



Foreign Land Ownership¹

Agriculture has been an enduring strand in the fabric of the North American continent since before the United States' inception, beginning with the development of agricultural practices by Indigenous communities, which were later used to aid the survival of early European settlers. Beyond its symbolic place in the American ethos, agriculture serves a practical function in the daily lives of Americans, providing food to meet the country's nutritional needs as well as a source of income for those employed in the agricultural sector. Because of this, agricultural land is a valuable asset in the United States and, as such, attracts investment by various foreign entities.² Some worry that foreign investment in U.S. farmland is a national security concern, particularly when such land is held by those perceived as adversaries or when the land is located near sensitive government sites like military bases.³ Various legislative proposals are being introduced to address this perceived risk.

This brief will examine the connection between foreign investment in domestic farmland and the 2024 farm bill. It particularly focuses on concerns related to Chinese land ownership, the main target of increased Congressional scrutiny. This brief provides empirical facts that contextualize the primacy of national security concerns, an overview of various legislative efforts targeting these concerns, historical analogs that suggest a cautious response is warranted, and a summary of alternative policy proposals.

QUICK SUMMARY

- Foreign ownership of U.S. agricultural land has increased in recent years, leading policymakers to cite national security concerns, especially in relation to China.
- USDA records show that foreign investors own 3.4% of all privately held U.S. agricultural land; Chinese investors own less than 0.027%.
- Given U.S. history of targeted, anti-Asian legislation, alternative strategies should be considered for stemming perceived threats to land affordability and national security.

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² *Foreign Investment in U.S. Agricultural Land Is Raising National Security Concerns*, U.S. GOV'T ACCOUNTABILITY OFF. (Jan. 23, 2024), <https://www.gao.gov/blog/foreign-investment-u.s.-agricultural-land-raising-national-security-concerns>.

³ *Id.*

BACKGROUND

While foreign investment in U.S. farmland is not new, and foreign ownership of U.S. farmland makes up only 3.4% of all privately held farmland,⁴ the rate at which foreign entities have increased their holdings has exploded since 2016,⁵ making this subject particularly relevant for the next farm bill. The largest portion of foreign-owned land is held by Canadian investors, making up 32% of all foreign landholdings as of December 31, 2022, with 14.2 million acres.⁶ The next four countries—the Netherlands, Italy, United Kingdom, and Germany—own 12%, 6%, 6%, and 5%, respectively.⁷

In comparison, Chinese investors hold less than 1%, a total of 346,915 acres.⁸ As of 2022, “[t]here were no filings directly by the government of China[,]” while five Chinese-owned companies owned 87% of the reported holdings:⁹

- Brazos Highland Properties, LP – 102,345 acres
- Murphy Brown LLC (Smithfield Foods) – 97,975 acres
- Murphy Brown of Missouri (Smithfield Foods) – 42,716 acres
- Harvest Texas, LLC – 29,705 acres
- Walton International Group (USA), Inc. – 29,437 acres

Again, Chinese holdings, collectively, comprise less than 1% of all foreign landholdings, which is approximately 0.027% of all privately held U.S. agricultural land.¹⁰

NATIONAL SECURITY CONCERNS

According to the U.S. Government Accountability Office (GAO), some foreign investments in U.S. agricultural land could raise national security concerns, especially when the land is near sensitive government locations.¹¹ Lawmakers and various media outlets have focused attention on China. Some of this distrust may stem from 2022, when a Chinese company purchased agricultural land in North Dakota near the Grand Forks Air Force Base.¹² This purchase sent lawmakers into a frenzy, fearing that Chinese land purchases could allow China to gain control of U.S. food and energy.¹³

⁴ *Which Foreign Country Owns the Most Farmland in the U.S.? Hint: It's Not China*, DROVERS, (Jan. 4, 2024), <https://www.drovers.com/news/ag-policy/which-foreign-country-owns-most-farmland-us-hint-its-not-china>.

⁵ U.S. GOV'T ACCOUNTABILITY OFF., GAO-24-106337, FOREIGN INVESTMENTS IN U.S. AGRICULTURAL LAND 1 (2024), <https://www.gao.gov/assets/gao-24-106337.pdf>.

⁶ FARM. SERV. AGENCY, U.S. DEP'T OF AGRIC., FOREIGN HOLDINGS OF U.S. AGRICULTURAL LAND THROUGH DECEMBER 31, 2022 5 (2023), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/EPAS/PDF/2022_afida_annual_report_12_20_23.pdf.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *See id.* at 20 (percentage determined by dividing total Chinese-owned acreage (346,915) by the total acres of privately held U.S. agricultural land (1,270,604,522)).

¹¹ *Foreign Investment in U.S. Agricultural Land*, *supra* note 2.

¹² *Foreign land investments exposes U.S. security issues*, MIDWEST MESSENGER (Oct. 26, 2023), https://aupdate.com/midwestmessenger/news/state-and-regional/foreign-land-investments-exposes-u-s-security-issues/article_24f6c0e8-6de7-11ee-ad7b-ff8ca99a0325.html.

¹³ *China owns 380,000 acres of land in the U.S. Here's where*, NAT'L PUB. RADIO (June 26, 2023), <https://www.npr.org/2023/06/26/1184053690/chinese-owned-farmland-united-states>.



This and more recent investments by Chinese affiliates have heightened concerns, especially given the perceived threat by the Chinese government.

It is worth examining this perceived threat in its relevant context. Based on the information available, Chinese affiliates own around 0.027% of privately held U.S. farmlands, and yet, much of the justification for limiting foreign purchase of land points to national security concerns in relation to China.¹⁴ How much of this fear is due to broader tensions between the United States and China on issues such as Taiwan, trade, and intelligence gathering?¹⁵ This is not to suggest that national security claims are unfounded, but rather to frame the farmland issue in the context of these larger policy concerns.

Regardless of whether these potential risks are real or perceived, the U.S. government struggles with tracking such transactions. First, the relevant land records are usually kept at local county offices rather than maintained in a centralized database.¹⁶ This reality means that records must be searched for relevant information through each individual locality, rather than via a single source.¹⁷ Second, while the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA) requires that foreign investors in U.S. agricultural land submit forms describing their transactions to the U.S. Department of Agriculture (USDA),¹⁸ this mechanism was not designed as a national security program.¹⁹ As such, the required disclosures do not collect information that would equip officials to identify which transactions pose a potential national security concern. Furthermore, while AFIDA requires information relating to the primary investor in the transaction, this investor may only represent one of several ownership tiers.²⁰ AFIDA does not require disclosure of ownership beyond the primary investor and, therefore, the actual ownership structure of certain U.S. agricultural land may be unclear.²¹ Finally, although a failure to report may result in a civil penalty,²² the fragmented nature of recordkeeping makes the law difficult to enforce.²³

Conversely to the purpose of AFIDA, the Committee on Foreign Investment in the United States (CFIUS) is an interagency entity specifically designed to review foreign transactions for national security threats.²⁴ While the purpose of the CFIUS is to identify these concerns, the USDA does not share complete and timely data with the CFIUS due to challenges in how the USDA collects information.²⁵ More specifically, the

¹⁴ See, e.g., *Foreign Ownership of Farmland Probed at U.S. Senate Hearing*, MISSOURI INDEPENDENT (Sep. 28, 2023), <https://missouriindependent.com/2023/09/28/foreign-ownership-of-u-s-farmland-probed-at-u-s-senate-hearing/>; *Democrat, Republican Team up to Limit Chinese Purchase of U.S. Farmland*, NBC NEWS (June 20, 2023), <https://www.nbcnews.com/politics/national-security/democrat-republican-team-limit-chinese-purchase-us-farmland-rcna90082>.

¹⁵ *China owns 380,000 acres of land in the U.S.*, *supra* note 13.

¹⁶ See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 5.

¹⁷ See *id.* at 20.

¹⁸ 7 U.S.C. § 3501.

¹⁹ See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 5, at 11–14.

²⁰ See *id.* at 21.

²¹ See *id.* at 21.

²² 7 U.S.C. § 3502.

²³ See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 5, at 2.

²⁴ *Id.* at 5.

²⁵ *Id.* at 19.

USDA receives “thousands of paper forms detailing foreign transactions every year,” which are slowly, manually assembled by USDA employees.²⁶ Additionally, as noted above, the information that the USDA collects is not focused on national security concerns and does not include details relating to multiple ownership tiers. In light of these recordkeeping challenges, the GAO has made recommendations on how to better identify and protect against purported national security risks. These include recommendations that the “USDA share detailed and timely AFIDA data with CFIUS agencies, improve the reliability of AFIDA data, and assess its ability to adopt an online submission system and public database.”²⁷

LEGISLATIVE ACTION

Several bipartisan Congressional actions have been taken or are underway to address this purported national security threat. Congress enacted appropriations for fiscal year 2023 in which it directed the USDA to improve reporting under AFIDA by streamlining a process for electronic submission of disclosures, the data from which is to be maintained in a database.²⁸ Appropriations for fiscal year 2022 directed the USDA to report on U.S. farmland owned, fully or in part, by the governments of China, Russia, Iran, or North Korea.²⁹ Other proposals that have not yet turned into legislation include new restrictions on foreign investor eligibility for certain USDA programs and prohibition on the purchase of U.S. farmland by companies owned by China and certain other countries.³⁰

In terms of current legislation, Wisconsin Senator Tammy Baldwin and a bipartisan group of senators introduced the AFIDA Improvements Act of 2024. The purpose of the legislation is to “strengthen reporting and enforcement of foreign investment in American agricultural land.”³¹ According to Senator Baldwin, farmland security addresses both economic security and national security.³² On economic security, Baldwin argues that foreign ownership of farmland increases competition for local, family farms and beginning farmers.³³ As such, it is important for the federal government’s reporting methods to promote investor transparency.

Similarly, a bipartisan group of U.S. representatives introduced the Farmland Security Act of 2023 to “protect food security and national security by strengthening analysis of foreign ownership of American agricultural land.”³⁴ In addition to national security,

²⁶ *Foreign Investment in U.S. Agricultural Land*, *supra* note 2.

²⁷ *See id.*

²⁸ CONG. RSCH. SERV., FOREIGN OWNERSHIP OF U.S. AGRICULTURE: SELECTED POLICY OPTIONS (2023), <https://crsreports.congress.gov/product/pdf/IF/IF12312>.

²⁹ *Id.*

³⁰ *See id.*

³¹ AFIDA Improvements Act of 2024, S. 3666, 118th Cong. (2024) <https://www.congress.gov/bill/118th-congress/senate-bill/3666/text>.

³² *Baldwin Introduces Bill to Improve Tracking of Foreign Investment in American Farmland*, TAMMY BALDWIN (Jan. 30, 2024), <https://www.baldwin.senate.gov/news/press-releases/baldwin-introduces-bill-to-improve-tracking-of-foreign-investment-in-american-farmland>.

³³ *See Senators Baldwin, Grassley Introduce Legislation to Scrutinize Foreign-Owned American Farmland and Protect Rural Communities*, TAMMY BALDWIN (July 19, 2023), <https://www.baldwin.senate.gov/news/press-releases/senators-baldwin-grassley-introduce-legislation-to-scrutinize-foreign-owned-american-farmland-and-protect-rural-communities>.

³⁴ *Johnson Continues to Protect U.S. Farmland from Foreign Ownership*, CONGRESSMAN DUSTY JOHNSON (Nov. 21, 2023), <https://dustyjohnson.house.gov/media/press-releases/johnson-continues-protect-us-farmland-foreign-ownership>.



these representatives highlighted the fact that, since the United States imports most of its fruits and vegetables, gatekeeping U.S. farmland serves to re-assert some control over our domestic food supply.³⁵

Interest in this topic is continuing to grab headlines. In September 2023, the Senate Committee on Agriculture held a hearing on foreign ownership of U.S. farmland wherein senators from both sides of the aisle cited this situation as a national security threat.³⁶ More recently, in March 2024, the House Committee on Agriculture held a hearing on the same subject, where lawmakers focused on the purported security risks of land purchases by Chinese affiliates.³⁷ During this hearing, Kristi Noem, Republican Governor of South Dakota, described China as “an enemy” that is “buying up our entire food supply chain.”³⁸

Interestingly, while foreign ownership of U.S. farmland hasn't yet been restricted at a federal level, 24 states currently restrict foreign ownership of U.S. land and 11 of these enacted such laws during the 2023 legislative session.³⁹ This number may continue to increase in response to the more recent political fervor.

HISTORICAL ANALOG

Federal policy that promotes scrutiny of foreign land purchases ought to be historically contextualized. In this way, past events may bring light to otherwise concealed justifications. Recognition of these underlying motivations enables a more comprehensive analysis of potential policy initiatives. This type of analysis helps one determine whether national security concerns can adequately and independently justify the anxieties of the current political moment.

To settle the western frontier, “Alien” land laws originally allowed migrants to acquire land in the same way that citizens did.⁴⁰ However, as Asian populations increased, so did racial tensions. In response to pressure from constituents, states enacted policies that greatly cut back on Asian land ownership. In 1859, Oregon's constitution stated that no “chinaman” could own property in the state, but the document afforded white foreigners the same opportunity to own land as white citizens.⁴¹

In 1879, when California rewrote its constitution, it limited land ownership to aliens of the “white race or of African descent.”⁴² Furthermore, in 1913, California passed the California Alien Land Law of 1913, which prohibited “aliens ineligible for citizenship”

³⁵ *Johnson Continues to Protect U.S. Farmland from Foreign Ownership*, CONGRESSMAN DUSTY JOHNSON (Nov. 21, 2023), <https://dustyjohnson.house.gov/media/press-releases/johnson-continues-protect-us-farmland-foreign-ownership>.

³⁶ See *Foreign ownership of farmland probed at U.S. Senate hearing*, MISSOURI INDEPENDENT (Sept. 28, 2023), <https://missouriindependent.com/2023/09/28/foreign-ownership-of-u-s-farmland-probed-at-u-s-senate-hearing/>.

³⁷ See *US states are cutting off Chinese citizens and companies from land ownership*, POLITICO (Apr. 3, 2024), <https://www.politico.com/news/2024/04/03/state-laws-china-land-buying-00150030>.

³⁸ *Id.*

³⁹ See *Foreign Ownership of Agricultural Land: FAQs & Resource Library*, NAT'L AGRIC. L. CTR., <https://nationalaglawcenter.org/foreign-investments-in-ag/> (last visited Apr. 5, 2024).

⁴⁰ Mark Lazarus, *An Historical Analysis of Alien Land Law: Washington Territory and State: 1853-1889*, 12 UNIV. PUGET SOUND L. REV. 198 (1989).

⁴¹ *Id.*

⁴² *Id.*

from owning agricultural land or possessing long-term leases but permitted leases lasting up to three years. Some Asian Americans attempted to bypass these restrictions by navigating loopholes in the legal language. However, nativist groups lobbied their political representatives to tighten the language of the legislation to prevent this from occurring.⁴³ These nativist groups' articulated rationales described Asian immigrants as an economic threat and decried them for their apparent inability to assimilate into American culture.⁴⁴

While it is difficult to conclude that certain policymakers are motivated by an anti-Chinese sentiment, some of their actions may indicate a response to political pressure. As this brief has mentioned, Chinese entities own less than 1% of all foreign landholdings and foreign landholdings make up just 3.4% of all privately held farmland in the United States. Canadian investors make up the largest share of these holdings, yet Canada has not been the target of similar Congressional inquiry. Given the recent anti-Asian backlash that accompanied the COVID-19 pandemic, lawmakers should be cautious in ensuring that the incentives behind proposed legislation are in line with objective, verifiable national security risks and are not discriminatory in their approach. Absent this criterion, such actions and public objections may more accurately be classified as artificial political responses engendered to fit the fears of the moment.

ALTERNATIVE APPROACHES

To the extent that threats to national security, farmland affordability, and the domestic food supply are legitimate, there are several other approaches policymakers could take to address these concerns without promoting or endorsing anti-Asian or anti-Chinese policies.

First, Congress could enact policies to restrict foreign landownership in proximity to sensitive locations for national security, such as military bases. CFIUS already exists to review transactions that pose a national security threat.⁴⁵ Since the enactment of the Foreign Investment Risk Review and Modernization Act of 2018, this authority more fully extends to real estate transactions in proximity to ports and military installations.⁴⁶ Reporting on most real estate transactions remains voluntary, however. To address current land acquisition concerns, Congress could expand mandatory notification requirements to these transactions. The land's status as "agricultural" need not be determinative if the concern is proximity to sensitive locations. Congress could also review whether the tools CFIUS has available to mitigate or prevent transactions that pose a true threat are sufficient.

Second, increases in the price of farmland have been driven not just by foreign companies but domestic corporations and investments as well.⁴⁷ Pending legislation

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See U.S. GOV'T ACCOUNTABILITY OFF., *supra* note 5, at 5–11.

⁴⁶ John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, §§ 1701-1728, 132 Stat. 1636, 2173–2208 (2018); see Kenneth J. Nunnenkamp, Carl A. Valenstein, & Giovanna M. Cinelli, *CFIUS's Final Real Estate Regulations: Still a Largely Voluntary Process*, MORGAN LEWIS (Apr. 9, 2020), <https://www.morganlewis.com/pubs/2020/04/cfiuss-final-real-estate-regulations-still-a-largely-voluntary-process>.

⁴⁷ Emily Featherston & Madison McVan, *Secret Acres: Boom or bubble? High farmland prices encourage investors, concern farmers*, INVESTIGATE MIDWEST (Dec. 18, 2023),



could address this challenge. Senator Booker's *Farmland for Farmers Act*, introduced in 2023, would, among other things, restrict "corporations, multilayered subsidiaries, pension funds, and investment funds . . . from purchasing or leasing agricultural land for investment purposes" and restrict access to USDA programs for existing holdings.⁴⁸ The bill includes exemptions for certain corporate forms provided the parties are actively engaged in farming. Removing these corporate investors as competitors in the market should help bring land prices back within reach of those committed to farming or land conservation.

Finally, securing and protecting the domestic food supply requires supporting domestic producers through investments and policy changes that equip them to succeed. For instance, federal food purchasing policies can be leveraged to pay premium prices for domestic products. This shift would involve a reframing of procurement policy as one designed to conserve government spending to one targeted toward uplifting the U.S. food system. For example, in response to requests that USDA stop purchasing meat products from JBS USA after its Brazilian parent company pled guilty to bribery, Secretary Vilsack bemoaned that USDA could not pivot to another source without "hurt[ing] taxpayers" because, in the highly concentrated meatpacking industry, "the company has so few competitors."⁴⁹ While the Biden Administration has invested significant resources in strengthening the food supply chain and supporting independent processors,⁵⁰ long-term changes will require sustained investment and the use of additional tools—such as the federal government's power as a market actor—to spur change. Recommendations for enacting such policies in the next farm bill can be found in FBLE's [Farm Viability Report](#).

CONCLUSION

Foreign ownership of U.S. farmlands is not a new phenomenon and neither are the fears associated with such ownership. Past U.S. policies addressing such fears are a poor precedent for solutions given the discriminatory intent and impact of those policies. Notably, the current focus on Chinese land ownership is disproportionate to the reported landholdings of Chinese investors.

National security, land affordability, and a strong domestic food supply chain are important and worthwhile objectives. Improving the recordkeeping aims of AFIDA is one piece of the puzzle for better understanding the land acquisition landscape in the United States. Coupling changes to AFIDA with better documentation of corporate

<https://investigatemitwest.org/2023/12/18/secret-acres-boom-or-bubble-high-farmland-prices-encourage-investors-concern-farmers/>.

⁴⁸ NAT'L FAMILY FARM COAL., *FARMLAND FOR FARMERS ACT* (S. 2583) (2023), https://nffc.net/wp-content/uploads/Farmland-for-Farmers-Act_Final-1.pdf; *Farmland for Farmers Act of 2023*, S. 2583, 118th Cong. (2023), <https://www.congress.gov/bill/118th-congress/senate-bill/2583/cosponsors>.

⁴⁹ See Marcias Brown, *Federal government won't stop buying food from meatpacker tied to bribery case*, POLITICO (Jan. 10, 2023), <https://www.politico.com/news/2023/01/10/usda-meatpacker-bribery-case-00077093>.

⁵⁰ *USDA Announces Framework for Shoring Up the Food Supply Chain and Transforming the Food System to be Fairer, More Competitive, More Resilient*, U.S. DEP'T OF AGRIC. (Jun. 1, 2022), <https://www.usda.gov/media/press-releases/2022/06/01/usda-announces-framework-shoring-food-supply-chain-and-transforming>.

landholdings across the country would better equip policymakers to develop appropriate strategies for mitigating farm consolidation, farmland price increases, and decreases in the number of farms. Instead of singling out one or a few countries' investors for different treatment, there are several other policy alternatives available that are more appropriately tailored to Congress' stated goals. As described in the preceding section, limitations on foreign acquisition of any type of land near strategically sensitive locations, limitations on corporate land acquisition, and investments in domestic food producers would advance these objectives without unwarranted discrimination.