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Food the Next Frontier in the CFIUS Battles?

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A few weeks ago we told you about the Congressional efforts underway to combat China's increased investment in the United States (see here). Well, those aren't the only efforts to revamp the authority of the Committee on Foreign Investment in the United States (CFIUS). In mid-March, Senators Chuck Grassley (R-IA) and Debbie Stabenow (D-MI) introduced legislation to broaden the scope of CFIUS by including the impact to food safety as part of CFIUS' purview. (For those new to the world of CFIUS, our client alert from last summer includes a primer on CFIUS and its authority.)

The proposed bill is titled "Food Security is National Security Act of 2017" and would change the make-up of CFIUS by adding the Secretary of Agriculture and the Secretary of Health & Human Services as full-time CFIUS committee members. Additionally, the proposed legislation would identify "the potential effects of the proposed or pending transaction on the security of the food and agriculture systems of the United States, including any effects on the availability of, access to, or safety and quality of food" as an express CFIUS consideration.

CFIUS has long had broad authority to consider many different areas as a function of its national security review. As such, it's likely CFIUS has already been considering food security issues during its reviews. This proposed legislation however would formalize the elements of food security review as part of the CFIUS process. Also, it would add two more agencies that have to clear the transaction potentially making the process longer and opening the door for additional inquiries during the review process. Food companies should follow this proposed legislation and evaluate these issues when considering taking in foreign investments