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Good morning Co-Chairs Cleveland and Wessel and members of the Commission. My name is Patrick Woodall and I am the Research Director and Senior Policy Advocate at Food & Water Watch, a national non-profit advocacy and consumer organization dedicated to ensuring the food, water and fish we consume is safe, accessible and sustainably produced. Our food program promotes a secure and resilient food system that can provide healthy food for consumers and an economically viable living for family farmers and rural communities.

Thank you for holding this hearing and inviting Food & Water Watch to testify on the implications of Chinese investment in U.S. farms, food processing and agribusiness. The government of China, its state-owned enterprises and independent Chinese companies have aggressively pursued agricultural and food assets worldwide, including here in the United States. This agricultural acquisition strategy is an extension of China's food security policy designed to ensure that it can guarantee food self-sufficiency.

The purchase of U.S. food, farm and agricultural assets can have substantial effects on the food system. Converting U.S. farms and food enterprises into export platforms for the Chinese market can raise domestic food prices, disadvantage U.S. farmers and accelerate global consolidation in the agriculture sector to the detriment of American farmers, rural communities, and consumers. China's pursuit of global food and farm mergers — in the United States and worldwide — undermines food security and ultimately can have destabilizing national security implications.

The Committee on Foreign Investment in the United States (CFIUS) reviews foreign direct investments in the United States, but its review process is primarily designed to address specific national security concerns and is inadequate to evaluate the impact of foreign takeovers of U.S. food and farm assets. Even though the CFIUS statute and regulation theoretically would consider various national security elements of cross-border food and farm mergers, the opaque nature of the CFIUS review process makes it impossible to know whether these legitimate issues have been seriously considered.

China's growing investment in U.S. farm, food and agricultural assets

Chinese firms and state-owned enterprises purchase assets and firms in the United States for the same reasons that make U.S. firms attractive takeover targets. America's open investment market attracts the largest pool of foreign direct investment.[1] Federal and state programs affirmatively

[1] Organization for International Investment. "Foreign Direct Investment in the United States 2016 Report." 2016 at 1.

encourage and solicit foreign investment.[2] The U.S. economy represents the largest consumer market and the biggest pool of venture capital and private equity.[3] The United States also boasts highly productive workers, an innovative economic environment and transparent and effective legal and regulatory systems.[4]

But China is also targeting investments in farm, food and agricultural assets in the United States to further its domestic food security and global food ownership ambitions. In 2011, the Chinese government included global food company acquisitions in its five-year plan to secure food resources to feed the country's growing demand for food.[5]

Chinese businesses also seek takeover targets in part to secure technology and intellectual property. Chinese state-owned enterprises are encouraged to pursue cross-border mergers in order to "acquire much-needed technologies," according to professors from Peking University and Stanford University.[6] China considers agricultural technology to be a strategic prize for these cross-border takeovers.[7] China's twelfth Five Year Plan focused on developing self-sufficiency in chemicals and developing national champions that can aggressively pursue access to foreign chemical technologies and processes.[8]

Since the United States granted China permanent normal trade relations (PNTR) and China entered the World Trade Organization in 2000, China's investment in the U.S. economy has grown rapidly. Total Chinese foreign investment into the United States soared more than 670-fold from $68 million in 2000 to $45.6 billion in 2016, according to the Rhodium Group.[9]

Food, farm and agricultural firms have been a common target of Chinese investors. Chinese firms have made 34 food and agricultural acquisitions in the United States totaling $7.4 billion since 2000.[10] And Chinese firms and investors owned over 42,000 acres of U.S. farmland worth $900 million in 2012, according to the latest U.S. Department of Agriculture figures.[11] But the two largest and highest profile takeovers were the 2013 purchase of U.S. pork powerhouse Smithfield Foods and the 2016 purchase of Syngenta, a Swiss-based seed and chemical company with substantial assets in the United States. Both of these purchases benefited from Chinese government support and both will continue to have a substantial impact on the U.S. food supply.

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[2] Jackson, James K. Congressional Research Service. "Foreign Direct Investment in the United States: An Economic Analysis." CRS-7-5700. December 11, 2013 at i; Beal, Dave. "From Cirrus to Schwing America, firms in Minnesota are part of China's growing U.S. investment." *MinnPost*. July 2015; Sturgeon, Jeff. "Chinese deals fraught with peril." *Roanoke (VA) Times*. March 6, 2016.
[3] Organization for International Investment (2016) at 2.
[4] U.S. Department of Commerce. Office of the Chief Economist. "Foreign Direct Investment in the United States: Update to 2013 Report." June 20, 2016 at 1.
[5] "Who's behind the Chinese takeover of world's biggest pork producer?" *Frontline PBS*. September 12, 2014.
[6] Fan, Gang and Nicholas C. Hope. China-United States Exchange Foundation. *US-China 2022: Economic Relations in the Next 10 Years*. Chapter 16: The Role of State-Owned Enterprises in the Chinese Economy. 2013 at 14.
[7] Scissors, Derek. "After Syngenta, what's next for China Inc.?" *Barrons*. February 23, 2016.
[8] Hartmann, Bernhard and Ulrich Deutschmann. AT Kearney. "China's Chemical Industry: Flying Blind." 2012 at 1 and 13.
[9] Rhodium Group. China Investment Monitor. Available at http://rhg.com/interactive/china-investment-monitor. Accessed January 2017.
[10] *Ibid*.
[11] U.S. Department of Agriculture. Farm Service Agency. "Foreign Holdings of U.S. Agricultural Land." 2013 at 200.

The WH Group (then known as Shuanghui) takeover of Smithfield was the largest purchase of a U.S. firm by a Chinese company at the time.[12] Shaunghui paid more than $7 billion for Smithfield including the firm's debt.[13] Smithfield was and remains the largest pork processor and hog producer in the United States with a significant impact on the food supply. In 2012, Smithfield had 25 U.S. plants with 46,000 workers that slaughtered 27.7 million hogs annually, controlling a quarter (26 percent) of the U.S. pork market.[14] Smithfield also dominated hog production, with 862,000 sows producing litters for hog production in the United States annually (28 percent of the domestic sows).[15] The United States approved the Shuanghui-Smithfield deal in September 2013.[16] In 2017, Smithfield completed its purchase of Hormel's Clougherty Packing, including three more hog producing sow operations, bringing Smithfield's market share to 28 percent.[17]

ChemChina's $43 billion purchase of Syngenta, announced in 2016, would create the world's largest manufacturer and distributor of agrichemicals and pesticides.[18] The deal would be the largest Chinese purchase of any foreign firm in history and is larger than the next four largest deals combined.[19] The takeover of the Swiss-based agrichemical and seed company includes manufacturing facilities in the United States, perhaps explaining the 22 percent premium ChemChina offered.[20] Syngenta is the largest seller of agrichemicals in the United States.[21] It also is a major seller of U.S. field crop seeds, selling 10 percent of soybean and 6 percent of corn seeds.[22] More than one-fourth (25.9 percent) of Syngenta's $13.4 billion in global 2015 sales were generated in the United States.[23] In August 2016, U.S. regulators approved the ChemChina-Syngenta deal and Australia declined to block the merger in December 2016, but the antitrust review is still pending in the European Union.[24]

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[12] Erman, Michael and Greg Roumeliotis. "China Inc.'s Smithfield bid expected to pass Washington test." *Reuters*. May 31, 2013.
[13] Ho, Prudence, Cynthia Koons and Nopparat Chaichaleammongkol. "Morgan Stanley to provide $3bn in Smithfield bid." *Wall Street Journal*. May 31, 2013; Felerbaum, Michael. "China's Shuanghui in $4.7B deal for Smithfield." *Associated Press*. May 29, 2013.
[14] Gelles, David and Gregory Meyer. "Deal saves pig farmer from a break-up." *Financial Times*. May 30, 2013; Smithfield Foods. U.S. Securities and Exchange Commission (SEC) filing 10-K. July 31, 2012 at 13, 24 to 25.
[15] "Top 25 U.S. Pork Powerhouses 2012." *Successful Farming*. December 2012.
[16] Singh, Shruti Date and Bradley Olson. "Smithfield receives U.S. approval for biggest Chinese takeover." *Bloomberg*. September 6, 2013.
[17] Smithfield Foods. [Press release]. "Smithfield Foods completes acquisition of Clougherty Packing LLC." January 2, 2017; Food & Water Watch analysis of Pork Board data. "Estimated Daily U.S. Slaughter Capacity by Plant (head per day)." August 2016. Available at http://www.pork.org/wp-content/uploads/2016/08/estimated-daily-us-slaughter-capacity-by-plant.pdf. Accessed January 2017.
[18] Browning, Jonathan. "ChemChina said to add time for U.S. Syngenta deal review." *Bloomberg*. June 14, 2016.
[19] Held, Robert. "To buy a Swiss company, ChemChina must pass through Washington." *The Hill*. February 19, 2016; Scissors (2016).
[20] Wyant, Sara. "Syngenta says 'yes' to ChemChina bid, as farm, food groups raise concerns." *Agri-Pulse*. February 3, 2016.
[21] Roumeliotis, Greg. "Exclusive: USDA to join U.S. panel reviewing ChemChina's Syngenta deal —sources." *Reuters*. May 16, 2016.
[22] Bunge, Jacob and Brent Kendall. "Merger of Dow, DuPont likely to get close antitrust scrutiny." *Wall Street Journal*. December 9, 2015.
[23] Wooten, Casey. "Treasury asked to include crop regulators in Syngenta review." *Bureau of National Affairs*. March 24, 2016.
[24] Shields, Michael and Greg Roumeliotis. "U.S. clearance of ChemChina's Syngenta deal removes key hurdle." *Reuters*. August 22, 2016; Westbrook, Tom. "Australia regulator will not block ChemChina's Syngenta bid." *Reuters*. December 7, 2016; Aizhu, Chen and Michelle Price. "ChemChina, Syngenta submit minor concessions to EU watchdog: Sources." *Reuters*. January 10, 2017.

Chinese government support for Smithfield, Syngenta takeovers

These two agribusiness mega-mergers benefited from considerable support from the Chinese government. The Chinese government provides a host of benefits to its domestic enterprises, even privately held firms, that make them more competitive than international firms that operate without state subsidies. These firms receive below-market interest rate loans from state-owned banks and often the debt from these loans is forgiven or significantly written down. China's policy to ensure food self-sufficiency provides a subsidy for domestic food processing, meatpacking and agricultural production. And China's protection and manipulation of its currency provides a benefit to Chinese firms. These state-sponsored benefits helped both Shuanghui and ChemChina become big enough to pursue global takeover targets.

Shuanghui grew into the country's largest meatpacker largely through generous subsidies, government policies and investment.[25] It was founded as a state-run meatpacking enterprise.[26] The state-owned Bank of China provided $4 billion to purchase Smithfield and the loan will be collateralized by both Smithfield and Shuanghui's physical assets, namely the processing plants in United States and China.[27] The Bank of China approved the Smithfield takeover loan in one day and it fulfills the bank's mission to finance the global takeover efforts of Chinese businesses.[28]

Some of Shuanghui's management and many of the investors had cozy relationships with the Chinese government. The Chairman of Shuanghui, Wan Long, has strong ties to political leadership in Beijing and has been a member of the National People's Congress for decades.[29] A key financial backer of the deal, New Horizon, was co-founded by the son of the former Chinese prime minister, and although he left the investment house to become chairman of the government-owned China Satellite Communications Corporation, New Horizon retained close financial ties with China's leading families.[30]

ChemChina is one of more than 100 companies directly controlled by China's State Council (akin to the Cabinet of the United States).[31] The Chinese central government maintains firm control over state-owned chemical companies.[32] ChemChina's president is a senior member of the Chinese Communist Party and there is a party office inside ChemChina's headquarters.[33]

ChemChina is especially leveraged — its debt is nearly ten times revenues — but as a state-owned enterprise it still has managed to secure financing for the Syngenta takeover.[34] ChemChina is financing the Syngenta deal with $50 billion in loans from foreign and Chinese

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[25] Haley, George and Usha Haley. "Purchase poses strategic risks." *USA Today*. June 6, 2013.
[26] De la Merced, Michael and David Barboza. "China, in need of pork, to buy U.S. supplier." *New York Times*. May 29, 2013.
[27] Jing, Mao. "Shuanghui gets $7.9b loan for Smithfield acquisition." *China Daily*. June 20, 2013.
[28] *Frontline PBS* (September 12, 2014).
[29] Mattioli, Dana and David Kesmodel. "China makes biggest U.S. play." *Wall Street Journal*. May 31, 2013.
[30] Barboza, David. "Billions amassed in the shadows by the family of China's Premiere." *New York Times*. October 26, 2012; Barboza, David. "Chinese bid for U.S. pork had links to Wall Street." *New York Times*. June 2, 2013.
[31] "Tycoon behind Syngenta bid China's most aggressive dealmaker." *Associated Press*. March 26, 2016.
[32] Hartmann and Deutschmann (2012) at 9.
[33] Mitchell, Tom. "Monday interview: Ren Jianxin, ChemChina." *Financial Times*. April 19, 2015.
[34] Kynge, James. "State-owned Chinese groups' acquisitions in Europe raise concern." *Financial Times*. February 29, 2016.

lenders.[35] Much of the funding is expected to come from government-backed sovereign wealth funds or state-owned banks.[36] ChemChina already received a $5 billion investment for the deal from another state-owned industrial conglomerate, Citic Ltd.[37] The level of government financing — through sovereign wealth funds, direct capital infusions and loans from government-owned banks — suggests a concerted effort by the apparatus of the central government to secure these international takeovers and perhaps exercise control over these assets if the deals are approved.

The U.S. implications and potential risks of China's food, farm and agricultural takeovers

China's investments in the U.S. agricultural and food sector can provide needed capital for continued success or expansion, but it can also come with substantial risks. Foreign investment can create jobs — but new jobs are predominantly created by "greenfield" investments in new facilities and 90 percent of foreign investment dollars go towards takeovers like Smithfield and Syngenta, not new investments.[38] Not all Chinese investments generate promised jobs. For example, several Chinese investments in Virginia failed to generate promised jobs — the investors defaulted or deals fell apart as loans came due.[39] And although wages were generally higher than the U.S. average at jobs at companies owned by foreign investors, the wages at China owned employers were a third lower than at average foreign owned firms ($51,000 and $81,000, respectively in 2014).[40]

Chinese food and farm investments are designed to export food to China, capture valuable international brands and create a more resilient global network of productive food and agricultural assets. The purchased assets could be converted to export platforms, diverting U.S. productive resources to feed China and leaving any externalities like agricultural pollution and economic inequality here in America. The purchases can share productive technologies — hog genetics, seed technologies or others — with China's domestic agricultural sector. The combined capture of valuable U.S. brands and innovation can allow China's agricultural sector to disadvantage U.S. agricultural exports.

Potentially damaging impact on U.S. food supply: Food prices, equity and food safety

Chinese investment can have widespread impact throughout the U.S. food supply. Senator Chuck Grassley (Iowa) noted that "We're seeing more and more foreign investment in our agriculture assets, and it's something that we need to very aware of. The transactions that are occurring today will shape the food industry for decades to come. We need to be thinking strategically about who will control our food supply tomorrow."[41] Senator Debbie Stabenow (Michigan) noted during the Smithfield takeover that the American people will not be comfortable if "half of

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[35] *Associated Press* (March 26, 2016).
[36] Scissors (2016).
[37] Bunge, Jacob. "ChemChina details changes to structure of planned Syngenta purchase." *Wall Street Journal*. June 17, 2016.
[38] Jackson (2013) at 7.
[39] Sturgeon (March 6, 2016).
[40] U.S. Department of Commerce. Bureau of Economic Analysis. Selected Data of Majority-Owned U.S. Affiliates by Country of Ultimate Beneficial Owner, 2014; U.S. Department of Commerce (2016) at 2.
[41] Senator Chuck Grassley. [Press release]. "Grassley: Food security is national security." July 12, 2016.

our food processors are owned by China. And I think there are some very, very tough questions that need to be answered."[42]

Increased exports can increase U.S. consumer food prices: China's agricultural investments are specifically designed to increase food exports to China.[43] For example, the Smithfield takeover provides a steady supply of pork exports and the Chinese-owned firm faces fewer administrative import barriers than other U.S. exports to China.[44] Diverting more of Smithfield's supply to exports could tighten up U.S. pork supplies and increase U.S. retail pork prices.[45] American consumers are very price sensitive to food price increases during economic downturns.[46] Creating tight market conditions for pork in the U.S. market because of increasing exports can exacerbate price increases caused by other factors. For example, after the Smithfield takeover, the pork industry faced a widespread virus outbreak that drove up pork prices by 13 percent in 2014.[47]

While it is difficult to precisely estimate the impact that increased exports can have on consumer prices, diverting significant supplies of agricultural production to exports can significantly increase retail food prices in the United States. According to a University of Missouri 2013 economics paper, a one percent increase in the net export of pork would increase U.S. hog prices by about 3 percent.[48] In 2012, Smithfield exported 18 percent of its pork production; by 2015, Smithfield exported 25 percent of its pork.[49] The combination of export diversion — for pork or any farm or food product — and agricultural instability from disease, pests, drought or market volatility can rapidly drive up U.S. consumer food prices. Today, half of U.S. pork production is controlled by two foreign firms (Smithfield and JBS), making U.S. consumers more vulnerable to retail price spikes.

Cross-border mergers can undermine economic viability of U.S. farms: The agriculture and food sector is unusually concentrated, with just a few companies dominating the market in each link of the food chain. Fewer, larger buyers of farm products (like Smithfield) and sellers of farm inputs (like Syngenta) can compromise the economic viability of family farms that have to pay more for supplies and receive less for their crops or livestock. The impact of these mergers is more pronounced during downturns in the farm economy. Many agricultural prices are forecast to remain persistently low for the next decade, creating a substantially more precarious economic situation for family farmers.[50]

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42 *Frontline PBS* (September 12, 2014).
43 Mattioli and Kesmodel. May 31, 2013.
44 Gelles and Meyer (May 30, 2013); Schneider, Howard and Brady Dennis. "Smithfield Foods to be brought by Chinese firm Shuanghui International." *Associated Press*. May 30, 2013.
45 Fielding, Michael. "Little risk for Smithfield, little impact on U.S. hog industry, analysts say." *Meatingplace*. May 30, 2013.
46 Felerbaum (May 29, 2013).
47 Swanson, Abbie Fentress. "As pig virus spreads, the price of pork continues to rise." *NPR Morning Edition*. June 27, 2014.
48 Plain, Ron. University of Missouri-Columbia. "Economic Impact of U.S. Pork trade, 1986-2012." Department of Agricultural & Applied Economics Working Paper No. AEWP 2013-2.
49 Smithfield Foods. SEC 10-K. July 31, 2012 at 5; Smithfield Foods. SEC 10-K. January 3, 2016 at 4.
50 Food and Agricultural Policy and Research Institute. University of Missouri. "U.S. Baseline Briefing Book." Report #02-16. March 2016 at 2 and 45; Johansson, Robert. Chief Economist USDA. "Focus on the Farm Economy: Growing Farm Financial Pressure." Statement before the Subcommittee on General Farm Commodities and Risk Management. Committee on Agriculture. U.S. House of Representatives. April 14, 2016 at 3.

The two Chinese mega-mergers may represent only the beginning of a wave of Chinese investment in an already hyper-consolidated sector.[51] The proposed ChemChina-Syngenta deal would increase consolidation and market power in the seed and agrichemical industries. In the United States, the seed market is already intensely consolidated; the top four firms produced 83 percent of corn seed and 77 percent of soybean seed in 2014.[52] Moreover, the majority of seeds have "stacked" biotechnology traits from more than one company.[53] The proposed deal would enable ChemChina to exert anticompetitive pressure on the seed and agrichemical market and drive up prices that farmers pay for seeds and other inputs.

With ChemChina in control, Syngenta would likely act to further the business interests of not only its corporate parent but also China itself. Syngenta would have an incentive to focus its development on seed varieties engineered to work with patented ChemChina agrichemicals, vertically integrating the two firms' products into a more expensive product for U.S. farmers. The proposed deal could hinder innovation because Syngenta would be more likely to foreclose new developments from the U.S. market. For example, it could refuse to cross-license Syngenta seed patents for stacked seed traits offered by other seed companies. This would enable ChemChina to leverage its market power over the entire U.S. crop sector, limit the choices of U.S. farmers, raise prices and reduce innovation.

The Smithfield takeover contributed to the growing consolidation in the pork packing industry that has been exacerbated by the recent approval of Smithfield's takeover of Clougherty. The rising concentration in the pork packing industry increases buyer power significantly and gives firms more leverage over farmer suppliers. This power dynamic allows processors to exercise considerable control over farmers, lower the prices they pay for hogs and more easily collude with other packers.[54]

Agribusiness consolidation contributes to the decline in independent, medium-sized and smaller livestock producers that can sap the economic vitality of rural communities.[55] The earnings from locally-owned and locally-controlled farms generate an economic "multiplier effect" when farmers buy their supplies locally and the money stays within the community.[56] The economic multiplier effect is much lower with large corporate-affiliated livestock operations than with smaller independent farms.[57] Foreign ownership exacerbates many of these problems. The earnings and profits from meatpacker-owned hog production facilities are shipped to corporate headquarters instead of invested locally, and with foreign firms these earnings are not shipped to Virginia but to China.

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[51] Erman and Roumeliotis (May 31, 2013).
[52] Gjerde, Sonya. "Seed competition heats up." *Farm Journal*. July 2015.
[53] Letter from American Antitrust Institute, Food & Water Watch and National Farmers Union to U.S. Department of Justice. Re: The Proposed Dow-DuPont Merger. May 31, 2016 at 11.
[54] Paarlberg, Philip et al. Department of Agricultural Economics, Purdue University. "Structural Change and Market Performance in Agriculture: Critical Issues and Concerns About Concentration in the Pork Industry." Staff Paper 99-14. October 1999 at 6 to 8.
[55] Democratic Staff Report, U.S. Senate Committee on Agriculture, Nutrition and Forestry. "Economic concentration and structural change in the food and agriculture sector: Trends, consequences and policy options." October 29, 2004 at 2.
[56] Pew Commission on Industrial Farm Animal Production. "Putting meat on the table: industrial farm animal production in America." April 2008 at 41.
[57] *Ibid*. at 41.

Chinese technology and brand investments can distort global trade and disadvantage U.S. exports: The use of U.S. farmland and processing plants as an export platform, as well as the capture of valuable U.S. brands and technology can distort trade and disadvantage U.S. agricultural exports. Chinese businesses seek to partner or purchase Western firms in part to secure their technology and intellectual property. Both Smithfield and Syngenta were ripe technology targets for Chinese investors.

The Smithfield takeover not only included packing plants and farms but also the technology and hog genetics that have helped build the company. Smithfield has developed high-value hog genetic strains that it contends are "the leanest hogs commercially available."[58] Providing foreign competitors access to these intellectual property and technology assets could disadvantage the domestic hog industry on the global market.[59]

The WH Group was expected to rapidly adopt Smithfield's hog genetic lines that could weaken the U.S. pork export opportunities.[60] The WH Group has an extensive supply chain and distribution system in China and throughout Asia with operations in Japan, Singapore, the Philippines and South Korea and ships considerable amounts of pork to Japan and South Korea.[61] The merger would improve the position of the WH Group's Mainland China processing plants by sharing U.S. technology and expertise and potentially allow it to undercut U.S. pork exports to other Pacific Rim countries.[62] The merger has already disadvantaged other U.S. pork exporters to China. In 2015, Smithfield's exports to China rose 50 percent and controlled nearly *all* U.S. pork exports to China (97 percent).[63]

ChemChina's proposed Syngenta takeover would include its portfolio of high-tech agrichemicals, including pesticides, crop protection products, seeds and advanced fertilizers.[64] It also would create a unique conflict between a state-owned enterprise and government regulator with the Chinese government effectively both approving and manufacturing seeds and agrichemicals.[65] This would give ChemChina-Syngenta a significant commercial edge over its rivals in accessing the Chinese market. China's seed market is the second largest in the world but the largest international seed companies only capture 20 percent of the Chinese market.[66]

While China is in the process of modifying laws and regulations governing biotechnology, many biotech food crops have not yet been approved for cultivation. At times, China's regulatory approval process has hindered U.S. grain and oilseed exports.[67] Crops approved for cultivation in the United States but not allowed for import into China wreak havoc on export markets. ChemChina-Syngenta could manipulate the Chinese government import approvals to disadvantage crops grown with rivals' seeds. ChemChina is a state-owned enterprise of China

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[58] Smithfield Foods. SEC 10-K. July 31, 2012 at 6.
[59] "This little piggy in the US market." *China Economic Review*. June 5, 2013.
[60] Herzstein, Robert. "The dangers behind the Smithfield deal." *Washington Post*. June 1, 2013.
[61] Fielding, Michael. "With merger, Smithfield gains massive Chinese distribution network." *Meatingplace*. May 29, 2013; "Shuanghui apologizes over additive scandal." *Xinhua*. March 16, 2011.
[62] "Stabenow worried by Smithfield acquisition, but CFIUS clearance likely." *Inside US-China Trade*. June 12, 2013.
[63] Clayton, Chris. "China's next steps 1: China's global ag conquest." *DTN Progressive Farmer*. April 12, 2016.
[64] *Associated Press* (March 26, 2016).
[65] Wooten (March 24, 2016).
[66] Bunge, Jacob. "ChemChina deal offers new formula for seed sector." *Wall Street Journal*. February 4, 2016.
[67] Bunge, Jacob. "Syngenta says ChemChina deal poses no food safety or major security issues." *Dow Jones*. March 24, 2016.

and, as such, does not act in economically rational ways. Should Syngenta get preferential treatment after its acquisition by ChemChina, this could dramatically impact the competitiveness of the agriculture biotechnology sector.

Syngenta suggested that the company did not anticipate favored regulatory treatment from the Chinese government and even projected that the deal would pave the way for the approval of other U.S. crops and biotechnologies.[68] But it admitted that the deal would give Syngenta "a lot of opportunities to totally transform the landscape for agriculture in China."[69] The proposed deal could give exports grown from Syngenta seeds preferential access to the China market and reinforce a barrier to crop exports grown from other companies' seeds.

Potential food safety risk of exports from China of U.S. brands: China's food supply has suffered from the persistent trend of "economically motivated adulteration" and a culture of adulteration in China's food and agricultural sector.[70] In the first nine months of 2016, China discovered half a million food safety violations that reflected "deep seated" problems in the food system, according to the head of the China Food and Drug Administration.[71] Cross-border takeovers from this lax and dangerous food safety environment could weaken commitments to food safety in domestic facilities — but it also could mean that Chinese-owned multinational firms could export well-known brands to the United States from considerably more suspect processing plants in China.[72]

The Smithfield takeover presents a case study in how these deals could expose U.S. consumers to risky imported foods. American food processing companies operate in an environment the *Wall Street Journal* has characterized as having "strong brands creating the right incentives all along supply chains, transparent regulations that are well enforced, and rule of law compensating victims of lapses."[73] In contrast, the WH Group (then Shuanghui) evolved in China's Wild West business environment that allowed many food manufacturers and processors to cut corners, sell tainted food products and rely on adulteration to maximize their competitive advantage. Chinese officials have readily acknowledged the country's food system as "grim."[74]

Shaunghui became the dominant meatpacker in this landscape of tainted food. In 2012, one of its subsidiaries sourced hogs treated with the illegal veterinary drug clenbuterol, which is used to produce leaner meat but is hazardous for humans to eat.[75] More than 38,000 hogs raised with the illegal drug were purchased and slaughtered without testing.[76] The company fired four executives at the processing plant and ordered the factory to recall its pork products.[77] Five Shuanghui employees received prison sentences for their role in the tainted pork scandal.[78] This

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68 *Ibid*.
69 Bunge (February 4, 2016).
70 Barboza, David and Alexei Barrionuevo. "Filler in animal feed is open secret in China." *New York Times*. April 30, 2007.
71 Stanway, David. "China uncovers 500,000 food safety violations in nine months." *Reuters*. December 24, 2016.
72 Erman and Roumeliotis (May 31, 2013).
73 Sternberg, Joseph. "Rethinking that Chinese pork takeover." *Wall Street Journal*. June 20, 2013.
74 "Food safety situation still grim in China." *Associated Press*. March 3, 2009.
75 Pinghui, Zhuang. "TV report on clenbuterol in pigs sees 22 people held." *South China Morning Post*. July 19, 2012.
76 Pinghui, Zuang. "5 jailed in tainted pork scandal." *South China Morning Post*. August 14, 2012.
77 Pinghui (July 19, 2012).
78 "China cracks down on clenbuterol; arrests 2,000 for other offenses." *Food Chemical News*. August 4, 2011.

catastrophic lapse in governance is hardly something that should be exported to the U.S. business culture, but nor should Smithfield-branded pork be exported to the United States from China.

Ultimately, the WH Group could export Smithfield pork back to the United States.[79] A significant portion of U.S. pork exports are half-hog carcasses which are processed into value-added pork cuts, including by firms like the WH Group.[80] The adoption of Smithfield hog genetics and processing technologies could allow the company to reverse the global flow of pork products and begin the export of Chinese pork to the United States.[81] Currently, China is not eligible to export pork products to the United States, but in 2013, after years of pressure, USDA approved China to ship chicken from certain approved countries (like the United States and a few others) to be processed in China and then re-exported to the United States.[82] The USDA is now considering allowing the import of chickens sourced and slaughtered in China.[83] It seems likely that eventually China will apply to export pork to the United States, and since the WH Group could export Smithfield-branded processed pork products, it would be difficult to know whether the product was from U.S. or Chinese processing plants — an especially difficult problem with the repeal of U.S. country-of-origin meat labeling after a WTO dispute.

Erosion of state sovereignty to facilitate Chinese takeovers: Many states prohibit the foreign and/or corporate ownership of farmland, including some states where Smithfield subsidiaries operate hog farms, including Missouri.[84] The Missouri legislature promptly passed two bills that would have allowed foreign companies to own approximately 300,000 acres of farmland, essentially a waiver for the Smithfield's Murphy-Brown of Missouri, LLC (formerly Premium Standard Farms) hog production facilities in that state.[85] The Missouri governor vetoed both bills but the legislature overrode the veto, allowing foreign ownership of one percent of Missouri's farmland.[86] In 2015, Missouri enacted a bill eased by nearly $400,000 in Smithfield campaign contributions that allowed foreign firms and individuals to buy farmland through a U.S. subsidiary without notifying the state agriculture department, eviscerating the one percent limitation.[87]

In 2016, Nebraska overturned a long-standing ban on meatpacker ownership of livestock, a key element of Smithfield's hog production operations.[88] The legislation was largely pushed by Smithfield.[89] Smithfield made over 20 campaign donations to legislators, the governor and attorney general of Nebraska.[90] Nebraska was the last state to ban packer ownership, which

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[79] De la Merced and Barboza (May 29, 2013).
[80] Keefe, Lisa M. "Long-developing Smithfield deal to boost U.S. pork industry: Pope." May 29, 2013.
[81] Herzstein (June 1, 2013).
[82] Healy, Amber. "China moving closer to poultry equivalency." *Food Chemical News*. October 14, 2011; Wingfield, Brian and Shruit Date Singh. "Chicken processed in China triggers U.S. food safety protests." *Bloomberg News*. September 26, 2013.
[83] USDA. Food Safety and Inspection Service. Proposed Rule. "Eligibility of the People's Republic of China (PRC) for the importation into the United States of poultry products from birds slaughtered in China." RIN 0583-AD64. Fall 2016.
[84] Huffstutter, P.J. et al. "Exclusive: Smithfield deal may face state hurdles as Midwest laws eyed." *Reuters*. June 9, 2013.
[85] Baertlein, Lisa and P.J Huffstutter. "Missouri legislation may help Chinese Smithfield buy." *Reuters*. June 10, 2013.
[86] Baertlein, Lisa and P.J Huffstutter. "Missouri vetoes raise questions for Smithfield-China deal." *Reuters*. July 2, 2013; McDermott, Kevin. "Is Missouri's agricultural law being re-written in Hong Kong?" *St. Louis Post-Dispatch*. May 24, 2015.
[87] McDermott (2015).
[88] Gee, Kelsey. "Nebraska ends ban on meatpacking companies owning hogs." *Wall Street Journal*. February 13, 2016.
[89] Douglas, Leah. "Nebraska's livestock market faces death by big meat lobbying." *Fortune*. February 5, 2016.
[90] Schulte, Grant. "Lawmakers pass bill to end packer ban on meatpacker-owned hogs." *Associated Press State & Local*. February 5, 2016.

ensured that farmers could market or contract farmer-owned hogs to packers rather than raising Smithfield-owned hogs for a service fee. Nebraska Farmers Union president John Hansen noted, "the Legislature voted to help Chinese government-owned Smithfield Foods, Inc. take over hog production in Nebraska by allowing them to directly own the hogs. That vertically integrated packer-controlled system of one-sided take-it or leave-it contracts with no cash markets or competition is similar to the poultry system that has victimized broiler producers across the nation."[91]

The farmer protection legislation had persisted for years in Missouri and Nebraska even in the face of the pre-takeover Smithfield's opposition. Other state laws on corporate land ownership and county biotech crop cultivation bans could be vulnerable to this kind of foreign lobbying against local laws. The China-owned Smithfield seemed to exert greater pressure to overturn state laws than the big companies did before their takeover.

The food security and national security implications China's global food ambitions

Food security is a critical component of national security. The U.S. is fortunate in its current capacity to feed our nation and many others across the world. President Obama recognized that global food security is an important component of U.S. national security.[92] Senator Johnny Isakson (Oklahoma) noted that global food insecurity can impact U.S. national security because the "lack of access to affordable, nutritious food impacts not only developing nations' economies and productivity, but the international economy and U.S. national security."[93]

Major General Darren Owes (U.S. Army, Ret.) recently testified to Congress that "Without American agriculture providing adequate supplies of food and fiber at a reasonable cost we would all be dependent on other nations and that could place the food security and ultimately the security of the nation at risk."[94] These security implications are global. Maj. Gen. Owens further stated "A nation without food security has only one problem. That one problem has proven that it will escalate into many other problems destabilizing every aspect of an entire nation, and that impact can be felt on a global scale."[95]

The 2008 food crisis exacerbated food insecurity that undermined the tenuous civil stability in at least 33 countries.[96] Protests over the rapid escalation in food prices erupted across Africa, Latin America, the Caribbean, Asia and Eastern Europe.[97] In Africa, protests over food prices began in Senegal and Mauritania in late 2007 and spread to at least seven more countries. Demonstrators were killed in Senegal, Cameroon and Mozambique in 2008.[98] The Arab Spring uprising that

[91] Shaffer, Erica. "Nebraska approves packer-owned hogs." *Meat+Poultry*. February 8, 2016.
[92] President of the United States. National Security Strategy. May 2010 at 5, 33-34, 39, and 46-47.
[93] Sen. Isakson, Johnny. [Press release]. "Isakson, Casey introduce legislation to combat global hunger, bolster U.S. national security." May 7, 2015.
[94] Major General Owens, Darren G. (USA, Ret.). The Interrelationship of a Comprehensive Farm Policy to national Food Security and National Security. Statement before the Committee on Agriculture. U.S. House of Representatives. July 7, 2016 at 1.
[95] *Ibid*. at 12.
[96] "As food prices soar, U.N. calls for international help." *NewsHour with Jim Lehrer*, April 23, 2008
[97] "Factbox: Food price rises spark protests, hoarding," *Reuters*, May 2, 2008.
[98] Walt, Vivienne, "The world's growing food-price crisis." *Time*. February 27, 2008; *Reuters* (May 2, 2008).

ultimately contributed to the instability in Syria and beyond was both ignited and exacerbated by food insecurity and rising food prices throughout the region.[99]

Food security is a piece of our critical national security infrastructure. The Department of Homeland Security's 2003 National Strategy for Critical Infrastructures and Key Assets identified food and agriculture as a component of the critical infrastructure of the security of the United States. It specifically included crop production and seed, fertilizer and agrichemical supply chains in this critical infrastructure, stating, "the fundamental need for food, as well as great public sensitivity to food safety makes assuring the security of food production and processing a high priority."[100]

China's global food takeover strategy

Chinese agricultural investment in the United States is part of a strategy to lock up productive farmland, water and food processing assets worldwide to give China the global strength to be the driving force in food production. Experts expect China to pursue cattle, sheep and commodity crop assets in the future as agriculture replaces oil as the country's top takeover target.[101] In 2016, China announced that it aimed for its agricultural futures markets to be the "global pricing center for commodities."[102] The vice chairman of Cargill predicted that "China will be more integrated into the global commodities system on the agricultural side than they have ever been."[103]

The Chinese government and Chinese companies are aggressively purchasing farmland in the developing world to secure access to productive agricultural land and water resources.[104] Chinese sovereign wealth funds, Chinese government entities and Chinese companies have pursued or finalized more than 100 land deals in the developing world covering an estimated 5.2 million to 8.9 million acres between 2006 and 2014.[105] In Africa, there are at least one million Chinese farmers cultivating African land for export to the home country.[106] China's Cofco Corp. controls 90 percent of imported wheat and purchased two international commodity firms (Nidera Holdings from the Netherlands and Noble Holdings Ltd. from Singapore) that included Argentine grain elevators, Brazilian sugar mills, and Ukrainian and South African soybean crushing plants.[107]

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[99] Cambanis, Thanassis. "The Arab Spring was a revolution of the hungry." *Boston Globe*. August 22, 2015; Perez, Ines. "Climate change and rising food prices heightened Arab Spring." *ClimateWire*. March 4, 2013.
[100] Department of Homeland Security. National Strategy for the Physical Protection of Critical Infrastructure and Key Assets. February 2003 at 36.
[101] Haas, Benjamin and Yuriy Humber. "Food replacing oil as China M&A commodity of choice." *Bloomberg*. May 30, 2014.
[102] Thoma, Tom. "China sets sights on setting global grain prices." *Mason City (IA) Globe Gazette*. June 4, 2016.
[103] Haas and Humber (May 30, 2014).
[104] Cotula, Lorenzo et al. "Land Grab or Development Opportuinity?" UN Food and Agriculture Organization/International Fund for Agricultural Development/International Institute for Environment and Development." 2009; Kugelman, Michael and Susan L. Levenstein (eds.). "Land Grab? The Race for the World's Farmland." Woodrow Wilson International Center for Scholars. 2009.
[105] GRAIN. [Press release]. "GRAIN releases data set with over 400 land grabs." February 23, 2012; Land Matrix. Online Public Database on Land Deals. Available at http://www.landmatrix.org/en/get-the-detail/by-investor-country/china/?order_by=.
[106] Navarro, Peter and Greg Autry. *Death by China: Confronting the Dragon — A Global Call to Action*. Saddle River (NJ): Prentice Hall. 2011 at Chapter 7.
[107] Thakral, Naveen and Michael Flaherty. "China's Cofco to pay $1.5 billion for stake in Noble's agribusiness." *Reuters*. April 2, 2014; Haas and Humber (May 30, 2014).

Oceana has been a prime target for China's agricultural ambitions. China investors bought approximately $400 million in Australian farmland between 2012 and 2015.[108] In April 2016, Australia rejected an effort by China-based Dakang to purchase a cattle operation that covered one percent of the nation's land; by October another Chinese firm offered to purchase a 50 percent stake in the same cattle ranch, which is still pending approval.[109] In 2016, a Chinese state-owned dairy company was the majority investor in a new $140 million milk processing plant in New Zealand to supply China with milk powder for infant formula.[110]

China has also aggressively pursued food processing. In 2013, Chinese investors bought $12.3 billion in global food, beverage and agricultural assets (including the Smithfield purchase) — the highest single year total purchase in a decade.[111] The state-owned enterprise Bright Food Group already owns the formerly British food manufacturer Weetabix and since 2014 has purchased a 50 percent stake in New Zealand's largest meatpacker and a controlling stake in Israel's largest dairy.[112] In late 2016, Bright Food announced it would sell Weetabix as global demand for breakfast cereal continued to slump, but Bright continued to pursue acquisition targets in the United States, Europe, Australia and New Zealand.[113]

The Smithfield and Syngenta mega-mergers with U.S. assets have broader, global food implications. The Smithfield takeover included agricultural and food processing assets outside the United States — Smithfield owns 7 hog processing plants and 227,000 hog producing sows in Mexico, Romania and Poland.[114] Syngenta operates in 90 countries across the world and ChemChina is the world's largest generic herbicide and insecticide producer with products and patents in 120 countries, suggesting the reach of its fertilizers and other agrichemical businesses.[115] Not only is Syngenta a global agrichemical firm, ChemChina had already purchased a French food ingredients company (Adisseo) and an Israeli pesticides manufacturer.[116]

By investing in agribusinesses, farmland and food processing, China and Chinese investors are increasing the nation's role on the global food landscape and providing a stronger and potentially more destabilizing impact on global food security. University of California, Irvine professor Peter Navarro wrote that "China's resource acquisition lockdown strategy is nothing more than a thinly disguised *de facto* embargo on natural resource access imposed on the rest of the

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[108] Cranston, Matthew, Angus Grigg and Lisa Murray. "Chinese investors heat up Australian farm buying spree." *Australian Financial Review*. September 27, 2015.
[109] Rapoza, Kenneth. "China stopped from buying 1% of Australia." *Forbes*. April 22, 2016; Ough, Tom. "Will Chinese have to ride into the sunset?" *Daily Telegraph (UK)*. October 31, 2016.
[110] Gray, Jamie. "Plans for new $200m dairy plant unveiled." *New Zealand Herald*. July 18, 2016; Federal Reserve Board. Foreign Exchange Rates. G.5A Annual. January 4, 2017.
[111] Haas and Humber (May 30, 2014).
[112] "Bright Food said to prepare IPO of $1 billion distribution arm." *Bloomberg News*. October 29, 2015; "China's Bright Food Group to buy 50% stake in New Zealand meat processor." *Reuters*. September 15, 2015; Astley, Mark. "Bright Food to acquire controlling stake in Israeli dairy Tnuva." *Dairy Reporter*. May 26, 2014.
[113] Daneshkhu, Scheherazade. "Weetabix set for sale by China's Bright Food." *Financial Times*. December 22, 2016; Ren, Daniel. "Bright Food stays on global acquisition push." *South China Morning Post*. October 26, 2016.
[114] Smithfield Foods. SEC 10-K filing. July 31, 2012 at 13, 24 to 25; "Top 25 U.S. Pork Powerhouses 2012." *Successful Farming*. December 2012.
[115] Syngenta Annual Review 2015 at iii; ChemChina. Products & Services. Agrochemicals. Available at http://www.chemchina.com.cn/en/cpyfw/ywbk/nyhx/A60180104web_1.htm. Accessed July 2016.
[116] *Associated Press* (March 26, 2016); Wyant (February 3, 2016).

world."[117] By controlling farm and food resources China is exacerbating the food insecurity in the investment areas. This can considerably contribute to civil instability during time of agricultural crises like drought, pestilence, disease or other production downturns that are becoming more frequent with climate change.

Current review of Chinese investments inadequate to assess national and economic security implications

Chinese acquisitions of U.S. farm and food assets are reviewed by the Committee on Foreign Investment in the United States (CFIUS). The statutes and regulations that govern the CFIUS review are appropriately targeted at assessing the national security implications of any foreign investment, but the apparent narrowness of this focus will miss legitimate national and economic security concerns, including the impact on U.S. food security and global food insecurity and civil instability.

CFIUS's mandate provides an open-ended and broad consideration of national security screening for proposed foreign direct investments.[118] CFIUS applies this consideration to "genuine national security concerns alone."[119] CFIUS is directed to "determine the effects of the transaction on the national security of the United States."[120] CFIUS must consider the "nature of the U.S. business" and whether a proposed deal "creates susceptibility to impairment of national security" and the "potential consequences" of that vulnerability.[121] The CFIUS national security review considers whether the foreign purchaser "might take action that threatens to impair U.S. national security" and has the capacity or intent to cause harm.[122] This is especially true for state-owned enterprises from foreign governments with a record of "other national security-related matters."[123]

The CFIUS review process completely lacks transparency and all parties are guaranteed total confidentiality.[124] The opaque nature of the CFIUS review makes it impossible to know what factors are considered, how various concerns are weighted and how the determination to approve or reject an investment is made. CFIUS does not comment on ongoing reviews, or even confirm whether a cross-border investment deal is being reviewed.[125]

The investments CFIUS has blocked or allowed with mitigation (either divestiture or behavioral remedies) suggest that there are two primary concerns that the Committee takes most seriously: an investment's proximity to U.S. military or classified assets that could pose a security risk and investments that touch upon certain technologies that could be transferred to the acquiring country. CFIUS mitigation agreements typically regulate the buyer's access to potentially

[117] Navarro and Autry (2011) at Chapter 7.
[118] Moran (2015) at 3.
[119] Department of the Treasury. Office of Investment Security. Regulations Pertaining to Mergers, Acquisitions, and Takeovers by Foreign Persons. 31 CFR Part 800. 73 Fed. Reg. 226. November 21, 2008 at 70705.
[120] 50 USC App. §2170(b)(1)(A).
[121] 73 Fed. Reg. 236 at 74569.
[122] *Ibid*.
[123] *Ibid*. at 74571.
[124] Browning (June 14, 2016); Solomon, Steven Davidoff. "Chinese deals feel the chill from Washington." *New York Times*. February 23, 2016.
[125] Browning (June 14, 2016).

sensitive information.[126] All of the 2014 mitigation measures were related to takeovers of software, technology and services industries.[127] The unconditional approval of the Syngenta takeover suggests that CFIUS did not consider the agricultural technology sufficient to warrant divestitures or other mitigations.

CFIUS appropriately gives close scrutiny to the proximity of the targeted investment to U.S. military facilities.[128] CFIUS reports "that foreign governments are extremely likely to continue to use a range of collection methods to obtain critical U.S. technologies."[129] This remains among CFIUS' primary concerns.[130]

CFIUS has denied or modified cross-border mergers that targeted firms with facilities close to military installations. In 2012, CFIUS blocked the sale of a U.S. windfarm to a Chinese company because it abutted the airspace of a Naval Weapons Systems Training Facility.[131] In 2013, a Chinese firm dropped its proposed purchase of a 60 percent stake in a U.S. mining company because during the pre-filing negotiations, CFIUS purportedly required the divestiture of certain assets near U.S. military facilities.[132] In 2013, CFIUS forced the Chinese state-owned oil company to divest oil platforms and oil leases in the Gulf of Mexico owned by takeover target Nexen because of proximity to the U.S. Naval Air Station in Belle Chase, Louisiana.[133] It is worth noting that most military facilities are in rural areas and so are most agricultural assets.

CFIUS technology transfer assessment does not appear to recognize import of agricultural technology

Although the CFIUS statute addresses cross-border mergers that involve critical technologies, the review appears focused on technologies with obvious military, telecommunications or computational applications. But cross-border deals that transfer agricultural technologies should also receive close scrutiny. Deals like the proposed ChemChina-Syngenta deal could make other U.S. firms and farms more susceptible to commercial espionage. U.S. authorities have identified a pattern of Chinese nationals attempting to steal patented seed technology. In 2016, a Chinese businessman plead guilty to stealing patented corn seeds.[134] In 2013, two Chinese scientists were indicted for stealing patented rice seeds.[135] The FBI and Justice Department have stated that cases of espionage in the agriculture sector have been growing and U.S. companies, government research facilities and universities have all been targeted.[136] The patented corn trade secrets case implicated a Chinese state-owned enterprise.[137]

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[126] Skadden, Arps, Slate, Meagher & Flom LLP & Affliates (Skadden). "National security reviews of foreign investments in US businesses show no signs of slowdown in 2014." *Insights*. 2014.
[127] Committee on Foreign Investment in the United States (CFIUS). "Annual Report to Congress." Calendar Year 2014. February 2016 at 23.
[128] Held (2016).
[129] CFIUS (2016) at 32.
[130] Skadden (2014).
[131] Moran, Theodore H. Peterson Institute for International Economics. "Chinese Investment and CFIUS: Time for an Updated (and Revised) Perspective." No. PB15-17. September 2015 at 6.
[132] Skadden (2014).
[133] Penty, Rebecca and Sara Forden. "CNOOC said to cede control of Nexen's U.S. Gulf assets." *Bloomberg*. March 1, 2013.
[134] Rodgers, Grant. "Chinese businessman gets deal in seed theft case." *Des Moines Register*. January 27, 2016.
[135] Rodgers, Grant. "FBI treats trade secrets as a national security issue." *Des Moines Register*. March 29, 2015.
[136] Edwards, Julia. "In Iowa corn fields, Chinese national's seed vulnerability." *Reuters*. April 11, 2016.
[137] Rodgers (January 27, 2016).

CFIUS should scrutinize transactions that effectively transfer advanced, confidential or sensitive information to foreign companies or foreign state-owned enterprises.[138] The ChemChina takeover of Syngenta would include its portfolio of high-tech agrichemicals, including pesticides, crop protection products, seeds and advanced fertilizers.[139] Syngenta is "a leading player in seed treatment and genetically modified traits," has the "highest rate of trait innovation in the industry" and its research is "unique in combining chemistry, genetics, breeding and computational science to develop new products and solutions."[140]

Theoretically, the statute and regulations direct CFIUS to consider the national security implications of technology transfers which include "select agents and toxins" among critical technologies acquired by foreigners to receive special scrutiny.[141] The CFIUS regulations refer to federal statutory provisions that include biotechnology products and other research among these agents and toxins, explicitly listing genetic elements, recombinant and/or synthetic nucleic acids, and recombinant and/or synthetic organisms in the cross-referenced statutes.[142] CFIUS should more closely assess the impact of cross-border mergers that transfer agricultural technologies.

CFIUS should consider takeover effects on the food supply as "critical infrastructure"

Foreign investments in food, farm and agricultural assets could disrupt the critical infrastructure and systems of the U.S. food supply, agricultural land and rural economies. The CFIUS statute identifies transactions that would create national security risks from the foreign control of critical infrastructure. The Foreign Investment and National Security Act of 2007 (FINSA) regulations define critical infrastructure as any "system or asset" that is "so vital to the United States that the incapacity or destruction of the particular asset" by the foreign purchasing company "would have a debilitating impact on national security."[143] Moreover, the statute gives CFIUS wide latitude to consider cross-border purchases that deliver "the control of domestic industries and commercial activity by foreign citizens as it affects the capability and capacity of the United States."[144]

There are security concerns in FINSA that potentially include the impact of takeovers of food and agricultural assets. The law requires CFIUS to take into account the potential impact on domestic production to meet domestic military requirements.[145] The Smithfield and Syngenta deal represent significant portions of the food supply — one fourth of the pork and about 10 percent of soybean and corn production. These products end up in military mess halls and PX retailers. And both the Smithfield and Syngenta takeovers included facilities within ten miles of significant military facilities, but CFIUS approved both deals.

Currently, CFIUS does not appear to consider agriculture or the food system a critical infrastructure asset. CFIUS unconditionally approved the Smithfield and Syngenta takeovers

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[138] Skadden (2014).
[139] *Associated Pres*s (March 26, 2016).
[140] Syngenta Annual Review 2015 at 8 to 10.
[141] Referencing 7 CFR §331 and 9 CFR §121; CFIUS (2016) at 37 and 38.
[142] 7 CFR §331.3(c); 9 CFR §121.3(c); 42 CFR §73.3(c).
[143] §800.208. 73 Fed. Reg. 226. November 21, 2008; 50 USC App. §2170(a)(6).
[144] 50 USC App. §2170(f)(3).
[145] 50 USC App.2170(f)(1-2).

despite the central role these two firms play in agricultural production, the food supply and the rural economy in the United States. Food & Water Watch believes that the integrity of the food supply and food security should properly be considered part of both a critical infrastructure system and a domestic industry that could affect the capability of the United States.

Australia's review of cross-border investments allows a broader review of potential mergers on economic security and well-being. In 2013, Australia blocked the proposed Archer Daniels Midland (ADM) $2 billion takeover of Australia's GrainCorp because it would disrupt the domestic grain supply.[146] GrainCorp controlled three-quarters of Western Australia's grain marketing and the purchase would have impeded farmers access to markets, storage and distribution.[147] One farm organization stated that GrainCorp essentially had a monopoly on infrastructure, and foreign ownership would have "distorting impacts" on the industry.[148] When Australia's investment committee (akin to CFIUS but with a mandate broader than national security alone) deadlocked on the ADM takeover bid, Australia's Treasurer determined that the purchase was not in the public interest and stopped the deal.[149]

The CFIUS statute and regulations should be amended to include a more encompassing assessment of national security, critical infrastructure and effects on the capacity and capability of the United States. In 2016, Senator Chuck Grassley (Iowa) introduced legislation to strengthen the CFIUS review of foreign investment that could undermine food security. The Securing American Food Equity (SAFE) Act would ensure that the Secretary of U.S. Department of Agriculture was permanently included in the CFIUS review process and specify that agricultural assets were included in the definition of critical national security infrastructure.[150] Food & Water Watch supports this commonsense clarification of CFIUS to more appropriately address the unique aspects of cross-border farm and food mergers.

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China's investment in U.S. farm, food and agricultural assets poses unique challenges. Unlike other cross-border investments into the United States, takeovers by Chinese private and state-owned enterprises further a strategy to develop food export platforms and secure agricultural technology for the Chinese market. Investments that are designed to extract agricultural economic value inherently distort the U.S. farm economy and food supply as well as undermine domestic and global food security. As a result, these cross-border food and farm investments warrant much closer scrutiny by federal regulators who should consider food and farm assets as part of critical infrastructure and weigh the impacts of an acquisition on the capability of the United States.

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[146] Scott, Jason and Behrmann, Elisabeth. "ADM's $2 billion GrainCorp bid blocked by Australia." *Bloomberg*. November 29, 2013; Gough, Neil and Matt Siegel. "Australia Blocks A.D.M.'s $2.7 Billion Bid for GrainCorp." *New York Times*. November 28, 2013.
[147] Gough and Siegel (2013).
[148] McRobert, Katie. "A 'David and Goliath' win." *Farm Weekly*. November 30, 2013.
[149] Scott, Jason and Behrmann, Elisabeth. "ADM's $2 billion GrainCorp bid blocked by Australia." *Bloomberg*. November 29, 2013.
[150] S. 3161. Securing American Food Equity (SAFE) Act. 114th Congress. July 12, 2016.