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U.S. review of foreign acquisitions gets a second look with Smithfield deal

By [Rhyan Kronzer](#) | August 15, 2013

WASHINGTON – The role of the Committee on Foreign Investment in the United States (CFIUS) is in the spotlight with the pending purchase of Smithfield Foods Inc. by Shuanghui International Holdings Ltd.

Interest groups, select congressmen and foreign relations experts are calling for a deep investigation by the committee in the name of national security and public health.

“Food security is a part of national security. It is not just about the company being near a military base...this acquisition would be setting a precedent” in that it would pave the way for future Chinese acquisitions of American food companies said Usha Haley, professor of management and director of the Robbins Center for Global Business and Strategy at West Virginia University.

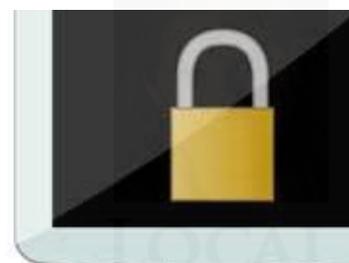
Any possible acquisition of an American company by a foreign firm is subject to an investigation by the investment committee that will determine if the transaction is a threat to the security of the U.S. and its interests here and abroad.

Virginia-based Smithfield is the world’s largest pork producer, controlling 15 percent of pork production and 26 percent of processing in the U.S. Given the size of this pending acquisition, industry experts have become vested in the approval process. Some worry that an approved acquisition will result in lowered safety standards and compete with other American pork producers exporting to countries like Japan.

“The costs of the acquisition far outweigh the benefits to Americans, and the security of our domestic food system is threatened by foreign

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control,” said Roger Johnson, president of the National Farmers Union in a letter to CFIUS chair and U.S. Secretary of the Treasury, Jack Lew.

“The purchase puts the full economic force of China into a single pork company in the United States,” Johnson said. “Our nation’s food security, economic power, competitive agricultural market and technological advances are threatened by this and future cross-border purchases of major agricultural companies.”

Some members of Congress have voiced concern over the economic aspects of the pending deal, including Sen. Debbie Stabenow, D-Mich., chairwoman of the Senate agriculture committee.

“Despite the strength of America’s pork sector, Smithfield has been struggling to make a profit—and yet Shuanghui is offering to pay a 30 percent premium for the company. That, to me, raises questions about the economic motivations of the purchase,” Stabenow said at a Senate agricultural committee hearing last month.

“We need to evaluate how foreign purchases of our food supply will affect our economy broadly, and frankly, whether there is a level playing field when it comes to these kinds of business purchases,” Stabenow said.

But some industry experts assert that foreign acquisitions are a crucial part of today’s global economy and necessary for strengthening ties between the U.S. and China.

“A smooth Smithfield purchase would send a valuable signal to China and to the broader world that the United States welcomes such investment at a time where that investment is especially needed,” said Matt Slaughter, professor of management at the Tuck School of Business at Dartmouth.

The \$7.1 billion Smithfield Foods acquisition, which includes existing company debt, would be the largest Chinese acquisition in U.S. history. The committee has opposed past efforts by Chinese companies to merge with or acquire U.S. enterprises.

In 2009, Chinese company Northwest Nonferrous International Investment Corp. attempted to buy U.S.-based Firstgold Corp. The transaction was withdrawn by the Chinese company after the U.S. Department of Treasury objected, claiming Firstgold properties were too close to military bases.

set for Oct. 17-18 in Washington, DC. Events are planned for the 17th at Medill’s DC newsroom, with sessions the next day at the Rayburn Office Building. Updates will be posted [at MRE’s site](#).

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In 2012, another Chinese investment corporation withdrew its proposed acquisition of fiber optics and solar panel component producer Emcore Corp. citing regulatory concerns, according to a report by the Congressional Research Service.

Negative publicity that stems from a CFIUS investigation can be enough to deter many firms from continuing with a pending merger. According to the Congressional Research Service report, nearly half of the transactions investigated by CFIUS since 1990 have been terminated by the firms involved to avoid a negative decision.

The committee is chaired by the Secretary of the Treasury and includes members of the U.S. departments of justice, defense, commerce, homeland security, state, energy, science and technology policy and the office of the U.S. Trade Representative.

The Office of Management and Budget, Council of Economic Advisors, National Security Council, National Economic Council and Homeland Security Council also participate in committee activities when appropriate.

“The CFIUS statute stipulates that certain Cabinet members be a member of CFIUS,” said James Jackson, international trade and finance specialist. “In most cases, this responsibility is delegated to someone lower in rank than the Secretary level.”

The committee was first established by President Gerald Ford in 1975 in answer to Congress’ growing concern over the purchases of American assets by the Organization of the Petroleum Exporting Countries (OPEC). Concern stemmed from the belief that OPEC’s purchasing of corporate stocks, bonds and treasury securities was political rather than economic.

The 1988 Exon-Florio provision gave then- President Ronald Reagan authority to block pending mergers or acquisitions that his administration concluded posed a threat to national security. However, Congress stipulated that the President must provide credible evidence that national security is threatened and prove that “other U.S. laws are inadequate or inappropriate to protect national security,” according to the Congressional Research Service report.

The committee operated under the radar until 2006 when the proposed purchase of commercial port operations by Dubai Ports World sparked controversy within Congress. In light of the Sept. 11, 2001 attacks, lawmakers argued that the role of the committee needed to adapt to changing economic and national security concerns.

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The 110th Congress approved measure P.L. 110-49 that broadened the definition of national security, sanctioned greater oversight of the committee by Congress and required increased analysis by the committee on certain types of direct foreign investments.

The hesitation to approve Chinese acquisitions of American companies has continued into 2013 with the \$20 billion purchase of Sprint Nextel by Japanese firm SoftBank Corp. Complication arose with Sprint's acquisition of Clearwire Corp., which relied on the Chinese company Huawei Technologies Co., Ltd. as a supplier.

The Smithfield Foods acquisition faces an uphill battle with the deal currently being investigated by CFIUS. Long-term implications of the deal are a main concern for the opposition while supporters, such as the North American Meat Association, voice concern over the government's control of such deals.

"Foreign ownership of companies does not exempt these U.S. operations from full compliance with both the food safety and workplace laws of the U.S. It is not appropriate for lawmakers to try to carve out some special new law to impede the legal operations of such corporations," the association said.

Foreign acquisition deals undergo an initial 30-day review process, then can either be approved or move into an extended, second phase at the request of CFIUS.

The Smithfield deal will be entering a second, 45-day phase of review this month with both Shuanghui and Smithfield expecting the deal to be completed by the end of 2013 company officials said in a July 24 statement.

"This is the point at which most investment transactions are halted by mutual consent of the parties involved," Jackson said. "It is anyone's guess if that will happen in this case, but it would surprise me if Shuanghui voluntarily withdrew."

By Rhyan Kronzer | Posted on August 15, 2013 | Comments Off



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