

ARTICLE

Senators Voice Numerous Concerns at CFIUS Hearing on Chinese Acquisition of Smithfield Foods

July 15, 2013

At an unprecedented hearing before the U.S. Senate Committee on Agriculture, Nutrition and Forestry on July 10, 2013, 11 U.S. senators expressed concerns over the potential negative impacts of the proposed acquisition of Smithfield Foods, Inc. (Smithfield) by Chinese food company Shuanghui International Holdings Limited (Shuanghui), in a transaction valued at \$7.1 billion. Following the hearing, the senators received a briefing from the Committee on Foreign Investment in the United States (CFIUS) detailing CFIUS' national security review process as it pertains to the acquisition. While the hearing will likely not lead to congressional action blocking the transaction, senators noted the current lack of U.S. legal mechanisms needed to address economic security and China's ability to thwart investment reciprocity.

In her opening statement, Committee Chairwoman Debbie Stabenow (D-MI) urged an examination of the long-term impacts of the "precedent-setting" acquisition on the United States' food supply, security and safety. Other senators in attendance, including Sen. Sherrod Brown (D-OH) and Sen. Charles Grassley (R-IA), questioned how the deal would impact U.S. jobs and pork prices and worried that the acquisition would lead to increased Chinese exports of pork to the United States and other countries, to the detriment of the U.S. agriculture industry. Sen. Mike Johanns (R-NE), a former secretary of Agriculture, noted that while the deal did not raise significant national security concerns, he is troubled that the United States does not have legal or regulatory mechanisms to address economic security concerns. Multiple senators also took issue with the fact that while

Authors

Nova J. Daly
Senior Public Policy Advisor
202.719.3282
ndaly@wiley.law

Practice Areas

International Trade
National Security

Shuanghui has the ability to acquire Smithfield, a reverse acquisition by Smithfield would likely not even be entertained, or would be rejected, by the Chinese government.

Smithfield CEO Larry Pope sought to ease public concern over the acquisition, describing the deal as enormously beneficial to American agriculture, and said that the transaction would have "no impact on U.S. food supply and therefore no impact on 'food security.'" Mr. Pope also stressed that the focus of the merged company would be on exporting high-quality meat products from the United States to China and other countries to meet the growing demand for pork. Matt Slaughter, associate dean at the Tuck School of Business at Dartmouth College, also testified in support of the proposed acquisition, stressing that such foreign-direct investment in the United States enhances American productivity and increases compensation for American workers.

Two witnesses who opposed the transaction—Daniel Slane, commissioner of the U.S.-China Economic and Security Review Commission, and Dr. Usha Haley, a professor at West Virginia University—identified numerous risks associated with the potential acquisition. These included, but were not limited to, Chinese government involvement in and control over Shuanghui; the Chinese government's concerted effort to acquire strategic assets, particularly in the United States; the potential for shifting production to China, particularly in light of subsidies provided by the Chinese government; increased exports to the United States from China; Chinese food safety violations; and the loss of Smithfield technology and intellectual property.

With such elevated concern over the potential acquisition of a U.S. food company, CFIUS, which is reviewing the acquisition for potential national security risks to the United States, is being asked to heighten its scrutiny of the deal. Last month, a bipartisan group of 15 senators urged CFIUS to include the U.S. Food and Drug Administration and the U.S. Department of Agriculture in the review of the transaction.^[1] The day before the hearing, a coalition of farm, producer, consumer and rural organizations sent a letter to U.S. Treasury Secretary Jacob Lew, Secretary of State John Kerry, and several others urging CFIUS to block the transaction.^[2] Following the Senate Agriculture Committee hearing, the U.S. Department of the Treasury, chair of CFIUS, and other CFIUS members held a rare briefing with senators and their staff regarding the CFIUS review process, with emphasis on how CFIUS assesses U.S. national security risks in transactions involving issues such as food and agriculture, areas not generally within the purview of CFIUS reviews.

[1] A copy of the bipartisan letter is available at <http://www.ag.senate.gov/newsroom/press/release/senators-urge-oversight-smithfield>.

[2] A copy of the coalition letter is available at http://documents.foodandwaterwatch.org/doc/Coalition_Letter_to_CFIUS_on_Proposed_Shuanghui-Smithfield_deal_7-9-13.pdf.