

Consensus Recommendation on Federal Regulations Governing Imports of Living Plants (Q-37)

Background

At its January 2007 meeting, the Dialogue asked Opportunity Workgroup #1 to include among its short-term goals development of draft common positions for consideration by Dialogue participants. These positions are to pertain to important pathways for the introduction of new forest pests & pathogens. Highest priority was assigned to introductions via the live plant (“plants for planting”) importation pathway as:

- Live plants are a major pathway for pest introduction
- Opportunities will arise for input as USDA APHIS has initiated a rulemaking to revise the relevant regulations (called “Q-37 regulations - the Federal quarantine regulating the import of nursery plants, roots, bulbs, and seeds).
- Dialogue participation in this comment period facilitates communication with federal agencies and enables us to be a recognized stakeholder in the process.
- Clean stock programs hold promise for simultaneously minimizing risks of pest introduction while placing appropriate responsibility for preventing pest introductions on those engaged in and benefiting from trade in live plants.

Goals

1. Develop a position on Q-37, which reflects the common goals of the Dialogue.
2. Assist USDA APHIS in improving the Q-37 regulation.
3. To achieve the Dialogue’s Vision of drastically reducing and virtually eliminating the introduction of forest pests via the live plant pathway by 2015, APHIS must pro-actively fulfill its pest prevention obligations. Systems-based approaches offer great promise.
4. Encourage importer and exporter accountability and participation in development of best management practices to assure they transport only plant stock essentially free of plant pests.
5. Improve identification of potential actionable pests in their countries of origin (before they are introduced) through, *inter alia*, conducting rapid pest risk analyses of species contained in existing lists of forest pests (e.g., ExFor).
6. Contribute to increasing resources and incentives for improved detection of potential actionable pests through pre-shipment inspection in countries of origin and at receiving sites (including ports of entry and plant inspection stations, receiving nurseries, distribution points, etc.).
7. In deciding whether and how to regulate a potential environmental hazard, federal agencies must conduct cost/benefit analyses. In the context of trade policy, cost/benefit analyses routinely capture benefits to both economic entities and consumers associated with the proposed trade. However, they often disregard the risk of pest introduction, and resulting “external” costs that may affect a variety of public and private interests. Cost/benefit

analyses associated with trade policy as it relates to plants for planting (as well as plant products and packaging that have been demonstrated to pose pest risk) should consider external costs associated with pest response, including eradication or quarantine.

8. Ensure that steps to improve Q-37 remain in compliance with World Trade Organization and International Plant Protection Convention standards, in part by obtaining adequate resources to conduct timely pest risk assessments.

Elements of Position

1. The Dialogue holds as a major objective, the prevention of the introduction of forest pests and pathogens in the United States.
2. The live plant pathway governed partly by Q-37 is a high-risk pathway for introductions. Preventing introduction would entail:
 - Importation of plants that are free of regulated pests and essentially free of other pests, and
 - Early detection of residual pests and potential pests to enable cost-effective and successful eradication.
3. The Dialogue believes that the current Q-37 regulations are not adequately effective in preventing introduction of forest pests and pathogens on live plants and they must be revised.¹ We applaud USDA APHIS for proposing modifications and for allowing public comment and suggestions.
4. APHIS must have additional resources to adopt and implement Q-37 regulations on a timely basis that will effectively prevent actionable pest introductions. Consideration should be given to the development of private sector opportunities to provide additional funding sources, expertise and mechanisms that will enhance and expedite the completion of PRA's and other aspects of the program within the given timeframes.
5. Importation of live plants from importers participating in formalized 'clean stock' programs, as well as producers who implement best management practices with effective pest detection, testing, and tracking mechanisms, would significantly reduce the risk of pest introductions. Development and validation of such programs will take time; in the interim, APHIS should pursue other improvements in risk reduction, including steps to address the following specific situations:
 - plants being imported from new sources/origins;
 - plants being produced for import using unexpected horticultural methods that may pose additional risk (e.g., open field production of penjing from China);
 - when new pests are reported or intercepted from a production area;

¹ To quote APHIS in a recent description of its program published in the Federal Register, "[Visual] inspection may not always provide an adequate level of protection against quarantine pests, particularly if the pest is rare, small in size, borne within the plant, an asymptomatic plant pathogen, or not yet recognized and regulated as a quarantine pest." APHIS. Federal Register: December 10, 2004 (Volume 69, Number 237)

- when scientific information including but not limited to peer-reviewed publications suggests that a host/origin combination poses a risk but a PRA has not yet been completed.

Risk reduction options may include as examples temporary prohibition such as is contemplated under NAPPRA (Not Authorized Pending Plant Risk Analysis); an increase in inspection intensity; post-entry quarantine; or, a mandatory disinfestation treatment.

6. USDA-APHIS should publicly specify a timeline within which the agency - in collaboration where possible with the industry - will swiftly act to reduce significantly the risk of introductions via live-plant imports while more comprehensive programs are developed. For plant/origin combinations not evaluated by PRA by the specified deadline, APHIS' actions might reflect the inherently lower risk associated with certain types of plants, such as seed and tissue culture plantlets.
7. USDA-APHIS should develop and implement a categorized live-plant pest risk system based on the risk associated with broad plant groups and geographic regions of origin. This will allow for faster Pest Risk Assessments (PRAs) to be completed on 'low-risk' categories (e.g., seed germplasm from Europe) while allocating more stringent scrutiny to those 'high-risk' plants posing greater threat (e.g., woody plants from Asia). Live plants which are identified as 'high-risk' due either to place of origin or plant type (e.g., whole plants in contrast to seeds or tissue culture plantlets) should be reviewed periodically to substantiate inclusion in that 'high-risk' category.
8. APHIS should use its proposed NAPPRA program to temporarily prohibit importation of plant/origin combinations that have not been subject to PRA or, absent a PRA, for which there is no importation track record indicating freedom from actionable or new pests. APHIS must have additional resources to conduct PRAs more rapidly in compliance with a clearly delineated timeline. Consideration should be given to the development of private sector opportunities to provide additional funding sources, expertise and mechanisms that will enhance and expedite the completion of PRA's and other aspects of the program within the given timeframes.
9. The Dialogue supports expeditious development of voluntary BMPs and incentives for importers and exporters. BMPs when properly implemented should not place extraordinary monetary burdens or lengthy delays on these parties so as to encourage participation. BMP's developed to fit into the proposed system must serve as a working model for virtual elimination of pests via this pathway by 2015 while encouraging and rewarding industry participants that appropriately implement BMPs and promptly report unusual pests. Incentives for participation might include low-cost insurance or compensation to cover losses arising from an exotic pest infestation that occurred despite implementation of the BMPs.
10. While plant inspection upon arrival at U.S. ports of entry should not be relied upon as the sole pest prevention measure, USDA-APHIS plant inspection stations (PIS) are a key element in the pest prevention system. APHIS is developing a PIS strategic plan, and should move to strengthen staffing and use of technology at the PIS. APHIS should also evaluate

workload distribution, trends in commerce, and potential partnerships with major freight handlers as APHIS weighs decisions to locate or relocate facilities and to expand PIS capacity.

11. Plant imports posing a potential risk of introducing actionable or new pests – especially pests which may be latent or otherwise difficult to detect – could be routed through improved post-entry quarantine (PEQ) facilities. USDA-APHIS PPQ should stipulate performance standards for PEQ facility design and management so as to minimize the risk that a pest or pathogen might escape to the environment during the requisite observation and testing period. Since expanded PEQ requirements will result in increased numbers of plants passing through such facilities, APHIS should consider implementing certification programs for industry participants interested in designing and operating PEQ facilities. PEQ timeframes and methods should be science based and operationally realistic. Stringent regulatory inspections (number of inspections determined by nature of pest risk associated with origin and type of material introduced) as well as appropriate sampling and testing during the PEQ period should be required.