

**Feb 11, 2018**

**USDA APHIS signals intent to enforce beginning March 1 Vietnam's precautionary zero tolerance for *Cirsium arvense* / Canada Thistle / Creeping Thistle (CT)**

On Friday at a meeting with USDA Undersecretaries Greg Ibach and Ted McKinney that included a few stakeholders selected by USDA, USDA Animal and Plant Health Inspection Service Deputy Administrator Osama El-Lissy explained the Agency's plans following the APHIS Plant Health bilateral with Vietnam that ended on January 24. As you may recall USDA reported the January 23<sup>rd</sup> technical discussion held the first day of two day bilateral concluded with Vietnam informing the USDA team that on "*March 1, 2019 Vietnam will require all U.S. shipments (apparently limited to wheat and soybeans) to comply with PPD's regulations being imposed on other nations based on PPD's risk analysis. And that "USDA will work with individual U.S. exporters that wish to continue to export to this important market and will assist them in their compliance efforts.*

Over two weeks after the bilateral ended we were quite surprised and disappointed to learn that during the January 23 -24 talks, APHIS acquiesced to the Vietnamese position that, based as we understand it on controlled laboratory experiments and without any evidence of exposure in Vietnam's agriculture that CT seeds are is capable of propagating in Vietnam's climate:

**Vietnam's zero tolerance for CT seeds is justified and shall result in APHIS action not to issue phytosanitary sanitary certifications for consignments of wheat and soybeans from the US if a yet to be defined APHIS regime detects the presence of Canadian thistle.**

APHIS's El-Lissy further indicated they had subsequently written to Vietnam stating the understanding that what in-effect amounts to a zero-tolerance phytosanitary certificate issuance requirement to be imposed by APHIS will apply to vessels loaded on or after March 1, not to shipments en-route on or before that date and has not received a contrary response from Vietnam. PLEASE NOTE: The agreement codified by the APHIS communication with Vietnam's Plant Protection Division (VN PPD) **does not prevent Vietnam from taking any action at import – including continuing to visually inspect consignment shipments upon arrival, and to require reexport if Canadian thistle is detected.**

APHIS clearly disregarded our earlier and consistent advice cautioning against supporting any Zero Tolerance approach and "*take no new action until we adequately consult on possible responses and have a common understanding of what we might gain and the risks related to those possible responses.*

APHIS did provide some related information to the USDA statement of January 24 *with my related comments italicized*, including

1. VN PPD maintained that Canadian thistle had been detected in 60 percent of U.S. wheat import shipments and 40 percent of imported soybean shipments. *Apparently VN PPD did not provide similar information for other origins nor did APHIS provide for verification of the VN PPD assertion.*
2. VN PPD asserted that managing risk of CT introduction from imported wheat and soybeans after arrival with chain of custody controls and with processing mitigation was an "undue burden" on VN. APHIS said the Vietnamese alleged it took 80 persons two months to unload and transport two vessels of imported U.S. commodities to Vietnamese import buyers'

interior locations by truck. *Apparently, USDA APHIS also accepted the undue burden designation rather than pursue guidance from VN PPD on appropriate measures to provide for such chain of custody controls and with processing mitigation. However given USDA's previous statement that it "with will work with individual U.S. exporters that wish to continue to export to this important market and will assist them in their compliance efforts" some exporters might choose explore options to work with USDA in addition to the OBVIOUS NEED to IMMEDIATELY work with importers and VN PPD in order to establish a compliance regime to pre-empt the precautionary and yet to be justified visual inspection at import and re-export measures implementation .*

3. APHIS indicates their rational for taking this and other actions related to weed seeds seeds in grain and oilseed shipments is based on their belief that that weed seed presence in U.S. grain and oilseed has increased in recent years **because of herbicide resistance**. *To the contrary Cirsum arvesed / CT has not been identified for wheat, soybeans or any major exporter in the INTERNATIONAL SURVEY OF HERBICIDE RESISTANT WEEDS <http://www.weedscience.org/Summary/Country.aspx> . APHIS also extended this rational in rejecting the possibility of deploying the 2011 FGIS directive 9180.17 for CT in wheat as "to old" to provide for its regime to detect the prescience of CT.*
4. APHIS believes its "Systems Approach" to reducing weed seeds can have an impact in one year.

The list of critical information APHIS **did not** provide in its explanation of rational for enforcing the VN PPD requirements (Zero Tolerance) is astounding. included:

1. Details on the regime APHIS plans to use or VN PPC is using to detect the presence of CT
2. Any evidence that pathways for wheat, soybeans or other grains imported into Vietnam result in the introduction of CT.
3. Any new evidence that CT does not already exist in VN, including existing control measures.
4. Verification VN PPD assertions of equal treatment for all origins of wheat and soybeans.
5. Verification of and details from VN PPD reports of actions taken on

Next steps?

1. Suggest that trade IMMEDIATELY work with VN PPD in order to establish a compliance regime to pre-empt the precautionary and yet to be justified visual inspection at import and re-export measures implementation
  2. We have begun to look the possibilities to challenge VN PPD through the International Plant Protection Convention and WTO process. APHIS acquiescence to VN PPD. Like what apparently is the case from the "agreement" during APHIS's negotiations and acquiescence to the Chinese on the soybean weed seed/FM issue last year greatly impedes the chance of success for utilizing both IPPC and WTO process or for that matter proceeding with a sound science based
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**Previous Report: February 2 summary:**

Recently NAEGA and other stakeholders have placed focus on actions by Vietnam related to the presence *Cirsium arvense* (commonly referred to as Canada Thistle or Creeping Thistle) plant parts in imported grain. We are investigating several options and input including global outreach and intelligence gathering related to sound science and best commercial and official practice.

Communication with U.S. government and stakeholders has been a priority.

In advance of bi-lateral technical talks between Vietnam and U.S. Government officials on January 23 and 24, NAEGA advised U.S. government and a group of stakeholders organized by USDA as follows:

We find that that a thorough examination and understanding of Vietnam's pathway analysis, sampling and inspection for grain and oilseed shipments related to the concern over a presence *Cirsium arvense* / Canada Thistle (CT) seed in grain and oilseed imports is warranted and very much needed so we can better understand how to respond to the concern.

HOWEVER given the lack of understanding and time to consider new information we recently became aware of from APHIS, we suggested APHIS should take no new action until we adequately consult on possible responses and have a common understanding of what we might gain and the risks related to those possible responses. Given the prevailing circumstances this means giving all relevant stakeholders the opportunity to be included in the related consultations AND such consultations can begin no sooner than the week of Jan. 28, 2019 and must include a complete reporting on findings from the APHIS Plant Health bilateral with Vietnam.

The principles that need to be considered include:

1. As we currently understand it, the approach Vietnam is taking is an impractical "zero tolerance" approach and is a concern for many origins. The U.S. response will have global ramifications that impact trade of multiple commodities impacted by all sorts of plant health related measures.

2. Origin final determination to provide for consignment discharge is essential. This means options to allow for commercial partners or even shipment specific management that is based on origin final determination of whether the consignment is allowed to enter and with post shipment and arrival chain of custody-based responsibility for any needed mitigation.

3. Whatever is considered should provide for adequate time to be implemented, predictability, and commercial flexibility. It should be compliant with sound science, provide for a least trade distortive approach and apply relevant best practices including ISPMs. We need to insist on ISPM compliance, adhering to best practices and holding authorities accountable.

A USDA report following the first day of APHIS Plant Health bilateral with Vietnam text of which is copied in italics below, included assurances that the NAEGA advice above and during several related meetings was being taken into full consideration. The report provided on Thursday, January 24 follows:

***USDA Statement on Vietnam Canadian Thistle***

*A USDA team led by APHIS and supported by FAS met with Vietnam's Plant Protection Department (PPD) regulatory officials to discuss PPD's phytosanitary import standards announced last fall and scheduled for implementation on November 1, 2018.*

*PPD provided a summary of U.S. origin shipments including PPD's analysis of Canada Thistle (CT) presence in these shipments. PPD provided information on shipments from other countries that PPD has rejected due to the presence of CT since PPD's regulations went into effect on January 1, 2019.*

*USDA disagreed with PPD's position stating CT can establish populations in Vietnam. USDA maintained our position that all phytosanitary regulations must be based on sound science, and USDA requested PPD provide scientific evidence supporting their position that CT populations can become established in Vietnam. USDA also stated that end use processing mitigates the viability of any CT seed, and therefore, provides the basis for continued trade in accordance with IPPC or ISPM provisions. PPD rejected all of these assertions and communicated their experiences with other mitigation efforts from port to processing made such protocols ineffective and cost prohibitive.*

*USDA further pressed PPD to provide adequate time to implement any additional requirements to ensure predictability and provide for commercial flexibility necessary to facilitate the least trade distortive approach. USDA also reinforced the need to apply relevant best practices, including ISPMs.*

*The technical discussion concluded with Vietnam informing the USDA team that on March 1, 2019 Vietnam will require all U.S. shipments to comply with PPD's regulations being imposed on other nations based on PPD's risk analysis.*

*USDA will work with individual U.S. exporters that wish to continue to export to this important market and will assist them in their compliance efforts.*

Unfortunately, USDA did not arrange for meetings last week.

We believe USDA will provide for meeting at 10 AM on Friday Feb. 8 that includes a debrief on the 2<sup>nd</sup> day of the bilateral between APHIS and VN PPD.

Meanwhile NAEGA is seeking advice from several sources.

Saturday, February 2, 2019