

Business Update | April 18, 2016

FOREIGN INVESTMENT IN U.S. AGRICULTURE UNDER SCRUTINY

Raising National Security, Critical Infrastructure, and Key Resources Concerns

The 2013 sale of American pork producer and processor Smithfield Foods to China's Shuanghui International¹ aroused concern among some U.S. lawmakers.² The \$4.7 billion deal (\$7.1 billion including debt), was and remains the largest acquisition of a U.S. business by a Chinese entity.³ This year, some U.S. lawmakers are again raising concerns about a Chinese firm's acquisition of an agricultural company: the proposed \$43 billion acquisition by state-owned China National Chemical Corporation (ChemChina) of Syngenta AG, the Swiss agrochemicals company that does substantial business in the United States.⁴ If completed, the Syngenta deal would "transform ChemChina into the world's biggest supplier of pesticides and agrochemicals."⁵

With Chinese buyers, record-setting deals, and industry-leading acquisition targets in the mix, the Smithfield and Syngenta transactions provide the ingredients needed to stir media interest and controversy about foreign investment in and affecting the United States.⁶ Beyond deal optics, a more interesting, strategically-oriented, and potentially consequential policy and public discourse about foreign investment in U.S. agriculture is emerging in the United States, at least in some quarters.

Some U.S. lawmakers called for the Committee on Foreign Investment in the United States (CFIUS)⁷ to conduct national security reviews of the Smithfield and Syngenta deals on the grounds that U.S. agriculture has *direct* national security value. This is significant because national security reviews of foreign investment in the United States are typically reserved for transactions that involve sectors, like defense, that are viewed as *inherently* national security-sensitive or present incidental national security issues (as when property of a U.S. business acquired by a foreign party is located near a military facility). Relatedly, recent news coverage of foreign ownership of U.S. farmland by Middle East-based companies has focused on the key resource implications of foreign farmland ownership—particularly water use. This news coverage, like lawmakers' concerns about foreign investment in U.S. agriculture, exemplifies an evolving, strategic view of foreign investment in U.S. agriculture that has and will likely further influence public and policy thinking in the United States.

SOME RECENT SCRUTINY OF FOREIGN INVESTMENT IN U.S. AGRICULTURE

- **2016.** A bipartisan group of U.S. senators called for CFIUS to conduct a national security review of ChemChina's proposed purchase of Syngenta and renewed calls for a USDA role in the CFIUS process.
- **2015 & 2016.** An April 2015 investigative journalism piece on water use on Arizona farmland owned by Middle East-based companies was picked up by local and national media through 2016, and inspired calls for updating water laws.
- **2014.** The Foreign Investment and Economic Security Act was introduced in the House of Representatives. The Bill provides for a USDA role in CFIUS reviews of transactions that affect U.S. agriculture and/or food safety.
- **2013.** The acquisition of Smithfield Foods by China's Shuanghui Intl. drew calls from U.S. Senators for a CFIUS national security review and USDA participation in the process. The Senate Agriculture Committee held a hearing on Smithfield and future foreign investment in U.S. agriculture.

Foreign Investment in U.S. Agriculture Generally

The United States is a comparatively foreign investment friendly jurisdiction. This openness to investment largely holds in the agriculture sector, even though many U.S. states limit or require the disclosure of foreign ownership of farmland;⁸ and, at the federal level, the Agriculture Foreign Investment Disclosure Act of 1978 (AFIDA) requires the disclosure of certain transactions by foreign parties in U.S. agricultural land.⁹

Some foreign investment in the United States is subject to national security screening. National security investigations of foreign investments, which are conducted at the federal level by CFIUS, are reserved for mergers, acquisitions, or takeovers that could result in foreign control of persons engaged in interstate commerce in the United States and that are foreign government-controlled transactions, could impair U.S. national security, or result in foreign control of U.S. critical infrastructure.¹⁰ Neither CFIUS Rules nor relevant legislation identify U.S. agriculture as a national security-sensitive sector or as critical infrastructure.¹¹ However, as discussed below, U.S. government entities have recognized—separately from the foreign investment screening framework—the critical infrastructure and national security/foreign affairs significance of food and agriculture.¹²

“Congress purposefully chose not to specifically define what qualifies as an issue of ‘national security’ . . . knowing that the term would naturally evolve over time . . . While food safety and food supply may not have been traditionally seen as an issue of national security, we believe that such issues represent a critical infrastructure of the United States and as such, must be viewed through the lens of a national security concern.”

-Letter from Congressman Randy Forbes to President Obama Regarding Smithfield Deal (2013)

Critical Infrastructure and National Security Status of Agriculture in Homeland Security and Foreign Affairs Contexts Does Not Carry Over to U.S. Foreign Investment Framework

The U.S. Food and Agriculture Sector is “critical infrastructure” for homeland security purposes.¹³ In the foreign affairs context, elements of the Executive Branch have identified the national security/ global security significance of food, agriculture, and related essential resources like water: specifically by identifying climate change as a global threat multiplier, including for its exacerbating effect on food insecurity and related potential to magnify instability overseas, particularly in vulnerable regions like the Middle East.¹⁴ In Congress, the link between global affairs-related national security and food and agriculture was recently the subject of a House Agriculture Committee hearing—on “American Agriculture and Our National Security”—during which Committee members and witnesses addressed the domestic and global national security significance of food and agriculture.¹⁵

Notwithstanding the fact that current law and practice do not identify U.S. agriculture as national security-sensitive for foreign investment screening purposes, members of Congress have—in official correspondence to the Executive Branch, Congressional hearings, proposed legislation, and public statements—asserted that U.S. agriculture has national security and critical infrastructure significance, thus warranting national security scrutiny of foreign investment in U.S. agriculture.

U.S. Lawmakers’ National Security and Critical Infrastructure Concerns About Foreign Investment in U.S. Agriculture

CHEMCHINA’S PROPOSED PURCHASE OF SYNGENTA (2016)

On March 24, 2016, a bipartisan group of U.S. senators sent a letter to the Secretary of the Treasury, in his capacity as the Chairman of CFIUS, requesting that CFIUS review ChemChina’s proposed acquisition of Syngenta.¹⁶ The senators, who are members of the Senate Agriculture Committee, called on CFIUS to review

“There is a shared sentiment among lawmakers, military officials, and everyday Americans that protecting the safety and resiliency of our food system is core to American national security.”

-Letter from Senate Agriculture Committee Members to the Treasury Secretary Requesting a CFIUS Review of the Syngenta Deal

the transaction’s “potential ramifications . . . for American national security,” citing “a shared sentiment among lawmakers, military officials, and everyday Americans that protecting the safety and resiliency of our food system is core to American national security.”¹⁷

The senators also requested the participation of the U.S. Department of Agriculture (USDA) and Food and Drug Administration (FDA) in the CFIUS review, because “growing foreign investment in U.S. agriculture—and the

prognosis of more to come—should be met with a careful review process that captures the issues most relevant to safeguarding the American food system going forward” (emphasis added).

As discussed below, members of the same Senate committee requested USDA and FDA participation in the review of the 2013 acquisition of Smithfield Foods. The calls for a USDA role in CFIUS reviews of foreign investment in and affecting U.S. agriculture are notable, as the USDA is not a statutorily designated member of CFIUS. However, the Foreign Investment and National Security Act of 2007 (FINSAs), which established CFIUS by statute and amended the CFIUS process, provides that federal agencies that are not permanent members of CFIUS may be added to its membership “generally or on a case-by-case basis,” as the President of the United States deems appropriate.¹⁸ Thus, USDA participation in CFIUS reviews is an option under existing law.

SHUANGHUI’S ACQUISITION OF SMITHFIELD FOODS (2013)

In 2013, a group of U.S. senators on the Senate Agriculture Committee sent a letter to the Treasury Secretary requesting a CFIUS review of Shuanghui’s acquisition of Smithfield and called (then for the first time) for the USDA’s participation in CFIUS’s review.¹⁹ Notably, the senators identified the American food supply as “critical infrastructure that should be included in any reasonable person’s definition of national security” (emphasis added).²⁰ The Smithfield transaction received abundant media coverage and lawmaker responses, including a Senate Agriculture Committee hearing on the Smithfield transaction and foreign investment in U.S. agriculture generally.²¹ In 2014, Senator Debbie Stabenow of Michigan, then the Chairwoman of the Senate Agriculture Committee (currently the Ranking Member) announced plans to draft legislation “to overhaul the American government’s review process for foreign acquisitions.”²²

“We believe that our food supply is critical infrastructure that should be included in any reasonable person’s definition of national security.”

-U.S. Senators Request to Treasury Secretary for Review of Shuanghui-Smithfield Deal (2013)

Individual members and committees of the House of Representatives also expressed concern about the Smithfield transaction. Congressman Randy Forbes of Virginia—whose district includes Smithfield, Virginia (home of Smithfield Foods)—wrote to President Obama in 2013 to request the USDA’s participation in the CFIUS review.²³ Notably, the Congressman acknowledged the absence of a definition of “national security” in the foreign investment screening framework and suggested that the scope of national security should evolve to encompass food safety and the soundness of the food supply, explaining that: “While food safety and food supply may not have been traditionally seen as an issue of national security, we believe that such issues represent a critical infrastructure of the United States and as such, must be viewed through the lens of a national security concern.” The Congressman’s concerns about food safety and the food supply were shared by others, including the author of the Foreign Investment and Economic Security Act of 2014, discussed below.²⁴

In addition, the House Appropriations Committee—in a report on an appropriations bill (and with specific reference to appropriations for the Treasury Department)—articulated its expectation that the “Secretary of the Treasury, in conjunction with other relevant Federal agency heads . . . consider the impact the [Smithfield] acquisition will have on the short- and long-term ability of the United States to protect intellectual property rights, as well as the safety and security of the U.S. food supply system during the CFIUS review . . . and to provide a detailed briefing to Congress about its findings.”²⁵

INTRODUCTION OF THE FOREIGN INVESTMENT AND ECONOMIC SECURITY ACT (2014)

Partly in response to the Smithfield transaction, in 2014, Congresswoman Rosa DeLauro of Connecticut introduced the Foreign Investment and Economic Security Act of 2014 (“FIESA”), to further amend the Defense Production Act of 1950 by expanding the scope of CFIUS reviews to encompass, *inter alia*, a “net benefit” review of foreign investment.²⁶ With respect to foreign investment in U.S. agriculture, the FIESA seeks to require the participation of the Secretary of Agriculture in CFIUS reviews of transactions that the President determines “may affect the agricultural sector, including food safety.”²⁷ As written, the FIESA is unlikely to become law as it goes beyond prevailing parameters for assessing foreign investment in the United States—*e.g.*, by expanding the scope of CFIUS reviews to include, *inter alia*, economic considerations (*e.g.*, a net benefit test) and greenfield investments.²⁸ However, insofar as the FIESA embodies some lawmakers’ desires for enhanced scrutiny of foreign investment in U.S. agriculture (including a USDA role in the CFIUS process), the Bill is not an outlier.

“They're coming over here, buying land over here and using our natural resources, and we get nothing. Like I've said before, we don't get oil for free, how come we're allowing water to just be depleted for nothing.”

-A La Paz County, Arizona Supervisor on Water Use by Middle East-Based Farmland Owners

News Coverage of Key Resource Implications of Middle East-Based Companies’ Ownership of U.S. Farmland

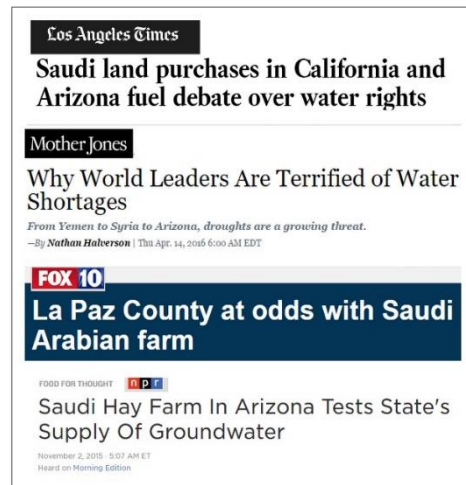
In April 2015, the Center for Investigative Reporting published an article in its online publication *Reveal* that discussed the depletion, as a result of domestic farming, of Saudi Arabia’s desert aquifers and the consequences—including the phasing out of domestic wheat production.²⁹ China’s reliance on “at-risk” aquifers and its related need for foreign farmland were also discussed.³⁰

Connecting the dots between domestic water scarcity and foreign farmland investment, the article provided global context: “A global domino effect has begun. As one country runs low on water, it turns to another,

“Reportedly, some Law Paz County leaders requested the help of Arizona’s governor and other state officials “to protect their water supply as companies from the Middle East move to the state to grow alfalfa they intend to ship overseas to feed their cattle.”

putting more strain on those water reserves.” In this context, the article described a Saudi dairy company’s purchase of a “15 square miles of farmland in the Arizona desert” to grow water-intensive alfalfa crops for export to Saudi Arabia. That water, it was noted, “comes from the Colorado River, where reservoirs are at an all-time low threatening drinking water for Las Vegas, Los Angeles and San Diego.”

The *Reveal* article, as a work of investigative reporting, was notable not so much for its content, but for its traction and longevity. Several regional and national news outlets picked up the story in late 2015 and in early 2016.³¹ Unsurprisingly, the media coverage led to the announcement of a La Paz County (where the farmland is situated) public hearing and calls to amend state water laws. A La Paz County Supervisor floated the idea of a water tax scheme, rationalizing that “we don't get oil for free, how come we're allowing water to just be depleted for nothing.”³² Reportedly, some Law Paz County leaders requested the help of Arizona’s governor and other state officials “to protect their water supply as companies from the Middle East move to the state to grow alfalfa they intend to ship overseas to feed their cattle.”³³



Potential Legal and Non-Legal Developments in the United States, International Context

As stated above, the United States—which is the largest foreign investor and recipient of foreign investment—is a relatively foreign investment-friendly jurisdiction. Recent calls for national security or other enhanced scrutiny of foreign investment in U.S. agriculture (and other sectors of the U.S. economy) are not unprecedented. However, as cross-border investment in agriculture—and related essential resources (*e.g.*, water) and technologies—continues to grow (more recently in developed jurisdictions like the United States), the increased activity will continue to be met with changes in public attitudes, laws, and foreign investment review processes (as recently happened in Australia and Canada).³⁴

Even in the absence of legal or other official responses, public perceptions and attitudes will shape foreign investment climates, including in the United States—a reality illustrated most potently by the Dubai Ports World saga that ended, under pressure from members of Congress and the public, with the divestment by a foreign investor in 2006 of assets acquired through a CFIUS-approved transaction.³⁵

At minimum, foreign investors and other parties with interests in agriculture investment would be well advised to monitor legal, media, and related developments. ■

ABOUT MASSPOINT

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- [Emerging Markets-Based Private and State-Owned Enterprises Need Entrepreneurial Governance to Advance Strategic Objectives](#) (discussing the role of entrepreneurial governance for entities with direct or indirect interests in food, agriculture, and water assets or resources) (October 2015).
- [FAO-OECD Guidance for Responsible Investment in Agricultural Supply Chains: Considerations for Investors, Food-Agri Companies, and Finance Providers](#) (February 2015).
- [Food Security and Agriculture Investment Require Multidimensional Approaches](#) (February 2014).

ENDNOTES

[Note: Citations herein do not conform strictly to the Bluebook].

- ¹ Smithfield was before the transaction the world's largest pork producer and processor. See, e.g., David Kesmodel, [Bringing Home Pork's Bacon](#), Wall St. Journal, January 8, 2013. Shuanghui International Holdings Ltd reportedly acquired Smithfield through a Cayman Islands company. See, e.g., David Barboza, [Chinese Bid for U.S. Pork Had Links to Wall Street, N.Y. Times](#), June 2, 2013 (reporting that nearly half of Shuanghui's shares were controlled by a "group of savvy investors and global deal makers who hold a substantial stake in the Chinese company: Goldman Sachs, CDH Investments, Singapore's sovereign wealth fund and New Horizon Capital."). Shuanghui reportedly was, at the relevant time, the majority owner of "the actual Chinese meat processor" Henan Shuanghui Investment and Development. Simon Rabinovitch, [Is China's US pork play just a PE ploy?](#), Financial Times, June 5, 2013 (discussing one commentator's analysis of the deal as a leveraged buyout).
- ² See, e.g., Charles Wilbanks, [Smithfield: The Controversy Simmers](#), CBS News, July 20, 2013 ("Critics [of the deal] range from members of Congress and environmentalists to food safety advocates and hedge fund managers who think they could make more money under other scenarios.").
- ³ See, e.g., Nathan Halverson, [How China Purchased a Prime Cut of America's Pork Industry](#), Reveal (The Center for Investigative Reporting), January 24, 2015 ("The takeover, valued at \$7.1 billion, remains the largest-ever Chinese acquisition of an American company.") and Michael J. De La Merced, [U.S. Security Panel Clears a Chinese Takeover of Smithfield Foods](#), N.Y. Times, September 6, 2013 ("Smithfield Foods won national security clearance on Friday for its proposed \$4.7 billion sale to a Chinese meat processor, overcoming one of the biggest obstacles to a takeover.").
- ⁴ "Syngenta . . . generates about one-quarter of its sales in North America, where it is a top pesticide seller and supplies an estimated 10% of U.S. soybean seeds and 6% for corn." Jacob Bunge, [Lawmakers Raise Concerns About ChemChina's Purchase of Syngenta](#), Wall St. Journal, March 23, 2016. [ChemChina Offers Over \\$43 Billion for Syngenta](#), Bloomberg News, February 3, 2016.

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- ⁵ [ChemChina Offers Over \\$43 Billion for Syngenta](#), Bloomberg News, February 3, 2016.
- ⁶ It is well known that Chinese outbound investment has been on the rise in the last several years, including investment in the United States, and has been met with resistance by some government and other constituencies in the United States and elsewhere.
- ⁷ CFIUS is a multi-agency committee that is chaired by the Secretary of the Treasury. CFIUS “has only one purpose: to review the potential national security effects of transactions in which a foreign company obtains control of a U.S. company. CFIUS does not consider broader economic or policy concerns when reviewing foreign investments.” United States Dept. of the Treasury, [CFIUS at a Glance](#), February 19, 2013.
- ⁸ Some U.S. states- *e.g.*, Iowa, South Dakota, Wisconsin—prohibit or restrict foreign ownership of farmland (and some require foreign parties to divesture of agricultural land within a statutorily specified period of time in cases of change of control or ownership in favor of a foreign party).
- ⁹ Foreign Investment in Agriculture Foreign Investment Disclosure Act of 1978 (7 U.S.C. §§ 3501-3508) (**AFIDA**) requires, *inter alia*, foreign persons who acquire or transfer “any interest” (other than a security interest) in agricultural land to report such a transaction to the Secretary of Agriculture within 90 days after the transaction date. 7 U.S.C. § 3501 (Lexis 2016). Notably, the AFIDA was enacted partly in response to “media accounts” of U.S. agricultural land purchases by foreign parties. United States House of Representatives, Committee on Agriculture Report on AFIDA, H.R. Rep. No. 95-1570, at 6 (1978). This legislative history is a reminder of the roles that the media and public discourse can play in shaping legislation.
- ¹⁰ Authority to Review Certain Mergers, Acquisitions, and Takeovers, 50 U.S.C.A. § 4565 (West 2016) (part of the Defense Production Act of 1950 as amended by the Foreign Investment and National Security Act of 2007, Pub. L. No. 110-49, 121 Stat. 252, § 3 Statutory Establishment of the Committee on Foreign Investment in the United States (amending Section 721 of the Defense Production Act of 1950, 50 U.S.C. App. 2170) (codified at 50 U.S.C. § 2170(k)(2)(j)) [hereinafter **FINSA**]; United States Dept. of the Treasury, Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons, 31 C.F.R. Part 800 (2016) [hereinafter “**CFIUS Rules**”]. “Critical infrastructure” was added to the national security review process by the FINSA.
- ¹¹ CFIUS takes a case-by-case approach to identifying critical infrastructure and determining the national security effects of foreign control of critical infrastructure. CFIUS Rules at § 800.503(b)(2).
- ¹² Relevant legislation does not define “national security.” However, FINSA states that in the foreign investment screening context, “‘national security’ shall be construed so as to include those issues relating to ‘homeland security’, including its application to critical infrastructure.” FINSA, *supra* note 10 at § 2(a)(5).
- ¹³ The Food and Agriculture Sector was designated as a critical infrastructure sector in 2003 in the homeland security context. See, *e.g.*, *Food and Agriculture Sector-Specific Plan 2015* (Departments of Agriculture and Homeland Security and the Food and Drug Administration). Executive Order 13228 of October 8, 2001, Establishing the Office of Homeland Security and the Homeland Security Council, included agriculture as critical infrastructure. The USA Patriot Act, signed into law in October 2001, defined critical infrastructure as “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.” Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Pub. L. No. 107-56, § 1016(e), 115 Stat. 276, 401 (2001). The Homeland Security Act of 2002 adopted by reference the Patriot Act’s definition of “critical infrastructure” and tasked the Department of Homeland Security with, *inter alia*, the development of a national critical infrastructure protection plan. Pub. Law No. 107-296, § 2(4) and § 201(d)(5). The *Food and Agriculture Sector-Specific Plan* is a product of the Homeland Security Act’s directive.

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- ¹⁴ See, e.g., Department of Defense, [National Security Implications of Climate-Related Risks and a Changing Climate](#), July 23, 2015; [National Security Strategy May 2010](#) (the President of the United States recognized climate change as a security threat and identified promoting food security as an element of the national security strategy).
- ¹⁵ [American Agriculture and Our National Security](#), Hearing Before the H. Comm. On Agriculture, 114th Cong., Serial No. 114-33 (Nov. 4, 2015).
- ¹⁶ The letter was co-signed by four members of the Senate Agriculture Committee: Senators Debbie Stabenow (D-MI), Charles Grassley (R-IA), Sherrod Brown (D-OH), and Joni Ernst (R-IA). United States Senate Committee on Agriculture, Nutrition, & Forestry, [Senators Call On Treasury Department to Review ChemChina’s Acquisition of Syngenta](#), March 24, 2016 [hereinafter “**Bipartisan Syngenta Letter**”].
- ¹⁷ Bipartisan Syngenta Letter.
- ¹⁸ FINSA, *supra* note 10, § 3 (amending Section 721 of the Defense Production Act of 1950). Until the enactment of FINSA, CFIUS was established and existed under a 1975 Executive Order issued by President Ford. Exec. Order No. 11858, Foreign Investment in the United States, 40 Fed. Reg. 20263 (May 7, 1975), amended by Exec. Order No. 13456, Further Amendment of Executive Order 11858 Concerning Foreign Investment in the United States, 73 FR 4677 (July 23, 2008) (Issued by President George W. Bush after the enactment of the FINSA).
- ¹⁹ Release, U.S. Senator Debbie Stabenow (D-MI), [Bipartisan Group of Senators Urge Appropriate Oversight of Proposed Smithfield Purchase](#), June 20, 2013 [hereinafter “**Bipartisan Smithfield Letter**”]. See also Doug Palmer, [Senators urge inclusion of food safety in Smithfield review](#), Reuters, June 20, 2013. Note that CFIUS reviewed the Smithfield transaction. It is assumed, because the CFIUS process is confidential, that the review covered incidental national security concerns, such as the proximity of Smithfield facilities to U.S. military bases.
- ²⁰ Bipartisan Smithfield Letter, *supra* note 19.
- ²¹ Senate Agriculture Committee Hearing, *Smithfield and Beyond: Examining Foreign Purchases of American Food Companies*, July 10, 2013. A complete transcript of the hearing is available [here](#).
- ²² U.S. Senate Agriculture, Nutrition, and Forestry Committee, [Chairwoman Stabenow Calls for Legislation to Protect American Interests in Foreign Acquisitions](#), September 14, 2014. It does not appear, as of the date of this writing, that any such draft legislation has been introduced.
- ²³ Release, Congressman Randy Forbes, [Forbes Asks President Obama to appoint Secretary of Agriculture to CFIUS](#), June 21, 2013.
- ²⁴ Release, [Congresswoman Rosa DeLauro, DeLauro Statement On Sale of Smithfield Foods to Chinese Company](#), undated.
- ²⁵ House Committee on Appropriations, Report on Financial Services and General Government Appropriations Bill, 2014 (to accompany H.R. 2786), H.R. Rep. No. 113-172, at 8 (2013) (corresponding to page 2 of the relevant bill on Department of the Treasury appropriations), available at <https://www.gpo.gov/fdsys/pkg/CRPT-113hrpt172/pdf/CRPT-113hrpt172.pdf>.
- ²⁶ Foreign Investment and Economic Security Act of 2014, H.R. 5581, 113th Cong., § 3 (2014). As of the date of this writing, the Bill had been referred to the House Committee on Financial Services in September 2014, with no further action taken. See, e.g., CRS [Bill Summary & Status, 113th Congress \(2013-2014\), H.R. 5581](#).
- ²⁷ *Id.* at § 6(F). The FIESA would also add the Secretary of Health and Human Resources to the CFIUS membership to review transactions that the President determines “may affect the public health, including food safety.” *Id.* at § 6(G). In addition, the FIESA would expand the Defense Production Act (as amended by FINSA) definition of “covered transaction” to include greenfield investments. *Id.* at § 2. As stated above, “covered transactions” in the CFIUS framework—excluding greenfield investments—are “any merger, acquisition, or takeover that is proposed or pending after August 23, 1988, by or with any foreign person which could result in foreign control of any person

engaged in interstate commerce in the United States.” Defense Production Act of 1950, 50 U.S.C.A. at § 4565 (West 2016).

²⁸ The FIESA would include among factors to be considered in a net benefit review of a foreign investment by CFIUS whether, in cases of foreign government influenced transactions, “the foreign person . . . adheres to United States standard of corporate governance . . . [and] is a foreign person of a country whose government has adequately engaged with the Securities and Exchange Commission and the Public Company Accounting Oversight Board in order to promote and ensure adequate transparency.” FIESA at § 3.

²⁹ Nathan Halverson, [What California can learn from Saudi Arabia’s water mystery](#), *Reveal* (The Center for Investigative Reporting), April 22, 2015. For a discussion of wheat production and its discontinuation in Saudi Arabia and food security challenges facing the Middle East generally, see, e.g., Hdeel Abdelhady, [Islamic Finance as a Mechanism for Bolstering Food Security in the Middle East: Food Security Waqf](#), *Am. U. Sustainable Development Law & Policy* 13, no. 1 (2012): 29-35, 63-65 (“Saudi Arabia embarked on an ambitious government-mandated and subsidized effort to achieve self-sufficiency in key food staples and succeeded, but at a high cost to government coffers and the country’s scarce water resources . . . Saudi Arabia spent between SR60 billion to 70 billion to subsidize wheat production over the “long term” and significantly depleted water resources in the process. Recognizing the prohibitively high cost of domestic wheat production, the government announced that Saudi Arabia will phase out wheat production by 2016.”)

³⁰ The article also noted that Shuanghui, by purchasing Smithfield, “secur[ed] 1 in 4 American-raised pigs, plus the water-hungry grains those 30 million pigs consumed.”

³¹ See, e.g., [Saudi Hay Farm In Arizona Tests State's Supply Of Groundwater](#), National Public Radio, November 2, 2015; Jeff Daniels, [Saudi Arabia buying up farmland in US Southwest](#), CNBC, Jan. 15, 2016; Danielle Miller, [La Paz County at odds with Saudi Arabian farm](#), Fox 10 Phoenix, February 23, 2016 [hereinafter “**Fox 10**”]; [Saudi land purchases in California and Arizona fuel debate over water rights](#), Los Angeles Times, March 29, 2016 (this Associated Press story was picked up by several media outlets).

³² Fox 10, *supra* note 30.

³³ Associated Press, [La Paz County fights foreign farms over water for alfalfa](#), Nov. 6, 2013.

³⁴ Australia tightened rules applicable to foreign investment in agriculture in late 2015. See, e.g., Rob Taylor, [Australia Tightens Rules on Foreign Investment in Agricultural Land](#), *Wall St. Journal*, February 10, 2015. Saskatchewan, Canada, enacted legislation limiting foreign and prohibiting corporate ownership of farmland. Government of Saskatchewan, [New Laws for Farmland Ownership Proclaimed](#), December 21, 2015.

³⁵ David E. Sanger, [Under Pressure, Dubai Company Drops Port Deal](#), *N.Y. Times*, March 10, 2006.