

FOREIGN OWNERSHIP IN U.S. AGRICULTURE

HEARING

BEFORE THE

COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY

UNITED STATES SENATE

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FOREIGN OWNERSHIP IN U.S. AGRICULTURE

Wednesday, September 27, 2023

U.S. SENATE
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m. in room 328A, Russell Senate Office Building, Hon. Debbie Stabenow, Chairwoman of the Committee, presiding.

Present: Senators Stabenow [presiding], Brown, Klobuchar, Bennet, Gillibrand, Booker, Warnock, Welch, Fetterman, Boozman, Hoeven, Ernst, Hyde-Smith, Marshall, Tuberville, Braun, Grassley, Thune, and Fischer.

STATEMENT OF HON. DEBBIE STABENOW, U.S. SENATOR FROM THE STATE OF MICHIGAN, CHAIRWOMAN, U.S. COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Chairwoman STABENOW. I call the Committee to order of the Agriculture, Nutrition, and Forestry Committee. We first want to welcome the witnesses we will be hearing from. Deputy Under Secretary Montaña Greene, Mr. Pittman, and Dr. Ortega, we thank you all for being here today, and we of course, in a few minutes, will hear from our colleagues who have been playing leadership roles on this issue who are not on the Committee. Then as we move through today, we will of course hear from colleagues on the Committee who have important legislation as well.

Agriculture is crucial to our American way of life. That is what we know. I always say that we do not have an economy unless somebody makes something and somebody grows something. That is how we have an economy in the United States. Our food industry and agriculture support more than 21 million jobs, contributing roughly \$1.2 trillion to the American economy, and providing a safe and affordable food supply.

Also, we know food security is national security. That is the message I shared in 2013, when I held a hearing in this Committee to review the purchase of Smithfield Foods by a Chinese company. It was the largest purchase of a U.S. company, and the first purchase of a major U.S. food and agriculture company by a Chinese firm. After that hearing, I worked with Senator Grassley to introduce the Food Security Is National Security Act, to help ensure that acquisitions of U.S. food and agriculture companies receive proper scrutiny. It gives USDA and FDA officials permanent representation on the Committee on Foreign Investment in the United States (CFIUS), and we will certainly hear more about CFIUS today. It adds new criteria that consider impacts to the U.S. food systems.

Since that time, other major U.S. food and agriculture companies have been bought by foreign companies. American farmers and families have raised many questions, from the economic impacts of foreign purchases in our food supply chain, to how we can protect agriculture innovation and research spurred by U.S. investment, and more. The American people deserve careful consideration of how foreign investment will affect the future of our farms, ranches, and agriculture economy.

Today, we are having a conversation and a fact-finding session about foreign investment in U.S. agricultural land. This discussion is not new. Then-Congressman Grassley—and I see he is not here yet, so please let him know I gave him several shout-outs today with Senator Ernst. Congressman Grassley helped author the Agriculture Foreign Investment Disclosure Act of 1978, in an attempt to understand the full picture of foreign ownership of U.S. farmland. That was nearly five decades ago. Thanks to the data base established under that law, we know that foreign investors today hold an interest in nearly 40 million acres of American farm and forest land, which represents just over three percent of all privately held agricultural land in the U.S.

While this is a small fraction of overall agricultural land, foreign ownership has increased 66 percent since 2010, nearly two million acres per year. The largest foreign stakeholders in American farmland remain countries like Canada, the United Kingdom, and those in Europe, while Chinese ownership is less than 1 percent of all foreign-held farmland up to this point. We have heard some real concerns about foreign ownership and that it may be undercounted, and that the American government lacks the proper oversight tools to see the whole picture.

It is also important to consider what impacts foreign investment can have on U.S. farmers and consumers. I was pleased to partner with Senator Ernst to introduce a bipartisan bill earlier this year, the FARMLAND Act, which is aimed at improving the reporting process and providing new resources for USDA, and a number of other members as well have introduced important bills on this topic.

In July, the Senate adopted an amendment on this issue, authored by Senators Tester and Rounds, to the National Defense Authorization Act. I am glad that the idea of adding USDA to CFIUS, that Senator Grassley and I first proposed, was included in this amendment.

The leadership of Senators Tester and Rounds on these issues has been critical. We are glad to hear from them today, and also glad to hear from two other leaders not on our Committee, Senators Baldwin and Lankford, who will be sharing information as well.

Our national security depends on a food system that is safe, secure, affordable, abundant, and resilient. As foreign entities continue their acquisitions of U.S. food and agricultural assets, American farmers and families deserve to know that these transactions receive proper scrutiny. We must also be cautious of our history of barring immigrants from owning land in our country, and ensure efforts to protect our national and economic security interests do not encourage discrimination.

To that end, I would like to submit for the record a letter from Congresswoman Judy Chu, the Chair of the Congressional Asian Pacific American Caucus, that offers recommendations on how the Committee can examine this issue without casting suspicion or discrimination toward Asian Americans. Without objection, I will submit that for the record.

[The letter can be found on page 72 in the Appendix.]

Chairwoman STABENOW. Deputy Under Secretary Montaña Greene, Director Pittman, Associate Professor Ortega, we look forward to hearing your insight on these matters, and now I turn to my partner on the Committee, Ranking Member Boozman for any opening remarks that he would like to make.

**STATEMENT OF HON. JOHN BOOZMAN, U.S. SENATOR FROM
THE STATE OF ARKANSAS**

Senator BOOZMAN. Well thank you, Madam Chair, and thank you for convening this hearing. We have traveled the country, we have held hearings in Washington, listening to farmers and ranchers discuss their priorities for the upcoming farm bill, and this topic has been brought to the Committee's attention on numerous occasions. I have been asked many times for my thoughts on this matter, and my answer has always been that we need to better understand the problem before we can provide a solution.

Today's hearing is a good first step in bringing more information to the discussion. My hope is that at the end of today's hearing, we will have a clearer picture of the scope and the scale of the issues foreign ownership of U.S. farmland poses to our country. Thank you, Madam Chair, very much for working with us to get this hearing scheduled. Many of our Senate colleagues on and off the Committee have given considerable thought to the issues of foreign land ownership. We will have the opportunity to hear from many of them this morning, and I look forward to hearing about what their States are experiencing and how they believe we should address their concerns.

As we move this discussion forward and consider various proposals, there are several considerations and questions that I would urge my colleagues to keep in mind. First, whatever we do must respect and protect the private property rights of U.S. citizens. Second, land use issues have historically been decided at the State and local levels. Are State laws sufficient to address the issues posed by foreign ownership? Does the Federal Government need to play a larger role? If the Federal Government does get more deeply involved, what are the impacts of increased regulation on asset values and liquidity that may hinder investment in agriculture in rural America?

Finally, let's not forget that there are other parties aside from foreign operators that have made significant investments to acquire Americans' farmland, pastureland, and forest that are not the subject of this hearing, yet these purchases also impact farmers' and ranchers' ability to compete for land access, and they impact the Nation's food and energy security. There is more work to be done, and I look forward to future efforts by this Committee to explore the overall ownership of U.S. agricultural land and how it affects rural communities and economies across the country.

In conclusion, I would like to join Senator Stabenow in welcoming four guests to the Agriculture Committee. Like several members on this Committee, our esteemed colleagues Senators Tester, Rounds, Baldwin, and Lankford have each introduced thoughtful legislative proposals, and I am grateful for their engagement. I look forward to working with each of you as we move forward, and thanks again, Madam Chair, for again working so that we could make this possible. I look forward to the discussion.

Chairwoman STABENOW. Well, thank you so much, and thanks for working closely on this hearing together.

Senator Baldwin, we have four people, four Senators we invited; I guess you are speaking for all of them. We have the most powerful person here. Senator Baldwin, from Wisconsin, as we know, our great colleague who is very involved in leadership in this, and we really appreciate your sharing your thoughts today.

**STATEMENT OF HON. TAMMY BALDWIN, U.S. SENATOR FROM
THE STATE OF WISCONSIN**

Senator BALDWIN. Thank you, Chair Stabenow and Ranking Member Boozman. Good morning to all the Committee members, and thank you for convening this hearing on a very important issue of foreign ownership of U.S. farmland.

In Wisconsin, the agriculture industry is a major economic driver, contributing more than 104 billion annually to our State's economy. The industry supports hundreds of thousands of jobs, especially in our rural communities, giving us the acclaimed name, America's Dairyland. Our robust agriculture industry also helps keep our country safe, as food security is national security.

Our foreign competitors realize this also. When foreign investors own American farmland and agricultural processing capacity, it can put our country and domestic food supply and local communities at risk, and right now, we do not know the full extent of the risk at hand. Outdated reporting systems and a lack of auditing, at both a State and Federal level, leave us with incomplete information and many questions. That is why I appreciate the opportunity to highlight for the Committee the alarming gap in comprehensive data on foreign ownership of agricultural land across the country.

Senator Grassley has long led on this issue, and I was proud to work with him to introduce and pass our Farmland Security Act last Congress, this legislation that we were able to include in the omnibus last year. The Farmland Security Act of 2022 requires the Department of Agriculture to transition away from their outdated filing system to an online form, and create a disaggregated, public-facing data base of filings for supporting national security and food security research. Under our 2022 law, the USDA must also report to Congress on the impacts of foreign ownership of agricultural land on family farms, rural communities, and our domestic food supply.

While passing our legislation was a step in the right direction, Congress can and must do more, and that is why I have partnered once again with Senator Grassley to introduce the Farmland Security Act of 2023. Our new legislation would go even further in addressing foreign activity in our domestic agriculture marketplace.

As this Committee works to write the next farm bill, I urge you to include this bipartisan bill in the final version.

The Farmland Security Act of 2023 would give USDA additional tools to address and penalize shell corporations who fail to comply with our Nation's foreign ownership laws. It requires annual auditing of foreign ownership filings to ensure that we have the whole picture of our food security or national security risks. This legislation also goes beyond looking just at ownership trends by scrutinizing the impacts of long-term leasing of agricultural land. Importantly, the Farmland Security Act of 2023 requires USDA to take a closer look into foreign ownership of our agricultural production capacity.

Many of the products that our farmers make here are only as good as the processors that help them get it to market, and we need to get a look under the hood of the entire supply chain in order to ensure that it is resilient and capable of preventing any malign foreign influence. We saw the increase in exports from U.S.-based, foreign-owned meat processors during the COVID-19 pandemic, while those very same processors jacked up the prices of meat at the grocery store for American families. That market disruption illuminated the larger trend that we are not in total control of in our domestic agricultural supply chain.

By understanding the full extent of foreign ownership in American's agriculture market, we can take the necessary steps to protect American consumers and safeguard both our food security and rural farming economies for generations to come. As lawmakers, we must ensure that we have access to information about foreign ownership of our food system, and this Committee has the opportunity to do so in the next farm bill. I thank you again for having me here to testify.

Chairwoman STABENOW. Well thank you, Senator Baldwin, for your long-time leadership on this. This is so important, and we appreciate your efforts and look forward to continuing to work with you.

Senator Lankford, welcome. We are so happy to have you.

**STATEMENT OF HON. JAMES LANKFORD, U.S. SENATOR FROM
THE STATE OF OKLAHOMA**

Senator LANKFORD. Thank you. Thank you for allowing me to slip into the prestigious Ag Committee, and to be able to have this kind of conversation and be able to walk through it. I would love to be able to tell you a story of how I got involved in this at all. Obviously I come from Oklahoma, which is a State with four million people. Literally, two million of them live in urban areas, and two million of them live in rural areas. Like many of you as well, we have this great distribution in our State, so I have been interested in this in an ancillary way in many ways, until 2018.

In 2018, my State passed a Medical Marijuana Law. Now it was the most liberal medical marijuana bill in the Nation at that time, and what we saw was a rush to be able to buy up farmland in our State. It was a shift that surprised a lot of people in the State, based on how quickly it happened and based on who actually did it. Oklahoma is now No. 8 in the Nation for having land owned by foreign entities in our State, since 2018, when we passed that. In

fact, the year after we passed a Medical Marijuana Law in our State, the next year, Oklahoma had more land sales to foreign entities than any other State in the Nation. We saw a rush that came into our State. We have great land prices. We have great prices for electricity, and ready access to water. All those features all came together to have a huge amount of land that actually shifted into foreign ownership in the days literally leading after the passage of the Medical Marijuana Law.

Just in the past decade, to give you a percentage on this, we have had a 500 percent increase in our State of foreign ownership of land—just in the past decade. We have 7,000 licensed marijuana grows in our State now. That is since 2018; in 2017, we had zero. Now we have 7,000. Thousands of those are actually illegal operations that have not gone through the full licensing capability. Of those, our Oklahoma Bureau of Narcotics States that about 75 percent of those are actually Chinese-owned facilities. What we have found is, Chinese criminal organizations are partnering with Mexican cartels to be able to facilitate the distribution of marijuana nationwide, and they are using Oklahoma as the source for that, and this has all kicked in just since the 2018 vote.

The problem in Oklahoma has gained a lot of national attention; many of you have probably heard about it as well. Politico did a large feature article on it called “The Growing Chinese Investment in Illegal American Weed,” was their big article, and they did multiple different stories on it, but Oklahoma has been the epicenter on that. We have also seen things like in 2022, execution-style murders on a rural farm in Kingfisher, Oklahoma, where multiple people were left dead in an execution and a shooter on the run, all of them Chinese nationals—in rural Oklahoma.

We have multiple entities that are in Oklahoma that are law enforcement, sheriff’s department and otherwise, that are having a difficult time because if they pull someone over, they do not speak English, they speak Mandarin, and it has become its own unique challenge. It has also led to a tremendous amount of human trafficking and sex trafficking to be able to work in these different farms across our State.

We have seen over and over again individuals that have come across our southern border illegally that are Chinese nationals that end up in the marijuana farms, and they are working off their debt, literally being moved from farm to farm to farm. They literally do not even know what town that they are in, or often what State that they are in when they are actually arrested and the operation is taken down.

That brought my attention to what was happening and got me to ask a simple question—if that is happening in Oklahoma, what is happening in the rest of the Nation, and what are we seeing? What I have seen is a tremendous rise in foreign ownership of land around our country. All of us that are in ag States all know the saying, there is lots of things you can get more of; there is not more land. It is incredibly precious to us as Americans to be able to make sure we are making right decisions on this.

We have worked for several years to be able to find a way to be able to deal with this foreign ownership of land issue, and we have something called the SOIL Act. The SOIL Act we have brought up

for several years and continue to be able to refine it, add additional ideas to it. My partners on this are Senators Bennet, Risch, and Tillis. We have worked together specifically on the ag issues here, and let me walk through the details of it. It requires review of agricultural real estate purchased by certain foreign entities through the CFIUS process, which we think is a reasonable place to be able to put that. It restricts Federal assistance for foreign-held real estate holdings, and it broadens disclosure requirements for land purchases made by foreign entities through the AFIDA process.

For us, we are focused in on, what are we doing to actually make this a better process? It does not do a blanket prohibition of foreign ownership of land, but it puts an additional hoop in the process so that illegal operations are not going to go through that hoop. If they have got to go through the CFIUS hoop and they can actually show that there is a reason they should have that land holding, they should be able to actually earn the right to be able to do that. We have foreign ownership across our Nation, from multiple entities. That has never been an issue for us as Americans, but we should actually ask the basic question, why, before we are making agricultural land available to them.

We attempt to be forward-looking in this as well by not citing one particular country or group of countries, but using the established list from the Department of Commerce and the Director of National Intelligence, just saying as that list shifts from the Department of Commerce and the Director of National Intelligence, it would also shift in ours as well. We are narrowing in specifically on this Committee's jurisdiction. The SOIL Act closes current reporting loopholes currently in the AFIDA process by requiring reports of leases longer than five years, and the disclosure regardless of acreages.

The reason is that we have a lease loophole that is currently in the AFIDA process that if you do not own it but you lease it, you do not have to go through that reporting process. We are trying to be able to close that loophole. Then currently, that process also allows just 10 acres or more. For many of these, for instance, marijuana farms, they are at nine acres or less, and so they are not going through that process because they are building greenhouses to be able to take that on. This would close up those two loopholes that are currently in the AFIDA process, that are under this Committee's jurisdiction.

We have tried to be able to work through the process, tried to be able to get this right, in a way that we think actually helps us as a nation to be able to protect our ag, and quite frankly, also to be able to deal with criminal organizations that are trying to take advantage of our very open nation. Thank you for hearing us out and for doing the work to be able to address this.

Chairwoman STABENOW. Well thank you very much, Senator Lankford, and it certainly brings a different perspective. My mother grew up on their family farm in Oklahoma picking cotton, and so this is a very different picture that you are portraying as of what is happening, so appreciate your legislation and your focus on this very much.

Senator Rounds has joined us, part of the duo of Senator Tester and Senator Rounds. I know there is another important committee

meeting going on in Banking and that you are both coming back and forth, but we wanted to give you an opportunity since you both worked so hard in the NDAA to be able to have your amendment passed, and we wanted to give you a few moments to share what that does.

**STATEMENT OF HON. MIKE ROUNDS, U.S. SENATOR FROM THE
STATE OF SOUTH DAKOTA**

Senator ROUNDS. Well, thank you, Madam Chair, and I suspect that Senator Tester will be here shortly; we were both at the Banking hearing together. First let me just say good morning, and I do believe that it is truly a privilege to be here today with the Senate Committee on Agriculture, Nutrition, and Forestry. I want to thank you, Madam Chair, along with Ranking Member Boozman, for taking a special interest in this issue and inviting me to provide some remarks at the hearing today, along with Senator Tester, who is just arriving now. Do not worry; I am just holding things up long enough for you to get here.

Chairwoman STABENOW. I think Senator Tester always knows how to make an entrance.

Senator TESTER. Thank you. Keep filibustering, buddy.

Senator ROUNDS. Well, as you all know, China and Russia are our near-peer adversaries, and North Korea and Iran are no friends of the United States. These four adversaries view America as their top competitor and only wish to gain advantage and opportunities to surveil our Nation's capabilities and resources.

Over the course of the last several years, it has become very apparent that an increasing number of foreign purchases of American agricultural land is posing a threat to national security. After listening to the concerns of American producers, Senator Tester and I introduced the Promoting Agriculture Safeguards and Security, or PASS Act, to ban China, Russia, North Korea, and Iran from purchasing American farmland or ag businesses. Key portions of this legislation were included in Amendment Number 813 to the Senate-passed National Defense Authorization Act; it is now referred to as Section 1086.

Section 1086 would strengthen our national security while still providing access and opportunity for our foreign partners. Foreign investment into U.S. real estate and farmland presents many economic opportunities, but in some cases can present significant consequences to our national security, trade, and food security. While Chinese entities currently hold slightly less than one percent of all foreign-held acreage in the United States, the volume of their holdings have surged exponentially over the last 13 years, from roughly 13,000 acres to over 352,000 acres, and foreign ownership and investment in the United States agricultural land nearly doubled.

In recent years, our country has seen firsthand attempts by our near-peer competitors to acquire land adjacent to our military bases. In 2020, a Chinese-linked company planned to build a wind energy farm project near Del Rio, Texas, only miles away from Laughlin Air Force Base where U.S. pilots are trained.

In 2022, a Chinese-linked company attempted to build a corn milling plant on farmland near a sensitive Air Force base outside Grand Forks, North Dakota. Treasury later determined that they

did not have the proper jurisdiction to act in this case, which demonstrates the need for this Section to become law. The legislation, as included in the Senate-passed version of the NDAA, would require the

Committee on Foreign Investment in the United States, or CFIUS, to prohibit China, Russia, North Korea, and Iran from purchasing agricultural land and agricultural businesses in the United States, and make reforms to the CFIUS process to improve our country's ability to protect our national security.

However, this legislation would also allow the President of the United States to waive the requirement prohibiting a purchase by one of these four countries. This decision would be made on a case-by-case basis, if it is deemed that doing so is in the national security interest of the United States, and would require a report to Congress by the President. It also adds the Secretary of Ag as an ex officio member of CFIUS, giving them the ability to consult on all cases if they so choose. Additionally, this legislation does not alter current exemptions for our trusted allies—the United Kingdom, Canada, Australia, and New Zealand—to make purchases without being subject to CFIUS review.

I want to thank my friend from Montana, Senator Tester, for his hard work to get our amendment into the Senate-passed Fiscal Year 2024 NDAA, and on our original bill, the PASS Act. This is a common-sense provision that will make our homeland more secure. However, it is just the first step in addressing this issue on a broader scale. Specifically, I commend the work done by Chairman Stabenow, Senator Ernst, Senator Braun, and others on several pieces of legislation to enhance the Agricultural Foreign Investment Disclosure Act (AFIDA), a critical piece to addressing this issue. As the Committee gets closer to completing its work on the farm bill, I request that you build on what we started with Section 1086 with additional legislation, because there is more work to be done.

I again want to thank the Chairwoman and Ranking Member for holding this hearing, and allowing non-Committee members to provide their perspective. I look forward to working with the members of the Senate Ag Committee on this critical issue. Thank you.

Chairwoman STABENOW. Well thank you so much, Senator Rounds, and we so appreciate your leadership, Senator Tester's leadership on what is now Section 1086.

Senator Tester, welcome. Thank you so much for all of your leadership on this issue. It is very important, and we are glad to have you before the Committee.

STATEMENT OF HON. JON TESTER, U.S. SENATOR FROM THE STATE OF MONTANA

Senator TESTER. I will do my best to be very brief. I want to thank you, Chairman Stabenow, Ranking Member Boozman, for having this hearing. I think it is a very important hearing. I want to thank you for the courtesy of allowing four Senators that do not sit on this Committee to be able to speak to this issue, because I think it is a very important issue.

Look, many of you know—in fact, I think all of you know—I have a real life outside the Senate; I am a farmer. I can tell you that

everybody in this room also knows that food security is national security. When we are talking about somebody like the Chinese Communist Party, which is what Senator Rounds referred to, putting up a corn milling plant within miles of a sensitive Air Force base, and our agencies cannot do anything about it, we need to give them the authority. We need to make sure that this does not happen. Because quite honestly—and some of you know this, probably all of you know this—China, Russia, Iran, North Korea, they are not friends of ours. They want to do things to make us less than what we are today, so we should not allow these bad actors to be on our soil, honestly. The fact is that if they are there to have impacts on our food supply, that is bad business. If they are there to spy on us, they should not be allowed to spy on us anywhere in the world, and certainly not on our own soil.

Senator Rounds spoke a lot about what I was going to talk about in my remarks; there is no need repeating it. We have had some successes in this Congress, but none of them have got to the President's desk yet. I appreciate the fact that you guys are doing this and showing the kind of leadership in a committee that is all things agriculture, because this is important. It is important for this Nation's food security, our national security; it is important for our citizenry. Thank you for doing this hearing.

Chairwoman STABENOW. Well, thank you so much. We deeply appreciate it. We hope the NDAA is passed by the Senate and gets to the President's desk so he can sign it, and we appreciate all of you and your leadership in bringing together all the various pieces that we need to be focused on on this issue. Thank you so much.

We will now ask our three witnesses, our panel, to join us.

Chairwoman STABENOW. You are welcome to join us at the table. Thank you so much.

Senator BOOKER. I just want to say for the record that Mr. Ortega has too much hair.

[Laughter.]

Senator BOOKER. I feel——

Chairwoman STABENOW.—for the record, we will indicate that Senator Booker is deeply concerned.

Senator BOOKER. I take it as a personal attack. I want it noted.

Chairwoman STABENOW. All right. Well good morning, and let me introduce our three witnesses and then ask each of you to make some comments.

Gloria Montaña Greene is the Deputy Under Secretary for Farm Production and Conservation, FPAC. In her position, Montaña Greene leads agencies that deliver farm programs and services to farmers, ranchers, and other producers. She is also a former State executive director for the Farm Service Agency in Arizona, so we so appreciate your being with us.

Our next witness, that Senator Booker has attacked so far, Mr. Boozman, I will turn to you to introduce, because he is from your State, and I think you may be offended by what Senator Booker said. I am not sure.

Senator BOOZMAN. Well, we are pleased to have Mr. Harrison Pittman, a proud Arkansan, with us on the panel today. Harrison is the Director of the National Agricultural Law Center, a University of Arkansas System Division of Agriculture. He received his

Juris Doctor and LLM from the University of Arkansas Law School, in Little Rock and Fayetteville, respectively, and has worked at the center since 2001.

Harrison is an active member of the American Agriculture Law Association, and is a frequent presenter on a range of topics, including the farm bill, water law, and environmental law. He has authored articles on numerous subjects, including the National Organic Program, the constitutionality of corporate farming laws, pesticide litigation, the Packers and Stockyards Act, and the list goes on and on.

Many food, environment, and agriculture stakeholders depend on Harrison and his team to work to provide accessible, dependable, and objective legal analysis, so we are all proud of the work that they do. Thank you, Harrison, for taking the time to be with us, and a special thanks to the rest of the panel for your willingness to be with us today.

Chairwoman STABENOW. Thank you so much. Senator Booker, I misheard you. You were actually attacking my witness, from Michigan State University. I just want to—although I see two people—

Senator BOOZMAN [continuing]. Harrison has got plenty of hair, too.

Chairwoman STABENOW.—that have wonderful heads of hair.
[Laughter.]

Chairwoman STABENOW. Yes, yes. I am so pleased that Dr. David Ortega, a food and agricultural economist and professor at Michigan State University, is with us today. Welcome. His research focuses on understanding consumer, producer, and agribusiness decisionmaking to better inform food policy. Dr. Ortega has vast experience studying food systems in various developing and emerging countries, and we are so pleased, Dr. Ortega, that you are with us this morning.

Let me turn first to Deputy Under Secretary Montaña Greene. We would ask for five minutes, and then anything further you would like to submit for the record. Good morning.

STATEMENT OF GLORIA MONTAÑO GREENE, DEPUTY UNDER SECRETARY, FARM PRODUCTION AND CONSERVATION, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, DC

Ms. MONTAÑO GREENE. Good morning. Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee, thank you for the opportunity to come before you today to discuss the Agricultural Foreign Investment Disclosure Act of 1978. It is an honor to serve as Deputy Under Secretary for Farm Production and Conservation, which we regularly call FPAC. It is rewarding work. It is the one mission area at USDA that houses all the producer-facing agencies. Every day, I get to work with four agencies across the country—the Farm Service Agency, the Risk Management Agency, Natural Resources Conservation Service, and the FPAC Business Center—to provide farmers, ranchers, and forest landowners support, be it through farm loans, disaster programs, safety net, risk management, conservation programs, and other items that they might be facing. It is an honor, a privilege, and a great responsibility to work alongside more than 20,000 public servants across more than 2,900 offices that support our producers.

FPAC is also the mission area that houses the filing of AFIDA. I want to take a moment to be able to recognize this mighty AFIDA team, FPAC's Economic and Policy Analysis staff, who work on AFIDA and are working hard to improve outreach and filing information to ensure they are getting the best information possible.

Any foreign person who buys, sells, or holds a direct or indirect interest in U.S. agriculture land must report their holdings and transactions to USDA through the AFIDA report, also known as FSA Form 153. Lease holds of 10 years or more on agricultural land, often involving wind turbine and solar panel interests, must also submit a report to USDA. AFIDA is self-reporting. Currently, the AFIDA reporting system uses a paper-based approach to data collection. We currently have no way to identify the geographic location of AFIDA filings more specifically than the country level.

The process to report and track foreign-owned agricultural land is complex. There is not currently a system at the national, State, or local level that tracks deeds or leases, and there is no automated reporting mechanism to aggregate information and contribute to the disclosure report. Any system for tracking land purchases and owners would be complicated, expensive, and create a potential risk to producer privacy, the price of agricultural land, and individual American seller interests.

There are more than 3,000 county clerks in recorders' offices, or their equivalent, more than 50 State systems, and more than 500 sovereign tribal nations processing and tracking of land ownership and land transfer. This is a patchwork to track and report foreign-owned agricultural land is challenging. As Congress considers the issues around the ownership of agricultural land, it will be essential for them to consider a system that balances these issues and is workable—for USDA, for producers, for landowners, and for local government.

In addition to the complicated patchwork system, USDA is under-resourced, and the staff have limited authorities that are less expansive in scope than those outside of USDA may recognize. We are doing our best. We are working to stretch our resources, and making improvements. We have added additional staff. We are working to update the FSA-153 form. We anticipate that the revised form will ask questions that will help us address the impact of foreign ownership on U.S. agriculture land.

I want to recognize that in Section 773 of the Consolidated Appropriation Act of 2023, Congress did direct USDA to modernize the AFIDA reporting system within three years, via an online electronic filing portal linked to a queryable. USDA was not provided funding to implement these requirements. To move forward with the Section 773 language in the absence of funding, the Department has taken several low-cost steps. In early June 2023, USDA posted Excel spreadsheets for each year from 2011 to 2021, with the detailed data underlying the annual report to Congress. This is what could be done with the funding we receive.

While there are challenges to the current reporting system, we understand the task. We agree that there are incredibly important issues and look forward to working with Congress to address them. Thank you for the invitation and the time today.

[The prepared statement of Ms. Montaña Greene can be found on page 44 in the appendix.]

Chairwoman STABENOW. Thank you very much. We really appreciate your being here today.

Mr. Pittman, welcome.

STATEMENT OF HARRISON PITTMAN, DIRECTOR, THE NATIONAL AGRICULTURAL LAW CENTER, UNIVERSITY OF ARKANSAS SYSTEM DIVISION OF AGRICULTURE, FAYETTEVILLE, AR

Mr. PITTMAN. Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee, thank you for the opportunity to be here with you today and testify as part of this hearing on foreign ownership of U.S. agriculture. As you all know, this is an issue of great national significance, and it is one that has garnered significant attention throughout the country. In our experience, that has been with stakeholder groups all throughout the ag industry, and then those that are not traditionally involved in ag issues.

My opening remarks will focus on the National Agricultural Law Center, our role with this, and kind of an overview of what is happening at the State and Federal level. Very quickly, about the National Agricultural Law Center, in 1987, Congress established the Center to be an objective, neutral, nonpartisan source of agricultural and food law research and information for the Nation's agricultural community. We operate in partnership with the USDA Agricultural Research Service, National Agricultural Library, and as the Ranking Member mentioned, we are a standalone unit of the University of Arkansas System Division of Agriculture.

On a routine basis, we provide research and outreach on a wide range of issues to producers of all sizes and commodities throughout the United States, State departments of agriculture, State and Federal policymakers, farm organizations, attorneys, students, and many, many more. We do not engage in legal or policy advocacy of any kind.

The center has been very involved on the issue of foreign ownership of agriculture, and specifically on the issue of foreign ownership of agricultural land, and particularly so in the last two to three years. As I am here today, one of my colleagues, Micah Brown, is actually testifying before the Mississippi legislature on foreign ownership, was in Nebraska last week, and I will be in Indiana next week, and that is just a snapshot in time of what we have going on in this area.

In terms of State-level activity, in 2021 and 2022, at the State level we saw a very significant increase in activity, in the number of proposals, and it was a historical shift that was noteworthy. Most of those proposals focused on foreign ownership at large. Transferring over into 2023, that level of intensity and activity basically increased threefold across the country. In fact, there are really not very many States left that have not had at least one or more proposals at the State level, and those shifted more away from a focus on foreign ownership at large but more toward what we often refer to as the Big Four—China, North Korea, Russia, and Iran.

Likewise, at the Federal level, there has been a very significant increase. There are nearly two dozen proposals between the House and the Senate, but most of these fall into three basic categories. They are amendments to A-fida or A-feeda, depending on how you want to say that; amendments to the Defense Production Act of 1950; and then restrictions on Federal funding, particularly those dealing with Federal farm programs through USDA. That does not capture everything, of course, and in the written testimony I have an outline with links to all the proposals. Of course on our website, we have myriad resources that would be useful to you.

Finally, I think AFIDA is such an important focus, some quick observations here. First, it is a simple statement, but it bears noting that agriculture in the United States and in the world around it has changed considerably, just in the last few years but certainly in the last three or four decades. When we think of AFIDA—and we have heard mentions of leases already—in 1978, when Congress enacted AFIDA, the concept of a lease was a lot more basic than it is today. Today, we are thinking about solar leases, wind energy, and even carbon on rural lands across the country. There was really no way that Congress or USDA could have accounted for that back at that time.

Land transactions have become typically more complicated. They have become bigger. I do not know if you guys saw the news yesterday. We had the record ag land sale, 35,000-ish dollars per acre, in the State of Missouri. The world of ag innovation and ag research has changed in ways that are just beyond our imagination back in the late '70s.

Finally, along that thread, I would say that our national economy has become far more interdependent on trading partners like Mexico and China and Canada, and obviously many other countries.

I would also add that when it comes to AFIDA—and I see my yellow light, so I want to bring it in for a landing here—one of the things I would highlight to you, and this might be more for a lot of the staffers that are here?—when we say AFIDA, you are really saying four things. You are saying the statute, you are saying the regulations, the Farm Service Agency Handbook, and then FSA-153, and a change to one of those is likely to require a change to any one of the other. Missing that point could very well lend itself to having trouble with implementation later on down the line.

There is more to say, lots to say about AFIDA. I will conclude on the last part here. When you look at how it is implemented today, in 2023—and again, if you really want to nerd out on it, which I encourage—the most formative time period to where we are today is between December 1978 and August 1979. That is when, you know, Congress passed AFIDA and provided agency authority to USDA. Most of the implementation has occurred through rulemaking, and that is when most of the activity occurred that really leads to the implementation that is today. Going back to that original thought about how much things have changed, you know, put yourself in the shoes of somebody in 1978 and 1979, and then having hindsight today to look back on that.

Then if you think AFIDA is easy, you probably have not spent enough time with it. If you think it is hard, it is probably harder than you think. The devil is in the details, and I will conclude

there. I am more than happy to answer questions today and in the future, for this and other issues that come up. Thank you for your time.

[The prepared statement of Mr. Pittman can be found on page 47 in the appendix.]

Chairwoman STABENOW. Well, thank you so much. It is complicated, and we appreciate you being involved and giving us input as we work through it.

Dr. Ortega, welcome. We are so glad you are here.

STATEMENT OF DAVID L. ORTEGA, Ph.D., ASSOCIATE PROFESSOR, AGRICULTURAL, FOOD, AND RESOURCE ECONOMICS, MICHIGAN STATE UNIVERSITY, EAST LANSING, MI

Dr. ORTEGA. Thank you, Chairwoman. Chairwoman Stabenow, Ranking Member Boozman, and members of the Committee, thank you for the invitation to be here today.

The U.S. has nearly 1.3 billion acres of privately held agricultural land, of which around 40 million were foreign-owned in 2021, a 50 percent rise from 2011. Currently, 3.1 percent of American agricultural land is foreign-owned. Contrary to popular belief, foreign governments do not typically own this land. Most is owned by Canadian interests, with significant holdings from entities in Europe. Holdings from China are under 1 percent of foreign-held agricultural land.

These entities buy land for food production, energy, or as an investment due to its stable growth and returns. Most States have minimal foreign holdings, often concentrated regionally. In my home State of Michigan, most foreign-held agricultural land can be found in the Upper Peninsula. Foreign investments in these lands can be a source of economic growth, employment, and job creation in local communities.

One concern over foreign ownership of agricultural land stems in part from Lansing land prices, and the potential for foreign demand to price farmers out of the market. However, there is no clear evidence that foreign ownership is causing U.S. farmland prices to rise.

Under current U.S. Federal law, there is no limitation to foreign entities acquiring agricultural land. However, several States have some type of restriction on foreign ownership. Some proposals, as we have heard today, have suggested even broader restrictions. Given the potential for some of these proposals to have unintended consequences, careful consideration is needed to understand their impact on the broader U.S. agri-food system.

Analysis of land values in States with varying restrictions and those without does not show a clear pattern. In fact, some results even contradict expectations that these bans would dampen land value increases. AFIDA mandates foreign entities to report transactions of foreign lands to the U.S. Department of Agriculture. Enforcement of reporting requirements have been inconsistent, and at times lax. This has been attributed to low staffing levels in the agency.

Considering the rise in foreign holdings over the past decade, this is very problematic. How many foreign agricultural land acquisitions have gone unreported, and by whom? Failure to address

these questions limits our ability to draw meaningful conclusions from any economic analysis on the impacts of these purchases, among other concerns.

Chinese ownership of U.S. agricultural land has garnered attention due to high-profile acquisitions and rising Sino-American tensions. Last year, the Fufeng Group's land acquisition near the Air Force base in North Dakota became controversial. A subsequent corn mill project, which promised significant economic benefits to the region, was canceled due to national security concerns.

The Chinese government does not directly own any U.S. agricultural land. Chinese entities own less than one percent of the three percent of foreign-held agricultural land. This represents 0.03 percent of all U.S. agricultural land, and less than many other countries, including Portugal and Luxembourg. Over 80 percent of the Chinese-owned land belongs to Smithfield Foods and a billionaire investor.

China's foreign investment strategy has shifted from the early 2000's, to now include the acquisition of agribusinesses like Smithfield Foods. Issues over consolidation for their business acquisitions, and concerns surrounding intellectual property in the agri-food sector need to be carefully monitored and evaluated.

Food security concerns naturally arise when discussing foreign ownership of American farmland. The U.S is not only self-sufficient in basic food production, but we also provide food for many across the globe. We are the breadbasket of the world. Food insecurity arises in our country not because of production deficits, but because of issues of affordability and accessibility.

I will conclude by noting that American farmland is a critically valuable and finite resource. While in my view the foreign acquisition of U.S. agricultural land by foreign entities does not threaten our ability to produce food, it does raise specific and sometimes local concerns. It is vital that any legislative and regulatory response be evidence-based, consider the broader agri-food landscape, and aim to strike a balance between safeguarding our national interests and security, and promoting economic growth and opportunity.

Thank you again for the opportunity to testify, and I look forward to your questions.

[The prepared statement of Dr. Ortega can be found on page 65 in the appendix.]

Chairwoman STABENOW. Well, thank you so much. We very much appreciate your being here today, and we will start with questions. Deputy Under Secretary Montaña Greene, your testimony highlights really the complexity—I think all of yours did—the complexity and challenges in monitoring land ownership with limited resources. The FARMLAND Act I introduced with Senator Ernst would expand the scope of CFIUS, to include reviews of farmland purchases over a certain size, 320 acres or \$5 million, and from certain countries.

We know it is important that we have proper oversight, but we also know we have, as you have indicated, limited resources right now. What changes might be needed to the Agriculture Foreign Investment Disclosure Act process to focus our resources on the real potential threats to U.S. food security?

Ms. MONTAÑO GREENE. Thank you, Chairwoman, for that question. As you laid out, this is a very complex process, and that was laid out by the individuals with me. First, maybe I will approach the conversation about CFIUS. I want to start by saying it is not in my purview at FPAC; it is at USDA, under the Office of Homeland Security. As you recognized, USDA is not a committee member, nor are we an ex officio member, and there have been conversations of the role USDA has. USDA most definitely, when we are called upon information, FPAC will provide that information moving forward.

The complexity is the funding for some of the items—how do we make it from a paper-based process to a little bit more robust, as was shared. I think some of that funding for the, the investments is one within USDA, very explicitly for AFIDA. The staffing to make sure that we are able to do that. We are monitoring appropriations debates, and having a cut to the FPAC Business Center has impacts for how we stretch those dollars.

I think the other part is outside of USDA, the system that allows us to be able to have the data base or the information, that we are able to have that automation. We shared that the multiple thousands of county recorders where deeds are recorded locally has an impact for us to be able to have an understanding. There is not that robust data system for us to be able to have an automated reporting system.

So even if we move fully off of paper based, it still requires very manual labor to be able to address and to be able to dig down into those items. Within USDA, there is some support and work, but that system collectively, to be able to support investments, the understanding needs to be there.

Chairwoman STABENOW. Thank you very much. Dr. Ortega, as someone who has studied China's food systems more closely over the years, is farmland investment something that countries like China are pursuing around the world? Where do you see trends in foreign investment in food, and agriculture supply chains more broadly?

Dr. ORTEGA. Thanks, Chairwoman, for the question. When it comes to China's foreign investment strategy in agriculture, it is important to understand that it is really driven by their desire to be self-sufficient. They have 20 percent of the world's population, but less than 10 percent of their land is arable. It is a big country, but a lot of it is mountainous terrain, and therefore they are buying farmland across the world. We are seeing investments in farmland in places in sub-Saharan Africa, Southeast Asia, Eastern Europe, as well as Russia.

By and large, China's foreign investments in farmland have bypassed North America. They are really looking at acquiring agribusinesses, like Smithfield. We saw ChemChina's takeover of Syngenta, and this is to exert more control over their import food supply chain. I do foresee there being additional investments in this regard, but when it comes to actual American farmland, it is not something that I would consider as part of their current foreign investment strategy in agriculture.

Chairwoman STABENOW. Thank you. We are talking about farmland today, but as I mentioned in my opening statement, I think

that our agribusinesses should be as much of a concern—and Senator Grassley, your ears must be burning, because I was speaking about you and our work together early on about Smithfield, when they first were purchased by that Chinese business, and of course Chinese government a part of that, and our ongoing efforts to get USDA part of CFIUS, because we know that food security is national security.

To follow a little bit more, Dr. Ortega, though, you had talked about potential unintended consequences when we are looking at placing restrictions on U.S. agricultural land ownership on citizens from certain countries. What should we be aware of as we are looking at this?

Dr. ORTEGA. Yes, thanks for the question, Chairwoman. This could really take many forms. You know, there could be retaliation from other countries. It is important to note that the U.S. is one of the top investors in foreign agricultural land across the world. From 2000 to 2016, U.S. entities were involved in many agricultural land deals, amounting to more than eight million acres worldwide, in places like South America, Brazil, Argentina, also in Eastern Europe, and so there could be some retaliation that would affect American interests abroad.

There are also trade implications. For example, China is the largest export market for U.S. agricultural and food products. We export a lot of our grain, our soybeans, our corn to China, as well as more consumer-oriented products like beef and pork. In my view, it would be far easier for China to find new sources of these products than it would be for American farmers to find new export markets, so I think it is important to also be aware of potential trade impacts from some of these measures that could happen.

Chairwoman STABENOW. Thank you very much. Senator Boozman?

Senator BOOZMAN. Thank you, Madam Chair. Mr. Pittman, based on your legal analysis, do you find AFIDA is currently written sufficiently such that it captures pertinent foreign investments in U.S. agricultural land? You mentioned the problem with it being written in the 1970's; here we are now. Does it still work in that regard, concerning that narrow area?

Mr. PITTMAN. That is actually a difficult question, believe it or not. I would put that into two parts. The first is more value judgment. You know, people in this room and people around the country would have a different viewpoint, potentially, on whether AFIDA is strong enough, whether it goes too far, whether it is on the mark, or somewhere in the proximity of any of those on the spectrum, where I think that before you get to that point, the part you go through—and this is how I break it down—AFIDA I would put as definitional and then situational, meaning more specifically, you know, as it was articulated a moment ago, you know, foreign persons, as a specific definition under the statute and the regulations.

When you deal with foreign governments or foreign individuals, I think that is fairly easy. I mean that is easy. When you get to the business entity aspect, it gets more difficult, and I think when you get to U.S. business entities, that becomes more difficult on the definitional side, meaning when is it that a U.S. entity is required

to report under AFIDA? That turns into what is—again, goes back to definitional—significant interest or substantial control, which is a lynchpin of the entire reporting system. It is in the statute, not defined in the statute but it is defined in the regulations. Again, I encourage people to go back to 1978 to 1979. It has changed since then, but that is where the foundation is laid.

Then within significant interest or substantial control, you have some bright-line tests, such as acting in concert or not acting in concert, and you know to my knowledge, there is not a definition of those.

Going back to that part about the foreign persons in that U.S. entity example, it is not—what I would say is that the way that the rules are set up, when you kind of stretch them out on the table, a U.S. entity will report up to three tiers of ownership. Then it turns back into situational, meaning once that occurs, then the Secretary is given the authority, discretion to then go ask for more information about foreign persons that are below that third tier. When that information comes in, it goes back to situational again, where they can ask for some more information.

Depending on, come full circle, on what your value judgment is on that, and we heard a lot about, you know, resources being limited, I do not have any firsthand knowledge of it, but my guess is that USDA is not able to routinely go back and exercise on that situational side of going back and, you know, potentially what I would just call the Garden of Eden, known ownership in an entity.

That is how I would analyze it. That is how I would encourage people to look at it, and then, you know, inform on that and, you know, of course they would have their own viewpoint on what that would be. There are probably other examples, but that is what came out when I was thinking it through here.

Senator BOOZMAN. Madam Under Secretary, in regard to that, do you think USDA has the current authorities—now it sounds like you do not have the infrastructure to do the disclosure process and all that. Then, you know, you talked about that all of this is being done by hand and, you know, the difficulties there as we try and move forward. Discounting that, do you feel like you have the authority to move, if Congress wanted you to move in the direction of greater disclosure?

Ms. MONTAÑO GREENE. Thank you for that, Senator. For your question, to be able to look at the levels of detail, some of the items that were mentioned by Mr. Pittman are not within the authority. We are currently reviewing the FSA form to be able to see if we can add items, not as a requirement but as optional to report, to be able to better engage. There are some expectations that we have received in various congressional inquiries and technical assistance where we have provided feedback on what additional authorities we might need if we wanted to be able to have some requirements and some reporting there. I think as Congress decides what level of additional information we want in that disclosure form, or additional engagement that USDA needs to move forward, we might need to consider that.

Senator BOOZMAN. Very quickly, can you talk a little bit very quickly about what you do to verify the accuracy and completeness of information that you receive regarding this, foreign disclosure?

Ms. MONTAÑO GREENE. When the team receives a form, they review it. They go back and ask various levels of detail. Sometimes they go and have conversations and engagement with the counties where that is being recorded, where the local FSA office is able to provide resources. Some of that information is based on local knowledge, not necessarily local FSA knowledge but local county reporters, on the level of information and filings that they also have to be able to reflect that.

Some of that conversation is having engagements with their respective lawyers to be able to ask questions whenever the form has not been completed, or if the form seems to have some gaps of information. The team is doing what they can with the resources we have, and is looking into the various layers in the third tier of ownership to be able to have those items and moving together as current information as they can.

Senator BOOZMAN. Okay. Thank you, Madam Chair.

Chairwoman STABENOW. Thank you very much. Senator Booker?

Senator BOOKER. Chairwoman and Ranking Member, thank you both for another really important hearing. I cannot tell you how grateful I am to have this opportunity to question three extraordinary witnesses, despite their haircuts.

Look, who controls our farmland is really important, and honestly my concern is also with who controls many other parts of our food system, including our seeds, meat processing, and grocery stores. This is all part of our national security. Indeed, as one of our witnesses already said, food security is national security.

In the last several decades, our entire economy, but especially the agricultural sector, has concentrated power and profits into the hands of a small group of corporations, and several of those big corporations are indeed foreign-owned, as has been mentioned by our witnesses. I support legislation that would prevent foreign corporations, such as Smithfield, from continuing to purchase U.S. farmland.

I have visited Duplin County, North Carolina, and seen firsthand what a bad corporate citizen Smithfield is, with their large factory farms poisoning the air and water, and ruining the quality of life for local rural communities, all so that Smithfield can ship cheap pork back to China. However, an equally concerning issue to me, and an issue that I hope this Committee will focus on and perhaps hold a hearing on, is the rate at which domestic corporations, such as pension funds and hedge funds, are buying up U.S. farmland as an investment strategy.

According to a recent report, institutional investors spent over \$12 billion to acquire U.S. farmland in 2021 alone, and these corporate investors now own approximately 35 million acres of U.S. farmland. I believe that our national food security depends on the farmers who are working the land having an opportunity to own the land, and I do not believe that our Federal farm safety net programs, like crop insurance, should be used as a risk management strategy by Wall Street investment funds.

That is why I recently introduced the Farmland for Farmers Act, which would prohibit these investment corporations from acquiring any additional U.S. farmland. The bill would also make the hedge funds and pension funds who currently own farmland ineligible for

USDA safety net programs moving forward. Chairwoman, I request consent to enter into the record this letter of support for this bill, which is led by the National Family Farm Coalition, and signed by over 70 farm groups.

Chairwoman STABENOW. So ordered without objection.

[The letters can be found on page 78 in the Appendix.]

Senator BOOKER. I would like to direct my question to Mr. Pittman. Can you talk about how the issues of foreign investment in U.S. farmland, and the purchase of our farmland by corporate investors such as Wall Street pension funds and hedge funds, are really intertwined issues, and the interconnected way in which some States actually have dealt with those two issues?

Mr. PITTMAN. Going in reverse chronological order, the way the States have handled that would be on the one hand, corporate farming laws. They are sometimes referred to as anti-corporate farming laws. They have been historically predominant in the Midwestern States but in other places, too, and they have a history that traces back to pre-what we know as the Great Depression era, but for agriculture the Depression oftentimes we think started in the 1920's instead of the 1930's. That is one aspect. The other is on these foreign ownership laws, which we have detailed enough; I do not think I need to go back through any of those.

Historically, in the public record—you know, I mentioned in my opening remarks how the ag industry has changed a lot, so obviously the transactions, the nature or the scope has evolved considerably. On the corporate farming law side, you know a lot of these laws, they go back, as I mentioned, out of North Dakota, 1920's on forward, and they were challenged under the different theories of the Constitution, or the constitutionality was challenged a handful of times. Made their way to the U.S. Supreme Court and the constitutionality was always upheld, and then more recently, in the last two decades, we have had some decisions under the Dormant Commerce Clause that called that into question. Along the way, the proponents of those laws, to get them enacted and then as they were argued in the court system, it was investors, and institutional investors, and from a proponent's viewpoint.

When you look at the public record on foreign ownership, both in what has been enacted at the State levels over the decades, but even if you go into the legislative history and the regulatory history of AFIDA, there you see similar concerns, a thread there from those. In fact, you know initially when AFIDA was enacted, that was what USDA was directed to report back on, impact on family farms and availability of land.

Then in my own firsthand experience, I do hear those concerns raised. Of course, that is not to say I do not hear competing viewpoints, but about that there is this broader question of ownership, whether it be institutional and/or foreign, that it basically, you know, as we all know and someone said earlier, we are not making any more land, that it becomes more difficult to compete to purchase land.

Then the final thing, which I would reflect on this a little bit more, but you know by my notion, there is ten States that have their corporate farming law and their foreign ownership law in the

same statute. At some level, they have been welded together over the years in that way.

Senator BOOKER. Yes, thank you, sir, for that answer. I will maybe ask you to think about it in a question for the record, as well as otherwise. I do appreciate the whole panel here. It has been extraordinary, as well as my colleagues beforehand. I am hoping we can look more about corporate ownership. I have had some conversations with great colleagues across the aisle about it as well. Then finally, I just want to note for the record also that Mr. Pittman has an accent that is almost as awesome as a Jersey accent. Thank you.

Chairwoman STABENOW. Well, thank you, Senator Booker, and thank you for raising really important issues. We need to broaden the scope as we are looking at all of this. This is very important.

Senator Grassley, we are going to turn to you next, and Senator Marshall technically was next but is deferring to you. I will say again, we have invoked your name and leadership multiple times today. It has been a pleasure to work with you on this issue ever since we raised great concerns about the original Smithfield purchase, and thank you for working with so many of us on both sides of the aisle on this issue. Senator Grassley?

Senator GRASSLEY. Well thank you, Chairman and Ranking Member for this very important hearing. I do not know whether the figure of 100 million acres of farmland is going to be sold over the next 10 years, so this is a very timely hearing for you to have that. You said you mentioned my name many times. I do not know whether you knew that I had an interest in this way back when I was a member of the House of Representatives and authored a piece of legislation, now law, in 1978 called the Agricultural Foreign Investment Disclosure Act. At that particular time, we did not have any national records of foreign ownership of land, and this required that the USDA keep track of this.

Just last December, Senator Baldwin and I made improvements in that act with the Farmland Security Act, which was included in the Omnibus Appropriation Bill. The bill requires a report to Congress on these investments, and to publish a prior-year disclosure on an interactive and public USA data system. That brings me to Mrs. Greene, if you have taken steps to implement the changes included in the Farmland Security Act, and what have those steps been?

Ms. MONTAÑO GREENE. Thank you, Senator, and thank you for your leadership on this issue. Section 773 of the Consolidated Appropriation Act did designate that USDA needed to modernize the AFIDA reporting system within three years and make it an online system, accessible and queryable. We did not receive any funding to be able to implement that, so we looked at creating a cost-efficient one to move forward. This summer, around June, we uploaded an Excel file for 2011 to 2021, so those could be searchable and queryable, on our website.

Senator GRASSLEY. Okay, thank you for that answer, and I hope that Congress realizes that we were reluctant, or did not put money into it, but maybe getting it authorized is a necessary first step.

Most recently, Senator Baldwin and I have introduced a bill to bring additional transparency and oversight to the foreign investment in farmland. The Farmland Security Act of 2023 imposes a new financial penalty on foreign owners or shell companies who fail to report, or misreport their acreage. Ms. Greene, how does the USDA currently track shell companies, and do you have any data on how many foreign shell companies may own farmland?

Ms. MONTAÑO GREENE. The report information that we receive is based on the self-disclosure, and so the level of reporting that we provide annually is the information and the data that we do have available.

Senator GRASSLEY. Okay. Do you think that the Department of Agriculture should have a permanent seat on the Committee on Foreign Investment in the United States, CFIUS as we call it?

Ms. MONTAÑO GREENE. Thank you for that question, sir. I want to be able to state that it is not within my purview at FPAC regarding the decision for the Department to serve on CFIUS. That would be in the purview of the Office of Homeland Security. What I can say is to be able to repeat things that my boss has definitely shared, and most recently was at Monday's White House press briefing, that the Secretary was asked a very similar question on Monday, and he stated that he does support USDA having a more robust role on CFIUS.

Senator GRASSLEY. Okay. Then Mr. Pittman, a lot of credit goes to my State of Iowa for having some of the best laws on the books when it comes to foreign land ownership. Because of these restrictions, Iowa does not have the issues that other States have had. In your research, have you encountered any State laws that could serve as an example for Federal legislation that could be enacted?

Mr. PITTMAN. The short answer is no, because it is not just a patchwork of legislation; it is a historical patchwork of legislation, and so it is difficult to find one that would be a model. There are unique differences in Iowa to Missouri, to Pennsylvania, to South Carolina, and on and on. Some of these laws were put into place—I think of Pennsylvania in particular—1791 and 1818. They have been unamended ever since. It would be hard to use that as a model law. We do not really have a lot of uniformity yet that would allow for something like that. It would be hard to do.

In that historical perspective, the reason so many of these laws are in the Midwest is that at one point, that was the Western boundaries of the United States, and so it just has a historical underpinning to it. They were enacted at a very different time. Many have been amended in some way; some have not been amended very much. It would be hard to do.

Senator GRASSLEY. Okay, thank you. Thank you, Madam Chairman.

Chairwoman STABENOW. Thank you very much. Senator Bennet?

Senator BENNET. Thank you, Madam Chair. Thank you and the Ranking Member for holding this important discussion today. I really appreciate it. Colorado agriculture contributes \$47 billion to the State's economy, with nearly 39,000 farms and ranches spread over 32 million acres. My State ranks third in the Nation in foreign-owned farm and ranchland, behind only Texas and Maine, which raises economic and national security challenges for us.

This upward trend is incredibly concerning, not just for the sake of our vital land resources but also for our precious water resources, which as you know in the West are tied to the land. Water has the same legal property rights as land; sometimes it is often more important than land. As we grapple with how to handle land resources, we should do the same for water.

On the economic front, when foreign buyers purchase land and the corresponding water rights, it drives their prices up, and Colorado family farmers and ranchers, you know, cannot afford it. Outside of the Agricultural Foreign Investment Disclosure Act, USDA has minimal authority when it comes to foreign investments, including monitoring or weighing in on any of these transactions to determine their effect on national security. Ms. Montaña Greene, while respecting private-market transactions, what role do you believe the agency could play to mitigate economic and national security concerns related to heightened foreign investments in our land and water resources?

Ms. MONTAÑO GREENE. Thank you, Senator. As a Westerner, I definitely appreciate the impact of water as a natural resource, and so thank you for being a champion on those items and issues. USDA understands that this is important for national security, and that land resources and all resources are very important. Our authority does not allow us to stop the selling of foreign land. We do not have authority to have a decision in foreign or domestic land purchases and leases. We are doing our job to be able to have the Foreign Land Disclosure Act.

Questions have been asked about our role within CFIUS, and my understanding, although it is not in my purview, is that infrastructure that we have been talking about, that complication of having that way to better understand who is purchasing and who is moving, is sometimes outside of the USDA role. We will continue to do our work to implement the Foreign Land Disclosure work, and to be able to continue to work with Congress on working on solutions.

Senator BENNET. Well, I really appreciate the clarity of your answer, Ms. Montaña Greene, and you are right, both about the lack of jurisdiction and then also CFIUS, so you have anticipated my next question.

So earlier this year—and this is for the whole panel—earlier this year, Senator Lankford, my colleague on the Intel Committee and I introduced the Security and Oversight of International Land Holdings Act, or the SOIL Act, as a means to address foreign investment oversight. Our bill would not limit private agricultural land real estate transactions, a topic I understand worries some producers.

The bill would require CFIUS, the Committee on Foreign Investment in the United States, an important national security committee, to review agricultural land acquisition deals from countries with non-market economies, including China, Russia, Iran, North Korea, that pose a national security threat risk to the United States. It would also require the Committee to consult the Secretary of Agriculture on such deals.

Would each of the witnesses today share how they believe Congress should reform the Committee's authorities to help address

the increase in foreign-owned U.S. farmland? Why do we not start here in the middle and go around? Thank you.

Mr. PITTMAN. Thank you for that. In terms of an opinion about what Congress should do, I am going to bail out on that one. You know, from the National Ag Law Center perspective, we do not engage in advocacy or policy, advocacy legal-or policy-wise. What I could add to that, I think, you know there is obviously a number of proposals to add the Secretary of Agriculture to CFIUS. You know, I think everybody here knows that in the House, it passed 42 to nothing a few days ago on that very measure. Under the Defense Production Act of 1950, in addition to the efforts legislatively, there is in the statute authority for the President to place other people on CFIUS. It is the last paragraph; I think it is Paragraph J of that section. As far as an opinion on what Congress should do with it, I do not have an opinion on that.

Dr. ORTEGA. Senator, thanks for the question. I will just add, you know, I think it is important that future land deals and acquisitions receive proper scrutiny. I cannot really speak to what policy should be implemented to do that necessarily, but I would just reiterate what I mentioned during my testimony, that whatever action and regulatory response be evidence-based, and sort of look to strike a balance between our national security and also fostering economic growth and opportunity.

Chairwoman STABENOW. Thank you very much, and thank you for your leadership. Senator Lankford was here earlier and acknowledged that the two of you were working on this. It is very important.

All right, we are now going to turn to Senator Marshall. Good morning.

Senator MARSHALL. All right, Madam Chair, good to see you and Ranking Member, good morning, and welcome to our witnesses.

BGI is a China-based biotech company tied at the hips to the Chinese Communist Party and Chinese military, that has been leading China's efforts to create the world's largest genomic repository.

Our USDA has provided grant dollars over the past decade to BGI for genomic gathering and data storage. Of great immediate concern, though, is its relationships with USDA and the American scientific community. BGI has access to genetic information of American citizens. BGI is listed as a concern by the NCSC, the Department of Defense, and the U.S. Department of Commerce.

I want to stop and emphasize the greater national security threat we face in agriculture and our Nation's ability to feed itself lies in this backdrop of China's goal to steal our intellectual property, and then create and manipulate the world's largest genomic repository. Here is my concern. To borrow from the Wall Street Journal article, World War III will be fought with biological and computer viruses simultaneously.

Next I want to talk about the Earth BioGenome Project, EBP, which is an international cooperative initiative to sequence the DNA of more than 1.5 million species. BGI provides data collection and data storage for EBP. Please realize this again—the USDA continues to maintain a relationship with the Earth BioGenome Project today.

Now here is the important point. Here is the theme. In China's relationship with our Nation and others, their goal is to obtain access to intellectual property, while we pay for the research and development. The intellectual property is what is so very important in this relationship. Again, we pay for it, we do the research, they get the intellectual property. By maintaining relationships with the CCP-related entities, directly or indirectly, we place American citizens and our food supply at risk. There is no guardrail. There is no contract, no ethics of scientific research, nothing the CCP respects, as we witnessed by their takedown of valuable DNA sequencing data during the Chinese-created COVID pandemic.

Again, my national security issue is this. While I acknowledge all the good that can be done from genomic collection, it does not take much imagination to realize the potential catastrophic biotech attacks rogue nations or terrorists could wage on Americans.

My first question for Madam Under Secretary is this, and I know this is not your exact purview with USDA, but do you agree that EBP and BGI pose a national security threat to our Nation, and should we continue to have this relationship with either of those entities?

Ms. MONTAÑO GREENE. Senator, USDA is definitely concerned about agriculture and its role as it is connected to national security. We feed this country, and so we know agriculture is very key to that. With regard to this question, this is fully outside of my purview. FPAC gets to be the program-facing entity of it. If it would be okay with you, I would like to take that back to my colleagues over in the research/education division to be able to help me better respond to that.

Senator MARSHALL. Great, I appreciate that. We did send a letter previously, and we will be awaiting the answers here.

The plot thickens, though. We described an ever-widening web here. The Earth BioGenome Project and BGI are also part of something even bigger called the Global Virome Project, GVP, which was also formed and created with American dollars. More accurately described, the Global Virome Project became part of the EBP, so GVP is able to expand its global reach even more while it has been able to hide behind this larger umbrella of the EBP, which has made tracking of the Global Virome Project's activities even more difficult. A tangled web, indeed.

Today, GVP supports The Trinity Challenge. What is The Trinity Challenge, you might ask. The Trinity Challenge has a goal to collect the DNA of every human, animal, and plant across the world. We as a nation are once again financing the research and giving the Chinese Communist Party access to a goldmine of intellectual property that can and will be used against us.

Again for Madam Secretary, two questions. Is it ever safe to do research with China? Next, what are the potential bio-weapons that could result from this research that could impact American food security?

Ms. MONTAÑO GREENE. Senator, thank you for that concern. USDA is very much concerned with national security issues and how agriculture is part of that. I would like to take that question back to my colleagues to better provide you an answer and to give you commentary on it.

Senator MARSHALL. Okay. If I could, Dr. Ortega, you have been involved with China on and off. Do you feel it is ever safe to do research with China?

Dr. ORTEGA. Senator, thanks for your question. You know, this is a very complex issue, and I will say we have very talented Chinese-Americans and Chinese scientists working at land-grant institutions here in the United States. I think it is in our national interest to collaborate with China on research, but we have to make sure that it is done in a very fair way, and that is all that I am able to comment.

Senator MARSHALL. I would love to see how you vet these people, but that is probably a question for another day. Thank you so much for your answers, and thank you, Madam Chair.

Chairwoman STABENOW. Thank you very much. Senator Welch, welcome.

Senator WELCH. It is good to be here. Thank you, Madam Chair. You know, I share the concern about foreign ownership, Chinese ownership in particular. A lot of that has been covered by my colleagues. I also share the concern about the incredible challenges for young aspiring farmers to get access to land, and a lot of that has to do with the high price, and of course corporate consolidation.

As I understand it, between 2011 and 2021, foreign ownership increased from 2 percent to 3.1 percent. Most of that foreign ownership is non-Chinese. Chinese ownership is less than one percent of all foreign-held acres, and I think a lot of that is around installations that do need security. There is obviously a link between their ownership and trying to be close to military installations.

But 81 percent of America's farmed cropland is controlled by 15 percent of farms, so this is an incredible amount of consolidation. Small family farms, those that earn less than \$350,000 in gross cash income, accounted for 89 percent of all farms. We have a lot of those small farms in Vermont. Large-scale farms, one million or more, accounted for about three percent of farms, but 47 percent of the value.

I am going to ask Dr. Ortega, in your testimony you mentioned that the foreign acquisition of U.S. agricultural land by foreign entities does not threaten our ability to produce food, with the caveat that it does raise specific and sometimes local concerns. However, the consolidation of farmland by large corporate entities also poses significant challenges for our farmers. Can you speak on the extent of corporate consolidation in the agricultural sector, and what challenges that consolidation poses for our economy and our farmers?

Dr. ORTEGA. Yes, thank you, Senator, for that question, and thanks for highlighting this very important issue. It has also been brought up earlier with Senator Booker's comments.

Senator WELCH. Right. That is right.

Dr. ORTEGA. The issue of corporate ownership of farmland and farm consolidation is very, very important, especially as it affects new and young beginner farmers as we look at an aging farmer population. One constraint to being able to answer your question fully is data availability. We do not have high-frequency data on this issue. There is a survey that was recently done by the National Young Farmers Coalition last year, done over many thousand farmers under the age of 40, and a lot of these farmers noted

that access to farmland was critically important, but it was also challenging given the rising land prices. It is an issue that I think needs to be better informed by having more access to data on farm ownership consolidation, given how fast these trends are changing in the industry.

Senator WELCH. Thank you very much, and I will perhaps ask Under Secretary Montaña Greene, any suggestions of what we can do about this? I mean the big operators have the cash and they can outbid the small farmers, and we need those small farmers, so I wonder what concrete suggestions that you might suggest to us.

Ms. MONTAÑO GREENE. Senator, if I could take that in two approaches with what USDA is doing, and how we could maybe continue to collaborate with the Senators and Congress. First, for land access, capital, and market, thank you for the Inflation Reduction Act. We had \$300 million to be able to implement a program to be able to study this and to be able to think about providing grant programs. We just announced those projects earlier this summer. Looking forward to seeing the results and the returns so we can better be informed on how we can provide better tools for young beginning farmers, and for communities that are smaller, low-income farmers looking to be able to have access to those. Just thank you for that; the Inflation Reduction Act was able to provide that.

With regard to consolidation and monopolies, while it is not explicitly in my purview at FPAC, the Department has been doing quite a bit of work on that to move forward with the American Rescue Plan, the Food System Transformation, to be able to think about local and regional foods in those aspects. FPAC has participated with our colleagues over in the Marketing Regional Program.

The other is, this summer USDA launched a partnership with State attorneys general to go after corporate bad actors who are against antitrust laws. We have been working to be able to address the Packers and Stockyards Act, and then just be able to robustly think about how we are addressing those smaller farmer needs as we move forward.

Senator WELCH. Thank you very much. I yield back.

Chairwoman STABENOW. Thank you very much. Senator Ernst?

Senator ERNST. Thank you, Madam Chair, and thank you to our witnesses for being here today as well. Chairwoman Stabenow, I appreciate you calling this hearing today on this important issue. I think so many of us are really concerned about this issue, and we have worked very closely together on it to modernize the Agricultural Foreign Investment Disclosure Act.

As our Iowa farmers know well, food security is national security. In that same vein, I would be remiss not to express my frustration that we do not have at this time meaningful progress on the farm bill. On Monday morning, I drove up to the airport, and my route goes through southwest Iowa. That entire way to the airport, we have farmers that are fully engaged in harvest right now, and it is such a great sight for me. I get very nostalgic. Some of the best memories I have from childhood are riding in the tractors and the combines with my grandpa, my dad and my uncle. Yet these Iowa farmers, while they are out there, they are working hard, they are bringing in the harvest right now, they are feeding their livestock,

and yet Congress and this Committee, we are set to let the 2018 Farm Bill expire in three days, and I really think this is a shame.

I consistently hear from our farmers and ag leaders about the need for more farm in the farm bill, and there are serious concerns with the increasing foreign investment in American farmland today. China, our No. 1 pacing threat, continues to grow their influence on the world stage under the weak leadership of the Biden administration.

In 2021, we had a China-based company purchase 300 acres of valuable farmland only 20 minutes from the Grand Forks Air Force Base in North Dakota. Mind you, this base is home to some of the Nation's most sensitive military drone technology. As if that was not enough, earlier this year the world watched as a Chinese spy balloon crossed over our sovereign border, gathering intelligence for the Chinese Communist Party over much of the Midwest and our Nation's prized land. President Biden had the audacity to call this silly.

Folks, this is concerning on many levels, and a grave threat to our national security. According to USDA's 2021 AFIDA report, foreign persons hold an interest in approximately 40 million acres of U.S. ag land. That is more than the entire State of Iowa—more than Iowa. Foreign ownership and investment in our ag land has nearly doubled over the latest decade. It is time we get tough on China and our adversaries by drawing a line in the sand when it comes to our ag industry and the food security of our very own nation.

Thankfully, in Iowa we have provisions to protect our farmland, but we need to see strong protections across our Nation. It is time we overhaul the system. We must modernize the Agricultural Foreign Investment Disclosure Act, which became law in 1978, and that is why I am proud to have bipartisan action with Chairwoman Stabenow on our legislation, the Foreign Agricultural Restrictions to Maintain Local Agricultural and National Defense, or FARM-LAND Act, to increase reporting, strengthen oversight, and send a strong, clear message to our adversaries that American farms are not their playground.

Deputy Under Secretary Greene, do you know and can you report to this Committee how many foreign persons are participating in taxpayer-funded Farm Service Agency programs?

Ms. MONTAÑO GREENE. Senator, thank you for your concern. I want to acknowledge that USDA also believes that agriculture is an important part of national security and the work that we have been doing. The AFIDA requires us to disclose foreign land. USDA does not have the authority to stop the sale to a foreign land. We do not have the authority to have any decision in the process of foreign or domestic lands, domestic entities purchasing land.

With regard to the question of individuals within the program, we will have to get back to you for that. We implement the program based on statute, and each program has its own respective statute governing the eligibility for the respective programs.

Senator ERNST. Okay. It is concerning, and I think part of the problem in tracking this as well, foreign people participating in these programs, is that USDA has a very outdated process and so we do not know this information, and that we have a voluntary fil-

ing system, and it is still paper-based. I think we have a lot of work to do within USDA to make sure that we are tracking this information, because if our taxpayer dollars are going to foreign individuals, we need to know that. Again, I think the FARMLAND Act would address a lot of those concerns and make it much easier for us to track.

I see my time has expired, Madam Chair. Thank you very much for allowing me the time. I yield back.

Chairwoman STABENOW. Thank you so much. Let me just say for the members, that as we are diligently working on the farm bill—I have been involved in six of them—none of them, unfortunately, have ever hit the exact deadline. In 1918, we went through until December, and I am hoping with all of the Committee leaning in and working together that we will be able to meet that timeline again, because it is so important that we do this for everyone who is impacted by all the issues in the farm bill. Thank you so much for raising that, and we will continue to work with you and all the members of the Committee to make sure that happens.

Let me turn to Senator Fetterman. Welcome.

Senator FETTERMAN. Thank you, Madam Chairwoman. Let me say, I hope many of our colleagues agree, the Chinese government and other U.S. adversaries should own zero, zero agricultural land in our country. I believe that. I mean they are taking back our pandas, you know; we should take back all of their farmland. You know, this is really a national security issue, and it is a food security issue.

Pennsylvania is a leader on this issue, and a law requiring foreign disclosure on agricultural land, and I hear it is a good one. Mr. Pittman, you shared some State laws, but can you elaborate on how State laws and the few Federal laws may work together?

Mr. PITTMAN. Sure. Probably the best way to answer that is to take a snapshot in time back at the end of 1970's, with the enactment of AFIDA in 1978. At that time, the position that was struck was that matters of prohibition, or even banning, although there is no State that has an absolute ban on foreign ownership, that that would be a matter left to the States and that the Federal Government would operate in the space of requiring reporting. From that backdrop, that is basically the paradigm in which this has moved forward since that time. So there are things that the Federal Government can do, things like CFIUS, that the States simply cannot, but that is basically the paradigm there.

Anything to dig deeper in that, you would look at each specific State law and how it compares, and States like Pennsylvania are very unique; you did mention that, unique with the reporting requirement. It also has a requirement that the Department of Agriculture has a role in monitoring the AFIDA data. A lot of its provisions go back to the Revolutionary War period and up into the early 1800's, so you have got to take those things into account as well.

Senator FETTERMAN. Can you speculate on why exactly would the Chinese want to own vast amounts of our farmland?

Mr. PITTMAN. I am not the most qualified for that, but I think, as Dr. Ortega laid out, a lot of the ownership that currently is evidenced in the AFIDA data traces back to the Smithfield transaction

that occurred roughly a decade ago, and I will leave it at that. I do not think I am qualified beyond that.

Senator FETTERMAN. Yes. Yes. Secretary Montaña Greene, like my colleagues, I am concerned with foreign countries' and foreign corporations' ownership in our agricultural supply chain, in small farmers in PA. There is over 56,000 of them here in Pennsylvania face enough hardships, and they do not need to compete with foreign governments buying our land. Secretary, how could Congress give USDA more resources, including and updating the Agricultural Foreign Investment Disclosure Act, to counter adversaries buying our farmland?

Ms. MONTAÑA GREENE. Thank you, Senator, for the question. We agree with you. USDA believes that agriculture is an important part of national security. Two approaches to that question. The first is, thinking about your small producers and your family farms in Pennsylvania, and the work we are doing to be able to invest and have better investments there. While not specifically within FPAC, USDA has been investing in the Food System Transformation, which has a lot of local and regional investments. We have been working to address consolidation efforts and have a collaboration with attorneys general throughout the country to be able to address that.

With regard to AFIDA, AFIDA itself is a disclosure act, and that is the authority that we have. USDA does not have the authority to approve or decline purchases of land, domestic or foreign, so that is just one thing to be very clear of what USDA has within authorities.

Within the support of the investments, we appreciate Congress' work in which they have given us some language within the Omnibus Appropriations Bill last year to be able to modernize and look forward to some support on that financially as well.

Senator FETTERMAN. Thank you.

Chairwoman STABENOW. Thank you very much. Senator Hyde-Smith?

Senator HYDE-SMITH. Thank you, Chairwoman Stabenow and the Ranking Member Boozman, for this important hearing, and thank you to our witnesses. Senator Boozman, thank you for bringing Harrison along. We have worked together for many years, and it is certainly good to see you at the end of the table, Harrison.

It truly is important for us to examine foreign investments in U.S. agriculture, American food security is obviously the national security issue that we all know that it is. We need to make sure that our foreign adversaries do not have the influence over those agricultural systems, and that is really important in Mississippi, where agriculture is our No. 1 industry.

I am pleased that the State of Mississippi has convened a Study Committee on Foreign Purchases of Farmland there. We are simply missing some information when it comes to this topic. I am glad my home State is investigating this issue, and I am glad that we are examining it today here at a Federal level, too.

Madam Under Secretary Montaña, as you know, several legislative proposals this Congress seek to include the Secretary of Agriculture as part of the Committee on Foreign Investments in the

United States. Should this proposal become law, how do you envision USDA's participation on this Committee?

Ms. MONTAÑO GREENE. Thank you, Senator. I just want to acknowledge that the role of CFIUS would not actually land within my mission area; it would land within the Office of Homeland Security within USDA. Having said that, I will just repeat something that the Secretary had said earlier this week when he was asked this at the White House during a press briefing, in that he does acknowledge that it would be an important role for USDA to have a more robust role on CFIUS.

With that implementation of it, it is not just the role of CFIUS but it is also understanding the system to be able to report and to be able to gather the information. Not the AFIDA disclosure system, but understanding where deeds are registered, about leases, and how we are able to collaborate that information and that information feeds in to better understand it. Some of the USDA role, and then some of the systems roles within counties and States, and I do want to recognize your State of Mississippi for the work that they are taking on to better study this.

Senator HYDE-SMITH. While I understand the Secretary is not a current member of the Committee of Foreign Investments, and you are saying it has fallen under someone else, the Committee does flag certain cases to be reviewed by USDA, which falls under the responsibility of the USDA's Office of Homeland Security, obviously. However, the caseload is high while annual budgetary resources are rather limited, less than 1.4 million for the USDA Office of Homeland Security in the Fiscal Year of 2023 that we are in. What type of budgetary resources would USDA's Office of Homeland Security need to appropriately analyze all the cases in a timely manner?

Ms. MONTAÑO GREENE. Senator, thank you for the appreciation and the support for the staff that implement a lot of these programs, and any of the resources that we need to move forward. The Office of Homeland Security is not under my purview, but if I can just make a general statement about impact of budget. We are all concerned about the appropriations and the cuts we have to have, and what that means for stretching further resources. If it is okay with you, I would like to take that back for the Office of Homeland Security, too, to better provide a response on what the need would be for Fiscal Year 2024.

Senator HYDE-SMITH. Okay, I have a little time left. Dr. Ortega, in your testimony, you mentioned China's investment in agribusinesses in other countries, and could you talk to us about China's investments in agricultural research and development, and how the United States' investment compares to that?

Dr. ORTEGA. Senator, thank you for your question. This is, what I would consider China's investments in agriculture research and technology, one of the biggest threats to our food security. China, since 2011, became the largest funder of agricultural research and development, far surpassing the U.S. and the European Union. They are currently spending five times more on research and development today than they were—

Senator HYDE-SMITH. Wow.

Dr. ORTEGA [continuing]. two decades ago. In comparison, here in the U.S., our spending and investment has fallen, and has fallen by about a third over the last two decades, and it is close to about half of what China is spending. Their trajectory is upward; we are falling behind. As you point this out, you know, it is what I would consider to be one of the most serious threats to our food security is their level of investment.

Senator HYDE-SMITH. Thank you for your answer, and my time is out. Harrison, you are off the hook.

Chairwoman STABENOW. Thank you so much. Senator Fischer?

Senator FISCHER. Thank you, Madam Chairman and Ranking Member Boozman for holding a hearing on this important topic, and thank you to our witnesses for being here today. In addition to serving on the Agriculture Committee, I also serve as a senior member on the Senate Armed Services Committee, and I am the Ranking Member on the Subcommittee on Strategic Forces, which is responsible for our nuclear deterrent, space systems, and our missile defense.

It is no secret that many critical weapons systems are located in rural America near agricultural land. For example, in western Nebraska, that is home to the Minuteman III ICBMs, and it will soon be replaced by the Sentinel ICBMs. These weapons systems and the airmen operating them keep Americans safe every day. We cannot let military installations hosting sensitive missions, like these in Nebraska, become vulnerable by allowing adversaries to purchase land nearby, which they can then conduct espionage or other nefarious activities. The Chinese Communist Party will actively seek and exploit any opportunity they see to do so, and so I believe we have to have a process in place to prevent them from doing that.

Ms. Greene, while foreign investments in ag land should be reported, we also need to ensure that the information is communicated to all relevant stakeholders. Does the USDA currently have any process in place for reporting to DoD if there is foreign investment in proximity to national security assets?

Ms. MONTAÑO GREENE. Thank you, Senator, for your service on both committees. We agree with you at USDA that agriculture is part of national security and very important to that role, and we do not have the authority to be able to approve or to decline purchases by foreign or domestic lands.

With regards to—I am sorry.

Senator FISCHER. Oh, to reporting to DoD.

Ms. MONTAÑO GREENE. Yes, with regards to the reporting, yes—

Senator FISCHER. Do you currently have the tools needed to do that, or—

Ms. MONTAÑO GREENE.—so with regards to—

Senator FISCHER [continuing]. does this Committee need to look at something?

Ms. MONTAÑO GREENE. With regard to reporting, I know there has been a lot of conversation about the role within CFIUS. It is not within the purview of FPAC. It has been raised to the Secretary; the Secretary has shared his intention that it would be a good idea for us to serve there.

With regards to report, even though we are not members of CFIUS, we serve in an ad hoc role, so when they call upon information to share and we are able to share that information, we do provide that with them. Throughout the year, they look at our reports that we provide annually, and so we do know that that report is available publicly and individuals have been leveraging it, and if there are needs, they will seek additional information.

Senator FISCHER. Also, you had mentioned that USDA is updating the FSA-153 form currently being used for AFIDA data base. Can you expand on what questions will be added to the form? For example, currently is there any way to know how much foreign-owned land U.S. farmers can be renting?

Ms. MONTAÑO GREENE. The questions that are going to be updated in the 153 form, we have been gathering a group to be able to better understand the statute, where information can be added that we are not seeking, has been shared by my colleagues. Right? This is 45 years ago that it was passed, 44 years ago that it was written in regulation, and so agricultural land has been very different.

Some of the information is not a requirement that we can have. If we want to be able to ask for their FSA farm records, that cannot be required to be put in there; we are going to be putting it as an optional to help us better track information. That is something that we do not have authority to be able to provide. Most of the requests and everything that we do is going to have to have an authority to better reflect leases and better reflect some of the land ownership in agricultural communities.

Senator FISCHER. As you know, people in agriculture are pretty individualistic, and they do not like a lot of reports. How—I will ask any of you—do you have suggestions on how we can make sure to get the information we need? I think we are all looking at foreign-owned land, foreign renters of land, and I specifically am looking in certain vulnerable areas across this country. Do you have any ideas how we can differentiate on the reporting requirements so we are not putting undue burdens on citizens in this country? Anyone have an aha moment here?

Ms. MONTAÑO GREENE. You know, Senator, I think the issue is very complex here. It is self-reporting. It is on the books. It should also be known we have been doing a lot of robust education with the realtor associations, various individuals that are within knowledge of deeds, making sure that our county offices or State offices would be more than willing to work with senators to be able to provide a toolkit if you want to be able to provide it to your respective communications, to be able to report.

I do not know if there is like a system that is not self-reporting. The complication is the multiple county recorders, the clerks, the multiple State systems that do not actually have an automated flag that then reports it up, for us to be able to then scoop into this. As we are moving forward, to be able to, you know, adlib what the Secretary said, there is not necessarily a foolproof way to be able to go. We can do the work that we need to do at USDA in one part of the system, but the other systems throughout the country and the infrastructure for us to be able to pull a report. We can rely on colleagues such as Mr. Pittman and Dr. Ortega and other enti-

ties, but we do have multiple structures and a complex system that needs to be created to be able to——

Senator FISCHER. Right. Since we do not—I just do not think the government needs to interfere in people's private businesses by requiring more reporting. In Nebraska, we have 97 percent private ownership of land. I understand the challenges that we are facing here as we do try to figure out how we can get a better handle on, have more information on the foreign ownership, which I think is a concern for all of us. Thank you.

Chairwoman STABENOW. Thank you very much. Senator Braun?

Senator BRAUN. Thank you, Madam Chair. Thanks to the witnesses for your participation and comments. I have got a statement I am going to make, and then a question for Madam Chair and Ranking Member.

Senator Tester and I did a bill, Protecting America's Agricultural Land from Foreign Harm Act, also sponsored by Senator Tuberville and Rubio. It would prohibit persons owned by, controlled by, or subject to the jurisdiction of China, Iran, North Korea, and Russia from owning or leasing American agricultural land. It would also stop these individuals from participating in any of the USDA programs. I vetted this bill carefully with the USDA, the intelligence community, and a handful of committees here in Congress.

I would like to submit letters of support for this legislation into the record, from the Agribusiness Council of Indiana, America First Policy Institute, Inherited Action.

Chairwoman STABENOW. So ordered without objection.

[The letters can be found on page 82 in the Appendix.]

Senator BRAUN. Thank you. Several bills are addressing this issue. I have got Kip Tom, a farmer from Indiana and a former Ambassador to the United Nations for Food and Agriculture, and he capsulizes in a letter, which I would like to submit into the record as well.

Chairwoman STABENOW. So ordered without objection.

[The letter can be found on pages 85 in the Appendix.]

Senator BRAUN. He points out that China has invested heavily in Belt and Road Initiatives throughout Africa, somewhat in South America. We have seen them steal intellectual property, manipulate currencies, just do about anything out there that would not be in the category of a handshake business partner. We have watched them leverage corrupt influence over the WHO, perpetuating a years-long lie about how the COVID-19 pandemic started. Now China is running the same playbook on agriculture, using direct investments and regulatory capture at trusted international organizations to build power.

Something has to give, and I am concerned about what time we have left here this year. If these bills do not make it into the farm bill, or in a way through this Committee, would Madam Chair and Ranking Member be okay with trying to maybe get them into the NDAA?

Chairwoman STABENOW. Well, thank you very much, Senator Braun. Senator Boozman and I were just talking about there is such interest, there are a multitude of bills, all of which in some way come together—we also know this is very complicated, as we

were just hearing, about private ownership and how do we make sure this is focused and targeted in the right way on national security. I think we need to work together on all of this. Certainly NDAA is the vehicle that is moving and probably, you know, will have the opportunity to be signed into law first; we do not know. We certainly want to work with you, with other members of the Committee and those off the Committee to put together what makes sense. Some of this is jurisdiction of the Banking Committee with CFIUS, which I think is a very important piece of this.

Senator BRAUN. We have already worked with them to clear it, to make sure it dovetailed with them.

Chairwoman STABENOW. Absolutely. I think we have got to work together. I pledge to work with you and with Senator Boozman and other members that are interested to see how we can move forward, in the way that protects our national security interests but addresses the other concerns that have been raised today as well.

Senator BRAUN. Senator Boozman, are you okay with that?

Senator BOOZMAN. No, I agree totally. Again, as the Chairwoman said, we were kind of going back and forth about a path forward. You know, there is not many things in Congress where there is a lot of consensus, and I think that there is real consensus, both in the House and the Senate, Democrats and Republicans, that we simply need to get this worked out so that we protect, you know, the farmland, protect our entities, our industry, but also, you know as Senator Fischer was talking about, you know, not making this thing too onerous.

Senator BRAUN. In that rare moment here in the U.S. Senate, we certainly out to take advantage of it. Thank you.

Chairwoman STABENOW. Senator Thune, welcome.

Senator THUNE. Thank you, Madam Chair and Senator Boozman, for having today's hearing on foreign ownership of U.S. agriculture. I also want to thank our witnesses for appearing before the Committee and for your input on this important issue. It has already been stated, but food security is a critical component of national security, and we need to make sure that foreign countries do not hold an undue influence over our food supply. I am pleased that this year's Senate National Defense Authorization Act includes Senator Rounds' amendment to prohibit China, Iran, Russia, and North Korea from purchasing U.S. agricultural land and businesses, and I will continue to advocate for this provision's inclusion in the final NDAA.

We also need to take a close look at the U.S. Department of Agriculture's role in overseeing foreign ownership of U.S. agriculture, particularly as we keep working on the next farm bill. We must safeguard U.S. farmland, and food security is a critical component of national security, and I look forward to working with members of this Committee on this issue in the next farm bill.

Dr. Ortega, what are the food security implications of increased foreign ownership of U.S. agricultural land and businesses? Based on your research, what can we do to strengthen food security to support national security?

Dr. ORTEGA. Great. Thanks, Senator, for the question. You know, as I mentioned in my testimony, one area that I think is important to look at are the effects of foreign demand for agricultural land on

land prices and rental rates. The research that is out there, and this has been done as part of the latest AFIDA reporting, shows that there is no effect of increased demand on land values and rental rates.

I will say, you know, in terms of what needs to be done, and we have discussed a little bit of this today, we need to have better access to data. The AFIDA data that is out there and that is reported has a lot of missing records, missing values that make it very difficult to really understand what is happening.

Another important point on this is when we look at trends in the AFIDA data, there has been a lot of reconciliation of past transactions due to a lot of these errors, so it is really difficult to track what is happening over time because of the data quality, and I will leave it at that.

Senator THUNE. Okay. Mr. Pittman, you mentioned that USDA program eligibility for U.S. ag producers versus foreign persons is an area that can lack clarity. It is important that USDA programs are targeted to U.S. farmers and ranchers and not foreign persons. Could you explain that issue a little bit further, and how do we make sure that USDA programs are targeted specifically to help American ag producers?

Mr. PITTMAN. The short version of that is, in general, when it comes to USDA programs, particularly disaster assistance-type programs, the word that is used is prorate. You prorate out the level of foreign ownership, or the percentage of foreign ownership from the payment that is at issue. That is how it is generally done now. An area that I can only speak to that I have noticed it, that seems to be a shift, with the Emergency Relief Program and then the recently announced Milk Loss Program, it appears that the standard for those is any level of foreign ownership would create ineligibility.

Those are the two tracks that I am aware of, and again that kind of gets you down in from—we talked earlier about AFIDA, but parallel to that, when you have the statute, the regs, when you deal with Farm Service Agency, or NRCS for that matter, you are going to have handbooks as well that go out to the States, and that is what is used at the county level to implement all these programs, and it is in the handbook where those new standards have been found, particularly for the ERP.

You know outside of that, it is more proactive or looking forward. You know, you have several proposals, I will not relate them all here, but several that try to have some level of restriction on the receipt of Federal funds. Some go as far as receipt of any Federal funds, you know, if a State does not have a law that prohibits foreign ownership to some degree, and others are more specific at the Federal level to USDA programs. It is a matter of changing those laws to the extent that that is done through the Committee and through Congress.

Senator THUNE. Thank you. Ms. Greene, given your role in overseeing USDA's implementation of the Agriculture Foreign Investment Disclosure Act, what is your response to the discrepancies that Dr. Ortega has raised, and could you provide a status update on USDA's implementation of the improvements to the Agricultural Foreign Investment Disclosure Act that were enacted last year?

Ms. MONTAÑO GREENE. Thank you, sir, for that question. We are doing our best based on the information—it is a self-reporting document. We appreciate that Congress has put language in the appropriations language last year to update and to modernize AFIDA. It also came with zero funding. We have done the recommendation which was in the Consolidation Act to be able to provide that in a queryable format. This summer, we uploaded Excel documents for the last 10 years of that data to be able to move forward. We have been hearing on some of those documents, to be able to move forward. We are currently looking at budgets that are being discussed within the House and the Senate. We know that the FPAC Business Center, which houses the AFIDA, has a drastic reduction in their budget, so that will have impacts as well moving forward. We continue to find ways that we can move forward to be able to continue working with—

Senator THUNE. The discrepancies that he pointed out? You know, I mean I understand updating it is part of it, but do you have any way of explaining that?

Ms. MONTAÑO GREENE. Yes, so there are some items, which we will call Excel records—so there is times that have compiled ways for where it has been recorded that it was sold, or to foreign entities holding it, but that entity might have then sold it back to domestic, for example, so like a U.S. citizen might have it. Those kinds of information that are needed to be able to have that more updated format.

The complicated system outside of USDA, to be able to have an understanding of how the deeds are recorded when they are recorded at the county office level, the State level, or even the sovereign tribal communities, and how that reports up to us, there is not like an automated query that we can then put it into the AFIDA way, so we have to rely on the self-reporting. That includes the education and the outreach that we are doing with various entities, realtors, land trusts, local communities, posting it within our county offices so folks know to update their form and to make sure once it sells back from foreign to domestic or domestic to foreign, to be reporting to FSA or to USDA.

Senator THUNE. Thank you. Thank you, Madam Chair. Time has expired.

Chairwoman STABENOW. Thank you. Senator Hoeven?

Senator HOEVEN. Thank you, Madam Chair. To Secretary Montaña Greene, as has been brought up a number of times, a Chinese company recently wanted to purchase, or did purchase 320 acres and wanted to build a wet corn milling plant very close to the Grand Forks Air Force Base in our State. That raised serious national security concerns, defense concerns, because that base is a leading base when it comes to ISR, satellite, and actually now working with hypersonic development. We worked with CFIUS to try to address that situation, but because CFIUS really was not up to date in some respects, in regard to agriculture, for example, and some other respects, the CFIUS process was not effective for that situation. We ended up working directly with Air Force and the city of Grand Forks and ultimately did resolve it, so that project did not go forward.

As a result, we have taken a number of steps, and one of those is legislation. I am a cosponsor of the PASS Act with Senator Tester, Senator Rounds—and much of that legislation has now been included in the NDAA, in the Senate version of the NDAA, and we hope it becomes law—restricting China, Russia, Iran, and North Korea from purchasing land, but also requiring the Ag Secretary to report on foreign takeover of U.S. businesses. In this case, it was not just the purchase of farmland; it was an ag business that created the opportunity for spying, which was a big concern.

In terms of this legislation that we are now advancing to prevent this type of risk, not only foreign purchase of farmland but spying on our military installations, that kind of thing, are we doing enough here? Is there something else that we should be doing in addition to what I have just described?

Ms. MONTAÑO GREENE. Senator, thank you for that, and thank you for your various support in the agencies at FPAC. USDA does believe that agriculture is part of national security, and while FPAC and the four agencies that I get to work with in the mission area do not have direct purview over CFIUS—that would be with the Office of Homeland Security—it has been a discussion that I have been aware of, of various items.

I think one is the consideration, right, that there are some ag land purchases that are not covered within CFIUS, so I think that is what you addressed within North Dakota specifically. It is also the placement and the ability for the Secretary to serve on CFIUS, which he mentioned this week at a White House briefing that he is supportive of having USDA have a more robust role. It needs to be that, plus more.

The complex system to be able to have an understanding of the data that is occurring at the local level in 3,000 counties across this country, at the 50 States and 500 sovereign nations, to be able to report that up, it does not exist. In addition to the work that we do to be able to have the disclosure act filed, having that complex system to be able to support, and how we think about the Federal interacting with local governments is really important to move forward.

The other item I would just like to raise is, as was discussed about the improvements for AFIDA, or any items that we need to move forward, the resources to be able to complement that. While I still owe one of your colleagues a conversation, a followup with the Office of Homeland Security about their respective budget needs, the implementation for us to be able to have the capacity to be able to implement this if this moves forward is going to be very important.

Senator HOEVEN. Okay, exactly. That is the other thing I was going to mention. I am on the Ag Appropriations Committee. We included language last year, again trying to address this issue, directing you to update the access system for AFIDA so that people can truly see what is going on with any of these foreign purchases of ag businesses. Again, where I am going here, it is not just the purchase of ag farmland—and you are right; our State of North Dakota, we address that by prohibiting foreign purchase of farmland in our State. There is a State role to play, too, but in terms of the Federal level, I am really asking you about are we getting a grip

on these companies, these ag companies that are being purchased, as well as the farmland itself. You are right; we did include that language in Ag Approps on AFIDA. We want you to update that. We have got a deadline for you of 2026. I understand you are saying you need more resources; I need to know about that, because if so, then we are going to address that as well.

Again, hone in on the companies as well as the farmland, and getting that system updated so we are tracking what is going on with these ag companies. Like I say, we will continue to address that in Ag Approps as we did last year, but I need an update from you. What do you need? How are we doing, and what do you need? I know you are going to say dollars, but.

Ms. MONTAÑO GREENE. Is there time to—

Senator HOEVEN. Well, you went two minutes over for Thune, so—

Chairwoman STABENOW. You are certainly—

Senator HOEVEN [continuing]. your 32 seconds—

Chairwoman STABENOW. You are certainly welcome to—you are being asked what you need. I think you should tell him, because it is our job—

[Laughter.]

Chairwoman STABENOW.—it is our job to make sure you get what you need. It is really not fair to say do all this and then stop—

Senator HOEVEN. Thank you, Madam Chair.

Chairwoman STABENOW.—cancel the funding.

Senator HOEVEN. Thank you, Madam Chair.

Chairwoman STABENOW. Yes.

Ms. MONTAÑO GREENE. Well, sir—

Chairwoman STABENOW. You have the—

Senator HOEVEN. I want to commend the leadership of this Committee.

Chairwoman STABENOW.—right here.

Ms. MONTAÑO GREENE. Sir, thank you. I will take the last question, or the last part of your question first. Regarding the appropriation, thank you very much for including that in Fiscal Year 2023 for the deadline and the push to be able to modernize. We have received zero funding to be able to implement that, so we did release this summer a very low-cost way to be able to have that queryable process available. We did Excel files for the last 10 years of data, which was loaded on our website, to be able to process that.

Senator HOEVEN. Okay, you need to tell us what funding—we have provided substantial funding. Whether you used it on that system or not, I get it, but that is a decision you have in your discretion. We need to know what you need to get it done.

Madam Chair, thanks for your indulgence. Thank you for being here.

Chairwoman STABENOW. Thank you very much. You have the invitation, so we look forward to the information.

As we close, I just want to thank all of our witnesses. This is a very important topic. We are going to proceed—we understand it is also very complicated and appreciate all the issues that have been raised today, but clearly great interest, and look forward to

working with Senator Boozman and the Committee to address these issues. Thank you so much. The meeting is adjourned.

[Whereupon, at 12:21 p.m., the hearing was adjourned.]

A P P E N D I X

SEPTEMBER 27, 2023

Statement by
Gloria Montaña Greene
 Deputy Under Secretary for Farm Production and Conservation
 U.S. Department of Agriculture
 Before the Senate Committee on Agriculture, Nutrition and Forestry
 September 27, 2023

Chairwoman Stabenow, Ranking Member Boozman, and Members of the Committee, thank you for the opportunity to come before you today to discuss foreign ownership of agricultural land in the United States.

I have served as the Deputy Under Secretary for the Farm Production and Conservation (FPAC) mission area since February 2021. In this role, I have the honor to work with USDA's producer-facing agencies as we partner with farmers, ranchers and forest owners to strengthen American agriculture together. FPAC includes four agencies—the Farm Service Agency (FSA), the Risk Management Agency (RMA), the Natural Resources Conservation Service (NRCS) and the FPAC Business Center (FPAC-BC). These agencies provide key support for farmers, ranchers and forest landowners through farm loans, disaster assistance, safety net, risk management, and conservation programs. The more than 20,000 staff across more than 2,900 offices help producers weather economic ups and downs as well as grow and improve their operations.

The process to report and track foreign-owned agricultural land is complex. USDA gathers information from the more than 3,000 counties and county equivalents in the United States. Each with their own county clerk and recorder's office—or none at all—feeding information into more than 50 different state systems. There are also 500 sovereign tribal nations with different laws, rules, and processes for tracking land ownership and land transfer. USDA also works with local law offices and realtors associations to ensure that land buyers are aware of the need to report their purchase if they are covered by the statute. This creates a complicated patchwork that makes continuous tracking and reporting foreign-owned agricultural land very challenging. This challenge is compounded because the group within USDA tasked with collecting foreign ownership information is under-resourced and the staff have limited authorities that are less expansive in scope than those outside of USDA may recognize. There is not currently a system at the national, state or local level that tracks deeds and leases and no automated reporting mechanism to aggregate information and contribute to the disclosure report. Any system for tracking land purchases and owners would be complicated, expensive, and create a potential risk to producer privacy, the price of agricultural land, and individual American seller interests. As Congress considers the issues around the ownership of agricultural land it will be essential for them to consider a system that balances these issues and is workable for USDA, producers, landowners, and county government staff on the ground.

Historical Background

USDA's authority to report foreign agricultural land ownership is derived from the Agricultural Foreign Investment Disclosure Act of 1978, often called "AFIDA." Any foreign person who buys, sells or holds a direct or indirect interest in U.S. agricultural land must report their holdings and transactions to USDA through the Agricultural Foreign Investment Disclosure Act Report

(FSA-153). Leaseholds of 10 years or more on agricultural land—often involving wind turbine and solar panel interests—must also submit a report to USDA.

In addition to the FSA-153 form, filers must supply the legal description to the land and, if relevant, the tiers of ownership to the third tier. Failure to timely file an accurate report can result in a penalty of up to 25 percent of the fair market value of the agricultural land, per the 1978 statute. Since the beginning of the program in 1978, penalties have been imposed at less than 1 percent of the fair market value.

Challenges

In addition to the complexity of recording a deed as I mentioned earlier, it is important to note that AFIDA is a self-reporting system and does not capture all potential filers. While 24¹ states currently have enacted restrictions on foreign ownership of agricultural land those are state laws to implement and not the jurisdiction of USDA.

Currently, the AFIDA reporting system uses a paper-based approach to data collection that has changed little since the start of the program. Companies print out legal descriptions from their internal electronic land management systems and mail their hard copy AFIDA filings in bankers' boxes to USDA, with the data on the FSA-153 form hand-entered into an AFIDA Access database. As a manual process with hard copies of legal descriptions, we currently have no way to electronically identify the geographic location of AFIDA filings more specifically than at the county level.

Absent the filing of the form and our research to find multiple level ownership, USDA does not have the capacity, tools or expertise to identify which potential owners or lessees may be of foreign nationality. It is difficult to identify companies with a complex organizational structure or companies with unclear ownership. It is also difficult to update our data for small foreign-owned companies that go bankrupt or foreign individuals who pass away, and the land is sold to a U.S. citizen.

USDA Work to Improve the Process

While the challenges are significant, I want to make sure to take a moment to thank FPAC's Economic and Policy Analysis staff, who work on AFIDA and are working hard to improve outreach and filing information to ensure that we are getting the best information possible.

FPAC is striking to update the FSA-153 form, which has not been changed for many years. We anticipate that the revised form will ask questions that will help us address the impact of foreign ownership of U.S. agricultural land on farms and rural communities.

In addition, FPAC is also working to seek out individuals who may need to file, but do not. Data specialists match FSA-153 filing data with FSA Farm Programs data identifying those entities who are not U.S. citizens and not permanent residents and own agricultural land in the United

¹ <https://nationalaglawcenter.org/state-compilations/aglandownership/>

States. FPAC can proactively send these entities certified letters to provide information about AFIDA and how to file.

Reporting

Section 773 of the *Consolidated Appropriations Act of 2023* directs USDA to modernize the AFIDA reporting system within 3 years via an on-line electronic filing portal linked to a queryable database where interested parties could examine foreign holdings within a given county or see the array of holdings by foreigners from specific countries. Congress did not provide funding to implement these requirements.

To move forward with the Section 773 language in the absence of funding, the Department has taken several low-cost steps. In early June, FPAC posted Excel spreadsheets for each year from 2011 to 2021 with the detailed data underlying the annual report to Congress. This is a step in the direction of increasing public access to data of increasing concern and what could be done given the funding provided.

Conclusion

While there are challenges to the current reporting system, we understand the task. We agree that these are incredibly important issues and look forward to working with Congress to address them.

**Written Testimony of Harrison M. Pittman
Director, National Agricultural Law Center
University of Arkansas System Division of Agriculture
Before the United States Senate Committee on Agriculture, Nutrition, & Forestry**

Submitted September 23, 2023
for Entry Into Public Record

Chairwoman Stabenow, Ranking Member Boozman, and members of the United States Senate Committee on Agriculture, Nutrition, & Forestry, thank you, very much, for the invitation to provide testimony as part of the September 27, 2023 hearing on "Foreign Ownership in U.S. Agriculture". In recent years, the issue of foreign ownership of agricultural land has re-emerged as a matter of significant national interest across a diverse range of citizens, businesses, and others directly and indirectly involved in all aspects of the agricultural and food industries.

I know of no other issue that engenders such deep interest from virtually every public and private sector component of the industry as well as many interests not often involved in agricultural issues at the state or federal levels. Additionally, the issue of foreign ownership of agricultural lands brings with it many competing viewpoints, often so among those who are commonly aligned on other agriculture-related issues. In 2023 alone, all but a few states have proposed legislation alongside approximately two dozen federal proposals or resolutions that seek to limit or restrict in some way foreign investment or ownership of agricultural land.

The National Agricultural Law Center has provided extensive research and outreach activities on the issue of foreign ownership of agricultural land to all manner of stakeholders. I hope that the NALC can be of value to you in the course of your deliberations in this hearing and in the days and weeks ahead. I look forward to answering your questions and providing any requested information that might be of assistance to you, your staff, or your constituents.

Chairwoman Stabenow, I also want to take a quick moment to thank you and your staff for holding the excellent Farm Bill field hearing along with Ranking Member Boozman in June of last year. The field hearing was well-received and informative. Senator Boozman, as always, it is an honor to have the opportunity to discuss with you issues important to the nation's agricultural community.

As per the September 21, 2023 invitation to testify at this hearing, this written testimony embodies the following areas: (1) a brief introduction of the National Agricultural Law Center; (2) a concise summary of state and federal issues pertaining to the foreign ownership of agricultural land; and (3) brief mention of some additional issues that may be helpful in the course of ongoing deliberations.¹ I want to acknowledge NALC Staff Attorney Micah Brown for his assistance outstanding efforts over the past two year in researching, publishing, and engaging with stakeholders on the issue of foreign ownership of agricultural land but also his assistance in helping prepare for this testimony. Micah handles the Ag Finance & Credit portfolio

¹ For purposes of this written testimony, "agricultural land" refers only to privately held agricultural land. There are a small number of states that restrict foreign ownership of public lands.

for the NALC, specifically including issues involving foreign ownership of agricultural land, and has been of tremendous assistance in helping prepare for this hearing.

I. The National Agricultural Law Center

The National Agricultural Law Center (NALC) serves as the nation's leading source of agricultural and food law research and information. In 1987, Congress established the NALC against the backdrop of the Farm Crisis of the 1980s. As that crisis unfolded, the agricultural community – lenders, landowners, farmers, state and federal courts, land grant universities, federal and state agencies, attorneys, and more – abruptly found themselves confronted with a unique body of law that impacted their livelihoods. Some of those laws, just as is true today, had their roots as far back as the pre-Great Depression era. Unfortunately, there was a lack of timely, relevant, and neutral educational resources about those laws.

Recognizing this need, Congress established the NALC to serve as an independent, neutral, nonpartisan resource to the nation's vast agricultural community. As you all well know, the legal issues facing the agricultural and food industry have expanded greatly since that time and continue to do so.

The NALC operates as part of the Agricultural Law Information Partnership of the U.S. Department of Agriculture (USDA) Agricultural Research Service, National Agricultural Library and is a standalone unit of the University of Arkansas System Division of Agriculture, headquartered in Fayetteville, Arkansas. The NALC provides research and information to agricultural producers of all crops, timber, aquaculture, and other commodities; members of Congress and their respective staffs; state departments of agriculture; state and federal agencies, policymakers at all levels of government; farm and commodity groups; farmers' aid organizations; farm managers and rural appraisers; agricultural lenders; journalists; Cooperative Extension Service professionals; students; public and private sector attorneys; and others involved or interested in the agricultural industry.

The NALC and its staff do not engage in legal or policy advocacy of any kind, but rather serve to enhance understanding of the complex fabric of local, state, federal, and international laws, regulations, and policies that impact our diverse system of food, fiber, and energy production. We routinely deal with issues ranging from pesticide litigation and regulation, carbon and solar leases, the Endangered Species Act, the Lacey Act, Farm Bill issues, states' right-to-farm laws, statutory agricultural liens, impactful court decisions, Clean Water Act issues, conservation compliance, industrial hemp, federal and state research and promotion programs, heirs property, foreign ownership of agricultural land, and much more.

NALC Resources: Brief Overview

The NALC provides an array of agricultural and food law resources. A key part of the NALC's mission is providing a free-of-charge, comprehensive online clearinghouse of research and information in more than 50 specific areas of agricultural and food law research information. The NALC's clearinghouse of resources is available free of charge through its website,

www.nationalaglawcenter.org. Additionally, the NALC has a strategic national network of partners that help carry out its national research and information mission.

The NALC also engages in significant outreach and education through in-person workshops/meetings with producers and others in the ag industry, legal conferences, publications for non-attorneys and attorneys, one-on-one assistance with stakeholders, webinars on issues ranging from PFAS to federal crop insurance to Rail-to-Trail conversions, in-person presentations from states' farm bureau county committee meetings to the National Association of State Departments of Agriculture (NASDA) annual meeting, and through social media.

NALC Resources: The Feed

One resource that may be of particular value to you and your staff is the NALC's free-of-charge newsletter, The Feed. The Feed is issued every two weeks (except December). The Feed provides brief highlights of ag law and policy developments along with links to NALC and NALC partner resources for those interested in learning more about a particular issue. For example, each issue of The Feed contains updates on any notable federal or state legal developments regarding the foreign ownership of agricultural land. One can subscribe to The Feed by visiting the NALC website or accessing the adjacent QR Code.



NALC Resources: Foreign Ownership of Agricultural Land

The NALC has a comprehensive set of publications, webinars, and other materials focused on foreign ownership of agricultural land. The adjacent QR Code provides one-stop access to "NALC Resources At A Glance: Foreign Ownership of Agricultural Land".



NALC as a Resource: Post-Testimony

The NALC staff is available to be a resource to members of this Committee and their staff in the days and weeks ahead, including but not limited to the issue of foreign ownership of agricultural land. We can be contacted directly by phone or e-mail at any time. The NALC's main line is 479-575-7646 and the general email is nataglaw@uark.edu. My direct line is 479-575-7640 and my email is hmpittm@uark.edu.

II. Foreign Ownership of Agricultural Land: Concise Summary of State and Federal Issues

The following discussion is intended to provide a concise, foundational overview of key historical underpinnings and the current status at the state and federal levels regarding foreign ownership of agricultural land. The goal is for the information provided to help Committee members and their staff more efficiently understand the legal context in which this issue arises.

The key takeaway on the state level aspect is that there has been a dramatic increase in legislative activity over the past two years and especially since January 1, 2023. Additionally, state legislative proposals and enactments have trended towards a focus on specific countries – often the “Big Four” of China, Russia, North Korea, and Iran – and away from a focus on restrictions foreign ownership vis-a-vis all countries outside the U.S.

The key takeaway at the federal level is that the first and, for all practical purposes, the only instance in our nation's history in which Congress has specifically addressed foreign ownership of agricultural land was enactment of the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA).² AFIDA has largely not been amended since its enactment nearly a half-century ago. As will be addressed below, USDA rulemaking in the nine-month period between December 6, 1978 and August 14, 1979 is by definition the most formative time period in our nation's history relative to federal government involvement on the issue of foreign ownership of agricultural land. Thus, an examination of decisions made during that time period is critical to understanding the current implementation of AFIDA. Of course, AFIDA is not the only subject of federal level attention.

Foreign Ownership: Brief Data Overview

The latest AFIDA reporting data is through December 31, 2021.³ According to that data, foreign ownership in agricultural land is 40,031,308 million acres, equaling 3.1% of all privately held agricultural land in the United States. This is a 2.4 million-acre increase from the prior year. From 2011 to 2021, foreign ownership of agricultural land increased by 35.7% (total of slightly more than 14.3 million-acre increase between 2011 and 2021).⁴ As of 2021, 47% of this ownership was in forestland, 29% in cropland, and 22% for pasture and other agricultural purposes. The current percentages of forestland, cropland, and pastureland closely align with the percentages that have been reported since enactment of AFIDA.

Investors from three countries – Canada (31%), Netherlands (12%), and Italy (7%) – comprise one-half of all foreign ownership of agricultural land. The United Kingdom and Germany each represent 6% of foreign ownership. Thus, those five countries account for nearly two-thirds of all foreign ownership of agricultural land. The remaining one-third is spread across more than 100 countries. China reports a total of 0.9% (total of 383,935 acres) of all agricultural and non-agricultural land; 194,179 acres of agricultural land and 189,756 of non-agricultural land.

² 7 U.S.C. § 3501 - 3508. The AFIDA regulations are found at 7 C.F.R. Part 781. There are also AFIDA-relevant provisions contained in the USDA Handbook, available at https://www.fsa.usda.gov/Internet/FSA_File/1-afida_r02_a02.pdf. In 2018, the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) expanded CFIUS committee review over certain real estate assets in close proximity to US military installations, ports, or other sensitive facilities.

³ USDA, Farm Service Agency, “Foreign Holdings of U.S. Agricultural Land through December 31, 2021” (Revised July 27, 2023), available at <https://www.fsa.usda.gov/programs-and-services/economic-and-policy-analysis/afida/annual-reports/index>.

. Data used in this section derives from the AFIDA Reports contained in the preceding url.

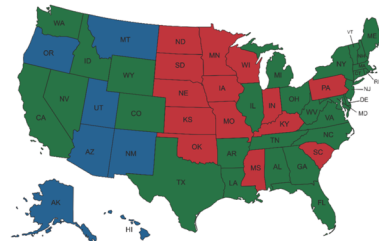
⁴ This is an NALC internal calculation based on AFIDA data from 2011-2021.

In terms of acreage, the highest levels of foreign ownership of agricultural land occur in Texas (4,719,144 acres), Maine (3,504,096 acres), Alabama (1,780,937 acres), Colorado (1,766,80), and Oklahoma (1,529,397 acres). In terms of percentages, the highest levels of foreign ownership of agricultural land occur in Maine (20.1%), Hawaii (9.2%), Alabama (6.3%), Florida (6.3%), and Louisiana (5.8%). This translates to Maine accounting for 10% of all foreign ownership of agricultural land in the U.S. and these five states accounting for more than 20% of all foreign ownership of agricultural land. The states with restrictions on foreign ownership as of December 31, 2022 (see discussion and map below), along with Maine, account for nearly one-fourth of all foreign ownership of agricultural land in the U.S.

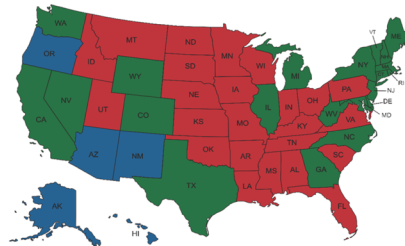
A. State Law Overview

State Laws: Current Status (2021-2022 through present)

As of December 31, 2022, there were approximately fourteen states that had enacted some type of restriction on foreign investment or ownership in agricultural land.⁵ The map to the immediate right depicts the status of states' laws on this issue as of 2022. The states in green affirmatively allowed for foreign ownership of agricultural land, the states in blue were silent on the issue, and the states in red had some type of foreign ownership restriction. Thus, at the end of 2022, a large majority of states affirmatively allowed for foreign ownership of agricultural land. As noted, there has been a significant increase in state level legislative activity since January 1, 2023.



As of September 2023, approximately one-half of states specifically forbid or limit certain foreign ownership within their state. The map to the immediate right depicts the status of states' laws as of September 2023. Since January 1, 2023, twelve states have enacted a law that restricts or limits certain foreign ownership of agricultural land within

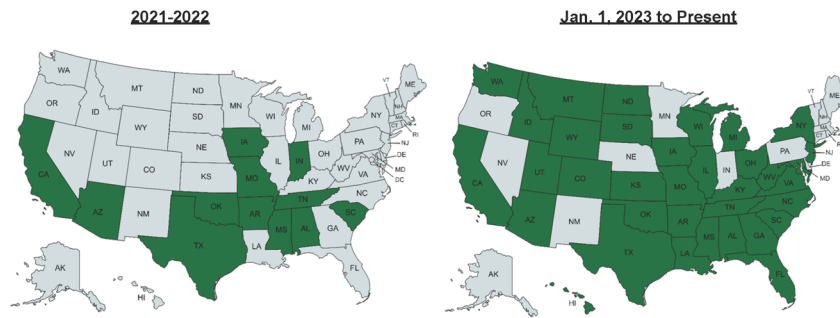


⁵ The term "approximately" is used as a result of reasonable competing interpretations that may exist. For example, states like Georgia technically have a law that could be read to restrict foreign ownership of agricultural land, but it is unenforceable. Additionally, there are states with state-level reporting requirements that are not included in this list of fourteen states.

that state.⁶ Those states are Idaho, Utah, Montana, North Dakota, Oklahoma, Arkansas, Louisiana, Tennessee, Ohio, Virginia, Alabama, and Florida.

State Law: Legislative Proposals 2021-2022 & 2023

In 2021-2022, twelve states proposed laws that sought to restrict foreign investment or ownership of agricultural land. This represented a historically significant shift in state-level activity compared to prior decades. As can be seen immediately in the two maps below, in 2023, the number of state proposals increased even more dramatically.



B. Federal Law Overview

Congress enacted AFIDA on October 14, 1978. At that time, AFIDA was the first instance in our nation's history in which Congress specifically addressed the issue of foreign ownership of agricultural land. With the exception of the recent Consolidated Appropriations Act, 2023⁷ (discussed below), for all practical purposes AFIDA has not been significantly amended since its enactment nearly one-half century ago. Thus, AFIDA remains essentially the only action Congress has taken in our nation's approximate 250-year history specifically addressing foreign ownership of agricultural land.

Pre-AFIDA

On February 28, 1978, Senator Herman E. Talmadge, then-Chairman of the Senate Committee on Agriculture, Nutrition, & Forestry, requested that the United States General Accounting Office (GAO) provide the Committee with "information on the various State laws that place constraints

⁶ A small number of states have enacted laws that impacted state-level reporting requirements, which are not included in the listing of states that have enacted some type of restriction.

⁷ Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022).

or reporting requirements on non-resident alien ownership of U.S. farmland"; "a summary of data available from any reports on or analyses of the results of these laws"; and "any suggestions that might surface regarding possible approaches for obtaining nationwide data on purchases of U.S. farmland by foreigners."⁸ Following a comprehensive state-by-state research process, GAO responded on June 12, 1978 via a landmark Report titled, "Foreign Ownership of U.S. Farmland: Much Concern, Little Data".⁹

The detailed, 65-page Report might be best summarized by the following excerpt:

There is virtually unanimous agreement among persons at all levels of government and in the private sector that, currently, there is no reliable data on the amount of U.S. farmland owned by nonresident aliens or on recent trends of such ownership. Such information would be very helpful to the Congress if it wishes to formulate and implement a national policy on nonresident aliens owning farmland in the United States. Clearly, efforts need to be started now to produce useful and meaningful information.¹⁰

AFIDA

Congress enacted AFIDA four months later. AFIDA sets out a nationwide system for collecting certain information about foreign investments and ownership of U.S. agricultural land. Under AFIDA, a "foreign person who acquires or transfers any interest . . . in agricultural land" is required to disclose their interest in the land to USDA. Thus, a "foreign person" who acquires, holds, transfers, or disposes an interest in "agricultural land" within the U.S. is required to disclose to USDA certain information concerning such transactions and investments.¹¹ This data is compiled into an annual publication that reports the amount of cropland, pastureland, forestland, and other types of agricultural land that is foreign owned.¹²

AFIDA: USDA Rulemaking & Implementation

Importantly, Congress directed that "[n]ot later than 90 days after October 14, 1978, the Secretary shall prescribe regulations for purposes of carrying out the provisions of this

⁸ *Foreign Ownership of U.S. Farmland: Much Concern, Little Data*, CED-78-132; B-114824 (June 12, 1978)

⁹ *Id.* There have been several additional GAO Reports on foreign ownership of agricultural land since 1978. A list of these Reports along with a link to each is available on the NALC website and also available upon request.

¹⁰ *Id.*

¹¹ 7 U.S.C. § 3501. The information a foreign person must include in their disclosure is listed at 7 U.S.C. § 3501(a) – (b), (e), (f), 7 C.F.R. § 781.3, and form FSA-153. Depending on the type of foreign person involved in a transaction for agricultural land, USDA may require the party to provide further information.

¹² Additionally, USDA "shall transmit to each State department of agriculture, or such other appropriate State agency as the Secretary considers advisable, a copy of each report which was submitted to the Secretary under section 3501 . . . during such 6-month period and which involved agricultural land located in such State." 7 U.S.C. § 3505.

chapter.”¹³ The USDA Agricultural Stabilization and Conservation Service ((ASCS), which today is known as the Farm Service Agency) set out to do so almost immediately. In understanding AFIDA today, it is vitally important to examine the regulatory foundation that began to be laid in those first 90 days.

The AFIDA Proposed Rule was issued a few weeks later on December 6, 1978.¹⁴ A 30-day comment period was opened, along with a December 14, 1978, public hearing held in Washington, D.C. A total of sixty-eight individuals submitted written comments as part of the 30-day comment period. A total of six individuals appeared and submitted comments at the public meeting.¹⁵ One month after the close of the comment period, on February 6, 1979, the initial AFIDA Final Rule was issued.

USDA allowed for additional comments on that Final Rule to be submitted through March 8, 1979.¹⁶ On May 18, 1979, an amended AFIDA Final Rule was issued based on comments received and “independent Departmental efforts”.¹⁷ Then, on August 14, 1979, USDA issued a “Corrections and Interpretations” of the May 1979 Final Rule. These three agency actions, all of which occurred within a nine-month timeframe nearly a half-century ago, are the basis of much of the modern-day implementation of AFIDA.

It appears that USDA has since amended the AFIDA regulations five times, with the last amendment occurring December 29, 1995. However, the predominant legal foundation of how AFIDA is currently implemented – i.e., standards for tracing of actual ownership through multiple tiers of ownership; what constitutes “any interest, other than a security interest”; civil penalties and the penalty process; substantial interest and substantial control standards vis-a-vis when a U.S. entity qualifies as a “foreign person”; the definition of “agricultural land” – was established in the nine-month period between December 6, 1978 and August 14, 1979.

AFIDA Proposed Rule: December 6, 1978

The AFIDA Proposed Rule set out six “Major Issues” for which it sought comments from the public.¹⁸ These were as follows:

- 1) Nature of the interest in United States agricultural land which a foreign entity holds, acquires, or transfers.
- 2) Nature of a security interest.
- 3) Tracing of actual ownership.
- 4) The nature of agricultural land.
- 5) The size of the agricultural land.
- 6) Significant or substantial control.

¹³ 7 U.S.C. § 3507.

¹⁴ 43 Fed. Reg. 57607 (Dec. 8, 1978) (proposed rule) (to be codified at 7 C.F.R. Part 781).

¹⁵ 44 Fed. Reg. 7115, 7115 (Feb. 6, 1979) (final rule) (to be codified at 7 C.F.R. Part 781).

¹⁶ Id.

¹⁷ 44 Fed. Reg. 29029 (May 18, 1979) (final rule) (to be codified at 7 C.F.R. Part 781).

¹⁸ 43 Fed. Reg. 57607, 57607-57608.

The proposed rule did not seek comments regarding penalties for violations of AFIDA. As noted, 68 individuals submitted comments and six individuals appeared and submitted written testimony at the December 14, 1978 public hearing in Washington, D.C.

AFIDA Initial Final Rule: February 6, 1979

The Final Rule addressed each of the Major Issues. It also included penalty provisions, which initially required that determinations of reporting violations "will be made on the basis of evidence submitted to a Board periodically appointed by the Secretary to make such determinations."¹⁹ As part of the Final Rule, USDA allowed additional comments to be submitted through March 8, 1979.

AFIDA Final Rule, Revised: May 18, 1979

The May 18, 1979, Final Rule revisions were based on comments received regarding the initial Final Rule and "independent Departmental efforts".²⁰ In issuing the May 18 Final Rule, USDA explained that "[s]uch revision is needed to obtain the reporting of information, but no more than is necessary, to effectuate the intent of Congress as expressed in . . . [AFIDA]. It is anticipated that, as a result of this action, entities which might have otherwise been required to file a report with the Department will be relieved of the obligation to do so."²¹ The Final Rule made several other changes, much of which forms the basis of present-day AFIDA implementation, including:

- Clarified the definitions of "any interest" and "significant interest or substantial control" with a focus on specifying leaseholds of ten years or more;
- Provided "an interpretation . . . to make clear that interests solely in mineral interests are not considered an interest in agricultural land and, therefore, need not be reported." (the basis of § 781.2(c)(6));
- Revised the rule to state that foreign persons are exempted from reporting requirements insofar as ownership relates to "surface or subsurface easements and rights of way used for some purpose unrelated to agricultural production." (the basis of § 781.2(c)(5));
- Provided an interpretation "to clarify the fact that a report must be filed if the aggregate of the foreign individuals, foreign governments, and the actual or defined foreign legal entities holding an interest in a U.S. legal entity totals 5 percent or more." (5% was later changed to 10%, in addition to other definitional changes);
- Restated the definition of "significant interest or substantial control" "in order to make clear that the reporting entity referred to in the definition is the entity in which the five percent foreign interest is held, rather than the foreign persons holding such interest.";
- Rewrote the provision regarding what constitutes a reporting violation "in order to eliminate confusion as to what was a violation";
- Removed the word "value" from the definition of "agricultural land" in order to tailor specific circumstance in which reporting is required;

¹⁹ 44 Fed. Reg. at 7118.

²⁰ 44 Fed. Reg. at 29029.

²¹ *Id.*

- Specified that, “[i]n an effort to eliminate any possible confusion . . . § 781.2(l) is amended to provide that indirect land holdings need not be reported”, changing the definition of “substantial interest and significant control” to: “Means five percent or more interest in a legal entity for the purpose of obligating such legal entity to report.”
- Required the name and the nature of the foreign business entity holding an interest in U.S. entity; and
- Provided that with respect to U.S. entities qualifying as a “foreign person”, “[a] close reading of the statute . . . reveals the Congress apparently did not intend to permit the Secretary to trace ownership beyond the third tier. Had this not been the case, section 2(f) of the Act would have included, after referring to reports submitted under paragraph (e), the expression, “or this subsection”. The absence of such language appears to limit tracing to the third tier.” The Final Rule further provided that “[i]n view of the fact that one of objectives of the Act is to uncover foreign ownership of U.S. agricultural land, tracing to the third tier is more than adequate. In fact, this objective can probably be accomplished in most cases without extensive tracing. Therefore, § 781.3(g) of the final rule is revised to exclude the terms ‘or this subsection’”.
- Revised the Final Rule to address circumstances in which a “foreign person” that has been reported by a U.S. entity will provide additional information about interests held in such foreign person.

AFIDA Final Rule “Corrections and Interpretations”: August 14, 1979

USDA issued a “Corrections and Interpretations” to the May 18, 1979 Final Rule in August 1979.²² This action set out two interpretations and is the basis of present-day § 781.3(h). Specifically, USDA stated that “[t]he first interpretation is added in order to indicate when a U.S. legal entity holding, acquiring, or transferring a U.S. agricultural land is considered to have 5 percent or more of its total ownership interest held, indirectly, by foreign individuals, foreign governments, or other foreign legal entities.”²³ The second interpretation was intended to provide “some indication as to what efforts a U.S. legal entity holding, acquiring, or transferring U.S. agricultural land must undertake in order to satisfy the Agricultural Stabilization and Conservation Service that it has attempted to determine whether a foreign persons hold, directly or indirectly, 5 percent or more of its total ownership interest.”²⁴ USDA concluded, “[t]hese interpretive rules should assist the public in attempting to decide whether a reporting obligation exists.”²⁵

Language used in this section may lack sufficient clarity to know with certainty precisely what is the standard communicated via the August 1979 agency action. For example, the second interpretation initially provides the following:

²² 44 Fed. Reg. 47256 (Aug. 14, 1979) (Corrections and Interpretations) (to be codified at 7 C.F.R. Part 781).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

Any legal entity which has issued 100,000 or more shares of common and preferred stock, and instruments convertible into equivalents thereof, shall be considered to have satisfactorily determined whether it has an obligation to file a report pursuant to § 781.3 if its business records fails to reveal that the percentage of shares held in such legal entity both by the entities with the foreign mailing addresses and investment institutions which manage shares does not equal or exceed five percent interest in such legal entity.

The interpretation continues, however, as follows:

If the legal entity . . . determines that the percentage of shares, held in it both by entities with foreign mailing addresses and investment institutions which manage shares, *equals or exceeds five percent interest*, then such legal entity shall be considered to have satisfactorily attempted to determine whether it has an obligation to file a report . . . if it sends questionnaires to each such investment institution holding an interest in it inquiring as to whether the entities for which they are investing are foreign persons and the percentage of shares reflected by the affirmative responses plus the percentage of shares held by entities listed on the business records with foreign mailing addresses does not reveal that foreign persons hold five percent or more interest in such legal entity.²⁶

This interpretation could potentially be read to provide that a U.S. legal entity with "100,000 or more shares of common and preferred stock, and instruments convertible into equivalents thereof" that determines "that the percentage of shares, held in it both by entities with foreign mailing addresses and investment institutions which manage shares, *equals or exceeds five percent interest*" might not be required to report under § 781.3 so long as the appropriate questionnaires were later sent out and it was not then revealed that foreign persons held five percent or more in the entity. It bears noting that the underlying procedural context for application of this provision would be that an entity did not report and was subsequently subject to a USDA inquiry or investigation as to whether it was required to report but failed to do so.

AFIDA: Other Issues to Consider

This list is not meant to be an exhaustive list of issues, but rather is intended to highlight some issues that might help someone further research the role of AFIDA in the current discussion over foreign ownership of agricultural land.

AFIDA broadly defines "person" as "any individual, corporation, company, association, firm, partnership, society, joint stock company, trust, estate, or any other legal entity."²⁷ It bears noting that AFIDA as well as the regulations between December 6, 1978 and August 14, 1979 were written at a time in which Limited Liability Companies (LLC) were virtually non-existent.

²⁶ Id. (emphasis added).

²⁷ 7 U.S.C. § 3508. The AFIDA regulation (as well as the FSA Handbook) definition mirrors the statutory definition, except that it does not include "firm".

The first LLC statute was enacted in 1977 (in Wyoming), with the overwhelming majority of states' creation of LLCs not occurring until the 1990s.

Today, LLCs are a very popular and often-used legal entity throughout the U.S. States' laws for LLCs vary widely and LLCs have unique features that may need to be considered as part of any discussion of AFIDA. For example, some states do not require LLCs to identify members of the LLC in the state business filing and LLCs allow a high degree of operational flexibility in the context of multi-tiered business structures.

AFIDA, the AFIDA statute to be specific, defines "agricultural land" as "any land located in one or more States and used for agricultural, forestry, or timber production purposes as determined by the Secretary under regulations to be prescribed by the Secretary."²⁸ The regulatory definition of "agricultural land" has evolved over the past several decades to its current definition at 7 C.F.R. § 781.2(b). And, it can be changed in the future. Thus, any proposal – i.e., S. 2060 and S. 926 – to define or redefine the definition of "agricultural lands" specifically as the term is defined at AFIDA § 3508(1) must keep in mind that doing so potentially means that the definition itself will not be found squarely in the statute but rather in combination with the regulatory definition, and that the regulatory definition is subject to being changed by agency-only action in a future year. The potential significance of this distinction is highlighted in the following paragraph.

On page 7, line 6, S. 2060 proposes that "agricultural land" has "the meaning given the term in section 9 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. § 3508)." Thus, as described above, the definition will necessarily bridge with the regulatory definition found at § 781.2(b) and is subject to future amendment via agency action. However, on page 22, line 1, S. 2060 proposes that the term "agricultural land" "has the meaning given term in section 781.2 of title 7, Code of Federal Regulations (as in effect on the date of enactment of this Act)". If enacted as proposed, this could create a scenario with two different definitions of "agricultural land" applying under the same statute.

Similarly, the definition of "interest" or "any interest" is also subject to being defined via agency action. This should also be taken into account in any proposal to statutorily define "interest" or "any interest". AFIDA's first words are "[a]ny foreign person who acquires or transfers *any interest, other than a security interest*, in agricultural land shall submit a report"²⁹ However, the regulatory definition of "any interest" is more complex, has changed over time, and is subject to additional amendment through future agency action. This distinction could make a difference, for example, with S. 926 language found at page 6, line 22 in which it is proposed to define "interest" to include "a security interest" and "lease, without regard to duration of the lease." Congressional intent as to whether the statutory definition of "interest" or "any interest" be defined exclusively in the statute or additionally defined and subject to future change by USDA rulemaking is a factor that might be considered in the drafting process.

²⁸ 7 U.S.C. § 3508(1).

²⁹ *Id.* at § 3501(a). See also § 3501(b), (c), (d), (e), and (f).

Finally, the same is true for the definition of “foreign person” – i.e., the statutory definition is one that has been and remains subject to further definition via agency action, particularly through the definition of “significant interest and substantial control”. (See, e.g., S. 926 on page 9, line 14, S. 2060 on page 8, line 9, S. 2060 page 22, line 11, and S. 2060 page 24, line 8).

The term “tier” is an integral component of AFIDA reporting requirements, especially with respect to U.S. entities that qualify as “foreign persons” due to having satisfied the “significant interest or substantial control” definition. The term “tier” may have a broadly accepted common-sense definition that has been uniformly understood by all potential “foreign persons” since 1978. However, to the extent there is room for interpretation, the term is not defined in either the statute or regulations. While not entirely clear at this point, it is possible that the definition of “shell corporation” in S. 2382 (page 2, line 16) is written in light of issues presented by what constitutes a “tier.”

Another key term under AFIDA is “significant interest or substantial control.” Section 3508(3)(C) provides that the term “foreign person” includes “any person, other than an individual or government . . . which is created or organized under the laws of any State . . . and . . . in which, as determined by the Secretary under regulations which the Secretary shall prescribe, a significant interest or substantial control is directly or indirectly held . . .”³⁰ The definition of “significant interest or substantial control” has evolved somewhat since February 6, 1979 to include the phrase “acting in concert” as a bright line test of when a U.S. entity with foreign ownership is required to report as a “foreign person” under AFIDA. However, the term “acting in concert” is not used (yet alone defined) in the statute and is not defined in the AFIDA regulations.

Consolidated Appropriations Act, 2023

On December 29, 2022, Congress amended AFIDA through the “Consolidated Appropriations Act, 2023” (“CAA”).³¹ Specifically, Section 773 of CAA contained amendments to AFIDA.

The CAA requires USDA to report to Congress on “foreign investments in agricultural land in the United States, including the impact foreign ownership has on family farms, rural communities, and the domestic food supply.” A similar type of report was initially required under § 3504 of AFIDA. That provision was repealed in 1998. CAA revives § 3504 such that USDA will again be required to report certain data and analysis concerning foreign ownership and investments in U.S. farmland to Congress.

CAA also requires USDA, within three years, to establish a process so that “foreign persons” required to report their agricultural landholdings under AFIDA can submit their disclosure electronically. Currently, foreign persons required to disclose their interests in U.S. farmland to USDA must generally complete and submit form FSA-153 to the FSA office in the county where

³⁰ Id. (emphasis added).

³¹ Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022).

the land is located. Thus, under the direction of the CAA, USDA must make disclosures available for online submission.

Finally, CAA directs USDA to establish “an internet database that contains disaggregated data from each disclosure submitted.” The database will include data from every disclosure submitted to USDA since the implementation of AFIDA, and all future disclosures submitted to the agency. The law requires USDA to organize the database information into two separate categories of foreign persons: (1) foreign individuals and (2) foreign persons that are not individuals or a government (i.e., foreign business entities). For investments of a foreign individual, the database will indicate and be organized based on the citizenship of the individual. If the “foreign person” is a foreign business, the data will be organized based on (i) the nature of the business entity; (ii) the country where the foreign business entity is organized; and (iii) its principal place of business. Although the CAA requires USDA to establish a database that provides information concerning foreign ownership and investments in U.S. agricultural land, the law requires the agency to implement a “process to ensure the protection of personally identifiable information.”

Recent/Current Federal Proposals

As of July 27, 2023, there are approximately two dozen federal proposals, resolutions, or amendments that deal with one or more aspects of foreign ownership of agricultural land. The NALC has published articles specifically addressing many of these proposals, which can be accessed via the QR Code provided above for “NALC Resources At A Glance: Foreign Ownership of Agricultural Land”. NALC has internally categorized these items into ten categories, as follows:

Restrict Ownership/Investments: Ag Land, China Only

- Lower Energy Costs Act ([H.R. 1](#))
- Prohibition of Agricultural Land for the People's Republic of China Act ([H.R. 809](#))
- This Land Is Our Land Act ([S. 684](#))

Restricting Ownership/Investments: Ag Land, Multiple Countries

- Promoting Agriculture Safeguards and Security Act of 2023 (“PASS Act”) ([S. 168/H.R. 683](#))
- Protecting America's Agricultural Land from Foreign Harm Act of 2023 ([S. 926](#))
- Protecting America's Agricultural Land from Foreign Harm Act ([H.R. 3357](#))
- FY24 ag appropriations bill ([H.R. 4368](#)) (Sec. 765)
- Farmland for Farmers Act ([S. 2583](#))

Restricting Ownership & Investments: All Real Estate

- Protecting our Land Act ([H.R. 212](#))
- Securing America's Land from Foreign Interference Act ([H.R. 344](#))
- Saving American Farms from Adversaries Act ([H.R. 840](#))

- Protection of American Land Act of 2023 ([H.R. 4806](#))
- Not One More Inch or Acre Act ([S. 1136](#))

Restricting Ownership & Investments Through Other Methods

- Stop China's Continuous Purchase of Land Act ([H.R. 4772](#))
- Protecting American Farmland Act ([H.R. 3996](#))

Amending AFIDA

- Protecting America's Agricultural Land from Foreign Harm Act of 2023 ([S. 926](#))
- Security and Oversight for International Landholdings Act of 2023 ("SOIL Act") ([S. 1066](#))
- Not One More Inch or Acre Act ([S. 1136](#))
- Foreign Agricultural Restrictions to Maintain Local Agriculture and National Defense Act of 2023 ("FARMLAND Act") ([S. 2060](#))
- Farmland Security Act of 2023 ([S. 2382](#))
- [H.R. 1789](#)
- FY24 ag appropriations bill ([H.R. 4368](#)) (Sec. 747)

Restricting Foreign Participation in Farm Programs & Federal Funds

- Security and Oversight for International Landholdings Act of 2023 ("SOIL Act") ([S. 1066](#))
- Protecting America's Agricultural Land from Foreign Harm Act of 2023 ([S. 926](#))
- Protecting America's Agricultural Land from Foreign Harm Act ([H.R. 3357](#))
- Foreign Agricultural Restrictions to Maintain Local Agriculture and National Defense Act of 2023 ("FARMLAND Act") ([S. 2060](#))

Adding Agriculture to CFIUS

- Foreign Adversary Risk Management Act ("FARM Act") ([S. 68/H.R. 513](#))
- Promoting Agriculture Safeguards and Security Act of 2023 ("PASS Act") ([S. 168/H.R. 683](#))
- Protecting U.S. Farmland and Sensitive Sites from Foreign Adversaries Act ([H.R. 4577](#))
- Security and Oversight for International Landholdings Act of 2023 ("SOIL Act") ([S. 1066](#))
- Foreign Agricultural Restrictions to Maintain Local Agriculture and National Defense Act of 2023 ("FARMLAND Act") ([S. 2060](#))
- National Defense Authorization Act for Fiscal Year 2024 ([S. 2226](#))
- Food Security is National Security Act of 2023 ([S. 2312](#))

III. Additional Considerations

The following information is not exhaustive, but contains some potentially noteworthy areas that may warrant consideration.

"Agriculture" & FLSA

S. 168 proposes "agriculture" be defined as that term is defined under the Fair Labor Standards Act of 1938 (FLSA). FLSA a comprehensive federal statute that sets minimum wages, requires overtime wages, restricts child labor, and mandates some record-keeping by employers. The FLSA covers employees of employers engaged in interstate commerce directly or engaged in producing goods and services for interstate commerce. The term "agriculture" vis-a-vis "agricultural employer" has been interpreted by courts. In terms of exploring intended/unintended consequences it may warrant considering the different context in which the FLSA definition arises and that the term has been interpreted by courts.

S. 926 (page 3, line 12) proposes that "the President shall take such actions as may be necessary to prohibit the purchase or lease by covered persons of . . . public agricultural land that is owned by the United States and administered by the head of any Federal department or agency" There are instances, for example pursuant to the Bankhead-Jones Act, in which agricultural land is deeded to land grant universities and other public institutions for "public use" or "public purpose". The entity is typically considered to own such property, but it is subject to having ownership revert to the federal government under certain circumstances. It is possible that these types of properties constitute "public agricultural land" but also could be an unusual circumstance that makes it difficult to determine whether the properties are "owned by the United States".

Annual Compliance Audit

S. 2382 proposes that the USDA Secretary "shall conduct an annual compliance audit of not less than 10 percent of the reports submitted under section 2 for the year covered by the audit" It is unclear how the 10 percent might be calculated and who would make that determination. For example, the 10 percent could be of any group of ten reports for every one-hundred submitted or potentially a certain number of reports over a certain dollar amount or some other criteria.

CFIUS & Defense Production Act

Several proposals seek to amend the Defense Production Act, including statutorily prescribing that the USDA Secretary be a member of the Committee on Foreign Investment in the United States (CFIUS). In addition to these proposals, the Defense Production Act currently provides that the Committee shall be comprised of the several Executive Branch department heads (or their designees) as well as "[t]he heads of any other executive department, agency, or office, as the President determines appropriate, generally or on a case-by-case basis."³² Thus, it appears

³² 50 U.S.C. § 4565(k)(2)(J).

that the potential exists for the USDA Secretary to be added to CFIUS by action of the President of the United States.

Implementing AFIDA: Full Picture

AFIDA implementation encompasses four main areas of activity: 1) the statute, 2) the regulations, which are subject to change via agency action, 3) the FSA Handbook, and 4) FSA-153. Thus, any changes to one of those four areas will require consideration of how that change is impacted by any of the other three areas. A lack of congruency could lead to a challenge in implementation. One potential current example is the difference between FSA-153 and the AFIDA regulations pertinent to U.S. entities who qualify as a "foreign person" pursuant to the significant interest or substantial control standard. Specifically, paragraph 3(D)(3)(d) states as follows: "List on separate sheet, the Name, Address and Country of all foreign persons who individually or in the aggregate hold significant interest or substantial control . . . in the person owning the land." The AFIDA regulations indicate that such a U.S. entity would not list "all foreign persons", but rather up to the first three "tiers" of ownership.

USDA Program Eligibility

In general, payments made to a "participant" of a USDA program are prorated to reflect those instances in which a "foreign person" has ownership in the participant. NALC experience has been that this is an area in which there is confusion in different sectors of the agricultural industry. One example of this confusion is whether a "participant" in the USDA Emergency Relief Program (ERP) is ineligible in the event there is *any* foreign ownership present versus the more general approach of prorating the USDA payment. For ERP, the statute and regulation seem to indicate that the general rule would apply but the FSA Handbook sets out the standard that any presence of foreign ownership triggers ineligibility.

Outreach & Awareness

S. 2060 (page 5, line 19) calls for the Secretary to use "existing resources and efforts to the maximum extent practicable . . . [to] carry out a nationwide outreach program . . . to increase public awareness and provide education regarding reporting requirements under this section." Specifically, the provision states that the outreach program be directed "primarily towards landlords, owners, operators, persons, producers, and tenants . . . of agricultural land and county property appraiser offices, land appraisal companies, and real estate auction companies". The NALC currently conducts this type of research and outreach, and would gladly help be a part of any effort to use existing resources to increase awareness of current laws to the nation's agricultural community, specifically including those enumerated in S. 2060.

Similarly S. 926 (page 11, line 7) proposes that the Secretary submit a report to Congress that includes "the role of State and local government authorities in tracking foreign ownership of agricultural land in the United States." The NALC currently maintains this type of information as

part of its national research and information mission and would gladly work with USDA and others in helping provide that information.

IV. Conclusion

Chairwoman Stabenow, Ranking Member Boozman, and members of the United States Senate Committee on Agriculture, Nutrition, & Forestry, thank you, again, for the invitation to provide testimony as part of the September 27 hearing on "Foreign Ownership in U.S. Agriculture". If the NALC can be of any assistance to you, your staff, or constituents on this or any other issue, please feel free to contact us anytime.



Department of Agricultural,
Food, and Resource Economics
College of Agriculture and Natural Resources

Testimony of David L. Ortega, Ph.D.

before the United States Senate Committee on Agriculture, Nutrition, and Forestry

Hearing on "Foreign investment in U.S. agriculture"

September 27th, 2023

David L. Ortega

Associate Professor, Department of Agricultural, Food and Resource Economics
Faculty Laureate, College of Agriculture and Natural Resources
Michigan State University
Justin S. Morrill Hall of Agriculture
446 W. Circle Drive, Room 202
East Lansing, MI 48824

Chairwoman Stabenow, Ranking Member Boozman, and Members of the Committee thank you for the invitation to be here today. I am a food and agricultural economist. I work at Michigan State University, where I am an associate professor in the Department of Agricultural, Food and Resource Economics and hold the title of Faculty Laureate in the College of Agriculture and Natural Resources.

I will begin by providing some background on foreign ownership of U.S. agricultural land. Then, I will shift my focus to key issues that I believe are important to consider in understanding this very complex and dynamic topic: data constraints and availability, Chinese ownership of agricultural land, and issues surrounding threats to U.S. food security.

Overview of foreign ownership of U.S. agricultural land

The United States has close to 1.3 billion acres of privately held agricultural land, and there has been growing interest and concern about the amount of this land that is foreign-owned. Under the provisions of the Agricultural Foreign Investment Disclosure Act (AFIDA), all foreign acquisitions of U.S. agricultural land, which includes land used for forestry production, must be reported to the U.S. Department of Agriculture (USDA). The USDA publishes an annual report detailing these transactions, which currently serves as the principal source of information regarding foreign ownership of agricultural land in the U.S.¹ Out of the 1.3 billion acres of privately owned land, around 40 million acres were under full or partial foreign ownership as of 2021. This is a 50% increase from 2011 when approximately 26 million acres were owned by foreign entities. Current foreign agricultural holdings represent 3.1% of the country's privately owned agricultural land.

Foreign governments themselves generally do not own U.S. agricultural land. The majority of foreign-owned land in the U.S. is owned by Canadian interests (31% or 12.8 million acres). Other major stakeholders originate from the Netherlands, Italy, the United Kingdom, and Germany, together accounting for 31% of foreign-owned land in the U.S. Entities from China own a smaller portion, slightly under 1% of all foreign owned agricultural land. Foreign entities purchase agricultural land for many reasons, including food production, energy production (e.g., wind farming), or as an investment. Nearly half (47%) of foreign-owned land is forest land (timber or forest), 29% is dedicated to crops and 22% to pasture and other agricultural land. With the exception of Maine, which has 20.1% of its private land under foreign ownership (mainly forestland and Canadian ownership), most states have nominal foreign holdings. The proportion of foreign-held to privately held agricultural land is in the low to mid-single digits for all other states; notable exceptions include Hawaii (9.2%, majority pasture) and Washington (7.2%, majority forestland). Foreign land holdings are concentrated in the Western and Southern regions of the country. These holdings often tend to be concentrated within specific regions of a state. For example, in my home state of Michigan, most foreign land holdings are found in the Upper Peninsula². Foreign investments in U.S. agricultural land can be a source of economic growth, employment, and job creation in local communities.

From an economic perspective, the impact that these holdings can have on farmland prices is important to understand. Farmland prices are influenced by the value of the products produced on the land (e.g., crops, livestock) and alternative land uses, such as housing and commercial development. An increase in the value of these products, such as increased commodity prices,

will increase land values and rental rates. Competing land interests, such as urban sprawl, also contribute to higher land prices. The average U.S. farm real estate value reached a record \$4,080 per acre over 2022, a 7.4% increase from the previous year and a doubling from 2007³. U.S. cropland values rose to an average of \$5,460 per acre in 2023, marking an 8.1% increase from 2022, while pastureland values also saw significant gains, averaging \$1,760 per acre (6.7% increase from 2022). These increases come on top of record increases in 2021-2022, when we saw rising commodity prices, and have also translated into increased cash rents.

The consistent growth and stable returns of agricultural land have positioned it as a highly attractive asset for foreign investors. One concern over foreign ownership of agricultural land stems from rising land prices and the potential for increased foreign demand for land to price U.S. farmers out of the market. As such, land prices and rental rates could potentially impact farm assets and credit availability and the ability of new and beginning farmers to access land. However, there is no clear evidence that foreign ownership is causing U.S. farmland prices to rise. Publicly available analysis of USDA data finds no statistically significant difference in agricultural land values (cropland, pastureland, or total ag land) or rental rates for counties with foreign investment in such land and those without⁴. A comparison of counties that experienced a rise in foreign investment from 2012 to 2017 finds that while counties with heightened foreign ownership did experience above-average increases in land values and rental rates, these differences were not statistically significant.

Restrictions to foreign land ownership

Under current U.S. federal law, there are no limits on the quantity of American agricultural land that foreign entities may acquire⁵. While some states grant foreign entities property rights identical to their citizens, others place notable restrictions or outright prohibit some type of foreign ownership of agricultural land. About two dozen states have laws that curtail or prevent nonresident foreigners, overseas corporations, and foreign governments from owning agricultural land. Recent proposals have suggested placing broad land ownership restrictions, encompassing agricultural land, while others empowered the President with the authority to block certain real estate transactions⁶. Given the potential for some of these proposals to have unintended consequences, careful analysis is needed to understand their impact on the broader U.S. agri-food system.

An analysis of land values and rental rates across counties in states classified according to different types of restriction does not provide a clear pattern of results⁷. Counties in states with mild restrictions saw the largest land value increases, while those in states with weak restrictions observed the smallest growth. Cropland rental rates were higher in states with weaker restrictions, while the opposite was true for pastureland rates. States with mild to strict restrictions experienced above-average increases in pastureland rental rates. These results are contrary to the expectation that such prohibitions would dampen increases in land values.

Data constraints and availability

In 1978, Congress introduced the Agricultural Foreign Investment Disclosure Act (AFIDA) to oversee the foreign ownership of U.S. lands meant for crops, pasture, and timber. Under AFIDA, foreign entities must inform the U.S. Department of Agriculture of any transaction concerning these lands. Noncompliance could incur a civil fine amounting to as much as 25% of the land's

market value. As I noted earlier, the data collected under AFIDA are subsequently reported to Congress and the President. The database, comprised of over 40,000 records, details ownership, land use, purchase price, and location, among other attributes⁸. Notably, an inquiry by the Midwest Center for Investigative Reporting found discrepancies and missing data within the historical records⁹. Some 1 million acres of foreign-held land, for instance, did not identify the country of ownership, and typographical errors have distorted some entries, like an Ohio dairy farm's reported purchase price, which contained an extra set of three zeros. Changes in foreign-held agricultural acres reflect the reconciliation of past transactions. As such, these records might not reliably portray changes over time. Until last year, when Congress directed USDA to establish an online database containing AFIDA data and permit digital disclosure submission, the agency operated the program predominantly on a paper-based system.

Enforcement of reporting requirements has been inconsistent and even lax at times. Between 2015 and 2018, USDA assessed no penalties for either late filings or failure to file a transaction. This has been attributed to low staffing levels in the agency¹⁰. Since 2013, fines have been levied on only six entities, well below the number for the previous ten years, when over 200 penalties were recorded. The overwhelming majority of the fines were levied for late filing, with only two non-filing penalties recorded (both in 2021 and attributed to purchasers from China). Given the rise in foreign holdings and investors over the past decade, these numbers raise concerns regarding data quality and completeness. How many foreign agricultural land acquisitions have gone unreported, and by whom? Failure to address these questions limits our ability to draw meaningful conclusions from any economic analysis on the impacts of these purchases, among other concerns.

Chinese ownership of U.S. agricultural land

Chinese ownership of U.S. agricultural land has emerged as an area of concern, as reflected in remarks made by policymakers and recent reports from the media. My focus on Chinese ownership of U.S. agricultural land in this testimony stems from my experience researching Sino-American agricultural issues over the past 15 years and is meant to place this issue into a broader perspective.

Concerns over Chinese ownership of U.S. agricultural land, which come amid rising tensions between the two countries, were heightened by high-profile acquisitions in recent years. Two of them are worth highlighting briefly. In 2013, Smithfield Foods, the largest U.S. pork producer, was purchased by China's WH group in what is China's largest purchase of a U.S. company. Smithfield has credited its parent company with driving consistent growth over the past decade, particularly enhancing its exports to China — the world's foremost pork consumer—as well as with facilitating the hiring of additional U.S. personnel and grown the processing capacities of the company¹¹. More recently, in 2022, a land purchase by the Fufeng group from China came under scrutiny because it was located near the Air Force base in Grand Forks, North Dakota. An agreement to build a corn mill on the land, which would have brought 1,000 construction jobs and more than 200 permanent jobs, was terminated by the city of Grand Forks after the United States Air Force deemed the project a significant threat to national security. The corn mill would have been the largest economic development initiative in the city's recent history¹².

The government of the People's Republic of China, like most other governments, does not directly own any agricultural land in the United States. Chinese-owned U.S. farmland is a very small fraction of all foreign-owned land in the U.S. – approximately 383,934 acres or less than 1 percent of all foreign-owned agricultural land. This implies that Chinese entities have a stake in just 0.03% of all privately held U.S. agricultural land. Significantly less than investors from the Netherlands (4.9 million acres), Portugal (1.5 million acres), and Luxembourg (802,249 acres). Entities from seventeen countries have bigger stakes in American agricultural lands ahead of China. Moreover, Chinese ownership of American agricultural land is largely centralized. A recent analysis of USDA data by NPR revealed that over 80% of the land owned by China is concentrated in the hands of Smithfield Foods and billionaire Sun Guangxin¹³. Guangxin, through his entities (Brazos Highland Properties LP and Harvest Texas LLC), possesses approximately 40% of all Chinese-held U.S. land. Over 100,000 acres are in Val Verde County, Texas. Smithfield Foods lays claim to over a third of the Chinese-owned lands in the U.S., primarily in North Carolina and Missouri.

China's investments in foreign agriculture are largely driven by its desire to build food self-sufficiency¹⁴. In this pursuit, China has strategically evolved its foreign investment approach in the agricultural sector. An initial wave of investments from 2004 to 2012 largely concentrated on crop production and securing raw materials, especially in eastern Russia and Asia, incentivized by robust domestic demand and favorable trade agreements with ASEAN nations¹⁵. China's more recent investment trend has pivoted towards acquiring established agribusiness companies in the West, like Switzerland's Syngenta, a chemical and seed company, and U.S.'s Smithfield Foods. China's ambitions to exert greater control over its import supply chains and have a stronger hand in global commodities may propel additional investments in trade, logistics, and the agricultural commodity sectors. Issues over consolidation, further acquisitions of agribusinesses and concerns surrounding intellectual property in the agri-food space need to be monitored and evaluated.

Food security concerns over increasing foreign ownership of U.S. agricultural land

Food security concerns naturally arise when discussing foreign ownership of U.S. agricultural land. The U.S. is not only self-sufficient in basic food production, but we also provide food for many across the globe. We are the breadbasket of the world. Food insecurity arises in our country not because of production deficits but because of issues of affordability and access. This came to the forefront during the COVID-19 pandemic when supply chain disruptions caused unprecedented stockouts in our nation's grocery stores, in the wake of Russia's invasion of Ukraine when global commodity prices reached record highs, and during the subsequent inflationary period that is affecting many households' ability to put food on the table. It is important to look beyond foreign holdings of U.S. agricultural land and the impacts on production when assessing issues of food security.

Concluding remarks

I will conclude by noting that American farmland is a critically valuable and finite resource. While, in my view, the foreign acquisition of U.S. agricultural land by foreign entities does not threaten our ability to produce food, it does raise specific and sometimes local concerns. Foreign ownership of U.S. agricultural land is a nuanced and multifaceted topic with implications that intersect with economics, geopolitics, national security, and food security. The available data

suggests that while foreign holdings have been rising, they still represent a small fraction of privately held agricultural land, with a majority of that ownership rooted in entities from friendly nations. Chinese ownership, a recent focal point of concern, remains marginal in regard to the size of holdings compared to other countries. However, the reliability of our data warrant further attention to ensure informed policy decisions are made. It is vital that any legislative and regulatory response be evidence-based, consider the broader agri-food landscape, and aim to strike a balance between safeguarding our national interests and promoting economic growth and opportunity. Thank you again for the opportunity to testify this morning and I look forward to your questions.

¹ USDA Farm Service Agency. [Agricultural Foreign Investment Disclosure Act \(AFIDA\)](#).

² Knudson, B. June 2023. [Foreign Ownership of Michigan Farmland](#). Working Paper 0601-2022.

³ USDA NASS. August 2023. [Land Values 2023 Summary](#).

⁴ USDA Farm Service Agency. [Foreign Holdings of U.S. Agricultural Land Through December 31, 2021](#).

⁵ Brown, M., and Spellman, N. [Statutes Regulating Ownership of Agricultural Land](#). National Agricultural Law Center.

⁶ Johnson, R. January 2023. [Foreign Ownership of U.S. Agriculture: Selected Policy Options](#). Congressional Research Service

⁷ USDA Farm Service Agency. [Foreign Holdings of U.S. Agricultural Land Through December 31, 2021](#).

⁸ USDA Farm Service Agency. [Detailed Data Underlying the AFIDA Annual Reports](#)

⁹ [Data Set: Foreign-Held Ag Land](#). Midwest Center for Investigative Reporting.

¹⁰ [Internal USDA memo](#) acquired by [Agri-Pulse](#)

¹¹ Thomas, P. May 2023. [Smithfield Foods CEO Defends Pork Producer's Chinese Ownership](#). The Wall Street Journal.

¹² Smith, M. July 2022. [A North Dakota City Attracted a Corn Mill. Then Came Questions About Its Chinese Owners](#). The New York Times.

¹³ Bustillo, X. and Jin, C. June 2023. [China owns 380,000 acres of land in the U.S. Here's where](#). National Public Radio.

¹⁴ Greenwood, L. May 2022. [China's Interest in U.S. Agriculture: Augmenting Food Security through Investment Abroad](#). U.S.-China Economic and Security Review Commission Staff Research Report.

¹⁵ Gale, F., and Gooch, E. April 2018. [China's Foreign Agriculture Investment](#). USDA ERS Economic Information Bulletin Number 192.

**DOCUMENTS SUBMITTED FOR THE
RECORD**

SEPTEMBER 27, 2023

Statement for the Record by Rep. Judy Chu, Chair of the Congressional Asian Pacific American Caucus (CAPAC)

Senate Committee on Agriculture, Nutrition, & Forestry

Hearing on “Foreign Ownership in U.S. Agriculture”

September 27, 2023

Thank you, Chair Stabenow, Ranking Member Boozman, and other esteemed Members of the Committee for the opportunity to submit a statement for the record.

As Chair of the Congressional Asian Pacific American Caucus (CAPAC), I am incredibly concerned by efforts to restrict ownership of land and property by immigrants from the People’s Republic of China, Russia, Iran, and North Korea. Recent attention on foreign investment in the U.S. food and agriculture sectors has focused on fears that Chinese government and government-owned entities are creating a national security risk by amassing U.S. farmland and potentially gaining control of our nation’s food supply—an assumption that does not currently have any factual evidence behind it. I do not oppose limiting foreign governments, state-owned enterprises, entities, companies, or individuals with ties to foreign governments from making purchases of agricultural land or property. However, I staunchly object to any legislation—at the federal, state, or local level—that bans an individual from land or property ownership solely based on their country of origin. At this moment of heightened U.S.-China tension and as we in Congress remain vigilant in protecting our national and economic security, as CAPAC Chair, I will continue to raise my voice to ensure that we are not eroding the civil liberties of individuals in our communities.

Most alarming of all is the impact of anti-China fearmongering on Chinese immigrant communities and the erection of unfair barriers to their pursuit of the American Dream solely because of their country of origin. I speak out now as we have seen policies like this before in our nation’s history. Such policies targeted at individual citizens echo xenophobic alien land laws targeting Asian immigrants—in the 1800s, when anti-Chinese sentiment culminated in the Chinese Exclusion Act of 1882, or during World War II when tensions with Japan led to the stripping of land ownership rights from Japanese immigrants and the incarceration of 120,000 Japanese Americans.

The country witnessed again the same harmful prejudices that marred our history when Florida Governor Ron DeSantis signed a law in May 2023 preventing foreign nationals from China and six other countries from purchasing what the state deems sensitive American land. Individuals from China who are not U.S. citizens or lawful permanent residents are barred from owning Florida property altogether, with limited exceptions for residential property by those lawfully present in the United States. This law allows the state to discriminate against Chinese home seekers and places a disproportionate and stigmatizing burden on current Chinese homeowners who must register their property with the State.¹ This will harm a much wider immigrant

¹ *DeSantis signs bill restricting certain foreigners from property buys*, Axios, <https://www.axios.com/local/tampa-bay/2023/05/08/florida-ron-desantis-china-property>

population: as a result, Asian Americans living in Florida will now likely face undue suspicion when purchasing property, including agricultural land or farmland.

As Chair of CAPAC, I recommend two approaches for how this Committee can examine this topic without casting suspicion or discrimination on the Asian American community. First, I urge that any provisions addressing foreign ownership of land or property must be narrowly tailored to specify foreign governments, or those subject to sanctions on Treasury Department's Specially Designated Nationals and Blocked Persons List, as subject to restrictions, and not impact Asian immigrant or Asian American individuals.

Second, I welcome additional efforts to increase our understanding of specific security threats posed by foreign ownership of U.S. land, including agricultural land, through the direction of studies and data collection. For example, according to the U.S. Department of Agriculture (USDA), foreign persons own 2.9 percent of all privately held U.S. agricultural land, and 1.7 percent of all U.S. land in 2021. Of those shares, Chinese investors own less than 1 percent of all foreign-held U.S. agricultural land. In contrast, Canada owns 31 percent and the Netherlands owns 12 percent.² The Committee must take these specific figures into account as it considers proposed legislative solutions, and if it finds that current data may be incomplete or inaccurate, should direct their efforts towards improving data collection and reporting.

There is no question that we must fight against all threats to American security. But in this process, we must not ensnare innocent individuals and communities or compromise our fundamental values of liberty and equality. It is dangerous to categorize an entire country of people as a threat to our national security, and I urge the Committee to reject these overly broad and xenophobic attempts to build a case that Chinese individuals should be viewed with more suspicion than others. This Committee should not condone profiling that encourages individuals to view all Chinese and Chinese Americans, and Asian Americans broadly, as potential national security threats. Instead, it must consider genuine solutions to ensure the rights of our communities domestically are not collateral damage.

Especially as this is a priority issue for CAPAC, I offer the Committee our Caucus' expertise in this matter as a resource. Please do not hesitate to reach out to our Caucus to ensure that discussions on this matter continue in a productive way that is not harmful to Asian American communities. Thank you again for the opportunity to submit a statement and to ensure that the record reflects strong opposition to any attempt to ban an individual from agricultural land or property ownership solely based on their country of origin. There is no room for this type of prejudice in our country's laws or practices.

² *Foreign Holdings of U.S. Agricultural Land through December 31, 2021*, USDA, https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/EPAS/PDF/2021_afida_annual_report_through_12_31_2021.pdf#:~:text=Foreign%20persons%20held%20an%20interest%20in%20approximately%2040.percent%20of%20all%20land%20in%20the%20United%20States.



The Honorable Debbie Stabenow
Chairwoman
Senate Agriculture Committee

The Honorable John Boozman
Ranking Member
Senate Agriculture Committee

October 4, 2023

Dear Chairwoman Stabenow and Ranking Member Boozman:

Thank you for holding the hearing, *Foreign Ownership in U.S. Agriculture*, on September 27. The topic is both timely and important. The National Alliance of Forest Owners (NAFO) agrees with the comments you made in your opening remarks and write to underscore your position that U.S. agriculture and forest lands should be protected from foreign adversaries attempting to deploy assets on our soil, lock up our food and fiber supply chains, and steal important intellectual property. As you continue to investigate and work on this topic, we would also like to ensure you are familiar with an important issue with the investment structure of U.S. timberland companies that was not discussed during the hearing. We are concerned that unintended consequences of future laws could severely impact the forestry industry's ability to receive investment from ecologically minded investors and conduct investment transactions. This could also harm a large percentage of the U.S. population, as millions of Americans are financially invested in forestlands.

Many U.S. timberlands are owned and operated by real estate investment trusts (REIT), timber investment management organizations (TIMO), and private equity firms. Timberlands are currently a stable financial investment. While most investors are U.S. citizens and institutions, we also attract foreign investment—primarily from Canada, the United Kingdom, New Zealand, the EU, Japan, and South Korea. Foreign investment from friendly nations is an important driver of the value of U.S. timberlands. These investments keep U.S. forests working, and working forests give us clean air and water, provide recreational wildlife habitat, and spur forest industry jobs in rural communities.

Many legislative proposals to address the potential harm of foreign ownership in our agricultural and forest lands that are currently under consideration would put either blanket prohibitions or onerous reporting requirements on transactions with all foreign entities. NAFO believes future legislation should focus on protecting U.S. agriculture and forestland from adversary nations while encouraging legitimate and safe investment from friendly nations. Failing to do so could harm our ability to attract and process investments from aligned countries and subsequently devalue our timberland holdings. More than 80 million American citizens have timberlands as a portion of their investment portfolios, and under that scenario, all these people would see their shares lose value.

NAFO hopes future legislation will ensure that

- The "trigger" for review should be a suspected tie to an adversarial nation. Putting all foreign investment transactions, including by non-hostile foreign entities, through a reporting or review process is onerous and not in line with historic transaction regulations in other fields.

- Passive, non-controlling investments are not accidentally targeted. For example, if an EU pension fund invests \$5m in U.S. timberlands, they do not gain access to that land. They simply own non-controlling shares in a U.S. timberland company, which retains all rights over the access to and management of that land.

To close, U.S. timberland companies manage the world's best forests. They are attractive investment opportunities for responsible investors around the globe, and it is in all American's best interest to continue encouraging those investments. As you continue your efforts to protect our country against malign adversaries, we hope the appropriate safeguards are in place to ensure unintended consequences of foreign ownership restrictions do not harm U.S. forests and the communities that depend on them.

NAFO is happy to talk more about this issue and make our counsel available for consultation if that would be helpful. Thank you for your time and leadership on this issue.

Sincerely,



David P. Tenny
President and CEO
National Alliance of Forest Owners

September 27, 2023

The Honorable Debbie Stabenow
Chairwoman
Senate Agriculture Committee
328A Russell Senate Office Building
Washington, D.C. 20510

The Honorable John Boozman
Ranking Member
Senate Agriculture Committee
328A Russell Senate Office Building
Washington, D.C. 20510

Dear Chairwoman Stabenow and Ranking Member Boozman,

Thank you for holding this important hearing to examine an issue and topic that has been in the national spotlight: Foreign Ownership in U.S. Agriculture. To better protect our nation's food security and bolster the public's trust in our institutions, we write to express our ongoing support for strengthening the Agriculture Foreign Investment Disclosure Act (AFIDA) and the jurisdiction and oversight of the Committee on Foreign Investment in the United States (CFIUS).

We understand the critical importance of protecting U.S. farmland from undue foreign influence, not only for our country's national security but also as a point of national pride. Critical safeguards like those found in AFIDA and implemented by CFIUS ensure that foreign investments in U.S. farmland do nothing to compromise American national security and are essential to maintain transparency and accountability in transactions that could impact America's food security and sovereignty. The important goals of supporting U.S. agricultural advancement and maintaining a strong national security posture on foreign ownership of U.S. farmland need not be in conflict.

As Congress examines legislative solutions, these proposals must remain balanced to protect U.S. farmers and our national security while retaining the ability to remain globally competitive and support innovation. We appreciate the bills are designed to safeguard the country against international influence, but there could be unintended consequences.

For U.S. Agriculture, research and development are fundamental to the advancement of American agriculture and the industry's ability to remain competitive. On-farm or localized "Test plots" and research facilities must be located "locally" to ensure that varieties are appropriate to the local soils and climate conditions. Current and future research will also unlock new possibilities for tackling climate-related challenges. Without that research, Congress could inadvertently limit farmers' access to cutting-edge technologies and new varieties.

We operate in a global marketplace. Should some of the proposals be implemented, we are concerned about the potential for retaliation from foreign countries. We only have to look back three years to see the massive reduction in agricultural exports to those countries and the impact it caused to require our government to provide ad hoc disaster assistance to farmers.

Striking a balance between safeguarding U.S. national security interests and ensuring the continued growth and competitiveness of the American agricultural sector is crucial. We

appreciate scheduling the hearing for later this week and hope you will focus that hearing on finding legislative solutions to limit foreign influence and promote national security that take into consideration the complexities and nuances of the agricultural industry.

Sincerely,

American Soybean Association
National Association of Wheat Growers
National Corn Growers Association
National Sorghum Producers

CC: Members of the Senate Committee on Agriculture

United States Senate
Washington, DC 20510

United States House of Representatives
Washington, DC 20515

September 26th, 2023

Re: Farmland for Farmers Act

Dear Senators and Representatives,

The undersigned 71 farmer and rural community advocacy organizations wholeheartedly endorse the Farmland for Farmers Act of 2023 (S.2583), introduced by Senator Booker on July 27th, 2023, and urge you to co-sponsor this critical bill and support its inclusion in the 2023 Farm Bill.

Over the past two decades farmland consolidation is increasingly being driven by U.S.-based multinational corporations, private equity firms, and pension funds. The number of institutionally owned properties tripled from 2009 to 2022, and the market value of that property increased from less than \$2 billion dollars to over \$14 billion in the same time period. Farmland ownership is a foundational source of wealth and power in rural America. As farmland has increasingly been consolidated under corporate ownership, evidence shows that the result in rural communities is depopulation, the loss of critical institutions such as banks and hospitals, and fewer jobs.

The trend of corporate ownership has also contributed to agricultural land prices reaching historically high levels in 2023, with farmland prices nearly doubling since 2005. According to the USDA, one acre of farmland has a national average price of \$3,800 - the highest since the 1970s - with the average U.S. farmland value increasing 7% from June 2020 to June 2021 and 12% from June 2021 to June 2022. Higher land prices provide an advantage to corporate buyers with the legal and financial resources to recruit capital from investors and outbid independent family-scale farmers – and prospective new farmers in particular. Today, land access is the single most significant challenge facing young and beginning farmers, saddling them with debt and financial risk.

For family farmers and ranchers who already own land, speculative corporate land investment also poses a threat as corporations routinely target farmers in crisis with a deluge of predatory marketing materials, pressure tactics, and forced auctions of common family lands to scale-up their farmland holdings. Furthermore, lack of transparency in land markets and the use of multi-level subsidiaries to mask the identity of the corporations benefiting from these investment tactics undermines accountability and regulatory enforcement of state and national land policies. Rural communities have a right to know who is buying up, and in some cases monopolizing, natural resources including farmland in their communities.

The Farmland for Farmers Act of 2023 would address corporate farmland investment to ensure that farmland in the U.S. stays in the hands of farmers by:

·**Curbing speculative investments:** Corporations, private equity firms, pension and investment funds would be restricted from purchasing or leasing new farmland for speculative investment to mitigate market volatility.

·**Bringing transparency in land markets:** Multi-level subsidiary structures, used to conceal farmland investments in local communities, would be limited from farmland transactions.

·**Targeted approach:** Corporations with 25 or fewer shareholders, partners, members, or beneficial owners who are actively engaged in farming, as well as non-profit corporations and farmer cooperatives would all be exempt from the bill's oversight.

·**Strengthening State authority:** In providing a national standard, States would be fortified for regulating corporations involved in farmland ownership, both domestic and foreign, on a fair playing field.

·**Ensuring fair allocation of farm programs:** Critical federal agricultural programs, currently being misused by corporations to reduce their investment risk, would no longer be utilized by corporate investors, and instead would prioritize independent farmers who form the backbone of the farm sector.

With four hundred million acres of U.S. farmland, or 40% of total U.S. agricultural land, expected to change hands in the next decade, the stakes for rural America are high. If farmland does not move into the hands of independent family farmers, but rather continues to be consolidated under corporate control, the power of rural communities to determine their futures will be undermined, with concerning implications for local community control of natural resources, national security, and the vitality of diversified rural economies. Now is the time to address this trend and put farmer livelihoods over corporate profits. We call on Congressional leaders to work collaboratively to strengthen U.S. farmland laws by including the Farmland for Farmers Act (S.2583) in the 2023 Farm Bill.

Sincerely,

National Family Farm Coalition

- Action Aid USA
- Addison County Relocalization Network (ACORN)
- Agrarian Trust
- Agricultural Justice Project
- Agroecology Research-Action Collective
- American Federation of Government Employees, Local 3354
- American Grassfed Association
- American Raw Milk Producers Pricing Association
- American Sustainable Business Network
- Ashtabula, Geauga, Lake Counties Farmers Union (Ohio)
- Campaign for Family Farms and the Environment
- Community Alliance with Family Farmers
- Community Alliance for Global Justice

- Community Farm Alliance
- Crop Swap LA
- Dakota Resource Council
- Dakota Rural Action
- Family Farm Defenders
- Farm and Ranch Freedom Alliance
- Farm Action Fund
- Farm Aid
- Farmer Foodshare
- FarmSTAND
- Farmworker Association of Florida
- Federation of Southern Cooperatives
- Food and Water Watch
- Food for Maine's Future
- Food Tank
- Food in Neighborhoods Community Coalition
- Grassroots International
- Greenhorns
- HEAL Food Alliance
- Illinois Stewardship Alliance
- Independent Cattlemen of Wyoming
- Iowa Citizens for Community Improvement
- Iowa Farmers Union
- Institute for Agriculture and Trade Policy
- Land Loss Prevention Project
- Midwest Farmers of Color Collective
- Missouri Rural Crisis Center
- National Young Farmers Coalition
- Nebraska Communities United
- New Entry Sustainable Farming Project
- North American Marine Alliance
- Northern Plains Resource Council
- Northeast Farmers of Color Land Trust (NEFOC)
- Northeast Organic Farming Association - Interstate Council
- Northeast Organic Farming Association - New Hampshire
- Northeast Organic Farmers Association - New Jersey
- Northeast Organic Farmers Association - New York
- Northeast Organic Farmers Association - Vermont
- One Fish Foundation
- Open Markets Institute
- Pennsylvania Farmers Union
- R-CALF USA
- Rural Advancement Foundation International–USA
- Rural Vermont

- Salmonberry Tribal Associates
- Slow Food USA
- Socially Responsible Agriculture Project
- Soul Fire Farm Institute
- Southern Colorado Livestock Association
- SPROUT NOLA
- Sustainable Agriculture of Louisville
- The Cornucopia Institute
- The Foodshed Network
- U.S. Food Sovereignty Alliance
- Western Organization of Resource Councils
- Wisconsin Farmers Union
- Women, Food and Agriculture Network (WFAN)

Legislative text of the Farmland for Farmers Act of 2023 can be found [here](#).

If you need more information or have questions, please contact:

-Jordan Treacle at National Family Farm Coalition: jordan@nffc.net



NEWS RELEASE

AFPI CALLS ON CONGRESS TO RESTRICT COMMUNIST CHINA'S ACCESS TO AMERICAN AGRICULTURAL LAND

WASHINGTON, D.C. – Today, the America First Policy Institute (AFPI) released the following statement from **Steve Yates, Chair of the China Policy Initiative at the America First Policy Institute**, regarding the importance of passing federal legislation to prevent hostile foreign powers from accessing America's farmland:

"Our agricultural land and farmers are a strategic asset to America. No foreign nation has a right to own U.S. agricultural land, and the Communist Party of China and other adversarial nations cannot be allowed to use it to undermine our food security, economic security, and national security.

This is a clear threat to our food supply chains, and our agricultural land also makes a convenient base for surveillance and sabotage of our military installations and critical infrastructure, including power stations, dams, and ports. Federal legislation is needed immediately to ensure our Nation's food security and independence and to protect our communities. Americans have a right to determine which foreign countries may purchase U.S. farmland."

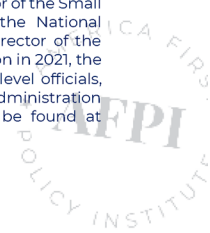
The Chinese Communist Party (CCP) already owns a significant and growing amount of American agricultural land. According to the U.S. Department of Agriculture (USDA), Chinese holdings of U.S. agricultural land surged from 13,720 acres in 2010 to 383,935 acres in 2021, and this land is now valued at nearly \$2 billion.

In their 2023 sessions, at least 23 state legislatures introduced bills that would restrict CCP access to U.S. agricultural land in some way, and Arkansas, Florida, Montana, North Dakota, Tennessee, Utah, and Virginia successfully passed bills into law. Congress now has the opportunity to build a comprehensive federal solution to ensure the protection of every American citizen.

###

About the America First Policy Institute:

AFPI is a 501(C)(3) non-profit, non-partisan research institute focused on advancing policies that put the American people first. AFPI is led by senior leaders from the Trump Administration: Linda McMahon, Chair of the Board and former Administrator of the Small Business Administration; Larry Kudlow, Vice-Chair, former Director of the National Economic Council; and Brooke Rollins, President and CEO and former Director of the Domestic Policy Council and Chief White House Strategist. Since its inception in 2021, the America First Policy Institute team proudly includes nine former Cabinet-level officials, three former Governors, and nearly 50 former Senior White House and Administration officials. More information about AFPI and its 21 research centers can be found at www.americafirstpolicy.com.





June 14, 2023

The Honorable Debbie Stabenow
Chairwoman
Senate Agriculture Committee
Washington, D.C. 20002

The Honorable John Boozman
Ranking Member
Senate Agriculture Committee
Washington, D.C. 20002

Chairwoman Stabenow and Ranking Member Boozman,

We write today to indicate our support for Senator Braun's *Protecting America's Agricultural Land from Foreign Harm Act (S. 926)*, an important and necessary step towards protecting national security.

In light of reports of recent Chinese purchases of agricultural land near U.S. military installations, it is vital that Congress take steps to ensure the safety and security of our critical infrastructure. These purchases have raised legitimate concerns about potential espionage, unauthorized access, and exploitation of critical areas. This is not a hypothetical: since 2017, U.S. officials have "investigated Chinese land purchases near critical infrastructure...and stonewalled what they saw as clear efforts to plant listening devices near sensitive military and government facilities⁶⁹." Failure to address the national security risks of these purchases risks putting our troops in harm's way, unnecessarily exposing intelligence sources and methods, undermines our relationships with allies, and threatens our national security.

Senator Braun's bipartisan, bicameral *Protecting America's Agricultural Land from Foreign Harm Act*, which would restrict the ownership or control of U.S. agricultural land by individuals controlled by our adversaries, is a well-designed solution to this problem. The legislation will allow the federal government to effectively protect our critical infrastructure and reduce the vulnerability of our defense installations. The bill would send a clear message to our enemies that while the U.S. values foreign investment, we will take responsible measures to safeguard our national security. We urge the Senate Agriculture Committee to quickly consider and favorably report this legislation to the full Senate.

Sincerely,

Ryan Walker
Acting Executive Director
Heritage Action for America

69. Katie Bo Lillis, "CNN Exclusive: FBI Investigation Determined Chinese-Made Huawei Equipment Could Disrupt US Nuclear Arsenal Communications," CNN, July 25, 2022, <https://www.cnn.com/2022/07/23/politics/fbi-investigation-huawei-china-defense-department-communications-nuclear/index.html> (accessed February 14, 2023).



September 25, 2023

The Honorable Mike Braun
Senate Agriculture Committee
Washington, D.C. 20002

I write today on behalf of the Agribusiness Council of Indiana (ACI) to support your bill ***Protecting America's Land from Foreign Harm Act***. This bill is an important step to protecting America's national security and to deter potential bad actors from doing harm to our farms and agricultural assets.

This legislation will allow the federal government to effectively protect our critical infrastructure and reduce the vulnerability of our defense installations. While we value foreign investment, it must not be at the expense of safeguarding our national security and critical interests in agriculture.

America's farmers and the food, feed and fiber that they produce is a valuable and strategic asset which is used for good around the world. ACI members are proud to provide the services and supplies needed for Indiana farmers to be among the most productive and sustainable producers in the United States and in the world. Your bill will allow us to maintain the leadership and security needed to feed a growing population in a safe and efficient manner.

Sincerely,

A handwritten signature in cursive script that reads "Bruce Kettler".

Bruce Kettler
President and CEO
Agribusiness Council of Indiana

Written testimony submitted to: the Senate Committee of Agriculture, Nutrition and Forestry
 Topic: To examine foreign ownership in U.S. Agriculture
 Date: September 27, 2023, at 10:00am EDT
 Submitted by: Kip Tom, Farmer and (Former) Ambassador of the United States to the United Nations Agencies for Food and Agriculture

Chairwomen Senator Stabenow and Ranking Member Senator Boozman:

As a seventh-generation farmer and the former Ambassador of the United States to the United Nations Agencies for Food and Agriculture from 2019-2021, I have had a unique lens into China's growing maligned influence into U.S. food and agriculture, which will impact our national security and our own food security.

National power for the United States in the past has been maintained by four key elements: effective diplomacy, rich informational resource, a strong military, and a growing and leading economy. Today, there are two other critical elements that have been taken for granted by Americans and others in the developed world: food and energy security. None of the other four elements can contribute to national power without food or energy. The Chinese recognize the importance of food and energy and are strategically growing their access around the globe.

I know today's focus is previewing foreign ownership of U.S. agriculture, including agricultural land. The United States holds the largest contiguous tract of arable land in production today that is supported by our 14,800 miles of navigable waterways, locks, dams, and other critical infrastructure that gives us a strategic advantage in the production of food, fiber, and energy. Today, I want to share several points on some additional concerns that have had and will continue to have a direct impact on U.S. agricultural land holdings.

I have witnessed first-hand the Chinese theft of intellectual property, namely seed genetics from farms and research sites from across the U.S. The goal for the Chinese is to increase yields of various crops in China without developing or paying for the intellectual property. Here are some examples:

Mo Hailoong, an agent for Chinese agriculture company Dabeinong Technology Group, stole patented seed varieties, inbred them, and mailed or carried them back to China. He was later prosecuted in the U.S. and, in October 2016, was sentenced to 36 months in prison and an additional 36 months of supervised release.

Chinese nationals were also caught visiting seed corn production fields in Northern Indiana, Southern Michigan, and Iowa to "dig up" pure parent inbred seed parent lines that are owned by major U.S. seed production companies. These individuals then took the stolen seeds to a warehouse in Chicago, catalogued them, and shipped them to China for propagation and crop production.

There was also a case where a Chinese national stole genetically modified rice seeds from a Kansas research facility. Similar to Mr. Hailoong, this Chinese national was also prosecuted by U.S. courts and served time in prison.

According to the American Seed Trade Association, it takes 5-15 years to develop a new seed variety at a cost of over \$100 million. Overall, the annual value of seed production in the U.S. is over \$9 billion. Intellectual property theft not only threatens these American seed companies, but also the rest of the value chain, from the seed breeder to the consumer.

In addition to corporate intellectual property, another area of concern is the theft of producer's trade secrets and intellectual property. Today, farmers generate and collect digital data at a rapidly increasing rate through GPS, internet of things, sensor technology, and software and cloud systems. This data strengthens the ability of farmers to measure, monitor, and control assets on their farms using advanced analytics, increasing productivity on their farms. These technologies can also lower cost of production, lower use of natural resources, and improve environmental sustainability.

Here is an example. In June 2017, a Chinese national named Haitao Xiang stole a copy of Monsanto's online platform used by producers to collect and manage their land productivity data. One aspect of this technology was an algorithm called the Nutrient Optimizer, which Monsanto successfully argued was "a valuable trade secret and [domestic] intellectual property."

In a Department of Justice document, Xiang, a former Monsanto employee, was said to have stolen this information "for the purpose of benefitting a foreign government, namely the People's Republic of China."

In June 2017, Xiang left Monsanto and boarded a flight back to China. The 44-year-old drew the attention of airport officials, who conducted a search. It was not until later that investigators found copies of the program and algorithms stored on his electronic devices.

Xiang was still able to leave the United States and began working for the Chinese Academy of Science's Institute of Soil Science.

However, during a return trip to the U.S., Xiang was arrested and charged. The Chinese national submitted to the charge of conspiracy to commit economic espionage and faces up to 15 years behind bars, a maximum of three years supervised release, and a fine of up to \$5 million.

In the words of U.S. Attorney for the Eastern District of Missouri Saylor Fleming, "Mr. Xiang used his insider status at a major international company to steal valuable trade secrets for use in his native China." Fleming also added that "[w]e cannot allow U.S. citizens or foreign nationals to hand sensitive business information over to competitors in other countries, and we will continue our vigorous criminal enforcement of economic espionage and trade secret laws."

Again, Xiang represents just one of several documented cases of theft. The question remains, in how many cases have trade secrets and intellectual property been stolen by foreign agents, but the perpetrator was not caught?

The last area of concern for this hearing is the Chinese acquisition of Smithfield Foods, the largest pork producer, processor, and marketer in the U.S. Most industry leaders watched this sale and thought the Chinese insatiable demand for pork was about building the supply chain in

the U.S. The reality is that the acquisition was meant to augment the intellectual property of Smithfield and ensure that, as the Chinese hog herd was transitioning from backyard operations to large scale integrated production units, they would have the knowledge to ramp up production quickly and in a proven system such as Smithfield had developed.

In summary, whether genetics, data, or companies in the value chain, the Chinese are strategically attempting to build their economic power to supplant the United States' leadership globally through the theft of intellectual property connected to our farmland. We need a national strategy to face China our largest existential threat.

Thank you for your time.

Kip Tom, Former Ambassador of the United States to the United Nations Agencies for Food and Agriculture and Chairman of Tom Farms



July 25, 2023

VIA ELECTRONIC TRANSMISSION

Thomas J. Vilsack, Secretary
U.S. Department of Agriculture
1400 Independence Ave, SW
Washington, D.C. 20250

Dear Mr. Vilsack:

Today we write about our concerns about U.S. Department of Agriculture (USDA) sponsored-research coalitions involving Chinese biotech organizations that may pose a threat to U.S. economic and national security. Specifically, the USDA's Agriculture Research Service (ARS) previously announced its partnership with the Earth BioGenome Project (EBP), a "version of the moonshot, an effort that will yield millions of powerful new solutions to agriculture's challenges."¹ Subsequent to that 2018 announcement, USDA-ARS awarded \$1 million to BGI, a Chinese-government controlled genomics company that was recently linked to China's People's Liberation Army (PLA).² We uncovered this coalition while tracing U.S. government financial flows as part of our investigation into the origins of the COVID-19 pandemic.

We recognize the benefits and importance of genomic modification (GM) to agriculture but we must also ensure that appropriate safeguards protect the security of U.S.-sponsored genomic research materials and intellectual property. As the agency's chief research division, USDA-ARS must be extra vigilant in safeguarding U.S.-funded research that has potential to be weaponized against the U.S., especially when projects involve countries of concern, like China.³ Research partners and contracts must be thoroughly vetted to identify potential threats to U.S. security whenever genomic modification research or dual use research of concern (DURC) is involved. DURC is research that can be misapplied to "pose significant threat with broad potential consequences to public health and safety, agricultural crops and other plants, animals, the environment, materiel, or national security."⁴

¹U.S. Department of Agriculture, *Earth BioGenome Project Could Hold Solutions for Agriculture's Future*, Research News (Apr. 23, 2018) available at <https://www.ars.usda.gov/news-events/news/research-news/2018/earth-biogenome-project-could-hold-solutions-for-agricultures-future/>.

² USASpending.gov, search parameters for Recipient UEI number "L5Q8SNHT2NZ9" and Awarding Agency "USDA" (Apr. 27, 2023) available at <https://www.usaspending.gov/search/?hash=c86c4ea8401cebd1a3ff6d1e734686f>; and

Elsa B. Kania and Wilson Vordick, *Weaponizing Biotech: How China's Military Is Preparing for a 'New Domain of Warfare'*, Defense One (Aug. 14, 2019) available at <https://www.defenseone.com/ideas/2019/08/chinas-military-pursuing-biotech/159167/>.

³ Director of National Intelligence, *Annual Threat Assessment of the U.S. Intelligence Community*, Assessments (Feb. 6, 2023) available at <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2023-Unclassified-Report.pdf>.

⁴ Public Health Emergency, *Dual Use Research of Concern*, Science Safety Security (Apr. 24, 2023) available at

The Increasing Threat of China's Military-Civilian Fusion Impact in Research

In 2022, the U.S. Department of Defense (DoD) identified the People's Republic of China (PRC) as "the most consequential and systemic challenge to U.S. national security and a free and open international system."⁵ The PRC pursues a Military-Civilian Fusion (MCF) development strategy to, among other things, increase its power through developing and acquiring "advanced dual-use technology for military purposes and deepen reform of the national defense science and technology industries."⁶ By fusing civilian technology and industrial base with its defense industrial base, the PRC can build military requirements into civilian infrastructure, leverage civilian service for military purposes, and blend civilian and military expertise.⁷

The PRC has been weaponizing biotech in preparation for strategic advantage in a new domain of biological warfare.⁸ Scientific ethical boundaries have been ignored by scientists in China, as evidenced by their creation of two genetically altered babies.⁹ Chinese military medical scientists recently inserted a gene from a microscopic water bear into a human embryonic stem cell which significantly increased its resistance to radiation for the ultimate purpose of developing blood-making cells to increase the chances of humans surviving an apocalyptic event.¹⁰

Risks of USDA Collaboration with BGI

BGI is a China-based biotech company that has been leading the PRC's efforts to create the world's largest genomic repository. The U.S. National Counterintelligence and Security Center (NCSC) issued a public warning about risks of BGI's access to genetic information of Americans in 2021.¹¹ In 2022, the DoD added BGI to its list of Chinese military companies operating directly or indirectly in the U.S. as a civilian entity that "supports the modernization goals of the People's Liberation Army" through China's MCF strategy.¹² In 2023, the U.S. Department of Commerce (Commerce) added BGI to its Bureau of Industry and Security's Entity List for trade restrictions in 2023. Two BGI affiliates were added to the list in 2020.¹³ Any U.S. collaboration with BGI or any other data-storage entity based in China could place research projects and resources at risk for sudden denial to data access.¹⁴ The United States experienced the adverse impact of China's denial to information when in 2020, a research coalition that included BGI as a partner, supported by U.S. grants, had to retract published results after the PRC

<https://www.phe.gov/s3/dualuse/Pages/default.aspx>.

⁵ U.S. Dept. of Defense, *2022 Report on Military and Security Developments Involving the People's Republic Power Report*, China Military Power Report (Nov. 29, 2022) available at <https://media.defense.gov/2022/Nov/29/2003122279/-1/-1/1/2022-MILITARY-AND-SECURITY-DEVELOPMENTS-INVOLVING-THE-PEOPLES-REPUBLIC-OF-CHINA.PDF>.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Dennis Normile, *Chinese scientist who produced genetically altered babies sentenced to 3 years in jail*, SCIENCE (Dec. 30, 2109) available at <https://www.science.org/content/article/chinese-scientist-who-produced-genetically-altered-babies-sentenced-3-years-jail>.

¹⁰ Stephen Chen, *Chinese team behind extreme animal gene experiment says it may lead to super soldiers who survive nuclear fallout*, South China Morning Post (Mar. 29, 2023) available at <https://www.scmp.com/news/china/science/article/3215286/chinese-team-behind-extreme-animal-gene-experiment-says-it-may-lead-super-soldiers-who-survive>.

¹¹ NCSC, *China's Collection of Genomic and Other Healthcare Data From America: Risks to Privacy*, U.S. Economics and National Security (Feb. 2021) available at https://www.dni.gov/files/NCSC/documents/SafeguardingOurFuture/NCSC_China_Genomics_Fact_Sheet_2021revision20210203.pdf.

¹² DOD Releases List of People's Republic of China (PRC) Military Companies in Accordance with Section 1260H of the National Defense Authorization Act for Fiscal Year 2021 (Oct. 5, 2022) available at <https://media.defense.gov/2022/Oct/05/2003091659/-1/-1/0/1260H%20COMPANIES.PDF>.

¹³ 88 FR 13673. Federal Register, *Additions and Revisions of Entities to the Entity List*, A (March 6, 2023) available at <https://www.federalregister.gov/documents/2023/03/06/2023-04558/additions-and-revisions-of-entities-to-the-entity-list>.

¹⁴ Christian Perez, *Why China's New Data Security Law Is a Warning for the Future of Data Governance*, FOREIGN POLICY MAGAZINE (Jan. 28, 2022) available at <https://foreignpolicy.com/2022/01/28/china-data-governance-security-law-privacy/>.

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unexpectedly changed its data-sharing regulations and withdrew the data from public access.¹⁵ Without access to the underlying scientific data, the entire project and U.S. resource investments were essentially voided.

The Earth Biogenome Project

The Earth Biogenome Project (EBP) is an international cooperative initiative to sequence the DNA of more than 1.5 million species and BGI is a data-collection, data storage partner.¹⁶ As a precursor to the EBP and before BGI was listed by DoD and Commerce as a China-based organization with PLA connections, BGI met with USDA, University of California at Davis (UC Davis) and other U.S. government and university representatives to explore the concept of sequencing of all life.¹⁷ Subsequent to that foundational meeting, BGI has pursued partnerships for strategic access to genome sequencing and one of those partnerships, the UC Davis Genomic Center, serves as the functional headquarters for the EBP.¹⁸

The EBP started by building on existing research efforts to sequence genomes, such as the USDA's i5K Initiative and Ag100Pest.¹⁹ Over fifty similar DNA collection and characterization coalition projects are part of EBP's affiliated network, several of which are directly organized by BGI or BGI is a member.²⁰ An affiliate relevant to the COVID-19 origins investigation is the Global Virome Project (GVP), a private organization aimed to prevent pandemics by collecting and conducting laboratory experiments on dangerous animal virus pathogens, like bat coronaviruses.²¹ BGI and the China National GeneBank hold leadership roles on EBP's subcommittees for: Genomic Sequencing and Assembly; Annotation, Data Analysis; and IT and Informatics (chair).²² USDA-ARS serves on the EBP's steering committee.²³

We are gravely concerned that the USDA is participating in this massive effort to sequence all of life with BGI's participation as an active research collaborator. Following the COVID-19 outbreak, the PRC blocked access to patient and virus samples that could assist in our investigation into the origins of the pandemic, despite data-sharing agreements and multiple-year collaborations between the PRC and U.S. public health agencies and universities. Even if USDA stopped paying BGI directly, through partnering with BGI and sharing U.S. intellectual property, the collaboration could endanger our security by giving China a strategic competitive edge to hold and store data that U.S. scientists have worked hard to develop.

Request for Information

1. What is the status of USDA's data sharing agreements with BGI?
2. Does BGI have access to USDA research databases and if so, which ones and to what extent is their access?

¹⁵ Na Cai, et al, *RETRACTED ARTICLE: 11,670 whole-genome sequences representative of the Han Chinese population from the CONVERGE project*, SCIENTIFIC DATA (Apr. 16, 2020), available at <https://doi.org/10.1038/s41597-020-0430-x>.

¹⁶ Earth Biogenome Project, About (Apr. 27, 2022) available at <https://www.earthbiogenome.org/>.

¹⁷ Victoria Hatch, *The Earth Biogenome Project: on track and ready to ramp up*, EMBL-EBI (Jan 21, 2022) available at <https://www.ebi.ac.uk/about/news/announcements/the-earth-biogenome-project-on-track-and-ready-to-ramp-up/>.

¹⁸ *Id* at 19.

¹⁹ *Id* at 1.

²⁰ *Id* at 19.

²¹ Global Virome Project, *About Us* (May 1, 2023) available at <https://www.globalvirome.org/leadership-team>.

²² *Id* at 19.

²³ *Id* at 1.

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3. What is the status of USDA's involvement in the Earth Biogenome Project?
4. Does USDA warehouse any of the collected Earth Biogenome Project data? If not, does USDA have access to all research project data sponsored by the USDA?
5. A new law placed limitations on funding by the U.S. Department of Health and Human Services for research involving dangerous pathogens that would be performed by a foreign entity at a facility located in countries of concern, like China.²⁴ Will USDA also prohibit funding involving dangerous pathogens in countries of concern?
6. More than 50 EPB affiliated projects are named on the Earth Biogenome Project website. How many of those affiliated projects involve USDA funding? Of those projects, do any involve potentially dangerous pathogens or research?
7. Has USDA planned for contingencies if access to data collected by BGI or any other China-based organization is suddenly terminated?

To assist our ongoing oversight investigation, please provide the following to Senator Marshall's Chief Investigator Diane_Cutler@marshall.senate.gov by August 8, 2023. Thank you for your timely consideration of our request.

Very respectfully,



Roger Marshall, M.D.
United States Senator



Marsha Blackburn
United States Senator



Marco Rubio
United States Senator



Susan M. Collins
United States Senator

²⁴ Consolidated Appropriations Act of 2023, Pub. L. 117-328, *see Section 2315*.

QUESTIONS AND ANSWERS

SEPTEMBER 27, 2023

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Foreign Ownership in U.S. Agriculture
 September 27, 2023
 Questions for the Record
Deputy Under Secretary Gloria Montañó Greene

Ranking Member John Boozman

1. In your written testimony, you state the following:

“FPAC is striking to update the FSA-153 form, which has not been changed for many years. We anticipate that the revised form will ask questions that will help us address the impact of foreign ownership of U.S. agricultural land on farms and rural communities.”

It is my understanding that filers of Agriculture Foreign Investment Disclosure Act (AFIDA) FSA-153 reports compile county-specific land-use details, input information into fillable PDF forms, print the PDF forms, and send three copies of the physical completed forms to FSA. Further, once this information is received by FSA, analysts manually enter information from the physical form into its database for inclusion in the annual reports. Finally, any errors or discrepancies in the reports are resolved through email communications or, in some cases, by the FSA analysts returning paper copies to the filers through U.S. mail or common carrier.

Based on this information I have the following questions:

- a. What specific actions or improvements will FPAC implement to modernize and update the FSA-153 data entry process, and when will FPAC complete these revisions? *The first step in developing a modernized data entry process involves ensuring that we are collecting the data that best helps us meet the requirements of AFIDA and the intent of Congress. To that end, USDA convened an inter-agency USDA group to evaluate and update the FSA-153 AFIDA filing form.*
- b.
- c. What impediments, if any, prevent FPAC from adopting a process that does not require manual data entry of physical forms? *We need funding to be able to create an on-line filing portal and queryable database containing AFIDA data. The FY 2024 President's Budget included a request for \$1 million to start the process. However, the cost depends greatly on whether all historical legal descriptions are desired for inclusion. In addition to the initial funds to begin and implement the process for modernization, annual funding is needed for IT staffing to support this effort.*

Does USDA have the statutory authority to modernize and update the AFIDA reporting process?
Yes, USDA has the authority for IT modernization per the FY 2023 appropriations act, which

indicates that the Secretary is required to “establish a streamlined process for electronic submission and retention of disclosures made under the Agricultural Foreign Investment Disclosure Act...”
Statutory language is not a constraint – funding is the constraint.

- d. Regarding your proposed addition of questions to the form, what office or agency will “address the impact of foreign ownership of U.S. agricultural land on farms and rural communities?” *USDA is proposing to add several questions to the revised FSA-153 form that helps us address the impact of foreign ownership of U.S. agricultural land on farms and rural communities. We are working with the Economic Research Service economists to develop those questions. These economists developed the “Impacts of Foreign Investment on the U.S. Agricultural Sector and Rural Economies” analysis starting on page 5 of the December 2022 report to Congress, which can be found at: https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/2021_afida_annual_report_through_12_31_2021.pdf*
- e. Does USDA have the statutory authority to “address the impact of foreign ownership of U.S. agricultural land on farms and rural communities?” If so, please cite the appropriate statute and section number. *USDA has the statutory authority to report and share the impacts of foreign ownership of agricultural land. Section 5 of The AFIDA of 1978 (P.L. 95-460) addresses the report to Congress and states:*
- “...and determine the effects of foreign persons acquiring, transferring, and holding agricultural land, particularly the effects of such acquisitions, transfers, and holdings on family farms and rural communities;...”*
- In addition, Section 773 of the CAA of 2023 reads:*
- “The Secretary, as part of the report on foreign landholding required under the Agricultural Foreign Investment Disclosure Act (Public Law 95-460), shall report to Congress on foreign investments in agricultural land in the United States, including the impact foreign ownership has on family farms, rural communities, and the domestic food supply. Provided, That within 3 years after the enactment of this Act, the Secretary shall establish a streamlined process for electronic submission and retention of disclosures made under the Agricultural Foreign Investment Disclosure Act, including an internet database that contains disaggregated data from each disclosure submitted...”*
- f. Can USDA summarize and/or publish for public consumption the information collected in response to “the impact of foreign ownership of U.S. agricultural land on farms and rural communities?” *Yes, USDA first published an analysis of the impacts of foreign ownership of U.S. agricultural land on farms and rural communities in its December 2022 report to Congress. We will include an updated analysis in the December 2023 report. The proposed FSA-153 form,*

after approval by OMB, will allow the collection of additional data that will help provide a more robust analysis of impacts.

2. In your written testimony, you state the following:

“Section 773 of the Consolidated Appropriations Act of 2023 directs USDA to modernize the AFIDA reporting system within 3 years via an on-line electronic filing portal linked to a queriable (*sic*) database where interested parties could examine foreign holdings within a given county or see the array of holdings by foreigners from specific countries. Congress did not provide funding to implement these requirements.”

“To move forward with the Section 773 language in the absence of funding, the Department has taken several low-cost steps. In early June, FPAC posted Excel spreadsheets for each year from 2011 to 2021 with the detailed data underlying the annual report to Congress. This is a step in the direction of increasing public access to data of increasing concern and what could be done given the funding provided.”

USDA’s 2024 Budget Summary for the Farm Production and Conservation Business Center (FPAC-BC) “includes \$1 million for design of a new data system to comply with the Agricultural Foreign Investment Disclosure Act (AFIDA), as specified by Sec. 773 of the Consolidated Appropriations Act, 2023.”

- a. Please provide a breakdown of the total amount of funding that has been allocated to the implementation of AFIDA within USDA-FPAC since Fiscal Year 2013. *The entire cost of the AFIDA work was solely associated with staffing over that time period. From Fiscal Year 2013 to present, the staffing cost is approximately \$5 million.*
- b. Please also provide a breakdown of how much USDA has requested for AFIDA-related activities in their Presidential Budget Requests since Fiscal Year 2013. *The FY 2024 request was the first time that USDA made a specific request for funding for AFIDA through the President’s Budget process. In past years, implementation of AFIDA has been exclusively through salary and expenses (S&E). Use of S&E for modernization places AFIDA in competition with many other demands that use the same S&E.*
- c. If different than the \$1 million figure in the Fiscal Year 2024 Budget Request, please share what level of funding and staffing is necessary for USDA to comply with the CAA of 2023. The \$1 million stands as the request for the FY24 Budget to begin the start of the process of compliance.
- d. Assuming USDA does indeed have the statutory authority to modernize the reporting process and given USDA’s knowledge that the AFIDA process has long

been under-resourced and outdated, had USDA considered requesting additional funds from Congress to implement AFIDA prior to passage of the CAA of 2023? *No, given many competing priorities and needs, USDA had not requested funding for AFIDA modernization prior to passage of the CAA of 2023. We are available to provide technical assistance for this modernization.*

3. Please describe the relationship between AFIDA under USDA-FPAC and USDA's Office of Homeland Security (OHS).
 - a. Does AFIDA flag filings for OHS for potential CFIUS review? *Yes, AFIDA staff flag filings of key interest (particularly regarding China) for OHS, as well as contacts identified within the Department of Defense and the FBI.*
 - b. Does OHS utilize AFIDA data in their analysis? *OHS meets with the AFIDA staff on a regular basis and if necessary, will use AFIDA data.*
 - c. Does OHS or another office or agency elevate cases, based on AFIDA data, to the intelligence community? *The Department of the Treasury is a member of the Intelligence Community (IC) and, as the Staff Chair of CFIUS, they engage the Office of the Director of National Intelligence as part of the case review process. OHS acts as a liaison to the IC, and has, in the past, provided AFIDA information directly to the IC.*

Senator Amy Klobuchar

1. In July, the Senate passed the National Defense Authorization Act which included an amendment that would formalize the U.S. Department of Agriculture's role on the Committee on the Foreign Investment in the United States (CFIUS) and require that the Committee review all significant purchases of agricultural land or agricultural businesses by foreign persons and entities.
 - a. How does USDA currently engage with the CFIUS and what would this expanded role mean for USDA's oversight of foreign investment in American agriculture? *USDA is not a formal member of the CFIUS Committee. As a result of an informal agreement between Secretaries Yellen and Vilsack, USDA reviews transactions when agriculture, forestry or other USDA equities are present. Treasury requests review or co-lead by USDA, as appropriate. Further, USDA is able to request complete case files when it sees a summary that contained, or might contain, agricultural interests. USDA participates in weekly CFIUS staff calls, though does not participate in Committee-only engagements. In addition, USDA also participates in any case activities where it is a reviewer or co-lead. An*

expanded role would formalize USDA's ability to review and provide input into CFTUS cases

2. USDA oversees a complex task of tracking foreign ownership of U.S. agricultural lands through the required reporting under the *Agricultural Foreign Investment Disclosure Act*, the only federal database of privately held land by foreign investors.
 - a. How does the USDA evaluate the long-term implications of foreign investments on the U.S. food supply chain and our economy? *The AFIDA report now contains analysis of the possible implications of foreign investment in U.S. agricultural land for farms and rural communities. USDA has not done any recent work examining the long-term implications of foreign investment in the U.S. food supply chain or the economy in general. A Congressional Research Service report from 2013 on Foreign Direct Investment in the United States: An Economic Analysis may provide useful information. Note that this report is not specific to agriculture.*

Senator Tina Smith

1. One of the top obstacles facing new and beginning farmers to establishing themselves in the agricultural sector is access to land. In July, I introduced the *Increasing Land Access, Security, and Opportunities Act (S.2340)* which would provide funding to community-led land access efforts across the country. The bill excludes foreign-based and foreign-owned corporations, while providing direct support to farmers and ranchers in the United States.
 - a. The price of farmland is a key barrier for beginning farmers and prices are skyrocketing. Are foreign buyers bidding up the price of land and pricing out beginning farmers?
The Economic Research Service developed the "Impacts of Foreign Investment on the U.S. Agricultural Sector and Rural Economies" analysis starting on page 5 of the December 2022 AFIDA report to Congress, which can be found at: https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/EPAS/PDF/2021_afida_annual_report_through_12_31_2021.pdf
 - f. *They concluded that there is neither a consistent nor significant relationship between foreign investment in agricultural land and land values or land rental rates.*
 - b. What can you tell us about the demand for community-based funding for land access, and how this kind of investment might help farmers compete with speculative interests? *While the data to quantify demand for community-based funding is not available at USDA, the recent competitive grant and agreement process for the Increasing Land, Capital, and Market Access (ILA) program can*

help inform potential demand for this type of funding opportunity and the types of innovative solutions the tentatively-selected proposals intend to utilize.

USDA received 164 applications for this opportunity, with a total federal funding request that exceeded \$2.3 billion. The requests greatly exceeded the \$300 million available for this funding opportunity. Fifty applications have been tentatively-selected for funding. These tentatively selected projects offer a diverse approach to meeting program goals, with both rural and urban agriculture represented. Most projects include partnerships, both in the form of subawards and contracts.

Examples of innovative ideas included in the tentatively-selected proposals include:

- Producer loans for land purchases, land improvements, operating costs, and equipment; some utilize revolving loan funds.*
- Producer grants for land purchases, land improvements, operating costs, and equipment.*
- Farm preservation easements to facilitate the transfer of land to underserved producers.*
- Awardee/subawardee purchasing land and equipment for incubator farms.*
- Buying down points and paying off loans on land which the awardee had previously purchased.*
- Awardee/subawardee construction of marketing facilities.*
- Outreach and technical assistance.*

These grants and cooperative agreements are complementary and can create community-based approaches to assist land access challenges.

Senator Cory Booker

1. Corporate speculative farmland investment, whether it represents foreign or domestic corporations, has raised significant concerns across the country in recent years; for example, there has been a lot of reporting recently about Bill Gates' corporate investments making him the largest farmland investor in the nation. Could you please discuss the general farmland consolidation trends over recent decades as more corporate investors acquire farmland? Please also discuss the scale of this problem, and the types of farms or farmland are we losing because of it? *Over the last three decades, cropland has shifted from midsize (between 100 and 999 acres) to large operations with 2,000 or more acres in crops. In 1987, 57 percent of cropland acres were operated by midsize farms, while large farms operated 15 percent of all cropland. By 2017, the share of cropland operated by midsize farms had fallen to 33 percent, while the share operated by large farms had grown to 41 percent of all cropland. That shift occurred steadily over time, with the share of acreage operated by large farms increasing in every census from 1987 to 2017, including an increase from 36 percent of acres in 2012 to 41 percent of acres in 2017. The shift of acreage to larger operations has been widespread across nearly all crops.*

While cropland consolidation has been widespread and persistent, livestock consolidation has followed a different pattern. It is not as persistent over time as cropland consolidation, instead showing very large increases in some periods and little change in others. Dramatic shifts have occurred in the last 25 years in U.S. dairy, egg, hog, and turkey production consolidation; consolidation has continued to occur in broiler and fed cattle production. However, in one important sector—beef cow-calf operations—there was very little consolidation.

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Foreign Ownership in U.S. Agriculture
 September 27, 2023
 Questions for the Record
Mr. Harrison Pittman

Senator Tina Smith

1. One of the top obstacles facing new and beginning farmers to establishing themselves in the agricultural sector is access to land. In July, I introduced the *Increasing Land Access, Security, and Opportunities Act (S.2340)* which would provide funding to community-led land access efforts across the country. The bill excludes foreign-based and foreign-owned corporations, while providing direct support to farmers and ranchers in the United States.
 - a. The price of farmland is a key barrier for beginning farmers and prices are skyrocketing. Are foreign buyers bidding up the price of land and pricing out beginning farmers?

The price of farmland has consistently been identified as a barrier to entry or expansion for many beginning farmers. However, in light of the National Agricultural Law Center mission, this is not an area we have researched in a way in which I can otherwise form a reasoned opinion.

- b. What can you tell us about the demand for community-based funding for land access, and how this kind of investment might help farmers compete with speculative interests?

This is not an area in which we have background that allows for an informed opinion.

Senator Tommy Tuberville

1. As we consider banning certain adversarial nations, such as China, from purchasing U.S. farmland, do you think we should make an exception for research facilities or test plots to advance our nation's agricultural technologies?

This is an area that has received considerable attention at the state level, especially over the past two to three years. Given our mission of providing neutral/objective information, we are not in a position to offer an opinion, but can point out how many states (and stakeholders) have considered the issue.

Some states' foreign ownership laws—laws which restrict foreign acquisitions and investments in agricultural land—contain an exception for research, development, and experimentation of agricultural products. *See* Ind. Code Ann. § 32-22-3-0.5(a)(1); Iowa Code Ann. §§ 9H.4(1), 9I.3(3)(d); Kan. Stat. Ann. § 17- 7504(a)(10); Minn. Stat. Ann. § 500.221, subdivision 2(5); Mo.

Rev. Stat. § 350.015(4); N.D. Cent. Code Ann. § 47-10.1-02(9); Okla. Stat. tit. 18, § 954(1); S.D. Codified Laws § 47-9A-9; Wis. Stat. § 182.001(2)(d). However, some of these states' laws that contain this type of exemption limit the amount of agricultural acreage a foreign investor may hold for research, development, and experimentation purposes.

Alternatively, Arkansas' foreign ownership law (codified under Ark. Code Ann. §§ 18-11-110; 18-11-801 – 805) does not contain such an exception. Recently, the states' attorney general ordered a subsidiary of Syngenta Seeds—which is a Chinese-owned company—to divest itself of farmland it owned within the state.

a. Does allowing these research entities present national security concerns?

Because our goal at the NALC is to provide neutral/objective information, we have not researched this issue in a way in which we can form a reasoned opinion.

2. As you mentioned, amending AFIDA statute affects AFIDA regulations, the FSA Handbook, and FSA Form 153. What specific changes does this Committee need to be cognizant of that may indirectly impact either the statute, regulations, handbook, or Form 153?

A change to certain definitions under the statute can likely impact the regulations, FSA Handbook, and FSA-153. This is partly due to the statute providing express authority to the Secretary of Agriculture to establish definitions of certain terms to implement the statute. For example, 7 U.S.C. § 3508(3)(C)(ii) authorizes the Secretary of Agriculture to prescribe a definition of “significant interest or substantial control.” This definition is crucial to AFIDA because it determines whether certain persons are deemed a “foreign person” required to report an FSA-153 disclosure form. The FSA Handbook (AFIDA provisions), in accordance with the regulations, explains on page 1 of Exhibit 11 what triggers a required FSA-153 filing when there are multiple “tiers” of ownership.

The Handbook states that a “2nd Tier” individual, entity, or government that could qualify as a “foreign person” must have a “significant interest or substantial control in the title holder of the land” (i.e., “1st Tier”), to trigger a filing. If Congress decides to define the term itself under the statute or diverts from this term altogether, the Secretary of Agriculture would be required to amend the regulatory provisions that rely on that term, specifically 7 C.F.R. §§ 781.2(g)(4)(ii), (k); §§ 781.3(f)(1), (g)(1)(i), (h), and would also lead to a change in the handbook.

3. Senator Gillibrand and I recently introduced legislation, the *Prohibiting Foreign Adversary Interference in Cryptocurrency Markets Act* (S.1870), to ban Chinese entities and their subsidiaries from acquiring U.S. digital commodity companies. Our bill would give the CFTC the power to block these transactions and revoke the registration of digital commodity platforms operating in the U.S. that are owned by entities based in China.

a. Is this legislation needed?

Because our goal at the NALC is to provide neutral/objective information, we have not researched this issue in a way in which we can form a reasoned opinion.

- b. What do you think about foreign adversaries investing in cryptocurrency?

Because our goal at the NALC is to provide neutral/objective information, we have not researched this issue in a way in which a reasoned opinion can be provided.

- 4. U.S. agricultural companies face unequal competitive conditions on our own home turf. Under current laws, Chinese State-Owned Entities (SOEs) can directly sell their seeds and crop protection products to U.S. farmers, buy and control emerging agricultural technologies, and own land. However, U.S. companies seeking to operate in China cannot do any of these things.

- a. The Chinese government intentionally slows down the regulatory approval process, impacting our farmers' access to new agricultural production technologies.
- b. How should Congress approach Chinese agricultural SOE freedom to operate in the United States?

Because our goal at the NALC is to provide neutral/objective information, I have not researched this issue in a way in which I can form a reasoned opinion.

- c. In your opinion, what role does the SOE presence in the United States play in the Chinese Communist Party's stated goal of controlling critical agricultural technologies?

Because our goal at the NALC is to provide neutral/objective information, I have not researched this issue in a way in which I can form a reasoned opinion.

U.S. Senate Committee on Agriculture, Nutrition, and Forestry
Foreign Ownership in U.S. Agriculture
 September 27, 2023
 Questions for the Record
Dr. David L. Ortega

Senator Tina Smith

1. One of the top obstacles facing new and beginning farmers to establishing themselves in the agricultural sector is access to land. In July, I introduced the *Increasing Land Access, Security, and Opportunities Act (S.2340)* which would provide funding to community-led land access efforts across the country. The bill excludes foreign-based and foreign-owned corporations, while providing direct support to farmers and ranchers in the United States.
 - a. The price of farmland is a key barrier for beginning farmers and prices are skyrocketing. Are foreign buyers bidding up the price of land and pricing out beginning farmers?

Response: *As I noted in my testimony, there is no clear evidence that foreign ownership is causing U.S. farmland prices to rise. Farmland prices are mainly influenced by the value of the products produced on the land (e.g., crops, livestock) and alternative land uses, such as housing and commercial development. Publicly available analysis by USDA of the AFIDA data finds that average farmland values and rental rates were not substantially different for counties with foreign ownership and those without. This analysis can be found in pgs. 5-7 of the 2021 AFIDA Report published by USDA Farm Service Agency.*

Reference:
 USDA Farm Service Agency. *Foreign Holdings of U.S. Agricultural Land Through December 31, 2021*. https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/EPAS/PDF/2021_afida_annual_report_through_12_31_2021.pdf.

- b. What can you tell us about the demand for community-based funding for land access, and how this kind of investment might help farmers compete with speculative interests?

Response: *Access to land and the ability to purchase it have been a longstanding challenge for young farmers, especially for black, indigenous, and other people of color (BIPOC) farmers. The National Young Farmer Survey reports from 2011, 2017 and 2022 consistently underscore this, with 59% of young farmers in 2022 finding it very challenging to find affordable land to buy. Findings from work done by the National Young Farmers Coalition suggests that investing in community-led land access is crucial for enhancing land accessibility for the new generation of farmers and is particularly important in promoting equitable land access. Below I provide*

additional references to some of the work done by this organization, which speaks to this very important issue.

Additional resources:

Ackoff, S., Flom, E., Garci Polanco, C., Howard, D., Manly, J., Mueller, C., Rippon-Butler, H., Wyatt, L. (2022). *Building a Future with Farmers 2022: Results and Recommendations from the National Young Farmer Survey*. National Young Farmer's Coalition.
<https://www.youngfarmers.org/wp-content/uploads/2022/11/2022nationalsurveyreport.pdf>.

Rippon-Butler, H. (2020). *Land Policy: Towards a More Equitable Farming Future*
<https://www.youngfarmers.org/land/wp-content/uploads/2020/11/LandPolicyReport.pdf>.

Senator Cory Booker

1. You draw on an NPR investigation to determine that over 80% of the land owned by China is concentrated in the hands of Smithfield Foods (via WH Group) and billionaire Sun Guangxin. Simultaneously, we know from a 2018 USDA national report that 10.3% of all U.S. farms are legal partnerships or corporations. An Illinois study determined that 12% of land was owned by legal entities such as Limited Liability Corporations (LLCs) or Limited Partnerships. In other words, if we look at land held by entities, there is substantially more land that can potentially be traced back to some form of absentee investment. **Is it possible to trace who (or what country) ultimately owns U.S. land that is held in business firms such as LLCs? More specifically, please clarify whether the numbers that you present on Chinese landownership reflect the ultimate beneficiaries or owners of corporate land at large. Please also clarify whether this study relied only on AFIDA?**

Response: AFIDA is the primary source of information on foreign ownership of US agricultural land. The AFIDA data provides information on owner type (e.g. individual, corporation, partnership), however, a significant number of records are classified as having an owner type of "other". Presumably many of these data observations are LLCs, but since the reporting form predates the proliferation of LLCs, we do not have detailed data on which transactions are indeed from LLCs. Similarly, a non-trivial share (~7.8%) of the reported foreign-held acres in the AFIDA data have associated country codes 998 (no foreign investor listed) or 999 (no predominant country code), making it challenging to trace who ultimately owns these acres. The numbers that I presented in my testimony, including those on Chinese landownership, are drawn from the AFIDA data. I would like to refer you to the Definitions section of the latest AFIDA report (pg. 2) for detailed information on the information that is collected (USDA Farm Service Agency).

Reference:

USDA Farm Service Agency. *Foreign Holdings of U.S. Agricultural Land Through December 31, 2021*. https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/EPAS/PDF/2021_afda_annual_report_through_12_31_2021.pdf

2. Access to land is widely cited as the most significant challenge for new and beginning farmers. While you say that foreign investment is not responsible for driving up today's land prices to levels not seen since just before the 1980s farm crisis, would you agree that most corporate investors have more financial tools and capacity to buy farmland at high prices than most independent, small and medium-sized farmers? **Could you please discuss how the federal government has done this in the past, going back to the New Deal?**

Response: Access to land and the ability to purchase it have been a longstanding challenge for young farmers, especially for black, indigenous and other people of color (BIPOC) farmers. The National Young Farmer Survey reports from 2011, 2017 and 2022 consistently underscore this, with 59% of young farmers in 2022 finding it very challenging to find affordable land to buy. The issue of corporate farm ownership and farmland consolidation is a very important topic which deserves special attention. Below I provide some resources which highlight the changing dynamics of farm ownership as well as the many other challenges that new and beginning farmers face, including access to affordable land and capital to grow their operation.

The federal government has supported farmers access to land through various programs, including farm loans for land purchases. The origins of USDA's Farm Loan Program can be traced back to the New Deal and while they are an important source of credit for many farmers, they also carry a troubled history of discrimination and disparate treatment by USDA (Coppess 2021a). Below I provide a reference to a comprehensive three part series which reviews the history and development of USDA Farm loan programs (Coppess 2021 a,b,c). More recently, the federal government implemented the Increasing Land, Capital, and Market Access Program to support farmers' access to land. This USDA program funds cooperative agreements or grants for projects that help underserved producers.

Additional resources on farmland ownership and challenges:

Ackoff et al. (2022). *Building a Future with Farmers 2022: Results and Recommendations from the National Young Farmer Survey*. National Young Farmer's Coalition. <https://www.youngfarmers.org/wp-content/uploads/2022/11/2022nationalsurveyreport.pdf>.

Keiffer, K. (2017) *Who really owns America's Farmland? The Counter* <https://thecounter.org/who-really-owns-american-farmland/>

Sherrick, B. (2017). *Farmland Ownership: Trends and Future Implications*. Farm Foundation. https://www.farmfoundation.org/wp-content/uploads/2018/09/IR-Sherrick_IssueReportFINAL-Oct.-2017.pdf

References:

Coppess, J. (2021a). Reviewing the History and Development of USDA's Farm Loan Programs, Part 1: Origins. *farmdoc daily* (11):31. <https://farmdocdaily.illinois.edu/2021/03/reviewing-the-history-and-development-of-usdas-farm-loan-programs-part-1-origins.html>

Coppess, J. (2021b) Reviewing the History and Development of USDA Farm Loans, Part 2: 1937 to 1946. *farmdoc daily* (11):36. <https://farmdocdaily.illinois.edu/2021/03/reviewing-the-history-and-development-of-usda-farm-loans-part-2-1937-to-1946.html>

Coppess, J. (2021c) The History and Development of USDA Farm Loan Programs, Part 3: 1946 to 1961. *farmdoc daily*(11):46. <https://farmdocdaily.illinois.edu/2021/03/the-history-and-development-of-usda-farm-loan-programs-part-3-1946-to-1961.html>

USDA Farm Service Agency. *Increasing Land, Capital, and Market Access Program*. <https://www.fsa.usda.gov/programs-and-services/increasing-land-access/index>

Senator Tommy Tuberville

1. You stated that AFIDA reporting requirements have been “inconsistent and even lax at times.” Since 2013, fines have been levied on only six entities, mainly for late filings.

- a. Can you expand on the national security concerns regarding the lack of AFIDA enforcement for unreported filings?

Response: *The lack of AFIDA enforcement for unreported filings, along with the data quality issues that I raised in my testimony, constrains our understanding of foreign ownership of American farmland. This in turns affects our ability to fully assess potential threats to our national security including those related to food security. For example, we don't know the scale of unreported acres and foreign land transactions, nor do we know which countries or entities have failed to disclose those purchases.*

- b. What tools does USDA, or the private sector, need to improve reporting requirements for foreign investment in agricultural land?

Response: *The USDA has noted that one of the main reasons for the lack of enforcement of AFIDA reporting requirements is a lack of resources and staffing. It is also important to note that AFIDA does not fully capture foreign investment in agricultural and because it is a self-reported system. The current reporting system is largely paper based as there is no automated*

system in place that tracks these types of transactions. Developing a system to monitor land acquisitions would be logistically complex, costly and would need to address issues of data protection and privacy. While the USDA would be better suited to address your question on specific tools that they needed to improve reporting requirement, I concur with the assessment provided by Deputy Under Secretary Montañó Greene during the hearing regarding the Department's capacity to improve reporting requirements given their lack of funding and resources.

2. U.S. agricultural companies face unequal competitive conditions on our own home turf. Under current laws, Chinese State-Owned Entities (SOEs) can directly sell their seeds and crop protection products to U.S. farmers, buy and control emerging agricultural technologies, and own land. However, U.S. companies seeking to operate in China cannot do any of these things.
 - a. The Chinese government intentionally slows down the regulatory approval process, impacting our farmers' access to new agricultural production technologies.

Response: *The land tenure system and regulatory approval process is inherently different between the U.S. and China. A thorough understanding of China's regulatory process, which is relatively less well understood, is essential to ensure any policy response is evidenced-based. While China has delayed commercialization of major GM crops, the generalizability of the statement does not apply to all agricultural production technologies. In the area of agricultural biotechnology, Xiao and Kerr (2022) provide a good overview of regulations, investments and delayed commercialization.*

Reference:

Xiao, Z., & Kerr, W. A. (2022). Biotechnology in China—regulation, investment, and delayed commercialization. GM Crops & Food, 13(1), 86-96.

- b. How should Congress approach Chinese agricultural SOE freedom to operate in the United States?

Response: *Foreign entities that buy land must adhere to the rules and regulations of the United States. My view is that Congress should approach and treat Chinese SOE as they would entities from any other country. Proposals that single out any country or group of countries could have potential unintended consequences. This includes but is not limited to retaliation which could affect American interests abroad as well as trade implications. In my view, it is critically important that any legislative and regulatory response to the issue of foreign ownership of agricultural land be evidence-based, consider the broader agri-food landscape, and aim to strike*

a balance between safeguarding our national interests and promoting economic growth and opportunity.

- c. In your opinion, what role does the SOE presence in the United States play in the Chinese Communist Party's stated goal of controlling critical agricultural technologies?

Response: *China's investment in foreign agriculture is largely driven by their desire to be self-sufficient in food production. They have made foreign investments in agricultural land in many parts of the world, but these have largely by-passed North America. More recently, China has acquired key Western agribusinesses like Syngenta and Smithfield Foods. This shift, aiming for greater control over import supply chains and a dominant role in global agricultural commodities, raises some concerns about potential future acquisitions, and issues of intellectual property over critical agricultural technologies.*