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Selected Recent Actions Involving Foreign Ownership and Investment in U.S. Food and Agriculture: In Brief

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The 118th Congress has continued to debate the appropriate role of foreign ownership and investment in the U.S. food and agriculture sector. Some in Congress view foreign ownership and investment in the U.S. food and agriculture sector as a potential national security threat and maintain that additional restrictions and monitoring may be needed to prevent certain foreign adversaries from gaining an advantage over U.S. capabilities and resources.¹ Some Members of Congress have introduced legislative proposals to restrict foreign ownership of U.S. agricultural land and to require additional U.S. government scrutiny and oversight of foreign investment and ownership in the U.S. food and agriculture sector. Congress has continued to debate a range of policy options and has enacted additional reporting requirements for the U.S. Department of Agriculture (USDA) related to foreign ownership of U.S. agricultural land, as reflected in annual appropriations directives and other congressional actions.² Other proposed legislative changes would enhance U.S. government oversight and expand the current membership of the interagency Committee on Foreign Investment in the United States (CFIUS) to include USDA and other agencies.³

Selected Legislative Efforts to Amend Existing Authorities

Some Members of Congress have introduced a series of bills that would amend existing federal law to impose additional requirements on and review of foreign ownership of U.S. agricultural land and/or foreign investment in the U.S. food and beverage industry. Many of these bills build on or reintroduce legislative proposals considered in the 117th Congress. Introduced bills broadly fall into four categories and span oversight involving USDA and other federal agencies. Legislative proposals in the 118th Congress include the following:

- **Tighten USDA Foreign Investment Disclosure Requirements.** Current USDA disclosure requirements under the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA; P.L. 95-460; 7 U.S.C. §§3501-3508) provide that “any foreign person who acquires or transfers any interest, other than a security interest, in agricultural land” submit a report to USDA within 90 days after the date of such acquisition or transfer. USDA tracks this information and reports data annually to Congress.⁴ Bills in the 118th Congress that would amend AFIDA include H.R. 344, H.R. 809, H.R. 1789, H.R. 3357/S. 926, S. 1136, S. 1066, H.R. 6469/S. 2382, and H.R. 5078/S. 2060. Generally, the bills seek to update USDA’s disclosure requirements (including who is required to report), increase penalties for failure to disclose, and require additional reporting and analysis by USDA, among other changes.
- **Restrict Access to USDA Farm Support Programs by Foreign Persons and Entities.** Current restrictions apply to foreign persons under some USDA

¹ See, for example, comments during U.S. Congress, Senate Committee on Agriculture, Nutrition, and Forestry, *Foreign Ownership in U.S. Agriculture*, hearing, 118th Cong., 1st sess., September 27, 2023.

² For more background, see CRS In Focus IF11977, *Foreign Ownership and Holdings of U.S. Agricultural Land*, and CRS In Focus IF12312, *Foreign Ownership of U.S. Agriculture: Selected Policy Options*.

³ For more background on the Committee on Foreign Investment in the United States (CFIUS), see CRS In Focus IF11684, *China’s 14th Five-Year Plan: A First Look*, CRS In Focus IF12415, *CFIUS Executive Order on Evolving National Security Risks and CFIUS Enforcement Guidelines*, and CRS In Focus IF10177, *The Committee on Foreign Investment in the United States*.

⁴ U.S. Department of Agriculture (USDA) annual reports are available at <https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida/index>.

programs but not others.⁵ For example, current law imposes no specific eligibility restrictions on foreign persons for crop and livestock insurance premium subsidies; however, foreign persons are not eligible for Supplemental Disaster Assistance. Foreign persons (other than registered aliens) must meet certain criteria to receive USDA commodity and conservation program benefits. Recipients of most USDA loans must be a U.S. citizen, noncitizen national, or a qualified alien; recipients of most USDA grants must be domestic entities owned, operated, and located within the United States and U.S. territories. Bills in the 118th Congress that would further limit access to USDA programs include H.R. 3357/S. 926 and S. 1066.

- **Expand Federal Review of Foreign Investment Transactions.** Current membership of the interagency CFIUS, as governed by Section 721 of the Defense Production Act of 1950 (DPA; 50 U.S.C. §4565), does not include the Secretaries of USDA or the Department of Health and Human Services, among other officials.⁶ Bills in the 118th Congress that would expand CFIUS membership or CFIUS review of transactions in the U.S. food and agriculture sectors include H.R. 513/S. 68, H.R. 558, H.R. 683/S. 168, H.R. 917/S. 369, H.R. 1448, H.R. 3378, H.R. 4577, S. 1066, S. 2312, S. 3077, and H.R. 5078/S. 2060.
- **Prohibit U.S. Agricultural Land Purchases by Certain Foreign Adversaries or Establish Other Restrictions.** Current federal law imposes no restrictions on the amount of private U.S. agricultural land that can be foreign-owned. Bills in the 118th Congress that would establish additional restrictions include H.R. 212, H.R. 344, H.R. 683/S. 168, H.R. 809, H.R. 840, H.R. 917/S. 369, H.R. 1448, H.R. 3357/S. 926, S. 684, and S. 1136.

In September 2023, the Senate Agriculture Committee conducted a hearing, *Foreign Ownership in U.S. Agriculture*.⁷ The hearing highlighted a range of concerns but focused on China's foreign investment strategy. Some claim that China has shifted its strategy since the early 2000s to now include the acquisition of U.S. agribusinesses, highlighting the need to monitor and evaluate industry consolidation, further business acquisitions, and concerns surrounding intellectual property in the agri-food sector.⁸ A USDA representative testified that some at USDA agree the Department should be a CFIUS member while noting that USDA currently serves in an ad-hoc role and shares information with CFIUS when called upon. The representative further noted that USDA has not received funding from Congress to be able to implement its efforts to modernize its data collection process under AFIDA.⁹

⁵ See USDA, "Foreign Persons: Frequently Asked Questions," https://www.fsa.usda.gov/programs-and-services/payment-eligibility/foreign_persons/index, and USDA, "Payment Eligibility and Payment Limitations," fact sheet, April 2021, <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/FactSheets/payment-eligibility-limitations-factsheet.pdf>. See also CRS Report R46248, *U.S. Farm Programs: Eligibility and Payment Limits*.

⁶ See CRS In Focus IF10177, *The Committee on Foreign Investment in the United States*. Background on CFIUS is available at U.S. Department of the Treasury, "The Committee on Foreign Investment in the United States (CFIUS)," <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

⁷ U.S. Congress, Senate Committee on Agriculture, Nutrition, and Forestry, *Foreign Ownership in U.S. Agriculture*, hearing, 118th Cong., 1st sess., September 27, 2023.

⁸ *Ibid.* Comments from Harrison Pittman, Director of the National Agricultural Law Center, University of Arkansas.

⁹ *Ibid.* Comments from Gloria Montañó Greene, Deputy Under Secretary Farm Production and Conservation, USDA.

Opportunities for the House and Senate Agriculture Committees to take up foreign ownership of U.S. agricultural land as part of farm bill reauthorization remain unclear. Congress may separately consider legislative changes to USDA or other federal agency authorities as separate stand-alone actions outside the farm bill.

Selected Directives in Agriculture Appropriation Acts

Congress has enacted provisions in previous agriculture appropriations acts regarding foreign ownership of U.S. agricultural land and its possible impacts on the U.S. food and agricultural industries.

- The FY2023 Consolidated Appropriations Act (P.L. 117-328, §773) required USDA to report on the impact of foreign investments in U.S. agricultural land on “family farms, rural communities, and the domestic food supply.” It also directed USDA to establish within three years a “streamlined process for electronic submission and retention of disclosures,” including an “internet database” with “disaggregated data from each disclosure submitted” under AFIDA.
- The FY2022 Consolidated Appropriations Act (P.L. 117-103) explanatory statement directed USDA to report on trends related to land owned or partially owned by the governments of China, Russia, Iran, or North Korea, as well as “the potential impacts caused by such foreign ownership on the American agricultural sector, food security, and rural economies.”¹⁰

The House-reported and Senate-passed FY2024 Agriculture appropriations bills also included related provisions. The committee report accompanying the Senate-reported FY2024 bill (S. 2131) expressed congressional concerns that USDA has failed to assess penalties for a failure to disclose foreign investments in U.S. agricultural land under AFIDA. The report also directed USDA to report back on its efforts to “ensure that foreign investments are being accurately disclosed, including an analysis of any barriers USDA faces in conducting oversight of these purchases and planned steps for overcoming these challenges.”¹¹

The House-reported FY2024 bill (H.R. 4368) included two provisions regarding foreign ownership of U.S. agricultural land. Section 747 included language similar to that in the FY2023 act clarifying that USDA has two years to establish a “streamlined process for electronic submission and retention of disclosures” under AFIDA. Section 765 directed USDA to “take such actions as may be necessary to prohibit the purchase of agricultural land located in the United States by non-resident aliens, foreign businesses, or any agent, trustee, or fiduciary associated with Russia, North Korea, Iran, or the Communist Party of China.” These concerns were reiterated in House committee report language that is the same as the Senate’s report language on

¹⁰ U.S. Congress, House Committee on Appropriations, *Provisions Applying to All Divisions of the Consolidated Appropriations Act*, 117th Cong., 2nd sess., H. Comm. Print 47-047, <https://www.govinfo.gov/content/pkg/CPRT-117HPRT47047/pdf/CPRT-117HPRT47047.pdf>.

¹¹ U.S. Congress, Senate Committee on Appropriations, *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2024*, report to accompany S. 2131, 118th Cong., 1st sess., S.Rept. 118-44, June 22, 2023.

the issue.¹² The House-reported bill failed to pass the House,¹³ the status of the FY2024 provisions and the report language remains pending.

Proposed Changes in FY2024 National Defense Authorization Act

Congress considered but ultimately did not adopt as part of the National Defense Authorization Act [NDAA] for Fiscal Year 2024 (P.L. 118-31) provisions that would have established additional requirements related to potential national security threats related to foreign-owned agricultural land. The House-passed NDAA provisions would have required the Department of Defense, in conjunction with USDA, to submit a report to Congress on the national security threats of foreign-owned agricultural land located within 50 miles of a U.S. military installation (H.R. 2670, §1868). The Senate-passed NDAA provision (S. 2226, §1086) would have required review of certain foreign-tied agriculture-related transactions by CFIUS and would have established certain prohibitions on transactions made by certain foreign countries and entities tied to these countries with respect to U.S. agricultural companies and real estate (P.L. 81-774, 50 U.S.C. §§4501 et seq.).¹⁴ The conference report did not explain why the enacted law did not adopt either the House-passed or the Senate-passed provision.¹⁵

House Select Committee Recommendations Involving Agriculture

In January 2023, the House established the House Select Committee on Strategic Competition between the United States and the Chinese Communist Party (H.Res. 11) to address concerns about China’s “escalating aggression” and possible economic coercion. Some Members of the House Select Committee have expressed their intention to address concerns regarding People’s Republic of China (PRC) ownership of U.S. farmland focused on U.S. competition with China. For example, at a February 2023 House Select Committee hearing, some Members highlighted concerns about U.S. agricultural land purchases that are in close proximity to national security assets and about food security as a national security concern.¹⁶

In December 2023, the House Select Committee released a series of recommendations in its report, *Reset, Prevent, Build: A Strategy to Win America’s Economic Competition with the Chinese Communist Party*.¹⁷ The report recommends that Congress enact legislation that would codify USDA as a “voting member of CFIUS for cases that involve farmland or agriculture

¹² U.S. Congress, House Committee on Appropriations, *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Bill, 2024*, report to accompany H.R. 4368, 118th Cong., 1st sess., H.Rept. 118-124, June 27, 2023.

¹³ House of Representatives Roll Call vote number 408: <https://clerk.house.gov/Votes/2023408>. See CRS Insight IN12158, *FY2024 Agriculture Appropriations: Status and Scope*.

¹⁴ The Senate provision was added as a floor amendment (S.Amdt. 813 to S.Amdt. 935). Senate Roll Call vote number 197: https://www.senate.gov/legislative/LIS/roll_call_votes/vote1181/vote_118_1_00197.htm.

¹⁵ U.S. Congress, Conference Committee, *National Defense Authorization Act for Fiscal Year 2024*, conference report to accompany H.R. 2670, 118th Cong., 1st sess., H.Rept. 118-301, December 6, 2023, p. 1331. For other related background, see *World Trade Online*, “Schumer Blasts House GOP for Blocking China-Focused Measures in NDAA,” December 5, 2023.

¹⁶ U.S. Congress, House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, *The Chinese Communist Party’s Threat to America*, hearing, 118th Cong., 1st sess., February 28, 2023. Hearing transcript is available at <https://docs.house.gov/meetings/ZS/ZS00/20230228/115402/HHRG-118-ZS00-Transcript-20230228.pdf>.

¹⁷ U.S. Congress, House Select Committee on the Strategic Competition Between the United States and the Chinese Communist Party, *Reset, Prevent, Build: A Strategy To Win America’s Economic Competition With the Chinese Communist Party*, December 12, 2023, pp. 14-15.

technology and allow the Secretary of Agriculture to flag potentially problematic land purchases for CFIUS review.”¹⁸

The House Select Committee report also presents a series of recommendations related to biotechnology, which could involve agricultural biotechnology. For example, the report recommends Congress enact “authorities to allow the President to ban technology products and services critical to national security from the U.S. market if they are owned, controlled, or developed by a foreign adversary” and “prevent U.S. government funds, including loans or grant funds, from being used to reimburse the use or purchase of biotechnology machines, products, and services” from certain PRC- affiliated biotechnology entities and subsidiaries.¹⁹ The report also recommends requiring the executive branch to “quickly establish general controls on critical and emerging technology to foreign adversaries” including biotechnology, and requiring the Department of State (through the Multilateral Action on Sensitive Technologies group, in coordination with the Department of Commerce) to “negotiate expanded multilateral controls on biotechnology” among other technologies.²⁰ The report further recommends providing federal funding for research that prioritizes “technologies that have implications for U.S. national security and supply chain security, including but not limited to biotechnology” and other technologies.²¹

Other language in the report raises concerns among some other Members and industry that such actions, if approved by Congress, could alter the U.S. trade relationship with China because of how the PRC might retaliate against U.S. industry in response to certain provisions.²² Specifically, in anticipation of potential PRC trade retaliation, the report notes the potential need for USDA and the Office of the United States Trade Representative to “collaborate to determine alternative market access for agriculture exports” that predominately rely on the China market. In response, several farm groups sent a letter to the House Select Committee leadership expressing concerns that the House Select Committee report language might result in Congress enacting legislation to repeal China’s Permanent Normal Trade Relations status,” which they claim would negatively impact U.S. agriculture exports.²³

Forthcoming GAO Report on AFIDA

In October 2022, Members of the House Agriculture Committee tasked the Government Accountability Office (GAO) with conducting a review of AFIDA, of foreign investment in U.S. agricultural land and its impacts, and of U.S. government efforts to monitor these farmland acquisitions.²⁴ To date, GAO’s report has not been published. The 2022 letter to GAO outlined a

¹⁸ Ibid., p. 31.

¹⁹ Ibid., p. 23.

²⁰ Ibid., p. 29 and p. 30, respectively.

²¹ Ibid., p. 36.

²² See, for example, Doug Palmer and Gavin Bade, “House Select Committee Finalizes China Trade and Economic Recommendations,” *Politico*, December 12, 2023.

²³ Letter to Representatives Mike Gallagher and Raja Krishnamoorthi from several farm groups, December 12, 2023, <https://www.agri-pulse.com/ext/resources/2023/12/11/Farm-Groups-Warn-Impacts-PNTR-12.12.23.pdf>. The letter cites an Oxford Economics Report that estimates further People’s Republic of China tariff retaliation could reduce U.S. agricultural sales to China by 32% (Oxford Economics, *The Impact of China PNTR Repeal and Increased Tariffs on the U.S. Economy and American Jobs: A Report Prepared for the U.S.-China Business Council*, November 2023, p. 25, https://www.uschina.org/sites/default/files/the_economic_impact_of_china_pntr_repeal.pdf).

²⁴ Letter from several House Representatives to Gene L. Dodaro, Comptroller General, Government Accountability Office, October 1, 2022, https://oversight.house.gov/wp-content/uploads/2022/10/20221001_GAO_foreignlandownership.pdf.

series of questions regarding trends in foreign investment in U.S. agricultural land, USDA's data collection and filing procedures under AFIDA, current USDA procedures for ensuring data reliability and disclosure accuracy, use of the AFIDA data by federal authorities for determining if foreign investment in U.S. agricultural land poses a threat to national security, options to improve current AFIDA-related disclosure and reporting, and whether USDA should partner with other federal departments or agencies to ensure accurate disclosure of foreign-owned agricultural land. GAO previously examined federal data collection on foreign investment in the United States, including under AFIDA, in the 1980s.

USDA Request for Information on AFIDA Form Revisions

In December 2023, USDA issued a request for information (RFI) on proposed revisions to update the AFIDA intake form (FSA-153 Form) used by foreign persons and entities to disclose information on ownership, transfer, and investment in U.S. agricultural land.²⁵ USDA also prompted stakeholders to provide feedback and comment on whether any additional changes and clarification related to the form are needed. USDA is to consider public input, which may result in further regulatory changes and modification to the form.

Under AFIDA, coverage is defined by “any interest.” The term *any interest* refers to all acquisitions, transfers, or holdings in agricultural lands by a foreign person, excluding security interests or leaseholds of less than 10 years, contingent future interests, and noncontingent future interests.²⁶ Modifications proposed by USDA in December 2023 include adding information related to long-term leases, including leaseholds involving foreign companies engaged in wind energy and solar panels or photovoltaics. Currently, there are no specific questions about leases on the form. USDA also asks in the RFI whether the definition of *estimated value of the land* should be updated to reflect conditions related to leaseholds.

USDA's RFI also poses a series of questions related to reporting by foreign owners, including whether additional data should be captured beyond the third tier of ownership. As explained by USDA, the first tier of ownership refers to a foreign person who actually holds the direct (title) interest in the land, while the second tier refers to foreign persons holding a significant interest or substantial control in the land.²⁷ In turn, a second-tier entity may be required to provide information about foreign persons who hold a significant interest or substantial share in that entity.²⁸ AFIDA regulations define *significant interest or substantial control* to mean a 10% or more interest in the entity if held by a single foreign person or a group of foreign persons acting in concert, or a 50% or more interest if held by a group of foreign persons not acting in concert, none of whom individually holds a 10% or greater interest in that entity.²⁹ However, as noted in a 1989 GAO report, the reported AFIDA data “may not always reflect the ultimate ownership of the assets”; also, USDA “does not have legal authority to require disclosure beyond the third tier of

²⁵ 88 *Federal Register* 87385, December 18, 2023. The Farm Service Agency's form is available at <https://forms.sc.egov.usda.gov/efcommon/eFileServices/eForms/FSA153.PDF>. *Foreign owners* refer to investors who buy, sell, or hold a direct or indirect interest in U.S. agricultural land (or who hold long-term leases on agricultural land) and must report their holdings and transactions to USDA on the FSA-153 form.

²⁶ 48 *Federal Register* 35072, September 6, 1984; 7 C.F.R. §781.

²⁷ USDA, *Foreign Holdings of U.S. Agricultural Land, Through December 31, 2021*, p. 3.

²⁸ *Ibid.*

²⁹ 7 C.F.R. §781.

ownership.”³⁰ As such, there have been reports of foreign interests that are not readily tracked by USDA under AFIDA.³¹

GAO notes that AFIDA data are “collected on an enterprise basis rather than an establishment basis, meaning the parent corporation files a single report for the whole corporate family.”³² AFIDA data do not capture all individual shareholders, LLC members, or financial investors (such as ownership under a real estate investment trust).

USDA’s RFI poses a series of questions related to the reporting by foreign owners, including whether additional data should be captured beyond the third tier of ownership, among other related questions. USDA further states it is “moving towards modernizing the collection of information process, clarifying and modernizing the FSA-153 form” and “if funding becomes available, creating an electronic submission system that will allow foreign owners to report by filing electronically.”³³

Beneficial Ownership Information Reporting Requirements

Effective January 1, 2024, businesses across all industries—including those in the food and agricultural sectors—must file a Beneficial Ownership Information (BOI) report with the U.S. Department of Treasury’s Financial Crimes Enforcement Network. BOI reporting requirements were enacted by Congress as part of the William M. (Mac) Thornberry National Defense Authorization Act for FY2021, which included the Corporate Transparency Act (P.L. 116-283, Title LXIV, §6403). Given that many food and beverage businesses are privately owned, some expect the food and beverage industry to be particularly impacted by BOI reporting requirements.³⁴

Under the reporting requirements, a beneficial owner is an individual who either (1) has substantial control over a company or (2) owns 25% or more of the ownership interests of the company.³⁵ Foreign businesses that are registered to do business in the United States must also report. Reporting companies include limited liability companies (LLCs, including single member LLCs), S corporations, C corporations, limited partnerships, cooperatives, associations, and certain trusts.³⁶ Companies formed before January 1, 2024, will have until January 1, 2025, to report their current beneficial owners. Companies created on or after January 1, 2024, must file within 30 days of receiving notice that they are registered. Penalties for failure to report may not exceed \$500 for each day that the violation continues, up to \$10,000.³⁷

³⁰ Government Accountability Office (GAO), *Foreign Investment, Federal Data Collection on Foreign Investment in the United States*, GAO/NSIAD-90-25BR, October 1989, p. 15 (hereinafter cited as GAO/NSIAD-90-25BR).

³¹ See, for example, Jamie Grey et al., “Secret Acres: Foreign-owned agricultural land inaccurately tracked by government,” WSAW-TV (Gray Media Group, Inc.), January 24, 2022.

³² GAO/NSIAD-90-25BR, p. 5.

³³ *Ibid.*

³⁴ See, for example, Chris Bardenhagen, “Corporate Transparency Act: Farm and Ag Businesses Must Report Beginning January 1, 2024,” Michigan State University Extension, October 9, 2023 (hereinafter cited as Bardenhagen, “Corporate Transparency Act”).

³⁵ U.S. Department of Treasury, Financial Crimes Enforcement Network (FinCen), “Beneficial Ownership Information Reporting: Frequently Asked Questions,” https://www.fincen.gov/boi-faqs#D_1.

³⁶ See, for example, Bardenhagen, “Corporate Transparency Act.”

³⁷ For more background, see FinCen final regulation at 87 *Federal Register* 59498, September 30, 2022; 31 C.F.R. §1010.380. FinCen rulemaking resource materials are at <https://www.fincen.gov/boi/Reference-materials>.

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