

## **Viptera Corn Lawsuits**

*Frequently Asked Farmer Questions*  
May 2015

### **What is the lawsuit about?**

According to Court documents, “These cases concern the Syngenta defendants’ decision to commercialize corn seeds containing a genetically modified trait, known as ‘MIR 162,’ that reportedly controls certain insects. Corn with this trait has entered U.S. corn stocks but has not been approved for import by the Chinese government, which has imposed a complete ban on U.S. corn with this trait. Plaintiffs are corn growers and a grain exporter who suffered economic losses resulting from China’s refusal to accept MIR162 corn. All actions involve common factual questions regarding Syngenta’s decision to commercialize the MIR162 genetically modified corn trait in the absence of Chinese approval to import corn with that trait.”<sup>1</sup>

### **Why wasn’t Viptera approved in China?**

Viptera was approved for commercial release in the United States, Canada and Japan in 2010. The new trait was submitted to the Chinese government the same year. China conducted in-country production trials with Viptera during 2011 and 2012. The Chinese government sought, and received, additional information from Syngenta once in 2012 and twice in 2013. The Chinese government granted Viptera import approval in December of 2014. Comparing the nearly 1,460 days this application was pending in China, the biotechnology approval process in Brazil takes, on average, 372 days, in Canada—771 days, and 1,210 in the United States.<sup>2</sup>

In December of 2014, the USDA Foreign Agricultural Service’s Global Ag Info Network released this report detailing the regulatory system in China<sup>3</sup>. The report notes not only the stated approval process, but relates a series of verified observations showing differences between the supposed regulatory path and the way the system actually functions.

### **When was the trait commercialized and when did the Chinese begin rejecting shipments of U.S. corn?**

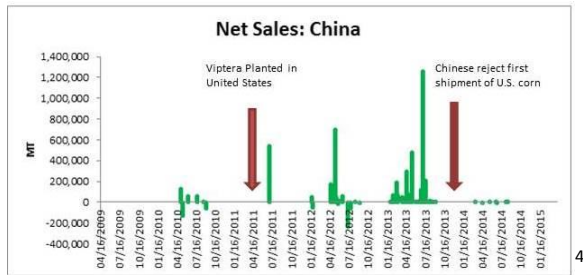
While Viptera was widely planted with full U.S. approval in the spring of 2011, the Chinese did not begin rejecting shipments of U.S. corn until November 20, 2013. The chart below details sales of U.S. corn to China before, during and after that period.

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<sup>1</sup> See <http://www.ksd.uscourts.gov/syngenta-ag-mir162-corn-litigation/>

<sup>2</sup> See, e.g. <http://www.agri-pulse.com/Biotech-backlog-Can-USDA-catch-up-06042014.asp>

<sup>3</sup> See [USDA GAIN Report December 2014](#)

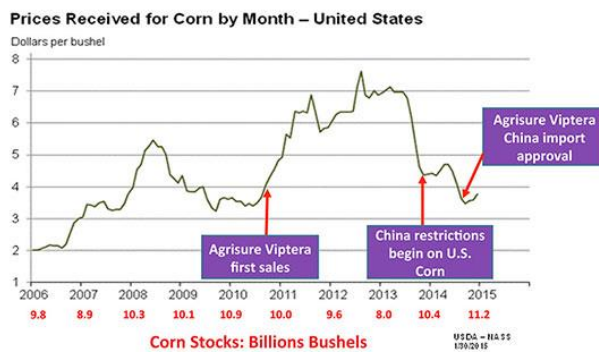


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### How did China’s decision to not accept U.S. corn affect the corn market?

There are a number of factors that affect the price of corn in a global market. U.S. farmers produced record yields in 2013 and 2014, so large supplies, generally, reduce corn prices. The USDA chart, below, does show changes in market prices from when Viptera was first commercialized until China halted imports.

#### U.S. corn price and stocks - 2006-2015



### Do you have to have grown/grow Syngenta corn specifically? Who is eligible?

The suit alleges that all U.S. corn farmers were impacted, regardless of whether they planted this trait. Any farmer who believes that he or she suffered financial damages from trait commercialization in the United States is eligible to participate in the suit. At this time, damages alleged by the plaintiff attorneys are based solely upon a model-derived price decline and a farmer’s demonstrated production history-- and not upon the farmer’s actual ability to demonstrate concrete damages to one’s own operation.<sup>5</sup>

### Is this a Class Action Lawsuit? Can I recover if I don't sign up?

<sup>4</sup> USDA, FAS, Export Sales Report

<sup>5</sup> See, e.g.: <http://www.grayreed.com/portalresource/ProducerPlaintiffsMCAComplaint.pdf>

At present, these lawsuits fall into the category of “putative” class action. This means that, while the plaintiffs’ counsel wants to certify suits as a class action, the court has not yet heard the motion. To win this motion, the plaintiffs’ counsel will need to show a number of “common issues” of law and facts.

At this time, all details as to the timeline for the court ruling on a class action motion may be early 2016, and we cannot speculate on what the court’s ruling might be. The suit may be certified as an “opt out” form of a class action, thus only those involved in the suit would have a right to seek compensation. Should it be found an “opt in” form of a class action, whether or not farmers had indicated interest in being involved in the suit, they would have a right to seek compensation. Either way, the certification is still not decided.

If the suits are certified as a class action, plaintiffs’ class counsel will notify the class. This will be done under the supervision of the court. At that time, growers will be given a deadline by which they must make an official decision to participate in the suit should it be certified.

### **Do you have a lawyer you suggest signing up with?**

The decision to or not to engage in this lawsuit is solely that of individual farmers. As such, NCGA does not provide referrals for legal counsel. Additionally, it urges farmers to seek independent legal advice, from attorneys who are not affiliated with the case, before engaging in legal action.

### **If folks are going to get a check, why wouldn’t I want to sign up?**

Plaintiff attorneys are citing a National Grain & Feed Association analysis<sup>6</sup> that claims losses stemming from the commercialization of MIR162 could range between \$1 billion and \$2.9 billion.<sup>7</sup> The attorneys have suggested this could mean a farmer could collect between 11-12¢ per bushel of corn produced. These cases are contingent fee cases, however, so plaintiff attorneys will take between 30-40 percent of any settlement or damages plus expenses. Syngenta cautions that producers may have to disclose business financial information, contracts for corn, and/or participate in depositions and courtroom proceedings.<sup>8</sup>

Weighing the potential benefits and risks is an individual decision that must be made by each individual farmer. As noted above, NCGA urges consultation with independent legal counsel prior to making this decision so that you can understand how you might benefit compared to the risks.

Above and beyond the individual cost/benefit analysis, other factors to consider include how you think this lawsuit will impact continued investment in new agricultural research and technology development? What role should China play in the release of new corn traits that have been approved in the United

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<sup>6</sup> See: <http://www.ngfa.org/wp-content/uploads/Agrisure-Duracade-5307-Economic-Impact-Analysis.pdf>

<sup>7</sup> See, e.g.: <http://www.syngentavipteracornlawsuitcenter.com/syngenta-viptera-lawsuit-faqs.asp>:  
“Essentially losing a major export market and flooding the domestic market with extra product, the American corn industry has seen domestic corn prices fall by 11 cents per bushel and has sustained losses estimated at \$1.14 billion.”

<sup>8</sup> See: <http://vipterachinafacts.com/For-Farmers/default.aspx>

States?<sup>9</sup> And, finally, what role should seed companies, farmers and grain companies each play in protecting U.S. markets? These are policy questions that are likely to be determined within this lawsuit.

### **Where does NCGA/(state corn organization) stand on this issue?**

The plaintiffs in these lawsuits are individual farmers acting on their own behalf and are in no way representative of the position of the National Corn Growers Association/(state corn organization). Farmers contemplating joining these lawsuits should seek independent legal counsel to answer questions.

NCGA's policy, developed by our farmer-members, supports access to all technologies that have gained approval in the United States as they allow growers to improve the economic and environmental performance of their farms. At the same time, NCGA acknowledges the valuable role that exports markets play in maintaining grower profitability. Thus, NCGA policy seeks to strike the important balance between maintaining access to technology and to markets.

While the need to maintain export markets remains of great importance to NCGA, we also recognize the potential difficulty farmers would face if a non-functioning regulatory system can, effectively, bar farmers' access to important new technologies.

Through our [Know Before You Grow](#) program, NCGA helps farmers maintain access to export markets and the biotechnology-enhanced traits. At all times, NCGA works directly with seed and grain companies to maximize farmers' access to technology while maintaining market access.

### **Where would you direct me for more information?**

In addition to strongly urging consultation with independent legal counsel, NCGA urges farmers to consider all sides of this issue prior to making a decision regarding joining a lawsuit. To find out more, information is available on the [U.S. District Court – District of Kansas webpage](#) and through a brief released by the [Iowa State University Center for Agricultural Law and Taxation](#) and a [Question & Answer document released by Texas A&M AgriLife Extension](#). Syngenta has posted information to a new website, [www.VipteraChinaFacts](http://www.VipteraChinaFacts), and plaintiff's information is available through multiple sites such as [www.syngentaviptercornlawsuitcenter.com](http://www.syngentaviptercornlawsuitcenter.com) and [www.syngentacornlitigation.com](http://www.syngentacornlitigation.com).

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<sup>9</sup> See, e.g.: <http://www.startribune.com/business/287393601.html>, stating, "If . . . trial lawyers are successful in imposing strict liability on the developers of new agricultural biotechnologies, they will effectively transfer to the government of China a final say in America's agricultural future. Both as a matter of law and policy, such an outcome would be disastrous. The effect on U.S. innovation would be crippling."