

DeLauro, Warren Demand Answers on Shuanghui-Smithfield Foods Deal

Thursday, June 27, 2013

WASHINGTON, DC—Congresswoman Rosa DeLauro and Senator Elizabeth Warren wrote to four top members of the Obama Administration today, demanding public answers on the proposed deal between Smithfield Foods and Shuanghui International Holdings. As outlined in the letter, the potential merger raises real food security and safety worries, and U.S. global economic competitiveness concerns.

“The proposed Shuanghui acquisition of Smithfield Foods is a highly consequential merger of two large food producers that warrants careful scrutiny by regulators,” they wrote. “As regulators responsible for promoting free and fair competition in the marketplace, ensuring strong intellectual property laws and effective enforcement, reviewing foreign acquisitions of U.S. companies, and protecting the safety of our food supply, we believe your views on key issues related to this proposed merger are critical.”

DeLauro is a longtime advocate for ensuring America’s food supply is safe and affordable for consumers. She is a former Chairwoman of the subcommittee responsible for funding the Agriculture Department. Warren is a well-known consumer advocate.

The letter follows in full:

June 26, 2013

The Honorable Michael Froman
Ambassador
U.S. Trade Representative

The Honorable Eric H. Holder, Jr.
Attorney General
Department of Justice

The Honorable Jacob J. Lew
Secretary
Department of the Treasury

The Honorable Tom Vilsack
Secretary
Department of Agriculture

Dear Ambassador Froman, Attorney General Holder, and Secretaries Lew and Vilsack:

We write to express our deep concern with regard to Shuanghui International Holdings Ltd. potential acquisition of Smithfield Foods. As regulators responsible for promoting free and fair competition in the marketplace, ensuring strong intellectual property laws and effective enforcement, reviewing foreign acquisitions of U.S. companies, and protecting the safety of our food supply, we believe your views on key issues related to this proposed merger are critical.

As you know, on May 29, China's largest pork producer Shuanghui announced it would acquire the United States' largest pork producer and processor Smithfield for \$4.72 billion. The deal amounts to the largest takeover to date of an American company by a Chinese one. It also represents the first major investment by a Chinese firm in the U.S. food and agriculture sector.

Rather than open its market to U.S. food products, China's policy is to attain self-sufficiency in its food supply while maintaining food processing and production in China. China is seeking to do this in the same way that it conducts business in other sectors, purchasing a foreign company to obtain its knowledge and technology to then build its own competing product.

In this case, Shuanghui will learn vertical integration and acquire other American technology to quickly build up its own domestic production. This acquisition, in addition to the approximately \$10 billion in agriculture sector investments made by China in other countries, allows Chinese companies enhanced access to intellectual property. As China increases its domestic production, it will better compete against U.S. companies in markets around the world.

Moreover, consolidation in our food supply chain is generally problematic because a food safety issue with one company can quickly impact consumers across the country and the world. Consolidation with overseas ownership can only make it more difficult to ensure the food Americans consume is safe.

While initially the deal may increase U.S. exports to China, over time the United States could in fact begin to import pork products from China. Such a development would raise a host of food safety concerns as China's food safety system remains wholly inadequate leading to unsafe exported food products.

Food safety concerns in China include melamine identified in pet foods and baby formula, unsafe levels of cadmium in rice, and rat meat being sold as mutton. Notably, in 2011, Shuanghui was found to have produced pork laced with the drug clenbuterol, which is linked to serious human health risks. In March 2013, more than 7,000 dead pigs were found floating in the Huangpu River. Just as Chinese consumers question the safety and security of their food supply, so should we as public officials on behalf of American consumers.

Since joining the World Trade Organization in 2001, China's food exports to the United States tripled to 4.1 billion pounds of food in 2012. Yet, oversight of China's food producers has not kept up with the sharp increase in imports. The Food and Drug Administration (FDA) inspects less than 2 percent of imported produce, processed food and seafood. Even with a Memorandum of Understanding between the FDA and China's Certification and Accreditation Administration signed in 2010, the FDA only conducted 10 inspections of food facilities in China in fiscal year 2012.

All of these issues raise a number of questions that we believe should be publically answered so that American consumers and businesses have a complete understanding of the ramifications of this potential deal. Accordingly, we appreciate your response to the following:

1. Consolidation in the agriculture industry crowds out smaller farmers and producers and leads to fewer options and higher costs for American consumers. What benefits will this proposed acquisition have on the opportunity for small market participants in the agriculture sector to compete and for consumers to have options to make pork purchases at reasonable prices? Along with Smithfield, will other farmers have access to China's market?

2. As a non-market economy, China favors employment and domestic growth over the profitability of its enterprises, which may cause this proposed merger to have larger implications for the entire U.S. pork sector. How will other U.S. companies compete in the marketplace against an entity that does not place normal commercial considerations as its primary goal? Will U.S. competitors be forced to reduce their profit margins to compete? If U.S. companies hope to maintain profit margins, what cost-cutting measures should we expect?

3. Smithfield operates facilities in 26 states that will be impacted by this acquisition. What assurances are included in the proposed merger to ensure that Smithfield continues to meet domestic food safety and animal welfare standards? What impact will the new management structure with Shuanghui ownership have on operations, including workforce size, at these facilities? Could some of these facilities potentially close with foreign ownership of agriculture land? What will be the term of these commitments?

4. U.S. pork producers have by and large been unable to secure access to China's market. With a growing desire for protein, rather than opening up the market, a Chinese company is purchasing a U.S. company. What commitments are made in this proposed acquisition to put Smithfield's expertise toward developing China's pork production? As this new merged company profits, what are the benefits to U.S. investors and what are the benefits to Chinese investors?

5. Shuanghui's development is central to China's effort to create an industrial meat industry. Shuanghui has invested aggressively in new facilities to better service the cities of Beijing and Tianjin. It's acquisition of Smithfield will likely allow Shuanghui to drastically scale up China's meat industry. What impact will this have on the ability of U.S. companies to compete in the global marketplace, including increasing exports to countries in competition with Shuanghui? What provisions will be put in place to assess the access that all U.S. pork producers will have to the Chinese market or will Smithfield have preferential access as a Chinese-owned company?

6. The United States Trade Representative continues to place China as one of 10 countries on its Priority Watch List of countries that are the worst violators of intellectual property rights. What intellectual property agreements, including related to Smithfield's animal gene technology, are proposed in this merger and what steps must be taken to ensure U.S. intellectual property is protected?

7. China is not yet approved to ship meat and poultry products to the United States. China is, however, in the process of being certified as "equivalent" to U.S. meat inspection standards. At the same time, the Department of Agriculture weakened its oversight of foreign meat and poultry producers when it moved from conducting annual on-site audits to relying on a "Self Reporting Tool" and conducting audits every three years. What assurances can you provide that the Shuanghui-Smithfield merger will not prematurely lead to equivalence certification and export of potentially unsafe pork products from China to the United States? What level of access do you believe the Food Safety and Inspection Service will have to Shuanghui facilities in China?

8. What ability will U.S. consumers have to differentiate from pork products that are of U.S. origin as opposed to those of Chinese origin that will, presumably, be marketed here in the United States under the Smithfield label? What country of origin labeling will be required, if any?

The proposed Shuanghui acquisition of Smithfield Foods is a highly consequential merger of two large food producers that warrants careful scrutiny by regulators. The Committee on Foreign

Investment in the United States (CFIUS) is reviewing the proposed acquisition to determine its impact on U.S. national security.

We believe the potential impact on U.S. global competitiveness and U.S. food safety and security of this proposed acquisition are national security considerations. Regardless, we believe your answers to our questions are critical to shedding light on the numerous ramifications the deal may have on American consumers and the country at large. We therefore respectfully request that responses to these important questions are publicly provided well in advance of any final consideration of this transaction by CFIUS.

Thank you in advance for your response.

Sincerely,

Rosa L. DeLauro

Elizabeth Warren