

# Authorizing Federal Legislation: Are Changes to the Plant Protection Act Necessary?

Continental  
Dialogue  
on Non-Native  
Forest  
Insects & Diseases

December 2007



# **Authorizing Federal Action**

## **Workgroup #4**

### **Objectives:**

- **Establish a Farm Bill Committee**
- **Flesh out ideas**
- **Develop support for legislation**
- **Develop authorization strategy**



# Progress so Far

- Too late for Farm Bill
- Issues under this objective addressed by other groups
- Focused on Group #1's work on Level of Protection
- Brainstormed other ideas



# Level of Protection

- Work Group #1 goal: **Establish a strong & measurable national level of protection for pathways by which live organisms are imported.**
- Need a higher priority on preventing introductions while promoting trade—adopt a “higher level of protection.”



# Possible solution: Change Language in the Findings

“Protect the agriculture, environment, and economy of the United States” from plant pests “while simultaneously facilitating exports, imports, and interstate commerce” in commodities that pose a risk of harboring plant pests.



# Adjust the Mission

- **Take all reasonable precautions to prevent the introduction and dissemination of plant pests, while facilitating trade**
- **In addition, performance measures should be implemented—additional work needed here**

# Is Changing the Findings Enough?

## Work Group #4 discussions:

- Adjusting the mission was a good start
- But given the vast changes in world operations, there may be a need for broader, bolder innovations

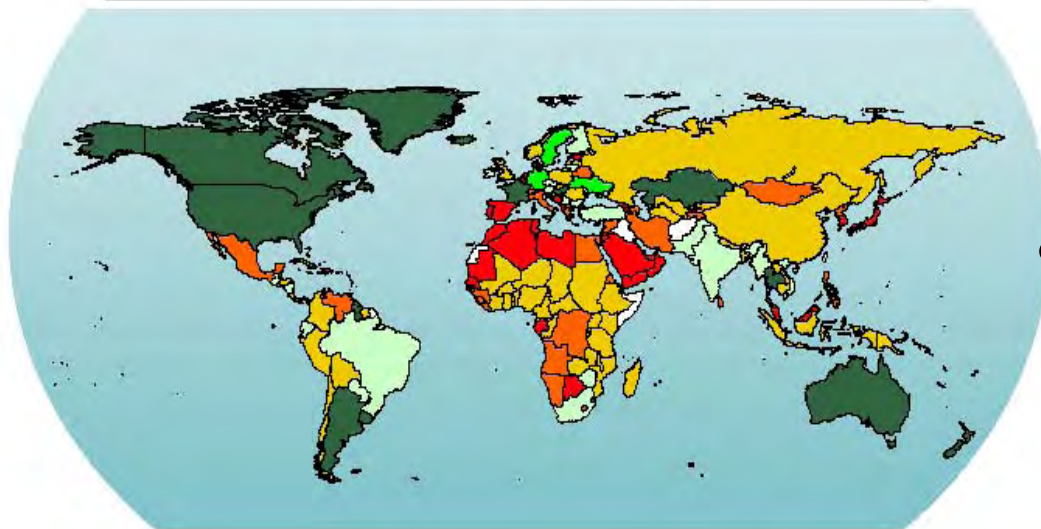
التجارة الصافية في الأغذية

食品贸易净额

Net trade in food

Commerce net de produits alimentaires

Comercio neto de alimentos



2000-2002

< -50 -25 0 25 50 > % (Exports-Imports)/Consumption (calories)

No data



# Pre-emption in the Federal Plant Protection Act

- States cannot regulate international trade
- States cannot regulate interstate trade if a pest is already regulated by the federal government, except if consistent with and does not exceed federal regulations
- Process to show special need allowed in statute, but not defined in rule



# The Commerce Clause

- Constitutional requirement (Article 1, Section 8, Clause 3)
- Stipulates that federal government regulates interstate commerce
- States can only regulate intrastate commerce
- According to court decisions, States can only regulate interstate commerce under very specific conditions



# *Maine v Taylor* (1986)

- Supreme Court decision: upheld a state statute that restricted the entry of live bait fish into Maine.
- The Court found that no non-discriminatory alternatives to Maine's live bait fish importation restrictions would adequately protect the state's interests/resources.





# Suggested Options

- 1) Repeal the federal PPA pre-emption language
- 2) Set up deadlines for **special need request** from APHIS PPQ in the federal PPA
- 3) Others?



# Compensating Growers without Taking Away Accountability

Growers using best management practices should be compensated if impacted by a pest,

But if they'll get full compensation,  
why would they use best  
management practices?



## Current Status

- No financial compensation for landowner or grower for costs of corrective action or losses
- Programs like the Crop Insurance Program and Indemnification have been suggested, but not adopted because accountability may be lessened



# Structure a Reimbursement Program with Liability

- Assign liability to those who cause the introduction of a new pest
- Liability means being responsible for all costs (property loss, eradication, etc.)
- Provide a complete release from liability if all applicable laws were followed



# Other Advantages

- Could help streamline regulatory process—not all responsibility is on the agency
- Improve investigations on how new invasive species are introduced—better info on how introductions happened
- Increase fairness for landowners who are impacted by unlawful pest introduction



# Increase Cooperation

- Some question as to whether the Department of Homeland Security has de-emphasized pest detection
- Increased cooperation between agencies of all levels are encouraged



# More Refinement Needed!

- Emphasize stopping pests in mission, but need performance measures
- Review Pre-emption requirements
- To get compensation, consider liability
- Encourage cooperation among agencies





**Questions?**