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New principles of phytosanitary legislation

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New principles of phytosanitary legislation

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PREFACE

The classic principles governing plant health control were thrown into complete turmoil by the adoption of the Final Act containing the results of the Uruguay Round multilateral trade negotiations. For the latter incorporated not only the Marrakech Agreement establishing the World Trade Organization, but a number of other international legal instruments which, because of their binding character, will have immediate consequences on quarantine and plant movements. These are the *Agreement on the Application of Sanitary and Phytosanitary Measures*, and, albeit to a lesser degree, the *Agreement on Technical Barriers to Trade.*

In order to meet these new needs, FAO has set about revising the International Plant Protection Convention, which from now on will make it possible to regularly adopt, the technical standards on which the WTO will base its decisions in the case of disputes in this area.

The Development Law Service therefore felt that it would be useful to examine the consequences that these developments will certainly have on national plant protection legislation, and to an even greater extent on the relevant rules adopted on a regional basis. This is particularly important in view of the fact that the trading practices which will stem from them will also have direct effects on the volumes of food production, and hence on food security.

This paper sets out to make a contribution to studying the sensitive interaction between the need to safeguard health, which the authorities are required to do in the exercise of their national sovereignty on the one hand, and on the other, the demands of free trade, which is now a global necessity. It sets out of quarantine as they have just been framed and provides a few descriptive examples of legislative or diplomatic systems through which these principles are being applied. Even though this is by no means an exhaustive treatment of the subject, the reader will find material to gain a better understanding of the new principles governing the legal framework for plant protection.

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Introduction

The principles of the market economy are now being applied worldwide. Yet they are still the subject of debate in many international fora. For while policies and magnitudes may have changed, trade remains primarily a juridical act, for example a sale, which is often accompanied by the use of other instruments such as payment guarantees. It creates various interlocking obligations.

But is this trend towards broader trade being accompanied by a "globalization" of legal instruments? If so, there will be a more or less spontaneous establishment of a common set of uniform laws, without being specific to any one territory, governing all economic relations. Is this desirable? Is it feasible? Even though the globalization of legal instruments to deal with the globalization of trade may be indispensable, or unavoidable, it seems to be particularly difficult to bring about.

In order to be safe and balanced, every market needs both the free movement of goods and compliance with specific legal rules, binding on all the parties involved and giving the whole system one essential quality: the legal certainty of the transactions.

Does this mean that it is not possible to have globalized trade without "globalized law"? One might object that a contract, the trading instrument *par excellence*, is not hampered by such contingent considerations as sources, because contracts are invented by the parties themselves and are the ideal vehicle for internationalizing trade. But what would be the effectiveness of a contract without a judge to enforce performance or hand down penalties in the event of breaches?

Although the business community has always resorted to private arbitration, the underlying principles of the law of persons has not always been quite so satisfactory. This is why it became necessary for the authorities to set up "non-territorial" or even "non-national" jurisdictions. This is what the World Trade Organization (WTO) has been created for, and empowered to draft rules of conduct, encourage their use and hand down penalties for infringements. But penalties cannot be lawful if failure to comply with the principle of free movement is justified on sound grounds, namely, the need to safeguard public health and public safety.

In this "mad cow" age, when the issues are highly technical, the courts must be given the means they require to enable them to properly assess the risks and hazards of one or another disease in terms of human health or plant protection and the health of animals. The scientists have the responsibility for shedding light on such issues.

These are the difficulties facing the authorities when they have to assess the physical risks that might be created by negligence in the matter of public health, or economic risks stemming from failure to respect the rules of free trade.

The demands of quarantine appear to the political authorities to provide the best, or the least unlawful, grounds for a decision to reject the import of some or another commodity. Preventing the introduction of harmful insects or disease-carrying agents into regions where they are still unknown, or officially isolating one product subject to specific sanitary

regulations so that it can be placed under observation, studied, inspected or tested in order to protect the health of people, animals or plants in a territory: these are the usual arguments offered in justification.

It is true that the quarantine system is one of the basic measures used to protect the health of people, plants and animals, but it must be based on technically appropriate regulations which are administratively justified. If not, some administrative prohibitions demanding quarantine could disguise trade barriers introduced to protect one of the sectors of the national industry against foreign competition. There are many examples of bans and prohibitions without any serious justification whatsoever.

The States that took part in establishing a WTO have tried to reconcile the need to protect health and their trading commitments, even though these goals often clash. In particular it has been established that countries *"should not be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or justifiable discrimination ... or a disguised restriction on international trade".**

The Final Act of the Uruguay Round included, *inter alia*, two agreements likely to substantially reduce the technical and non-tariff barriers to trade:

- The **Agreement on the Application of Sanitary and Phytosanitary Measures** (the SPS Agreement), which provides a uniform interpretation of the measures governing safety and plant and animal health regulations. It provides a framework for the mutual recognition of inspection procedures and rules for controlling food and carrying out health controls on the basis of an equivalence of the results, taking account of a risk assessment resulting from the application or non-application of each measure. It provides that reference shall be made to standards, directives and any international recommendations established by (i) the joint FAO/WHO Codex Alimentarius Commission on Food Safety, (ii) the International Office of Epizootics (the OIE) as far as animal health is concerned, and (iii) the International Plant Protection Convention (IPPC) regarding phytosanitary measures.
- The **Agreement on Technical Barriers to Trade** relates to the other aspects of regulations and measures imposed by national authorities or other authorities. This provides that "no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination ... or a disguised restriction on international trade ..."**

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* First paragraph of the Preamble to the Agreement on the Application of Sanitary and Phytosanitary Measures.

** Agreement on Technical Barriers to Trade, Preamble, paragraph six.

These measures came into force on 1 January 1995, but they have hardly had time to be tested in practice. However, the issues they raise will be vitally important in the years to come. Trade discussions are likely to be difficult and give rise to disputes.

The present paper will only deal with plants. It begins with a description of the international framework for phytosanitary legislation; the concept of harmonizing this legislation and the repercussions that this may have on certain countries or groups of countries is dealt with in the second part.

Part 1

The International Legal Framework for Plant Health Control

The International Plant Protection Convention (IPPC) and the 1947 and 1994 versions of the General Agreement on Tariffs and Trade (the GATT Agreements) laid down general principles for quarantine systems (Chapter I); but it was only thanks to the difficult supplementary negotiations that those principles are being applied today (Chapter 11).

Chapter I - The framework and the GATT principles

The purpose of the SPS Agreement was to curb the imposition of rules with no scientific basis and hence without any justification, whose only purpose was to restrict trade.

According to enshrined in this agreement, the authorities nevertheless remained free to set specific health standards to protect human, animal and plant life and health. But it was agreed that any sanitary or phytosanitary restrictions arising from them must be based on sound and rigorous scientific grounds.

To prevent too many irreconcilable disputes from arising, governments were invited to harmonize their technical standards by reference to the work of the recommendations of the relevant international organizations. Any scientifically unjustified restriction had to be repealed, in default of which punitive commercial sanctions would be imposed on countries enforcing such restrictions.

Before analysing the general principles of phytosanitary control, it may be useful to review the primary principles of free trade.

1.1 The establishment of the principle of free trade in international law

1.1.1 Statements of principle

Belief in the virtues of trade is one of the pillars of contemporary economics. Freedom of trade has been defined by the International Court of Justice as the right, which is in principle unrestricted, to engage in any commercial activity, both trade in the strict sense of the term, namely, the purchase and sale of commodities, and production, whether practised at home or abroad, through imports or exports.[1]

But since this freedom was only a principle of the art of politics, or was only a moral code governing virtually the whole of world trade at the time, the legislator was required to incorporate it into domestic law and guarantee its enforcement. The subjects of international law have received it into positive law both by the adoption of unilateral regulations and under international agreements spelling out its effects on such juridical principles as sovereignty.

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[1] Order of 12 December 1934, the Oscar Chirm case, series A/B, No. 63, p. 84.

Even though freedom to trade is an "unlimited right in principle", according to the International Court of Justice, it cannot flourish unless sound competition is guaranteed.[2]

1.1.2 Adjustments to the principle

Many unilateral decisions, bilateral conventions, regional accords and universal treatises are based on free trade and its supporting principles,[3] but they make adjustments to them. They constitute the source of practices and standards which are sometimes internationally recognized.

The role of these adjustments or arrangements is particularly important in the case of international trading relations. This has been emphasized in relation to many areas. Those which are relevant to the subject matter of this paper are the following:

(a) the **most-favoured-nation** clause, which implies that the State must treat any country to which it is bound by this clause in a manner which is at least equal to that applied to any third State;

(b) the **preferential treatment** clause, which is inconsistent with the previous principle in that it presupposes a privileged status for cooperation between the partners. This treatment may be reciprocal or unilaterally permitted;

(c) the **reciprocal treatment** clause, which implies that the States on which it is binding accord one another the same advantages or services;

(d) the **national treatment** clause, under which a State must grant its trading partners and their nationals the same rights and advantages as those enjoyed by its own;

(e) the **open-door regime**, which requires the States to be placed on a strictly equal footing with regard to the activities of their nationals in a territory under the sovereignty of either, or under the sovereignty of a third State.[4]

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[2] Regardless of their ideological preferences, all the governments agreed on this point, which explains how they were able to give priority to a number of minimum requirements. In Resolution 35/63 the United Nations General Assembly adopted the "Code" of principles and fair rules and agreed at the multilateral level to control restrictive trading practices, drafted by a conference convened for this purpose under the auspices of UNCTAD (Geneva 1980).

[3] These supporting principles are only optional customary principles and are rarely implemented absolutely: it is from the way they are combined into a single national legal instrument that one can identify the dominant stance of the economic and legal system in the State in question.

[4] This was implemented in relations with China at the end of the 19th century. It has been applied in a number of non-independent territories (under article 76(d) of the United Nations Charter on trust territories).

1.2 Free trade instruments

The GATT Agreements appear to be the main instrument for present day trade liberalization, and are based on two major principles: non-discrimination and the removal of customs barriers.

1.2.1 The principle of non-discrimination

This principle is applied through three international commitments or arrangements, of which the first two relate to competition between States exporting to the same country, while the third relates to competition between the exporting State and the importer-producer State. They may be summarized as follows:

(a) **the general most-favoured nation treatment clause** (article I) is the main contribution of the GATT, in that its scope is extremely wide-ranging: it not only applies to trade (covered by regulation and formalities relating to imports and exports) but also to the domestic tax regime applicable to imported products; it also refers to assurances, guarantees and control through consultation and conciliation. By virtue of this clause, any State that has granted customs concessions to one of its GATT partners must apply it equally to all the other contracting parties, which in practice means virtually every country in the world;

(b) by virtue of the **principle of reciprocity**, one State can grant concessions in exchange for concessions made by the other GATT parties; conversely, a State may lawfully refuse to apply them to States which fail to honour their own commitments. This balancing of services is found in the GATT text itself, in the protocol negotiated at the time of accession by a new State and in multilateral negotiations under the auspices of the GATT. This is the point that, when part IV of the GATT was adopted, led to the most serious objections from the developing countries. However, as a result of the amendment introduced in 1964, the other parties granted the developing countries a general and permanent waiver to this rule. Moreover, through the "*enabling clause*," enshrined in the 1979 Geneva Agreements, these States also obtained permanent and general recognition of the most important Generalized System of Preferences (GSP) which, by definition, do not benefit the developed countries; these preferences are negotiated within the framework of the GATT or between the developing countries, or to favour the least-developed countries. The implementation of this element is particularly sensitive in practice, because the same tariff concession does not have the same economic or financial scope for all parties;

(c) the **national treatment principle**, namely non-discrimination between imported foreign products and national products was set out in article 111(4) of the GATT in the following terms: *"The products of the territory of any contracting party imported into the territory of any other contracting party*

shall be accorded treatment no less favourable than that accorded to like products of national origin".

1.2.2 Lowering customs barriers

The lowering of customs barriers became an essential element of the neo-liberal economic policies of the proponents of the GATT. As article XXVIII-bis of the Agreement states: *"The products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin"*. Furthermore article XI prohibits quantitative restrictions (particularly quotas) on imports and exports.

1.2.3 The flexibility of principle

The flexibility of the GATT principles is expressed through a number of moderating mechanisms: safeguard clauses, the general waiver clause, a toning down of the principle of non-discrimination and a form of diversification of applicable rules:

(a) the **safeguard clauses** release parties from the obligation of applying some of the rules under exceptional circumstances. These are nevertheless defined rather vaguely in some cases. For example, under article XIX, one party may take precautions against the risk of the domestic market's being thrown into disarray by temporarily suspending its commitments;

(b) the **general waiver clause** provided by article XXV enables a State to temporarily suspend its obligations where a two-thirds majority of the parties agree to it by a reasoned vote;

(c) the **waiver to the principle of non-discrimination** is entirely legitimate when the waiver is based on institutionalized forms of cooperation (article XXIV): it has been accepted that the sacrifice of sovereignty permitted in these cases in exchange for customs concessions within the group of States concerned (regional trade organizations) cannot be deemed equivalent to the concessions offered by other members of the GATT. It is therefore only an apparent exception to the principle of reciprocity;

(d) the **differentiation of the rules** governing trading relations among the industrialized countries on the one hand and those governing trade between the developed and the developing countries on the other, is yet another element of flexibility.

Thus the Agreement codified of free trade. In absolute terms, if the partners had fully complied with all the obligations mentioned above, trade between the contracting parties would have effectively led to the wholesale liberalization of international trade. But a number of particular situations caused the signatory States to modify these

principles in specific cases and/or for specific commodities. Groups of countries therefore concluded free-trade agreements among themselves.

1.3 The application of the GATT to plant protection

The GATT originally covered commodities, as opposed to services.[5] But agricultural commodities were generally excluded, even though they might logically have been covered.

1.3.1 The peculiarity of agricultural products

The customary or written rules that traditionally governed international trade in agricultural commodities were so far removed from enshrined in the GATT that some authors and practitioners felt that the GATT could not apply to them.[6] Nevertheless, these rules were not entirely satisfactory. As long ago as 1949, the United States Congress imposed restrictions on imported dairy products, in total contradiction to the newly-accepted GATT principles. Despite strong pressure, the United States failed to respond to the demand for this regulation to be repealed and it was eventually authorized by the contracting parties as an exceptional measure (but it was a waiver, to use the terminology of the Treaty) in 1955. The waiver introduced in this way was widely criticized and led other parties to adopt similar practices without being authorized to do so by the GATT.

Generally speaking, it cannot be denied that agriculture is the one area of the economy into which governments pour the largest number of subsidies, in clear breach of the general principles of the GATT.

1.3.2 Phytosanitary controls

During the GATT preparatory discussions, a number of issues considered to belong only to the area of quarantine treatment were negotiated for the very first time by experts specializing in trade, and no longer plant health control experts alone. They reached the conclusion that plant protection measures constituted a major obstacle to free trade. Quarantine legislation was seen as an unnecessary impediment to trade, and the cost of inspections, treatment and in the worst cases the destruction of commodities was denounced as an unnecessary barrier.

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5 The current Marrakech Agreements resulting from the Uruguay Round of negotiations have expanded the coverage to include services. This is one of the most contentious issues in trade negotiations. The stakes are high here, because the volume of world trade in services is approximately equivalent to one-fifth of the world trade in commodities.

6 See Jackson, J., The World Trading System. Law and Policy of International Economic Relations, The MIT Press, Cambridge, Mass., 1983 (2nd Edition).

On the other hand, under the aegis of FAO, the International Plant Protection Convention was negotiated and adopted as a specific instrument governing plant quarantine.

(a) The **IPPC** was adopted by the FAO Conference in November 1951 and became effective on 3 April 1952. In November 1979, a number of amendments were made to it, but these did not become effective until 4 April 1991 (after two-thirds of the contracting parties, or 64 States, had deposited their instruments of accession).

The purpose of the IPPC is to adopt common and effective international measures (i) to prevent the introduction and spread of pests of plants and plant products and (ii) to promote appropriate measures for controlling them. It is also designed to establish forms of cooperation between States in other areas of plant protection.

These objectives, which met the needs of the first few decades of the post-war period, are still relevant today. However, advances in transport and conveyances, as well as new commercial practices, made it necessary to reframe the Convention.

(b) The **conflict between "health" and "commercial" interests** emerged in 1976 at a conference at which a number of possible amendments were examined. Actions were identified that might help to reinforce plant quarantine without allowing the phytosanitary certificate to be used purely for commercial purposes.[7] These commitments, however, were not followed up. Some countries naturally decided to tighten up their phytosanitary measures, particularly with regard to certification. Many regional plant protection organizations also helped to bring pressure to bear to tighten up international quarantine regulations, sometimes to meet the demands of the free trade ideology. But these pressures failed to have any major effect because no global effort has ever been made to tighten up the quarantine systems, let alone the whole "philosophy" of such regulation.

In the Seventies, efforts were made to reconcile two stances as far as plant health control-related issues of the GATT were concerned: the "commercial" stance, which advocated the idea of totally unfettered trade and the free movement of all commodities and goods, and the "scientific" stance, which considered that these were concepts to be placed into a legal and administrative framework.

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[7] The main purpose of the phytosanitary certificate is to control plants on entry to the importing country in order to acquire information on the health status of the consignments. It was subsequently used as a purely commercial document for the purposes of political retaliation or for commercial dealings. It was very easy for the authorities responsible for checking imported plants to bring pressure to bear on the exporting countries by requesting more information than was required by the Annex to the IPPC. This caused serious impediments to trade, because products were no longer compliant with the national regulatory or para-regulatory standards.

The intermediate position adopted by the GATT took these contrasting positions into account and recognized that every country is entitled to regulate commodities that might threaten animal or plant health or human safety and health.

(c) **The emergence of new principles** became evident when national plant protection organizations adopted the approach that the notion of harmonization had to deal primarily with the crucial areas of the principles of quarantine, risk evaluation, and certification processes and procedures. The main difficulty with certification was the widely different requirements that the national plant protection organizations perceived to be essential for the conservation of their national flora.

Although quarantine rules do guarantee a certain type of security for personal health and property, they also require the establishment of institutions, technical facilities and financial and human resources which many countries cannot possibly afford.

(d) **Harmonization as a new factor in international phytosanitary control**. The Uruguay Round of trade negotiations heralded a completely new approach to plant protection on the part of the international community. This Round started at a time when a different trading philosophy was being built up, incorporating the concepts of free trade, free trade agreements and free trade areas.

Even though the United States delegation pointed out that the free trade agreement that had just been signed by the United States and Canada was the concrete expression of the concept of harmonization (thereby giving "harmonization" the meaning of "identical"), the representatives of the national plant protection organizations said that it would be difficult for them to use a system which seemed to be based on a single set of universal technical benchmark standards. While the key-word seemed to be "harmonization" the establishment of one single identical plant health protection system for every country was very soon seen to be impossible. Differences between plant protection systems were so wide that it was agreed to redirect the technical approaches towards a system of "equivalences" according to which the results of any plant health control measure had to be identical whatever the instruments were used to achieve them. The obligation was now on the result achieved rather than the means used to achieve it.

(e) At the end of the Uruguay Round, the **IPPC was once again under attack**. In order to free international trade from unjustified phytosanitary restrictions, the agreements concluded at the end of the Round, particularly the SPS Agreement, indicated that the IPPC was a sound mechanism for standard-setting in the field of phytosanitary measures. However, in the amended 1979 version, the IPPC did not provide an official mechanism for setting standards or for a secretariat.

In 1989, the FAO Conference approved the establishment of a secretariat whose main function would be to draft international plant health standards. It was also to be given responsibility for encouraging and promoting the exchange of information, coordinating regional plant protection organizations and supplying technical assistance. In 1993, the FAO Conference agreed provisionally to authorize the establishment of a Committee of Experts on Phytosanitary Measures. It also endorsed a provisional procedure for drafting international phytosanitary standards and guidelines, such that the final adoption of these standards and directives formed part of its remit.

In November 1995, the FAO Conference requested a revision of the IPPC in order to harmonize it with the SPS Agreement, particularly with regard to the standards-setting procedures.

A draft amendment to the Convention was drawn up after consultation with national and regional plant protection organizations. The proposals were subsequently honed at a number of technical consultations. One of these proposals was to add an article spelling out the relations between the revised IPPC and other relevant international agreements, and particularly the SPS Agreement.

The idea was also broached that appropriate interim measures should be adopted for the period between the adoption of the amendments and their entry into force, particularly the appointment of an interim commission whose remit would be to adopt phytosanitary measures.

(f) In November 1997, the FAO Conference noted that the negotiations for the revision of the IPPC had been constructive.[8] It also took note of a statement by the chairman of the WTO Committee on Sanitary and Phytosanitary Measures stating that the WTO supported the results of those negotiations. Even though the IPPC differed from the SPS Agreement in terms both of its scope and its objectives, both texts are relevant to the implementation of phytosanitary measures as they affect international trade. The proposed revision appeared to be in accordance with the SPS Agreement, which includes forests and wild flora in its definition of plants, so that phytosanitary measures can also be used to protect plants regardless of whether or not they are commercially relevant.

The FAO Conference agreed that the international standards governing phytosanitary measures it had previously adopted would constitute the international phytosanitary standards referred to in article 3(2) of the SPS Agreement. It was decided that these standards would in future be adopted (i) by the interim Commission whose establishment was agreed upon, and (ii) eventually by the Commission on Phytosanitary Measures, once the revised IPPC was in force.

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[8] See the draft report of Commission III of the FAO Conference, C97/3/REP/1, containing the record of the negotiations, and describing the procedures used for the revision, and the final version of the amendments.

The Conference then adopted a resolution approving the amendments to the IPPC, and requested the contracting parties to adopt a new version as soon as possible.

Chapter II - The Uruguay Round multilateral trade negotiations

The difficulties encountered during the Uruguay Round multilateral trade negotiations can be explained by the general economic situation and the usual conflict of interest between the major powers. They were also due to the agenda items: firstly, it was necessary to settle the issue of the non-universality of the GATT, and secondly, the new forms of protectionism that had emerged in the Eighties had to be regulated.

2.1 Agricultural protectionism

Whereas negotiations regarding most industrial commodities presented no particular problems, there were two reports, one on agricultural products and the other on services, that created such enormous difficulties that until mid-December 1994, the conclusion of the negotiating round seemed to be doomed to failure.

Agricultural products had not been negotiated by the GATT since 1955.[9] This gave rise to frequent standoffs between the contracting parties with divergent agricultural interests. According to the then Secretary General of the GATT, A. Dunkel, there were as many legal interpretations of the rights and obligations as there were signatory States. Competition was therefore partly obscured by the financial capacity of exporting countries to subsidize some of their production, with the result that the developing countries were sidelined from world markets.[10] Even though trade in agricultural products accounted for slightly above 10 per cent of world trade at that time, it was nevertheless fraught with many obstacles created both by measures imposed at the borders and measures linked to production.

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9 See Jouanneau D., Le GATT, PUF, "Que sais-je?" (Second edition) and paragraph 1.3.1 of this paper.

10 See Dunkel, A., Interview in Libération, 4 December 1992.

The different opposing positions in these conflicts could be grouped under three headings:[11]

(a) the **free trade countries**, namely the "Cairns Group"[12] who were major net exporters (around 40 per cent of Australia's export revenues come from trading in agricultural products), which practised selective protectionism and gave few subsidies to their agriculture;

(b) the **highly protectionist importing countries**, which massively subsidized their agriculture but only exported marginally, such as Switzerland or Norway. In the case of Japan, protectionism was a result of the political might of one socio-professional category (the producers) according to the theory of public choices: rice imports were prohibited with the excuse of guaranteeing food security for traditional staple foods;[13]

(c) countries which provide major support for their agriculture and which are **major exporters**, such as the United States and the Member States of the European Union, which found a solution to the conflict regarding market supplies by signing the Final Act containing the results of the Uruguay Round Trade Negotiations (the Marrakech Final Act).

2.2 The Marrakech Final Act

The Marrakech Final Act is composed of a series of particular agreements which set out a new and extremely complex organization of the GATT.[14] The general architecture, which is indicated in an annex to this paper, is close to that of the GATT (some institutions have merely changed their name) but it also contains a number of essential administrative and scientific innovations, such as the establishment of the WTO. The GATT has formally become the WTO, which is responsible for managing a number of agreements. Thus the WTO is a framework organization encompassing the 1947 General Agreement and the results of the Uruguay Round Trade Negotiations.

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11 See Philippe, L'Europe Verte en mutation dans les négociations commerciales multilatérales, in Messerlin, P. et Vellas, F., Conflits et négociations dans le commerce International, l'Uruguay Round, Economica, Paris, 1989.

12 The large agricultural exporting countries, who acquired this name because their first meeting in 1986 was held at Cairns. There were 14 such countries: Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand and Uruguay.

13 Japan imports substantial quantities of other foods to cover over half its caloric requirements in the form of meat and citrus fruits, mainly from the United States. Japanese agriculture, which is heavily government-subsidized, and rice in particular, has a very important influence on political life because of electoral factional interests. It should be noted that the rice-growers are the most faithful Liberal Democratic Party voters, which supports them in exchange by protecting their production. The concept of food security is therefore only a disguised way of defending the interests of a guaranteed electorate.

14 The text of the Marrakech Final Act is published by the GATT (now WTO) Secretariat in the Results of the Uruguay Round of Multilateral Trade Negotiations - The Legal Texts, 1994.

2.2.1 The purpose and form of the measures adopted

All the signatories undertake to ensure that their foodstuffs are safe and to prevent the spread of parasites and disease amongst plants and animals. The sanitary measures can take many forms: some countries, for example, require that the products must come from an area which is exempt from any form of pest or disease, or that the imported products are inspected and guaranteed before leaving the country of origin, or that they are specifically treated or processed, or that the pesticide residues should not exceed a certain level, or that certain additives must not be used. These elements therefore remain under the principle of national sovereignty.

2.2.2 Area of application and relations to trade

The sanitary measures (human and animal health) or phythosanitary measures[15] apply to food products of national origin or to local diseases of animals and plants, and to products from other countries. But these measures, whether sanitary or phytosanitary may by their very nature constitute serious barriers to trade. It is well-known that pressure is often placed on national governments to be more demanding than strictly necessary to protect health, and to use sanitary and phytosanitary restrictions as a means of protecting their own producers or business community, who try to arm themselves against competition in this way. Under the SPS Agreement, the signatory States recognized that certain commercial restrictions are "necessary and appropriate" to ensure the safety of food products, and to protect the health and life of animals and plants.

A phytosanitary or sanitary restriction for which there are no sound reasons for the protection of health may be a major protectionist tool and because of its technical complexity may be a particularly deceptive barrier which is difficult to overcome.

2.3 Agreement on the application of sanitary and phytosanitary measures

As an integral part of the Final Act, the SPS Agreement sets out to prevent the use of unjustified measures for the purposes of protecting trade. The aim is to guarantee an appropriate level of protection, but also to prevent sovereign rights from being exercised unlawfully for protectionist purposes, thereby constituting an unnecessary barrier to international trade.

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[15] The Glossary of Phytosanitary Terms published as a Reference Standard in 1996 for the IPPC Secretariat defines a "phytosanitary" measure as follows: "any legislation, regulation or official procedure having the purpose to prevent the introduction and/or spread of quarantine pests".

2.3.1 Mandatory notions and concepts

These notions and concepts are generally the same as those used by the European

(a) **Greater transparency** - To this aim, the signatories shall make provision for the establishment of sanitary and phytosanitary measures based on the appropriate risk assessment and, on request, to make available the procedures pertaining to this assessment. Even though this principle had for a long time formed the basis of risk assessment in the area of food safety, the SPS Agreement enshrined the concept and encouraged recourse to a systematic assessment of the risks for all products. It made provision for the following measures:

- **compulsory notification**, such that States are required to notify the other signatories of any sanitary and phytosanitary measures they adopt which might impede free trade. Enquiry points also have to be established to answer requests for supplementary information;
- **submission to inspections**, so that the exporting State is able to examine the way in which the importer applies the regulations regarding the safety of food products, and the protection of animal and plant health.

The regular communication of information and the systematic exchange of data between different member States of the WTO thereby provides a better basis for setting national standards. This heightened transparency also protects the interests of consumers and trading partners from disguised protectionism created by unnecessary technical requirements.

While permitting the authorities to maintain an appropriate level of sanitary and phytosanitary protection, the SPS agreement reduces, in principle, the risk of arbitrary decision-making and encourages consistent decision-taking.

(b) **Necessary measures**. The SPS Agreement stipulates that the sanitary and phytosanitary measures must be necessary to ensure food safety, and protect the health and life of animals and plants. In particular, the following factors are to be taken into account when carrying out risk assessment:

- **the scientific basis of the measures** designed to guarantee food safety and to protect animal and plant life or health must be based on the analysis and the evaluation of objective and accurate scientific data. In many cases, and this also includes the developed countries, international standards are often less stringent than national ones. The SPS Agreement authorizes the authorities to decide not to apply these international standards if they wish. However, whenever a national standard is more restrictive of trade, the State applying it may be asked (i) to provide scientific justification for the measure, or (ii) demonstrate

that the relevant international standard is not adequate to attain an appropriate national level of sanitary and phytosanitary protection;

- **non-discrimination and respect for differences** arising from a proper understanding of the differences that exist as a result of climatic, animal health and plant health conditions and the situation regarding the safety of food products. It may not always be appropriate to impose the same sanitary or phytosanitary requirements on food products or products of animal or plant origin from different countries. So sanitary and phytosanitary measures may vary depending upon the country of origin of the food or animal or plant products under consideration. The SPS Agreement, however, forbids any unjustified discrimination in the use of sanitary or phytosanitary measures, either to favour national producers, or to discriminate among foreign suppliers.

(c) **Establishing an acceptable level of risk**. There are often different ways of establishing the acceptable level of risk.

In choosing among the different measures which guarantee the same level of food safety, or the life and health of animals and plants, the authorities must choose the ones which place the fewest restriction on trade, taking account of their technical and economic viability. The purpose is to guarantee an appropriate level of health protection while at the same time offering consumers the widest variety of safe food, supplying producers with inputs that are as safe as possible and ensuring healthy economic competition.

(d) **The concept of harmonization**. The SPS Agreement lists more specific and detailed rights and obligations regarding food safety, and the protection of the life and health of animals or plants which affect trade. The authorities may only impose measures which are really necessary to protect health and which are based on scientific principles. The authority in one particular country may challenge another authority's sanitary and phytosanitary measures, if they have evidence to show that the measure is not justified. The procedures and decisions used by one country for assessing the risks to food safety, and the health or life of animals and plants must be notified to the other countries upon request. The signatories undertake to be consistent when establishing what is a safe food product and when they respond to the concerns linked to the protection of the life or health of animals or plants. They are entitled to adopt more stringent measures, but they must respect certain harmonized precautionary principles:

- the authorities are **authorized to adopt more stringent standards**, and are free to establish the levels of food safety and animal and plant life and health protection for the country in question. The SPS Agreement expressly enables them to take measures of this kind provided that they are (i) scientifically justified, and (ii) necessary for sanitary or phytosanitary protection, but (iii) they must not constitute unjustified discrimination between foreign sources of supply. Even though States

have exclusive responsibility, the Agreement encourages the authorities to "harmonize" their decisions or to base national measures on the international recommendations, guidelines and standards already elaborated by the GATT signatories within organizations mandated to do this, or the Codex Alimentarius for food safety, the International Office of Epizootics for animal health, and the IPPC for the phytosanitary aspects. Even though a national standard may be more stringent than one adopted for the same matter by an international agency empowered to do so, it must nevertheless be scientifically justified and meet a specific proven need. If not, the application of a more stringent national standard would create a trade dispute, and the country adopting and applying it would be required to justify the basis for it. If the authorities do not base their measures/decisions on relevant international standards they may be required to provide technical justification for their more stringent national measures. The burden of proof of the scientific, necessary and proportional character of the measure being challenged lies with them. As far as food safety standards are concerned, national measures must be drawn up to the standards prescribed by the Codex Alimentarius. They are not the lowest common denominator, but have been drafted with input from distinguished scientists and national food safety experts. These same experts are responsible for drafting the corresponding national standards. It should be emphasized that in many cases the standards drawn up by Codex Alimentarius are more stringent than those applied in the developed countries;

- the **precautionary principle** applies to the responsibilities inherent in State sovereignty. Three types of precautionary measures are provided by the Agreement: (i) the risk assessment procedure and the establishment of acceptable levels of risk (which presupposes the regular use of safety margins to ensure that the necessary precautions are taken to protect health); (ii) since each State decides its own acceptable level of risk, it may be in response to complementary social and cultural concerns in addition to the usual precautions; (iii) precautionary measures taken when the authorities consider that there is no adequate scientific evidence to enable a final decision to be taken on the safety of a product or process. This also makes it possible to deal with emergencies.

The precautionary principle makes it possible to **recognize institutional differences**. The GATT recognizes that sanitary and phytosanitary regulations do not necessarily have to be laid down at the highest level of government and they need not be identical in one and the same country. Where the regulations developed by local public institutions affect international trade, they must meet the same requirements and conditions as if they had been developed by central government authorities.

With regard to the protection of health, this is the essential basis for any measures restricting international trade. The SPS Agreement authorizes the signatories to give priority to food safety, and to the protection of the life and health of plants and animals at the expense of trade, provided that their measures are based on scientific data that can be justified. If every country is free to establish the safety levels for food and for the protection of the life or of health of animals and plants that it deems appropriate, this cannot be done unless it is based upon a thorough assessment of the risks involved.

The SPS Agreement is therefore designed to set clearcut limits within which the signatory States may adopt sanitary or phytosanitary measures which have a direct or indirect influence on international trade.

2.3.2 Settlement of disputes

Decisions taken by the authorities may give rise to disputes. In the past, an arbitration system was used under the aegis of the GATT. The procedures used to be the following: (i) the country in question would file a complaint with the GATT Council, (ii) the Council would then appoint a panel of international experts to examine the case and issue simple recommendations to satisfy the complainants. Since the rule was unanimity, the defendant country was completely free to reject the recommendations and even when it undertook to implement them, there was nothing to force it actually to do so.

The establishment of the WTO was accompanied by the establishment of the Dispute Settlement Body (DSB) as a quasi-judicial and binding mechanism. The signatories are now obliged to submit to the decision of the panels and to the decisions of the DSB whose decisions now have the force of law. Any country judged to have acted unfairly is obliged to amend its legislation, to avoid severe trade sanctions by the complainant State, which could be in a different area to the one forming the subject matter of the dispute (cross sanctions).

The effectiveness of the WTO as judge/arbitrator has still to be demonstrated. Since agriculture has always been an important area of discord, particularly between the United States and the European Union, the mechanisms for dispute settlement will certainly be severely tested.

2.3.3 The contents and implementation of the SPS Agreement

(a) **Criteria for authorizing sanitary and phytosanitary measures.** In order to be lawful under the Agreement, any sanitary and phytosanitary measure must:

- be compliant with the **criterion of necessity** (article 2.1 *"Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health"*; article 2.2 *"Members shall ensure that any sanitary of phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health")*;

- *be **scientifically justified*** (article 2.2 *"Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of article 5"*; article 5.2 *"In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment")*;
- comply with the **criterion of non-discrimination** against Member States whose conditions are identical (article 5.5 *"With the objective of achieving consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life of health, each Member shall avoid **arbitrary or unjustifiable distinctions** in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade")*;
- be based on **international standards, guidelines or recommendations**, where these exist[16] (article 5.8 *"when a Member has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another Member is constraining, or has the potential to constrain, its exports and the measure is not based on the relevant guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the Member maintaining the measure".)*

(b) **The application of the SPS Agreement**. It has been mentioned elsewhere that the main purpose of the SPS Agreement is to harmonize sanitary and phytosanitary measures of different Member States by reference to the international standards. It should be noted that this is a new notion in the

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[16] The international standards to which reference is made here come mainly (even though this is not a complete list) from the Codex Alimentarius Commission, the International Office of Epizootics, and international and regional organizations operating within the framework of the IPPC. In this regard, Annex A, paragraph 3 provides that: "a) for food safety, the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice; b) for animal health and zoonoses the standards, guidelines and recommendations developed under the auspices of the International Office of Epizootics; c) for plant health, the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with regional organizations operating within the framework of the International Plant Protection Convention; and d) for matters not covered by the above organizations, appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to all Members, as identified by the Committee."

operation of the GATT which was previously more oriented towards facilitating international trade by settling disputes than to establishing a policy for harmonizing national standards. Without harmonization, the principle of the mutual recognition of standards must be applied. This presupposes equivalent levels of protection: the procedure for recognizing the sanitary and phytosanitary measures operates (i) by seeking equivalence between the desired levels of protection; the burden of proof naturally lies with the exporting State which must demonstrate, under article 4 that *"its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection"*; (ii) by establishing the appropriate level of protection; the proof of equivalence must be based on a risk appraisal procedure, *"taking into account risk assessment techniques developed by the relevant international organizations"* (art. 5.1).

2.3.4 Committee on sanitary and phytosanitary measures and the Codex Alimentarius

Article 12 of the SPS Agreement institutes the Committee on Sanitary and Phytosanitary Measures which has, amongst its functions, that of encouraging the harmonization of sanitary and phytosanitary measures and the use of international standards (including the Codex Alimentarius). It has a consultative role and operates on the basis of consensus. Article 12 (3) stipulates that it *"shall maintain close contact with the relevant international organizations, especially with the Codex Alimentarius Commission, with the objective of securing the best available scientific and technical advice"*. Nevertheless, relations between this Committee and the Codex Alimentarius Commission have not yet been defined. Paragraph 4 of this article suggests that it will indirectly influence or even direct the future work of the CAS: "*The Committee shall develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations"*. The Committee draws up, jointly with the international organizations (including the Codex Alimentarius Commission) a list of standards relevant to sanitary and phytosanitary measures which have a *"major trade impact"*[17]. It should be noted that it would be the Committee itself that decides whether there is a *"major trade impact"*, and not the international standards organization.

Furthermore, article 12(6) provides that *"The Committee may, on the basis of an initiative from one of the Members, through appropriate channels invite the relevant international organizations or their subsidiary bodies to examine specific matters with respect to a particular standard, guideline or recommendation, including the basis of explanations for non-use"* [of an international standard, guideline or recommendation as an import conditions]".

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[17] "Major trade impact" means a considerable economic influence on international trade resulting from a sanitary or phytosanitary measure. The fact that the Committee takes part in classifying measures that might impact on trade means that it may well have a final decision-making power, whereas the Codex can only advocate an opinion. There are many examples of prohibitions affecting the production, sale or import of products based on scientific evidence that these products pose an unacceptable risk to human, animal or plant life and health. The Agreement does not prevent a country from banning products under those conditions.

The **Codex Alimentarius Commission**, as a standards-setting organization, was instituted in 1962 jointly by FAO and the World Health Organization. Today its objectives and organization overlap with the SPS Agreement. For hitherto its purpose consisted of laying down worldwide standards for food products (processed, semi-processed or raw) to be supplied to the end consumer. It was also responsible for dealing with all food

related problems, including labelling. In addition to setting standards, the Codex Alimentarius also set out to draw up codes of good practice or guidelines, such as those laid down governing hygiene. The aim, which is still as relevant as ever, was both to protect consumer health and ensure fair commercial practices.

To do this, the Commission has vertical, horizontal and geographical committees. For a long time priority was given to vertical standards for specific products because of the commercial issues raised by the international standardization of commodities. For example, treated fruits and vegetables or preserved fruits and vegetables were subject to 37 Codex standards, while fats and oils were subject to 23 standards. Several hundred standards were published at the end of what has sometimes been heated debate because they went into the smallest details of the composition and the characteristics of the commodities concerned. It then became necessary to complete this work with horizontal standards regarding additives, contaminants, hygiene, analysis and sampling, and more recently by a study of control and certification methods.

The complexity of the system, coupled by a certain delay in the systems for drafting the standards, carrying out consultations and adopting the standards, justified the drafting and publication of a Procedural Manual, which has now reached its eighth edition. The work of the Codex Alimentarius Commission has produced an impressive volume of standards that no individual country could have developed on its own. And they are obviously extremely useful, particularly for developing countries and for business, which are always able to refer to a clear-cut text in the course of national and international trade.

Following the conclusion of the Uruguay Round of multilateral trade negotiations in 1994, the Codex Alimentarius Commission set about responding to the needs that had been expressed regarding health issues in relation to additives, residues, contaminants, analysis and sampling methods and food hygiene, as well as risk assessment, control and certification. The current texts and procedures will therefore have to be revised. This implies that the collection of all the scientific data regarding health must be reinforced, that experts must be given greater authority, that the problems of public and private control must be studied in greater depth, and the developing countries must be given greater assistance in dealing with these issues. The Codex General Standards Committee also recommended that a new committee should be set up with responsibility for examining issues regarding exports and imports.

If the recommendations and developments mentioned above become reality, one can expect a substantial change to take place in the behaviour of the business community. Detailed vertical standards will be replaced by private commercial contracts describing the foodstuffs without a mandatory reference to the standards, even though it is understood that everything relating to health, labelling, and controls must be in strict compliance with the Codex Alimentarius standards or recommendations.

Furthermore, the tendency towards economic deregulation as a result of the generalized adoption of the principles of free trade has not prevented the use of food standards to introduce a minimum of safety in the food trade. This security is to the benefit of the business community, who need a common benchmark to prevent anarchy, arbitrariness and trade disputes, but it is also essential to protect and guarantee the physical integrity of the consumer who may be harmed by food whose processing is not based upon safety standards, or by the fact that contaminated food or food past its expiry date is placed on the market.

The use of standards must be based essentially on general criteria that relate to hygiene, conformity and controls. Horizontal norms are particularly useful in this regard, and should lead to mandatory procedures and establish liability. In the decades to come these are issues which must not be placed in doubt.

The fact that the parties to the Agreement will have to ensure that their sanitary and phytosanitary measures are based on international standards, particularly the "Codex standards", will not be without implications for the direction of future work and the operation of the international organizations which produce them.

2.3.5 The locomotive role of the SPS Committee on the Codex Alimentarius

(a) **The impact on the status of the "Codex Alimentarius Standards"**. Article 3(1) of the Agreement stipulates that: *"members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement"*and in art. 3(2) *"international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health*". The fact that "shall" is used indicates that it is compulsory to use standards as benchmarks when laying down sanitary and phytosanitary measures governing and the import and export of food, whereas acceptance by the Member States was previously optional and voluntary.

The necessarily "sufficient" character of the sanitary and phytosanitary provisions set out in the international standards stems from art. 5(8) which provides that *"when a Member has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another Member is constraining, or has the potential to constrain, its exports, and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the Member maintaining the measure".*

Article 3(3) confirms the necessary scientific justification for all measures which go further than the "Codex standards". It states that *"Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by*

measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification [... "].

The only way for a State to be able to issue sanitary and phytosanitary measures providing a level of protection which is superior to that set out in the "Codex standards" is therefore to provide justification for their scientific basis, and these measures must be based upon a risk assessment.

The freedom to choose the level of protection desired will therefore be conditioned by the GATT Sanitary and Phytosanitary Committee's judgement of the scientific basis for the standards.

However, Europe's experience suggests that there is very little likelihood of a level of protection superior to that of the "Codex standards". Because whereas article 36 of the Treaty of Rome and the imperative demands established by the European Court of Justice (ECJ) state that the public health protection waiver is a derogation to the obligation for the free movement of food, it must be recognized that the case law of the ECJ only very rarely upholds such an exception.[18]

(b) **Implications for the operation of the Codex Alimentarius**. The changes which the SPS Agreement makes to the status of standards raise the issue of the future role of current procedures for accepting the "Codex standards", and particularly whether the standards that deal with sanitary and phytosanitary measures are likely to become compulsory, necessary and sufficient. What will be the residual meaning of accepting a standard whose provisions will be *de facto* compulsory? For it seems that we are moving in the direction of dividing the "Codex standards" into two categories:

- **standards which include sanitary and phytosanitary provisions** to which the SPS Agreement signatories will have to refer, whether or not they have accepted them in advance. Conversely, acceptance will

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18 The desire to issue stringent Community standards governing hygiene has often come up against opposition from the agrifood industry, which is the largest industrial sector within the European Community. Public health seemed initially to be a policy area in which the Community authorities were not supposed to intervene. While the European Court of Justice frequently recalls the legitimacy of restrictive measures based upon the protection of public health, it also establishes, as a rider, particularly stringent limitations which remove any opportunity from Member States to evaluate the dangerous nature of a commodity. Furthermore, any product regularly marketed in another Member State is considered a priori as being in conformity with the "imperative requirements of public health" recognized by case law. The European Court of Justice has therefore reversed the burden of proof regarding the harmful or the harmless character of a product placing the onus on the importing State. If the Member States are each responsible for looking after the health of their own consumers, any product which is duly produced is deemed to be safe, except if the importing country's administration is able to prove that it is dangerous: "it is the responsibility of the national authorities in each case to show that their regulation is necessary to effectively protect the interests referred to in article 36 of the Treaty, and particularly that the marketing of the product in question constitutes a serious threat to public health" (ECJ, 30 November 1983, Case No. 227/82, "Van Bennekom", Rec. Phytosanitaires, 3883)

certainly be relevant in the case of the other provisions of the standard without reference to the sanitary or phytosanitary field;

- **standards which have no relation to the sanitary and phytosanitary domain**, for which the present procedures will remain fully effective: States will be free to chose to accept them or not.

Another issue still remains pending: article 3(2) provides that the sanitary and phytosanitary measures included in international standards are deemed to be necessary for the protection of the life and health of persons, animals or plants, whereas article 5(8) implies that they are sufficient. What margin of manoeuvre does the SPS agreement leave the Codex Alimentanus Commission to appraise the substance of the standards in this respect?

In what other "Codex standard" measures can there be detailed provisions ranging beyond the mere criterion of necessity? Must the Codex Alimentanus be restricted to adopting minimum standards when they include sanitary and phytosanitary considerations?

The SPS Agreement places strong emphasis on the paramount nature of the scientific basis of the sanitary and phytosanitary provisions of these standards. It seems to be intended to limit the extent to which other criteria can be taken into account in management procedures. The obligation to refer to an internationally recognized risk assessment method led to a discussion on the Codex Alimentarius Commission, which was published in the document ALINORM 93/37, regarding the risk assessment procedures used by the Codex Alimentarius Commission and its subsidiary organs. This report compared the different methods currently used by the competent Codex Committees (the Codex Committee on additives and contaminants, the Codex Committee on pesticide residues, the Codex Committee on residues of veterinary drugs in foods) and other entities, and emphasized the inconsistencies between the different methods currently used.

It placed particular emphasis on the risk management elements incorporated into the risk assessment methods at different levels depending upon the entity concerned, and advocated a more effective separation between risk assessment and risk management.

Furthermore, the fact that the Agreement explicitly provides that the GATT Committee on Sanitary and Phytosanitary Measures must study risk assessment methods, approval procedures for food additives or levels of tolerance with regard to contaminants, suggests that the horizontal committees mentioned earlier will shortly have their powers enhanced.

The combination of these two elements - the mandatory nature of certain provisions of the "Codex standards" and the necessary restriction of the content of these' standards - should logically lead the Codex Alimentarius to set about a

revision of existing standards because they have been adopted on different bases.

This desire to simplify the present standards and to restrict the content of its future work merely to scientific data had emerged already in the medium term plan for the Codex Commission from 1993 to 1998 (ALINORM 93/98.), which envisaged, *inter alia*, a simplification of the norms for existing commodities and their rationalization.

The importance of this review should not be underestimated, because the present "Codex standards" had been adopted on the basis of a consensus due to the fact that the fact they did not need to be taken up subsequently at the national level. Since the standards were optional, governments were fairly open-minded during the course of the negotiations. But if the norms are going to contain *"necessary and sufficient sanitary and phytosanitary measures"*, anything that goes further than what is properly justifiable, as would seem to be the case according to articles 3(3) and 5(8), requires very careful vigilance of the part of Member States when revising the standards.

The drafting of the list of standards relating to sanitary and phytosanitary measures by the Codex Committee *"in conjunction with the relevant international organizations"*, as stipulated in article 12(4), must also be very carefully approached.

The fact that agricultural products had been excluded from the application of the GATT until 1994 has seriously conditioned relations, which have at times become quite belligerent - people have even spoken of "economic warfare" -between the United States and the European Union for a considerable length of time. It is true that, at that time, the rules governing quarantine systems were able to be evaded to exert economic pressure, leading both to material losses (foodstuffs decaying and determinating in various ways) and financial losses (loss of earnings). It therefore became urgently necessary to put these principles in place and to sign an agreement on agricultural products. But it was equally urgent to ensure that the rules governing plant quarantine systems were revised.

While the GATT was essentially designed to regulate commercial disputes, the WTO or GATT 94 have opted for the harmonization solution with reference to international standards. One might therefore say that whereas the Codex Alimentarius sets the standards - whether they are vertical or almost certainly, as we have been able to predict, horizontal in the future - the WTO Committee will still play a major part in laying down standards because it reserves the right to judge their relevance and their possible negative impact on free trade.

One must therefore ask whether the scientific aspect of these standards is submitted to the "dominant commercial ideology" of the WTO, which would place public health considerations on a secondary level.

While harmonization is one way of centralizing scientific and technical information at the international level, it also gives the WTO the role of an "international executing agency", while the Codex Alimentarius would have the powers of a "legislative organ" over food and agricultural matters.

However, very few States are ready to entrust the settlement of their trade disputes to this Organization, for the procedures that have been designed for this purpose create the impression that their sovereignty is being set aside. In this regard, one must not forget the existing disparities, which are continuing to grow, between the "post-industrial" economies and the economies of countries where 50 per cent of the land is still being tilled with rudimentary equipment.

(c) **The criterion of necessary measures**. Under article 2(1) and (2) of the SPS Agreement, *"Members have the right to take **sanitary and phytosanitary measures** necessary for the protection of human, animal or plant life or health"* and *"Members shall ensure that any sanitary and phytosanitary measures applied only **to the extent necessary** to protect human, animal or plant life or health"*.

From this language one may assume that only measures to protect public health people, animals and plants can create a necessity. Using the normal definitions, a "measure" is "a plan or course of action intended to attain some object"[19] and the term "necessary" is something "that cannot be done without".[20] A necessary measure which justifies impeding trade would therefore be "a course of action intended primarily to protect public health"

In some cases, the State can safeguard one interest by sacrificing another, if it judges the latter to be of lesser importance than the interest it is protecting. The need for a superior interest to be preserved can therefore result in harming an interest deemed to be inferior or sectoral. By applying this theory to a sanitary and phytosanitary measure - particularly to the quarantine system because the measures placing restrictions on trade are at all events prohibited - a State could decide to implement a measure restraining trade because it judges that to be of lesser importance than public health, for which it is responsible.

The experience of the European Community has shown that the ECJ only rarely accepts the public health argument to justify impediments to trade, because freedom is the rule, and a necessary measure is the exception. At all events, any measure adopted out of necessity must also be based upon relevant scientific principles, which raises yet another difficulty.

(d) **Scientific neutrality**. This underlies the whole issue of industrial risk. Science is the administrative operational benchmark, and lies at the basis of any decision.

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19 Oxford English Dictionary, Second Edition, 1989.

20 Ibid.

When the decision is implemented, the counter-example of the precautionary principle may be used in the field of health to deal with the "mad cow" issue, or to give it its scientific name *bovine spongiform encephalopathy*, which shook the European Union in 1996. Even though all the scientific and economic developments of this matter are still unknown, it is obvious that the consumers have gone even further than the health regulations, because they felt that the measures that had been drawn up might not be respected and that the controls instituted had not been effective. To this day, no-one can measure the full extent of this animal disease or its consequences in terms of human health. The only certain harm that this whole affair has caused has been its very serious political and economic repercussions.

The recent emergence of the "precautionary principle" may be summarized in the following manner: *"it may be justified (the weak interpretation) or it is mandatory (the strong interpretation) to limit, restrain or prevent certain potentially hazardous actions without waiting for the hazard or danger to be scientifically established beyond doubt"*.[21] This precautionary principle is at loggerheads with the principles laid down both by the European Union and by the WTO. Instead of requiring evidence that a product is harmful in order to prevent it from being marketed, it reverses the situation and requires the producers to demonstrate that it is safe. This reversal of the burden of proof means that the doubt relates to the consumer, not to the producer.

The difficulty of reconciling two rationales, the rationale of scientists that are often prudent before making any final propositions, and the rationale of politicians and the business community who want accurate data before taking decisions, is now one of the main issues regarding quarantine systems, for both human and animal health and plant health.

(e) **The credibility of the health concerns of a sovereign State** - The reason why the United States reacted so angrily to the stance of the European Parliament regarding hormone-use in livestock farming was that using a scientific argument that the United States deemed unacceptable, the Parliament's position was in fact designed to lift the beef boycott by European consumers following the "mad cow" scare. The rehabilitation of European beef and the role of the Nation State in protecting public health were thereby affirmed, because by refusing to import beef from the United States consumers were protected from a risk, even though the American experts provided assurances that these hormones were harmless *"if they are properly administered according to the prescribed instructions"*. With regard to hormones, phytosanitary products or additives, the DAD (daily admissible dose) creates a certain amount of misunderstanding among those primarily concerned, namely, the consumers. Does it mean that every product might eventually constitute a hazard to human health?

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21 See Godard, O., Le principe de précaution dans la conduite des affaires humaines, Éd. De la Maison des Sciences de l'Homme/Institut National de la Recherche agronomique, Paris, 1997.

A second example comes from the fruit and vegetables market: specked fruit cannot be sold on the home market or exported. Fruit farmers are therefore obliged to treat their products, even though the law forbids it. In other words, they are not supposed to use any pesticide treatment during the 15 days preceding harvesting. Who is therefore responsible? The farmer, who cannot comply with a regulation in order to be able to carry on his trade, or the rule governing the movement and sale and commodities?

2.3.6 The agreement on barriers to trade

During the previous round of GATT negotiations, an agreement on the technical barriers to trade was negotiated. [22]

Even though this agreement was not concluded solely to regulate sanitary and phytosanitary measures, it contains technical provisions based on food safety measures, the protection of animal and plant health and life, including the tolerances for pesticide residues, and rules for inspection and labelling.

The signatories agreed to use the relevant international standards (for example standards on food safety drafted by the Codex Alimentarius) save where they considered that they were not adequate to effectively protect health.

They were also obliged to notify their partners through the Secretariat of all technical regulations that were not based on international standards.

This agreement contained provisions regarding the settlement of disputes resulting from restrictions imposed in relation to food safety and other technical restrictions.

Conclusions

On 9-13 December 1996 Singapore hosted the the first ministerial conference of the WTO as the successor from 1 January 1995 of the General Agreement on Tariffs and Trade. The terms of reference of the WTO make free trade the basis of all trading relations. In the event of any conflict between environmental regulations and lawful trade, *"one must be prudent and discover whether it is a trade policy or the environmental policy that needs to be adjusted"*.The same applies to compliance with the minimum set of social rules in the exporting countries as a precondition for this lawful trade: *"this is a highly controversial issue and, in the absence of a consensus, it cannot form part of the WTO programme"*[23]

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[22] The 1979 Agreement on the technical barriers to trade was negotiated in the Tokyo Round (1974-1979). It came into force on 1 January 1980.

[23] See Ruggiero R., Director-General of the WTO, Focus, No. 6 October-November, Geneva.

Part Two
Harmonization and Functional Applications

In every age, man has suffered from the devastating consequences of pests that have affected crops. The authorities' usual response has been to draft and adopt specific legislation to guarantee a satisfactory level of plant health for crops. However, for the texts to be really useful in all their highly scientific detail, they have to set up an organization or agency responsible for protecting plants, delegating powers, and overseeing the plant health measures, involving preventive action, treatments against harmful organisms, and the control of production, transport and marketing.

Even though in many other sectors deregulation is the main trend today, in the field of plant protection every country has decided to establish (maintain or complete) stringent rules to control plant imports. This is one area in which economic interests are particularly powerful. Protection measures can also have negative or positive effects, and they can become serious obstacles to international trade.

The legislation meets a variety of different needs. [24] First of all it provides a guarantee that pest- and disease-related issues are dealt with at the appropriate level, whether that is local, regional or international. Assurance is given that efforts to guarantee the effective production and distribution of plant products, and their safety and quality are coordinated. [25]

But when drafting legislative or regulatory provisions governing plant protection reference must constantly be made to numerous technical elements. The legislator therefore gives statutory force to scientific principles determined by experts on the subject. This is generally done by statutory delegation. Phytosanitary legislation has to deal with changing social and economic situations, and must provide an effective response to them.

Through harmonization, international trade authorities assisted by such bodies as the Codex Alimentarius, are required to provide a minimum level of security in every country while avoiding what are known as "unnecessary" impediments to trade (Chapter I). Some countries or groups of countries have tried to arbitrate between two concepts that are *a priori* mutually antagonistic, freedom and safety/security, against the background of global trade (Chapter II).

Chapter I - Harmonizing the plant quarantine system

The IPPC, as adopted in 1951, did not lay down guidelines for harmonizing the rules and procedures for setting up a process to deal with phytosanitary hazards.

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[24] 24See Bombin, L., Plant Protection Legislation, Legislative Study 28, FAO, Rome 1984.

[25] See Gonzalez-Vaqué, L.M. Pesticide Labelling Legislation, Legislative Study 43, FAO, Rome 1988; Barberis, G. and Chiaradia-Bousquet, J-P., Legislative Study 51, Rome 1995; Chiaradia-Bousquet, J.P., Legislation governing Food Control and Quality Certification - Authorities and Producers, Legislative Study 54, Rome 1995.

The GATT's efforts to dismantle trade barriers, particularly in agriculture, made it necessary to re-examine the principles of quarantine, the methods used for risk assessment and general quarantine procedures, in order to harmonize them wherever possible. These principles may be divided into two groups: those dealing with trade and quarantine, and those dealing with risk assessment methods.

Generally speaking, quarantine systems are of three kinds: (i) eradicating harmful organisms, (ii) listing these organisms, (iii) preventing entry of new harmful organisms which are not yet present in a particular territory. This latter point relates directly to the phytosanitary conditions of imported plant products, which leads to the introduction of border controls for people and commodities.

It was to prevent such actions, which may not be justifiable in terms of health, from becoming a direct impediment to trade that the SPS Agreement was adopted. It is based on the need to harmonize the principles governing quarantine. On this point, it should be recalled that since 1989, and in the framework of the application of the IPPC, FAO has been working on a list of principles for application to this whole area.

1.1 The organization of quarantine principles

The principles must define a concept or describe a situation in such a way that they can be easily assimilated by technical officials. The harmonization of these principles is designed to facilitate their work.

In the course of the work carried out by FAO, there was unanimous agreement on the importance of the following:

(i) the establishment and reasonable use of phytosanitary measures,

(ii) international cooperation for the application of these measures, and

(iii) their implementation in every country.

The first point describes the purposes of phytosanitary measures, and the limits on their use.

The second explains the thinking underlying them by requiring any phytosanitary measure to be adopted in a way that reduces impediments to trade to the minimum.

The final point describes the principles of the procedures used (rules for elaboration, notification, negotiation and dispute settlement; the implementation of rules and certification, dealing with diseases and conformance procedures).

The list of principles has been published in summary form to show more clearly how they are inter-related in order to cover the three areas mentioned above.

There are a number of other elements in addition to these "published" or "official" principles. In particular,(i) each country has the right to lay down measures in the exercise of its sovereignty, (ii) any controls must be designed solely to prevent the spread of disease, and (iii) the measures must be applied without any form of discrimination, taking full account of particular situations, and especially those of developing countries.

One may therefore summarize these principles as follows:

- sovereignty, which justifies regulating entry, in order to prevent the introduction of plant and plant product pests and diseases;
- the minimum use of rules which might constitute disguised impediments to trade;
- account to be taken of regional or global effects and their consequences on the developing economies;
- harmonization, which requires the phytosanitary measures adopted nationally or at the regional level to be consistent with international guidelines;
- transparency, in order to ensure that phytosanitary conditions are properly understood, which involves providing access to information on the legislation and situation in other countries;
- equivalence, such that while measures need not be identical, they must produce the same result;
- risk management, meaning that the contracting parties must use methods based upon scientific evidence;
- pest tolerance, in that wherever possible the parties are obliged to take account of this technical phenomenon before taking decisions;
- the need for measures to be able to revised, because when a new or unexpected hazard arises, the parties must be able to take all the necessary measures based on the new risk assessments;
- national treatment, whereby the contracting parties must ensure that the phytosanitary measures they impose do not result in more stringent measures being applied to imports than those imposed on their own products;
- notification, which obliges the contracting parties to make information available to their commercial partners, at their request, on their phytosanitary measures, including specific details regarding the entry of plants or all plant products, the origins of these specifications, the conformity controls used, and the measures applied in the event of non-conformance;

- institutional dispute settlement, for if bilateral negotiations fail to settle the dispute the contracting parties must be able to resort to the multilateral procedures instituted for this

1.2 Material consequences

The contracting parties adopt their own export certification systems in compliance with the relevant international standards. As far as sanitary and phytosanitary measures are concerned, the contracting parties are also committed to complying with the application of the treatments and to using the models that have been elaborated in international fora.

In order to facilitate a prior acquisition of information and ensure rapid action, the contracting parties must declare that the whole of their territory, or part of it, is exempt from certain pests, and demonstrate this through stringent phytosanitary controls (these pest-free zones may also include territories of several other countries); the other contracting parties may also request the characteristics of these zones to be checked.

1.3 Principles and trade blocs

One of the new facts that have emerged relating to the world trade in agricultural products is the establishment and expansion of "regional trade blocs". Intense negotiations are currently taking place or have recently been concluded, on several regional trade agreements. The best-known example is perhaps the European Single Market that came into being in January 1993; but there was also the protocol concluded between the European Union and the European Free Trade Agreement (EFTA) setting up the European Economic Area, and the implementation in 1994 of the Free Trade Agreement between Canada, the United States and Mexico.

Although these blocs do not necessarily signify a step backwards from free trade, because they generally involve trading arrangements that are open to non-members (and to other blocs), it may still be difficult to stand up to the effects brought about by the adoption of rules that establish a degree of discrimination against foreign competitors.

Chapter II - Functional applications

2.1 The United States

2.1.1 Control systems in the United States

The principles of cooperation and transparency as recognized in the SPS Agreement were taken into account in the United States even before their recent "official" institution. For although the first legal plant protection instruments were the 1905 Act on the control and

inspection of diseases[26] and the plant quarantine Act 1912[27], the United States had been involved in cooperation as early as 1887.

(a) The establishment of institutions - The 1905 Act permitted the authorities to regulate the entry and movement of merchandise between the United States and its trading partners to prevent the possible introduction of pests that might affect the harvests and plants in general. It was under the 1912 Act that the Federal Horticultural Bureau was set up[28] with responsibility for implementing quarantine rules and controlling the movements of plants and other commodities in order to prevent the introduction of pests and diseases.

(b) International cooperation - The principle of international cooperation was established in 1887 when the Department of State sent an entomologist to Australia to study cotton bales infested by a parasite introduced into the country 20 years earlier. It should be noted that in order to replace the use of insecticides, it was decided to use a particular species of beetle to eliminate this pest. In view of its success, the experience was repeated in South Africa in 1892 and later still in Egypt, New Zealand and many other countries.

It was in June 1913 that the first measures were introduced to combat cotton diseases, with the promulgation of quarantine measures[29] against the import of cotton seeds and cotton flowers from Mexico, in order to prevent the propagation of *Pectinophora Gossypiela*, a typical cotton pest. But the results were poor. After the propagation of this insect in Texas, a border agreement was signed with Mexico on 6 October 1917.[30] It provided funding to eradicate the Pink Bollworm in Mexico. Other agreements were concluded in 1936 and 1942.

United States-Mexican cooperation was established through cooperation programmes to set up pest- and disease-free zones on the southern sides of their common border. The adoption of this legislative instrument was accompanied by an increase in quarantine controls along the whole of the border separating the two countries.

The United States very quickly extended its activities towards Europe. Initiatives were launched in 1951 to encourage (i) technical assistance for locust control in Iran, and (ii) residential plant quarantine training in the United States courses for inspectors from other countries. Preventive inspections of Dutch flower bulbs were also conducted.

Even though the United States only ratified the IPPC in 1972, in 1965 it had set up a regional plant protection organization under article VII of that Convention, and applied for membership of the Commission for the Protection of Plants in the Caribbean Zone in 1967.

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26 33 Stat. 1269; 7USC 141-144.

27 37 Stat. 315; 7 USC 151-165, 167.

28 By special order of the Secretary for Agriculture on 21 August 1912. The office was wound up in July 1928 after which the agency responsible for plant control and quarantine was created to centralize and regulate activities regarding insects and plants.

29 Title 7, Code of Federal Regulations, part 319, sub-part 8, (CFR part 319.8).

30 40 Stat. 674.

The North American Plant Protection Organization (NAPO) was instituted in 1976 by Canada, the United States and Mexico. Its main objective was to develop minimum standards for inspection procedures for North America, such as those used for imported products, export certificates and others.

Over the past few years, the United States' policy has been to eradicate diseases by tightening up quarantine measures outside its borders rather than depending solely on intercepting products at ports of entry. The other aim is to detect any harmful organisms as quickly as possible to be able to combat them and take the necessary steps to eradicate them before they spread. Instead of protection there is therefore a move in the direction of prevention.

NAPO and its permanent risk management panel have put in place a general process for risk analysis and management linked to plant diseases. This process is sufficiently flexible to be tailored to suit particular cases. It therefore applies to a wide range of situations, from inspections producing evidence of a rare disease at a port of entry requiring a decision to be taken in less than 24 hours, to the use by biologists of powerful computers operating for several months to assess risks.

A PRA (Pest Risk Assessment) can also be implemented upon request in order to examine any diseases associated with the movement of a particular commodity or on demand in order to examine a risk occasioned by several products likely to propagate particular diseases.

2.1.2 Disputes with the European Union

The issue which has attracted the greatest attention from United States industry (although not specifically to do with plants) was certainly the decision of the European Union to ban beef from animals treated with growth hormones. This is extremely significant. The ban infringed the standards laid down by the Codex Alimentarius and caused loss and damage to the United States beef industry worth around 90 million dollars. The case has been placed before the WTO Dispute Settlements Committee.

2.1.3 Disputes with other developed countries

Under the WTO procedures for settling disputes the United States has begun negotiations with Australia regarding its decision to ban imports of untreated salmon, whether fresh, chilled or frozen. Australia adopted this measure because it was afraid that the salmon diseases that had emerged in the United States and Canada might, if they entered Australia, have a devastating effect on the salmon in southern waters.

In the matter of plant health, the apples issue has caused quite a stir. The standards and conditions imposed by Korea for inspections, and Japan's procedure for certifying apples do not specifically ban the entry of apples into their countries, but their effect is to discourage imports, to the point of considerably restricting them, because these statutory, sanitary and hygiene measures have proven to be particularly burdensome. In the case of apple exports to

Japan, the phytosanitary criteria are so stringent that many United States producers cannot meet the conditions required for certification. Japan requires apples to be subjected to chilling treatment for a period that can last up to 90 days, followed by methyl bromide fumigation to prevent the propagation of the Carposcapse, a small moth whose caterpillar is particularly harmful to apples. It also requires apple trees to be planted at least 180 metres away from American white walnut trees in order to prevent the fruit trees from being contaminated by rust, which is caused by a fungus found on walnut trees.

The Japanese inspectors, paid by United States orchard proprietors, inspect the fruit trees three times a year, initially at the flowering period and then at the end of the flowering period, and lastly at the beginning of the fruiting period, to ensure that the apple trees have not contracted the disease. The costs are enormous.

The United States is therefore coming up against sanitary and phytosanitary difficulties in virtually every area of high value horticulture, packaged fruits or vegetables alike. China, for example, places restrictions on the imports of Florida grapefruit, grapes and cherries; Australia has drastic regulations against grapes and citrus fruits, while Mexico refuses to allow the imports of grapes and stoned fruits.

The largest sanitary and phytosanitary disputes facing the United States today probably relate to a whole range of practices introduced by Korea. Korea, as the United States' third largest world fruit customer, demands the fumigation of all fruits, the warming of all chilled fruits before the inspection tests are carried out (which often spoils the products) and insists that all crates of fruits and vegetables should be opened for inspection and all spoiled products eliminated, and that all deliveries should be systematically inspected not on a random sample basis, or when there are "doubtful" products. The United States maintains that the standards laid down by Korea have no scientific basis.

On average it takes between 2 and 3 weeks, and even up to 3 months for all the formalities to be completed before a crate of imported fruit can be admitted to Korea's markets, whereas it only takes between 2 or 3 days for this to be done on other Asian markets, according to the United States trade officials.

There is no doubt whatsoever that this dispute will be submitted to WTO experts.

2.1.4 The developing regions

Other countries are also challenging American exports. El Salvador, for example, is restricting imports of rice, and Egypt and Saudi Arabia are said to have issued certain mandatory rules regarding the period of pre-sale conservation. United States producers have refused to fumigate cherries to meet the demand of the Mexican importers, since the insects for which this treatment is designed are widespread in Mexico, and also because the forbidden species do not infest cherries. In the latter case, the United States does not consider that fumigating cherries meets a legitimate need.

Asia and China, according to the American food industry, more than any other region, impose sanitary and phytosanitary measures which impede trade. In 1992, China nevertheless

decided not to use barriers of this kind, even though various other barriers have been raised against the imports of citrus fruits, apples, nut fruits, table grapes and various other products coming from the United States.

If China accedes to the SPS Agreement, it will have to change these attitudes.

2.1.5 The question of Durum wheat

Another sensitive issue relates to bunt, a fungus affecting the quality of wheat without making it inedible. It was discovered a short time ago in Durum wheat grown in Arizona, California, Texas and New Mexico. The United States, however, has concluded protocols with 21 countries permitting them to export the wheat if the American inspectors certify that it comes from regions which are not affected by this disease. The bulk of the wheat is exported along the St Lawrence River, and is stored in grain silos on the Canadian riverbanks during transit. However, Canada is now opposed to having this Durum wheat stored on its territory, even though it is mainly grown in North Dakota and Minnesota which are a long way from the St Lawrence.

The United States Department of Agriculture has carried out surveys of all the regions of the country where the wheat is grown. The purpose of this was to reassure its trading partners that bunt is a highly localized disease, and to brief them on the measures being taken to eradicate the disease.

If this disease is shown not to exist throughout the whole territory, the United States could invoke article 6 of the SPS Agreement entitled "Adaptation to regional conditions, including pest- or disease-free areas" which provides, in particular, that states are required to differentiate between the regions of a country which are not affected by diseases and insects, and those that are.

Despite all the disputes between the United States and other markets, there does not appear to be any systematic intention to resort to the WTO to settle all the issues that might emerge on sanitary and phytosanitary issues. This is probably because the SPS Agreement provides sufficient grounds when negotiating bilaterally with the countries which the United States asks to explain the scientific basis for their restrictions. The WTO will probably only be required to settle disputes as a last resort if the initial negotiations come to naught.

These examples show how difficult it is to set up an international body responsible for settling trade disputes, particularly when they are alleged to be scientifically based.

2.2 The European Union

The Single European Market is based on the rule of the free movement of goods within the territory of the Member States. Initially, protective legislation only dealt with movements between the Community countries and third countries for plants, plant products and parts of plants. Two changes were then introduced, the first regarding Community production, and the second relating to trade with third countries.

2.2.1 The principles of control

In the first case, the change was due to the harmonization of the legislation of the Member States, such that controls no longer had to be carried out by the importing country but by the exporting country.

For the second proposal, the role of the Community borders in trading relations with third countries was enhanced. Any products that successfully pass the external border controls of the European Union are therefore subject to the same certification system as Community goods.

The accompanying measures for these decisions were(i) the establishment of a plant inspection body, (ii) the collection and dissemination of technical information, and (iii) the establishment of a mutual financial aid system (the costs incurred by a Member State to eradicate a new harmful organism or place it under control are paid out of the mutual aid fund set up by the Commission).

This makes the European Union similar to a traditional unitary State. The is not to abolish internal national borders but to change the traditional administrative structures such as customs posts or border policing.

The transfer to the European Union of the powers governing plant health that are usually vested in States has been accompanied by the adoption of new rules. For products coming from third countries, Community border controls consist in assuring the importing country that the product complies with the sanitary standards established by the European Union.

The import control points as set up in the territory of each Member State were obstacles to setting up a single market in that they discriminated in reality against products coming from other Member States. They duplicated the sanitary and phytosanitary controls already carried out in the sending country, and eventually the confusion in the administrative structures on the borders made it impossible to maintain them.

(a) Recognizing this situation, in 1990 the Community decided to abolish these import points.

The first measure was to extend the Community's field of action over the national markets of the Member States. The of phytosanitary legislation was to protect harvests in safe areas against the introduction of

harmful organisms from third States, and also from a contaminated zone in the same country. Control measures and rules on this matter were therefore standardized throughout all the countries of the European Union.

To take account of the fact that there are different ecological situations within the territory of the European Union, the Commission developed the concept of "ecological zones" in which some products were given greater protection than others.

Furthermore, whereas in many parts of the region some harmful organisms were able to spread, other areas were able to remain free of them. In the latter case it was proposed to introduce the concept of "isolated zones".

It should be noted that the agreements and decisions forming part of the concepts of the "isolated zones" or "ecological regions" are based on phytosanitary parameters alone, and the national borders are irrelevant.

A final measure consisted in setting up phytosanitary controls at the source of production. One of the arguments raised against removing controls at import points was that the consignee countries could no longer be certain that the controls carried out by the exporting countries had followed the same procedure as their own. The controls were therefore moved to the places of production, and the producers subject to these controls were registered. Detailed rules were adopted regarding the way in which the controls were to be carried out.

(b) Later, the controls were tightened up with the publication of a Community inspection manual. With the extra work caused by these various measures, it was impossible for the national plant protection organizations that had been established according to the provisions of the IPPC, to retain exclusive competence over all the parties involved in plant health. Even though some of the personnel could have been staff previously responsible for controlling import points, it was nevertheless necessary to recruit extra staff.

Another method for reducing the increased workload was also proposed. It consisted of reducing the list of harmful organisms subject to control to only those for which quarantine was required, and the list of products that were likely to carry these harmful agents to plant materials which posed a serious threat to crops in the country of destination.

For intra-Community movements, the traditional phytosanitary certificate of the kind annexed to the IPPC was not considered to be appropriate because it was not suitable for the system of ecological or isolated zones and did not provide a sufficient guarantee regarding the identity of the consignment. The Commission therefore proposed a simple "plant passport" system, to be controlled by technological means; this document was the best possible way of providing the information that the authorities required to carry out controls, and to label the consignment.

Abolishing national import control points does not mean the end of controls, particularly over conformity during the commercial phase. The details regarding these controls could be implemented randomly or occasionally, and are not to be used to practise discrimination.

2.2.2 Trade with the developing countries

(a) When the food comes from a third country, the phytosanitary certificate system is still applied because this is prescribed by the IPPC. However four changes have been made to it:

- the role of the common border has been strengthened and controls are carried out on products from third countries when they first enter European territory;
- since the controls have effects on all the Member States through which the products will enter, but also on the European Union as a whole, agreements regarding these controls have been redefined in order to standardize them;
- agreements concluded between the European Union and third countries have been drafted in such a way that the common border has been formally taken into account;
- a product coming from a third country is subject to the same plant passport system as a Community product once it has passed the controls at the common border.

These new rules have proven to be inadequate, and it has not been possible to completely abolish all the national import control points. Additional measures have had to be adopted to ensure the uniform and proper application of the rules throughout the whole of the European Union.

(b) In the framework of the Lomé Agreements, as far as ACP countries are concerned, and when implementing the PHARE programme for countries in transition, the European Union has strongly supported programmes to harmonize and bring phytosanitary legislation into line. It has also financed improvements to controls and increased facilities for carrying out inspections.

(c) Lastly, intra-Community financial solidarity has given rise to complementary measures. The Commission has proposed a mutual aid financial system in the event that a Member State has to combat or eradicate a new pest from a third country. This grant will be refunded by another Member State if it is shown that the infestation is the result of negligent inspections or examinations carried out under its responsibility.

A final set of measures refers to legislation governing cereals quality, the fact that they have to be nationally inventoried in accordance with Community

rules, and be governed by Community rules relating to directives on controls, packaging and product names. Lastly, the entry of a new variety of cereals into the Community catalogue has to be speeded up.

Here again, harmonization and transparency are the rule and have influenced the adoption of these ideas at the international level, because the concepts of transparency and harmonization are also found in the new sanitary and phytosanitary agreement.

2.2.3 Incorporation of the SPS Agreement and the Agreement on technical barriers to trade into European Union legislation

The SPS Agreement was immediately ratified by the European Union Council.[31] Its principles and procedures and the measures that it establishes are now enforceable. The European Union, which has jurisdiction over phytosanitary matters, must now carry out phytosanitary policing with the sole purpose of:

- protecting the health and life of animals and plants, throughout the territory of the Member States, against risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- protecting human or animal life or health within the territory of the Union from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or foodstuffs;
- protecting human life or health from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests;
- preventing or limiting other damage from the entry, establishment or spread of pests.

Any other types of measures or any other measure designed for different purposes are prohibited.

It should be noted that the SPS Agreement recognizes the concept of pest-free and disease-free zones, neighbouring ecological or isolated zones.

The Agreement on Technical Barriers to Trade was also approved in 1994.[32]

This has also had important intra-Community consequences for the European Union, and consequences in relation to third countries in that it affects all technical regulations and standards, as well as all the procedures for assessing conformity with all these regulations and standards, that must be taken into account by the Member States and the European Union

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31 Council Decision 94/800/EC published in OJ No. L336 of 23/12/94.

32 Council Decision 94/800/EC published in EJ No. L336 of 23/12/94.

itself in cases where it has exclusive jurisdiction or competence, and where there is the risk of impeding international trade.

The provisions governing packaging, marking and labelling which are particularly important to the European Union are mentioned specifically as falling within the scope of the agreement.

2.2.4 The European law approach

This latter Agreement has repercussions on the European law approach. It authorizes the Members to take all necessary steps to protect people and animals, plants and the environment and to prevent any practices likely to mislead, and any such measures must not be discriminatory. The same measures must therefore be applied equally to imported products and to local products, particularly within each of the Member States.

The principle of equivalence described in the first part of this paper also applies. Member States must recognize the regulations and standards of the other parties as being equivalent where those regulations and standards adequately achieve the objectives of their own regulations. Whenever possible, technical regulations should be defined in terms of the use of the product rather than its design. Standards must be drafted in accordance with the Code of Practice for the drafting and application of standards, annexed to the Agreement.

The legislative approach within the European Union may be defined as "the Union's public order". In effect, Community authority has taken the place of that of Member States, and the Member States are required to adopt the legal system of the Community itself, with greater economic *dirigisme* and control by the European authorities based on strengthening preventive procedures. Regulations have also been drawn up to foster European integration and to act as a benchmark system for Member States.

However it is necessary to distinguish between two clearly distinct stages in the European Union's legislative approach.

(a) Between 1962 and 1985, the free movement of goods and food, which was one of the political bases of the Treaty of Rome, led to a policy for the complete harmonization of food law throughout the six Member States at the time, which subsequently grew to nine, then twelve and then fifteen. For example, the rules for manufacturing and marketing chocolate, sugar, honey, fruit juices, jams and marmalades, fats and other products were harmonized. Directives were also issued to harmonize authorization to use colorants, additives, preservatives, and contact materials. In addition to this harmonization based upon free movement, the Common Agricultural Policy (CAP) organized the market for and consequently the production and marketing of dairy products, fruits and vegetables, fishery products, wines and spirits.

This was a huge operation, but it also showed that it was impossible to go much further within a reasonable time-frame, particularly since enlargement to take in new members meant that the Community was introducing Member

States in which the approach to problems was less geared to integration, including the integration of the legal systems.

(c) After 1985, a new approach was introduced, defined in the 1985 White Paper and in a Note from the Commission to the Council regarding foodstuffs alone (November 1985). This approach drew on the famous Court decision of the Cassis de Dijon case (1979), which has frequently been reconfirmed by the EC J, and raised the principle under certain conditions of the mutual recognition of national food law and the related procedures for carrying out controls.

After 1985 the vertical approach of harmonization was, in principle, abandoned in favour of broader areas relating to the protection of health, fair trading and consumer protection.

Even though the Member States are not quite so open to the rest of the world as they were formerly the aim of the European Union is to establish or strengthen trading partnerships and in more general terms existing economic partnerships both with countries on the eastern borders and the South, around the Mediterranean and even in sub-Saharan Africa, which are among the most vulnerable.

But while the WTO is eroding the preferential agreements by reducing tariff restrictions, how can these interregional communities be created? Paradoxically, the further globalization of trade which is being brought about by setting up the new organization ought, at least initially, to produce a more structured form of regionalization.

2.3 Africa and emerging law

In order to minimize the risks of introducing agriculturally harmful organisms into the Sahel, it was vital to control the quality of the plants being traded. The risk of introducing harmful organisms has, in fact, increased because of the increase in cereals and other plant imports, but also because of the seed trade between the Sahel and the other African regions or other continents. Nevertheless most of the Member States of the Interstate Permanent Committee for Drought Control in the Sahel (CILSS) did not have any phytosanitary legislation.

2.3.1 The drafting of common rules

Under their own agricultural policies which were designed to diversify and intensify crops in order to increase rural food availability and incomes, taking account of the damage continually caused by crop pests, and the huge changes taking place in the ecosystems in the Sahelian region, the drafters of the new rules based their work on the principles of the IPPC and the Inter-African Phytosanitary Convention (drafted by the Organization for African Unity). The members of the CILSS decided that:

- plants, parts of plants, plant products, composts and packaging used to transport them may not be introduced into their territories unless accompanied by a phytosanitary certificate issued by the authorities of the country of origin certifying that they are free of any pest or disease that might be a hazard to crops and harvests;
- the national plant protection organizations are solely responsible for carrying out phytosanitary policing at airports, ports and land borders in order to control the health status of plant imports and exports, but without impeding international trade. Phytosanitary certificates re required to be submitted to the plant protection officials for clearance, leaving them with the responsibility to carry out any checks or take any samples deemed necessary. They are the sole authorities authorized to decide on the admission, rejection, placing in quarantine, treatment or destruction of the products recognized as being diseased or infested with parasites, whether for export or import.

The following have also been produced:

- the list of products and materials which may not be introduced into the region except by a special waiver granted to research establishments;
- the list of plants or plant products whose importation is subject to prior authorization from the national plant protection organizations;
- the list of plants or plant products whose importation is unrestricted, but which must be submitted to inspection on arrival in the territory of CILSS Member States;
- the list of quarantine organisms not yet introduced into Africa with a distinction drawn between the host plants (e.g., carrots, soybean, onions) and the disease-carrying organisms specific to each (Ditylenchus dipsaci, Corynebacterium flaccumfasciens, Ditilenchus dipsaci, etc).

2.3.2 Burundi: law in conformity with international regulations

Burundi issued a decree law on the protection of plants on 30 June 1993. [33] The purpose of this decree law was to protect the health of plants, plant products and plants to be used for multiplication. This means included prevention and elimination of plant pests in the phases both of introduction into the country and of spreading within it; dissemination of plant protection techniques to improve plant production; measures to support plant and plant product exports; development of international cooperation in the field of plant protection; and the implementation of a national pesticide policy.

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[33] Decree Law No. 1/1033 for the protection of plants in Burundi, published in the FAO Food and Agricultural Legislation series, no. 43 of December 1994.

(a) With regard to national plant health protection (Chapter II) the law prohibits the introduction, possession or transport of plant pests within the national territory at any stage of their development. Waivers may be granted by the Minister and under his supervision to specialized institutions for research and trials. For the purposes of biological control, the Ministry is required to issue an order governing the introduction, multiplication and use of animals, plants and micro-organisms which are useful for combating plant pests.

(b) Chapter III deals with border controls, import controls for which the Minister is required every year to issue an order laying down restrictions and prohibitions relating to the import of plants, plant products, plants to be used for multiplication and plant pests, as well as any other things that are, or might be carriers or hosts of plant pests. The Minister may also require imports of particular plants or plant products, or plants to be used for multiplication purposes, to be covered by a phytosanitary certificate issued in the country of origin or a re-export certificate indicating that they are pest-free and in conformity with current regulations. The certificate must be in conformity with the certificate annexed to the IPPC.

(c) As for export controls, all exporters of plants and plant products must apply to the Minister for a phytosanitary certificate or a re-export certificate in conformity with the International Model Phytosanitary Certificate and in accordance with the requirements of the importing country. The importer is responsible for ensuring that the health status of the exported plants and the accompanying, certificate meet the requirements of the country of destination. Depending upon the plant health status ascertained after examination of the items to be exported, the Minister may refuse to issue the certificate or may only grant it after treatment.

(d) Chapter IV deals with pesticide control, which is organized in the traditional way, mainly using type approval procedures.

2.3.3 The shortage of facilities for implementation

In Africa in general, the unification of the market and declining real agricultural prices threatens productive investments and productivity gains. Small-holders in Africa can hardly afford to invest in highly performing materials or to buy selected seeds, fertilizer and any other treatment products. In order to renew the minimum amount of implements required, they are sometimes forced to make heavy sacrifices (to sell livestock) or to extend cash crop acreages to the detriment of food crops.

Falling agricultural prices are likely to have very serious consequences, leading to de-capitalization, under-consumption and under-nourishment.

2.4 Asia and trade competition

The large Asian markets, which cannot continue to shelter behind prohibited forms of protectionism, are becoming huge outlets for food, characterized by a demographic explosion of which little is yet known.

(a) There are hardly any regional institutions with the authority to regulate Asian trade flows (few sovereign treaties or intangible agreements, and even fewer "community budgets"). Nevertheless, highly specific political and economic cooperation programmes have been adopted, particularly for infrastructure, in the most vital sectors for rapid take-off. The regional economic decision-makers are used to cooperating on the basis of clear-cut technical programmes and investments. History shows that the economic leverage effect in Asia has always been performed by a "dominant" country dragging the others along behind it. The best example is Japan, which gave rise to the first economic alliance in Asia, Association of Southeast Asian Nations, ASEAN, during the 1980's. The institution of ASEAN was as political as it was economic, designed as it was to enable Japan to withstand the advance of the communist bloc. This economic policy, whose origin was strategic and security-related, was not dissimilar to the ideology espoused by the founding fathers of the European Economic Community.

ASEAN[34] which was the first Asian economic development association, silenced observers by enabling powerful economies to come into being. It is based on a hierarchical structure, of which the supreme authority is the Meeting of Heads of State and Government. In Bali in 1976, they adopted two instruments:

- a Treaty of Amity and Cooperation, based on respect for the independence and sovereignty of the Member States, non-interference in their internal affairs, and the peaceful settlement of disputes. This was amended in 1987 and other states, inside and outside the region are now entitled to join;
- a Declaration of Concord, laying down economic, social and cultural guidelines, including the maintenance of stability, particularly for economic development.

This latter led to the signing of an agreement at the Singapore Summit to set up a free trade area (ASEAN Free Trade Area - AFTA), due to be implemented by 2008.

AFTA, which is a step towards economic integration, is designed to liberalize trade, especially by reducing customs duties between the ASEAN Member States, limiting them to a maximum of 20 percent for an initial period of between 5 and 8 years, and then a maximum of 5 percent in the following

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34 La Documentation Française, Article by Daniel Besson and Marc Lantérie, "L'ANSEA, la décennie prodigieuse", No. 4992, June 1994.

seven years. This reduction refers to all manufactured products, including processed agricultural products (which account for two-thirds of their trade). For fifteen categories of commodities, including vegetable oils, rubber products, textiles and Pharmaceuticals the reduction in customs duties will be accelerated. Some States, such as Thailand, have promised to bring forward the timetable laid down in 1992. The Common Effective Preferential Tariff -CEPT agreement, which is the first stage in the implementation of the ASEAN free trade process, came into force on 1 January 1993.

Since 1989, economic cooperation between the Asian and Pacific countries, sponsored by Australia, began to develop. Known as APEC, the region sees it as an instrument to promote free trade and the GATT rules, and not an institutional and trading "fortress".[35] It will encourage regional integration by adopting procedures for settling disputes (of which we would recall the serious dispute between America and Japan) which will place greater emphasis on mediation than on arbitration/sanctions, which is characteristic of the new WTO. Flexibility, the lack of formalism, and mediation are therefore the key words of integration, or rather cohesion, in the Asia-Pacific region, since the work of APEC is restricted to organizing consultations between the parties and maintaining the cooperation needed for economic growth.

(b) The protection of agriculture remains a key element work throughout. At the present time, primary agricultural products are not covered by the free trade agreement which AFTA has decided to implement in the year 2008[36] with an intra-area customs band of between zero and 5 percent.

Only industrialized processed food products will be covered by this free trade system. Conversely, raw or semi-processed agricultural products are not yet considered to be competitive and are therefore protected from any regional competition. Most of the Asian countries undergoing rapid industrialization and very steep growth can quite legally exploit the benefits that have been adopted for the benefit of the developing countries, having an average GDP of $1050. Their agricultural output is therefore accepted on the main markets under the favourable treatment clause granted to the developing countries.

Under the commercial rules of the WTO they also benefit from waivers which are justified by their low level of commercial development. They are given preferential treatment which enables them to keep very high customs duties and import quotas, justified by their balance-of-payments difficulties, for example. They are dispensed from the obligation of reciprocity and the liberalization of imports, and have open access to the generalized system of preferences permitted by the industrial nations.

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35 See Frogé, S., "La coopération en Asie-Pacifique", in Organisations internationales à vocation régionales, Documentation française, Paris, 1995.

36 The countries involved are: Hong Kong, Singapore, Taiwan, Malaysia, Thailand, South Korea, Cambodia, Laos, Myanmar and Viet Nam.

Cleverly, but quite legally, the Asian countries therefore protect their agricultural domestic markets by using all the traditional methods at their disposal, including customs barriers. But the original form and large scope of their protection also stems from the fact that they are increasingly combining these with non-tariff measures.

The WTO will have to respond to this change in the situation by requiring these countries to increasingly adopt unfamiliar trading habits.

Conclusion

As indicated above, the WTO Committee on Sanitary and Phytosanitary Measures will examine the operation and implementation of the SPS Agreement three years after its entry into force, namely in the coming months.

One can already see that while article 13 makes States fully responsible for the implementation of the Agreement and for formulating and implementing positive measures and mechanisms to ensure compliance of the provisions of the Agreement, it makes no provision for any technical, financial or human obstacles that might arise when bringing the institutions into line, particularly in the less advanced countries. In effect, article 14 provides that "the least-developed country members may delay application of the provisions of this agreement for a period of 5 years following the date of entry into force of the WTO Agreement", namely the year 2000, "where such application is prevented by a lack of technical expertise, technical infrastructure or resources".

Even though it is still too early to carry out a reliable legislative study of this area, the observer will feel that the ambition to harmonize sanitary and phytosanitary measures internationally has now been supplanted by the concept of the mutual recognition of legislation. According to this concept, measures are deemed to be equivalent when they achieve the same level of protection as that achieved by the partner. The concept of single and common legislation to all the WTO signatory States seems to clash with the traditional concept of national sovereignty under which States have the authority to enforce any measures they deem necessary to protect the health and life of people, animals and plants.

ANNEX I

AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES

Members,

Reaffirming that no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade;

Desiring to improve the human health, animal health and phytosanitary situation in all Members;

Noting that sanitary and phytosanitary measures are often applied on the basis of bilateral agreements or protocols;

Desiring the establishment of a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures in order to minimize their negative effects on trade;

Recognizing the important contribution that international standards, guidelines and recommendations can make in this regard;

Desiring to further the use of harmonized sanitary and phytosanitary measures between Members, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention, without requiring Members to change their appropriate level of protection of human, animal or plant life or health;

Recognizing that developing country Members may encounter special difficulties in complying with the sanitary or phytosanitary measures of importing Members, and as a consequence in access to markets, and also in the formulation and application of sanitary or phytosanitary measures in their own territories, and desiring to assist them in their endeavours in this regard;

Desiring therefore to elaborate rules for the application of the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b) [37];

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[37] In this Agreement, reference to Article XX(b) includes also the chapeau of that Article.

Hereby agree as follows:

Article 1
General Provisions

1. This Agreement applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade. Such measures shall be developed and applied in accordance with the provisions of this Agreement.

2. For the purposes of this Agreement, the definitions provided in Annex A shall apply.

3. The annexes are an integral part of this Agreement.

4. Nothing in this Agreement shall affect the rights of Members under the Agreement on Technical Barriers to Trade with respect to measures not within the scope of this Agreement.

Article 2
Basic Rights and Obligations

1. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.

2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.

3. Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.

4. Sanitary or phytosanitary measures which conform to the relevant provisions of this Agreement shall be presumed to be in accordance with the obligations of the Members under the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b).

Article 3
Harmonization

1. To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3.

2. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.

3. Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate in accordance with the relevant provisions of paragraphs 1 through 8 of Article 5.[38] Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not be inconsistent with any other provision of this Agreement.

4. Members shall play a full part, within the limits of their resources, in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.

5. The Committee on Sanitary and Phytosanitary Measures provided for in paragraphs 1 and 4 of Article 12 (referred to in this Agreement as the "Committee") shall develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations.

Article 4
Equivalence

1. Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

2. Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

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[38] For the purposes of paragraph 3 of Article 3, there is a scientific justification if, on the basis of an examination and evaluation of available scientific information in conformity with the relevant provisions of this Agreement, a Member determines that the relevant international standards, guidelines or recommendations are not sufficient to achieve its appropriate level of sanitary or phytosanitary protection.

Article 5
Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

1. Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

2. In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment.

3. In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risk, Members shall take into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.

4. Members should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects.

5. With the objective of achieving consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. Members shall cooperate in the Committee, in accordance with paragraphs 1, 2 and 3 of Article 12, to develop guidelines to further the practical implementation of this provision. In developing the guidelines, the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.

6. Without prejudice to paragraph 2 of Article 3, when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, Members shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.[39]

7. In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or

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[39] For purposes of paragraph 6 of Article 5, a measure is not more trade-restrictive than required unless there is another measure, reasonably available taking into account technical and economic feasibility, that achieves the appropriate level of sanitary or phytosanitary protection and is significantly less restrictive to trade.

phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

8. When a Member has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another Member is constraining, or has the potential to constrain, its exports and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the Member maintaining the measure.

Article 6
Adaptation to Regional Conditions, Including Pest- or Disease-Free Areas and Areas of Low Pest or Disease Prevalence

1. Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area - whether all of a country, part of a country, or all or parts of several countries - from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.

2. Members shall, in particular, recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.

3. Exporting Members claiming that areas within their territories are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Member that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

Article 7
Transparency

Members shall notify changes in their sanitary or phytosanitary measures and shall provide information on their sanitary or phytosanitary measures in accordance with the provisions of Annex B.

Article 8
Control, Inspection and Approval Procedures

Members shall observe the provisions of Annex in the operation of control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, and otherwise ensure that their procedures are not inconsistent with the provisions of this Agreement.

Article 9
Technical Assistance

1. Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.

2. Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved.

Article 10
Special and Differential Treatment

1. In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members.

2. Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.

3. With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.

4. Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations.

Article 11
Consultations and Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

2. In a dispute under this Agreement involving scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the parties to the dispute. To this end, the panel may, when it deems it appropriate, establish an advisory technical experts group, or consult the relevant international organizations, at the request of either party to the dispute or on its own initiative.

3. Nothing in this Agreement shall impair the rights of Members under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement.

Article 12
Administration

1. A Committee on Sanitary and Phytosanitary Measures is hereby established to provide a regular forum for consultations. It shall carry out the functions necessary to implement the provisions of this Agreement and the furtherance of its objectives, in particular with respect to harmonization. The Committee shall reach its decisions by consensus.

2. The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues. The Committee shall encourage the use of international standards, guidelines or recommendations by all Members and, in this regard, shall sponsor technical consultation and study with the objective of increasing coordination and integration between international and national systems and approaches for approving the use of food additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs.

3. The Committee shall maintain close contact with the relevant international organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention, with the objective of securing the best available scientific and technical advice for the administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided.

4. The Committee shall develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations. For this purpose, the Committee should, in conjunction with the relevant international organizations, establish a list of international standards, guidelines or recommendations relating to sanitary or phytosanitary measures which the Committee determines to have a major trade impact. The list should include an indication by Members of those international standards, guidelines or recommendations which they apply as conditions for import or on the basis of which imported

products conforming to these standards can enjoy access to their markets. For those cases in which a Member does not apply an international standard, guideline or recommendation as a condition for import, the Member should provide an indication of the reason therefor, and, in particular, whether it considers that the standard is not stringent enough to provide the appropriate level of sanitary or phytosanitary protection. If a Member revises its position, following its indication of the use of a standard, guideline or recommendation as a condition for import, it should provide an explanation for its change and so inform the Secretariat as well as the relevant international organizations, unless such notification and explanation is given according to the procedures of Annex B.

5. In order to avoid unnecessary duplication, the Committee may decide, as appropriate, to use the information generated by the procedures, particularly for notification, which are in operation in the relevant international organizations.

6. The Committee may, on the basis of an initiative from one of the Members, through appropriate channels invite the relevant international organizations or their subsidiary bodies to examine specific matters with respect to a particular standard, guideline or recommendation, including the basis of explanations for non-use given according to paragraph 4.

7. The Committee shall review the operation and implementation of this Agreement three years after the date of entry into force of the WTO Agreement, and thereafter as the need arises. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, *inter alia*, to the experience gained in its implementation.

Article 13
Implementation

Members are fully responsible under this Agreement for the observance of all obligations set forth herein. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this Agreement.

Article 14
Final Provisions

The least-developed country Members may delay application of the provisions of this Agreement for a period of five years following the date of entry into force of the WTO

Agreement with respect to their sanitary or phytosanitary measures affecting importation or imported products. Other developing country Members may delay application of the provisions of this Agreement, other than paragraph 8 of Article 5 and Article 7, for two years following the date of entry into force of the WTO Agreement with respect to their existing sanitary or phytosanitary measures affecting importation or imported products, where such application is prevented by a lack of technical expertise, technical infrastructure or resources.

ANNEX A
DEFINITIONS[40]

1. *Sanitary or phytosanitary measure* - Any measure applied:

   (a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;

   (b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;

   (c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or

   (d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.

2. *Harmonization*- The establishment, recognition and application of common sanitary and phytosanitary measures by different Members.

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[40] For the purpose of these definitions, "animal" includes fish and wild fauna; "plant" includes forests and wild flora; "pests" include weeds; and "contaminants" include pesticide and veterinary drug residues and extraneous matter.

3. *International standards, guidelines and recommendations*

(a) for food safety, the standards, guidelines and recommendations established by the Codex Alimentarius Commission relating to food additives, veterinary drug and pesticide residues, contaminants, methods of analysis and sampling, and codes and guidelines of hygienic practice;

(b) for animal health and zoonoses, the standards, guidelines and recommendations developed under the auspices of the International Office of Epizootics;

(c) for plant health, the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention in cooperation with regional organizations operating within the framework of the International Plant Protection Convention; and

(d) for matters not covered by the above organizations, appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to all Members, as identified by the Committee.

4. *Risk assessment* - The evaluation of the likelihood of entry, establishment or spread of a pest or disease within the territory of an importing Member according to the sanitary or phytosanitary measures which might be applied, and of the associated potential biological and economic consequences; or the evaluation of the potential for adverse effects on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organisms in food, beverages or feedstuffs.

5. *Appropriate level of sanitary or phytosanitary protection* - The level of protection deemed appropriate by the Member establishing a sanitary or phytosanitary measure to protect human, animal or plant life or health within its territory.

NOTE: Many Members otherwise refer to this concept as the "acceptable level of risk".

6. *Pest- or disease-free area* - An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease does not occur.

NOTE: A pest- or disease-free area may surround, be surrounded by, or be adjacent to an area - whether within part of a country or in a geographic region which includes parts of or all of several countries -in which a specific pest or disease is known to occur but is subject to regional control measures such as the establishment of protection, surveillance and buffer zones which will confine or eradicate the pest or disease in question.

7. *Area of low pest or disease prevalence* - An area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease occurs at low levels and which is subject to effective surveillance, control or eradication measures.

ANNEX B
TRANSPARENCY OF SANITARY AND PHYTOSANITARY REGULATIONS

Publication of regulations

1. Members shall ensure that all sanitary and phytosanitary regulations[41] which have been adopted are published promptly in such a manner as to enable interested Members to become acquainted with them.

2. Except in urgent circumstances, Members shall allow a reasonable interval between the publication of a sanitary or phytosanitary regulation and its entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products and methods of production to the requirements of the importing Member.

Enquiry points

3. Each Member shall ensure that one enquiry point exists which is responsible for the provision of answers to all reasonable questions from interested Members as well as for the provision of relevant documents regarding:

(a) any sanitary or phytosanitary regulations adopted or proposed within its territory;

(b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within its territory;

(c) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection;

(d) the membership and participation of the Member, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of this Agreement, and the texts of such agreements and arrangements.

4. Members shall ensure that where copies of documents are requested by interested Members, they are supplied at the same price (if any), apart from the cost of delivery, as to the nationals[42] of the Member concerned.

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41 Sanitary and phytosanitary measures such as laws, decrees or ordinances which are applicable generally.

42 When "nationals" are referred to in this Agreement, the term shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

Notification procedures

5. Whenever an international standard, guideline or recommendation does not exist or the content of a proposed sanitary or phytosanitary regulation is not substantially the same as the content of an international standard, guideline or recommendation, and if the regulation may have a significant effect on trade of other Members, Members shall:

(a) publish a notice at an early stage in such a manner as to enable interested Members to become acquainted with the proposal to introduce a particular regulation;

(b) notify other Members, through the Secretariat, of the products to be covered by the regulation together with a brief indication of the objective and rationale of the proposed regulation. Such notifications shall take place at an early stage, when amendments can still be introduced and comments taken into account;

(c) provide upon request to other Members copies of the proposed regulation and, whenever possible, identify the parts which in substance deviate from international standards, guidelines or recommendations;

(d) without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account.

6. However, where urgent problems of health protection arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 5 of this Annex as it finds necessary, provided that the Member:

(a) immediately notifies other Members, through the Secretariat, of the particular regulation and the products covered, with a brief indication of the objective and the rationale of the regulation, including the nature of the urgent problem(s);

(b) provides, upon request, copies of the regulation to other Members;

(c) allows other Members to make comments in writing, discusses these comments upon request, and takes the comments and the results of the discussions into account.

7. Notifications to the Secretariat shall be in English, French or Spanish.

8. Developed country Members shall, if requested by other Members, provide copies of the documents or, in case of voluminous documents, summaries of the documents covered by a specific notification in English, French or Spanish.

9. The Secretariat shall promptly circulate copies of the notification to all Members and interested international organizations and draw the attention of developing country Members to any notifications relating to products of particular interest to them.

10. Members shall designate a single central government authority as responsible for the implementation, on the national level, of the provisions concerning notification procedures according to paragraphs 5, 6, 7 and 8 of this Annex.

General reservations

11. Nothing in this Agreement shall be construed as requiring:

(a) the provision of particulars or copies of drafts or the publication of texts other than in the language of the Member except as stated in paragraph 8 of this Annex; or

(b) Members to disclose confidential information which would impede enforcement of sanitary or phytosanitary legislation or which would prejudice the legitimate commercial interests of particular enterprises.

ANNEX C
CONTROL, INSPECTION AND APPROVAL PROCEDURES[43]

1. Members shall ensure, with respect to any procedure to check and ensure the fulfilment of sanitary or phytosanitary measures, that:

(a) such procedures are undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products;

(b) the standard processing period of each procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the procedure in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the procedure if the applicant so requests; and that upon request, the applicant is informed of the stage of the procedure, with any delay being explained;

(c) information requirements are limited to what is necessary for appropriate control, inspection and approval procedures, including for approval of the use of additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs;

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[43] Control, inspection and approval procedures include, *inter alia*, procedures for sampling, testing and certification.

(d) the confidentiality of information about imported products arising from or supplied in connection with control, inspection and approval is respected in a way no less favourable than for domestic products and in such a manner that legitimate commercial interests are protected;

(e) any requirements for control, inspection and approval of individual specimens of a product are limited to what is reasonable and necessary;

(f) any fees imposed for the procedures on imported products are equitable in relation to any fees charged on like domestic products or products originating in any other Member and should be no higher than the actual cost of the service;

(g) the same criteria should be used in the siting of facilities used in the procedures and the selection of samples of imported products as for domestic products so as to minimize the inconvenience to applicants, importers, exporters or their agents;

(h) whenever specifications of a product are changed subsequent to its control and inspection in light of the applicable regulations, the procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned; and

(i) a procedure exists to review complaints concerning the operation of such procedures and to take corrective action when a complaint is justified.

Where an importing Member operates a system for the approval of the use of food additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs which prohibits or restricts access to its domestic markets for products based on the absence of an approval, the importing Member shall consider the use of a relevant international standard as the basis for access until a final determination is made.

2. Where a sanitary or phytosanitary measure specifies control at the level of production, the Member in whose territory the production takes place shall provide the necessary assistance to facilitate such control and the work of the controlling authorities.

3. Nothing in this Agreement shall prevent Members from carrying out reasonable inspection within their own territories.

ANNEX II

RESOLUTION 12/97 ADOPTED BY THE FAO CONFERENCE AMENDMENTS TO THE INTERNATIONAL PLANT PROTECTION CONVENTION

THE CONFERENCE,

Recalling its approval of the International Plant Protection Convention (IPPC) under Article XIV of the FAO Constitution at its Sixth Session in 1951, which Convention came into force on 3 April 1952,

Recalling its adoption of amendments to the Convention at its Twentieth Session in November 1979 by Resolution 14/79, which amendments came into force on 4 April 1991,

Being convinced of the continued need to protect plant life or health from the spread and introduction of pests,

Noting the agreements reached as a result of the Uruguay Round of Trade Negotiations and the references in the Agreement on the Application of Sanitary and Phytosanitary Measures to the International Plant Protection Convention and international standards guidelines and recommendations developed for connection therewith,

Taking into account the need for the development of International phytosanitary standards to protect plant health without creating unnecessary impediments to the international transportation of plants, plant products and other articles deemed to require phytosanitary measures,

Recalling the agreement reached at its Twenty-fifth Session in November 1989 on the necessity of establishing a Secretariat within FAO for the International Plant Protection Convention,

Recalling that at its Twenty-seventh Session in November 1993, as an interim measure, it agreed to authorize the Director-General to establish the Committee of Experts on Phytosanitary Measures under Article VI.2 of the Constitution, and to establish the procedure that could be followed for the setting of harmonized international standards and guidelines,

Having considered the work of the Expert Consultation on the Revision of the IPPC held in January 1997, the Technical Consultation on the Revision of the IPPC held in January 1997, the Fourteenth Session of the Committee on Agriculture in April 1997 and the Hundred and Twelfth Session of the Council in June 1997,

Taking note of the recommendations contained in the report of the African Expert Consultation on the IPPC held in June 1997,

Having examined the text of the draft amendments to the IPPC endorsed by the Council at its Hundred and Twelfth Session in June 1997,

Having considered the observations contained in the Report of the Sixty-seventh Session of the Committee on Constitutional and Legal Matters held in October 1997 and the Report of the Hundred and Thirteenth Session of Council,

Stressing that it is in the interest of the international community that the proposed amendments should enter into force without delay,

Noting that, in accordance with Article XIII.4 of the Convention, the amendments will enter into force as from the thirtieth day after acceptance by two thirds of the contracting parties:

1. Approves the amendments to the International Plant Protection Convention set out in the revised text contained in **Appendix A** [of the report of the FAO Conference of 1997];

2. Takes note of the agreed interpretation contained in Appendix I [of the Report of the FAO Conference of 1997];

3. Requests the Director-General to transmit the revised text incorporating the amendments to the Contracting Parties for their consideration with a view to their acceptance of the amendments;

4. Urges the Contracting parties to accept the amendments as early as possible;

5. Urges FAO Members and Non-Member States that have not yet done so to adhere to the Convention as early as possible;

6. Notes the specific need of developing countries, in particular the least developed countries, for technical assistance in order to enhance their capacity to fulfill their obligations under the Convention and to facilitate its implementation;

7. Urges that high priority be given to the provision of reports on the occurrence, outbreak and spread of pests to the Secretary of the IPPC and, underlines the importance of establishing relevant procedures applicable to this reporting;

8. Agrees to the establishment of an Interim Commission on Phytosanitary Measures under Article VI. 1 of the FAO Constitution with the Terms of Reference contained in **Appendix B** [of the Report of the FAO Conference of 1997];

9. Agrees that the present Secretariat to the IPPC shall continue until the amendments come into force and until then shall provide secretariat services to the Interim Commission;

10. Agrees that the present standard-setting procedure shall continue until the amendments come into force, or until the interim Commission decides otherwise, except that phytosanitary standards will be considered and adopted by the Interim Commission instead of by the Committee on Agriculture, Council and/or the Conference;

11. Agrees that the Secretariat to the IPPC commence work on international standards for non-quarantine regulated pests;

12. Allows the use of the amended phytosanitary certificate as an alternative and on voluntary basis among parties that accept it; and

13. Requests parties to nominate an official contact point, and to communicate its nomination to the Secretariat.

Appendix A

INTERNATIONAL PLANT PROTECTION CONVENTION

PREAMBLE

The contracting parties,

- *recognizing* the necessity for international cooperation in controlling pests of plants and plant products and in preventing their international spread, and especially their introduction into endangered areas;

- *recognizing* that phytosanitary measures should be technically justified, transparent and should not be applied in such a way as to constitute either a means of arbitrary or unjustified discrimination or a disguised restriction, particularly on international trade;

- *desiring* to ensure close coordination of measures directed to these ends;

- *desiring* to provide a framework for the development and application of harmonized phytosanitary measures and the elaboration of international standards to that effect;

- *taking into account* internationally approved principles governing the protection of plant, human and animal health, and the environment; and

- *noting* the agreements concluded as a result of the Uruguay Round of Multilateral Trade Negotiations, including the Agreement on the Application of Sanitary and Phytosanitary Measures;

have agreed as follows:

Article I
Purpose and responsibility

1. With the purpose of securing common and effective action to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate measures for their control, the contracting parties undertake to adopt the legislative, technical and administrative measures specified in this Convention and in supplementary agreements pursuant to Article XVI.

2. Each contracting party shall assume responsibility, without prejudice to obligations assumed under other international agreements, for the fulfilment within its territories of all requirements under this Convention.

3. The division of responsibilities for the fulfilment of the requirements of this Convention between member organizations of FAO and their member states that are contracting parties shall be in accordance with their respective competencies.

4. Where appropriate, the provisions of this Convention may be deemed by contracting parties to extend, in addition to plants and plant products, to storage places, packaging, conveyances, containers, soil and any other organism, object or material capable of harbouring or spreading plant pests, particularly where international transportation is involved.

Article II
Use of terms

1. For the purpose of this Convention, the following terms shall have the meanings hereunder assigned to them:

"Area of low pest prevalence" - an area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures;

"Commission" - the Commission on Phytosanitary Measures established under Article XI;

"Endangered area" - an area where ecological factors favour the establishment of a pest whose presence in the area will result in economically important loss;

"Establishment" - perpetuation, for the foreseeable future, of a pest within an area after entry;

"Harmonized phytosanitary measures" - phytosanitary measures established by contracting parties based on international standards;

"International standards" - international standards established in accordance with Article X, paragraphs 1 and 2;

'Introduction" - the entry of a pest resulting in its establishment;

"Pest" - any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products;

"Pest risk analysis" - the process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it;

"Phytosanitary measure" - any legislation, regulation or official procedure having the purpose to prevent the introduction and/or spread of pests;

"Plant products" - unmanufactured material of plant origin (including grain) and those manufactured products that, by their nature or that of their processing, may create a risk for the introduction and spread of pests;

"Plants" - living plants and parts thereof, including seeds and germplasm;

"Quarantine pest" - a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled;

"Regional standards" - standards established by a regional plant protection organization for the guidance of the members of that organization;

"Regulated article" - any plant, plant product, storage place, packaging, conveyance, container, soil and any other organism, object or material capable of harbouring or spreading pests, deemed to require phytosanitary measures, particularly where international transportation is involved;

"Regulated non-quarantine pest" - a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of the importing contracting party;

"Regulated pest" - a quarantine pest or a regulated non-quarantine pest;

"Secretary" - Secretary of the Commission appointed pursuant to Article XII;

"Technically justified" - justified on the basis of conclusions reached by using an appropriate pest risk analysis or, where applicable, another comparable examination and evaluation of available scientific information.

2. The definitions set forth in this Article, being limited to the application of this Convention, shall not be deemed to affect definitions established under domestic laws or regulations of contracting parties.

Article III
Relationship with other international agreements

Nothing in this Convention shall affect the rights and obligations of the contracting parties under relevant international agreements.

Article IV
General provisions relating to the organizational arrangements for national plant protection

1. Each contracting party shall make provision, to the best of its ability, for an official national plant protection organization with the main responsibilities set out in this Article.

2. The responsibilities of an official national plant protection organization shall include the following:

(a) the issuance of certificates relating to the phytosanitary regulations of the importing contracting party for consignments of plants, plant products and other regulated articles;

(b) the surveillance of growing plants, including both areas under cultivation *(inter alia* fields, plantations, nurseries, gardens, greenhouses and laboratories) and wild flora, and of plants and plant products in storage or in transportation, particularly with the object of reporting the occurrence, outbreak and spread of pests, and of controlling those pests, including the reporting referred to under Article VIII paragraph 1(a);

(c) the inspection of consignments of plants and plant products moving in international traffic and, where appropriate, the inspection of other regulated articles, particularly with the object of preventing the introduction and/or spread of pests;

(d) the disinfestation or disinfection of consignments of plants, plant products and other regulated articles moving in international traffic, to meet phytosanitary requirements;

(e) the protection of endangered areas and the designation, maintenance and surveillance of pest free areas and areas of low pest prevalence;

(f) the conduct of pest risk analyses;

(g) to ensure through appropriate procedures that the phytosanitary security of consignments after certification regarding composition, substitution and reinfestation is maintained prior to export; and

(h) training and development of staff.

3. Each contracting party shall make provision, to the best of its ability, for the following:

(a) the distribution of information within the territory of the contracting party regarding regulated pests and the means of their prevention and control;

(b) research and investigation in the field of plant protection;

(c) the issuance of phytosanitary regulations; and

(d) the performance of such other functions as may be required for the implementation of this Convention.

4. Each contracting party shall submit a description of its official national plant protection organization and of changes in such organization to the Secretary. A contracting party shall provide a description of its organizational arrangements for plant protection to another contracting party, upon request.

Article V
Phytosanitary certification

1. Each contracting party shall make arrangements for phytosanitary certification, with the objective of ensuring that exported plants, plant products and other regulated articles and consignments thereof are in conformity with the certifying statement to be made pursuant to paragraph 2(b) of this Article.

2. Each contracting party shall make arrangements for the issuance of phytosanitary certificates in conformity with the following provisions:

(a) Inspection and other related activities leading to issuance of phytosanitary certificates shall be carried out only by or under the authority of the official national plant protection organization. The issuance of phytosanitary certificates shall be carried out by public officers who are technically qualified and duly authorized by the official national plant protection organization to act on its behalf and under its control with such knowledge and information available to those officers that the authorities of importing contracting parties may accept the phytosanitary certificates with confidence as dependable documents.

(b) Phytosanitary certificates, or their electronic equivalent where accepted by the importing contracting party concerned, shall be as worded in the models set out in the Annex to this Convention. These certificates should be completed and issued taking into account relevant international standards.

(c) Uncertified alterations or erasures shall invalidate the certificates.

3. Each contracting party undertakes not to require consignments of plants or plant products or other regulated articles imported into its territories to be accompanied by phytosanitary certificates inconsistent with the models set out in the Annex to this Convention. Any requirements for additional declarations shall be limited to those technically justified.

Article VI
Regulated pests

1. Contracting parties may require phytosanitary measures for quarantine pests and regulated non-quarantine pests, provided that such measures are:

(a) no more stringent than measures applied to the same pests, if present within the territory of the importing contracting party; and

(b) limited to what is necessary to protect plant health and/or safeguard the intended use and can be technically justified by the contracting party concerned.

2. Contracting parties shall not require phytosanitary measures for non-regulated pests.

Article VII
Requirements in relation to imports

1. With the aim of preventing the introduction and/or spread of regulated pests into their territories, contracting parties shall have sovereign authority to regulate, in accordance with applicable international agreements, the entry of plants and plant products and other regulated articles and, to this end, may:

(a) prescribe and adopt phytosanitary measures concerning the importation of plants, plant products and other regulated articles, including, for example, inspection, prohibition on importation, and treatment;

(b) refuse entry or detain, or require treatment, destruction or removal from the territory of the contracting party, of plants, plant products and other regulated articles or consignments thereof that do not comply with the phytosanitary measures prescribed or adopted under subparagraph (a);

(c) prohibit or restrict the movement of regulated pests into their territories;

(d) prohibit or restrict the movement of biological control agents and other organisms of phytosanitary concern claimed to be beneficial into their territories.

2. In order to minimize interference with international trade, each contracting party, in exercising its authority under paragraph 1 of this Article, undertakes to act in conformity with the following:

(a) Contracting parties shall not, under their phytosanitary legislation, take any of the measures specified in paragraph 1 of this Article unless such measures are made necessary by phytosanitary considerations and are technically justified.

(b) Contracting parties shall, immediately upon their adoption, publish and transmit phytosanitary requirements, restrictions and prohibitions to any contracting party or parties that they believe may be directly affected by such measures.

(c) Contracting parties shall, on request, make available to any contracting party the rationale for phytosanitary requirements, restrictions and prohibitions.

(d) If a contracting party requires consignments of particular plants or plant products to be imported only through specified points of entry, such points shall be so selected as not to unnecessarily impede international trade. The contracting party shall publish a list of such points of entry and communicate it to the Secretary, any regional plant protection organization of which the contracting party is a member, all contracting parties which the contracting party believes to be directly affected, and other contracting parties upon request. Such restrictions on points of entry shall not be made unless the plants, plant products or other regulated articles concerned are required to be accompanied by phytosanitary certificates or to be submitted to inspection or treatment.

(e) Any inspection or other phytosanitary procedure required by the plant protection organization of a contracting party for a consignment of plants, plant products or other regulated articles offered for importation, shall take place as promptly as possible with due regard to their perishability.

(f) Importing contracting parties shall, as soon as possible, inform the exporting contracting party concerned or, where appropriate, the re-exporting contracting party concerned, of significant instances of non-compliance with phytosanitary certification. The exporting contracting party or, where appropriate, the re-exporting contracting party concerned, should investigate and, on request, report the result of its investigation to the importing contracting party concerned.

(g) Contracting parties shall institute only phytosanitary measures that are technically justified, consistent with the pest risk involved and represent the least restrictive measures available, and result in the minimum impediment to the international movement of people, commodities and conveyances.

(h) Contracting parties shall, as conditions change, and as new facts become available, ensure that phytosanitary measures are promptly modified or removed if found to be unnecessary.

(i) Contracting parties shall, to the best of their ability, establish and update lists of regulated pests, using scientific names, and make such lists available to the Secretary, to regional plant protection organizations of which they are members and, on request, to other contracting parties.

(j) Contracting parties shall, to the best of their ability, conduct surveillance for pests and develop and maintain adequate information on pest status in order to support categorization of pests, and for the development of appropriate phytosanitary measures. This information shall be made available to contracting parties, on request.

3. A contracting party may apply measures specified in this Article to pests which may not be capable of establishment in its territories but, if they gained entry, cause economic damage. Measures taken against these pests must be technically justified.

4. Contracting parties may apply measures specified in this Article to consignments in transit through their territories only where such measures are technically justified and necessary to prevent the introduction and/or spread of pests.

5. Nothing in this Article shall prevent importing contracting parties from making special provision, subject to adequate safeguards, for the importation, for the of scientific research, education, or other specific use, of plants and plant products and other regulated articles, and of plant pests.

6. Nothing in this Article shall prevent any contracting party from taking appropriate emergency action on the detection of a pest posing a potential threat to its territories or the report of such a detection. Any such action shall be evaluated as soon as possible to ensure that its continuance is justified. The action taken shall be immediately reported to contracting parties concerned, the Secretary, and any regional plant protection organization of which the contracting party is a member.

Article VIII
International cooperation

1. The contracting parties shall cooperate with one another to the fullest practicable extent in achieving the aims of this Convention, and shall in particular:

(a) cooperate in the exchange of information on plant pests, particularly the reporting of the occurrence, outbreak or spread of pests that may be of immediate or potential danger, in accordance with such procedures as may be established by the Commission;

(b) participate, in so far as is practicable, in any special campaigns for combatting pests that may seriously threaten crop production and need international action to meet the emergencies; and

(c) cooperate, to the extent practicable, in providing technical and biological information necessary for pest risk analysis.

2. Each contracting party shall designate a contact point for the exchange of information connected with the implementation of this Convention.

Article IX
Regional plant protection organizations

1. The contracting parties undertake to cooperate with one another in establishing regional plant protection organizations in appropriate areas.

2. The regional plant protection organizations shall function as the coordinating bodies in the areas covered, shall participate in various activities to achieve the objectives of this Convention and, where appropriate, shall gather and disseminate information.

3. The regional plant protection organizations shall cooperate with the Secretary in achieving the objectives of the Convention and, where appropriate, cooperate with the Secretary and the Commission in developing international standards.

4. The Secretary will convene regular Technical Consultations of representatives of regional plant protection organizations to:

(a) promote the development and use of relevant international standards for phytosanitary measures; and

(b) encourage inter-regional cooperation in promoting harmonized phytosanitary measures for controlling pests and in preventing their spread and/or introduction.

Article X
Standards

1. The contracting parties agree to cooperate in the development of international standards in accordance with the procedures adopted by the Commission.

2. International standards shall be adopted by the Commission.

3. Regional standards should be consistent with the principles of this Convention; such standards may be deposited with the Commission for consideration as candidates for international standards for phytosanitary measures if more broadly applicable.

4. Contracting parties should take into account, as appropriate, international standards when undertaking activities related to this Convention.

Article XI
Commission on Phytosanitary Measures

1. Contracting parties agree to establish the Commission on Phytosanitary Measures within the framework of the Food and Agriculture Organization of the United Nations (FAO).

2. The functions of the Commission shall be to promote the full implementation of the objectives of the Convention and, in particular, to:

(a) review the state of plant protection in the world and the need for action to control the international spread of pests and their introduction into endangered areas;

(b) establish and keep under review the necessary institutional arrangements and procedures for the development and adoption of international standards, and to adopt international standards;

(c) establish rules and procedures for the resolution of disputes in accordance with Article XIII;

(d) establish such subsidiary bodies of the Commission as may be necessary for the proper implementation of its functions;

(e) adopt guidelines regarding the recognition of regional plant protection organizations;

(f) establish cooperation with other relevant international organizations on matters covered by this Convention;

(g) adopt such recommendations for the implementation of the Convention as necessary; and

(h) perform such other functions as may be necessary to the fulfilment of the objectives of this Convention.

3. Membership in the Commission shall be open to all contracting parties.

4. Each contracting party may be represented at sessions of the Commission by a single delegate who may be accompanied by an alternate, and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Commission but may not vote, except in the case of an alternate who is duly authorized to substitute for the delegate.

5. The contracting parties shall make every effort to reach agreement on all matters by consensus. If all efforts to reach consensus have been exhausted and no agreement is reached, the decision shall, as a last resort, be taken by a two-thirds majority of the contracting parties present and voting.

6. A member organization of FAO that is a contracting party and the member states of that member organization that are contracting parties shall exercise their membership rights and fulfil their membership obligations in accordance, *mutatis mutandis*, with the Constitution and General Rules of FAO.

7. The Commission may adopt and amend, as required, its own Rules of Procedure, which shall not be inconsistent with this Convention or with the Constitution of FAO.

8. The Chairperson of the Commission shall convene an annual regular session of the Commission.

9. Special sessions of the Commission shall be convened by the Chairperson of the Commission at the request of at least one-third of its members.

10. The Commission shall elect its Chairperson and no more than two Vice-Chairpersons, each of whom shall serve for a term of two years.

Article XII
Secretariat

1. The Secretary of the Commission shall be appointed by the Director-General of FAO.

2. The Secretary shall be assisted by such secretariat staff as may be required.

3. The Secretary shall be responsible for implementing the policies and activities of the Commission and carrying out such other functions as may be assigned to the Secretary by this Convention and shall report thereon to the Commission.

4. The Secretary shall disseminate:

(a) international standards to all contracting parties within sixty days of adoption;

(b) to all contracting parties, lists of points of entry under Article VII paragraph 2(d) communicated by contracting parties;

(c) lists of regulated pests whose entry is prohibited or referred to in Article VII paragraph 2(i) to all contracting parties and regional plant protection organizations;

(d) information received from contracting parties on phytosanitary requirements, restrictions and prohibitions referred to in Article VII paragraph 2(b), and descriptions of official national plant protection organizations referred to in Article IV paragraph 4.

5. The Secretary shall provide translations in the official languages of FAO of documentation for meetings of the Commission and international standards.

6. The Secretary shall cooperate with regional plant protection organizations in achieving the aims of the Convention.

Article XIII
Settlement of disputes

1. If there is any dispute regarding the interpretation or application of this Convention, or if a contracting party considers that any action by another contracting party is in conflict with the obligations of the latter under Articles V and VII of this Convention, especially regarding the basis of prohibiting or restricting the imports of plants, plant products or other regulated articles coming from its territories, the contracting parties concerned shall consult among themselves as soon as possible with a view to resolving the dispute.

2. If the dispute cannot be resolved by the means referred to in paragraph 1, the contracting party or parties concerned may request the Director-General of FAO to appoint a committee of experts to consider the question in dispute, in accordance with rules and procedures that may be established by the Commission.

3. This Committee shall include representatives designated by each contracting party concerned. The Committee shall consider the question in dispute, taking into account all documents and other forms of evidence submitted by the contracting parties concerned. The Committee shall prepare a report on the technical aspects of the dispute for the purpose of seeking its resolution. The preparation of the report and its approval shall be according to rules and procedures established by the Commission, and it shall be transmitted by the Director-General to the contracting parties concerned. The report may also be submitted, upon its request, to the competent body of the international organization responsible for resolving trade disputes.

4. The contracting parties agree that the recommendations of such a committee, while not binding in character, will become the basis for renewed consideration by the contracting parties concerned of the matter out of which the disagreement arose.

5. The contracting parties concerned shall share the expenses of the experts.

6. The provisions of this Article shall be complementary to and not in derogation of the dispute settlement procedures provided for in other international agreements dealing with trade matters.

Article XIV
Substitution of prior agreements

This Convention shall terminate and replace, between contracting parties, the International Convention respecting measures to be taken against the *Phylloxera vastatrix* of 3 November 1881, the additional Convention signed at Berne on 15 April 1889 and the International Convention for the Protection of Plants signed at Rome on 16 April 1929.

Article XV
Territorial application

1. Any contracting party may at the time of ratification or adherence or at any time thereafter communicate to the Director-General of FAO a declaration that this Convention shall extend to all or any of the territories for the international relations of which it is responsible, and this Convention shall be applicable to all territories specified in the declaration as from the thirtieth day after the receipt of the declaration by the Director-General.

2. Any contracting party which has communicated to the Director-General of FAO a declaration in accordance with paragraph 1 of this Article may at any time communicate a further declaration modifying the scope of any former declaration or terminating the application of the provisions of the present Convention in respect of any territory. Such modification or termination shall take effect as from the thirtieth day after the receipt of the declaration by the Director-General.

3. The Director-General of FAO shall inform all contracting parties of any declaration received under this Article.

Article XVI
Supplementary agreements

1. The contracting parties may, for the purpose of meeting special problems of plant protection which need particular attention or action, enter into supplementary agreements. Such agreements may be applicable to specific regions, to specific pests, to specific plants and plant products, to specific methods of international transportation of plants and plant products, or otherwise supplement the provisions of this Convention.

2. Any such supplementary agreements shall come into force for each contracting party concerned after acceptance in accordance with the provisions of the supplementary agreements concerned.

3. Supplementary agreements shall promote the intent of this Convention and shall conform to the principles and provisions of this Convention, as well as to the principles of transparency, non-discrimination and the avoidance of disguised restrictions, particularly on international trade.

Article XVII
Ratification and adherence

1. This Convention shall be open for signature by all states until 1 May 1952 and shall be ratified at the earliest possible date. The instruments of ratification shall be deposited with the Director-General of FAO, who shall give notice of the date of deposit to each of the signatory states.

2. As soon as this Convention has come into force in accordance with Article XXII it shall be open for adherence by non-signatory states and member organizations of FAO. Adherence shall be effected by the deposit of an instrument of adherence with the Director-General of FAO, who shall notify all contracting parties.

3. When a member organization of FAO becomes a contracting party to this Convention, the member organization shall, in accordance with the provisions of Article II paragraph 7 of the FAO Constitution, as appropriate, notify at the time of its adherence such modifications or clarifications to its declaration of competence submitted under Article II paragraph 5 of the FAO Constitution as may be necessary in light of its acceptance of this Convention. Any contracting party to this Convention may, at any time, request a member organization of FAO that is a contracting party to this Convention to provide information as to which, as between the member organization and its member states, is responsible for the implementation of any particular matter covered by this Convention. The member organization shall provide this information within a reasonable time.

Article XVIII
Non-contracting parties

The contracting parties shall encourage any state or member organization of FAO, not a party to this Convention, to accept this Convention, and shall encourage any non-contracting party to apply phytosanitary measures consistent with the provisions of this Convention and any international standards adopted hereunder.

Article XIX
Languages

1. The authentic languages of this Convention shall be all official languages of FAO.

2. Nothing in this Convention shall be construed as requiring contracting parties to provide and to publish documents or to provide copies of them other than in the language(s) of the contracting party, except as stated in paragraph 3 below.

3. The following documents shall be in at least one of the official languages of FAO:

(a) information provided according to Article IV paragraph 4;

(b) cover notes giving bibliographical data on documents transmitted according to Article VII paragraph 2(b);

(c) information provided according to Article VII paragraph 2(b), (d), (i) and (j);

(d) notes giving bibliographical data and a short summary of relevant documents on information provided according to Article VIII paragraph 1(a);

(e) requests for information from contact points as well as replies to such requests, but not including any attached documents;

(f) any document made available by contracting parties for meetings of the Commission.

Article XX
Technical assistance

The contracting parties agree to promote the provision of technical assistance to contracting parties, especially those that are developing contracting parties, either bilaterally or through the appropriate international organizations, with the objective of facilitating the implementation of this Convention.

Article XXI
Amendment

1. Any proposal by a contracting party for the amendment of this Convention shall be communicated to the Director-General of FAO.

2. Any proposed amendment of this Convention received by the Director-General of FAO from a contracting party shall be presented to a regular or special session of the Commission for approval and, if the amendment involves important technical changes or imposes additional obligations on the contracting parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Commission.

3. Notice of any proposed amendment of this Convention, other than amendments to the Annex, shall be transmitted to the contracting parties by the Director-General of FAO not later than the time when the agenda of the session of the Commission at which the matter is to be considered is dispatched.

4. Any such proposed amendment of this Convention shall require the approval of the Commission and shall come into force as from the thirtieth day after acceptance by two-thirds of the contracting parties. For the purpose of this Article, an instrument deposited by a member organization of FAO shall not be counted as additional to those deposited by member states of such an organization.

5. Amendments involving new obligations for contracting parties, however, shall come into force in respect of each contracting party only on acceptance by it and as from the thirtieth day after such acceptance. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General of FAO, who shall inform all contracting parties of the receipt of acceptance and the entry into force of amendments.

6. Proposals for amendments to the model phytosanitary certificates set out in the Annex to this Convention shall be sent to the Secretary and shall be considered for approval by the Commission. Approved amendments to the model phytosanitary certificates set out in the Annex to this Convention shall become effective ninety days after their notification to the contracting parties by the Secretary.

7. For a period of not more than twelve months from an amendment to the model phytosanitary certificates set out in the Annex to this Convention becoming effective, the previous version of the phytosanitary certificates shall also be legally valid for the purpose of this Convention.

Article XXII
Entry into force

As soon as this Convention has been ratified by three signatory states it shall come into force among them. It shall come into force for each state or member organization of FAO ratifying or adhering thereafter from the date of deposit of its instrument of ratification or adherence.

Article XXIII
Denunciation

1. Any contracting party may at any time give notice of denunciation of this Convention by notification addressed to the Director-General of FAO. The Director-General shall at once inform all contracting parties.

2. Denunciation shall take effect one year from the date of receipt of the notification by the Director-General of FAO.

ANNEX
Model Phytosanitary Certificate

No. _____

Plant Protection Organization of _____
TO: Plant Protection Organization(s) of _____

I. Description of Consignment
Name and address of exporter: _____
Declared name and address of consignee: _____
Number and description of packages: _____
Distinguishing marks: _____
Place of origin: _____
Declared means of conveyance: _____
Declared point of entry: _____
Name of produce and quantity declared: _____
Botanical name of plants: _____

This is to certify that the plants, plant products or other regulated articles described herein have been inspected and/or tested according to appropriate official procedures and are considered to be free from the quarantine pests specified by the importing contracting party and to conform with the current phytosanitary requirements of the importing contracting party, including those for regulated non-quarantine pests.

They are deemed to be practically free from other pests.*

II. Additional Declaration

III. Disinfestation and/or Disinfection Treatment
Date _____ Treatment _____ Chemical (active ingredient) _____
Duration and temperature _____
Concentration _____
Additional information _____

Place of issue _____
(Stamp of Organization) Name of authorized officer _____
Date _____

(Signature)

No financial liability with respect to this certificate shall attach to _____ (name of Plant Protection Organization) or to any of its officers or representatives.*

* Optional clause

Model Phytosanitary Certificate for Re-Export

No. _____

Plant Protection Organization _____ (contracting party of re-export)
TO: Plant Protection Organization(s)
of _____ (contracting party(ies) of import)

I. Description of Consignment

Name and address of exporter: _____
Declared name and address of consignee: _____
Number and description of packages: _____
Distinguishing marks: _____
Place of origin: _____
Declared means of conveyance: _____
Declared point of entry: _____
Name of produce and quantity declared: _____
Botanical name of plants: _____

This is to certify that the plants, plant products or other regulated articles described above _____ were imported into (contracting party of re-export) _____ from _____ (contracting party of origin) covered by Phytosanitary Certificate No. _____, *original ☐ certified true copy ☐ of which is attached to this certificate; that they are packed ☐ repacked ☐ in original ☐ *new ☐ containers, that based on the original phytosanitary certificate ☐ and additional inspection ☐, they are considered to conform with the current phytosanitary requirements of the importing contracting party, and that during storage in _____ (contracting party of re-export), the consignment has not been subjected to the risk of infestation or infection.

* Insert tick in appropriate ☐ boxes

II. Additional Declaration

III. Disinfestation and/or Disinfection Treatment

Date _____ Treatment _____ Chemical (active ingredient) _____
Duration and temperature _____
Concentration _____
Additional information _____

Place of issue _____
(Stamp of Organization) Name of authorized officer _____
Date _____

(Signature)

No financial liability with respect to this certificate shall attach to _____ (name of Plant Protection Organization) or to any of its officers or representatives.**

** Optional clause

Appendix B

TERMS OF REFERENCE OF THE INTERIM COMMISSION ON PHYTOSANITARY MEASURES

1. The functions of the Commission shall be to promote the full implementation of the objectives of the International Plant Protection Convention and, in particular, to:

(a) review the state of plant protection in the world and the need for action to control the international spread of pests and their introduction into endangered areas;

(b) establish and keep under review the necessary institutional arrangements and procedures for the development and adoption of international standards, and to adopt international standards for phytosanitary measures;

(c) establish rules and procedures for the resolution of disputes in accordance with the Convention;

(d) establish such subsidiary bodies of the Commission as may be necessary for the proper implementation of its functions;

(e) adopt guidelines regarding the recognition of regional plant protection organizations;

(f) establish cooperation with other relevant international organizations on matters covered by the Convention;

(g) adopt such recommendations for the implementation of the Convention as necessary; and

(h) perform such other functions as may be necessary to the fulfilment of the objectives of the Convention.

2. Membership in the Commission shall be open to all Members of FAO and to such non-member States as are contracting parties to the IPPC.

3. Each contracting party may be represented at sessions of the Commission by a single delegate, who may be accompanied by an alternate, and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Commission but may not vote, except in the case of an alternate who is duly authorized to substitute for the delegate.

4. The contracting parties shall make every effort to reach agreement on all matters by consensus. If all efforts to reach consensus have been exhausted and no agreement is reached, the decision shall, as a last resort, be taken by a two-thirds majority of the contracting parties present and voting.

5. The Commission may adopt and amend, as required, its own Rules of Procedure, which shall not be inconsistent with the Constitution of FAO.

6. The Chairperson of the Commission shall convene an annual regular session of the Commission.

7. Special sessions of the Commission shall be convened by the Chairperson of the Commission at the request of at least one-third of its members.

8. The Commission shall elect its Chairperson and no more than two Vice-Chairpersons, each of whom shall serve for a term of two years.

9. The languages of the Commission shall be the official languages of FAO.

ANNEX III

INTERNATIONAL PRINCIPLES FOR PHYTOSANITARY MEASURES

Principles of Plant Quarantine as Related to Internatinal Trade, ISPM Publication No. 1, FAO, Rome, 1995.

Guidelines for pest risk analysis, ISPM Publication No. 2, FAO, Rome.

Code of conduct for the import and release of exotic biological control agents. ISPM Publication No. 3, FAO, Rome.

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