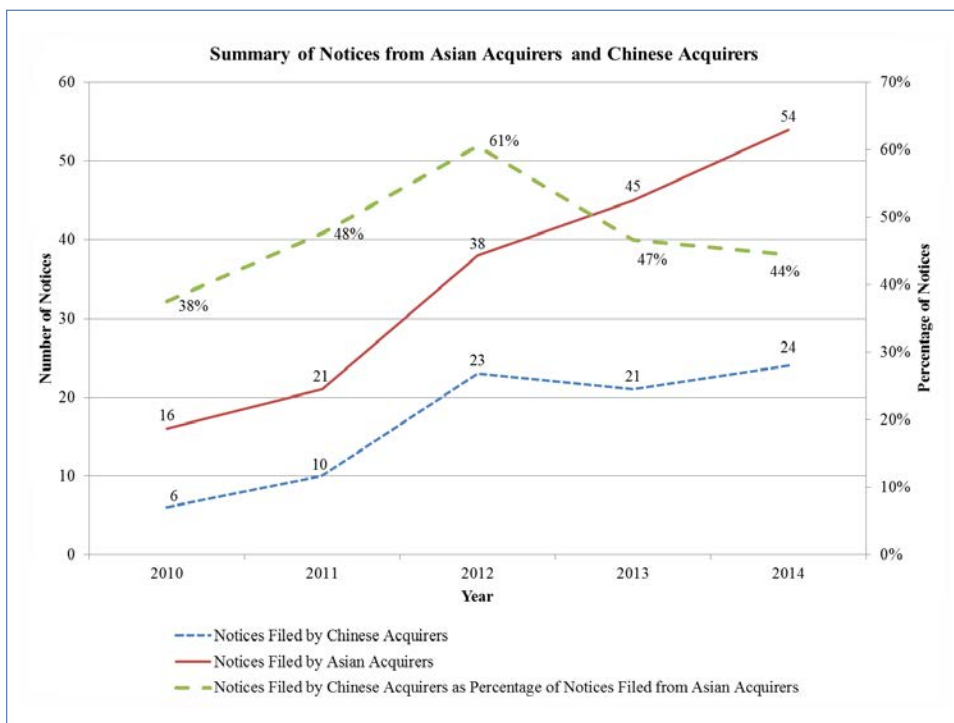
1. *The total number of notices filed with CFIUS increased significantly from the previous year.*

- The 147 notices filed reflect a 52% increase in notices filed compared to the previous year, and the second-highest number of notices filed in a single calendar year since 2008.
- The top five countries of origin for acquirers were:

2014 Rank	Country	2014 Notices Filed	2013 Notices Filed	Previous Year Rank (2013)
1	China	24	21	1
2	United Kingdom	21	7	4 (tie)
3	Canada	15	12	3
4	Japan	10	18	2
5	Germany	9	4	6

2. *The total number of notices from Asian acquirers, especially Chinese acquirers, continued to rise.*

- Notices from Chinese acquirers rose in absolute terms, constituting a plurality of all notices filed with CFIUS for the third year in a row.

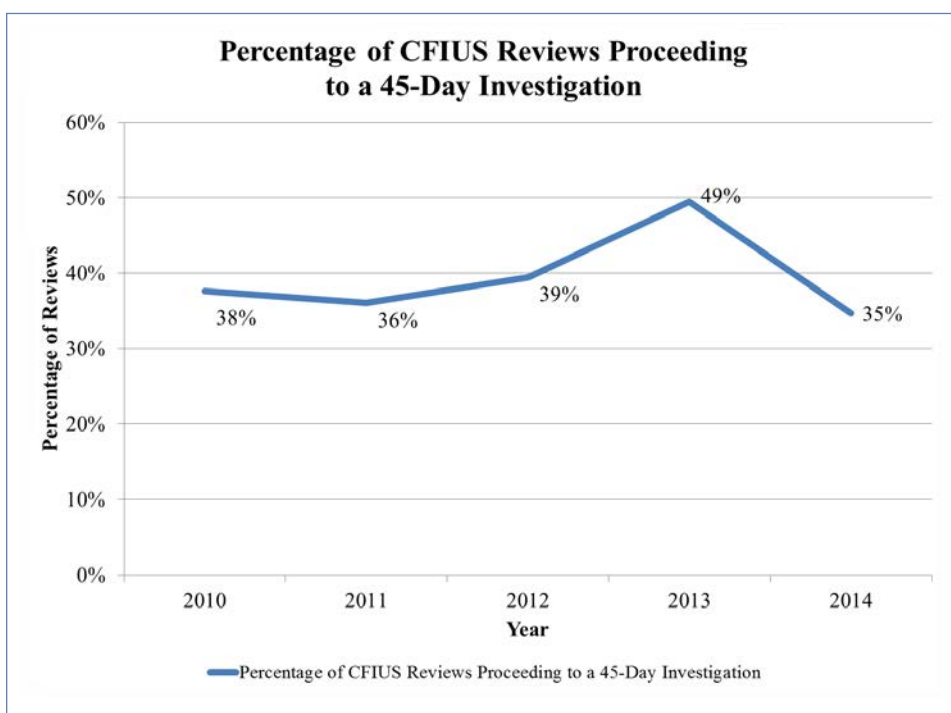


- Of the six Asian countries that filed notices to CFIUS in 2014, five such countries reported increases in notices over the previous year.

Country	2010	2011	2012	2013	2014
China	6	10	23	21	24
Hong Kong	1	0	2	1	6
Indonesia	0	0	0	0	1
Japan	7	7	9	18	10
Malaysia	1	1	0	0	0
Singapore	1	2	2	3	6
South Korea	0	1	2	1	7
Taiwan	0	0	0	1	0
Total	16	21	38	45	54

3. *The percentage of CFIUS reviews that went into a 45-day investigation phase declined, reverting to a quasi-historical mean.*

- CFIUS’ review of 35% of all filings (51 notices) extended beyond an initial 30-day review into a 45-day investigation phase, reflecting a shift to an approximate historical average.
- The Annual Report notes that the larger percentage of investigations in 2013 can be ascribed in part to the impact of the U.S. government shut-down in October 2013.

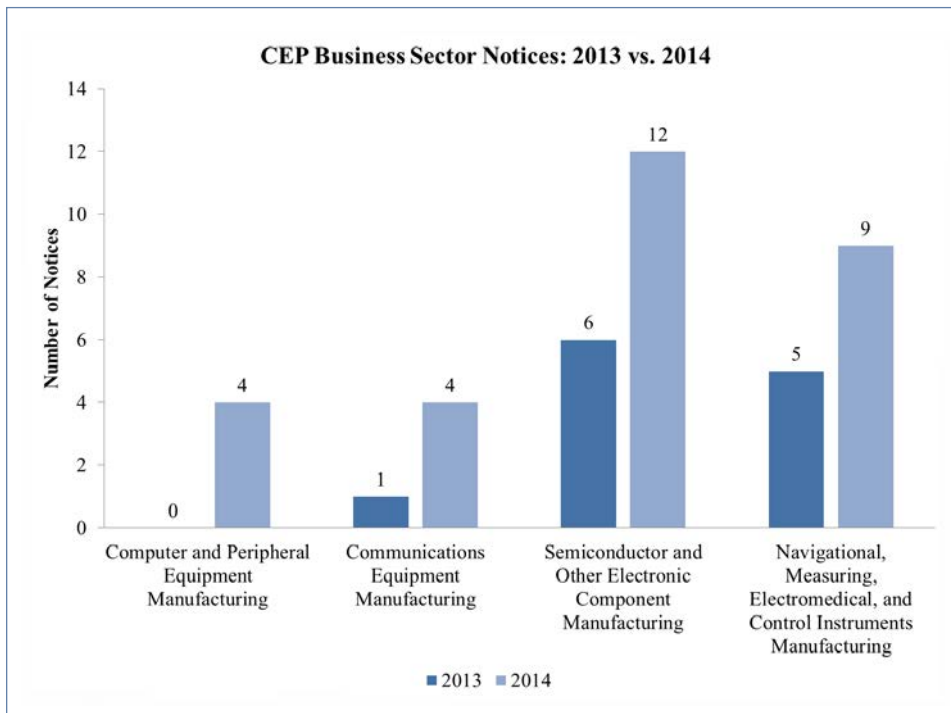


4. *Notices filed in connection with acquisitions of U.S. companies engaged in the manufacture of sensitive electronics accounted for approximately 20% of total notices filed to CFIUS, up from 12% in 2013.*

Manufacturing-related notices in general nearly doubled, with a significant increase in notices filed in connection with acquisitions of U.S. businesses engaged in the manufacture of sensitive electronics.

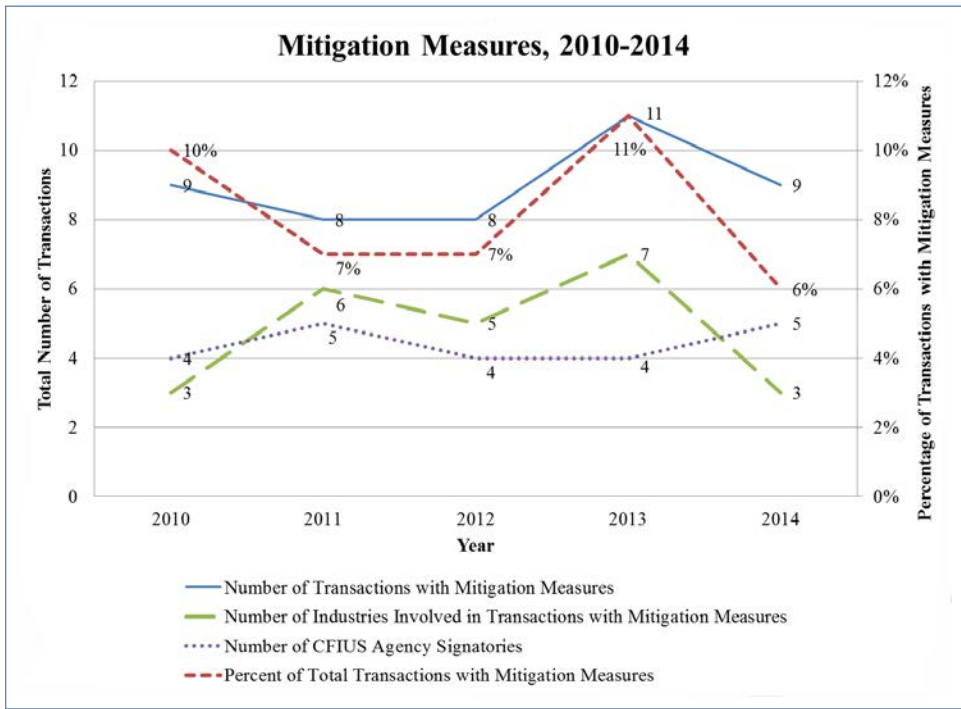
- 47% (69 notices) of total notices in 2014 were filed in the manufacturing sector, an increase of 97% compared to the 35 manufacturing sector notices filed in 2013.
- Approximately 20% (29 notices) of total notices in 2014 were filed in the computer and electronics products (“CEP”) subsector, constituting a plurality of manufacturing sector notices for the third year in a row.

- Notices filed in connection with acquisitions of U.S. semiconductor and other electronic component manufacturing companies *doubled* in 2014 compared to 2013.



5. CFIUS imposed mitigation measures in connection with the lowest percentage of covered transactions (6%) in the past five years.

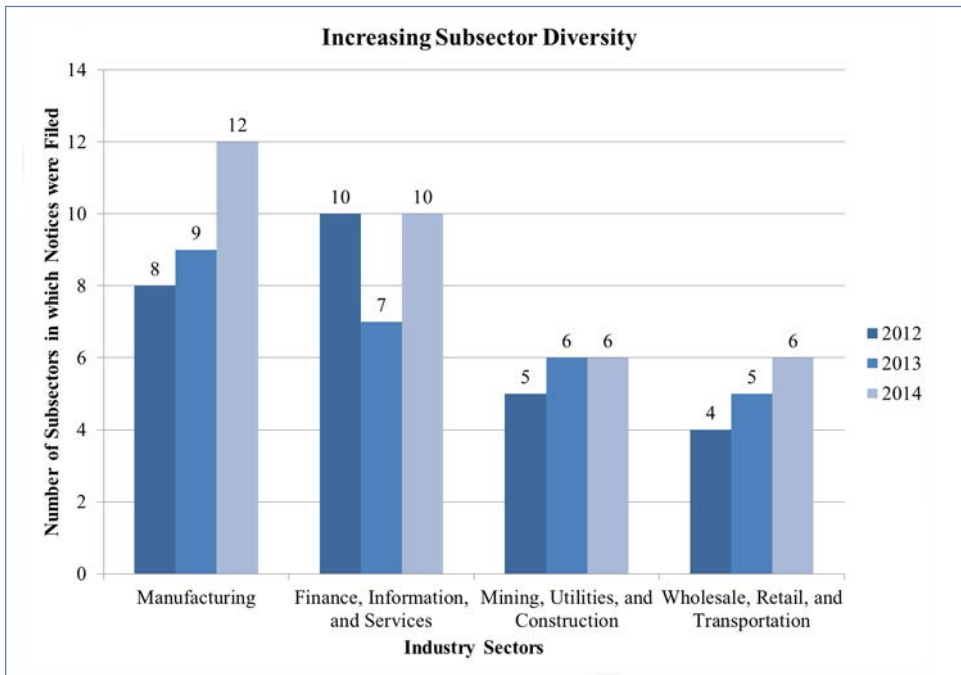
- The industry focus of mitigation measures was more narrowly targeted than in the previous four years, with such measures imposed in connection with nine covered transactions in only three industries—software, services, and technology.
- Five CFIUS agencies were signatories to mitigation agreements, an increase from four CFIUS agency signatories in 2012 and 2013.



6. *The U.S. Intelligence Community (“USIC”) found that foreign governments are “extremely likely to use a range of collection methods to obtain critical U.S. technologies.”*

- Each Annual Report since the Annual Report for calendar year 2009 has expressed the same conclusion.

7. *The increasing number of subsectors in which notices were filed highlights CFIUS’ broadening industry reach.*



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The United States, the EU and other countries scrutinize or regulate international business activities to advance priority national security, foreign policy and other objectives. If not addressed effectively, such governmental scrutiny or regulation can adversely impact business strategy and investment decisions, lead to significant individual and corporate civil and criminal penalties, and may even result in imprisonment for responsible persons.

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- 1 The Annual Report details CFIUS' activities in calendar year 2014, including with respect to the number and disposition of notices filed in connection with covered transactions, geographic origin of acquirers, and other pertinent information.

If you have any questions about the matters addressed in this *Kirkland Alert*, please contact the following Kirkland authors or your regular Kirkland contact.

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