



# PLANT PROTECTION LEGISLATION



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Rome, 1984

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M-10  
ISBN 92-5-101460-4

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## FOREWORD

Plant protection is one of the specific fields of activity of the Food and Agriculture Organization of the United Nations. The protection of crops against pests and diseases in fact plays a vital role in increasing food production.

From the technical standpoint, plant protection has been assigned to the Plant Production and Protection Division of FAO, which carries out a wide range of activities in this field. Certain aspects of the subject which are of particular legal interest are not normally dealt with in technical publications. The particular aim of this study is to provide the reader precisely with this information.

The study presents the plant protection legislation of 14 countries. For each country, the Legal and institutional provisions that form the basic framework for plant protection are examined. All specific technical data published in FAO's Plant Protection Bulletin are deliberately omitted. By this approach, we avoid entering into the purely technical field covered by the Plant Protection Bulletin and attempt to draw up a list of legal difficulties encountered in the various national laws and indicate the measures and solutions adopted in each system. By way of a general introduction, the main features of comparative law are set out. We consider these to be useful, especially to those called upon to draft plant protection laws and regulations. This is followed by a section on country studies.

Within the limits of the documents available in FAO a choice of countries was made according to geographical distribution, variety of enactments, economic development and the existence of systematic legal texts. An attempt has been made to give examples that were representative. The inclusion or exclusion of a particular country is not indicative of the value of its legal system or the laws in force.

This study was prepared by Dr. Luis M. Bombín, Legal Officer of the Legislation Branch, Legal Office of FAO, assisted for some of the country studies by Ms. Beatriz Benilde Galán. The Legislation Branch wishes to thank Mr. Joseph F. Karpati, of FAO's Plant Protection Division, for his assistance in the preparatory phase of the general outline of the study and for the final revision of Part I.

The Legislation Branch would be grateful for comments on any omissions that may come to light or data in the monographs that have been overtaken by events. Due account will be taken of these in any future editions. The study was published in Spanish in 1983. The legal texts taken into consideration were those published up to September 1983. Rates of exchange indicated in the section on penalties are those prevailing in August 1983.

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**PART I: GENERAL REVIEW OF PLANT PROTECTION LEGISLATION**



# 1. PLANT PROTECTION LEGISLATION AND AGRICULTURAL DEVELOPMENT

## 1.1 Importance of pests and diseases in food production <sup>1/</sup>

In spite of major technological advances in agriculture, the world food deficit situation remains serious. Currently there are 450 million undernourished people in the world and by the end of this century this figure may well increase to 600-650 million. To erase such a food deficit will involve at least doubling food production by the year 2000.

This objective can only be reached if there is an increase in the effective level of utilization of existing resources on the one hand and an accelerated rate of production on the other.

Plant protection plays an essential role in increasing the utilization of resources produced. Pre-harvest crop losses due to weed infestation, plant diseases, arthropods and vertebrate pests are estimated to be of the order of 30-35 percent. Post-harvest crop losses due to these organisms amount to a further 10 or 20 percent. Between 40 and 55 percent of food produced is therefore lost for these reasons.

The quickest means of reducing the magnitude of these losses would be through more effective utilization of existing plant protection knowledge and technology. Such an approach would avoid the costly, energy-consuming process of developing new technologies. Furthermore, the cost-benefit margin for existing inputs and resources would be considerably improved.

Crop protection also plays an essential role in accelerating the rate of production. As agricultural systems move towards greater intensification, they become increasingly vulnerable to attack by pests and diseases. Consequently, one of the first and inevitable consequences of intensified agricultural production is the urgent need for more effective plant protection measures. The very process of producing more food from the same land area involves changes in the natural dynamic balance when pests, diseases and weeds increase proportionately to the new status of the food crop.

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<sup>1/</sup> A large part of the information contained in this section has been taken from the FAO document: Plant Protection: Development of a Global Strategy (COAG/83/8; November 1982).

## 1.2 The role of legislation in plant protection

Throughout history, men have frequently suffered the devastating effects of plant diseases and pests. The enactment of laws designed to protect crops and prevent the spread of diseases and pests is nevertheless a recent phenomenon. This is not surprising, for society and the public authorities have only recently become aware of the complexity of the subject. In addition, the technical knowledge required to develop and establish a plant protection system has not been available until recently.

Plant protection is a subject in which planning, the establishment of specialized bodies, the application of scientific knowledge and an operational infrastructure are extremely important. It is also a subject in which important economic interests are involved (i.e. the pesticide industry) and enforcement could require the restriction of constitutional rights (i.e. quarantines or transport regulations). At the international level, plant protection measures may have either positive or negative effects on trade between countries and may be a hindrance to imports or exports.

All these examples show that to be able to put a plant protection system into effect, it is essential to be able to rely on legislation regulating these and other similar questions. Such legislation has various functions. Some of these are listed below:

Plant protection legislation is first of all a guarantee that the problems of diseases and pests are being dealt with at the appropriate level, be it local, national or international. It is also a means whereby efforts may be combined and resources distributed more efficiently and economically.

Secondly, through plant protection legislation, the administrative and technical infrastructure necessary for the implementation of protection measures is set up on a national scale.

Thirdly, the use of adequate means for the control of diseases and pests is ensured as far as practicable and to the extent that the current state of technological development allows. In fact, the public authorities can provide farmers with know-how, acquired at home or abroad, which the individual farmer could not obtain on his own.

Fourthly, the introduction of quality or composition standards, designed to the consumer could create a climate of confidence and security in the pesticides market and in the plant market in general. Plant protection legislation should act as a filter and not as a barrier to the movement of plant products.

Fifthly, the persons contravening the plant protection laws make good any loss or damage caused or are justly penalized.

The foregoing clearly shows that plant protection legislation is a means of achieving an adequate system of protection. However, the existence of a plant protection legislation in a country is no guarantee, in itself, of an adequate plant protection system. For various reasons, the legislation may not have the desired effects. Sometimes, the law may be bad and therefore unusable. Sometimes, although the law in itself may be good, it may not be applicable to the country concerned. And at times the law in itself may be good and suitable for the country, but may not be put into effect.

Plant protection laws, therefore, like all laws, must be directly related to the social, economic and juridical situation of the country. Otherwise, the law will be inapplicable or will not be enforced. Hence the difficulty of making "model laws" for all countries. If the model is inflexible, there is a risk of introducing an alien element, either through the form or the content, into what is a homogenous system. The technical aspects of plant protection could be used as a basis for establishing some "general guidelines" for the preparation of plant protection laws. However, when the law is being drafted for a particular country, the social, economic and legal context within which the law will be enforced must be borne in mind 2/.

It must be pointed out that plant protection legislation must not be considered purely as a means of coercion or restriction. Fortunately, the notion of law as a mere means of coercion, operating mainly through penalties, is gradually being replaced by one whereby law is seen as a means of developing and creating new opportunities. The main purpose of plant protection legislation is not to punish offenders but to increase food production. It is not passed for the pleasure of laying down a new rule but because of the imperative need to raise the quality of life of the people or sometimes even to save life. In view of this positive conception of law as a development tool, plant protection legislation will sometimes serve as a means of informing and educating the farmers; sometimes it will be a means of mobilizing efforts at national level; and sometimes, above all, as a means of facilitating domestic and foreign trade of food products.

One of the main obstacles to the economic development of a society is the lack of structures and legislation geared to social realities. Often, it is the administrative capacity and not the technical possibilities which are lacking. Sometimes, valuable efforts in the technical field come to nought because of bureaucratic delays, inefficient administrative procedures, the profusion of official bodies that exist or the absolute lack thereof. All these points will also have to be borne in mind with regard to plant protection.

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2/ The Plant Quarantine Division of FAO has prepared some general technical guidelines of this kind: J.F. Karpati, Suggested guidelines for plant quarantine act or law.

### 1.3 Positive plant protection legislation

Once the various countries have agreed that it is technically feasible and juridically convenient to establish a plant protection system, the preparation of positive plant protection legislation begins. Such legislation may be national, that is to say applicable solely in the national territory in accordance with the laws and regulations made by the competent national authorities, or international, that is to say applicable internationally under national laws or through agreements between two countries or more.

Although this study deals essentially with national laws, the international aspects of these laws cannot be ignored since they are closely related to the national laws and almost always pose problems for all countries.

#### 1.3.1 National plant protection legislation

In order to give an overall picture of the circumstances peculiar to each country, specific plant protection problems, the enactments in force and the measures taken to solve the problems, this study examines the plant protection legislation of 14 countries.

By tackling the question from the point of view of positive law, the danger of making comments of a personal nature is avoided, for the aim of the study is to make readers aware of existing legislation in some representative countries. Such legislation has usually been drawn up in answer to specific problems and, in the main, is contingent upon a certain level of technological development.

A preliminary analysis of the most salient points dealt with in the plant protection laws and regulations enabled an outline to be drawn up of the main fields or activities to be examined. Material both in Part I and each of the country studies in Part II, has been arranged according to this outline.

It is as follows:

Section 1 (Legislative Texts) lists the laws which, within the limits of the available information, appear to be in force.

Section 2 (Scope and structure of the legislative texts) gives the purpose of the texts; the main subjects dealt with and, in some cases, the structure of the texts.

Section 3 (Basic concepts and terms) gives the terms or expressions used in the texts and, where necessary, the definitions of plants, plant products, pests, harmful organisms and plant protection products or pesticides.

Section 4 deals with institutional organization; i.e. states whether a plant protection organization exists in the country, be it a ministry or a specialized body, and gives an outline of the functions of such an organization.

Section 5 gives the preventive measures applied within the country. It deals first of all with general preventive measures, such as preventive treatments, demarcation of control zones, establishment of sanitary cordons, the need for licences to grow certain crops, the need to use pest or disease-resistant seeds and the establishment of research institutes. The subject dealt with next is the treatment of pests or diseases which are already present in the crops; when lists of plant pests exist and plant protection campaigns or pest control measures are conducted by professionals, this is specified. In this context, it is of particular interest to know if diseased plants may be seized or destroyed and whether compensation is payable for such distinction. National quarantine regulations, that is to say quarantine measures applied within the country, are then dealt with. This is followed by a paragraph on the regulations governing the transport and trade of plants and plant products. Finally, phytopharmaceutical products for agricultural use, in so far as they are subject to plant protection legislation, are dealt with briefly.

Section 6 (International protection measures) deals with national import and export or re-export regulations. Important aspects thereof are: import and export licences; entry and exit ports; frontier inspections; phytosanitary certificates; disinfection operations where necessary; international quarantine measures; refusal of entry for reasons not related to plant protection.

Section 7 refers to the incentives for the plant protection presented in the national legislations. They may include grants and compensatory tax exemptions, bonuses or rewards, promotion of the manufacture and use of certain pesticides.

Section 8 deals with offences and penalties. The most important are indicated to give an idea of the system of coercion in operation.

Finally, the legal and administrative procedures regarding appeals are dealt with and the competent authorities with respect to penal matters are cited.

This brief outline gives a general idea of the variety and scope of the topics dealt with under what is termed "plant protection legislation". Of course, in this study these topics are considered from a legal point of view, that is to say in so far as they are components of an articulated system of laws designed to ensure plant protection. This means that, in general, technical details, which are the concern of engineers, economists, biologists, etc. are avoided. This study is therefore unlikely to be a duplicate of FAO's "Plant Protection Bulletin" 3/. Its purpose is not to give technical details but to explain the legal principles upon which the various plant protection systems are based.

### 1.3.2 Plant protection at the international level: Action taken

By their very nature, plant pests and diseases are international since they can rapidly spread across man-made boundaries. Action and cooperation at the international level are therefore essential.

FAO has played a major role in plant protection at the international level and is continuing to do so.

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3/ The "Plant Protection Bulletin" is a quarterly publication of FAO which is used to disseminate data collected by the World Information Service on Plant Diseases and Pests, set up under the 1951 International Plant Protection Convention. It provides information on the existence, occurrence and control of diseases and pests of economic significance, information on quarantines and other related matters, with special emphasis on current information.

Its considerable efforts and commitment in the technical field over the past 35 years have often met with success 4/. The satisfactory results of integrated pest control (particularly of the coconut palm rhinoceros beetle in the South Pacific, olive pests in the mediterranean area and crop loss appraisal); the international programme on horizontal resistance in crops against pests and diseases (especially the coffee berry disease in East Africa, the cadang-cadang disease of coconuts in the Pacific and diseases of wheat in Brazil); the development, since 1959, of an international programme on the proper use of agricultural pesticides; the prevention of post-harvest losses and weed management.

From a specifically legal standpoint, FAO has been at the centre of coordinating efforts aimed at establishing a world-wide system of cooperation to prevent the spread of pests and diseases through commercial exchanges or other means. The International Plant Protection Convention was established in 1951 and since then FAO has been the depositary therefor. The Convention has played a major role in preventing the spread of pests and diseases across national boundaries. Under the Convention, the signatory states issue and accept the International Phytosanitary Certificate and strive to ensure that their basic laws and quarantine regulations comply with the provisions of the Convention 5/.

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4/ The Plant Production and Protection Division has published a booklet entitled "Plant protection activities in FAO", Rome, 1983, which gives a brief description of these activities. Another FAO document of particular interest is "Plant Protection: Development of a Global Strategy", COAG/83/8, Rome 1982. A considerable amount of information on plant protection at the international level was taken from this document.

5/ At its sixth session in 1951, the FAO Conference approved the International Plant Protection Convention, which was then submitted to the governments for approval. It came into force on 3 April 1952, following ratification by three of the signatory governments. It was registered with the Secretariat of the United Nations on 29 November 1952 under number 1963. In August 1983, 83 governments had accepted and ratified the Convention or had deposited the required instrument of adherence and were thus part of the Convention.

In November 1979 the FAO Conference approved a revised text of the Convention which was due to come into force as from the thirtieth day after acceptance by two-thirds of the contracting parties. In July 1983, notice of acceptance of the amendments had been deposited by 32 countries. The revised text is given in the annex attached hereto.

Within the framework of the International Plant Protection Convention, FAO has encouraged the establishment of regional plant protection organizations to deal with problems of pests and diseases of regional significance. The establishment of such organizations began as early as 1950, when the European and Mediterranean Plant Protection Organization (EPPO) was set up. This was followed in Central America by the "Organismo Internacional Regional de Sanidad Agropecuaria" (OIRSA) in 1955; the FAO Plant Protection Committee for the South East Asia and Pacific Region (PPC/SEAP) in 1956; the Inter-African Phytosanitary Council (IAPSC) in 1956; the FAO Near East Plant Protection Commission (NEPPC) in 1963; the "Comité Inter-americano de Protección Agrícola" (CIPA) in 1965; the FAO Caribbean Plant Protection Commission (CPPC) in 1967; the "Junta del del Acuerdo de Cartagena" (JUNAC) in 1969; and the North American Plant Protection Organization (NAPPO) in 1976. With the exception of EPPO and NAPPO, FAO has played a role either in the establishment or in the operation of these organizations, whose main function has been to coordinate plant quarantine operations at the regional level, to assist member countries in solving their plant protection problems and to work with FAO towards strengthening plant protection and quarantine services throughout their respective regions.

FAO was also involved in the establishment of more operationally-oriented regional organizations, such as those dealing with locusts and other migratory pests. FAO took the lead in creating the International Locust Centre at Jeddah in Saudi Arabia (which later became the base for the FAO Regional Locust Commission for the Near East) and established locust commissions in Algiers for North-West Africa and in Teheran for South-West Asia. Regional control organizations were also formed in West Africa, the "Organisation Commune pour la Lutte Anti-acridienne et Anti-aviaire" (OCMALAV) and, in East Africa, the Desert Locust Control Organization for Eastern Africa (DLCO-EA). Currently, all countries affected by the desert locust are members of a regional structure. The usefulness of these regional organizations has been clearly demonstrated over the years. However, although regional structures exist in most areas, it has also become clear that their performance and operation effectiveness has often suffered greatly for lack of financial support and adequate staffing.

Besides FAO, many other organizations such as research institutions, scientific groups or institutes, public and private foundations and bodies involved in international aid programmes have shown an interest in international plant protection. Clear proof of this is the number and variety of projects financed by these bodies for the developing countries. Unfortunately, many of these undertakings are started and operate independently, sometimes competing with each other and often without mutual cooperation. This can result in chaos at national level and considerable

wastage of resources. To solve these problems, closer cooperation and coordination among agencies and institutions must be encouraged at international, regional and country level so that more effective measures to improve plant protection may be developed and enforced <sup>6/</sup>.

## 2. LEGISLATIVE TEXTS

Knowledge of a wide range of technical items is a prerequisite for drawing up plant protection legislation. The main function of the legislator or competent authority is often to convert the plans or measures prepared by the technical staff into binding legislation. In general, the more detailed the law, the more technical it is.

The largely technical nature of plant protection legislation explains why the power to deal with progressively grater details is assigned to progressively lower authorities.

The process is as follows:

Firstly, the national legislature promulgates a basic plant protection act which lays the foundations of plant protection policy, sets up or reorganizes the necessary services, delegates to the competent authorities (government, ministers, directors, etc.) the power to make regulations and, in a general way, indicates the penalties to be imposed.

Secondly, the authority thus empowered makes general or special regulations.

Finally, the regulations are made more concrete by means of orders or resolutions.

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<sup>6/</sup> The first meeting to strengthen the regional plant protection organizations, organized by FAO/IICA/WMO/EPPPO, was held at San José de Costa Rica in June 1983.

The specification process that all these lower enactments undergo usually results in their becoming increasingly technical and narrows their field of application. The increase in technicality is seen in the following example: the Act empowers the Minister to prohibit the importation of plants affected by diseases that he himself shall specify, while in the Ministerial Order, the Minister specifies the actual diseases and gives other details. Regarding the narrowing of the field of application, the law may apply to the whole national territory or to all diseases or all imports. Resolutions on the other hand, frequently deal with only some aspects of these topics and not in detail. Of course, throughout the specification process, care must be taken to ensure that the lower enactments do not contradict those to which they are subordinate, i.e. the national constitution or the basic acts.

This method of producing legislation has some basic advantages:

- a) The principle of subsidiarity is put into effect in that the lower authorities are given the freedom to act.
- b) It favours the quick and efficient operation of the public administration. Considering that all enactments are not as inflexible as the laws, the government, the ministry or the competent authority in every case, may amend or quickly adjust a particular enactment without it being necessary to amend the basic act, which is a slow process requiring the approval of the Legislative Assembly. This is particularly important in plant protection, since pests and diseases attack suddenly and the response must be quick if it is to be effective.

It is not surprising therefore that the national legislations examined in this study put this principle into effect. Almost all the countries have a basic law which is later enforced through lower ranking regulations. The characteristics and number of these lower enactments depend on the type of legal system operating in each country. For example, GERMANY has one Act and 11 Ordinances; ECUADOR has one Act, one set of General Regulations and seven Ministerial Orders; GUYANA has promulgated one Act, eight Regulations and five Orders; THAILAND has one Act, three Regulations and one Ministerial Order. There are three countries (CAPE VERDE, SUDAN and TRINIDAD AND TOBAGO) with the basic law only, which has not yet been enforced through lower enactments.

### 3. SCOPE AND STRUCTURE OF THE LEGISLATIVE TEXTS

#### 3.1 Title and purpose

The title of the basic act is the key to recognizing exactly what the various national legislations are trying to regulate. Of course, the title "Plants Act" or "Plant Protection Act" is often used (GERMANY, GUYANA, MALAWI, TRINIDAD AND TOBAGO, UNITED KINGDOM); or similar expressions (CAPE VERDE: Plant Protection Decree law; BELGIUM: Act on the control of organisms harmful to Plants and Plant Products; ECUADOR: Plant Protection Act; MEXICO: Plant and Animal Health Act; NEW ZEALAND: Plants Act; SUDAN: Plant Diseases Act). In two cases (CANADA and THAILAND), the title refers to quarantines: Plant Quarantine Act. In the particular case of SWITZERLAND, plant protection regulations have been enacted under the Federal Act on the promotion of agriculture and maintenance of the peasant population, and are enforced by the Plant Protection Ordinance.

The title is almost always explained in the act itself, in which the purposes thereof are specified. These are often given in detail, with expressions such as: prevent, eradicate and control plant diseases and pests (GUYANA, TRINIDAD AND TOBAGO, UNITED KINGDOM), or control the organisms which are harmful to plants and plant products (BELGIUM). Other countries stress the dual aspect of preventing both the introduction of pests or diseases and the spread thereof (CANADA, MALAWI, SUDAN). In MEXICO, the act applies to both plant and animal protection and preservation from the harmful action of pests and diseases but more details are given of the action to be taken in the plant kingdom.

The purpose of the act are particularly clearly expressed in the GERMAN and CAPE VERDIAN texts.

#### 3.2 Structure

The length of the basic plant protection act varies widely. It covers nine or ten sections in the UNITED KINGDOM or BELGIUM and 19 in GUYANA, SUDAN and TRINIDAD AND TOBAGO and 30 in CAPE VERDE or ECUADOR. MEXICO is a special case, since the 177 sections of its act also includes animal protection and refers to a large number of subjects.

The way in which the subjects are arranged and organized in each law also varies widely. This not only depends on the characteristics of each legal system (countries governed by Roman or Germanic law or "common law"), but also on the scope and specific purposes of each law.

In this study, an attempt has been made to arrange and present the material pertaining to each country in logical order. Generally speaking, subjects are usually arranged in the basic law as follows:

1. Short title (usually only in the "common law" countries);
2. Purpose of the act;
3. Interpretation;
4. Assignment of duties; regulatory powers; institutional aspects;
5. Appointment of official officers or inspectors; functions;
6. Plant protection measures within the country;
  - a. Preventive measures: sanitary cordons; sowing resistant varieties; reports and information to be provided by private individuals;
  - b. Treatment of pests: emergency measures; plant protection campaigns; professional help; compensation;
  - c. National quarantine measures;
  - d. Transport and trade of plants and plant products; storage; airmail dispatch;
  - e. Pesticides control; registration of firms; special aspects concerning manufacture and trade.
7. International Plant protection measures
  - a. Reference to the International Plant Protection Convention where applicable;
  - b. Importation: licences; ports or airports of entry; frontier inspection; phytosanitary certificates; destruction of goods and compensation therefor; international quarantine measures; refusal of goods;
  - c. Exportation and re-exportation: phytosanitary certificate;
8. Incentives for plant protection;
9. Offences and administrative or penal sanctions;
10. Appeals and legal or administrative procedures; limitation of officers' liability in some cases (usually only in "common law" countries");
11. Final provisions and repeal.

Of course, all legislations do not deal with all these topics, nor are they dealt with in this order. However, these are more or less standard topics, almost always found in national legislations. Rules and other lower regulations deal in detail with the same topics.

### 3.3 Scope

The subjects dealt with in the acts are indicative of the scope of the acts themselves. Three points deserve particular attention however: quarantines, pesticides and fertilizers.

#### 3.3.1 Plant protection quarantine measures

Quarantines are clearly plant protection measures and, as such, they should be included in the plant protection act. This is indeed the case in the legislations of ECUADOR, GUYANA, TRINIDAD AND TOBAGO and NEW ZEALAND; and is implicit in the legislations of BELGIUM and GERMANY. Quarantines are nevertheless only one aspect, however fundamental, of plant protection. There are others, as shown by the variety of topics covered in the acts. Therefore, an act which deals exclusively with quarantine measures will not cover all the aspects needed to achieve complete plant protection. The most logical approach would be to include the basic elements regarding quarantine in the plant protection act, subsequently enforcing them in special technical regulations.

#### 3.3.2 Pesticides for agricultural use

To be strictly logical, the topic "Pesticides for agricultural use" should be included in the plant protection act, since pesticides are a basic means of plant protection. In some legislations they are included, i.e. BELGIUM, CAPE VERDE, GERMANY and MEXICO. In MALAWI, pesticides are not dealt with in the act but a government order deals specifically with authorized fumigants.

The reasons why pesticides are dealt with in a separate act, such as in CANADA, ECUADOR, NEW ZEALAND, SUDAN and TRINIDAD AND TOBAGO, may be either political or practical. The technical complexity and the scope of pesticide legislation tend to point to the latter. Nevertheless, as in the case of quarantines, the most logical solution would seem to be to include the basic elements in the plant protection act and to enforce these later by means of technical pesticide regulations. In this study, pesticides are dealt with only indirectly, as and when mentioned in relation to plant protection.

### 3.3.3 Fertilizers

Fertilizers should not, in principle, be included in plant protection legislation, since they are not strictly related to protection but to nutrition. Only in MEXICO and SWITZERLAND are they included in the plant protection acts which is probably because these are particularly comprehensive texts. On the other hand, BELGIUM, ECUADOR, GERMANY, MALAWI, NEW ZEALAND, TRINIDAD AND TOBAGO and the UNITED KINGDOM have passed a separate fertilizer act<sup>7/</sup>.

## 4. BASIC CONCEPTS AND TERMS

The normal meaning of the expression "plant protection" is protection of plants and plant products against possible enemies or pests. In most legislations therefore, the definitions of these two expressions are always given, as well as other more secondary definitions. Only in three basic laws (those of ECUADOR, MEXICO and SWITZERLAND) is no definition given, while in other countries they abound (i.e. in the GUYANA and Thailand acts 16 expressions are defined).

A clear definition of the terms and expressions used is essential if the content and scope of application of the act are to be made clear. We shall restrict ourselves here to the two basic terms mentioned in the foregoing paragraph and add a brief comment on the meaning of "pharmaceutical products for agricultural use".

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<sup>7/</sup> See: Denis M. Mylonas, Fertilizer legislation, FAO Soils Bulletin No. 20, FAO, Rome, 1973, p. 237.

#### 4.1 Plants

The term "plant" is given a broad interpretation in all legislations. Not only are the plants themselves included, but also the living parts thereof, bulbs and seeds (CANADA, GERMANY, GUYANA, MALAWI, THAILAND AND THE UNITED KINGDOM). Sometimes a "plant" means any member of the vegetable kingdom, whether living or dead (MALAWI, THAILAND). Only in SUDAN is the grain or seed not included, unless an order or regulation states otherwise or the seed concerned is the cotton seed.

The International Plant Protection Convention also gives a very broad definition of "plant": living plants and parts thereof, including seeds in so far as the supervision of their importation may be deemed necessary by contracting parties <sup>8/</sup>.

In NEW ZEALAND, the expression "plant material" is used. This is similar, although slightly wider in scope, than the term "plant". The same applies to TRINIDAD AND TOBAGO, where the expression "plant products" is used instead of the term "plants".

In Belgium and Cape Verde the expression "plant products" ("produits végétaux" and "produtos vegetais" respectively) supplements the term "plants" ("végétaux" and "vegetais" respectively). In these legislations, "végétaux" or "vegetais" has the same meaning as "plant" in other legislations. In fact, the definitions thereof are almost identical to that of "plant" in GERMANY'S Act.

#### 4.2. Pests

The term "pest" (used in the basic acts of CANADA, GUYANA, MALAWI, NEW ZEALAND, THAILAND, TRINIDAD AND TOBAGO and the UNITED KINGDOM) has almost the same meaning as the expressions "harmful or injurious organism" (used by BELGIUM, GERMANY and, to explain the term "pest", by MALAWI) and "plant pests" ("inimigos de vegetais") used in the legislation of CAPE VERDE. Basically, the definition is the same as that given in the International Plant Protection Convention, i.e.: the term "pest" means any form of plant or animal life, or any pathogenic agent, injurious or potentially injurious to plants or plant products. It is as wide in scope as the concept of "plant".

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<sup>8/</sup> International Plant Protection Convention, Art. II, 1. Ensure that the definitions given in the Convention do not affect the definitions established in the acts or regulations of contracting parties; please see Art. II, 5 of the Convention.

### 4.3 Pharmaceutical products for agricultural use

A definition of this expression is provided in the basic plant protection act of only two legislations.

In the CAPE VERDE legislation pharmaceutical products are those designed to protect the plant against pests, including growth regulators and all other similar products designed to affect the vital processes of the plant but which are not used for nutritional purposes.

In GERMANY, the expression "plant treatment substances" is used and includes both plant protection products and growth regulators.

## 5. INSTITUTIONAL ORGANIZATION

### 5.1 General considerations

For appropriate measures to be adopted and implemented in time, an efficient specialized organization must be in place. It has become increasingly clear how important this is in the development process. Often, it is not financial or technical resources that are lacking, but administrative capacity. The best technical development plans may be ineffective due to a shortage of trained staff, lack of communication or organization, an excess of bureaucratic procedure or lack of competence on the part of the authorities or at the appropriate levels.

Furthermore there is a risk that developing countries may adopt institutions from other countries that are unsuited to the conditions prevailing in the country or that cause too rapid a break between existing social customs and the new mentality.

It must be borne in mind that in so highly technical a sector as plant protection, the efficiency of the institutions is constantly under review by both the national and international community. Special attention must be devoted to the subject therefore, but it must always be possible to change the structures when advisable. The system or structure must never be an end in itself, but the means to an end. The end is plant protection.

## 5.2 Ministries and specialized agencies

The structure of the legislations examined is fairly complex. This is not surprising, since these are countries which have made an attempt to organize the plant protection sector, as shown by the fact that they have plant protection laws and regulations.

The competent authority for plant protection is usually the minister in charge of agricultural matters, although care is taken to ensure that he cooperates with other ministries, in particular those of health and foreign trade. In some legislations it is specified that the customs and postal authorities shall cooperate in all plant protection inspection and control operations.

The Minister of Agriculture (expression used in most legislations; in CAPE VERDE his equivalent is the Minister of Rural Development; in GERMANY, the Minister of Food, Agriculture and Forests) is usually empowered to make regulations to enforce the Act and administers the whole plant protection sector.

He usually works through a specialized body which forms part of the ministry. This may be a service, department or division, depending on the term used and normal practice of the public administration in each country. In BELGIUM and MALAWI, this body is the Plant Protection Service. In CAPE VERDE, it is the Plant Production and Protection Office. In ECUADOR, it is the Plant Protection Division. In TRINIDAD AND TOBAGO, a more specific term, the Plant Quarantine Service, is used, but its powers are wide. Special mention must be made of GERMANY, where, in addition to the administrative bodies, there is a Federal Biological Institute for Agriculture and Forestry which is an independent federal agency under the federal ministry, whose activities include providing information, technical and scientific advice and carrying out laboratory tests.

The particular characteristics of federal states are reflected in their plant protection legislation. In GERMANY, the Länder governments may make regulations in certain cases and, in cases of emergency, may, through a decree, prescribe measures which usually fall within the competence of the Federal Minister. In every canton in SWITZERLAND, there is a cantonal or inter-cantonal plant protection service, which operates under the supervision of the Department of Agriculture.

Cooperation between the public administration and the sectors concerned is achieved in the different countries through very different types of technical or advisory institutions. The Pesticides Board of NEW ZEALAND, with members from both the public and private sectors, or the Pesticides Commission of the SUDAN are typical examples. The boards or commissions deal solely with the pesticides sector, but they could be a first step towards ensuring greater participation in other sectors.

MEXICO'S model of decentralization and local participation in the plant protection sector could be very interesting. Regional plant health committees have been set up by the Ministry of Agriculture and Animal Husbandry and operate as auxiliary bodies. These committees cooperate with the local plant health boards; they have legal status and their members include representatives of the federal authorities, federative and municipal bodies and the sectors concerned.

### 5.3 The International Plant Protection Convention and plant protection organization

As regards the institutional aspects of plant protection, the International Plant Protection Convention prescribes certain measures to be taken at both national and international levels.

Under the Convention, each contracting party shall make provision, as soon as possible and to the best of its ability, for an official plant protection organization with the following main functions: the inspection of plants and plant products, disinfestation and disinfection, the issuance of certificates and the dissemination of information within the country. Research and investigation in the field of plant protection shall also be organized <sup>9/</sup>.

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<sup>9/</sup> Art. IV, 1 of the Convention. See text in the Appendix attached hereto.

With respect to international cooperation, the contracting parties shall cooperate with one another to the fullest practicable extent in achieving the aims of the Convention and, in particular, will take all necessary measures to establish a world reporting service on plant pests and shall participate in any special campaigns for combatting particular destructive pests 10/.

The Convention also encourages the establishment of regional plant protection organizations in appropriate areas 11/.

#### 5.4 Phytosanitary inspectors

Plant protection cannot be effective unless it extends over the whole territory and is subject to careful supervision. The supervisory role is fulfilled by the phytosanitary inspectors, who are also called phytosanitary inspection officers or quarantine agents or officers. They shall be present where there is a centre of infection or danger of infection or infestation as technical advisers or supervisors, or if necessary, to prescribe the necessary restrictive measures.

In view of the important role of the phytosanitary inspector, particular care is taken to provide an exact definition of his powers in national legislations. These are often very similar to those of the police and therefore impinge to a very great extent upon personal liberties. Almost all the legislations analysed deal in detail with this subject. Significant examples may be found in the acts of CAPE VERDE, GERMANY, NEW ZEALAND, SUDAN, SWITZERLAND and the UNITED KINGDOM.

Inspectors are usually authorized to enter upon any land, commercial and industrial premises, examine means of transport, inspect, take samples, examine commercial documents, visit installations and in some cases carry out temporary seizure. They must usually identify themselves before exercising their powers, make inspection reports and, in accordance with the procedure prevailing in each country, inform the judge or the competent administrative authority of the offences committed.

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10/ Art. VII of the Convention. For information on the world reporting service, see note 3 of this Part I.

11/ Art. VIII of the Convention.

## 6. PROTECTION MEASURES WITHIN THE COUNTRY

The basic plant protection act does not usually indicate the actual measures to be taken but delegates the power to enforce them to the Minister or competent authority, when necessary. Hence, concrete measures and all the technical implications thereof are not found in the basic act but in the regulations and other enactments pursuant thereto. General powers are however usually listed in the basic act and the framework within which they are to be exercised is laid down.

### 6.1 General preventive measures

Prevention is the most efficient and economical means of pest control. Hence, much of the work of the plant protection organization is connected with maintaining an adequate system of supervision. The regional offices in ECUADOR, whose function is to carry out pest and disease control programmes, projects and campaigns are a typical example.

For preventive systems to be effective, the cooperation of government officials or inspectors as well as the public in general is essential. This explains why, frequently, national legislations do not merely require government officials to be vigilant, but also practically oblige private individuals to cooperate by reporting the existence of pests. In GERMANY, for example, the Federal Minister is empowered to order that any outbreak of harmful organisms or diseases or any sign thereof be reported and to oblige owners to investigate any such outbreak. Similarly, in BELGIUM, the Crown is empowered to require that any outbreak or sign of outbreak of injurious organisms be reported.

Of course, the participation of private individuals is encouraged through a system whereby the public is kept informed. This information may be provided through the publication of lists of injurious organisms or other means. Thus, the Minister of Rural Development of CAPE VERDE publishes from time to time a list of the plant pests to be controlled and ensures that descriptions and drawings of these pests are distributed so that they may be consulted by the public. So as to keep the people informed and obtain their cooperation, it is the task of the Ministry of Agriculture and Animal Husbandry in Mexico to disseminate information on plant health on a permanent basis, using methods that can be easily understood.

The power to take preventive measures which is usually delegated by the acts may include prohibiting the planting of disease-prone species and varieties; prescribing preventive disinfection; promoting biological control by introducing animal and plant species which are useful in combating plant pests; demarcating observation areas; establishing sanitary cordons; and requiring permits for the cultivation of certain crops. Furthermore, land owners are obliged to take the measures prescribed by the competent authorities (e.g. CAPE VERDE, MALAWI and NEW ZEALAND).

## 6.2 Treatment of plants

If, despite the preventive measures, pests or diseases have appeared or have spread, they must be treated appropriately.

In this respect, the laws delegate a number of wide powers. The most common provided for are: to oblige those responsible for the areas affected to combat the injurious organisms; to uproot, destroy or disinfect the diseased plants or plant products or articles which carry injurious organisms; to prohibit or restrict cultivation and harvesting of crops; to prescribe particular methods of application for treatment agents; to fumigate or disinfect lands, buildings and vehicles or vessels. Among the countries listing such powers are GERMANY, MALAWI, MEXICO and SWITZERLAND.

Of particular importance from the economic standpoint is compensation for the uprooting or destruction of plants and plant products. Plant protection measures such as these are usually carried on private property for the benefit of the entire local or national community. Compensation is justified provided that the owners are not at fault. It may be instructive to examine some cases briefly:

- In GERMANY, in the case of the destruction of plants or plant products which are not infested and which show no sign of being infested, just compensation in cash shall be paid. It will be appreciated that such destruction is almost always an error on the part of the officers.
- In CANADA, regulations may be made authorizing the Minister to order payment of compensation for any plant or other matter destroyed or prohibited or restricted from sale because of its phytosanitary condition.

- In MALAWI, the Minister may provide for payment of compensation to the owner of plants destroyed under the powers conferred by the act. If the owner so requires, the amount of compensation payable may be determined by two assessors, one of whom shall be nominated by the owner.
- In NEW ZEALAND, the Minister is responsible for the payment of compensation to the owner of the matter destroyed or the article treated. The amount payable will be the market value of the goods involved or, in the event of dispute, this shall be determined by two experts, one appointed by the inspector and the other by the owner.
- In the UNITED KINGDOM, the Minister or Secretary of State may prescribe compensation in the event of crops, seeds, plants or parts thereof being removed or destroyed on the recommendation of an authorized inspector. The amount of compensation payable will be the real value of the object at the time of its removal or destruction.
- Finally, in SWITZERLAND, if the value of an article is diminished owing to preventive measures prescribed by the authorities, the owner may be paid fair compensation therefor. The procedure for granting such compensation is set out.

Only in the legislations of CAPE VERDE and TRINIDAD AND TOBAGO is compensation expressly excluded. In CAPE VERDE, plant protection treatment operations, destruction or removal prescribed by the inspectors shall be carried out by the persons receiving the orders or those holding the goods. Nevertheless, the Minister of Rural Development may grant an exemption in favour of farmers who do not have sufficient resources to have their plants treated. In TRINIDAD AND TOBAGO, the Government and its officers are under no obligation to pay any compensation whatever for damage or loss caused by treatment or any other quarantine action.

### 6.3 National quarantine measures

Quarantine regulations are basic component of plant protection legislation. In many cases, these regulations were the first plant protection measures taken and even today, in some national legislations (e.g. CANADA), reference is made to quarantines in the title of the act. The International Plant Protection Convention also applies mainly to quarantine pests 12/.

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12/ See Art. II, 4 of the Convention. It must however be borne in mind that the Convention applies mainly to quarantine pests involved with international trade. Section 6.3 of this document deals with the subject from the national standpoint.

The word "quarantine" simply means a period of 40 days. Originally it applied to the time ships had to spend isolated in ports when they came from countries with a high risk of epidemics or contagious diseases. Later, the term "quarantine" ceased to refer to a period of 40 days and was applied not only to human diseases but also to animal and plant diseases, before it came to be used as it is today, to mean a period of isolation (strict sense of the term) or the combination of efforts and measures to prevent the spread of diseases from one place to another (wider sense). For plant protection purposes, the term "quarantine" seems to have an even wider sense, although it usually includes a certain period of isolation. In any case, as mentioned in Section 3.3.1., the concept of quarantine does not cover all aspects of plant protection.

Considering that quarantine originated in the international field and that it is currently associated mainly with the control of international trade, national quarantine measures are often not the main concern of plant protection regulations. Nevertheless, the power to prescribe quarantine measures within the country is clearly implicit in the powers delegated by the act. This is the case in GERMANY and the UNITED KINGDOM.

Other countries explicitly recognize the power to prescribe national quarantine measures; i.e. ECUADOR, GUYANA, MALAWI and SUDAN. MEXICO in particular deals in detail with general, regional or local, permanent or temporary, preventive or treatment quarantines.

#### 6.4 Transport and trade of plants and plant products

In almost all the countries examined, the basic act grants the competent authority the power to prohibit or restrict the transport of plants or articles which may be disease carriers. This wide delegation of powers usually also extends to storage procedures and frequently includes the power to make technical regulations regarding disinfestation, disinfection or the cleaning of premises. It occurs in the legislations of BELGIUM, CANADA, CAPE VERDE, ECUADOR, GERMANY, GUYANA, MALAWI, MEXICO, TRINIDAD AND TOBAGO and the UNITED KINGDOM. MEXICO lays special stress on transport. ECUADOR emphasizes the phytosanitary aspects of trade in seeds and nursery plants as well as infested matter.

Provisions in MALAWI with respect to how phytosanitary requirements may affect the validity of contracts are interesting. If within three days of the delivery to him of plants sold by a nursery man, the purchaser of the plants finds that they are infested with an injurious organism, he may return the plants to the nursery man, at the nursery man's expense, and shall thereupon be freed from the liability to pay for them. If he has paid for them he may recover the purchase price.

## 6.5 Control of phytopharmaceutical products for agricultural use

Phytopharmaceutical products for agricultural use, or pesticides, or treatment agents, cover an area which exceeds the scope of this study. The characteristics and effects thereof pose technical and legal problems (i.e. pesticides residues in foodstuffs) which would have to be covered in a separate study. It will suffice to recall what was said in Section 2 of this study concerning its inclusion in plant protection laws.

Some countries which include phytopharmaceutical products in the basic plant protection act devote much space to them. This is the case in CAPE VERDE and GERMANY. In other countries, the basic act restricts itself to granting powers to the competent authority to make the relevant regulations, as in the case of BELGIUM and MEXICO.

Most often however, a separate act covers pesticides and similar products. This is the case in CANADA, NEW ZEALAND, SUDAN and TRINIDAD AND TOBAGO. It is worth mentioning that in CANADA a special act provides for compensation for damages caused by pesticides.

## 7. INTERNATIONAL PROTECTION MEASURES

Measures taken to prevent the spread of pests and diseases across international borders have been one of the main and more visible features of plant protection. In fact, the existence of natural or political boundaries has favoured the introduction of protection measures. The first quarantine laws were enacted for the specific purpose of commercial exchanges between countries.

Today, with increased international exchanges of every kind taking place, protection at the international level has become even more important. In addition, crop intensification and genetic manipulation have increased plant vulnerability to pests and diseases. All this explains the attention that is being paid to international aspects of plant protection. The International Plant Protection Convention was an answer to a world-recognized need.

All the countries studied, with the exception of SWITZERLAND, are part of the International Plant Protection Convention. SWITZERLAND is a signatory of the Convention, but has not yet deposited the required instrument of ratification.

## 7.1 Importation

The countries' acceptance of the ideals and practical principles of the Convention is reflected in their respective national legislations. They all pay particular attention to the international aspects of the import trade. They usually confer wide powers with regard to prohibition, restriction or regulation of the importation of plants, plant products and injurious organisms and subject such plants, products or organisms to inspection, disinfection or disinfestation, seizure or destruction. The legislations of BELGIUM, CANADA, ECUADOR, GERMANY, GUYANA, SWITZERLAND and the UNITED KINGDOM give good examples of such powers.

Importation is usually conditional upon the issuance of two very different types of documents - an import licence, which is granted on the basis of the economic, technological or political circumstances of the country, and the phytosanitary certificate of the country of origin, which guarantees that the plants or plant products have been inspected and are free from pests and comply with the phytosanitary provisions in force in the importing country <sup>13/</sup>. These two documents are required in CAPE VERDE, ECUADOR, MALAWI, MEXICO, SWITZERLAND, THAILAND, TRINIDAD AND TOBAGO. It is interesting to note that in NEW ZEALAND the prior consent of the person taking delivery of the goods is required. If this person fails to give his consent, the inspector shall be notified and shall give instructions as to whether the plants or products should be treated, destroyed or otherwise disposed of.

Importation must usually be effected through the appointed ports or airports (see the legislations of ECUADOR, NEW ZEALAND and THAILAND), since only at these ports will the facilities and staff be available to carry out the phytosanitary inspection prior to importation. These inspections are carried out according to the procedure set out in the customs regulations and ordinances and in accordance with the instructions given by the plant protection authorities, which sometimes dispose of special publications for such purposes (in GERMANY, the "Federal Information Bulletin" and in CAPE VERDE the "Plant Protection Bulletin").

If inspection shows that the phytosanitary condition of the plant or plant product is unsatisfactory, quarantine measures in places expressly appointed by the regulations may be prescribed, or disinfection or disinfestation may be carried out (see BELGIUM), or the plants or products may be destroyed (ECUADOR), or seized (SUDAN). The importer is usually liable to pay the costs of treatment and no provision is made for compensation in the event of destruction on the grounds of infestation (MALAWI). It is understandable that no compensation is payable, since the authorities are endeavouring to protect the country from danger. The importer must guarantee that the plants or products are in good condition and accept responsibility should this not be so.

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<sup>13/</sup> See the model phytosanitary certificate attached to the International Plant Protection Convention in the annex attached hereto.

Most legislations provide for a special procedure or permit for the importation of plants, products and organisms for scientific purposes. In CAPE VERDE, only the Plant Production and Protection Office may import for scientific purposes. In CANADA, a special permit is required to bring into the country pests, plants or other infested matter for scientific, educational or industrial purposes. In ECUADOR, the permission of the Ministry of Agriculture and Animal Husbandry is required for imports for experimental purposes. In the UNITED KINGDOM, the competent minister may grant a special permit to allow plants or plant products, pests or genetically manipulated matter to be landed. In SWITZERLAND, the Agricultural Division may authorize the importation of certain pests and disease agents mentioned in the relevant ordinance in special cases, provided that there is no risk involved.

In some cases a special permit is also required for the importation of pesticides. (See the legislations of CAPE VERDE, GERMANY and MEXICO on this subject).

## 7.2 Exportation and transit

The regulations concerning the exportation and transit of plants and plant products are similar to those governing the importation thereof, particularly with respect to the need for a phytosanitary certificate for export. This is not surprising, for this is one of the main points upon which it was agreed to coordinate different legislations through the International Plant Protection Convention. GERMANY may be cited as an example. Here, the act considers importation, exportation and transit together. Something similar occurs in MEXICO.

As in the case of importation, powers are also delegated to regulate, prohibit, restrict or control exportation or transit, to apply certain treatment procedures and to establish packaging and labelling regulations. Examples of this type of delegation of powers may be found in the legislations of CAPE VERDE, MALAWI, MEXICO, NEW ZEALAND and the UNITED KINGDOM.

Also in the case of exportation and transit, the issuance of the phytosanitary certificate is subject to prior inspection, as a result of which the plants or products may have to be treated. Often, an export permit is required in addition to the phytosanitary certificate. This is to prevent unprocessed products or products that are important for the national economy from leaving the country. ECUADOR'S provisions on this subject are interesting.

It is important to note that in GERMANY the export of treatment agents is governed by special regulations. This means that while the exportation and importation of plants and plant products are subject to the same provisions, as indicated at the beginning of this section, importation and exportation of treatment agents are dealt with separately. In fact, the authorization of the Federal Biological Institute is not required for the export of treatment agents, nor are they subject to the usual labelling regulations.

## 8. INCENTIVES FOR PLANT PROTECTION

Provision is not usually made for incentives in either the acts or the regulations. MEXICO is the only country among those studied which lends attention to this subject and provides that the Secretary of State for Agriculture and Animal Husbandry shall:

- a. Provide the farmers with technical and material assistance so that they may be trained in and given demonstration on methods of prevention and control;
- b. Provide facilities for the importation and exportation of substances, material and equipment used for the prevention and control of pests and diseases;
- c. Provide incentives to encourage those who furnish scientific or technical information, thereby making a positive contribution to plant protection.

This lack of regulations on incentives in most legislations is indeed surprising, bearing in mind how advantageous this could be for plant protection.

## 9. OFFENCES AND PENALTIES

The defining of offences and the fixing of the penalties therefor are subjects of particular legal importance and as a result are dealt with at the highest legislative level. This means that they are dealt with in the basic acts and not in the regulations. In this way, any improper practice on the part of the administrators may be avoided. However, where penalties are concerned, discretion both on the part of the administration and the judges, is necessary.

The countries examined offer a very varied picture of offences and penalties. Most countries distinguish between minor and serious offences. They are almost always of an administrative nature. One exception is CANADA, where some offences are considered felonies. The offences are usually listed in detail, except where minor offences are concerned, when it is often merely stated that an offence is any action which contravenes the regulations in force.

There are principal and cumulative penalties. Principal penalties include imprisonment and fines. It is interesting to note that almost all legislations revert to imprisonment in certain cases. Cumulative penalties include the withdrawal of authorizations or licences, confiscation of articles relating to the offence or destruction thereof and temporary or definitive closure of installations or establishments. In the event of a further offence, the penalty payable for the first offence is usually doubled.

Most legislations resort to imprisonment and fines alternatively or cumulatively, at the discretion of the judge or competent administrative authority. The only exception is NEW ZEALAND, where offenders are liable only to a fine which does not exceed US\$ 325. In SUDAN, offenders are liable to a fine not exceeding US\$ 15 or, if they fail to pay, to imprisonment not exceeding three months.

In order to give a clear idea of the kinds of offences committed and the type and magnitude of the penalties prescribed therefor, some typical cases are listed below.

In GERMANY, any person disseminating harmful organisms, thereby endangering plant assets which are not his own, shall be liable to imprisonment for a term not exceeding two years or to a fine. The importation or marketing of unauthorized plant protection substances or the marketing thereof without the required labels shall be liable to a fine of up to US\$ 3 850.

In BELGIUM, minor offences are liable to minimum fines or to imprisonment for a term of between 1 and 27 days. More serious offences, which are listed in detail, are liable to a fine of between US\$ 2 and 52 and to imprisonment for a term ranging from 15 days to 3 months.

In CAPE VERDE, offences against the enactments in force are liable to a fine of up to US\$ 26 or to imprisonment for a term not exceeding two years.

In ECUADOR, firms which have been closed down and which continue to ship material and their salesmen are liable to fines of between US\$ 100 and 500 and 10 and 2 000 respectively. Minor offences are liable to fines of between US\$ 2 and 50.

In GUYANA, penalties generally consist of a fine of some US\$ 160 and imprisonment for a term of three months.

The laws of MALAWI specify a large number of offences which are liable to a fine not exceeding US\$ 88 and to imprisonment not exceeding six months. Any person maliciously introducing a pest is liable to a fine of some US\$ 350 and imprisonment not exceeding four years.

The laws of MEXICO are particularly well compiled on this subject. The penalty most often applied is a fine, which may be as much as US\$ 1 000. More severe penalties are applied in some cases. For example, a government officer who fails to carry out his duties with respect to the control of epizootic diseases is liable to three years imprisonment and removal from his post; the smuggling of plants from quarantine countries is liable to imprisonment for a term of between 6 and 12 years; the dissemination of pests or diseases is liable to between 5 and 15 years imprisonment.

In the UNITED KINGDOM, there are special penalties concerning the potato beetle. For all other offences, a maximum fine of some US\$ 150 may be imposed.

In SWITZERLAND, violations of federal or cantonal laws are liable to imprisonment or a fine, provided that no greater offence is involved. The maximum fine, where the offender acted negligently, will be some US\$ 1 450.

For offences involving the importation and transport of prohibited materials, the laws of THAILAND prescribe imprisonment not exceeding six months or a fine of up to US\$ 90, or both. Any person who prevents a quarantine officer from carrying out his duties shall be liable to imprisonment of up to six months or a fine not exceeding US\$ 220 or both.

Finally, in TRINIDAD AND TOBAGO, the offences listed (i.e. altering phytosanitary certificates, preventing inspectors from carrying out their duties) are liable to a fine of US\$ 100 or to imprisonment not exceeding three months, or both. A special penalty applies to the importation of material without the required licence. The offender is liable to a fine of US\$ 400 or to imprisonment for a term of six months or both.

## 10. LEGAL AND ADMINISTRATIVE PROCEDURES

As a general rule, the ordinary competent authority deals with plant protection offences. This applies both to cases brought before a judge and to cases dealt with through administrative channels. The same may be said with respect to the procedures to be followed. This means that on the subject of plant protection, there are no instances or special procedures. There are, however, some special points which deserve mention.

With respect to competency to initiate proceedings, it must be noted that in GUYANA all proceedings shall be taken in the name of a plant protection officer. In SUDAN, proceedings cannot be initiated without the prior consent of the Under-Secretary, or an inspector or some person authorized by the Under-Secretary.

In some legislations the administrative procedure is set out in some detail. This is the case in the legislations of CAPE VERDE, ECUADOR, MALAWI and MEXICO. This may be due to the fact that these countries have no general rules relating to action under administrative law or, as is more likely, they wish to introduce special plant protection rules. In any case, this is a subject which goes beyond the scope of this study and which would require detailed knowledge of the procedural law of each country.

**PART II: NATIONAL LEGISLATION**



## BELGIUM

### 1. LEGISLATIVE TEXTS

Crown Order regulating control of importation of seeds and seedlings of specified plant species - 16 April 1966 - Moniteur Belge No. 88, 6 May 1966, p. 4799.

Act on the control of organisms harmful to plants and plant products - 2 April 1971 - Moniteur Belge No. 76, 20 April 1971, p. 4912 <sup>1/</sup>.

Official notice of the Ministry of Agriculture authorizing the use of certain phytopharmaceutical products - Moniteur Belge No. 234, 6 December 1974, p. 14590.

Ministerial Order on the control of organisms harmful to plants and plant products - 6 January 1980 - Moniteur Belge No. 12, 20 January 1981, p. 582.

Crown Order on the control of organisms harmful to plants and plant products - 16 October 1981 - Moniteur Belge No. 244, 22 December 1981, p. 16026.

Amended by the Crown Order amending the Crown Order of 16 October 1981 on the control of organisms harmful to plants and plant products - 12 July 1982 - Moniteur Belge No. 139, 21 July 1982, p. 8428.

The basic text is the Act on the control of organisms harmful to plants and plant products of 1971. Pursuant to this Act, the 1980 Ministerial Order and the 1981. Crown Order bringing the legal provisions into line with the European Economic Community's guidelines were issued.

### 2. SCOPE AND STRUCTURE OF THE LEGISLATIVE TEXTS

The purpose of the 1971 Act, as its title indicates, is to control organisms which are harmful to plants and plant products. The ten articles of the Act deal with the following subjects: interpretation; powers conferred on the Crown for the purpose of issuing the regulations pursuant to the Act; powers granted the enforcing organs; penal and administrative sanctions for violation of the act or the regulations pursuant thereto; system of compensation in respect of certain measures taken under the Act; repeal of former legislative texts.

The 1980 Ministerial Order, issued pursuant to the 1971 Act, contains 13 articles with the following provisions: measures for the control of a pest of the potato; information to be supplied by landowners; importation measures; and payments due by importers and exporters.

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<sup>1/</sup> A summarized text of the Act is published in FAO's Food and Agricultural Legislation series, Vol. XX, No. 2, p. 7 and 8.

The 1981 Crown Order, also issued pursuant to the 1971 Act, comprises 115 articles under the following headings:

- I - Control of organisms harmful to plants and plant products (measures taken within the country; importation, exportation and transit measures);
- II - The Plant Protection Service (function thereof, observers and warning stations);
- III - Final provisions.

The seven schedules of the Order deal with the following subjects:

- I - Harmful organisms the introduction of which is prohibited;
- II - Harmful organisms the introduction of which is prohibited, whether or not they are present in some plants or plant products;
- III - Plants or plant products the introduction of which is prohibited;
- IV - Special requirements for the introduction of plants, plant products and soil;
- V - Plants, plant products and soil requiring a phytosanitary certificate;
- VI - Plants requiring disinfection;
- VII - Models of phytosanitary certificates, the phytosanitary certificate for re-export and the fumigation certificate.

The 1971 Act provides that the Crown is empowered, inter alia to: prescribe, prohibit or regulate the use of pesticides. Pesticides are dealt with in a special act under which a number of provisions concerning storage, trade and the use of pesticides or phytopharmaceutical products have been made.

Quarantines are not specifically dealt with in the 1971 Act, but the regulatory orders issued pursuant to the Act refer to the control measures which must be taken in the case of importation and exportation of plants.

### 3. BASIC CONCEPTS AND TERMS

The 1971 Act gives the definitions of the following terms: plants, plant product and harmful organisms. In addition, the 1981 Crown Order defines: plantation, service, official findings, person responsible, the Minister, Member State, phytosanitary certificate, phytosanitary certificate for re-export and forest.

Plants ("végétaux") are living plants and the living parts thereof including the fresh fruit and seeds.

Plant products ("produits végétaux") are products of plant origin which have not been processed or which have undergone a simple preparation process, provided that they are not plants.

Harmful organisms ("organismes nuisibles") are animals, plants, and animal or plant organisms, as well as viruses harmful to plants and plant products 2/.

#### 4. INSTITUTIONAL ORGANIZATION

The Crown is granted wide powers under the 1971 Act. These powers may be delegated totally or in part to the Minister of Agriculture. The Crown may also appoint bodies corporate or natural persons to ensure that the measures prescribed are indeed taken 3/.

The Plant Protection Service is a specialized body, responsible for taking the necessary measures when the risk of infection is imminent 4/. The Service must undertake all necessary and useful steps to detect, verify and control harmful organisms 5/; it issues certificates declaring holdings of plants and plant products to be free from harmful organisms. A record of the certificates are kept in a special register 6/. It issues phytosanitary certificates and phytosanitary certificates for re-export. For the protection of plants and plant products, it may appoint observes to help investigate and carry out inspections on diseases and crop pests in particular regions. They may also be assisted by warning stations 7/.

The duties of enforcement officer are undertaken by the inspectors and control officers for basic requisites in agriculture, the inspectors and control officers of the National Agricultural and Horticultural Markets Office, the engineers and officers of the water and forests administration and the officers of the Customs Administration. These officers shall have free access to all premises, depots, offices, warehouses, vehicles, etc. They may undertake special missions under the authority of the Plant Protection Service and under the conditions laid down by the Minister of Agriculture 8/.

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2/ 1971 Act, Art. 1. The same definitions are given word for word in the 1981 Crown Order, Art. 1.  
3/ Act of 1971, Art. 2.  
4/ Act of 1971, Art. 3.2.  
5/ 1981 Crown Order, Art. 105.  
6/ Ibid., Art. 107.  
7/ Ibid., Arts. 108-112.  
8/ Act of 1971, Art. 3, 1 and 3.

## 5. PROTECTION MEASURES WITHIN THE COUNTRY

### 5.1 General preventive measures

The Act provides that the Crown is empowered to prescribe preventive or control measures (general or specific) in order to prevent the spread, introduction into the Kingdom or export of harmful organisms. The Crown is empowered to order that any outbreak or sign of outbreak of harmful organisms be reported and to prescribe the necessary measures to protect the plant and animal species that he shall designate 9/.

Officers of the Plant Protection Service shall take samples of the plants, plant products, soil and other culture media. Should there be an imminent danger of infection by harmful organisms which have not been specified by the Crown, they may take the appropriate measures for a maximum period of 30 days and must inform the Minister of Agriculture thereof without delay. The Service may temporarily seize the plants or plant products for a period not exceeding 30 days in order to subject them to inspection 10/. When the danger of infection is imminent and so as to meet the necessary export requirements, the Minister of Agriculture may prohibit or subject to regulations the transport of plants or plant products from infected lands. He may prohibit the cultivation of specified plants on such lands and order the up-rooting, removal, cultivation, harvesting, storage or destruction which may be necessary to exterminate the harmful organisms. These measures may extend to the declaration of a protection zone 11/.

### 5.2 Treatment of pests

The Act provides that when there is a danger of infection, the Crown may order the disinfection of the premises or the destruction or disinfection of plants, plant products, animals, soil, buildings and any object which is or may be a carrier of harmful organisms 12/.

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9/ 1971 Act, Art. 2, Section I, 1, 3 and 6.

10/ Ibid., Arts. 3, 2 and 7.

11/ 1981 Crown Order, Art. 6.

12/ 1971 Act, Art. 2, Section 1 and 5.

The 1981 Crown Order prohibits the preservation and cultivation of harmful organisms 13/. When the mayor receives the report that a harmful organism has been detected, the report is entered in a special register and the Plant Protection Service immediately informed. As soon as the presence of harmful organisms has been detected or once this has been reported by a government official, the person responsible is obliged to combat these organisms. If he fails to do so, or if the measures taken are inadequate or ineffective, the Service may automatically order destruction at the expense of the person responsible 14/.

In the event of an offence being committed, the enforcement officers may seize the plants, plant products, soil or culture media. These may be sold or returned to the owner against payment of fee. Should there be danger of infection, they may be immediately destroyed on the instructions of the Service 15/.

### 5.3 National quarantine measures

The 1971 Act does not provide for national quarantine measures. Although the 1981 Crown Order, when dealing with the role of the Plant Protection Service, makes no specific mention of quarantines, it does mention health control of plants and plant products 16/.

### 5.4 Transportation and trade of plants and plant products

The Crown is empowered by the Act to draw up the phytosanitary conditions to be met by plants, plant products, soil and culture media with respect to trade, transportation, importation and exportation. It also determines the working and procedure for the issuance of phytosanitary certificates. The Crown is also empowered to prohibit or regulate the transport of plants, plant products, animals and objects which may be or are likely to be carriers of harmful organisms 17/.

### 5.5 Control of phytopharmaceutical products for agricultural use

The Act empowers the Crown to prescribe, prohibit or regulate the use of pesticides or authorized phytopharmaceutical products as well as other procedures or control measures 18/.

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13/ 1981 Crown Order, Art. 3. Annexes I and II list the harmful organisms it is forbidden to introduce. Among these are living organisms of the animal kingdom, bacteria, viruses, pathogens similar to viruses, etc.

14/ 1981 Crown Order, Arts. 4 and 5. The same Order prescribes special measures for the control of 25 pests (Arts. 9 to 82). The 1980 Ministerial Order prescribes measures for the control of a pest affecting the potato plant (Arts. 1 and 2).

15/ 1971 Act, Art. 6.

16/ 1981 Crown Order, Arts. 108-112.

17/ 1971 Act, Art. 2, first section, 4 and 8.

18/ 1971 Act, Art. 2, first section, 7.

A special act deals with pesticides 19/. Pursuant to the provisions thereof, a series of regulations were issued to deal with the following subjects: storage, trade and use of pesticides and pharmaceutical products 20/; authorizing natural persons or bodies corporate to manufacture or import phytopharmaceutical products 21/; authorizing the use of phytopharmaceutical products for the treatment of seeds as a control measure against the pine pest, for soil treatment and as a control measure against the sugarbeet and seedling pest 22/; controlling the enforcement of the prescriptions concerning the use of phytopharmaceutical products in lettuce cultivation 23/.

A Ministerial order gives the list of technological additives which contain residues of the active ingredients of pesticides authorized in food substances of plant origin 24/.

## 6. INTERNATIONAL PROTECTION MEASURES

Belgium is part of the International Plant Protection Convention, which it ratified on 22 July 1952.

### 6.1 Importation

The 1971 Act empowers the Crown to draw up the phytosanitary standards to be met by plants, plant products, soil and culture media with respect to importation, exportation and transit and to determine the wording and procedure for the issuance of phytosanitary certificates 25/.

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- 19/ Act on Pesticides and Basic Requisites in Agriculture, Horticulture, Forestry and Animal Husbandry, 11 July 1979. Moniteur Belge No. 137, 17 July 1969, p. 7071. The complete text of the Act is published in FAO's Food and Agricultural Legislation series, Vol. XIX, No. 1, fascicule 5.
- 20/ Ministerial Order of 3 February 1976, Moniteur Belge No. 17, 7 February 1976, p. 1431. Crown Order of 1 April 1976, Moniteur Belge No. 79, 22 April 1976, p. 5144. Crown Order of 22 October 1976, Moniteur Belge No. 211, 28 October 1976, p. 13901. Ministerial order of 4 May 1977, Moniteur Belge No. 128, 2 July 1977, p. 8696.
- 21/ Crown Order of 16 December 1977, Moniteur Belge, No. 13, 19 January 1978, p. 507.
- 22/ Official Notice of the Ministry of Agriculture, Moniteur Belge, 6 December 1974, p. 14598.
- 23/ Crown Order of 26 May 1977. Moniteur Belge No. 156, 12 May 1977, p. 10161. Ministerial Order of 18 November 1977, Moniteur Belge No. 231, 2 December 1977, p. 14240.
- 24/ Ministerial Order of 19 December 1975, articles 1 to 3, Moniteur Belge No. 70, 8 April 1976, p. 4347. The Annex gives in different columns the usual designation of the active ingredient and its chemical designation, the maximum quantity of the substance or processing agent authorized for use on fruits or vegetables.
- 25/ 1971 Act, Art. 2, first section, 4.

Seeds, seedlings of certain plant species, fertilizers and other substances, intended for use as animal feed, may only be imported subject to control and authorization of the National Agricultural and Horticultural Markets Office and the Customs Administration, which issues a certificate affirming that the products have been checked, allowed entry and identified 26/.

The customs offices and branch offices authorize the importation of plants, plant products and soil which require a phytosanitary certificate. Consignments of plants, plant products and soil which have not been inspected by the Plant Protection Service at the points where customs duty is paid, must be covered during transport from these to the delivery points (in Belgium, the Netherlands or Luxembourg) by a document of accompaniment, issued by the Service in triplicate, sealed by the latter and signed by a Customs Officer 27/. Such consignments, covered by the form of accompaniment, undergo a phytosanitary inspection at the delivery points and, where necessary, are placed under the supervision of the Service until they are acknowledged to be free from harmful organisms 28/. The controlling officer sends the phytosanitary certificate and the form of accompaniment to the Plant Protection Service in Brussels. The fees to be paid by importers and exporters who, although under no legal obligation to do so, request an inspection by the Service or the issuance of a certificate by the latter are also given 29/.

Importation of plants, plant products and soil is allowed only under the conditions prescribed in the 1981 Crown Order and through the customs offices and posts designated by ministerial order 30/.

Plants, plant products and soil originating in or proceeding from a member state or a non-member state must be found to be free from the harmful organisms listed in the Order as well as from any other harmful organism, depending on the circumstance 31/.

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26/ 1966 Crown Order, Art. 1.

27/ 1980 Ministerial Order, Arts. 4, 5, 6.1 and 2. Schedule II of the Order contains an accompaniment form for imported living plants and living parts thereof.

28/ Ibid., Art. 6.3.

29/ Ibid., Art. 8 and sgg.

30/ 1981 Crown Order, Arts. 86-97. Excluded from the provisions of Arts. 87-97 are imports from the Netherlands and Luxembourg.

31/ Ibid., Art. 87. Schedules I and II list the harmful organisms whose introduction is prohibited. The list includes living organisms from the animal kingdom, bacteria, viruses, pathogenic agents similar to viruses, etc.

Plants, plant products and soil which have to be imported, shall be accompanied by a phytosanitary certificate issued by the official phytosanitary service of the country of origin or a certified copy thereof. If the consignment was split, stored or repacked in a country other than the country of origin, or if the phytosanitary service of that country considers that the consignment has not been exposed to any phytosanitary risk in its territory, in addition to the phytosanitary certificate or the certified copy issued by the country of origin, a phytosanitary certificate of re-export, issued by the official phytosanitary service of the re-exporting country shall be attached 32/.

The phytosanitary certificates shall be sent to the Service or an official phytosanitary service of a Member State, shall be worded in at least one of the following languages: Dutch, English, French, German, Italian or Danish and shall bear a Customs Office entry stamp 33/.

As soon as the plants listed in the 1981 Crown Order arrive in Belgium, they shall immediately be subjected to treatment, by the Service, with hydrocyanic acid or some other product recommended by the Service. The issue in triplicate of a fumigation certificate (one accompanies the consignment, another is sent to the Plant Protection Service in Brussels and the third remains at the place where fumigation was carried out) is proof that the treatment took place 34/.

## 6.2 Exportation and transit

Exportation to a Member State of the plants, plant products and soil listed in the 1981 Crown Order is authorized only if the provisions of this Order are met 35/. Plants, plant products and soil being exported from Belgium to a Member State, shall be accompanied by a phytosanitary certificate issued by the Plant Protection Service 36/.

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32/ 1981 Crown Order, Art. 90.1 and 2. Schedule III gives ten plants or plant products whose introduction is prohibited and indicates the respective country of origin thereof. Schedule IV gives the special requirements concerning the introduction of plants, plant products and soil. Schedule V lists the plants, plant products and soil for which a phytosanitary certificate is required. The Service checks the consignments of these plants, plant products and soil if they originate in or are proceeding from a non-Member State. It may also check consignments from a Member State if it considers this necessary (Art. 91.4).

33/ Ibid., Arts. 90.3 and 91.

34/ Ibid., Art. 94. Schedule IV lists the plants which must be disinfected.

35/ Crown Order of 1981, Art. 98. Arts. 90 and 100 do not apply to export to the Netherlands and Luxemburg.

36/ Ibid., Art. 99. This refers to plants, plant products and soil mentioned in Schedule V.

The plants, plant products and soil listed in the 1981 Crown Order, from a country other than Belgium and being re-exported to a Member State, shall be accompanied by a phytosanitary certificate issued by the official phytosanitary service of the country of origin or by a certified copy thereof.

All the other plants, plant products and soil, listed in the 1981 Crown Order, from a country other than Belgium and being re-exported to a Member State, shall be accompanied by a phytosanitary certificate issued by the official phytosanitary service of the country of origin or by the Belgian Plant Protection Service.

Prior to issuing the above-mentioned certificates the Service, may, if necessary, prescribe that the plants be treated with hydrocyanic acid or some other phytopharmaceutical product. Its own fumigation facilities may be used therefor 37/.

The Service does not issue phytosanitary certificates or phytosanitary certificates for re-export for a consignment to a Member State unless the plants, plant products and soil and their containers have all undergone a through inspection or representative samples thereof have been throughly inspected by the Service. The Service issues the phytosanitary certificate or the phytosanitary certificate for re-export for a consignment to a non-Member State only when inspection has shown that the requirements of the importing country are complied with 38/.

The aforementioned certificates are issued upon payment of the dues fixed by the Minister 39/.

Transit of plants, plant products and soil is authorized when there is no danger of dissemination of harmful organisms and provided that the export requirements set out in the 1981 Crown Order are complied with. Transit of the plants and plant products listed in the 1981 Crown Order, originating in the countries mentioned and proceeding to a Member State, is prohibited 40/.

## 7. INCENTIVES FOR PLANT PROTECTION

Neither the 1971 Act nor the regulations pursuant thereto contain provisions concerning incentives for plant protection.

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37/ 1981 Crown Order, Art. 100.5.

38/ Crown Order of 1981, Art. 101.

39/ Ibid., Art. 102.

40/ Ibid., Art. 104.

## 8. OFFENCES AND PENALTIES

Any person who: spreads, holds, transports, imports, exports or carries in transit harmful organisms or plants, plant products, soil or culture media the holding, transport, importation or exportation of which are prohibited; refuses or fails to destroy or disinfect plants, plant products, soil, culture media, buildings or any object whose destruction or disinfection has been ordered; plants or upkeeps plantations of plants in a region in which this is prohibited; refuses visits, inspections, seizure, controls, the taking of samples, requests for information or documents made by enforcement officers or knowingly gives false information, shall be guilty of an offence 41/.

The penalties consist of a term of imprisonment of between 15 days and three months and fines of between 100 and 3 000 francs 42/, or either one of these, without prejudice to the possible application of more severe penalties as provided by the Penal Code or by fraud prevention legislation regarding the importation, exportation and transit of prohibited goods. In the event of a conviction, the court may order the closure of the offender's premises for a period ranging from 8 days to one year and in the event of a further offence, this penalty may be doubled. The court may also order the confiscation and destruction of the plants and plant products which have been seized, if the nature or composition of the product so dictates. The expenses of any such destruction ordered by the court or carried out by the enforcement officers shall be borne by the person guilty of the offence. Violations of the Act or of the orders issued pursuant thereto, which are not covered by the aforementioned penalties, are liable to a fine of between 10 and 25 francs and to a term of imprisonment of between 1 and 27 days or to one of these penalties. In the event of a further offence, the offender shall be liable to the first-mentioned penalties43/.

Enforcement officers may seize plants, plant products, soil and culture media. The plants and plant products may be sold, as the case may be, by the Department of the Registry and State Domains or by the Department of Customs and Excise, at the request of the Plant Protection Service, or may be destroyed when there is an imminent danger of infection44/.

If it is found that no offence has been committed against the provisions of the Act or the orders issued pursuant thereto, compensation may be payable to the owners whose plantations or personal property have been destroyed by order of the competent authority with the aim of preventing the spread of harmful organisms. Crown Orders determine the amount of such compensation as well as the formalities and conditions of payment 45/.

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41/ 1971 Act, Art. 4, Section I.

42/ US 1 = 52 francs.

43/ 1971, Act Arts. 4, 5 and 8.

44/ Ibid., Art. 6.

45/ Act of 1971, Art. 9.

9. ADMINISTRATIVE AND LEGAL PROCEDURES

Without prejudice to the powers conferred on the judicial police officials, offences under the provisions of this Act and the regulations pursuant thereto, are investigated and confirmed by members of the gendarmerie and officers of the municipal police force, as well as by the other enforcement officers listed in the Act. Reports made by the aforesaid officers shall constitute prima facie evidence. One copy of each such report shall be forwarded within 15 days of the inspection to the person who committed the offence in question 46/.

The Court may order the publication of the ruling in one or more periodicals and that such ruling be posted at such places and for such period of time as it may determine, in all cases at the expense of the person guilty of the offence 47/.

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46/ Ibid., Art. 3.1.

47/ Ibid., Art. 8.

## CANADA

### 1. LEGISLATIVE TEXTS

The Plant Quarantine Act - 8 May 1969 - Revised Statutes of Canada 1970, Vol. VI, Chap. P-13 1/.

Plant Quarantine Regulations - 19 November 1976 - SOR/DORS/76-763, C.G. Part II, Vol. 110, No. 23, 8 December 1976, p. 3126.

Amended by SOR/DORS/79-366 - 27 April 1979 - C.G. Part II, Vol. 113 No. 9, 9 May 1979, p. 1971.

Emergency plant infestation regulations - 30 August 1970 - SOR/DORS/79-642, C.G. Part II, Vol. 113, No. 17, 12 September 1979, p. 3113.

The basic texts on plant protection are the Plant Quarantine Act, 1969 and the Regulations, 1976.

### 2. SCOPE AND STRUCTURE OF THE BASIC TEXTS

The purpose of the 1969 Plant Quarantine Act is, as its title indicates, to prevent the introduction or spreading of pests injurious to plants.

In addition to defining the expressions and terms used, the Act deals with the following subjects: the introduction or spreading of pests; the powers conferred on the Governor in Council to make regulations under the Act; the role of inspectors; offence and penalties; appeals.

The 1976 Regulations deal in detail with the subjects included in the Act. Particular reference is made to the treatment and inspection of plants; the admission into the country of infested plants for educational, scientific or industrial purposes; the conveyance and labelling thereof, compensation, the health certificate for export; the seizure and confiscation of plants or other materials; fees payable for inspection of vessels and fumigation.

The schedules to the Regulations are as follows: I - List of plants or other matter exempt from the provisions of the Regulations (seven kinds are mentioned); II - Treatment of plant or other matter admitted into Canada (17 types are mentioned, destination, origin, pest and treatment); III - Treatment of plant or other matter conveyed within Canada (13 types are indicated, destination, origin, pest and treatment); IV - Fees payable for inspection of ships; V - Fees payable for fumigation.

In 1979, emergency regulations concerning the destruction of pest-infested plants were passed 2/.

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1/ The complete text of the Act is published in FAO's Food and Agricultural Legislation series, Vol. XIX, No. 2, fascicule 1.

2/ Emergency plant infestation regulations, SOR/DORS/79-642, 30 August 1979, C.G. Part II, Vol. 113, No. 17, 12 September 1979, p. 3113.

Pesticides were the subject of a special 1969 act on pest control products. The Act contains definitions of the terms used therein and regulations concerning the manufacture, importation, exportation and conveyance of pest control products. The 1972 Regulations supplements the contents of this Act 3/.

A 1969 Act prescribes the compensation to be paid to farmers whose agricultural products have been contaminated by pesticides 4/.

### 3. BASIC CONCEPTS AND TERMS

The Plant Quarantine Act defines the following terms: infested, inspector, Minister, pest, plant or other matter. The Regulations pursuant to the Act gives the meaning of the expressions: approved, director, fumigation, Act, potato cyst nematode, permit, potato wart.

The word "pest" (in French, parasite) means "any insect, plant or animal organism, virus, bacterium, disease or disease-inciting agent causing or capable of causing injury or damage to any vegetable, any part, product or by-product of a vegetable or any plant material".

The expression "plant or other matter" (in French, plante ou autre Matière) means "any plant, plant material, material, equipment, carrier, container, article or other thing that may contain or carry any pest"5/.

The Pest Control Products Act of 1969 contains definitions of "pest" and "pest control products". The 1972 regulations pursuant thereto give the definition of "residues" 6/.

### 4. INSTITUTIONAL MATTERS

The 1969 Act explicitly states that it shall extend only to such matters as are dealt with by the Act and that, where necessary, the Governor in Council may make regulations. The legislature of each province may approve laws in relation to any matter or any aspect of a matter not so dealt with by the Act or by the Governor in Council; such laws shall not be incompatible with the Act or the regulations pursuant thereto.

The power of the Governor in Council is construed as ample to extend the application of this Act and the regulations to any matter and to every aspect of any matter within the scope of this Act, notwithstanding the existence of any provincial law relating thereto 7/.

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3/ Pest control products Act - 27 June 1969 - Revised Statutes of Canada, 1970, Vol. VI, Chap. P-10. Regulations on pest control products - 10 November 1972 - SOR/DORS/72-451, C.G., Part II, Vol. 106, No. 22, 22 November 1972, p. 1993.

4/ The complete text of the Act is published in FAO's publication Food and Agricultural Legislation Series, Vol. XX, No. 1, p. 25.

5/ Act 1969, Art. 2.

6/ Pest Control Products Act 1969, Art. I and 1972 Pest Control Products Regulations, Art. 2.

7/ Act, 1969 Art. 13.

The Governor in Council may make regulations for preventing or controlling the introduction or admission into Canada, the spreading within Canada or the conveying within or from Canada of any pest, plant or other matter that is infested or likely to be infested with a pest or that constitutes a biological obstacle to the control of any pest 8/.

The Minister of Agriculture, upon the report of an inspector concerning the existence of any pest in a specified area, may by order prohibit or restrict the transportation into or from that area or the movement therein of any plant or other matter that, in his opinion, is likely to result in the spread of such pest 9/.

The Minister of Agriculture may designate any qualified person as an inspector empowered to enter any place or premises in which he reasonably believes there is any pest or plant or other matter that is infected or likely to be infected with a pest or that constitutes a biological obstacle to the control of any pest. The inspector may open any container or package and examine anything found therein that he has reason to believe contains any such pest or plant or other matter and take samples thereof and may even require books, shipping bills, bills of lading, invoices or other documents or papers concerning any relevant matter to be produced for inspection or for the purposes of obtaining copies thereof or extracts therefrom 10/.

The inspectors shall be furnished with a certificate of his designation as an inspector and shall produce the certificate on entering any place or premises in the course of his duties. The owner or person in charge of such places or premises and every person found therein shall give the inspectors all reasonable assistance in the exercise of their duties 11/.

Under the Act, no person shall obstruct or hinder the inspectors in the carrying out of their duties or functions nor shall they knowingly make a false or misleading statement either verbally or in writing 12/.

## 5. PROTECTION MEASURES WITHIN THE COUNTRY

### 5.1 General preventive measures

The Act prohibits the introduction into Canada of any pest or any plant or any other matter that is infested or likely to be infested or that constitutes a biological obstacle to the control of any pest 13/.

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8/ Act, 1969, Art. 4.

9/ Ibid., Art. 8; and 1976 Regulations, Art. 25.2.

10/ Ibid., Arts. 5 and 6.1; and 1976 Regulations, Art. 25.1.

11/ Act, 1969, Art. 6.2 and 3.

12/ Ibid., Art. 7.

13/ Ibid., Art. 3.1.

The Governor in Council may make regulations prescribing the places at which any plant or other matter may be admitted into Canada. He may also prescribe the establishment of inspection and treatment centres through which any plant or other matter of any class that may be specified by the regulations may be admitted into Canada. The Governor in Council may also make regulations establishing phytosanitary and crop certification standards for the purposes of the Act and providing for the granting of health certificates for any plant or other matter that is to be exported or used for domestic purposes 14/.

## 5.2 Treatment of pests

The Governor in Council is empowered to make regulations providing for the conduct of pest surveys and the treatment to be given infested areas of land, properties or premises or the manner of treatment to be given to prevent the spreading of any pest. The Regulations may prescribe the treatment to be given to any plant or other matter or the manner of treatment to be given to prevent the spreading of any pest. The Regulations may prescribe the treatment to be given to any plant or other matter or the manner of treatment to be given to prevent the spreading of any pest and whether the treatment shall be given by the owner or by a person approved by an inspector for that purpose 15/ The Regulations may also restrict the use for general or specific agricultural purposes of any property or premises infested or suspected of being infested with any pest, and require notification to the Minister by the occupier of any property or premises on which any pest is discovered, or by any person having knowledge of the presence thereon of such pest and the forwarding to the Minister of specimens of such pest 16/.

When the Minister, basing himself on the inspector's report, has decided that land must be treated, such treatment shall be carried out by an inspector or by a person authorized by him for that purpose, so as to prevent the spreading of the pest, considering they type of pest, the geographical location of the area and the extent to which the area is infested 17/.

The Governor in Council may make regulations respecting the detention of any plant or other matter seized and the payment of any reasonable costs incidental to such seizure or detention and for preserving or safeguarding any plant or other matter so detained. The regulations may also refer to the destruction or disposition of any plant or other matter confiscated by the Court or by the inspector and the payment of any reasonable costs incidental to such destruction or disposition 18/.

An inspector may seize and detain any plant or other matter if he believes on reasonable grounds that an offence under the Act has been committed by means thereof or in relation thereto 19/.

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14/ Act, 1969, Art. 4a, b and k.

15/ Ibid., Art. 4c and d.

16/ Ibid., Art. 4.

17/ Regulations, 1976, Art. 25.2.

18/ Act, 1969, Art. 9.5a and b.

19/ Ibid., Art. 9.1 and 2.

Whenever the inspector believes on reasonable grounds that any plant or other matter constitutes a biological obstacle to the control of any pest, he may confiscate such plant or other matter and may order its destruction or disposition forthwith 20/.

The Act empowers the Governor in Council to make regulations authorizing the Minister to order the payment of compensation for any plant or other matter destroyed or whose sale is prohibited or restricted or for the restriction to use any property or premises in accordance with the Act and prescribes the procedure for granting the compensation and the maximum amount thereof. The Governor in Council may also make regulations prescribing the fees to be charged for inspection, quarantine or treatment of any plant or other matter 21/;

The 1979 emergency regulations concerning the destruction of plants infested by pests empower the Minister to order the destruction of plants that are infested or suspected of being infested. The Minister orders this measure up the report by the inspector and when he is satisfied that the infestation, must be dealt with expeditiously in order to prevent further spreading of the pest. The inspector or the person designated by him shall take charge of the destruction operations in a manner that the Minister believes will be effective in preventing the spread of the pests in view of the type of pest, the type of matter and plants infested, the location and the extent to which the plants and other matter are infested 22/.

### 5.3 National quarantine measures

The Act empowers the Governor in Council to make regulations providing for the establishment of quarantine centres through which any plant or other matter of any class that may be specified by the regulations may be admitted into Canada 23/ Act, 1969, Art. 4b.+.

### 5.4 Transport and trade of plants and plant products

The Governor in Council may make regulations prohibiting or restricting the sale or disposition of any plant or other matter that is infested or suspected of being infested with any pest or that constitutes a biological obstacle to the control of any pest 24/.

The Regulations adopted pursuant to the Act provide that any plant or other matter that is infested or likely to be infested or that constitutes a biological obstacle to the control of pests, may be conveyed within or out of Canada under a movement certificate issued by the Minister of Agriculture or under his authorization. Before any plant or matter mentioned in the Schedule to the Regulations is conveyed, it shall be treated as prescribed therein 25/.

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20/ Ibid., Art. 9.4.

21/ Act, 1969, Art. 4.

22/ 1979 emergency plant infestation regulations.

23/ Act, 1969, Art. 4 b.

24/ Ibid., Art. 4f.

25/ Regulations, 1967, Arts. 10 and 11. Schedule III gives types of plants or other matter, their destination, origin, type of pest and treatment required.

Vehicles which are infested or suspected of being infested may leave the province of Newfoundland (Terre-Neuve) for other parts of Canada only through an inspection and treatment centre at Argentia, St. John's or Port-Aux-Basques in that province 26/.

#### 5.5 Control of phytopharmaceutical products for agricultural use

As mentioned in Section 2, pesticides are dealt with in a special Act enacted in 1969 relating to pest control products. This Act regulates the products used to destroy pests and act on the organic functions of plants and animals 27/.

It is acknowledged that compensation should be paid to farmers whose agricultural products are contaminated by pesticides and the Governor in Council is empowered to make regulations establishing the procedure for claiming such compensation 28/.

### 6. INTERNATIONAL PROTECTION MEASURES

Canada is part of the International Plant Protection Convention which it ratified on 10 July 1953.

#### 6.1 Importation

Except as provided by the Act and the Regulations, no person shall knowingly introduce or convey within or from Canada any pest or any plant or other matter that is infested or likely to be infested with a pest or that constitutes a biological obstacle to the control of any pest 29/.

The Governor in Council may make regulations prescribing the places at which any plant or other matter may be admitted into Canada and specifying the circumstances in which, the purposes for which and the conditions upon which any pest or any plant or other matter which is infested or likely to be infested with a pest or that constitutes a biological obstacle to the control of any pest may be introduced or admitted into Canada or conveyed within or from Canada 30/.

Upon request, the Minister of Agriculture may grant a licence or authorization to introduce into the country any pest, plant or other matter which is infested or suspected of being infested with a pest or that constitutes a biological obstacle to the control of any pest 31/.

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26/ Regulations, 1976, Art. 12.

27/ Pest Control Products Act, 1969, Art. I.

28/ Act concerning compensation for damages caused by pesticides, 1969.

29/ Plant Quarantine Act, 1969, Art. 3.1.

30/ Ibid., Art. 4a and 1.

31/ Plant quarantine Regulations, 1976, Art. 4.1.

The application for a permit shall be made in writing and shall contain, in addition to information regarding the sender and consignee of the pest, plant or other matter, the description of the plant, pest or other matter, the purpose of its introduction into Canada, its point of entry into and destination within Canada, the means of transportation used, the precautions that shall be taken to prevent the spreading of the pest during transportation and the place where such pest, plant or other matter was propagated, produced or obtained 32/.

The permit for the admission of any pest, plant or other matter infested with a pest is granted by the inspector only when he is satisfied that the importer shall take satisfactory measures to prevent the spreading of the pest 33/.

A plant or other matter that is likely to be infested by a pest may be introduced into Canada if it is accompanied both by the required permit and a health certificate signed by an authorized officer of the government of the country of origin. Exempt from this requirement are plants grown in the United States, which may be admitted into Canada without a permit 34/.

The admittance into the country of pests, plants or other matter that are infested or that constitute a biological obstacle to the control of pests is authorized for scientific, educational and industrial purposes. The permit therefor shall specify the point of entry into Canada and the destination within the country and if the transport, handling, treatment and disposition comply with the terms of the permit 35/.

## 6.2 Exportation and transit

The Act prohibits the conveying within or from Canada of any pest, plant or any other matter that is infested or likely to be infested with a pest or that constitutes a biological obstacle to the control of any pest 36/.

The Governor in Council may make regulations providing for the granting of health certificates for any pest or other matter that is to be used in Canada or exported, and specifying the circumstances in which, the purposes for which and conditions upon which any pest, plant or other matter referred to in the Act may be conveyed from Canada 37/.

The inspector may issue a health certificate for any plant or other matter intended for export. The certificate may contain a statement concerning the origin of the plant or other matter and the treatment carried out 38/.

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32/ Plant quarantine regulations, 1976, Art. 4.2.

33/ Ibid., Art. 4.3.

34/ 1976 Plant quarantine regulations, Art. 5. Annex II specifies the treatment to be applied to plants or other matter admitted into Canada. In various sections of the Regulations, reference is made to 19 types of plants or other matter, destination, origin, pest and treatment to be carried out at the place of origin, upon arrival in Canada and in any other place.

35/ Ibid., Art. 8.

36/ Plant Quarantine Act, 1969, Art. 3.1.

37/ Ibid., Arts. 4k and 1.

38/ Plant Quarantine Regulations, 1976, Art. 19.

Vessels carrying grain or grain-derived products from Canada must be inspected and approved by an inspector. The cargo may not be dispatched until this requirement has been met 39/.

7. INCENTIVES FOR PLANT PROTECTION

The Plant Quarantine Act and the regulations pursuant thereto contain no such provisions.

8. OFFENCES AND PENALTIES

Any person who, or whose employee or agent fails to comply with or violates any provision of the Act or the regulations or any order made by the Minister which prohibits or restricts the entry, exit or movement within the country of any plant or other matter that, in his opinion, is likely to result in the spread of a pest is guilty of an indictable offence or a summary offence. The former is punishable with a term of imprisonment of two years and the latter, as its name applies, upon summary conviction 40/.

When a person has been convicted of an offence under the Act, any plant or other matter by means of or in relation to which the offence was committed is, upon the conviction, in addition to any penalty imposed, forfeited to Her Majesty, if such forfeiture is directed by the Court 41/.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

In any prosecution for an offence under the Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without his knowledge or consent and that he exercised all due diligence to prevent its commission 42/.

Any proceedings by way of summary conviction in respect of any offence under the Act may be instituted at any time within one year after the time when the subject matter of the proceedings arose 43/.

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39/ Ibid., Art. 13.

40/ Plant Quarantine Act, 1969, Art. 10.

41/ Ibid., Art. 9.3.

42/ Plant quarantine Act, 1969, Art. 10.2.

43/ Ibid., Art. 10.3.

A complaint or information in respect of an offence under the Act may be heard by a magistrate or justice of the jurisdiction in which the accused is resident or carrying on business 44/.

The provisions of the Pesticides Residue Compensation Act apply to appeals under the Plant Quarantine Act 45/.

During the appeal procedure, the Assessor may confirm the Minister's decision, amend it or refer the matter to the Minister who will ensure that the decision of the Assessor, which is final and without appeal, is carried out 46/.

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44/     Ibid., Art. 11.

45/     Ibid., Art. 12.3.

46/     Pesticides Residue Compensation Act, 1969, Art. 13.

## CAPE VERDE

### 1. LEGISLATIVE TEXTS

Decree-Law No. 114/80, making provisions for plant protection - 31 December 1980 - Boletín Oficial No. 52, 2nd supplement, 31 December 1980, p. 9.

### 2. SCOPE AND STRUCTURE OF THE LEGISLATIVE TEXTS

The purposes of the Decree-Law are specified in the clauses thereof:

- to protect crops from disasters and harmful organisms which reduce yield and prevent a rise in productivity;
- to guarantee such protection within a single legal framework;
- to take advantage of scientific and technical advances which today make it possible for plant pests to be controlled with increasing effectiveness both at the national and international level;
- to step up systematic supervision in matters of plant protection as an expression of Cape Verde's solidarity with other African countries and with the other members of the United Nations which have adopted common plant protection measures; and
- to protect farmers through a more effective control of the phytopharmaceutical products they require 1/.

The Decree-Law consists of five chapters, divided into 32 articles, arranged as follows:

- Resolutions;
- I: General provisions;
- II: Domestic plant protection control;
- III: Plant protection control with respect to importation and exportation;
- IV: Control of phytopharmaceutical products for agricultural use;
- V: Other provisions.

An entire chapter of the text deals with phytopharmaceutical products. They are taken in the wide sense and will be referred to below.

### 3. BASIC CONCEPTS AND TERMS

The following expressions and terms are defined: "pests" or "pest", "phytosanitary inspector", "phytopharmaceutical products", "plant products", and "plants" 2/.

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1/ 1980 Decree- Law, Whereases.

2/ 1980 Decree-Law, Art. 2.

The terms plant pests or pest ("inimigos de vegetais" "minigo") refer to any plant or animal organism, or all pathogens including viruses, which are or may be harmful to living plants and cause damage or disease.

Phytopharmaceutical products are those products intended to protect plants against pests, growth regulators and all other products similar thereto which are intended to exert an influence on the vital processes of the plant without entering into its nutrition.

Plant products are unmanufactured products of plant origin, including seeds and those manufactured products which, by their nature or that of their processing, may create a risk for the spread of plant enemies.

Finally, plants shall comprise living plants and parts thereof, including seeds.

#### 4. INSTITUTIONAL ORGANIZATION

The competent authority on plant protection is the Minister of Rural Development. The Minister of Rural Development may, from time to time, issue, by order, lists of the plant pests to be controlled in the national territory and ensures that descriptions and drawings of these pests are distributed for consultation by the public 3/.

Power to enforce the provisions of the Decree-Law is vested in the Minister of Rural Development, particularly with respect to: the exercise of the powers of inspector; publication of the plant protection bulletin concerning imports; the issue of application forms for phytosanitary import licences and phytosanitary export certificates; requirements concerning importation and marketing of phytopharmaceutical products; fixing of the minimum economic value in dispute for which suit may be brought before the Minister; the conditions whereby farmers who lack sufficient resources may be exempt from payment of expenses for certain phytosanitary treatments; fees payable for the issuance of the phytosanitary certificate for export; and settling of all other questions, should he deem this necessary or useful 4/.

The functions of the Plant Production and Protection Office 5/ with respect to plant protection, are as follows:

1. To control the spread of plant pests throughout the national territory;
2. To ensure that plant products are protected against pests when they are in storage or being transported;
3. To prevent entry into the national territory of plant pests from abroad;

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3/ Ibid., Art. 5.

4/ Decree-Law of 1980, Art. 30.

5/ This Office was set up, as mentioned in Art. 1 of the same Decree-Law, by Decree No. 56/77, of 25 June 1977.

4. To prevent plant pests from leaving the national territory;
5. To be the sole importers, to authorize the distribution and control the use of phytopharmaceutical products for agricultural use 6/.

Plant protection inspectors are those officers of the Ministry of Rural Development assigned to enforce measures prescribed under the Decree-Law 7/. The powers conferred on the inspectors are many, and cover both domestic and international phytosanitary control.

With respect to phytosanitary control at the domestic level, the powers listed hereunder shall be conferred on the inspectors. The Minister of Rural Development shall determine the practical details thereof.

1. They are allowed access, during normal working hours, to agricultural lands, buildings, premises, vehicles, ships or aircraft, and may take samples of plants, plant products or other articles which, in their opinion, are or may be carriers of plant pests, or be the pests themselves;
2. By an order in writing applicable to the entire area considered to be infested or suspected of so being, to prohibit the cultivation or planting of all plants or plant species which may be harmful to other plants, or to restrict cultivation or planting to specified varieties;
3. By order in writing giving notice of disinfection or disinfection, to prohibit the use of agricultural lands for agricultural purposes buildings, or other premises as depots or stores and vehicles, ships or aircraft for transport purposes;
4. By order in writing, to prohibit or restrict possession, removal, assigning for cultivation, storage or marketing of plants, plant products or other articles which in their opinion are or may be carriers of pest;
5. By order in writing, to carry out phytosanitary treatment or to uproot or destroy the plants, plant products or other articles which, in their opinion, are or may be carriers of a pest, or to disinfest or disinfect any land, building, premises or vessel which, in their opinion are carriers of a pest. If the person concerned fails to comply with the order within the time specified, to carry out the necessary operations or cause them to be carried out and draw up a report thereof;
6. Upon authorization in writing by the Minister of Rural Development, to carry out or cause to be carried out any other operation which may be necessary under this Decree-Law 8/.

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6/ 1980 Decree-Law, Art. 1.

7/ Decree-Law, 1980, Art. 2.

8/ Decree-Law 1980, Art. 8.

With respect to international control, an inspector is empowered:

1. To check the validity of documents produced, e.g.: traveller's card, phytosanitary licence for import, phytosanitary certificate for export;
2. To board vessels arriving from abroad, open and inspect baggage and goods which have been or are going to be off-loaded as well as all other objects on board. If necessary, to take samples of plants and plant products or other objects which are likely to be carriers of pests; or temporarily seize such plants, plant products or objects and subject them to inspection;
3. To require that the traveller or importer bear the cost of unloading, loading, unpacking, packing and all other operations and formalities related to the aforementioned activities;
4. To open and inspect postal packets arriving from abroad, at the request of the Customs Services, as far as practicable in the presence of the addressee;
5. To refuse entry to any baggage, goods or packages which have been inspected and which fail to comply with the provisions of this Decree-Law;
6. To disinfest or disinfect plants, plant products or other articles, vessels or aircraft or cause this to be done when, in his opinion, they are likely to be carriers of plant pests;
7. To destroy or cause to be destroyed plants, plant products or other articles which, in his opinion, are carriers of pests;
8. To carry out or cause to be carried out, with the authorization of the Minister or Rural Development, any other operation which he deems necessary within the framework of this Decree-Law 9/.

In the exercise of his duties, a plant protection inspector shall produce identification if asked to do so 10/, and shall be assisted by state services and public enterprises, in particular by the Customs and Postal Services and by the "Empresa Pública de Abastecimiento" 11/.

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9/ 1980 Decree-Law, Art. 16.

10/ Ibid., Art. 23.

11/ Ibid., Art. 24.

## 5. MEASURES OF PROTECTION WITHIN THE COUNTRY

### 5.1 General preventive measures

From time to time, by order, the Minister of Rural Development draws up a list of the plant pests to be controlled in the national territory. Descriptions and drawings of these pests are distributed and may be consumed by the public 12/.

The duties of the Plant Production and Protection Office include controlling the spread of plant pests throughout the national territory 13/.

Individuals or communities occupying land as owners or in any other capacity whatsoever, are obliged to ensure that the plants found on such land are in good phytosanitary condition 14/.

### 5.2 Treatment of pests

The individuals or communities referred to above are obliged, as soon as possible, to report to the local office of the Ministry of Rural Development, or to the nearest local administrative authority, or to the Plant Production and Protection Office: the presence or suspected presence of any plant pest classified as such in the list published by the Minister of Rural Development; any sign of an outbreak and spreading of such pests; and any other relevant information, such as the spread of the locust 15/. The local administrative or other authority, when there is no local office of the Ministry available, shall forward such reports to the Plant Production and Protection Office 16/.

Likewise, government officials and public enterprises, in particular customs and postal services, shall inform the Office of the presence, real or presumed, of any plant pest 17/.

An inspector shall be empowered to prohibit the cultivation of plants in infested lands and to apply restrictions thereto; to prohibit the utilization of lands, depots and buildings or vehicles, vessels and aircraft, in connection with disinfection or disinfestation; and to carry out any operation which may be necessary under the Decree-Law 18/.

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12/ Decree-Law of 1980, Art. 5.

13/ Ibid., Art. 1(1)

14/ Ibid., Art. 3.

15/ Ibid., Art. 6.

16 Ibid., Art. 7.

17/ Decree-Law of 1980, Art. 24.

18/ Ibid., Art. 8, b, c and f.

Phytosanitary treatment, removal or destruction or any other operation ordered by a plant protection inspector shall not be liable to compensation and the cost thereof shall be borne by the persons receiving the order or, if necessary, by those holding the goods. The Minister of Rural Development may, however, exempt from payment those farmers who lack sufficient resources to have their plants treated 19/.

### 5.3 National quarantine measures

This subject is not dealt with specifically.

### 5.4 Transport and trade of plants and plant products

The duties of the Plant Production and Protection Office include protecting plant products, whether stored or transported, against pests 20/.

Individuals or communities in charge of buildings or depots or warehouses, as well as drivers of vehicles and captains of vessels and aircraft, are obliged to ensure that the plant products assigned to their care are kept in good phytosanitary condition 21/.

The inspectors are empowered to restrict or prohibit possession, removal, assigning for cultivation, deposit, storage or marketing of plants or plant products which are potential carriers of pests 22/.

### 5.5 Control of phytopharmaceutical products for agricultural use

The Decree-Law devotes a chapter to this subject, in which the following provisions are of particular interest.

The only authority empowered to approve the importation and marketing of phytopharmaceutical products is the Ministry of Rural Development 23/. By Order, the Minister shall determine the conditions to be observed and, in particular, shall publish a list of approved products, specify how and when the product shall be used and determine the labelling, packaging and advertising regulations 24/. The products shall be approved by an inter-ministerial advisory commission on phytopharmaceutical products, set up under the Decree-Law in question 25/.

The Plant Production and Protection Office shall be the sole importer of phytopharmaceutical products for agricultural use and shall authorize the distribution and control the use thereof 26/.

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19/ Ibid., Art. 26.

20/ Decree-Law of 1980, Art. 1(2).

21/ Ibid., Art. 4.

22/ Ibid., Art. 8, d.

23/ Ibid., Art. 19.

24/ Decree-Law of 1980, Art. 20.

25/ Ibid., Art. 21.

26/ Ibid., Art. 1(5).

## 6. Importation

One of the duties of the Plant Production and Protection Office is to prevent the introduction into the national territory of plant pests from abroad 27/.

The Minister of Rural Development shall draw up and from time to time update, by Order, a list of plants and plant pests the importation of which is prohibited or restricted, as well as of those articles which are or may be carriers of such pests. This list is entitled "Plant Protection Bulletin" (boletín fitosanitario) and gives the different articles by area of origin and in accordance with the measures applicable.

Travellers disembarking at international ports and airports with any article mentioned in the "Plant Protection Bulletin" shall declare any such article under penalty of confiscation thereof 28/. Professional importers of such articles shall obtain a phytosanitary import licence 29/. Except where an exemption has been granted by the plant protection inspectors 30/, the imported articles shall be accompanied by a phytosanitary certificate issued by the official services of the country of origin and shall comply with certain requirements of language and form 31/. The Plant Production and Protection Office may nevertheless import all the articles it deems necessary for scientific research purposes, without complying with any formality whatever 32/.

The Ministry of Rural Development is in charge of importaing and marketing phytopharmaceutical products 33/.

### 6.2 Exportation and transit

One of the duties of the Plant Production and Protection Office is to prevent plant pests from leaving the national territory 34/.

Plants and plant products for export shall be examined by a plant protection inspector. He shall issue a phytosanitary certificate in accordance with the model prescribed by order of the Minister 35/.

The wide powers conferred on inspectors working in the international sector were described in Section 4.

## 7. INCENTIVES FOR PLANT PROTECTION

No mention is made of this in the Decree-Law.

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27/ Ibid., Art. 1(3).

28/ Ibid., Art. 10.

29/ Ibid., Art. 11.

30/ Ibid., Art. 13.

31/ Ibid., Art. 12.

32/ Ibid., Art. 14.

33/ Ibid., Art. 19; see Section 5.5.

34/ Decree-Law, 1980, Art. 1(4).

35/ Ibid., Art. 15.

8. OFFENCES AND PENALTIES

Without prejudice to the harsher penalties provided for by other regulations, offences against the Decree-Law and the regulations pursuant thereto shall be liable to a fine of between 20 and 2 000 escudos or to a term of imprisonment of up to two years 36/.

The same Decree-Law prescribes special penalties in some cases. Thus, any person who wilfully disseminates a plant pest among plants, thereby endangering the nation's plant heritage, shall be liable to a term of imprisonment of not less than 3 months 37/.

Where travellers fail to declare imported articles listed in the "plant protection bulletin", provision is made for confiscation thereof 38/.

Without prejudice to the suspensive effect of measures taken, when a written order issued by a plant protection inspector is not complied with within a specified period, the inspector shall collect costs increased by 50 percent in lieu of a fine 39/.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

Administrative appeal against the decisions or measures taken under the Decree-Law by the plant protection inspectors or other agents of the Plant Production and Protection Office must be made within two days when the economic value in dispute exceeds a minimum which is fixed from time to time by the Minister of Rural Development 40/. All appeals have a suspensive effect 41/.

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36/ Ibid., Art. 32. US\$ = 75 escudos.

37/ Decree-Law, 1980, Arts. 22 and 32.

38/ Ibid., Art. 10.

39/ Ibid., Art. 27.

40/ Ibid., Art. 25.

41/ Ibid., Art. 27.

## ECUADOR

### 1. LEGISLATIVE TEXTS

Plant Protection Act: Decree No. 52. - 14 January 1974. - Registro Oficial No. 475, 18 January 1974, p. 4.

The Act was amended by Decree No. 54, reforming the Plant Protection Act. - 27 January 1981. - R.O. No. 369, 30 January 1981, p. 2.

Decree No. 827, authorizing the Ministry of Agriculture and Animal Husbandry to finance the National Cotton Programme's plant protection campaign. - 12 August 1974. - R.O. No. 619, 19 August 1974, p. 5.

General Enforcement Regulations under the Plant Protection Act. - Order No. 0206 of the Ministry of Agriculture and Animal Husbandry. - 7 June 1977. - R.O. No. 364, 23 June 1977, p. 4 1/.

- The Regulations were amended by Order No. 0255 of the Ministry of Agriculture and Animal Husbandry, amending the General Enforcement Regulations under the Plant Protection Act. - 31 July 1978. - R.O. No. 651, 17 August 1978, p. 4.

Order No. 0106 of the Ministry of Agriculture and Animal Husbandry. Regulations controlling plant imports. - 4 April 1978. - R.O. No. 568, 18 April 1978, p. 3.

Order No. 0348, of the Ministries of Finance and Public Credit, Industries, Trade and Integration and Agriculture and Animal Husbandry, prescribing measures to protect Ecuador's banana crop, 8 August 1979. - R.O. No. 13, 29 August 1979, p. 4.

Order No. 536 of the Ministry of Agriculture and Animal Husbandry, reorganizing the structure and functions of the Ministry of Agriculture and Animal Husbandry. - 18 November 1980. - R.O. No. 324, 26 November 1980, p. 4.

Order No. 0170 of the Ministry of Agriculture and Animal Husbandry, regulating the structure and functions of the National Plant Health Programme. - 15 April 1981. - R.O. No. 437, 12 May 1981, p. 2.

Order No. 541 of the Ministry of Agriculture and Animal Husbandry regulating the movement of plant matter and products. - 14 October 1981. - R.O. No. 105, 22 October 1981.

Order No. 0005 of the Ministry of Agriculture and Animal Husbandry setting up the Inter-institutional Technical Committee for the Control, Prevention and Eradication of rust of coffee and the coffee berry borer. - 5 January 1982. - R.O. No. 170, 27 January, 1982, p. 2.

Order No. 0151 of the Ministry of Agriculture and Animal Husbandry, amending the regulations concerning the movement of plant matter and products. - 19 May 1982. - R.O. No. 260, 9 June 1982, p. 6.

The basic text is the Plant Protection Act of 1974, with the reforms introduced in 1981. The Act is amply enforced by the General Enforcement Regulations of 1977.

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1/ The summary is published in FAO's Food and Agricultural Legislation, Vol. - XXVII, No. 1, pp. 9 to 12.

## 2. SCOPE AND STRUCTURE OF THE LEGISLATIVE TEXTS

The preamble to the Plant Protection Act indicates the need to update existing plant protection legislation in order to promote crop development and prevent the introduction of pests and diseases which endanger crops.

The Act, which applies to the whole country, consists of 39 articles arranged in the following chapters: -

- I: Importation of plant products;
- II: Exportation of plant products;
- III: Establishments producing plant reproduction material and movement in the country thereof;
- IV: Plant protection campaigns;
- V: Offences and penalties;
- VI: General provisions.

The 71 articles of the General Enforcement Regulations under the Plant Protection Act apply to enforce the provisions of the Act concerning organization, importation and exportation of plant material, producers of propagation material, plant protection campaigns, movement of plant products and matter and offences and penalties.

The plant protection laws do not refer to pesticides which are dealt with in special regulations 2/.

The Act deals with quarantines; the General Regulations enforce the provisions on this subject.

## 3. INSTITUTIONAL MATTERS

The Ministry of Agriculture and Animal Husbandry is in charge of investigating, preventing and controlling pests and diseases which affect agricultural crops and making regulations for the enforcement of the Plant Protection Act. This Ministry acts through a specialized body, the Plant Protection Division 3/.

The staff of the Plant Protection Division and other officers assigned and identified by the Ministry of Agriculture and Animal Husbandry shall inspect agricultural lands, commercial and industrial premises involved in the sale of plants, seeds, etc., railway stations, sea, river and airports, markets and conveyances, in order to check the state of health of the reproduction material. In the event of an objection being raised, the inspection may be carried out with the help of the police 4/.

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2/ Order No. 222 regulating the sale and use of pesticides. - 4 November 1966. - R.O. No. 207, 7 September 1967, p. 1791. The complete text is published in FAO's Food and Agricultural Legislation, Vol. XVII, No. 1, pp. 1 to 4.

3/ Plant Protection Act, Arts. 1 and 37.

4/ Plant Protection Act, Art. 16.

The Ministry of Agriculture and Animal Husbandry is in charge of the following services within the Plant Protection Division:

- Basic specialist services, i.e. offices and laboratories dealing with plant health and pesticides toxicology, the staff of which are involved in applied research and plant protection experiments, the study of the causes and dynamics of plant diseases and the diagnosis thereof, the determination of methods of control to be recommended for specific cases.
- Technical services - plant health and plant quarantine - composed of three regional offices or "districts" each with its own provincial plant protection and plant quarantine inspectorates, located at certain ports, airports and frontier posts, which are listed in the Act.

The services of the inspectorates are provided without charge. Any person may request an inspection or health study of his crops or plant matter for import and/or export. However, when extirpation or protective measures are called for, compensation for damages and loss caused by these operations shall be paid by the person concerned. These inspectorates shall from time to time provide the Plant Protection Division with information to enable it to keep its register on the state of health of the crops grown in the areas under their authority and on the measures taken in these areas to control or prevent plant diseases 5/. The inspectors and officers of the Ministry of Agriculture and Animal Husbandry, unless authorized to do so, are forbidden to communicate to the press any information concerning outbreaks of diseases and pests. Any information on phytosanitary matters must be provided by the Department of Agricultural Development 6/.

The main aim of the National Plant Health Programme, set up in 1980 under the technical Under-Secretariat of the Ministry of Agriculture and Animal Husbandry is to ensure that cash crops are in good phytosanitary condition by preventing the introduction of exotic pests or diseases into the country and the spread of those already in the country 7/. Taking part in the Programme are the Executive Department, the Advisory Committee, the Legal Office, the Planning and Assessment and Administrative and Finance Departments, the Pesticides Registry Unit, the Technical Office, the Regional Offices, the Departments of Phytopathology, Entomology, Diseases, Pesticides, Plant Quarantine and the Provincial Plant Protection Inspectorates. The Technical Director is Registrar of the Council 8/.

The functions of the National Plant Protection Programme include promoting and encouraging plant protection activities in accordance with the agricultural policy defined by the Ministry of Agriculture and Animal Husbandry and enforcing or ensuring that the Plant Protection Act, the regulations and other relevant laws are enforced 9/.

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5/ General Enforcement Regulations under the Plant Protection Act, Arts. 1 to 3.

6/ Ibid., Art. 63.

7/ Order NO. 536 of 1980; and Order No. 0170 of 1981, Art. 1.

8/ Order No. 0170 of 1981, Art. 2.

9/ Ibid., Art. 4.

## 5. PROTECTION MEASURES WITHIN THE COUNTRY

### 5.1 General preventive measures

The Act provides that in the event of an outbreak of a rare pest or disease which poses a threat to the agricultural interests of the country, the Plant Protection Division shall immediately investigate the matter and determine the measures of prevention and control to be taken 10/. The staff of the Plant Protection Division shall carry out experimental work with a view to finding improved techniques, products, equipment, etc., in order to provide advice for those carrying out plant protection work in the regions or provinces, the results of which are published from time to time 11/.

The regulations under the Act provide that the plant protection inspectors shall inspect nurseries and establishments involved in producing plant reproduction material, they shall record their comments in the Register and, order, where necessary, the eradication of diseased plants or other suitable measures of control. Inspectors shall also investigate the causes of the spread of the plant disease agents and, where the symptoms are unknown, shall take samples in order to identify new plant diseases and ensure that the provisions concerning the isolation of areas unsuitable from the economic and environmental points of view for the cultivation of certain agricultural crops are met with 12/.

The regional offices which are part of the National Plant Protection Programme are responsible for carrying out programmes, projects and campaigns for the prevention and control of pests and diseases affecting cash crops grown in the areas under their authority 13/.

### 5.2 Treatment of pests

Owners of plants are under obligation to combat chronic diseases using the materials and methods prescribed by the Plant Protection Division and must bear the cost of treatment campaigns carried out on the affected crops 14/.

The Ministry of Agriculture and Animal Husbandry shall direct operations for the control of epiphytotic diseases which threaten to destroy or decimate cash crops. These plant protection campaigns are financed with public funds and with funds provided by the owners of the affected crops. Where necessary, other institutions pursuing similar aims also participate. On the authorization of the Ministry of Agriculture and Animal Husbandry, the trained personnel of other departments may also participate in emergency campaigns 15/. On the recommendation of the Department of Agricultural

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10/ Plant Protection Act, Art. 20.

11/ Plant Protection Act, Art. 24.

12/ General Enforcement Regulations under the Plant Protection Act, Arts. 5 and 6.

13/ Order No. 0176 of 1981, Art. 16.

14/ Plant Protection Act, Art. 21.

15/ Ibid., Arts. 22 and 23.

Development and in compliance with the technical report of the Plant Protection Division, the Ministry may, by order, declare the outbreak or existence of an epiphytotic pest or disease as a "national pest" and prescribe control operations therefor 16/. For its services, the Ministry determines and charges rates which do not include remuneration of officers and employees 17/.

The Plant Protection Division studies the pests, endemic and non-endemic diseases which have erupted on private land so as to identify the pathogens and recommend the steps to be taken and financed by the landowners. Burning of infested material is carried out at the expense of the landowner in the presence and under the control of the Inspector of Plant Protection 18/.

Uprooting is considered obligatory for home-garden crops which constitute a danger for cash crops. With respect to tobacco plants, which may harbour pathogens harmful to crops, the provisions of the relevant regulations shall apply. Phytosanitary operations on the banana plant are subject to special regulations and are therefore not included in this Act 19/

The Plant Protection Division carries out field and laboratory research which provides data, by zone, on the major pests and diseases affecting crops in each zone and conducts experiments to determine the most effective system, methods and measures of control thereof. The division is responsible for keeping the Register of Plant Pests and Diseases up to date. The organisms shall be identified and classified according to their rate of occurrence and the areas in which they occur. Depending on their occurrence and the extent of the outbreak, the Ministry declares the control of the harmful organisms to be either "particularly obligatory" or to be control "of a national pest". It is compulsory to report the existence of these plant pests or diseases to the Ministry's offices either verbally or in writing. After checking the report and summing up the phytosanitary situation, the Plant Protection Division takes suitable measures to prevent the development and spread of the pest or disease. Where control is declared to be "particularly obligatory", all farmers of the area and owners of crops that are affected or likely to become affected must undertake the treatment measures or recommendations prescribed and bear the cost thereof. Failure to comply within the time-limit laid down shall entail the substitution of the persons concerned by the Ministry. These persons are chargeable for the costs incurred plus a further 50 percent thereof by way of fine 20/.

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16/ General Enactment Regulations under the Plant Protection Act, Art. 59. The Campaigns referred to in this article are financed by the landowners but with the participation of the technical staff of the Plant Protection Division. If the landowners cannot afford the cost thereof, they may apply to the Minister to have the charges waived.

17/ Plant Protection Act, Art. 27.

18/ Plant Protection Act, Arts. 25 and 19.

19/ Plant Protection Act, Arts. 26 and 27. Ministerial Orders Nos. 0086 and 0348 (published in R.O. No. 552 of 27 March 1978 and No. 13, of 29 August 1979 respectively) deal with the protection of the raceme of the banana plant against pest infestation.

20/ General Enforcement Regulations under the Plant Protection Act, Arts. 26 and 27.

The Ministry of Agriculture and Animal Husbandry may enter into contracts with public or private enterprises with a view to mounting phytosanitary control operations in the areas and on the crops designated. Before the start of operations, the Plant Protection Division shall approve the plan of action and shall supervise operations 21/. Should it be necessary during the control operations, for either technical or economic reasons, to destroy a plot or crop on an estate where the plant protection treatment has proved ineffective and which has become a source of infection, a report shall be drawn up by the agricultural engineers appointed by the Department of Agricultural Development, the Plant Protection Division and the person concerned 22/.

Pests are treated by the National Plant Protection Programme through its Departments of Phytopathology, Entomology and Diseases, the respective duties of which include keeping an up-to-date register of diseases and the organisms which cause these diseases, keeping a catalogue of insects, pests, parasites and predators and keeping the national catalogue of diseases 23/.

### 5.3 National quarantine measures

When the plant protection staff are satisfied that a disease and the sources of infection thereof exist and that these constitute a danger for the crops of the canton, province or region of the country, an "observation zone" or "quarantine zone" is declared, depending on the severity of the outbreak, and landowners are required to control the diseases and undertake eradication campaigns. The declaration of a quarantine zone is usually accompanied by health measures to extirpate the disease and prevent it spreading to other areas 24/.

Before plant reproduction material infected with exotic or virulent pests or diseases is destroyed, the establishment is placed under observation or quarantine, depending on the severity of the case, in order to allow the landowner to institute appeal proceedings against the Plant Protection Division, the head of which has at his disposal an expert's report drawn up by the provincial inspector and an expert appointed by the person concerned. A decision is reached with the help of the report 25/.

The Minister of Agriculture and Animal Husbandry may issue an order declaring certain areas to be observation or quarantine zones and specifying the period for which the prescribed methods of control and agricultural protection must be pursued. For each case and jurisdiction, special regulations are issued in accordance with the technical report of the Plant Protection Division 26/.

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21/ Ibid., Art. 58.

22/ Ibid., Art. 65.

23/ Order No. 0170 of 1981, Arts. 17, 19 and 21.

24/ Plant Protection Act Art. 18.

25/ General Enforcement Regulations under the, Art. 52.

26/ Ibid., Art. 62.

The duties of the Plant Quarantine Division, which is part of the National Plant Protection Programme, include recommending to the Programme's technical director the quarantine and preventive measures to be taken in cases of national emergency; issuing and demanding to see permits authorizing movement within the country of agricultural products and plant material from areas affected by a pest and/or disease; inspecting seedbeds, nurseries and seed breeding stations in accordance with the provisions of the Plant Protection Act; inspecting the areas declared to be quarantine zones and, in cooperation with other divisions of the Programme, taking more effective technical measures to ensure that the quarantine order is enforced 27/.

#### 5.4 Transport and trade of plants and plant products

A plant protection inspector may inspect conveyances and seize consignments of agricultural products from areas in which control operations are being carried out, particularly fresh fruits, seeds, cuttings, bulbs, plants, buds and all types of reproduction material which do not carry the required phytosanitary circulation permit. Fumigation or disinfection shall be carried out on all products except fruits in the nearest office of the Ministry of Agriculture and Animal Husbandry. The owner shall bear the cost incurred plus a fine for having committed an offence. It is prohibited to move or circulate agricultural products which are in poor condition, infected/infested fruits and products that inspection has shown to be damaged or spoilt. In such cases, plant protection inspectors and police officers may seize and destroy the material which is in poor condition and record the date and circumstances thereof, the name of the carrier and the owner of the consignment 28/.

A permit issued by the Ministry of Agriculture and Animal Husbandry is required to set up nurseries and seed reproduction facilities for commercial purposes. A favourable report by the chief of provincial agricultural and animal husbandry services is a necessary pre-requisite for the issue of the permit. The Plant Protection Division shall from time to time inspect nurseries and other related establishments. If they comply with the requirements prescribed in the regulations, they are issued a certificate authorizing them to operate and circulate the material produced 29/.

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27/ Order No. 0170 of 1.981, Art. 23.

28/ General Enforcement Regulations under the, Art. 67.

29/ Plant Protection Arts. 13 and 14. The Regulations under the Act specify the application procedure and provide that the provincial offices of the Ministry of Agricultural and Animal Husbandry shall keep a record, dating back at least four years, giving information as regards the behaviour and resistance of the reproduction material produced in each establishment under its authority. The owners shall keep a record in their books and inform the officers of the Ministry of the designation, class and origin of the plant material used, the plant protection treatments carried out and the use to which the reproduction material was put, Arts. 44 and 45.

The sale, for reproduction purposes, of infected or infested plant material is prohibited when disinfection or fumigation has not given the expected results and, in such cases the Ministry, on the recommendation of the Plant Protection Division, may close the establishment temporarily or permanently 30/.

Trade of plants, seeds and parts of plants intended for cultivation and agricultural development is generally allowed when such material is produced by authorized establishments 31/.

The regulations under the Act state that in order to be able to sell and circulate reproduction material, the establishments concerned shall be registered with the Ministry of Agriculture and Animal Husbandry and shall be issued with the required permit by the provincial plant protection inspector. The provincial inspectors issue the permit or authorization to sell when the plant material is in good condition and when they are satisfied that all the mechanical and chemical operations which serve to ensure the quality of the product offered for sale have been carried out in the establishment. In any case, the authorization to sell carries with it the obligation of the owner to disinfect or fumigate the material, in accordance with recommendations made to him in writing 32/.

### 5.5 Control of phytopharmaceutical products for agricultural use

The Plant Protection Act the and the General Enforcement Regulations do not contain provisions on pesticides. These are dealt with separately by the regulations relating to the sale and use of pesticides 33/.

The functions of the National Plant Protection Programme include recommending that legal and technical regulations be drawn up to regulate the importation, manufacture, formulation, distribution, marketing and use of pesticides and similar products 34/.

The Pesticides Registration Unit, which is part of the National Plant Protection Programme, keeps the register for pesticides and similar products used for the prevention, control and eradication of plant pests and diseases in accordance with information provided by the division concerned. This unit also deals with registering the enterprises involved in the manufacture, importation, exportation, distribution, formulation and/or retail selling of pesticides and similar products and equipment for the application thereof. It also keeps the register of the enterprises involved in applying agricultural pesticides on a commercial basis. Other duties of the Pesticides Registration Unit include keeping an up-to-date register of authorized pesticides and the tolerances thereof 35/.

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30/ Plant Protection Act Art. 15

31/ Ibid., Art. 17.

32/ General Enforcement Regulations under the, Arts. 47 and 48.

33/ Order No. 222, regulating the sale and use of pesticides, 4 November 1966. R.O. No. 207, 2 September 1967, p. 1791.

34/ Order No. 0170, Art. 4d

35/ Order No. 0170, Art. 14.

The Pesticides Division, which is part of the National Plant Protection Programme, updates and prepares technical regulations concerning the distribution and/or retail selling of pesticides and similar products and, by carrying out chemical analyses, ensures that the details given in the pesticides registration application, adulteration of pesticides, etc, are indeed true 36/.

## 6. INTERNATIONAL PROTECTION MEASURES

Ecuador is a signatory of the International Plant Protection Convention, which it ratified on 9 May 1956. The General Enforcement Regulations under the Plant Protection Act refers to this Convention in the section on phytosanitary certificates, which shall conform to the model adopted by the Convention 37/.

The Governments of the Republics of Colombia, Ecuador and Venezuela jointly set up the Bolivar Organization for the Protection of Agriculture and Livestock (Organización Bolivariana de Sanidad Agropecuaria), the purpose of which is to draw up preventive measures and coordinate activities to combat and prevent diseases or to conduct research on pests likely to affect agriculture and livestock in the Member States 38/.

### 6.1 Importation

Plant Products may only be imported through the ports appointed in the Act, to which plant protection inspection officers have been assigned. The Ministry of Agriculture and Animal Husbandry may prescribe other ports of entry 39/.

Before plant material can be exported either for reproduction or consumption purposes, a phytosanitary certificate must be obtained from the Ministry of Agriculture and Animal Husbandry 40/.

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36/ Ibid., Art. 22.

37/ General Enforcement Regulations under the, Art. 41.

38/ The Agriculture and Livestock Protection Convention between Colombia, Ecuador and Venezuela was signed on 9 May 1966. Venezuela approved it by an Act dated 11 July 1968, Gaceta Oficial No. 28722, 6 September 1968, p. 214275.

39/ Plant Protection Act, Arts. 2 and 3.

40/ Plant Protection Act, Art. 4. The regulations contain provisions concerning the application for authorization which is examined by the Plant Protection Division, Arts. 10 and 11.

It is forbidden to import plant material that includes earth, straw, chaff, humus obtained by animal or vegetable decomposition, as well as pathogens unless they have been authorized by the Ministry of Agriculture and Animal Husbandry for scientific research purposes on the request of duly qualified institutions and following a favourable report by the Plant Protection Division 41/.

Plant material, the importation of which is prohibited and which transits through the national territory on its way to other countries, may only be unloaded from its transport vehicle to be transferred to another vehicle under the supervision of the plant protection authorities of the Ministry of Agriculture and Animal Husbandry 42/

The Plant Protection Division may seize and burn reproduction material entering the country without the required phytosanitary authorizations. Customs officers shall assist in carrying out this task 43/.

The regulations under the Act provide that any imported plant matter shall be accompanied by a phytosanitary certificate issued by the authorities of the port of shipment in accordance with the agreements in force. Other basic requirements for imports are: a favourable technical report and the authorization of the Ministry of Agriculture and Animal Husbandry; that the material shall arrive free of earth and decomposing animal or plant matter; and that used, poor quality, or infected/infested packing material must not be used. It is prohibited to unload material affected by pests or diseases, even when the material is in compulsory transit. To be unloaded, such material shall be accompanied by a certificate of re-export 44/.

Where plant matter is intended for reproduction purposes, in addition to the requirements imposed by the Seed Certification Division and the production of a phytosanitary certificate, information must also be provided as regards the purity of the variety, the absence of weed seeds, the date of production, and the products and doses thereof used for disinfection/disinfestation. Entry of seeds, plants buds, bulbs and any other reproduction material which has not met the import requirements shall be considered illegal. They shall be seized by Customs or police officers and the Ministry of Agriculture and Animal Husbandry must be informed thereof so that the plant quarantine inspectors may draw up the formal statement for destruction. The offender shall also be liable to a fine 45/.

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41/ Ibid., Art. 5.

42/ Ibid., Art. 6. The regulations provide that material in transit shall be inspected as a matter of course and only if found to be infected or infested shall the necessary measures be taken, Art. 28.

43/ Plant Protection Act, Art. 7. The regulations, Arts. 18, 19 and 21 provide that the plant quarantine inspectors and the Customs staff may seize seeds, plants or other types of plant matter arriving from outside the country if these do not comply with the provisions of the regulations, and may order their destruction without compensation. They must however make a report thereof.

44/ General Enforcement Regulations under the, Arts. 9, 12, 13 and 15.

45/ Ibid., Arts. 25 and 27.

The Ministry of Agriculture and Animal Husbandry may prohibit the importation of plant matter from countries in which diseases and pests that are potentially dangerous for the agricultural crops of Ecuador are known to exist 46/.

With respect to the handling of imported plant matter, the plant quarantine inspector shall: examine the legitimacy and source of the shipping documents, particularly the authorization of the Ministry of Agriculture and Animal Husbandry and the phytosanitary certificate; carry out inspections and analyses by taking samples to ensure that the material allowed entry is completely sound, take samples of suspect material for laboratory analysis or carry out on-the-spot examinations, prescribe that the material be placed in quarantine, disinfected, disinfested, fumigated and selected or re-exported or destroyed, etc. 47/.

The regulations controlling plant imports prohibit the importation of plants and/or parts of plants originating in or arriving from countries affected by rust, cherry berry disease (CBD) and coffee berry beetle, moths and the swollen shoot virus in cocoa, "sigatoka negra" and "moko" or bacterial wilt disease in plantain or banana 48/.

The authorization of the Ministry of Agriculture and Animal Husbandry is required for imports for experimental purposes. This is granted through the Plant Protection Division provided that the necessary plant protection treatments have been undertaken both in the country of origin and in the ports mentioned. Such imports must also undergo local quarantine if this is considered necessary 49/.

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46/ Ibid., Art. 29. Art. 6 of the regulations concerning the control of plant imports, drawn up under Order No. 0106 of 4 April 1978, provides that, in accordance with Art. 29 of the regulations, lists of plant pathogens and the crops affected in the countries in which they occur shall be sent to Ecuadorian diplomatic and consular offices, Customs and Post Office Departments and other state bodies.

47/ General Enforcement Regulations under the, Art. 30.

48/ Regulations controlling plant imports, Art. 1.

49/ Ibid., Art. 2. In order to prevent the introduction of foreign micro-organisms, the agricultural engineers or plant protection inspectors may require vessels, aircraft and land transport vehicles arriving in the country and the products they are carrying to undergo preventive treatment, Arts. 3 and 4.

## 6.2 Exportation and transit

A phytosanitary certificate issued by the Ministry of Agriculture and Animal Husbandry, subject to the international agreements in force and the relevant regulations, is required for the exportation of unprocessed plant material, provided that such exportation is not prohibited 50/. Before such a certificate is issued, the agricultural engineers - plant protection inspectors of the Ministry of Agriculture and Animal Livestock - shall examine the material. If examination shows that the exporter has included plant matter or other products discarded for failure to meet export requirements or has failed to comply with the legal requirements, the certificate shall not be issued and the relevant penalties shall be imposed 51/. Before being loaded for export, the plant products shall be fumigated and a certificate of fumigation issued by the sanitary inspector of the area in which the articles were produced 52/.

It is prohibited to send abroad parcels containing live plants, cuttings, and unprocessed fruits and seeds, unless these are accompanied by the required export permits and phytosanitary certificate 53/. It is also prohibited to export all types of seeds for reproduction, live plants, their shoots, cuttings, or any other plant form without the permission of the Agricultural Development Division. The Customs and Post Office authorities shall not allow plant products to be exported or dispatched unless they are accompanied by the export permit and phytosanitary certificate issued by officers authorized by the Ministry, under pain of being penalized by the Director of Customs or the Post Master General, respectively, at the request of the Director-General of Agricultural Development 54/.

## 7. INCENTIVES FOR PLANT PROTECTION

The Plant Protection Act and the regulations pursuant thereto contain no provisions on this subject.

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50/ Plant Protection Act, Art. 9. The regulations under the Act, Arts. 37 and 41, contain provisions for the issuance of phytosanitary certificates for export. These are issued at the port of shipment by the plant quarantine inspector who delivers the original to the exporter and keeps the copy in the archives of the office. Phytosanitary certificates bear ordinal numbers, must not show any amendments or erasures and shall correspond to the model adopted by the International Plant Protection Convention and shall be worded in Spanish for the Latin countries.

51/ Plant Protection Act, Art. 10, and General Enforcement Regulations under the Plant Protection Act, Art. 38.

52/ General Enforcement Regulations under the Plant Protection Act, Art. 67.

53/ Plant Protection Act, Art. 12.

54/ General Enforcement Regulations under the Plant Protection Act, Arts. 42 and 43. The Regulations, Art. 40, also set out the procedure governing the export of agricultural products intended for consumption or for industrial processing, including fresh fruits.

8. OFFENCES AND PENALTIES

The Act prescribes fines of between 200 and 5 000 sucres for any person obstructing or hindering the adoption of measures prescribed thereunder. The police may be called in to assist in enforcing these measures. Without prejudice to the imposition of fines, in cases in which owners fail to take the eradication or preventive measures prescribed by the Plant Protection Division on land where pests and diseases which are harmful to crops are known to exist, the Ministry of Agriculture and Animal Husbandry shall carry out the necessary operations and the owner shall be chargeable for the cost thereof plus a further 50 percent 55/.

Importers and exporters who fail to obtain the required authorization and phytosanitary certificate as well as owners of establishments producing plant material who do not apply for the required authorization to operate shall be liable to fines 56/. Establishments which continue to produce or dispatch reproduction material after they have been closed down and carriers and sellers of such material that has been declared infested or infected, shall be liable to fines of between 10 000 and 50 000 and 1 000 and 200 000 sucres respectively, without prejudice to seizure and burning of the material involved 57/.

The Area Director of Agriculture or the Provincial Director of Agriculture of the area in which the offence is committed or in which the effects thereof are suffered are in charge of applying the penalties 58/.

Finally, the Act prescribes fines, or in the event of a further offence, removal from their posts for Customs or Post Office officials who allow products not covered by the required export permit and phytosanitary certificate to be exported 59/.

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55/ Plant Protection Act, Arts. 28 and 29. U.S. \$ 1 = 98.50 sucres.

56/ Ibid., Arts. 30, 31 and 32.

57/ Ibid., Arts. 33 and 34, in accordance with the amendment introduced by Decree No. 54 of 27 January 1981, Art. I.

58/ Plant Protection Act, Art. 35, in accordance with the amendment introduced by Decree No. 54 of 27 January 1981, Art. 2.

59/ Ibid., Art. 36.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

As soon as the area director or the agricultural director of the province learns that an offence has been committed, the suspected offender is notified thereof so that within three days he may reply to the charges brought against him. If he contests or defaults, the case is heard within six days, after which, if it has been proved that the offence was committed, the official concerned makes a ruling or decision within three days, prescribing the penalty. The detailed report of the plant protection inspector concerned is submitted as evidence. If the fine exceeds 10 000 sucres, the person convicted may, within three days of the date of notification, appeal to the Director-General of the Agricultural Development Division, who, if he considers it necessary, shall prescribe as a matter of course the steps he considers appropriate. His decisions are final. If the ruling or decision is made within a period of three days of the date of notification and the offender fails to pay the fine within the following 30 days, a copy of the ruling or decision is sent to the director of the tax office of the province so that he may obtain it through coercive procedures. The fines are deposited into a special account of the Ministry of Agriculture and Animal Husbandry -the Plant Protection Fund 60/. Seizure and destruction or burning of the articles seized shall not be postponed when notice of appeal against the ruling or decision is made 61/.

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60/ Ibid., Art. 35, in accordance with the amendment introduced by Decree No. 54, 27 January 1981.

61/ Ibid., article added to article 35 by Decree No. 54, 27 January 1981.

## GERMANY (Federal Republic)

### 1. LEGISLATIVE TEXTS

Plant Protection Act - 10 May 1968 - Bundesgesetzblatt I No. 28, 15 May 1968, p. 352 1/.

There is a revised text of this Act, dated 2 October 1975 -Bundesgesetzblatt I No. 112, 4 October 1975, p. 2591 2/. The revised text incorporates the amendments introduced by the two following Acts:

Act amending the Plant Protection Act - 27 July 1971 - Bundesgesetzblatt I No. 73, 31 July 1971, p. 1161.

Second Act amending the Plant Protection Act - 15 August 1975 - Bundesgesetzblatt I No. 97, 16 August 1975, p. 2172.

The inspection and Authorization of Phytosanitary Products Ordinance - 4 March 1969 - Bundesgesetzblatt I No. 19, 7 March 1969, p. 183.

Fruit spotting control Ordinance - 7 June 1971 - Bundesgesetzblatt I, No. 53, 12 June 1971, p. 804.

The potato wart control ordinance - 20 April 1972 - Bundesgesetzblatt I, 1972, p. 625. 3/.

The potato nematode control ordinance - 20 April 1972 - Bundesgesetzblatt I, 1972, p. 627 3/.

The San José scale control ordinance - 20 April 1972 - Bundesgesetzblatt I, 1972, p. 629 3/.

Amended by the ordinance amending the San José scale control ordinance - 22 November 1979 - Bundesgesetzblatt I, No. 68, 24 November 1979, p. 1950.

Ordinance for the protection of bees against the dangers of phytosanitary products - 19 December 1972 -Bundesgesetzblatt I, No. 140, 22 December 1972, p. 2515. Third blight control ordinance - 10 May 1973 - Bundesgesetzblatt I, No. 36, 17 May 1973, p. 444.

The tobacco mildew control ordinance - 13 April 1978 - Bundesgesetzblatt I, No. 20, 18 April 1978, p. 502.

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1/ The complete text of the Act is published in FAO's Food and Agricultural Legislation series, Vol. XVIII, No. 1, fascicule 1.

2/ A brief summary of the principal changes in the revised text of the Act was published in FAO's Food and Agricultural Legislation, Vol. XXV, No. 2, p. 12.

3/ The text of this ordinance was not available. Although the number and exact date of the official gazette are not given, the dates that are given will enable it to be found.

Third Act amending the Plant Protection Act - 16 June 1978 - Bundesgesetzblatt I, No. 32, 24 June 1978, p. 749.

Fruit tree virus control ordinance - 27 July 1978 - Bundesgesetzblatt I, No. 43, 2 August 1978, p. 1120.

Amended by the ordinance amending the fruit tree virus control ordinance - 22 November 1979 - Bundesgesetzblatt I, No. 68, 24 November 1979, p. 1948.

Bans and restrictions on the use of plant treatment agents ordinance (the use of plant protection products ordinance) - 19 December 1980 - Bundesgesetzblatt I, No. 79, 30 December 1980, p. 2335.

Amended by the first ordinance amending the use of plant protection products ordinance - 2 August 1982 - Bundesgesetzblatt I, No. 30, 7 August 1982, p. 1125.

Plant inspection ordinance - 15 March 1982 - Bundesgesetzblatt I, No. 12, 20 March 1982, p. 329.

The basic text is the Plant Protection Act - version of 2 October 1975.

The Third Act of 1978 makes only minor changes.

## 2. SCOPE AND STRUCTURE OF LEGISLATIVE TEXTS

The purposes of the Act are 4/:

1. To protect plants against harmful organisms and diseases, which is the idea expressed by the term "plant protection" or "phytosanitary protection" ("Pflanzenschutz");
2. To protect plant products against harmful organisms, which is the idea expressed in the term "protection of stored products" ("Vorratsschutz");
3. To exert an influence over the vital processes of the plant by means of substances that are not intended for the nutrition thereof;
4. To prevent damage which may result from the use of "plant treatment substances" (Pflanzenbehand lungsmittel) or other measures of plant protection or conservation of stored matter, particularly where the health of man and animals is concerned.

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4/ Plant Protection Act, revised text of 1975, Article 1. henceforth, this Act will be referred to as "Act, revised text of 1975".

Moreover, it is stated that the first two purposes of the Act ("plant protection" and "protection of stored products") include not only the use and protection of animals, plants and micro organisms, which help to keep harmful organisms and diseases in check, but also muskrat control (Ondatra Zibethicus L.)

The Act contains 29 articles, dealing with the following subjects:

- Art. 1: Purposes of the Act.
- Art. 2: Definitions.
- Art. 3: Regulatory powers granted in the interests of those affected by the Act.
- Art. 4: Regulatory powers for the purposes of protection against the danger of the introduction or infiltration of harmful organisms or diseases.
- Art. 5: Emergency measures.
- Art. 6: Regulatory powers in the interests of the health of the community.
- Arts.7-12: Conditions governing the importation and marketing of plant treatment substances (Authorization by the Federal Biological Institute, grant of authorization, imported products, labelling).
- Art. 13: Plant protection substances intended for export.
- Art. 14: Application of protection substances.
- Arts.18-20: Assignment of duties.
- Art. 22: Fees.
- Art. 23: Inspection.
- Arts.24-25: Penalties.
- Arts.26-29: Repeal and final provisions.

Fertilizers are not included within the scope of this Act 5/; pesticides however are 6/. The Ordinance of 19 December 1980 deals with plant substances. Although the word "quarantine" is not used, the subject of quarantines is clearly included in this Act.

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5/ Act, revised text of 1975, Art. 2, 4. A special law deals with fertilizers.

6/ Act, revised text of 1975, Art. 2, 4; Art. 3(1), 5.

### 3. BASIC CONCEPTS AND TERMS

The Act provides definitions for "plants", "harmful organisms", "plant treatment substances" (which include "plant protection substances" and "growth regulators", terms which are also defined in the Act), "substances", "importation, transit or exportation" and "marketing" <sup>7/</sup>.

Plants ("Pflanzen") are the "living plants and the parts thereof, including their fruits and seeds".

The expression "harmful organisms" ("Schadorganismen") means: "parasitic animals, parasitic plants, particularly weeds and other higher parasitic plants such as mosses, algae, lichens and harmful fungi; harmful micro-organisms, including bacteria and harmful viruses".

By the term "plant treatment substances" ("Pflanzenbehandlungsmittel") is to be understood both "plant protection substances" ("Pflanzenschutzmittel") and "growth regulators" ("Wachstumsregler").

Plant protection substances ("Pflanzenschutzmittel") are substances intended for the protection of plants against harmful organisms or diseases or for the protection of plant products against harmful organisms. Excluded are water and fertilizer in the sense of the Fertilizers Act and those substances which are intended to enhance plant resistance to harmful organisms or diseases and which do not have any toxic action.

Growth regulators ("Wachstumsregler") are substances whose purpose is to exert an influence on the vital processes of the plant without entering into its nutrition. Excluded are those substances which hitherto were excluded from the definition of plant protection substances.

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<sup>7/</sup> Act, revised text of 1975, Art. 2.

#### 4. INSTITUTIONAL ORGANIZATION

The Administration and enforcement of plant protection legislation is vested in the Federal Minister for Food, Agriculture and Forests, henceforth referred to as the Federal Minister 8/. The Act confers wide regulatory powers on the Federal Minister, which are often exercised in collaboration with other ministers such as the Minister for Youth, Family and Health, 9/. The Minister for Economic Affairs 10/. and the minister of Finance 11/. depending on the subject of the regulations. The regulatory Ordinances are usually issued with the consent of the Federal Council ("Bundesrat"), except in cases of emergency, when the Federal Minister may issue certain regulatory ordinances without the consent of the Federal Council and without the agreement of the Federal Minister for Youth, Family and Health. These Ordinances are valid for a maximum period of six months and may be extended only with the consent of the Federal Council 12/.

The Federal Minister is empowered inter alia: to order the reporting of the outbreak of diseases and an investigation into any such outbreak; to oblige owners to take measures to control the diseases; to order or prohibit the use of specified plant protection substances; to order the destruction, disinfection or disinfestation of plants and plant products; to prohibit or order the use of certain soils or culture media for the cultivation of specified plants; to restrict the use of affected cultivated areas or of areas suspected of being affected; to prohibit or restrict the use of seeds or plants that are not appropriate or the cultivation of certain species; to prohibit or subject to various restrictions the circulation in the trade of reproduction, multiplication or genetic improvement material; to restrict or subject to the obtaining of a licence the cultivation of certain plant species or varieties; to prohibit or restrict the transport of specified harmful organisms such as plants or plant products which are or may be carriers of harmful organisms; to prohibit or restrict the breeding or the possession of certain harmful organisms; to prescribe particular methods of storage for plants and plant products; to order disinfection, disinfestation or cleansing of plant storage premises; to issue rules for the protection of animals, plants or viruses against the dangers arising from the use of plant protection substances; to issue rules concerning the utilization of animals, plants or viruses for the purpose of controlling or preventing harmful organisms; to regulate the appointment of committees for the safeguarding of bees and to prescribe the duties and obligations of their membership 13/.

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8/ Act, revised text of 1975, Art. 3(1)

9/ Ibid., Arts. 3(1), 6, 10.

10/ Ibid., Art. 6(1).

11/ Ibid., Arts. 20 and 21.

12/ Ibid., Art. 5(1).

13/ Act, revised text of 1975, Art. 3(1).

The governments of the Lander may issue regulatory ordinances in all cases mentioned in the foregoing paragraph, provided that the Federal Minister does not invoke his own powers in the matter 14/. In the Lander, the implementation of plant protection legislation is vested in the agencies or boards competent therefor under the laws of the respective Land 15/.

In so far as importation, transit or exportation of harmful organisms and plants and plant products are concerned, the Federal Minister may prohibit or limit them, subject them to the obtaining of a licence, subject them to inspection, disinfection or disinfestation, or require that an official phytosanitary certificate be produced and issue regulations concerning official inspection or the destruction of the same 16/.

In cases of emergency, the Lander authorities may, by means of a decree, order measures which are normally prescribed by the Federal Minister, even when these measures affect importation and exportation 17/.

There is a Federal Biological Institute for Agriculture and Forestry ("Biologische Bundesanstalt für Land - und Forstwirtschaft"), henceforth called the Federal Biological Institute. It is an autonomous federal agency. It reports to the Federal Minister and has the following terms of reference: to inform and advise the Federal Government with respect to the protection of plants and stored matter; to carry out scientific research on the same subject; to inspect and authorize plant treatment substances and maintain inspection of those already authorized; to examine methods for plant protection and the protection of stored products; to work on improving these methods; to test plants for resistance to harmful organisms and diseases; to examine equipment to determine whether it is suitable for plant protection and the protection of stored products; and any other tasks that the Federal minister may assign to it 18/.

Inspectors are allowed access to land, commercial and industrial premises and means of transport during normal working hours and may carry out inspections on harmful organisms or diseases, take samples, examine commercial documents and check installations and implements used for plant treatment agents. Where it is a question of averting imminent danger to public safety or public order, inspectors shall have access to any premises, even when these are used also as the dwelling of the person whose duty it is to provide information 19/.

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14/ Ibid., Art. 3(2), whereby the governments of the lander may regulate the powers conferred on the Federal Minister in Art. 3(1).

15/ Ibid., Art. 19; this article sets out the duties of this agency, called the "Plant Protection Service" in the Act.

16/ Act, revised text of 1975, Art. 4.

17/ Ibid., Art. 5(2).

18/ Act, revised text of 1975, Arts. 7 and 18.

19/ Ibid., Art. 23.

## 5. PROTECTION MEASURES WITHIN THE COUNTRY

### 5.1 General preventive measures

The Federal Minister is empowered to order the reporting of any outbreak or sign of outbreak of harmful organisms or specified diseases, any cultivation or presence of certain plant species or varieties, as well as any pertinent facts concerning the appearance of harmful organisms or diseases and the control thereof, or the use of specified plant protection substances or special procedures to protect the plants or stored products 20/.

He is also empowered inter alia: to require local owners to investigate or cause investigations to be made into the appearance of harmful organisms or diseases; to order or prohibit the use of certain soils or culture media for the cultivation of specific plants; to restrict the use of certain cultivated areas; to prohibit or restrict the use of seeds or plants that are not appropriate; to prohibit or restrict or regulate transport of specified harmful organisms as well as plants and plant products; to regulate the storage of plants and plant products; to prohibit or restrict or subject the importation of harmful organisms, plants and plant products to the obtaining of an import licence 21/.

### 5.2 Treatment of pests

The Federal Minister may require those responsible for cultivated areas, lands, and premises to control harmful organisms or certain diseases. He may also order the appropriate authorities of each Land to carry out control measures and where lands are affected or are suspected of being affected, he may order that they be cleared of certain plants or be protected against them 22/. He is also empowered to order the destruction, disinfection or disinfestation of plants, plant products or substances which are or may be carriers of certain harmful organisms 23/.

In the case of the destruction of plants or plant products that are not affected or suspected of being affected, fair compensation shall be paid in cash. No compensation shall be paid when the person affected by the destruction order caused the measure to be taken by violating the provisions of the Act 24/.

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20/ Ibid., Art. 3(1).

21/ Ibid., Art. 3(1).

22/ Act, revised text of 1.975, Art. 3(1), 3, 4, II.

23/ Ibid., Art. 3(1), 7.

24/ Ibid., Art. 15.

Prior notification of the authorities is required for the use by trade or on behalf of third parties (though this does not affect occasional help given to a neighbour) of plant treatment substances and applications must be carried out by or under the direction of an expert. The governments of the Lander shall fix the scale of fees and procedures governing proof of possession, by the expert in question, of the requisite professional knowledge and experience<sup>25/</sup>.

As will be seen from the section on Legislative Texts, many of the Ordinances have been enacted for the purpose of controlling specific diseases. The 1978 Ordinances on tobacco mildew and grapevine virus control are examples of this.

### 5.3 National quarantine measures

No mention is made of this. It is clear however that under the general delegated powers, in particular those which refer to the restriction of transport of harmful organisms and plants or plant products, the authorities may order quarantine measures <sup>26/</sup>.

### 5.4 Transport and trade of plants and plant products

The Federal Minister is empowered to prohibit or restrict the transport of specified harmful organisms, as well as plants, plant products or other articles which are or may be carriers of specified harmful organisms, or to subject such transport to the obtaining of a licence, or to prescribe conformity with certain precautionary measures in such cases <sup>27/</sup>.

Regarding storage, the powers vested in the Federal Minister are equally wide. He may require particular storage conditions for plants or plant products and that the premises assigned for storage be disinfected, disinfested or cleaned <sup>28/</sup>.

### 5.5 Control of phytopharmaceutical products for agricultural use

This is a subject which is dealt with extensively in the Act and which was the subject of the 1971 Ordinance - revised text of 1974 - and the 1980 Ordinance.

The Federal Minister may inter alia: a) order the reporting of the use of treatment agents; b) order or prohibit the use thereof; c) issue regulations for the protection of animals, plants and micro-organisms against the dangers which may be caused by the treatment agents <sup>29/</sup>.

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<sup>25/</sup> Ibid., Art. 14.

<sup>26/</sup> Ibid., Art. 3(1), 14, for example.

<sup>27/</sup> Act, revised text of 1975, Art. 3(1), 14.

<sup>28/</sup> Ibid., Art. 3(1), 16 and 17.

<sup>29/</sup> Act, revised text of 1975, Art. 3(1), 1, 5, 18.

More specifically, jointly with the Federal Minister of Youth, the Family and Health and the Minister of Economic Affairs, the Federal Minister is empowered to prohibit or restrict or subject to the obtaining of a licence or to a declaration, the application of certain treatment substances as well as the use of certain implements or procedures for such application 30/.

Plant treatment substances may be marketed only if they have been authorized by the Federal Biological Institute 31/. since the Federal Minister is authorized to regulate the authorization procedure 32/. Authorization may be requested by the manufacturer, by the owner of the marketing firm, when the treatment substance is being marketed for the first time, or by the importer. The information given in the authorization application must include: name of the applicant, designation and composition of the plant treatment substance, field of application, the text of indications which will be placed on the outer packaging 33/. The cases in which the authorization is granted are given as well as the period of validity thereof (ten years) and the conditions under which it may be revoked or withdrawn 34/. Labelling of plant treatment substances is the subject of detailed regulations. They may only be marketed if certain information appears on the containers and packaging in clearly legible lettering. It should include the denomination of the product, the authorization number, the name of the manufacturer or distributor, the nature and amount of active ingredients, the expiry date, etc. 35/.

Prohibitions and restrictions on the use of plant treatment substances were the subject of an Ordinance in 1980. The main provisions of this Ordinance are as follows:

- a) It totally prohibits the use of plant treatment substances which are or which contain any of the 23 substances listed in Schedule II of the Ordinance;
- b) Authorization is required for the use, under specified conditions, of plant treatment substances which are or which contain any of the 11 substances listed in Schedule II of the Ordinance;
- c) Certain uses are specifically prohibited for substances which are or which contain any of the 33 substances listed in Schedule III;
- d) It is prohibited to import, except in certain specific cases, seeds, plants and humus which have been treated with the substances referred to in Schedules I and II.

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30/ Act, revised text 1975, Art. 6(1), 1, amended by the Third Act of 1978.

31/ Ibid., Art. 7(1).

32/ Ibid., Art. 10.

33/ Ibid., Art. 7.

34/ Ibid., Arts. 8 and 9.

35/ Act, revised text, 1975, Art. 12.

## 6. INTERNATIONAL PROTECTION MEASURES

The German Federal Republic is part of the International Plant Protection Convention. It ratified the Convention on 3 May 1957.

### 6.1 Importation

Importation, exportation and transit of harmful organisms, plants, plant products or any objects which are or may be carriers of certain harmful organisms are dealt with in the same article of the Act. With respect to these organisms, plants, products or objects, the Federal Minister is authorized through a regulatory Ordinance and with the consent of the Federal Council, to:

- a) Prohibit, restrict or subject them to the obtaining of a licence or to compliance with specified requirements, especially regarding packaging or marking;
- b) Subject them to inspection, disinfection, disinfestation or to the production of an official phytosanitary certificate.

The Minister is also authorized to issue regulations concerning official supervision or the destruction of plants, plant products or objects 36/.

The Federal Minister of Finance and the Customs Officer appointed by him shall cooperate in the inspection of the importation, transit and exportation of organisms which are or which may be carriers of specified harmful organisms. The Federal Minister of Finance shall, jointly with the Federal Minister, draw up the details of the inspection procedure. He may also prescribe obligations, in particular the notification, declaration, information and rendering of ancillary services, as well as the obligation of allowing inspection of commercial papers and all other documents and the taking of samples and specimens free of charge 37/.

By means of the Federal Information Bulletin, the Federal Minister, jointly with the Federal Minister of Finance, also informs the Customs Offices through which harmful organisms, as well as plants, plant products or other objects which are or may be carriers of harmful organisms, pass, when undergoing importation, transit or exportation, in all cases where such importation, transit or exportation are regulated by a regulatory ordinance 38/.

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36/ Act, revised text of 1975, Art. 4. The Ordinance of 1982 concerning plant inspection was enacted in implementation of sub-paragraph 1 of Art. 4. It concerns the inspection of plants at the time of importation, exportation and transit.

37/ Act, revised text of 1975, Art. 20.

38/ Act, revised text of 1975, Art. 21.

With respect to the importation of plant treatment substances, it is stated that the Federal Minister may decide that authorizations for substances granted outside the scope of the Act come within the purview of the authorization of the Federal Biological Institute, when it has been shown that these substances meet the requirements for authorization in Germany. The Federal Biological Institute may also allow unauthorized treatment substances to be imported for research, analysis and test purposes and in cases of emergency, for the combating of harmful organisms or diseases and may subject such imports to any conditions it may consider necessary 39/.

The importation of treatment substances is in principle subject to the same conditions as apply to the marketing of substances produced in the country and thus, requires an authorization from the Federal Biological Institute 40/.

## 6.2 Exportation and transit

It has already been mentioned that the regulations governing the exportation and transit of harmful organisms, plants, plant products or any object which are carriers of harmful diseases are the same governing the importation thereof.

It is important to note however that the exportation of treatment substances is subject to special regulations. In fact, those substances intended for export do not require the authorization of the Federal Biological Institute 41/. nor are they subject to the usual labelling regulations 42/. They must be stored separately from those intended for use in Germany 43/.

## 7. INCENTIVES FOR PLANT PROTECTION

The Act offers no special incentives.

## 8. OFFENCES AND PENALTIES

Any person disseminating harmful organisms among plants and thereby endangering plant assets of notable value not his own shall be liable to imprisonment of up to two years or a fine. If the offender has wilfully caused the danger, the term of imprisonment shall not be less than three months. The attempt to cause the danger is also punishable 44/.

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39/ Ibid., Art. 21.

40/ See Section 5.5; Act, revised text of 1975, Art. 12.

41/ Act, revised text of 1975, Art. 7.

42/ Ibid., Art. 13(1).

43/ Ibid., Art. 13(2).

44/ Act, revised text of 1975, Art. 23.

A number of offences are listed. These include importing or marketing unauthorized protection substances or marketing them not marked as required. They are punishable with a fine of up to DM 10 000 45/. In some cases, the protection substances, plants and other objects which cause the infraction, may be confiscated 46/.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

In the case of destruction of plants or plant products which are not affected nor suspected of being affected, or of other objects which are not carriers of harmful organisms and are not suspected of so being, an equitable cash compensation shall be paid. Such compensation shall be determined by weighing the interests of the community against those of the persons affected 47/. In disputes arising out of claims for such compensation, recourse to the ordinary judicial process is possible 48/.

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45/ One US\$ = DM 2.60.

46/ Act, revised text of 1975, Art. 25.

47/ Ibid., Arts. 15 and 16.

48/ Ibid., Art. 17.

## GUYANA

### 1. LEGISLATIVE TEXTS

Plant Protection Act. - 31 December 1942. - The Laws of Guyana, Chapter 68:3, revised edition, 1973, p. 3. (Separate publication).

The same separate publication contains the subsidiary, revised texts which are currently in force, i.e.:

Prohibition of Importation Order (O. in C. 8/6/1937, 9/11/1937, 2/6/1938, 17/8/1939), p. 11.

Plant Diseases and Pests (Notification) Regulations (Reg. 2/4/1936), p. 12.

Plant Diseases and Pests Notification Order (O. in C. 2/5/1936), p. 12.

Plant Protection (Notifiable Pests) Order (O. 14/1945, 48/1958, 20/1969), p. 12.

Plant Diseases (plast) Order (O. 59/1958) p. 13.

Plant Protection (Conditions of Exportation) Order (O. 11/1958), p. 13.

Importation of Fruits and Vegetables Regulations (Reg. 10/1948), p. 14.

Plant Protection (cotton pests) Regulations (Reg. 3/1953), p. 15.

Plant Protection (Conditions of Importation) (Reg. 6/1955), p. 16.

Plant Protection (Conditions of Importation) (Reg. 5/1958), p. 17.

Plant Protection (citrus planting materials) (Reg. 19/1961), p. 19.

Plant Protection (coconut disease) (Red Ring) Regulations (Reg. 3/1962), p. 19.

Plant Protection (importation of Christmas trees) (Reg. 9/1967), p. 20.

Both the Act and the subsidiary texts, published in the revised edition of 1973, were still in force in 1981, the year in which the Guyanese authorities forwarded the separate publication to FAO.

## 2. SCOPE AND STRUCTURE OF LEGISLATIVE TEXTS

The complete title of the Plant Protection Act also gives the purposes of the Act, namely: the prevention, eradication and control of plant diseases and pests.

The Act consists of 19 articles, dealing with the following subjects:

- Art. 1: Short title;
- Art. 2: Interpretation;
- Art. 3: Appointment of officers;
- Art. 4: Power to make orders;
- Art. 5: Notification of "notifiable" diseases;
- Art. 6: Power of entry;
- Art. 7: Procedure for eradication of diseases and pests;
- Art. 8: Non-compliance with notice;
- Art. 9: Quarantine of nurseries;
- Art. 10: Service of notice in absence of occupier;
- Art. 11: Compensation;
- Art. 12: Informality not to invalidate proceedings;
- Art. 13: Offences;
- Art. 14: Legal proceedings;
- Art. 15: Certificate of Chief Plant Protection Officer sufficient evidence in certain cases;
- Art. 16: Power of Minister to make regulations;
- Art. 17: Publication of Orders;
- Art. 18: Protection of persons acting under this Act;
- Art. 19: Repeal.

Both the Act and the subsidiary texts deal exclusively with subjects that are specific to plant protection, including quarantine. They do not include fertilizers or pesticides.

## 3. BASIC CONCEPTS AND TERMS

The Act defines 16 terms or expressions, namely: "animal organism", "disease", "diseased", "disinfection", "imported", "land", "notifiable disease", "notifiable pest", "nursery", "occupier", "owner, "package", "pest", "plant", "plant protection officer" and "vegetable organism" <sup>1/</sup>.

The term "notifiable pest" means a pest declared as such by the Minister.

The term "pest" means any parasitical epiphytal or other animal or vegetable organism inimical to the growth or existence of living plants or injurious to plant products, and any other agent capable of producing a communicable disease of plants, which has been declared a pest by the Minister.

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<sup>1/</sup> Act, Art. 2.

"Plants" include any tree, shrub, herb or vegetable; any cutting, bulb, seed, bud or graft; the fruit or any other part of any plant; the whole or any part of any growing, dying or dead plant, including any pod, husk or skin.

4. INSTITUTIONAL MATTERS

The Minister may appoint the Chief Plant Protection Officer and such other plant protection officials that may be required 2/.

The Minister may also by order;

- a) Prohibit, control or restrict the transport of any diseased plant or any plant which appears to be affected with any pest or disease, or any other object, whether similar in nature to a plant or not, which is likely to cause any pest or disease in plants;
- b) Prohibit, control or restrict the cultivation and harvesting, throughout the national territory or in any specific area thereof, of any plant when, in the opinion of the Minister, such measures are necessary for the control or eradication of any pest or disease;
- c) Direct, authorize or control the quarantine of infected areas;
- d) Direct and specify the precautions to be taken to prevent the spread of plant diseases and pests;
- e) Authorize or require inspection, before import or export of any plant or article likely to cause any pest or disease in plants;
- f) Direct or authorize the disinfection or treatment of any plant and of any article likely to cause any pest or disease in plants;
- g) Authorize the immediate destruction without compensation of any plant or article which on inspection appears to be infested or infected with any pest or disease;
- h) Direct or authorize the detention in a specified place of imported plants and specify the precautions to be taken during such detention;
- i) require plants, or any class or classes of plants which are imported be accompanied by a certificate issued by a competent person 3/.

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2/ Act, Art. 3.

3/ Act, Art. 4.

The Minister may also make regulations for all or any of the following:

- a) Prohibiting, restricting or regulating the importation of any plant, vegetable organism or package, article, animal or animal organism which is likely to cause an infection;
- b) Authorizing or requiring the inspection prior to importation of any plant or article which is likely to cause a pest or disease;
- c) Authorizing or requiring the disinfection, treatment, destruction or disposal without compensation of any diseased or infected plants;
- d) Directing or authorizing the disinfection, treatment and fumigation of buildings, vehicles, vessels or aircraft which may harbour pests or diseases;
- e) Prohibiting the importation of any plant or plants except at specified ports of entry;
- f) Directing or authorizing the detention in a specified place of any imported plants and specifying the precautions to be taken during such detention;
- g) Requiring the importation of any plant to be accompanied by a certificate issued by an authorized person;
- h) Authorizing or requiring the issue or revocation of licences and the inspection of nurseries in which plants are reared for sale, the imposition of fees for such licences and the regulation of the sale or removal of plants;
- i) Regulating or prohibiting the removal from any land or building or the conveyance from any part of Guyana to any other part thereof of any plant, soil, manure straw, package, vegetable or animal organism;
- j) Fixing the payment of fees for disinfection or treatment or for any other service rendered by officers under the Act;
- k) Defining the duties of Plant Protection Officers;
- l) Regulating the manner in which applications are to be made to plant protection officials; and
- m) Generally, carrying into effect the provisions of the Act 4/.

A Plant Protection Officer may enter upon any land or into any building or part of any building not being a dwelling, at all reasonable times and without notices for the purpose of searching and examining any animal or vegetable organism, any disease-infected or pest-infected plant, and any soil, manure, straw, package or packing material. Prior to entering the aforementioned places, the plant protection official shall inform the occupier, if he is present at the time, of his intention to enter the premises 5/.

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4/ Act, Art. 16.

5/ Act, Art. 6.

## 5. MEASURES OF PROTECTION WITHIN THE COUNTRY

### 5.1. General preventive measures

The Minister may, by Order, direct and specify the precautions to be taken to prevent the spreading of plant diseases and pests 6/.

### 5.2. Treatment of pests

The Minister may:

- direct or authorize the disinfection or treatment of any plant and any article likely to infect any plant with a pest or disease;
- authorize the immediate destruction, without compensation, of any plant or article which on inspection appears to be infested or infected with any pest or disease 7/.

The occupier of any land on which a notifiable disease or pest occurs shall as soon as practicable inform the plant protection officer thereof 8/.

A Plant Protection Officer may require the occupier of the land, to take, at his own cost, all such measures as may be necessary to prevent the outbreak or spread of any plant disease and may order the total destruction of any infected or infested plant 9/.

If an occupier fails to take the measures prescribed in the above paragraph within the time specified by the plant protection officer, the officer may cause these measures to be taken. The costs of incurred shall be borne by the occupier unless special cases the Minister decides otherwise 10/.

The Minister may use funds provided by Parliament for such purposes, to make grants, by way of compensation, to those occupiers and owners in respect of healthy plants destroyed in order to prevent the spread of any pest to adjacent lands 11/. With regard to compensation, it must be noted that the Minister may authorize the immediate destruction, without compensation, of any infested or infected plant or article 12/.

Notification of diseases and pests are dealt with in three special orders. An order has also been issued dealing with blast and cotton pests 13/.

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6/ Act, Art. 4 d.

7/ Act, Art. 4, f, g.

8/ Act, Art. 5(1).

9/ Act, Art. 7.

10/ Act, Art. 8.

11/ Act, Art. 11.

12/ Act, Art. 4, g.

13/ See mention in the section on Legislative Texts.

### 5.3. National quarantine measures

The Minister may direct, authorize or control the quarantine of affected areas 14/. Special regulations deal with quarantines in nurseries 15/.

Special quarantine regulations are also prescribed with respect to coconut disease. Coconut planting material is not allowed to leave certain areas 16/.

### 5.4. Transport and trade of plants and plant products

The Minister may prohibit, control or restrict the transport of any diseased plant or any plant which appears to be affected with a pest or disease, or anything whatever, whether similar in nature to a plant or not, likely to cause a pest or disease in plants 17/.

### 5.5. Control of phytopharmaceutical products for agricultural use

The legislative texts available make no reference thereto.

## 6. INTERNATIONAL PROTECTION MEASURES

Guyana became part of the International Plant Protection Convention when it deposited the instrument of adherence on 31 August 1970.

### 6.1. Importation

The Minister is empowered:

- to authorize or require the inspection prior to importation, of any plant or article that is likely to cause a plant pest or disease;
- to direct or authorize the detention in a specified place of imported plants and specify the precautions to be taken during such detention;
- to require imported plants to be accompanied by a certificate issued by a competent person 18/.

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14/ Act, Art. 4,

15/ Act, Art. 9.

16/ See mention in the section on Legislative Texts.

17/ Act, Art. 4, a.

18/ Act, Art. 4, e, h, i.

The Minister may also make regulations for all or any of the following:

- prohibiting or restricting the importation of plants likely to cause infection;
- authorizing or requiring disinfection, treatment, destruction or disposal, without compensation of any diseased plant;
- requiring importation to be effected only through specified ports of entry;
- directing the detention of imported plants in a specified place;
- requiring that imported plants be accompanied by a certificate issued by an authorized person 19/.

The Guyanese authorities have issued several orders regulating the importation of certain products, i.e., fruits and vegetables and Christmas trees 20/.

#### 6.2. Exportation and transit

The Minister may authorize or require the inspection prior to exportation of any plant or article likely to cause plant pests or diseases 21/.

The Minister may also issue orders regulating or prohibiting the removal from any land or building, or the conveyance from any part of Guyana to any other part thereof, of any plant, soil, manure, straw, package, plant or animal organism 22/.

A plant protection Order has been issued specifying the conditions of export. The Order mentions the phytosanitary certificate 23/.

#### 7. INCENTIVES FOR PLANT PROTECTION

The texts examined do not deal specifically with this subject.

#### 8. OFFENCES AND PENALTIES

The occupier of land or a building who fails to report the presence thereon of a notifiable disease or pest, shall be liable, on summary conviction, to a fine of 500 dollars 24/.

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19/ Act, Art. 16, a, b, c, e, f, g. The complete text of the part corresponding to Art. 16 has been given in the section on institutional matters.

20/ See reference to this in the section "Legislative Texts". The same section deals with other regulations regarding importation.

21/ Act, Art. 4, e.

22/ Act, Art. 16, i.

23/ See reference thereto in the section "Legislative Texts".

24/ Act, Art. 5(2). U.S. \$ 1 = 3 Guyana dollars.

Any person who: obstructs plant protection officials in the exercise of their powers; knowingly introduces a disease or pest on any cultivated or uncultivated land; or contravenes the provisions of the Plant Protection Act or the regulations pursuant thereto, shall, be liable, on summary of conviction, for each offence, to a fine of 200 dollars and a term of imprisonment of three months 25/.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

All the proceedings instituted under the Plant Protection Act must be taken in the name of a plant protection officer and shall not impinge on any civil liability which may exist independently thereof 26/.

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25/ Act, Art. 13.

26/ Act, Art. 14(2). Other regulations concerning procedure are dealt with in Art. 15.

## MALAWI

### 1. LEGISLATIVE TEXTS

Plant Protection Act No. 11 of 1969. - 6 May 1969. - Malawi Government Gazette, Extr., Vol. VI, No. 24, 14 May 1969 1/.

Government Order No. 106, issuing regulations concerning plant protection (exportation). - 19 May 1969. - M.G.G. No. 27 supplement (No. 22A), 23 May 1969, p. 167.

Government Order No. 107, 1969 regulations concerning plant protection (importation). - 19 May 1969. - M.G.G. No. 27, supplement (No. 22A), 23 May 1969, p. 171.

Government Order No. 32, amending the regulations on plant protection (exportation). - 16 November 1981. - M.G.G. No. 11, 19 February 1982, supplement, p. 66.

The basic text is the Act 1969. The government orders supplement the provisions thereof and regulate certain aspects of plant importation and exportation.

### 2. SCOPE AND STRUCTURE OF THE LEGISLATIVE TEXTS

The purpose of the Act, as shown in the complete title, is the eradication of pests and diseases destructive to plants and the prevention of the introduction and spread of pests and diseases.

The Act contains 13 sections dealing mainly with the following subjects: interpretation, duties of owners of land, powers of inspectors, appeals, sale of plants infested with a pest, compensation, limitation of action against the Government, offences, and regulatory powers of the Minister.

Pesticides are not dealt with directly in the Plant Protection Act, but Government Order No. 114 of 1973, which deals with the fumigation of plants, products or buildings, mentions in one of its annexes the fumigants authorized, the doses thereof and the minimum time of exposure for each fumigation product 2/.

### 3. BASIC CONCEPTS AND TERMS

The Plant Protection Act defines *inter alia*, "plant", "pest" and "injurious organism".

The word "plant" means any member of the vegetable kingdom, whether living or dead, and includes any part of a plant, or the fruit or flowers thereof, whether severed therefrom or not, and any unmanufactured plant product.

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1/ The complete text of the Act is published in FAO Food and Agricultural Legislation, Vol. XIX 1, fascicule 1.

2/ Government Order No. 114 of 1973 plant protection regulations concerning (Fumigation). - M.G.G. Supplement No. 33A, 7 September 1973, p. 167.

The term "pest" means an injurious organism which has been declared to be a pest under the Act.

The expression "injurious organism" means any organism or like agent including a virus, which is:

- a) inimical to the growth or existence of living plants;
- b) injurious to plants or plant products; or
- c) capable of producing a disease 3/.

#### 4. INSTITUTIONAL ORGANIZATION

The Minister of Agriculture is responsible for enforcing plant protection measures. There is a Plant Protection Service of Malawi. Inspectors are the persons authorized in writing by the Minister to exercise the powers or perform the duties of an inspector under the Act. They shall comply with any directions or instructions which the Minister may from time to time issue 4/.

The Minister may, by notice, declare any injurious organism to be a pest either generally or in respect of a particular type of plant and either with a view to its control or the prevention of its introduction or spread, or for some other purpose 5/.

The Minister exercises regulatory powers. Without prejudice to the generality of the regulations, the Act mentions a number of subjects they may provide for: permits, certificates or other documents required under the Act; the import or export of plants, pests, injurious organisms; the treatment, destruction or disposal of infested pests or plants; the transport of pests, growing media or plants; quarantine; phytosanitary certificates; etc. 6/.

An inspector may, in the performance of his functions, upon production of the written authorization by the Minister, if demanded, enter upon and inspect any land or premises, buildings, vehicles or vessels, which he reasonably suspects of containing growing media or plants infested by pests. An owner of land, premises, buildings, vehicles, vessels, growing media or plants or the agent of such owner, shall afford the inspector access thereto and shall give such information and provide such labour and facilities as the inspector may require for the purposes of carrying out an inspection under the Act 7/.

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3/ Act of 1969, Art. 2.1.

4/ Ibid., Art. 3.

5/ Ibid., Art. 2.2.

6/ Act, 1969, Art. 12.

7/ Ibid., Arts. 5 a and 6.

## 5. PROTECTION MEASURES WITHIN THE COUNTRY

### 5.1. General preventive measures

For the purpose of preventing the introduction or spread of a pest the Minister may, by notice, declare any injurious organism to be a pest 8/.

An owner of land or premises shall take all measures prescribed or required by or under the Act, and such additional or alternative measures as are reasonably necessary for the prevention of the spread of a pest or disease which an inspector may, in accordance with the provisions of the Act, in writing order him to take 9/.

### 5.2. Treatment of pests

According to the provisions of the Act, the Minister may, without prejudice to the generality of the regulations, provide for: the disinfection, treatment, destruction or disposal of pests or plants infested or appearing to be infested with a pest or anything whatever, whether similar in nature to a plant or not, which is liable to infest a plant with a pest; the control and destruction of any plant infested with a pest; the prohibition, restriction and regulation of the cultivation and harvesting of plants if a pest cannot otherwise be readily or adequately controlled or eradicated; the control and destruction of host plants not under cultivation for the current season's crop; the reporting of the occurrence of a pest and the collection and transmission of specimens of a pest; the methods of planting, cleaning, cultivating and harvesting to be adopted and the precautions and measures, including the destruction of plants, to be taken by an owner of land for the purpose of eradicating a pest or of preventing or controlling attacks by or the spread of a pest; the destruction after harvest of a particular kind of plant by a specified date; the disinfection, fumigation or other treatment of any land, building, vehicle or vessel used for the storage or conveyance of any plant or agricultural produce 10/.

The fumigation of plants, products or buildings is regulated by a Government Order, 1973. This Order contains directions concerning the requirements to be fulfilled by the person carrying out the fumigation operations. These include having, at the site recommended for the fumigation operations, the necessary equipment, as well as a fumigation registration form and a certificate of completion of operations 11/.

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8/ Ibid., Art. 2.2.

9/ Act, 1969, Arts. 4.1, 5c.

10/ Act, 1969, Art. 12, d to 1.

11/ Government Notice No. 114, 1973, plant protection (Fumigation) regulations, 1973, M.G.G. Sup. No. 33A, 7 September 1973, p. 167. Schedule I lists essential fumigation equipment; Schedule II contains models of the fumigation registration form and certificate of completion of operations.

An inspector may be present at fumigation operations, which must be carried out according to the procedure laid down 12/. The inspector may also examine the equipment used for these operations. In the event of the fumigation operations not being carried out as required, he may order the operations to be repeated 13/.

The Order of 1973 gives standards of competence with respect to the persons carrying out fumigation operations. The inspector or another public official may issue a certificate of competence in their favour 14/.

The inspector is responsible for inspecting any growing media and plants and for the purpose of detecting pests, exposing the roots of any plant, removing bark or cutting any plant or opening any container which he believes to contain growing media or plants liable to harbour a pest. The inspector may also order the taking of measures which are prescribed or are reasonably necessary for the eradication or prevention of a pest or disease. If an owner of land or premises fails or neglects to take the measures which he is required to take, an inspector may give the owner not less than 7 days notice in writing of his intention to cause the measures to be taken. However, in the event that the measures must be taken without delay, the inspector may take such measures immediately without giving prior notice 15/.

If he reasonably suspects the presence of a pest in an area, the inspector may declare the area to be an infested area. In such a case, he may prohibit, in writing, for a period not exceeding 14 days, the removal from the land, premises or buildings of growing media, plants, containers or other things whatsoever capable of spreading the pest 16/.

The Minister may pay compensation to the owner of a growing medium or plant destroyed under the powers conferred by the Act of 1969. If the owner so requires, the amount of compensation payable may be determined by two assessors, one of whom shall be nominated by the owner 17/.

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12/     Ibid., Arts. 6 and 7.

13/     Ibid., Arts. 8 and 10. Schedule III gives guidelines for fumigation.

14/     Government Notice No. 114, 1973, Arts. 9 and 11. Schedule II contains a model of the certificate of competence.

15/     Act, 1969, Art. 5, b., c; and 4, 1 and 2.

16/     Act, 1969, Art. 5 f.

17/     Act, 1969, Art. 9.

5.3. National quarantine measures

The Act, 1969 empowers the Minister to declare areas infested with a pest as infested areas and areas as quarantine areas 18/.

5.4. Transport and trade of plants and plant products

Without prejudice to the generality of the regulations he makes, the Minister may provide for the prohibition, restriction and regulation of the removal and transport of pests, growing media or plants 19/. He may also provide for the registration and inspection of nurseries, the regulation of the sale or removal of plants from nurseries and the regulation of the sale of nursery stock 20/.

If within three days of the delivery to him of plants sold by a nursery man, the purchaser of the plants finds that they are infested with an injurious organism he may return the plants to and at the expense of the nursery man. He shall thereupon be freed from the liability to pay for these plants, or if he has paid for them he may recover the purchase price 21/.

5.5. Control of phytopharmaceutical products for agricultural use

The chemicals used for fumigation purposes must be those indicated in the 1973 government order, at the dosage rates and with the minimum time of exposure prescribed for each fumigation product 22/.

6. INTERNATIONAL PROTECTION MEASURES

Malawi, which deposited its instrument of adherence on 21 May 1974, is a signatory of the International Plant Protection Convention.

6.1. Importation

The Minister provides for the issue of permits as a pre-requisite to the importation of growing media, injurious organisms, invertebrates and plants. He also provides for the production of phytosanitary certificates signed by responsible persons or authorities in the country or territory of origin relating generally or specifically to:

1. The freedom of imported growing media, invertebrates and plants, or the area in which they were produced or grown, from injurious organisms; and
2. The treatment of imported growing media and plants before dispatch from their place of origin 23/.

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18/ Ibid., Art. 12 m.

19/ Ibid., Art. 12 e.

20/ Ibid., Art. 12 n.

21/ Act, 1969, Art. 8.

22/ Government Notice of 1973, Art. 12. Schedule IV gives the list of fumigants, dosage rates and the minimum times of exposure for each product.

23/ Act, 1969, Art. 12 x and y.

The Minister may provide for the production, by the importer, of certificates of origin of the growing media, injurious organisms, invertebrates and plants that he is importing and the furnishing of particulars relating to imported growing media, injurious organisms, invertebrates and plants 24/.

The Minister may provide for the prohibition of the importation of growing media, invertebrates and plants, except by specified ports or places of entry and routes and by specified methods of transport 25/.

Under the Act, the Minister may provide for: the regulation, prohibition, restriction or control of the import or export of any plant or class of plant or any growing medium, invertebrate, pest or other injurious organism; the detention and inspection before importation or exportation of such material and the granting of phytosanitary certificates following inspection; the disinfection, fumigation or treatment and immediate destruction, without compensation, in the event of infection 26/.

Under the Act, an inspector may order the seizure, detention and destruction without compensation of any imported growing medium or plant or injurious organism or invertebrate, together with the container thereof:

1. which is imported in contravention of the provisions of the Act or any regulations made thereunder;
2. which is imported otherwise than in accordance with the conditions of a permit to import issued under the Act or any regulations made thereunder;
3. which is not at the time of importation accompanied by such a certificate of origin, phytosanitary certificate or other document as may be prescribed or which is accompanied by such a certificate or other document which is incorrect in a material particular 27/.

## 6.2 Exportation and transit

The Minister is empowered by the Act to provide for the prohibition, restriction or control of the export of any plant or class of plant or growing medium, invertebrate, pest or other injurious organism 28/.

The Government Order of 1969 provides for the export of plants but excludes tung oil, cotton fibre, tea, coffee, cut flowers, fresh fruit and vegetables. The inspector is empowered to examine the plants or a representative sample thereof and the vehicles, aircraft or vessels transporting them. If he is satisfied with the result of his examination, he issues a phytosanitary certificate, the wording of which is published in the schedule of the Government Notice 29/.

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24/     Ibid., Art. 12 z.

25/     Ibid., Art. 12 t.

26/     Act, 1969, Art. 12 c., q. and r.

27/     Ibid., Art. 5.1.g.

28/     Act, 1969, Art. 12 c and e

29/     Government Notice of 1969. 1969 plant protection (export) regulations.

7. INCENTIVES FOR PLANT PROTECTION

The provisions examined do not deal with plant protection incentives.

8. OFFENCES AND PENALTIES

An owner of land or premises shall, without prejudice to any other penalty incurred by reason of his failure or neglect to take the measures which he is required to take in accordance with the Act, be liable to pay the costs incurred by the inspector in respect of the measures he causes to be taken in accordance with the Act 30/.

The Act lists a number of actions which constitute an offence. These include: a person who wilfully resists, obstructs, impedes or hinders an inspector in the exercise of his powers or the performance of his duties; contravenes or fails to comply with any of the provisions of the Act or any of the regulations made thereunder or of any order or direction made or given under the provisions of the Act, with which it is his duty to comply; without reasonable cause contravenes or fails to comply with any of the conditions of a permit or other document issued in accordance with the Act or of any regulations made thereunder; for the purpose of obtaining, whether for himself or any other person, the issue of a permit, certificate or other document makes a declaration or statement which he knows to be false in any particular or does not know to be true. These offences are liable to a fine of one hundred pounds and to imprisonment for six months. Any person maliciously introducing a pest on to land or premises in Malawi shall be liable to a fine of 400 pounds and to imprisonment for four years 31/.

An inspector may seize, detain and may order the destruction of a growing medium, plant or other thing whatsoever which is removed from an infested or quarantine area in contravention of the provisions of the Act or an order made in accordance with the provisions of the Act. Confiscation or destruction shall not free the person responsible for its illegal removal, from liability to prosecution 32/.

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30/ Act, 1969, Art. 4.3.

31/ Act, 1969, Art. 11.1 i U.S. \$ 1 = 1.13 Kwacha, currency which replaced the pound.

32/ Act, 1969, Art. 11.2 and 3.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

The importer or owner of a growing medium or plant or other thing, the destruction of which has been ordered in accordance with the provisions of the Act, may, within seven days of the date of the order, lodge with the Minister a notice of appeal against the order. There shall be no right of appeal in respect of:

- 1) an order for the destruction of a growing medium or plant declared by an inspector to be infested with a pest; or
- 2) an order of destruction of any host plants or any plants declared by the inspector to be infested with a pest, or any plant which is growing on land or in any growing media contrary to the provisions of the Act or any regulations made thereunder 33/.

A notice of appeal shall be in writing and shall specify the grounds of the appeal. The Minister may, after making such enquiries as he considers necessary, determine the appeal or, if he considers it desirable, refer the appeal to a board of enquiry appointed by him 34/.

A board of enquiry, made up of three members appointed by the Minister, shall as soon as possible report its findings and make recommendations in writing to the Minister who shall thereupon determine the appeal 35/.

No claim shall lie against the Government, the Minister, the Permanent Secretary, an inspector or any other servant or agent of the Government for anything done in good faith under the powers conferred by the Act 36/.

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33/ Ibid., Art. 7.1.

34/ Act, 1969, Art. 7.2 and 3.

35/ Ibid., Art. 7.4, 6 and 8.

36 Ibid., Art. 10.

## MEXICO

### 1. LEGISLATIVE TEXTS

Regulations for the control and use of herbicides. - 13 December 1973. - Diaria Oficial No. 32, 17 December 1973, p. 12.

Plant and Animal health Act of the United States of Mexico. - 18 November 1974. - Diario Oficial No. 30, 13 December 1974, p. 9.

Decree approving the International Plant Protection Convention, held in Rome, Italy, on 6 December 1951. - 17 October 1975. - Diario Oficial No. 31, 16 February 1976, p. 3.

The basic text is the Plant and Animal Health Act of 1974.

The regulations for the control and use of herbicides of 1973 were issued pursuant to Arts. 20 and 26 of the Plant and Animal Health Act of 1940 1/. Although the new Plant and Animal Health Act of 1974 repealed the former of 1940 2/, the regulations, decrees and orders in force in 1974 are still being applied where they are not contrary to the provisions of the new Plant and Animal Health Act of 1974 until new regulations are issued pursuant to the 1974 Act 3/.

### 2. SCOPE AND STRUCTURE OF THE LEGISLATIVE TEXTS

The purpose of the 1974 Plant and Animal Health Act is to protect and preserve plants and animals against the harmful action of pests and diseases 4/. As its title indicates, the Act applies to the protection of both plants and animals.

Protection activities, with respect to plants, include 5/: diagnosing, preventing, controlling and eradicating pests and diseases affecting plants; preventing the introduction into the country of any pest or disease that is a threat to the health or production of plants; cultivating disease-resistant varieties; carrying out sanitary and quality control of biological, chemical and pharmaceutical products for plants and technical equipment and services for the application thereof; inspecting plants and establishments classified according to Federal inspection criteria; controlling the transport of plants, plant products and sub-products, as well as substances, material, machinery and equipment for use with plants, or which for any reason whatever come into contact with plants; encouraging farmers' groups and other sectors involved in agriculture to cooperate in controlling pests or diseases; enforcing sanitary control measures with regard to importation and exportation of plants, plant products and sub-products and substances, materials, machines and equipment intended for use with plants, or that are or have been in contact with plants; compiling statistics and data regarding the environment, its protection and avoidance of the pollution which could result from plant protection activities.

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1/ Regulations for the control and use of herbicides of 1973, Preamble and Whereas II.

2/ Plant and Animal Health Act of 1974, second transitional article.

3/ Plant and Animal Health Act third transitional article.

4/ Ibid., Art. 1.

5/ Ibid., Art. 2.

All these points, which are among the plant and animal protection measures cited in the Act, are later dealt with in more detail in a separate section on plant health. It is stated that the role of plant protection is:

- 1) To organize the control of pests and diseases which affect plants, plant products and sub-products and damage to agricultural crops or forest resources;
- 2) To control the movement of plants, plant products and material of any other nature whatever which are likely to be carriers of pests that are harmful to crops and forests;
- 3) To control the import and export of plants and plant products, as well as of material of any other nature liable to infect any plant with a pest or disease;
- 4) To set up cooperative bodies in which farmers, public agencies and other sectors involved in agricultural production may participate;
- 5) To promote international cooperation for the prevention and control of pests and diseases in plants, plant products and sub-products and, to accept such cooperation, in accordance with Mexican laws, in so far as this is desirable;
- 6) To control the use of agricultural pesticides and in general of additives or substances used for the prevention, control and eradication of plant pests and diseases; and
- 7) To cooperate with other divisions of the Federal Executive, federative authorities and international bodies in the adoption of measures to preserve the health of plants and animals, to prevent the spread of pests and diseases and to ensure that the control methods used do not pollute the atmosphere 6/.

The Plant and Animal Health Act of 1974 consists of 177 articles, to which are added four transitional articles. The Act is arranged in eight titles, subdivided into chapters.

The Title I deals with the general provisions (Chapter I: Purpose; Chapter II: Scope; Chapter III: Powers of the authorities and auxiliary services). The Title II deals with plant health (Chapter I: The role of plant protection; Chapter II: Safety measures to be taken in plant protection; Chapter III: Importation and exportation of plants and materials likely to spread pests and diseases; chapter IV: Coordination and cooperation for the prevention and control of pests and diseases; Chapter V: Registration and control of enterprises; Chapter VI: Biological agents useful in agriculture; Chapter VII: Professional services in plant protection; Chapter VIII: Inducements, exemptions and incentives; Chapter IX: Plant protection in forestry). The Title III, which is subdivided into six chapters, is devoted to animal protection. The Title IV deals with quarantines in a single chapter; Title VI with plant protection inspection; Title VII with both minor and serious offences. Title VIII with appeals.

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6/ Plant and Animal Health Act, 1974, Art. 26.

The Plant Protection Act of 1974 therefore covers a wide range of subjects and includes regulations concerning pesticides as well as quarantine measures and fertilizers.

With respect to pesticides and fertilizers, it has already been pointed out above that sanitary and quality control of biological, chemical and pharmaceutical products for use on plants and the technical equipment and services for the application thereof are related to both plant and animal health 7/ and that one of the functions of plant protection is precisely to control the use of agricultural pesticides 8/. Furthermore, the safety measures to be taken as part of plant health activities include regulating the application of herbicides, pesticides and fertilizers and the use of active ingredients and formulations 9/. Pesticides and fertilizers are dealt with mainly in Arts. 34-50.

### 3. BASIC CONCEPTS AND TERMS

The Plant Protection Act of 1974 gives no definitions whatever. The 1973 regulations concerning the control and use of herbicides give the definition, inter alia, of "herbicide".

### 4. INSTITUTIONAL ORGANIZATION

Enforcement of the Act is vested in the Department of Agriculture and Animal Husbandry 10/. The Federal Executive departments and federal public sector agencies shall coordinate their respective plant protection activities with those of the Department 11/.

The Department of Finance and Public Credit in particular, shall, through the Customs Service, assist the Department of Agriculture and Animal Husbandry when so requested 12/.

The Department of External Relations shall also, through its diplomatic representatives and consuls abroad, inform the Department of Agriculture and Animal Husbandry of the presence of any plant pest or disease in the countries to which the representatives or consuls are assigned and of the regions affected, the drugs, biological products, pesticides, equipment and procedures used for the control thereof and the results obtained 13/.

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7/ Plant and Animal Health Act of 1974, Art. 2, V.

8/ Ibid., Art. 26, VI.

9/ Ibid., Art. 28, XIII.

10/ Ibid., Art. 4.

11/ Ibid., Art. 5.

12/ Ibid., Art. 6.

13/ Plant and Animal Health Act, Art. 11.

The Department of Agriculture and Animal Husbandry is empowered:

- to prescribe the measures it deems necessary for the protection and dissemination of plants and biological agents in general which help to prevent and control pests and diseases 14/;
- to set up and promote the establishment of laboratories to carry out research and analysis and to prepare biological and pharmaceutical products for plant protection and to control and monitor the operation thereof 15/;
- to prescribe, by emergency procedures, measures to prevent, control or eradicate epiphytic diseases 16/;
- to prescribe ways in which the Services under its authority could cooperate 17/;
- to hold meetings with State and municipal government bodies and the sectors concerned to organize campaigns against pests and diseases 18/;
- to make recommendations to the Chief Executive of the union regarding the holding of international plant protection meetings 19/;
- to prescribe sanitary measures with respect to transport vehicles and containers 20/;
- to prescribe any preventive and control measures it deems necessary 21/;
- to establish quarantine stations 22/;
- to disseminate information concerning plant protection 23/, and to coordinate and supervise the publicizing thereof by public and private bodies 24/;
- and, in general, to prescribe, with the cooperation of the Secretaría de Salubridad y Asistencia (Department of health and Assistance), the safety measures to be taken to prevent the spread of pests and diseases 25/. The measures may in practice apply to all activities relating in

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<u>14/</u>	Ibid., Art. 7.
<u>15/</u>	Ibid., Art. 8.
<u>16/</u>	Ibid., Art. 9.
<u>17/</u>	Plant and Animal Health Act, Art. 12.
<u>18/</u>	Ibid., Art. 13.
<u>19/</u>	Ibid., Art. 14.
<u>20/</u>	Ibid., Art. 19.
<u>21/</u>	Ibid., Art. 20.
<u>22/</u>	Ibid., Art. 22.
<u>23/</u>	Ibid., Art. 24.
<u>24/</u>	Ibid., Art. 25.
<u>25/</u>	Plant and Animal Health Act, Art. 27.

any way whatever to plant protection: preventive treatment; campaigns; destruction of diseased plants; demarcation of areas; disinfection; destruction of crops; control of transport and national and international trade; establishment of sanitary cordons; adoption of quarantine measures; prohibition of the sale of contaminated plants; control of herbicide application, pesticides and fertilizers; granting of cultivation permits; establishment of laboratories, etc. 26/.

In order to carry out the plant protection campaigns mentioned in the Act, the Department of Agriculture and Animal Husbandry shall, in places where it deems this to be necessary, set up plant protection regional committees, which shall operate as auxiliary bodies 27/. The regional committees and local boards shall operate as legal entities and their members shall include representatives of the federal authorities, federative and municipal bodies as well as of the sectors concerned. The boards shall be empowered to implement the agreements reached by the committees 28/.

Plant and animal inspections (phytosanitary inspections, animal and forest environment inspections) are similar to house inspections. The federal, state and municipal authorities shall assist the health inspectors in the exercise of their duties, and private individuals are obliged to allow them to carry out their duties and to provide every faculty to enable them to do so 29/. The inspectors shall be provided with orders in writing issued by the Department of Agriculture and Animal Husbandry stating the purpose and scope of their visit.

The inspections may be ordinary or extraordinary. The former are carried out on working days and during working hours, while the latter, for a specific reason only, may be done at any time 31/. The inspectors shall have free access to any place where plants, plant products and sub-products, material and equipment used therefor are present or thought to be present to inspect the sanitary condition thereof 32/. Upon starting his visit, an inspector shall produce due identification and after having carried out the inspection, shall draw up a report thereof which shall be submitted to the competent authority, who shall determine if an offence was indeed committed. In cases of emergency, an inspector shall use any means of communication to submit the report, so that the necessary measures may be prescribed 33/;

With respect to cooperation by the private sector in pest control, it is provided that privately-run services involved in the control of plant pests and diseases shall be duly authorized by the Department of Agriculture and Animal Husbandry and shall operate under its supervision 34/.

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26     Ibid., Art. 28.

27/     Ibid., Art. 15.

28/     Ibid., Art. 16.

29/     Plant and Animal Health Act, Arts. 130-132.

30/     Ibid., Art. 135.

31/     Ibid., Art. 134.

32/     Ibid., Art. 140.

33/     Plant and Animal Health Act, Arts. 141-142.

34/     Ibid., Art. 17.

## 5. PROTECTION MEASURES WITHIN THE COUNTRY

### 5.1 General preventive measures

The Secretary of Agriculture and Animal Husbandry is empowered to prescribe any preventive measures for plant protection that he deems necessary, the enforcement of which could be immediate 35/. These measures shall be published in the "Diario Oficial" of the Federation 36/, and may include preventive treatment against attacks by plant pests and diseases; the demarcation of observation areas and the declaration of disease-free areas; the demarcation of control and protected areas and areas that are open for agriculture; the establishment of frontiers or sanitary cordons; determining when crop licences shall be required and granting these when appropriate; prescribing that only seeds selected for their quality shall be sown to ensure that plants shall be pest and disease-resistant 37/.

The Department of Agriculture and Animal Husbandry shall take measures to protect animal and plant species which may in any way be used for the biological control of pests and diseases and ensure the reproduction thereof. The production, collection and utilization of biological agents to combat pests and diseases shall require a permit issued by the Department 38/.

The Department of Agriculture and Animal Husbandry is required to disseminate, on a regular basis, by any means it deems suitable, information and advice on plant health, using methods which are easy for the people to understand, so that their cooperation may be obtained through instruction and education 39/.

### 5.2 Treatment of pests

In the event of an outbreak of a pest or disease, the authorities and inhabitants of the infested region shall notify the Department of Agriculture and Animal Husbandry in cooperation with the Department of Health and Assistance 41/.

The measures adopted by the Department of Agriculture and Animal Husbandry may include: eradication campaigns; destruction of injurious, contaminated or diseased plants; disinfection and disinfection of crops, products, transport vehicles, warehouses or seeds when these are liable to spread diseases or pests 42/.

When an epiphytotic becomes serious and, the Department of Agriculture and Animal Husbandry deems it necessary to adopt urgent and pressing measures, the measures of control or eradication to be taken shall be prescribed by the Executive of the Union 43/.

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35/ Ibid., Art. 20.

36/ Ibid., Art. 21.

37/ Ibid., Art. 28.

38/ Plant and Animal Health Act of 1974.

39/ Ibid., ARt. 24.

40/ Ibid., Art. 10.

41/ Ibid., Art. 27.

42/ Plant and Animal Health Act of 1974, Arts. 27 and 28.

43/ Ibid., Art. 9.

### 5.3 National quarantine measures

Among the plant protection measures that the Department of Agriculture and Animal Husbandry may prescribe, the Act includes quarantine measures and provides that it may;

- Order general, regional or local, internal or external, permanent or temporary, preventive or treatment quarantine measures;
- Establish quarantine, disinfection and disinfestation stations for plants, plant products, transport vehicles and packaging 44/.

The quarantine stations shall be set up by the Department of Agriculture and Animal Husbandry in places that it considers suitable, and shall be administered by the Department itself or, when authorization to run them has been granted by private individuals under its supervision 45/. The stations shall be provided with the facilities described in the relevant regulations, and shall operate in accordance with the provisions set out therein and with the special provisions Laid down in each authorization 46/.

These provisions are expanded under Title IV of the Act, which deals specifically with quarantine measures. In particular, the Department is assigned the task of prescribing quarantine measures for any plant which is diseased, the carrier of a disease affected by or capable of transmitting a pest, and of taking adequate and immediate measures to control and eradicate any such pest or disease 47/. Details of quarantine measures are given in the regulations pursuant to the Act 48/, which specifies that any plant subject to quarantine shall not be bought or sold and that clearance certificates to allow the movement thereof shall not be issued 49/.

### 5.4 Transport and trade of plant and plant products

The Department of Agriculture and Animal Husbandry may prescribe safety measures with respect thereto. It may determine restrictions or requirements for the transit, transport and trade of plants, seeds or the products thereof 50/.

Title V of the Act deals specifically with transport with reference to animal and plant health. It is stated as a basic principle that maritime, river, air and land transport facilities conveying plants, plant products and sub-products, biological, pharmaceutical and food products, as well as material, machinery and equipment used in agriculture and animal husbandry shall comply with the health requirements prescribed by the Department of Agriculture and Animal Husbandry 51/. The Department also issues a clearance

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44/ Ibid., Art. 28, X and XI.

45/ Plant and Animal Health Act, 1974, Art. 22.

46/ Ibid., Art. 23.

47/ Ibid., Art. 120.

48/ Ibid., Art. 121

49/ Ibid., Art. 123.

50/ Plant and Animal Health Act of 1974, Art. 28, VIII.

51/ Ibid., Art. 125.

certificate in those cases in which, under the regulations, it is required for the transport of plants 52/. The Department shall prescribe suitable preventive measures when plants and containers of plant products being conveyed are liable to spread diseases or disseminate pests 53/, and may issue permits authorizing the movement of plants or products that are diseased or carriers of disease solely for scientific research or diagnostic purposes 54/. An Inspector who discovers that prohibited plants are being transported shall request the help of the police to seize the same 55/.

Similar provisions apply to the transport of forest products, in that trees that have been felled and treated for pests or diseases require a timber clearance certificate 56/.

#### 5.5. Control of phytopharmaceutical products for agricultural use

It has already been mentioned that the safety measures which may be prescribed by the Department of Agriculture and Animal Husbandry include regulating the application of herbicides, pesticides and fertilizers and controlling the use of active ingredients and formulations 57/.

In this connection, the Act confers wide powers on the Department of Agriculture and Animal Husbandry, which, in cooperation with the Departments of Industry and Commerce and Health and Assistance, shall determine the specifications of pesticides and associated substances, as well as of labels, containers and equipment used for the application thereof 58/, and shall meet with any institution, official or private individual conducting research into agents that are harmful to agriculture, pesticide ingredients and fertilizers in order to coordinate the work thereof 59/.

The Act lays special stress on the registration and control of enterprises involved in the formulation, manufacture, importation or trading in pesticides, fertilizers, similar substances and equipment for the application thereof 60/. These firms shall; obtain evidence of registration and authorization to operate from the Secretariat of Agriculture and Animal Husbandry; register, with the Department, the technical products, mixtures, similar substances and each model of equipment used for the application of pesticides, herbicides or fertilizers; register the professional staff responsible for the manufacture and quality of the products and for drawing up the recommendations for use thereof 61/. The pesticides and substances shall

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52/ Ibid., Art. 127 and 19.

53/ Ibid., Art. 126 and 19.

54/ Ibid., Art. 128.

55/ Plant and Animal Health Act, 1974, Art. 40.

56/ Ibid., Art. 62.

57/ Ibid., Art. 28, XIII. We have no information on the publication of new herbicides regulations and are of the opinion that the regulations for the control and use of herbicides of 1973, with the provisions given in the paragraph "Legislative Texts", are still in force.

58 Ibid., Art. 34.

59 Ibid., Art. 38.

60/ Plant and Animal Health Act, 1974, entire Chapter V of Title II deals with this subject.

61/ Ibid., Art. 41.

be entered in the register when the physical and chemical analysis carried out by the Department of Agriculture and Animal Husbandry has shown that the product conforms to the formulation submitted by the manufacturer and when the result of experiments has shown its effectiveness 62/. The Department is also empowered to cancel entries in cases in which the regulations are not respected and shall publish in the "Diario Oficial" of the Federation both the entry in the register and the cancellation thereof 63/.

The application of agricultural pesticides is also subject to special control. The firms or persons involved in such application must obtain a permit to operate, issued by the Department of Agriculture and Animal Husbandry, and shall allow the working condition and efficiency of their equipment to be checked 64/. Likewise, private laboratories involved in analysing substances and products mentioned in the Act, must obtain the authorization of the Department of Agriculture and Animal Husbandry to operate 65/.

On the subject of the preservation of the forest environment, the Act makes special provisions as regards pesticides. It provides that the persons involved in the trade or use of insecticides, substances or compounds used to combat forest pests and diseases shall obtain permission from the Department of Agriculture and Animal Husbandry 66/.

## 6. INTERNATIONAL PROTECTION MEASURES

Mexico, which deposited its instrument of adherence on 26 May 1976, is a signatory of the international Plant Protection Convention 67/.

### 6.1 Importation

The transit, transport, import or export and trade of plants, seeds or the products thereof may be subject to prohibitions or special requirements 68/.

The Act provides that the Department of Agriculture and Animal Husbandry may authorize or refuse, if necessary, the importation or exportation of plants, plant products and sub-products to ensure the health and quality thereof 69/. It states as a basic requirement that before plants, parts, products or sub-products thereof and any substance or article liable to be a carrier of a plant pest or disease are introduced into the country, the authorization of the Department of Agriculture and Animal Husbandry shall be obtained. This authorization shall be given after it has been ascertained that the imported article is free from pests or diseases or, where applicable, has been subjected to the prophylactic treatment required by the Department 70/.

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62/ Ibid., Art. 45.

63/ Ibid., Arts. 46 and 47.

64/ Plant and Animal Health Act of 1974, Art. 48.

65/ Ibid., Art. 50.

66/ Ibid., Art. 59.

67/ Decree of 17 October 1977.

68/ Plant and Animal Health Act of 1974, Art. 28, VIII.

69/ Ibid., Art. 29.

70/ Ibid., Art. 30.

The genetic material of pest-infested or diseased plants and material are subject to special regulations. The genetic material of under quarantine plants may only be introduced into the country if accompanied by a permit and under the supervision of the Department. It is placed in one of the Department's plant quarantine stations. Authorization to leave the station shall be given only after the requirements of observation and treatment have been satisfied 71/. Importation of materials affected by a pest or disease shall only be authorized for scientific research purposes, if such importation of the Department of Agriculture and Animal Husbandry 72/.

Also, the importation of plant species which play a useful role in biological control in agriculture is subject to the issuance of a permit by the Department 73/.

The Department of Agriculture and Animal Husbandry exercises considerable control over the importation of products used in agriculture. The Department may, in fact, ban the importation of substances and products used on crops, such as fertilizers, pesticides or other means of controlling diseases and pests and equipment for the application thereof, when there is scientific proof that the use thereof is harmful. The Department is also empowered to specify the pesticides that may be imported; to determine the quantities required in accordance with the phytosanitary needs of the country; and to define the type of equipment to be imported for the application thereof. In addition, official evidence must be submitted of the use for which the pesticide is intended in its country of origin 74/.

## 6.2 Exportation and transit

Export control is a precautionary measure that may be adopted by the Department of Agriculture and Animal Husbandry, as indicated in the first paragraph of section 6.1, which deals with imports. The Secretariat may also authorize or prohibit the exportation of plants, plant products and sub-products, in order to control the health and quality thereof 75/.

Transit of plants, seeds or the products thereof is also subject to prohibitions or special requirements 76/.

## 7. INCENTIVES FOR PLANT PROTECTION

The Department of Agriculture and Animal Husbandry is empowered to:

1. Provide farmers with technical and material assistance so that they may be trained in and given demonstrations on methods of prevention and control;

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71/ Plant and Animal Health Act of 1974, Art. 31.

72/ Ibid., Art. 33.

73/ Ibid., Art. 32.

74/ Plant and Animal Health Act, 1974, Arts. 42-45.

75/ Ibid., Art. 29.

76/ Ibid., Art. 28, VIII.

2. Encourage the Department of Finance and Public Credit to grant facilities for the importation and exportation of substances, material and equipment used for the prevention and control of pests and diseases; and
3. Provide incentives for those who furnish scientific or technical information, which contributes to solving phytosanitary problems, particularly those who discover or introduce the best methods for controlling plant pests and diseases 77/.

#### 8. OFFENCES AND PENALTIES

Violations of the provisions of the Act, the regulations pursuant thereto and other provisions emerging therefrom are penalized administratively by the Department of Agriculture and Animal Husbandry, without prejudice to the penalties applicable when they constitute a serious offence and irrespective of the fact that they may be subject to measures designed to guide and educate the offenders 78/.

The administrative sanctions are: fines; cancellation of authorization or licence; seizure; temporary or definitive closure, which may be partial or total; and arrest for up to 36 hours.

Fines, which may amount to 150.000 pesos, are the penalties most frequently applied 79/.

The cancellation of an authorization, permit or concession may only be imposed for serious offences or in the event of a subsequent offence. Administrative arrest for up to 36 hours applies without prejudice to the other penalties which may be imposed upon those who hinder or obstruct the authorities in the exercise of their duties with respect to plant and animal health 80/.

In more serious cases, more severe penalties are imposed. The officer who fails to carry out his duties in epizootic control is liable to three years imprisonment and dismissal from his post; smuggling of plants from quarantine countries is liable to imprisonment for a term of between 6 and 12 years; the manufacture of pesticides without a licence issued by the Department is punished with imprisonment of between 1 and 5 years and a fine, or 5 and 10 years imprisonment and a fine, depending on whether or not damages are involved; any person who spreads or causes the spread of a pest or disease shall be liable to a term of imprisonment of between 5 and 15 years 81/.

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77/ Plant and Animal Health Act of 1974, Art. 55.

78/ Ibid., Arts. 139 and 146.

79/ U.S. \$ 1 = 148.90 pesos.

80/ Plant and Animal Health Act of 1974, Arts. 146-162.

81/ Ibid., Arts. 163-168.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

The supposed offender may, within 8 days of the date of notification of the decision to impose a penalty, lodge an appeal with the Under-Secretary for Agriculture and Animal Husbandry or the Under-Secretary for Forestry and Wildlife, depending upon the competent authority involved.

This appeal, which must be submitted in writing, either directly or by registered post with acknowledgement of receipt, must be settled by the administration within 15 days of the date at which the proceedings begin. Notice of appeal suspends enforcement of all but the monetary penalties.

The installations, vehicles and equipment used in the acts which constitute an offence, as well as the plants, plant products and sub-products, which are the subject of the offence, may be subjected to precautionary administrative seizure by the Department of Agriculture and Animal Husbandry and be liable for a fine 82/.

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82/ Ibid., Arts. 170-177.

## NEW ZEALAND

### 1. LEGISLATIVE TEXTS

Plants Act No. 151 of 1970 (An Act to consolidate and amend the law relating to plants and plant diseases). - 3 December 1970. - Acts, 1970, No. 151.

Introduction and Quarantine of Plants Regulations. - 18 April 1973, - see Current Law, July 1973, p. 53.

- The Noxious Weeds Act Extension Order. - 1 July 1974. - separate publication, 1974/170.

- Potato Cyst Nematode Regulations. - 26 August 1974. - C.L., October 1974, p.85.

The basic text is Act No. 151 of 1970.

### 2. SCOPE AND STRUCTURE OF THE BASIC TEXTS

The purposes of the 1970 Act are not specified therein. The five parts into which the Act is arranged deal with: importation; disease control; plant control; powers of inspectors; and miscellaneous provisions dealing, *inter alia*, with offences and penalties.

Quarantine measures, in addition to being dealt with in the 1970 Act, are the subject of the 1973 regulations.

The plant protection texts contain no provisions concerning pesticides. These are found in specific legislative texts 1/

### 3. BASIC CONCEPTS AND TERMS

The 1970 Act contains the definitions of "pest", "plant material" and "serious disease or pest".

The term "pest" includes the living stage of any insect, mite or other invertebrate animal, which may directly or indirectly cause an unhealthy condition and includes any such condition caused by any pest.

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1/ Pesticides Act No. 26, 1979. - 19 October 1979. - Acts, 1979, No. 26. A summary of the text was published in FAO's Food and Agricultural Legislation Series, Vol. XXIX, No. 2.

"Plant material" includes any plant, tree, shrub, herb, flower, nursery stock, culture, vegetable, or other vegetation; it also includes any fruit, seed spore and portion or product of any plant, unless, by any manufacturing process, it has been rendered no longer viable and has been freed from all diseases and pests and has been made incapable of carrying any disease or pest.

"Serious disease or pest" means a disease or pest that is not known to be present in New Zealand, or, if known to be present in New Zealand, is one in respect of which measures are being taken under this Act to eradicate it from New Zealand or from any part of New Zealand<sup>2/</sup>

#### 4. INSTITUTIONAL ORGANIZATION

Regulatory powers with respect to plant protection are conferred upon the Governor General. The Act provides that, by Order in Council, the Governor General may make regulations prohibiting or restricting the importation of plant material, soil and the containers thereof, etc. By Proclamation approved in Executive Council, the Governor General may declare a state of plant disease emergency. For the exercise of his functions, the Governor General is empowered to appoint advisory committees and assessors <sup>3/</sup>.

The Minister of Agriculture exercises functions relating to the importation and exportation of plant material and the control of plant diseases. He appoints the ports through which plant material shall enter or leave the country and the facilities considered fit to be stored in which inspection, fumigations or any other treatment may be carried out <sup>4/</sup>.

The Director-General of Agriculture and Fisheries is empowered to declare an area to be a quarantine station for the detention of imported plant material. He may permit importation for scientific research or experiment. When he has reason to believe that a disease or pest is present in a crop which is intended for export, he may prohibit the export thereof <sup>5/</sup>.

Inspectors are appointed by the Director-General and operate under his direction. They are empowered to examine any plant material, to move it to a quarantine station for treatment, disinfection or destruction. Inspectors may employ assistants in the exercise of their duties <sup>6/</sup>.

The Plants Act refers to the duties of officers of the Post Office and of the Customs to assist those bodies specialized in plant protection with respect to the seizure, disinfection, destruction, transport and introduction of plant material <sup>7/</sup>.

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<sup>2/</sup> Plants Act of 1970, Art. 2(1).

<sup>3/</sup> Plants Act, 1970, Arts. 10, 12, 14, 16 and 31.

<sup>4/</sup> Ibid., Arts. 5 and 13.

<sup>5/</sup> Ibid., Arts. 4, 6, 7, 15 and 26.

<sup>6/</sup> Plants Act, 1970, Arts. 8, 11, 17 to 25.

<sup>7/</sup> Ibid., Art. 9.

The 1979 Pesticides Act establishes a Pesticides Board, formed by members of the public and private sectors appointed by the Governor General on the recommendation of the Minister of Agriculture. The Registrar, however, shall be appointed by the Director-General of Agriculture and Fisheries. The functions of this Board are to promote the prudent, effective and safe use of pesticides and to determine applications for the registration of pesticides and the grant of licences. It shall submit an annual report of its operations to the Minister of Agriculture 8/.

## 5. PROTECTION MEASURES WITHIN THE COUNTRY

### 5.1 General preventive measures

Among the powers of the Director-General under the Act of 1970 is prohibiting or restricting the importation of any plant material, soil, package, etc., in order to prevent the introduction of any disease or pest 9/. Officers of the Post Office and the Customs assist in these activities 10/.

In order to prevent the spread of any disease or pest, inspectors may give instructions to occupiers of affected lands or owners of affected vehicles 11/.

### 5.2. Treatment of pests

By proclamation approved in Executive Council, the Governor General may declare a state of emergency in respect of any plant affected by disease or any land area affected by a pest. During the state of emergency, the Minister or the persons authorized by him may take the necessary measures for the purpose of preventing the establishment of the disease or pest or eradicating it 12/.

By Order in Council, the Governor General defines the land in which diseased plants or pests are to be found and declares this land to be an infested area. In the Order the Governor General provides for prohibiting or restricting the entry of any conveyance, machinery, tools, equipment or any plant material, fungus, bacterium, virus, micro-organism, insect, mite or other invertebrate animal, or soil. The Order also prescribes the treatment and measures to be adopted in respect of any plant that is diseased, infested or affected by a pest, and requires the cleansing or disinfecting of any object that may have come into contact with that infested plant material 13/.

Treatment of the diseases and pests is carried out, by the occupiers of the land or conveyance containing the material affected by the disease or pest, under the direction of the inspectors 14/.

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8/ Pesticides Act, 1979, See footnote 1.

9/ Plants Act, 1970, Art. 6.

10/ Ibid., Art. 9.

11/ Ibid., Art. 11.

12/ Ibid., Arts. 12 and 13.

13/ Plants Act, 1970, Art. 14.

14/ Ibid., Art. 11.

If destruction or treatment of the plant material is considered necessary, the Minister provides for the payment of compensation to the owner of such material. The amount of compensation depends on the market value of the material and, in the event of dispute by two assessors (one to be appointed by an inspector and the other by the owner). The decision of the assessors is final 15/.

In 1974, the Director-General was empowered to declare the area in which the potato nematode is located to be an infested area extending over an area of 80 km 16/

### 5.3 National quarantine measures

The Act of 1970 contains provisions for international quarantine measures only.

### 5.4 Transport and trade of plants and plant products

Among the offences listed in the 1970 Act are the sale, the offering or exposing for sale and the transport of any plant material, package, fungus, bacterium, virus, insect, mite or other invertebrate animal whose introduction into the country has been prohibited or which is found to be infected by any disease or pest 17/.

The regulations made by the Governor General, by Order in Council, may contain provisions concerning the registration of nurseries, concerning standard packages for specific kinds of plant material intended for sale, the registration of brands and marks of such packages and the conditions under which any package or case may be used more than once for the carriage of fruit or plant material 18/.

### 5.5 Control of phytopharmaceutical products

The Pesticides Act No. 26 of 1979 empowers the Governor General to declare any organism to be a pest and any substance to be a pesticide 19/.

Only those pesticides may be sold which are registered as prescribed in Act No. 26. Applications for registration are to be made to the Registrar of the Pesticides Board, which considers and grants or refuses the application. Registration may also be granted for restricted use and for experiment purposes. The Board may issue a certificate of registration and is responsible for keeping the pesticides register 20/.

The Act contains rules concerning special mixtures, the sale of pesticides in bulk (the Board may permit this in specified circumstances), labelling, warranties as to the composition of the pesticide as set forth in the label and the data required for the purpose of ascertaining the amount of pesticides sold or held in stock 21/.

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15/ Ibid., Arts. 14(d) and 13(2).

16/ Potato Cyst Nematode Regulations, 1974.

17/ Plants Act, 1970, Art. 28.

18/ Ibid., Art. 16.

19/ Pesticides Act, 1979, Arts. 3 to 7.

20/ Pesticides Act, 1979, Arts. 21 to 35.

21/ Ibid., Arts. 36 to 41.

Annex I of the Act lists 11 controlled pesticides, the use of which is subject to restrictions. The requirements for obtaining a licence, for the application and grant, etc., thereof are prescribed 22/.

Finally, the Act contains rules concerning the powers of inspectors, the procuring and analysis of samples, offences and penalties and the legal procedure applicable 23/.

## 6. INTERNATIONAL PROTECTION MEASURES

New Zealand is a signatory of the International Plant Protection Convention, which it ratified on 26 September 1952. It is also a member of the Plant Protection Committee for the South East Asia and Pacific region; it deposited the required instrument of adherence on 17 December 1975.

### 6.1 Importation

By Order in Council, the Governor General is empowered to make regulations for all or any of the following purposes: prohibiting or restricting the introduction into any region of the country of plant material, soil, package or other thing specified and which is likely to introduce any disease or pest; conditions for introducing of plant material; treatment for aircraft and vehicles conveying plant material; the need for the members of crew, upon arrival in New Zealand, to submit a certificate declaring the state of health of the imported material and providing for inspection, disinfection, treatment, destruction, etc. of the plant material 24/.

In order to introduce plant material into the country, the prior consent of the person taking delivery in New Zealand must be obtained. Should his consent not be given, the inspector shall be notified and shall give instructions as to the treatment, destruction or disposal thereof 25/.

The Minister is empowered to appoint and designate the ports of importation or exportation of plant material and to appoint fit buildings for storage, fumigation or any other treatment to be carried out after importation or prior to exportation 26/.

With the consent of the Minister in certain cases, the Director-General may declare an area to be a quarantine station for the detention of plant material that has been imported or is in transit and to carry out treatment or destruction 27/. The Director-General shall prohibit or restrict the introduction of any plant material, soil, package, etc.,; he may permit the introduction thereof for scientific research or experiment purposes 28/.

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22/ Ibid., Arts. 42 to 54.

23/ Ibid., Arts. 55 to 74.

24/ Plants Act, 1970, Art. 10.

25/ Plants Act, 1970, Art. 25.

26/ Ibid., Art. 5.

27/ Ibid., Art. 4.

28/ Ibid., Arts. 6 and 7.

Any plant material illegally introduced may be seized by an inspector or an assistant and be disinfected, destroyed or otherwise disposed of, or placed under quarantine conditions 29/.

The regulations of 1973, made in accordance with the Plants Act of 1970, prohibit the introduction into New Zealand of any plant material that is not expressly authorized to enter the country, as well as certain plants that are harmful or undesirable. These regulations also contain provisions concerning the procedure to be followed during the period of quarantine, the treatment to be applied in the case of a disease and the procedure regarding the release of the plants from the quarantine station 30/.

## 6.2 Exportation and transit

By Order in Council, the Governor General may make regulations for all or any of the following purposes: prohibiting or restricting the exportation of any plant material; prescribing the mode of treatment of plant material intended for export; providing for a system of packing plant material in accordance with grades and methods and types of packing determined from time to time by the Director-General 31/.

By notice in writing to the grower, the Director-General may prohibit the exportation of a crop if he has reason to believe that any disease, pest or residue is present therein and that it is impossible to eliminate the disease or pest by treatment or reduce the residue to a permissible level 32/

## 7. INCENTIVES FOR PLANT PROTECTION

The legislative texts examined do not deal with incentives.

## 8. OFFENCES AND PENALTIES

Some of the offences listed in the Act of 1970, are: to possess, retain, sell, convey or distribute in any manner, any plant material, package, soil, fungus, bacterium, virus, insect, mite or other invertebrate animal or any other thing, the importation of which is known to be prohibited, or which is known to be infected by a serious disease or pest 33/.

It is also considered an offence under the Act to make false or erroneous declarations 34/, to obstruct, hinder, interrupt or assault or threaten an inspector or an assistant of an inspector in the exercise of his duties 35/.

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29/ Ibid Art. 8.

30/ Introduction and Quarantine of Plants Regulations, 1973.

31/ Ibid., Art. 15.

32/ Ibid., Art. 15.

33/ Plants Act, 1970, Art. 28.

34/ Ibid., Art. 27.

35/ Plants Act, 1970, Art. 22.

Under the Act, an offender is liable to a fine not exceeding 500 dollars 36.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

The Act of 1970 refers only to the summary conviction of the offender 37.

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36/ Ibid., Art. 29. U.S. \$ 1 = 1.53 New Zealand dollars.

37/ Ibid., Art. 29.

## SUDAN

### 1. LEGISLATIVE TEXTS

The Plant Diseases Act 1913. - 24 February 1913. - Laws of the Sudan, 5th edition revised as at 31 December 1975, Vol. I (1901 - 1925), p. 70.

### 2. SCOPE AND STRUCTURE OF THE LEGISLATIVE TEXTS

As indicated in the complete title, the purpose of the Act is to prevent the introduction of insect pests and plant diseases from places outside the Sudan and to provide for the control and eradication of insect pests and plant diseases within the Sudan.

The 1913 Act deals with the following subjects:

- Art. 1: Short title.
- Art. 2: Interpretation.
- Art. 3: Articles exempt from the Act.
- Art. 4: Special powers of Under-Secretary.
- Art. 5: Appointment of inspectors and plant quarantine officers.
- Art. 6: Under-Secretary to have power of inspector.
- Art. 7: Occupiers to eradicate proclaimed diseases.
- Art. 8: Powers of entry and inspection.
- Art. 9: Seizure of articles introduced contrary to regulations.
- Art.10: Cost of disinfection.
- Art.11: Notice, how delivered.
- Art.12: Immediate destruction of plants infected with proclaimed diseases.
- Art.13: Offences.
- Art.14: Penalties.
- Art.15: Trial of offences.

Art.16: Fees.

Art.17: Issue of regulations.

Art.18: Protection of public servants.

Art.19: Government not to be liable for loss or damage.

Two schedules are added; the first lists the proclaimed diseases and the second sets out the fees payable for different operations.

Pesticides are dealt with in a separate Act 1974 1/.

### 3. BASIC CONCEPTS AND TERMS

The Act gives the definitions of "disease", "diseased", "infected", "inspector", "magistrate", "occupier", "package", "plant", "plantation", "proclaimed disease" and "Under-Secretary".

"Plant" means any tree, shrub or vegetation and the fruits, leaves, cuttings, bark and any part or product thereof whatever, whether severed or attached, but shall not include grain or seed of any kind unless the same is specifically named in an order or regulation made under the Act or is cotton seed grown outside Egypt and the Sudan 2/.

### 4. INSTITUTIONAL ORGANIZATION

The Under-Secretary of the Ministry of Agriculture, Food and Natural Resources shall enforce the plant protection laws. He makes regulations concerning the introduction, inspection, treatment, destruction and disposal of specified plants. When the regulations are published in the Gazette, they shall have effect as if part of the Plant Diseases Act 3/.

After consultation with the pesticides Committee, the Under-Secretary may make the regulations he may deem necessary for the implementation of the provisions of the Pesticides Act. He therefore makes regulations concerning the degree of toxicity and risks of the pesticides, the distribution and use, storage and transportation thereof, etc. 4/, and may appoint competent persons to supervise the use and circulation of pesticides 5/. By order published in the Gazette, the Under-Secretary may prohibit absolutely or except in accordance with regulations issued under the Act, the introduction into the country of plants or other thing that he considers likely to produce any disease, he may appoint quarantine grounds, declare disease or remove any disease from the category of proclaimed disease 6/. The Under-Secretary may himself exercise the powers of an inspector appointed under the Act 7/.

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1/ The pesticides Act No. 37 of 1974. - The Democratic Republic of the Sudan Gazette No. 1162, Legislative Supplement No. 1, 15 June 1974, p. 155.

2/ Act 1913, Art. 2.

3/ Act 1913, Art. 17.

4/ Pesticides Act, Art. 2.

5/ Ibid., Art. 16.

6/ Act 1913, Art. 4.

7/ Ibid., Art. 6.

Inspectors and plant quarantine officers are appointed by the Under-Secretary. An inspector is empowered to enter into any conveyance or upon any plantation, land or building and on board any ship for the purpose of inspecting any plants and the packages containing the same 8/. He may remove, treat, disinfect, destroy or otherwise dispose of any plants or packages as he thinks fit. He may order the detention of any plant or package that he suspects of being infected or that is likely to introduce or spread disease 9/. Inspectors and plant quarantine officials may also seize any matter and products introduced into the country contrary to the regulations 10/.

## 5. MEASURES OF PROTECTION WITHIN THE COUNTRY

### 5.1 General preventive measures

By Order published in the Gazette, the Under-Secretary may prohibit the introduction into the country of any plant, fungus, parasite, insect or any other thing which, in his opinion, is likely to produce a disease. He may also prohibit the bringing into any portion of the Sudan from any other portion of the Sudan of any plant, fungus, parasite, insect or other thing which is diseased or is in his opinion likely to spread disease 11/. By Order published in the Gazette, the Under-Secretary may extend or amend Schedule I of the 1913 Act and declare any disease to be a proclaimed disease or remove any disease from the category of proclaimed disease 12/.

### 5.2 Treatment of pests

Under the Act, the occupier of every plantation shall eradicate any proclaimed disease and prevent the spread thereof. When a proclaimed disease is detected, the occupier of the plantation shall within 48 hours of discovering its existence, send notice thereof to the Regional Crops protection Officer or to the Executive Officer having jurisdiction over the district in which the plantation is situate. "Sheikhs" and "omdas" shall report the presence of any proclaimed disease which comes to their knowledge to the Regional Crops Protection Officer or the Executive Officer. These provisions apply only in districts within which it shall be declared applicable by an order of the Under-Secretary published in the Gazette or, in the case of urgency, by public notice issued by the Senior Inspector of Agriculture of the province and only with respect of such disease as shall be expressly mentioned in such order or notice 13/.

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8/ Ibid., Arts. 5 and 8.1.

9/ Act 1913, Art. 8.

10/ Ibid., Art. 9.

11/ Act 1913, Art. 4(a).

12/ Ibid., Art. 4(3). Schedule I lists five types of proclaimed diseases and all the insects or microbes that are injurious to fruit trees or other trees and plants of economic value.

13/ Act, 1913, Art. 7.

If any inspector or plant quarantine officer considers any plants or packages to be diseased or infected, he may give notice in writing to the owner of or person in charge of the conveyance, plantation, land, building or ship, so that they may take such measures as are necessary to eradicate or prevent the spread of the disease. If such owner or person in charge of the things or products affected fails to do so to the satisfaction of the inspector or plant quarantine officer, such inspector or plant quarantine officer may do the same at the expense of the person who has failed to comply 14/.

If, after inspection, the inspector considers the cotton plants to be so seriously infected or diseased by cotton worm (*Prodenia littoralis*) and the Mexican boll weevil (*Anthonomus grandis*) as to necessitate for purposes of eradication the employment of more persons than the inspector has at his disposal the inspector may call for every person capable of labour and resident within a reasonable distance of the locality in question to assist on the eradication of the pest. In the exercise of his powers any inspector or plant quarantine officer may remove, treat, disinfect, destroy or otherwise dispose of any plant or package 15/. The Regional Crops Protection Officer may order or prescribe the immediate destruction of plants that are infected with any proclaimed disease 16/.

The regulations made by the Under-Secretary may define the manner in which diseased plants and infected packages shall be treated, cleansed, destroyed or otherwise disposed of 17/. The regulations may also prescribe prohibiting the use of packages that have already been used as such 18/.

The Government shall not be responsible for any loss or damage caused to any plantation, plant or package as a result of any operation done in accordance with the provisions of the Act 19/.

The cost of disinfection and destruction of any plantation, plant or package, except the cost of inspection and mere detention in quarantine, shall be paid by the owner, occupier, consignee or addressee thereof. In default of payment, costs may be recovered by action in a Province Court before a Province Judge or District judge of the first grade. If the owner, occupier or consignee fails to pay within two months of the service upon him of a formal notice to pay, the Under-Secretary may order that payment be secured by the sale of the disinfected plants or packages 20/.

### 5.3 National quarantine measures

By Order published in the Gazette, the Sub-Secretary may appoint quarantine grounds where plants or packages may be detained for the purpose of being inspected, disinfected, destroyed or otherwise disposed of 21/.

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14/ Ibid., Art. 8.2 and 3.

15/ Act, 1913, Art. 8.4 and 5.

16/ Ibid., Art. 12.

17/ Ibid., Art. 17(c).

18/ Ibid., Art. 17(d).

19/ Ibid., Art. 19.

20/ Act, 1913, Art. 10.

21/ Ibid., 4(c).

Any inspector or plant quarantine officer may order the detention of any plant or package which he suspects to be infected or apprehends may introduce or spread disease. The inspector or plant quarantine officer may cause the same to be removed or detained in a quarantine ground or another convenient place for examination, disinfection or to be dealt with otherwise under the Act 22/.

#### 5.4 Transport and trade of plants and plant products

The Act contains no provisions on this subject.

#### 5.5 Control of phytopharmaceutical products for agricultural use

This subject is dealt with in the Pesticides Act No. 37 of 1974. Pesticides must be registered with the Pesticides Committee. A copy of the register must be held by the Minister of Agriculture, Food and Natural Resources. Before being entered in the register, the pesticide shall undergo scientific experiments for a period of not less than one year 23/.

Marketing of pesticides is prohibited except under a licence issued by the Minister. The permit is valid for five years and may be renewed at the request of the applicant and on payment of the prescribed fees.

Every person licenced to deal in pesticides shall keep a numbered register stamped with the seal of the committee for the registration of commercial dealings in pesticides. The register shall be kept for five years 24/.

No pesticide shall be imported, unless it has been registered and is accompanied by a certificate of conformity issued by the committee. Research institutions and firms designated by the Minister may import or manufacture unregistered pesticides in such quantities as may be necessary for scientific research purposes 25/.

Pesticides manufacture is subject to the issue of a licence by the Minister and payment of fixed fees 26/.

## 6. PROTECTION INTERNATIONAL MEASURES

Sudan became a member of the International Plant Protection Convention when it deposited its instrument of adherence on 16 July 1971.

### 6.1 Importation

The Under-Secretary may by Order published in the Gazette, appoint any places through which plants or any specific plant must necessarily be imported 27/.

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22/ Act 1913, Art. 8.6.

23/ Pesticides Act, Arts. 5 to 8.

24/ Ibid., Arts. 12 and 13.

25/ Act, 1913, Arts. 10 and 11.

26/ Ibid., Arts. 14 and 15.

27/ Ibid., Art. 4(b).

The Under-Secretary may issue regulations prescribing that notice be given by any person introducing specified plants into the Sudan, through the post or otherwise, and to whom and in what manner the notice is to be given, prescribing the manner in which the plants shall be examined at the place of entry or before delivery through the post 28/.

Inspectors, plant quarantine officers and customs officers are empowered to seize any plant, parasite, insect or other thing introduced or attempted to be introduced into the country contrary to any order or regulation issued under the Act, and any package containing the same as well as objects with which the same have been in contact. Posts and Telegraph officials and Customs officials shall assist in carrying out these regulations 29/.

## 6.2 Exportation and transit

The Act contains no provisions on this subject.

## 7. INCENTIVES FOR PLANT PROTECTION

The provisions examined provide no incentives for plant protection.

## 8. OFFENCES AND PENALTIES

A person commits an offence against the Act who:

- (1) Sells, offers or exposes for sale or distributes any plant or package which to his knowledge is infected with any proclaimed disease, and brings or suffers the same to be brought or removes or suffers the same to be removed from any land or building, except under the direction of an inspector or plant quarantine officer 30/.
- (2) Sells, offers or exposes for sale or distributes any plant or thing which to his knowledge has been introduced into the country contrary to any order or regulation issued under the Act, and brings or suffers the same to be brought or removes or suffers the same to be removed, except under the direction of an inspector or plant quarantine officer 31/.

To do or to attempt to do any other act in breach of the Act or of any order or regulation made thereunder, or to fail to observe any duty imposed thereby 32/.

Offenders are liable to a fine not exceeding 20 Sudanese pounds or in default to a term of imprisonment not exceeding three months 33/.

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28/ Ibid., Art. 17(a) and (b).

29/ Act, 1913, Art. 9.

30/ Ibid., Art. 13(a).

31/ Act, 1913, Art. 13(c) and (d).

32/ Ibid., Art. 14.

33/ U.S. \$ 1 = 1.30 pounds.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

Offences under the Act may be tried summarily or non-summarily by a Magistrate of the first or second-class under the Code of Criminal Procedure, 1974 but no procedure shall be initiated without the consent of the Under-Secretary or an inspector or some person authorized by the Under-Secretary 34/.

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34/ Act, 1913, Art. 15.

## SWITZERLAND

### 1. LEGISLATIVE TEXTS

Agriculture Act (complete title: Federal Act on the Promotion of Agriculture and the Maintenance of the Peasant Population). - 3 October 1951. - Feuille Fédérale No. 41, 12 October 1951, p. 141 1/.

Plant Protection Ordinance. - 5 March 1962. - Recueil des lois fédérales No. 10, 15 March 1962, p. 207. Amended by the following provisions:

- Amendment of the Ordinance relating to Plant Protection. - 18 December 1972. - R.L.F. No. 52, 22 December 1972, p. 2954.
- Amendment of the Ordinance relating to Plant Protection. - 21 June 1976. - R.L.F. NO. 26, 5 July 1976, p. 1492.
- Amendment of the Ordinance relating to Plant Protection. - 23 May 1979. - R.L.F. No. 20, 29 May 1979, p. 750.
- Amendment of the Ordinance relating to Plant Protection. - 7 July 1982. - R.L.F. No. 32, 24 August 1982, p. 1508.

The basic text is the Agriculture Act, which devotes a chapter to plant protection. Regulations pursuant to these provisions are contained in the Ordinance relating to Plant Protection.

### 2. SCOPE AND STRUCTURE OF THE LEGISLATIVE TEXTS

Part IV of the Agriculture Act deals with plant protection (Articles 60 to 68 of Chapter 1). Its provisions include measures to be adopted by the Confederation or cantons for protecting crops against diseases and pests.

Fourty-three articles of the Plant Protection Ordinance deal with measures to ensure plant protection within the country and at the frontier (importation, transit and exportation), subsidies and compensation,

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1/ The text of the Act was published in FAO's Food and Agricultural Legislation Series, Vol. I, No. 1.

implementation of the measures, appeal, and finally penalties. The four schedules of the Ordinance contain: a list of injurious matter (animal parasites, diseases, fungi, bacteria and viruses); a list of articles (insects, bulbs, plants, flowers, vegetables, etc. with the respective phytosanitary fees therefor), a list of plants (given in Latin, German, French and Italian) the importation of which is prohibited or which may be imported only after fumigation at the frontier and if accompanied by a phytosanitary certificate.

### 3. BASIC CONCEPTS AND TERMS

The Plant Protection Act and Ordinance do not contain definitions of basic terms.

### 4. INSTITUTIONAL ORGANIZATION

Under the Act, the Federal Council shall issue the necessary regulations for controlling particularly dangerous pests and diseases and shall supervise crops thus endangered 2/.

The Department of Agriculture is the body in charge of implementing the provisions of the Ordinance 1962. A Plant Protection Commission shall assist the Department of Agriculture in matters relating to plant protection. The Department may also consult experts and convene the officers of the cantonal plant protection services to training courses to ensure that the federal provisions are appropriately implemented 3/.

The instructions of general obligatory scope issued by the Department of Agriculture must be subject, as far as is practicable, to the approval of the Federal Council 4/.

The cantonal or intercantonal plant protection service is organized in each Canton under the supervision of the Department of Agriculture. Its functions are, inter alia: to carry out the orders of the Federal Council concerning the measures to be taken against certain pests and diseases, to organize surveillance services and information for the purpose of plant protection, to collaborate with the federal experimental stations in matters concerning plant protection, etc. The federal experimental stations are qualified to deal with problems of a technical and scientific nature 5/.

The bodies in charge of implementing plant protection measures are empowered to carry out investigations and checks under the 1962 ordinance. The cantonal and local police, as well as officers of the Customs, Railways, navigation companies and Posts shall assist the officers responsible for phytosanitary control in the exercise of their duties 6/.

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2/ Agriculture Act, Art. 60.2.

3/ Ordinance 1962, Arts. 40.2 and 33.

4/ Ibid., Art. 10

5/ Ordinance, 1962 Arts. 1 and 2.

6/ Ibid., Arts. 36 and 37.

## 5. PROTECTION MEASURES WITHIN THE COUNTRY

The outbreak and spread of plant pests and diseases are detected by the cantonal plant protection services, which monitor the crops on a regular basis in accordance with instructions from the competent experimental station. They provide regular reports to the producers and other parties concerned regarding the outbreak and the significance of the plant pests and diseases that constitute a widespread danger and ensure, by providing information, by means of demonstrations and courses, that the measures of protection and control are applied correctly and in time, in accordance with the instructions of the competent experimental stations 7/.

When the presence in parcels or goods of dangerous pests or diseases is suspected, the Department of Agriculture may, as a preventive measure, cause them to be examined by the federal plant protection service, even when these pests or diseases are not mentioned in the ordinance. These measures must be approved as soon as possible by the Department of Public Economy 8/.

For the protection of useful plants against natural dangers, the Federal Council may:

- (a) Prohibit the planting and sowing of species and varieties highly susceptible to diseases, and the use of seeds, plants and cuttings from land already attacked, or other articles affected by diseases or pests or prescribe appropriate precautionary measures for the treating of seeds and for sowing;
- (b) Issue regulations governing disinfection and methods of treatment and order the destruction of diseased plants and diseased carriers;
- (c) Assist steps taken to protect animals that play a useful role in plant pest control.

Measures under items (a) and (b) may be adopted only if they are of importance to agriculture and public economy 9/.

### 5.2 Treatment of pests

Producers shall support the precautions taken by the Confederation or Canton for the control of plant diseases and may be obliged to report particularly dangerous diseases and pests. The Federal Department of Public Economy or, in cases of mere local outbreaks, the Cantons shall specify the diseases and pests to be reported 10/.

Cantons shall carry out the measures allotted to them at their own expense. Producers who, either deliberately or by gross negligence evade the obligations imposed on them may be called upon to bear a part or the whole of the costs 11/.

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7/ Ibid., Arts. 3 and 4.

8/ Ordinance, 1962, Arts. 10 and 25.5.

9/ Agriculture Act, Art. 63.

10/ Ibid., Art. 62.

11/ Ibid., Art. 65.

If the value of an article is diminished owing to defensive measures prescribed by the authorities (disinfection or other similar process), the owner may be paid fair compensation therefor. The amount of compensation payable shall be finally determined, in the case of measures adopted at the frontier, by the Federal Department of Public Economy, and for the interior of the country, by a competent Cantonal Administrative Authority, by a procedure that is as simple as possible and free of charge for the person wronged. The Confederation shall reimburse the Cantons up to one third of the cost of such compensation 12/.

When the measures to be taken against pests and diseases constitute a public danger, people's rights cooperative societies may be set up to receive instructions from the competent experimental station with respect to control measures. When control measures and the tools to be used therefore are selected, when zones are marked off and measures implemented, due attention shall be paid to side effects and to the interests of the land owners. The cantonal plant protection service shall supervise the implementation of measures 13/.

Pest control (disinfection and treatment by professionals) is subject to the authorization of the Canton which shall be given only when it is guaranteed that the control operations will be carried out correctly 14/.

Any person who detects or thinks he has detected any pest or disease listed in Schedule I of the Ordinance, shall immediately inform the cantonal plant protection service or the competent experimental station thereof. To this end, the aforementioned service publicizes the characteristic signs by which pests and diseases may be identified and, for this purpose, the Department of Agriculture provides the service with the necessary information material 15/.

It is prohibited to possess, store or market any plant or part of a plant or plant product that is affected or suspected of being affected. The Department of Agriculture may grant exemptions for scientific research purposes 16/.

When any pest or disease listed in the aforementioned Schedule of the Ordinance is detected, the persons directly concerned and the competent bodies must take the appropriate steps to destroy the centres of infection or, where eradication is not possible, to prevent the spread thereof. Control in extensive areas of certain particularly dangerous pests and diseases is regulated by special orders issued by the Federal Council 17/.

The bodies of the Confederation and the cantons in charge of implementing the plant protection measures may seize any plant, part of a plant or plant product that is attacked or suspected of being attacked, and any material that has been in contact with the same 18/.

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12/ Agriculture Act, Art. 67.

13/ 1962 Ordinance, Art. 5.

14/ Ibid., Art. 6.

15/ Ibid., Art. 7.

16/ 1962 Ordinance, Art. 8.

17/ Ibid., Art. 9.

18/ Ibid., Art. 35.

5.3 National quarantine measures

The provisions examined do not deal specifically with national quarantine measures.

5.4 Transport and trade of plants and plant products

The regulations examined do not deal with this subject.

5.5 Control of phytopharmaceutical products for agricultural use

The Act and Ordinance examined do not contain provisions on this subject.

6. INTERNATIONAL PROTECTION MEASURES

Switzerland is a signatory of the International Plant Protection Convention, but is not yet part of the Convention as it has not deposited its instrument of ratification.

6.1 Importation

For the purpose of eliminating pests and diseases, the Federal Council may subject the import, transit and export, and marketing of plants, plant parts and plant products as well as of protection materials and of all articles capable of carrying pests or diseases to certain conditions. In cases of confirmed pests or diseases or of particular risk of their importation into Switzerland, imports may, where other measures are inadequate, be prohibited. The cost of disinfection at the frontier shall be borne by importers. The Federal Council may adopt special measures for frontier traffic 19/.

The Act provides for the levying of taxes on the import of plants and plant products, the entry of which into Switzerland needs to be controlled in the interests of plant protection. Those concerned shall be consulted before such taxes are fixed. These taxes shall cover the costs incurred by the Confederation in the campaign against plant diseases and pests. Any surplus remaining from taxes levied at the frontier shall be paid into a plant protection fund 20/.

The bodies of the Confederation are in charge of monitoring the importation, transit and exportation of plants and parts of plants and plant products, the methods of production thereof and any type of object which may develop into one of the pest and disease agents mentioned in the Ordinance. The Department of Agriculture shall provide the federal plant protection service at the frontier with the necessary technical equipment and implements 21/.

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19/ Agriculture Act, Art. 64.

20/ Agriculture Act, Art. 68.

21/ Ordinance, 1962, Art. 10.

The importation, of any pest or disease mentioned in the Ordinance, in any form and any stage whatever, and of goods affected by such pests and diseases, is prohibited 22/.

The official plant protection service authorizes the importation of goods listed when the phytosanitary conditions are complied with and the required fee paid to the customs offices. A consignment which is refused entry shall be destroyed at the expense of the carrier and under official supervision. The Department of Agriculture, with the approval of the General Customs Department, designates the customs offices that are open for phytosanitary control and the disinfection centres 23/.

A phytosanitary certificate which meets the requirements of the 1951 International Plant Protection Convention is required for the importation of the goods mentioned in the ordinance. If the certificate is not worded in German, French or Italian, the plant protection service official may require the carrier of the goods to provide a certified translation. A further declaration is required for special pests and diseases 24/.

Unloading, loading, unpacking and packing, and handling are subject to control, as are transport vehicles and consignments by post. After having been checked, the goods shall be disinfected as per the instructions of the Department of Agriculture. For this purpose, they shall be dispatched by the importer, at his cost and for his own account and at his own risk, to recognized disinfection premises, where the rates approved by the Department of Agriculture shall be charged 25/.

Goods, the import of which is prohibited under the Ordinance, may only be imported if special authorization is granted by the Department of Agriculture. The Ordinance prescribes quarantine measures for vines imported from countries that are members of the European Organization for Plant protection and other countries. Measures are also prescribed with respect to fruit plants from northern and central Europe and from other countries 26/.

In special cases (scientific purposes, etc), the Department of Agriculture may authorize, on request, the importation of the pests and disease agents listed in the Ordinance, provided that there is no risk of these pests and diseases spreading 27/.

## 6.2 Exportation and transit

Prior to export, the products must be inspected. If inspection shows that the prescribed conditions have been complied with, the phytosanitary certificate is issued upon payment of the required fees 28/.

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22/ Ibid., Art. 13. Schedule I contains the list of pests (animal pests and diseases).

23/ Ordinance, 1962, Art. 14 and 15. Annex IV gives the model of the phytosanitary certificate (in compliance with the International Plant Protection Convention).

24/ Ibid., Art. 16.

25/ Ordinance, 1962, Arts. 17 and 18.

26/ Ibid., Art. 19.

27/ Ibid., Art. 25.

28/ Ordinance, 1962, Art. 22.

At the frontier, the federal plant protection service may subject the goods for which phytosanitary certificates were issued to a further inspection. So that inspection may be carried out, the exporter shall submit, as early as possible, to the Department of Agriculture, an application stating the customs exit post he shall use and the time at which export shall be effected. If the results of the inspection fail to comply with the data on the certificate, the goods may not be exported. The Department of Agriculture then immediately begins an investigation into the matter. Any costs involved shall be borne by the exporter 29/.

The Department of Agriculture may subject consignments in transit to inspection for pests and diseases mentioned in the Ordinance and may refuse them if, due to special circumstances, there is a grave danger of such pests or diseases spreading 30/.

7. INCENTIVES FOR PLANT PROTECTION

The provisions examined do not mention any such incentives.

8. OFFENCES AND PENALTIES

Any person who deliberately violates the provisions of the Plant Protection Ordinance or cantonal regulations pursuant thereto, shall be liable to arrest or a fine, where no greater punishable offence is involved. The fine shall not exceed 3 000 francs, if the offender acted negligently 31/.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

The decisions of the Department of Agriculture shall be subject to a right of appeal to the Federal Department of Public Economy 32/.

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29/ Ibid., Art. 25.1.

30/ Ibid., Art. 25.6.

31/ 1962 Ordinance, Art. 41, amended in 1982. The Agriculture Act deals with penalties in Art. 112. U.S. \$ 1 = 2.08 francs.

32/ Agriculture Act, Art. 109.

## THAILAND

### 1. LEGISLATIVE TEXTS

The Plant Quarantine Act, B.E. 2507. - 13 March 1964. - Government Gazette Vol. 81 No. 27 (special edition), 21 March 1964.

Ministerial Regulations Nos. 1, 2 and 3, pursuant to the Plant Quarantine Act, B.E. 2507. - 19 June 1964. - Government Gazette Vol. 81 No. 54 (special edition), 19 June 1964.

Notifications of the Ministry of Agriculture Nos. 1, 2 3 and 4, issued under the Plant Quarantine Act, B.E. 2507. - 19 June 1964. Separate publication.

The basic text is the Plant Quarantine Act.

### 2. SCOPE AND STRUCTURE OF THE LEGISLATIVE TEXTS

The Act, the purpose of which is not expressly stated, consists of 27 articles dealing mainly with the following subjects: powers of the Minister of Agriculture, the Director-General of the Department of Agriculture and the plant quarantine officers; importation, transit and exportation of prohibited materials (plants, plant pests or carriers from certain areas) or restricted materials; phytosanitary certificates; quarantine measures; offences and penalties.

### 3. BASIC CONCEPTS AND TERMS

The Act defines the 15 following concepts or expressions: plant, plant pests, carriers, prohibited materials, restricted materials, un-prohibited materials, owner, importation, bringing in transit, plant quarantine station, post-entry quarantine station, plant pests control area, plant quarantine officer, Director-General and Minister.

"Plant" means all species of plants and any part thereof such as the stems, stumps, shoots, branches, leaves, roots, bulbs, flowers, fruits and seeds, regardless of whether they are propagable or dead.

"Plant pests" means those that are harmful to plants, such as insects, animals or plants that can do harm to plants and plant pathogens 1/.

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1/ Plant Quarantine Act, Art. 4.

#### 4. INSTITUTIONAL ORGANIZATION

The Minister of Agriculture is in charge of plant protection and shall ensure that the Plant Quarantine Act is enforced. He exercises the regulatory powers delegated by the Act and, issues notifications declaring the plants, plant pests or carriers from certain sources as prohibited or restricted materials; he also appoints the quarantine officers and determines the plant quarantine stations and the post-entry quarantine stations 2/.

The Director-General of the Department of Agriculture is the officer in charge of granting import, transit and export permits 3/. He shall determine, by notification, the plant pest control area 4/.

The plant quarantine officers ensure that the Act is implemented. They shall be provided with an identification card which shall be produced on request to the persons concerned 5/. The plant quarantine officers shall inspect materials, the importation or bringing in transit of which is prohibited or restricted, and may order the destruction thereof 6/.

#### 5. PROTECTION MEASURES WITHIN THE COUNTRY

##### 5.1 General preventive measures

In cases where it is necessary to prevent the spread of any kind of plant pest in the Kingdom, the Minister of Agriculture is empowered to specify, by notification published in the Government Gazette, the names of such plants, plant pests or carriers thereof to be considered as prohibited or restricted materials under the Act 7/.

##### 5.2 Treatment of pests

With respect to prohibited or restricted plants and material imported or brought in transit, the plant quarantine officers are empowered:

- To fumigate them or subject them to treatment with chemicals, at the expense of the owner;
- To seize or detain them at the plant quarantine station or at any other place for a period of time as long as necessary;
- To destroy them, if necessary, when there are reasonable grounds to believe that plant pests are present 8/.

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2/ Plant Quarantine Act, Art. 27; and Notifications Nos. 1, 2, 3 and 4 of 1964 of the Minister of Agriculture.

3/ Plant Quarantine Act, Art. 8.

4/ Ibid., Art. 17.

5/ Ibid., Art. 5; and Ministerial Regulation No. 1, which prescribes a model identification card.

6/ Plant Quarantine Act, Arts. 10 and 18.

7/ Ibid., Art. 6; and Notifications of the Ministry of Agriculture Nos. 1 and 2 of 1964.

8/ Plant Quarantine Act, Art. 13.

For as long as the prohibited or restricted plants or materials are impounded or detained, no person shall remove them without the permission in writing of the competent officer 9/.

The Director-General may, by notification, declare the locality in which a pest capable of causing serious damage has been detected as a plant pest control area. The notification shall specify the names and species of plants, plant pests and carriers as well as the locality in which inspection was carried out 10/. Once the notification defining the pest control area has been published, no person shall introduce or remove from the area any plant, pest or carrier specified in the notification, unless they have been inspected by and permission in writing has been obtained from the plant quarantine officer 11/.

### 5.3 National quarantines measures

International quarantines alone are dealt with in the Act.

### 5.4 Transport and trade of plants and plant products

The provisions examined do not deal with this subject.

### 5.5 Control of phytopharmaceutical products for agricultural use

Pesticides are not dealt with in the Plant Quarantine Act.

## 6. INTERNATIONAL PROTECTION MEASURES

Thailand is part of the International Plant Protection Convention; it ratified the Convention on 16 August 1978. It is also part of the Plant Protection Agreement for the South East Asia and Pacific regions; it deposited the instrument of adherence thereto on 26 November 1956.

### 6.1 Importation

By notification published in the Government Gazette, the Minister of Agriculture shall appoint the ports, airports and places to be considered as plant quarantine stations or as post-entry quarantine stations 12/.

No person may import or bring in transit prohibited materials unless permission has been obtained from the Director-General. The materials shall be accompanied by a phytosanitary certificate issued by the competent authority of the exporting country, or, in the case of a country that does not issue this certificate, by another reliable document. The Director-General may grant permission to import the aforementioned materials only for experiment or research purposes 13/.

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9/ Ibid., Art. 14.

10/ Ibid., Art. 17.

11/ Plant Quarantine Act, Art. 18.

12/ Plant Quarantine Act, Art. 7.

13/ Ibid., Art. 8.

When there are reasonable grounds to believe that importation has been carried out in violation of the legal provisions, the plant quarantine officer is empowered to inspect any warehouse, conveyance or package and any person within the limits of a plant quarantine station or pest control area 14/.

The conditions under which prohibited material may be imported are prescribed in Ministerial Regulations and the ports and airports of entry are specified therein. Regulations also deal with labels for imported materials and those brought in transit. The labels are issued by the Director-General and shall be attached to the package of the materials. The regulations indicate the fees payable for importation or bringing in transit and the charges for work carried out by the plant quarantine officers 15/.

## 6.2 Exportation and transit

Any person requiring a certificate testifying that the plants or plant products to be exported are free from pests, shall submit an application therefor to the plant quarantine officer and pay the prescribed fees 16/.

The Ministerial Regulations prescribe that any person desirous of applying for a phytosanitary certificate for plants or plant products to be exported shall submit an application to the plant quarantine officer in the form specified by the Department of Agriculture. The owner of the plants or plant products to be exported shall comply with the instructions of the quarantine officer with respect to fumigation or treatment with chemicals and the use of appropriate packaging or wrapping. The regulations give the fees charged for issuing the phytosanitary certificates and for the work done by the quarantine officers 17/.

## 7. INCENTIVES FOR PLANT PROTECTION

The provisions examined do not deal with this subject.

## 8. OFFENCES AND PENALTIES

Any person violating the provisions of the Act with respect to the importation and bringing in transit of plants and any other prohibited material, quarantine and pest control areas 18/ shall be liable to a term of imprisonment of up to 6 months or to a fine not exceeding 2000 baht or both.

Any person importing or bringing in transit un-prohibited materials without notifying the plant quarantine officer thereof in the form prescribed in the ministerial regulations, shall be liable to a fine of up to 50 baht 19/.

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14/ Ibid., Art. 12.

15/ Ministerial Regulations No. 2, 19 June 1964.

16/ Plant Quarantine Act, Art. 15.

17/ Ministerial Regulations No. 3, 19 June 1964.

18/ Plant Quarantine Act, Art. 21. U.S. \$ 1 = 22.96 Baht.

19/ Plant Quarantine Act, Art. 22.

Any person who resists or obstructs the plant quarantine officer in the exercise of his duties shall be liable to a term of imprisonment of up to six months or to a fine not exceeding 2000 baht or both 20/.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

The Act does not contain provisions with respect to procedures.

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20/ Ibid., Arts. 23 and 24.

## TRINIDAD AND TOBAGO

### 1. LEGISLATIVE TEXTS

Act No. 13 of 1975: Plant Protection Act. - 4 July 1975. - Trinidad and Tobago Gazette No. 202, 10 July 1975, Acts, p. 41 1/.

### 2. SCOPE AND STRUCTURE OF THE LEGISLATIVE TEXTS

As indicated in the title, the Act is intended "to make better provision for the control of diseases and pests injurious to plants".

The 19 Articles of the Act deal with the following:

- Article 1. Short title.
- Article 2. Interpretation.
- Article 3. Permit required for importation of a restricted article.
- Article 4. Applications for and restrictions on grant of permits.
- Article 5. Powers of the Minister with respect to the importation of restricted articles.
- Article 6. Powers of the Minister for preventing the spread of plant pests.
- Article 7. Powers of the Minister regarding the appointment of inspectors.
- Article 8. Powers of inspectors.
- Article 9. Notification to the Minister of entry of restricted articles.
- Article 10. Articles in transit.
- Article 11-14. Establishment of a plant quarantine service and operation thereof.
- Article 15. Government Responsibility.
- Article 16. Offences and penalties.
- Article 17. Publication of regulations.
- Article 18. Renewal.
- Article 19. Clause of entry into force.

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1/ A summary of this Act was published in FAO's Food and Agricultural Legislation series, Vol. XXV, 1.

As can be seen, the Act deals with quarantines but not with fertilizers, Pesticides are dealt with in a separate act 2/.

### 3. BASIC CONCEPTS AND TERMS

The Act defines the concepts of "carrier", "fruit", "Minister", "person", "planting material", "plant pest", "plant product", "land" and "vegetable" 3/.

"Plant pest" means any living stage of an insect, nematode, mites protozoan or other vertebrate or invertebrate animal, bacterium, fungus, parasitic plant or a reproductive part thereof, virus or any other similar organism capable of causing damage to any plant or plant product.

"Plant product" means any substance, material or article of vegetable origin (including pollen, whether processed or not), capable of harboring plant pests.

### 4. INSTITUTIONAL ORGANIZATION

The competent authority for plant protection is the Minister of Agriculture, who may make such regulations as he thinks necessary for preventing the spread of plant pests in Trinidad and Tobago 4/, and designate suitable employees of the Ministry of Agriculture or any other competent persons for the purpose of enforcing the provisions of the Act 5/.

The Minister shall make such regulations as he thinks necessary or expedient for the enforcement of the Act, and, in particular, may;

- (a) Issue any order required under the Act;
- (b) Control the procedure with respect to the granting of permits;
- (c) Authorize the detention of a restricted article in a particular place;
- (d) Prescribe such measures as he may think necessary when a restricted article is detained in a particular place;
- (e) Order the suspension of permits;
- (f) Order the inspection of nurseries or any other place in which plants are grown for sale;
- (g) order the treatment of buildings, conveyances, vessels or aircraft in which a restricted article is stored or conveyed;
- (h) Regulate the importation of restricted articles;
- (i) Determine the fees payable for treatment operations and quarantine.

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2/ See below 5.5.

3/ 1975 Act, Art. 2.

4/ 1975 Act, Art. 6(1).

5/ Ibid., Art. 7.

Under this Act, a Plant Quarantine Service is established for the purpose of preventing the entry into Trinidad and Tobago of plant pests which are likely to affect adversely any sector of the agricultural industry in the country 6/. The Service shall have power to do all that is necessary to the effective carrying out of the Act and any regulations thereunder 7/. It shall be managed by a Board of Management, composed of six members from the public sector and one from the private sector 8/.

When an inspector has reasonably cause to believe that any person, receptacle or carrier has, contains or is carrying a restricted article, the importation of which is prohibited or does not satisfy the conditions subject to which it was imported, he may board any ship or aircraft or enter on any land, or search, inspect or examine, without a warrant, such person, carrier or receptacle for the purpose of seizing or destroying or otherwise disposing of a restricted article 9/.

## 5. PROTECTION MEASURES WITHIN THE COUNTRY

### 5.1 General preventive measures

The Minister may make such orders as he considers necessary or expedient for preventing the spread of plant pests 10/

### 5.2 Treatment of pests

The Minister may also direct or authorize the destruction, removal or treatment of a restricted article 11/, or order the treatment of buildings, vehicles, ships or aircraft in which a restricted article is conveyed 12/.

The Government or its agents shall not be liable to pay any compensation whatever in respect of any damage or loss incurred as a result of any treatment or quarantine action 13/.

### 5.3 National quarantine measures

There are no specific provisions on this subject. It is clear however that the regulation thereof falls within the wide powers of the Minister.

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6/ Ibid., Art. 11.

7/ Ibid., Art. 12.

8/ Ibid., Arts. 11 to 14, regulating the composition, powers, duties and procedures of the Board of Management.

9/ 1975 Act, Art. 8.

10/ Ibid., Art. 6(1).

11/ Ibid., Art. 6(2).

12/ Ibid., Art. 17g.

13/ Ibid., Art. 15b.

#### 5.4 Transport and trade of plants and plant products

The Minister may make regulations prohibiting the selling, exposing or offering for sale or the distribution of a restricted article 14/, and may order the inspection of nurseries or any other place where plants are grown for the purpose of sale 15/.

#### 5.5 Control of phytopharmaceutical products for agricultural use

This subject is not dealt with in the Plant Protection Act, but in an Act of 1979 which deals specifically with pesticides 16/.

### 6. INTERNATIONAL PROTECTION

Trinidad and Tobago is part of the International Plant Protection Convention. It deposited its instrument of adherence on 30 June 1970.

#### 6.1 Importation

The import of fruits, planting material, plant pests, pathogens, plant products, soil, vegetables or any other restricted articles is prohibited unless a permit in accordance with the Act or the regulations pursuant thereto is first obtained 17/.

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14/ Ibid., Art. 6(2)b.

15/ Ibid., Art. 17f.

16/ Act No. 42 of 1979: Pesticides and Toxic Chemicals Act 1979 (an Act to regulate the importation, storage, manufacture, sale, use and transportation of pesticides and toxic chemicals and to provide for the establishment of the Pesticides and Toxic Chemicals Control Board and for matters incidental thereto). - 17 December 1979. - Trinidad and Tobago Gazette No. 420, 31 December 1979, Supplement, p. 483.

A summary of this Act was published in FAO's Food and Agricultural Legislation series, Vol. XXIX, 2, the text of which is given below. This Act has 21 sections. Following the citation, (Pesticides and Toxic Chemicals Act of 1979) definitions are given of 34 terms and expressions, among them "pest", "pesticide", and "toxic chemical". A Pesticides and Toxic Chemicals Control Board is established with the functions of advising the Minister of Health on matters relevant to the making of regulations under this Act, advising on and monitoring their implementation, and furnishing the Minister with such returns as he may require. The Board has a membership of five, plus a further four persons respectively representing an organization of workers and an organization of employers with two having knowledge, respectively, of occupational medicine or industrial hygiene and of a branch of agriculture involving the use or effects of pesticides.

The Minister is to designate a Registrar, who is also the Secretary of the Board and is responsible for keeping a Register of Licences, a Register of Pesticides and a Register of Toxic Chemicals.

Rules follow concerning the designation of public officers (analysts, inspectors and medical examiners), the powers of the inspectors and medical examiners, analysis and the detention and forfeiture of articles seized. The Minister is empowered to make regulations for the enforcement of the Act and prescribes penalties and judicial procedures.

17/ 1975 Act, Art. 3(1).

The grant of a permit is conditional upon the restricted articles being accompanied by the phytosanitary certificate as prescribed in the International Plant Protection Convention of 1951, and where planting material is concerned, upon growing experiments being carried out locally, if the Ministry of Agriculture deems this to be necessary, and being subject to such treatment as may be prescribed 18/.

The Minister may prohibit or regulate the importation of a restricted article where it appears to him that this is likely to result in the entry of a plant pest into the country 19/.

The Comptroller of Customs and Excise shall notify the Minister or designated employees of the entry of any restricted article into the country and shall not release or dispose of the article unless authorized to do so by the Minister or a designated employee 20/.

The Plant Quarantine Service is in charge of taking international quarantine measures and is empowered to do all that is necessary to ensure the effective carrying out of the Act and any regulations made thereunder 21/.

The Government or its agents are not liable to pay any compensation whatever in respect of the seizure or destruction of restricted articles imported contrary to the provisions of the Act or of the regulations pursuant thereto 22/.

## 6.2 Exportation and transit

Restricted articles or carriers in transit in Trinidad and Tobago shall be subject to such regulations as the Minister may prescribe 23/.

## 7. INCENTIVES FOR PLANT PROTECTION

This subject is not dealt with in the Act.

## 8. OFFENCES AND PENALTIES

The offences listed include; altering, forging or destroying a certificate or document required under the Act; obstructing the inspectors in the exercise of their functions; violating any other provision of the Act. Offenders are liable, on summary conviction, to a fine of 240 dollars or to a term of imprisonment of three months or both 24/.

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18/ 1975 Act, Art. 4.

19/ Ibid., Art. 5.

20/ 1975 Act, Art. 9.

21/ Ibid., Arts. 11 and 12.

22/ Ibid., Art. 15a.

23/ Ibid., Art. 10.

24/ 1975 Act, Art. 16. U.S. 1 = T.T. \$ 2.40.

A special penalty applies in the event of fruit, planting material, plant pests, pathogens, plant products, soil, vegetables or any other restricted article being imported without the required licence. The offender is liable, on summary conviction, to a fine of 1 000 dollars or imprisonment of six months or both, and to a further 500 dollars for every further offence 25/.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

This subject is not dealt with specifically in this Act.

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25/ Ibid., Art. 3.

## UNITED KINGDOM

### 1. LEGISLATIVE TEXTS

Plant Health Act. - 22 March 1969. - Current Law Statutes Annotated, 1967 c. 8.

This Act has been amended by the following

Criminal Justice Act 1967. - Current Law Statutes Annotated, 1967, c. 80.

The European Communities Act 1972. - Current Law Statutes Annotated, 1972, c. 68.

The Beet Cyst Nematode Order 1977. - 8 June 1977. - Statutory Instruments 1977, No. 988.

The Progressive Wilt Disease of Hops Order 1978. - 23 March 1968. - Statutory Instruments 1978, No. 505.

The Import and Export (Plant Health) Order. - 20 March 1980. - Statutory Instruments 1980, No. 420.

The basic text is the 1967 Act, supplemented by the 1977, 1978 and 1980 Orders.

### 2. SCOPE AND STRUCTURE OF THE LEGISLATIVE TEXTS

The purpose of the Act is to control pests and diseases injurious to agricultural and horticultural crops or to trees or bushes 1/.

The Act does not extend to Northern Ireland 2/.

The Act consists of nine articles, dealing with the following subjects:

- Art. 1: Objects of Act; competent authorities.
- Art. 2: Control of introduction of pests into Great Britain.
- Art. 3: Control of spread of pests in Great Britain.
- Art. 4: Execution of Act by government departments.
- Art. 5: Execution of Act by local authorities.
- Art. 6: Publication of Orders.

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1/ Plant Health Act, Art. 1.

2/ Ibid., Art. 9.

- Art. 7: Repeal.  
Art. 8: Transitional provisions.  
Art. 9: Short title and extent.

The Orders have usefully supplemented provisions concerning import and export. These aspects are in fact the main object of the 1980 Order and are also of great importance in the 1977 and 1978 Orders, which deal with the control of two specific diseases.

The plant protection legislation does not however include provisions on pesticides or fertilizers.

### 3. BASIC CONCEPTS AND TERMS

Under the Act references to "pests" shall be taken as references to insects, bacteria, fungi and other vegetable or animal organisms, viruses and all other agents causative of any transmissible disease of agricultural or horticultural crops or trees or bushes, and also as including references to pests in any stage of existence 3/.

The 1980 Order gives the definitions of plant, plant pest and plant product, in addition to 26 other definitions or meanings.

"Plant" means a living plant or living part of a plant, any tissue culture of such plant or living part of such plant, raw fruit or seed, and includes where the context so admits, any soil or other growing medium, packing material or container associated therewith.

"Plant pest" means living organism other than a vertebrate animal, or pathogen, which is injurious to any plant and includes cultures of such organism or pathogen.

"Plant product" means a product of plant origin, which product is unprocessed, that has not been manufactured, has undergone simple mere preparation insofar as it is not a plant and includes any soil or other growing medium, packing material or container associated therewith 4/

### 4. INSTITUTIONAL ORGANIZATION

The competent authorities for the purposes of the Act are:

- as regards the protection of forest trees, timber and forest products, the Forestry Commissioners;
- otherwise, for England and Wales the Minister of Agriculture, Fisheries and Food and for Scotland the Secretary of State 5/.

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3/ Plant Health Act, Art. 1(1)a.

4/ 1980 Order, Art. 3.

5/ Plant Health Act, Art. 1 (2).

A competent authorities may require a local authority to carry into effect any order under the Act 6/.

Under the Act, inspectors are granted the following powers:

1. In the case of any specified pest which has been introduced into Great Britain, the inspectors may remove or destroy, or cause to be removed or destroyed any crop or any seed, plant or part thereof, that is infected or may be infected with the pest or by means of which the pest is likely to spread. Inspectors may also take such steps as they may think expedient in connection with any crop, seed, plant or part thereof, for preventing the spread of the pest.
2. Inspectors may generally enter on any land or elsewhere in order to exercise the functions authorized by the orders 7/.

## 5. PROTECTION MEASURES WITHIN THE COUNTRY

### 5.1 General preventive measures

As a general rule, competent authorities make such orders as the authority thinks expedient or are called for by any Community obligation for preventing the spread of pests in Great Britain 8/.

### 5.2 Treatment of pests

The competent authorities may make orders directing or authorizing the removal, treatment or destruction of any crop, or any seed, plant or part thereof, or any container, wrapping or other article or any substance which has on it or is infected with a pest or to or by means of which a pest is likely to spread 9/.

The Minister or Secretary of State may pay compensation in respect of any crop, or any seed, plant or part thereof which is removed or destroyed by or under the instructions of an authorized inspector. Its value shall be taken to be the value which it has at the time of removal or destruction 10/.

A competent authority may require a local authority to pay compensation for removal or destruction carried out in pursuance of order of the competent authorities. The local authority may however withhold compensation if the person who is to receive it has done anything in contravention of the provisions of the Act or any order under the Act 11/.

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6/ Ibid., Art. 5.

7/ Plant Health Act, Art. 4, (1). See also: The Beet Cyst Nematode Order, Art. 7; The Progressive Wilt Disease of Hops Order, Art. 9; The Import and Export (Plant Health), Art. 12.

8/ Plant Health Act, Art. 3, (1).

9/ Plant Health Act, Art. 3, (2), a.

10/ Ibid., Art. 4, (2).

11/ Ibid., Art. 5, (1); with respect to transitory provisions concerning compensation, see Ibid., Art. 8, (2).

The 1977 and 1978 Orders concerning the beet cyst nematode and the progressive wilt disease of hops respectively, contain detailed regulations concerning treatment. With regard to the potato nematode, the Minister may declare any land as being infested; may order the treatment, destruction or removal of specified crops being grown without his authorization; and may require the owner or person in charge of infested land to give information concerning the pest in question 12/. Similar regulations are given with respect to the progressive wilt disease of hops 13/.

### 5.3 National quarantine measures

The possibility of ordering national quarantine measures is implicit under the wide powers granted the competent authorities to take general preventive and treatment measures as mentioned in the two previous paragraphs.

The subject is dealt with in detail with regard to hops. No person shall move any hop plant from or to certain areas, nor plant in certain areas any hop plant grown in other areas 14/.

### 5.4 Transport and trade of plants and plant products

The competent authorities may take measures to prevent the selling or exposing or offering for sale or the keeping of living specimens of a pest, or the distribution of these specimens 15/.

### 5.5 Control of phytopharmaceutical products for agricultural use

This subject is not dealt with under the Plant Health Act or the orders pursuant thereto.

## 6. INTERNATIONAL PROTECTION MEASURES

The United Kingdom is part of the International Plant Protection Convention. It ratified the Convention on 7 September 1953 and is also part of the Plant Protection Agreement for the South-East Asia and Pacific Regions, which it ratified on 3 December 1956.

### 6.1. Importation

A competent authority may make such orders as the authority thinks expedient or that are called for by Community obligations in order to prevent the introduction of pests into Great Britain 16/. When a competent authority considers that the landing in Great Britain of articles (and in particular plants, trees or bushes or any part or produce thereof) is likely to introduce a pest, the orders may prohibit or regulate the landing of those articles and may direct or authorize their destruction if landed 17/.

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12/ 1977 Order, Arts. 4, 5 and 8.

13/ 1978 Order, Arts. 4, 5, 7 and 8.

14/ 1978 Order, Arts. 6 and 7.

15/ Plant Health Act, Art. 3.

16/ Ibid., Art. 2, (I).

17/ Plant Health Act, Art. 2.

Importation is fully regulated in the 1980 Order. Apart from certain exceptions concerning raw fruit and cut flowers, it is prohibited to land the following in Great Britain:

1. Any plant pest of a description specified in Schedule I of the Order. These are 22 live organisms of the animal kingdom, three bacteria, 17 cryptogams, 25 viruses or virus-like pathogens and 1 phanerogam;
2. Any non-indigenous plant pest not being one of those listed in Schedule I;
3. Any Plant pest that has been subjected to genetic manipulation, or any genetically manipulated material;
4. Any Potatoes, except tubers of varieties that are marketable in a member state of the European Community;
5. Any soil, excluding peat, not being soil landed in association with a growing plant or plant product which:
  - (a) was brought to Great Britain from a country that is not a member of the European Community;
  - (b) although originating outside Europe, was brought to Great Britain from a member state of the European Community and has not been officially tested and found to be free from plant pests 18/.

The landing of 75 plants and plant products is subjected to special requirements 19/. In general, all imported products, whether consigned to Great Britain within a member state of the European Community or from third countries, must be accompanied by a phytosanitary certificate issued by the authorities of the country of origin 20/.

A special procedure must be followed when plants, plant products, soil, plant pests or genetically manipulated material are landed or likely to be landed 21/.

However, notwithstanding any landing provisions in the Order, 1980 the competent Minister may grant a special licence for the landing of any plant, plant product, plant pest, genetically manipulated material or soil 22/.

## 6.2 Exportation and transit

A competent authority may make such regulations as the authority thinks expedient or that are called for by any Community obligation for preventing the spread of pests by articles exported from Great Britain 23/.

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18/ Order, 1980, Art. 5.

19/ Ibid., Art. 6.

20/ Ibid., Arts. 7 and 8.

21/ Ibid., Arts. 13 and 14.

22/ Order, 1980, Art. 17.

23/ Plant Health Act, Art. 3, (1).

A phytosanitary certificate shall be obtained for the export or re-export from Great Britain to a member state of the European Community of six articles (plants, plant products or soil) 24/. Detailed information is given concerning the procedure for obtaining such certificates 25/.

7. INCENTIVES FOR PLANT PROTECTION

There are no regulations on this subject.

8. OFFENCES AND PENALTIES

Under the Plant Health Act 26/, a competent authority may provide for offences to be punishable on summary conviction.

An order issued by a competent authority for preventing the spread in Great Britain of the Colorado beetle, may provide for the following punishment:

1. For an offence against the order relating to the keeping of living specimens of the beetle or the distribution thereof, a maximum fine of £ 100 or a term of imprisonment not exceeding three months;
2. For any other offence against the order, a fine of not more than £ 100 27/.

Under any other orders, a competent authority may provide for a fine of not more than £ 100 or, for an offence £ 200 committed after a previous conviction 28/. These have been the penalties for offences against the beet cyst nematode 29/, the progressive wilt disease of hops 30/, and the import and export orders 31/.

9. LEGAL AND ADMINISTRATIVE PROCEDURES

This subject is not dealt with specifically in the texts examined.

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24/ 1980 Order, Art. 9.

25/ Ibid., Art. 10.

26/ Plant Health Act, Art. 3, (4).

27/ The Criminal Justice Act 1967 raised the fines to £ 100. The text introducing that amendment is: "New maximum fine: £ 100 or, for an offence committed after a further previous conviction of an offence against any such order, £ 200"; see the Criminal Justice Act, 1967, Art. 92, (2). U.S. \$1 = £ 0.654.

28/ Plant Health Act, Art. 3, (4), b; see note above.

29/ Order 1977, Art. 9.

30/ Order 1978, Art. 12.

31/ Order 1980, Art. 20.

APPENDIX

REVISED TEXT OF THE INTERNATIONAL PLANT PROTECTION  
CONVENTION

PREAMBLE

The contracting parties, recognizing the usefulness of international cooperation in controlling pests of plants and plant products and in preventing their spread, and especially their introduction across national boundaries, and desiring to ensure close coordination of measures directed to these ends, 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 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 III.
2. Each contracting party shall assume responsibility for the fulfillment within its territories of all requirements under this Convention.

ARTICLE II

Scope

1. For the purpose of this Convention the term "plants" shall comprise living plants and parts thereof, including seeds in so far as the supervision of their importation under Article VI of the Convention or the issue of phytosanitary certificates in respect of them under Articles IV (1)(a)(iv) and V of this Convention may be deemed necessary by contracting parties; and the term "plant products" shall comprise unmanufactured material of plant origin (including seeds in so far as they are not included in the term "plants") and those manufactured products which, by their nature or that of their processing, may create a risk for the spread of pests.

2. For the purposes of this Convention, the term "pest" means any form of plant or animal life, or any pathogenic agent, injurious or potentially injurious to plants or plant products; and the term "quarantine pest" means a pest of potential national economic importance to the country endangered thereby and not yet present there, or present but not widely distributed and being actively controlled.
3. Where appropriate, the provisions of this Convention may be deemed by contracting parties to extend to storage places, conveyances, containers and any other object or material capable of harbouring or spreading plant pests, particularly where international transportation is involved.
4. This Convention applies mainly to quarantine pests involved with international trade.
5. 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

#### Supplementary Agreements

1. Supplementary agreements 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 supplementing the provisions of this Convention, may be proposed by the Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO") on the recommendation of a contracting party or on its own initiative, to meet special problems of plant protection which need particular attention or action.
2. Any such supplementary agreements shall come into force for each contracting party after acceptance in accordance with the provisions of the FAO Constitution and General Rules of the Organization.

### ARTICLE IV

#### National Organization for Plant Protection

1. Each contracting party shall make provision, as soon as possible and to the best of its ability, for
  - (a) an official plant protection organization with the following main functions:
    - (i) the inspection of growing plants, of areas under cultivation (including fields, plantations, nurseries, gardens and greenhouses), and of plants and plant products in storage or in transportation, particularly with the object of reporting the existence, outbreak and spread of plant pests and of controlling those pests;

(ii) the inspection of consignments of plants and plant products moving in international traffic, and, where appropriate, the inspection of consignments of other articles or commodities moving in international traffic under conditions where they may act incidentally as carriers of pests of plants and plant products, and the inspection and supervision of storage and transportation facilities of all kinds involved in international traffic whether of plants and plant products or of other commodities, particularly with the object of preventing the dissemination across national boundaries of pests of plants and plant products;

(iii) the disinfestation or disinfection of consignments of plants and plant products moving in international traffic, and their containers (including packing material or matter of any kind accompanying plants or plant products), storage places, or transportation facilities of all kinds employed;

(iv) the issuance of certificates relating to phytosanitary condition and origin of consignments of plants and plant products (hereinafter referred to as "phytosanitary certificates");

(b) the distribution of information within the country regarding the pests of plants and plant products and the means of their prevention and control;

(c) research and investigation in the field of plant protection.

2. Each contracting party shall submit a description of the scope of its national organization for plant protection and of changes in such organization to the Director-General of FAO, who shall circulate such information to all contracting parties.

## ARTICLE V

### Phytosanitary Certificates

1. Each contracting party shall make, arrangements for the issuance of phytosanitary certificates to accord with the plant protection regulations of other contracting parties, and in conformity with the following provisions:

(a) Inspection shall be carried out and certificates issued only by or under the authority of technically qualified and duly authorized officers and in such circumstances and with such knowledge and information available to those officers that the authorities of importing countries may accept such certificates with confidence as dependable documents.

(b) Each certificate for the export or re-export of plants or plant products shall be as worded in the Annex to this Convention.

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

2. Each contracting party undertakes not to require consignments of plants or plant products imported into its territories to be accompanied by phytosanitary certificates inconsistent with the models set out in the Annex to this Convention. Any requirement for additional declarations shall be kept to a minimum.

## ARTICLE VI

### Requirements in Relation to Imports

1. With the aim of preventing the introduction of pests of plants and plant products into their territories, contracting parties shall have full authority to regulate the entry of plants and plant products and to this end, may:

(a) prescribe restrictions or requirements concerning the importation of plants or plant products;

(b) prohibit the importation of particular plants or plant products, or of particular consignments of plants or plant products;

(c) inspect or detain particular consignments of plants or plant products;

(d) treat, destroy or refuse entry to particular consignments of plants or plant products which do not comply with the requirements prescribed under sub-paragraph (a) or (b) of this paragraph, or require such consignments to be treated or destroyed or removed from the country;

(e) list pests whose introduction is prohibited or restricted because they are of potential economic importance to the country concerned.

2. In order to minimize interference with international trade, each contracting party undertakes to carry out the provisions referred to in paragraph 1 of this Article in conformity with the following:

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

(b) If a contracting party prescribes any restrictions or requirements concerning the importation of plants and plant products into its territories, it shall publish the restrictions or requirements and communicate them immediately to FAO, any regional plant protection organization of which the contracting party is a member and all other contracting parties directly concerned.

(c) If a contracting party prohibits, under the provisions of its plant protection legislation, the importation of any plants or plant products, it shall publish its decision with reasons and shall immediately inform FAO, any regional plant protection organization of which the contracting party is a member and all other contracting parties directly concerned.

(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 unnecessarily to impede international commerce. The contracting party shall publish a list of such points of entry and communicate it to FAO, any regional plant protection organization of which the contracting party is a member and all other contracting parties directly concerned. Such restrictions on points of entry shall not be made unless the plants or plant products concerned are required to be accompanied by phytosanitary certificates or to be submitted to inspection or treatment.

(e) Any inspection by the plant protection organization of a contracting party of consignments of plants or plant products offered for importation shall take place as promptly as possible with due regard to the perishability of the plants or plant products concerned. If any commercial or certified consignment of plants or plant products is found not to conform to the requirements of the plant protection legislation of the importing country, the plant protection organization of the importing country must ensure that the plant protection organization of the exporting country is properly and adequately informed. If the consignment is destroyed, in whole or in part, an official report shall be forwarded immediately to the plant protection organization of the exporting country.

(f) Contracting parties shall make provisions which, without endangering their own plant production, will keep certification requirements to a minimum, particularly for plants or plant products not intended for planting, such as cereals, fruits, vegetables and cut flowers.

(g) Contracting parties may make provisions, with adequate safeguards, for the importation for purposes of scientific research or education, of plants and plant products and of specimens of plant pests. Adequate safeguards likewise need to be taken when introducing biological control agents and organisms claimed to be beneficial.

3. The measures specified in this Article shall not be applied to goods in transit throughout the territories of contracting parties unless such measures are necessary for the protection of their own plants.

4. FAO shall disseminate information received on importation restrictions, requirements, prohibitions and regulations (as specified in paragraph 2(b), (c) and (d) of this Article) at frequent intervals to all contracting parties and regional plant protection organizations.

## ARTICLE VII

### International Cooperation

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

(a) Each contracting party agrees to cooperate with FAO in the establishment of a world reporting service on plant pests, making full use of the facilities and services of existing organizations for this purpose, and,

when this is established, to furnish to FAO periodically, for distribution by FAO to the contracting parties, the following information:

- (i) reports on the existence, outbreak and spread of economically important pests of plants and plant products which may be of immediate or potential danger;
- (ii) information on means found to be effective in controlling the pests of plants and plant products.

(b) Each contracting party shall, as far as is practicable, participate in any special campaigns for combating particular destructive pests which may seriously threaten crop production and need international action to meet the emergencies.

## ARTICLE VIII

### 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.

## ARTICLE IX

### 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 VI of this Convention, especially regarding the basis of prohibiting or restricting the imports of plants or plant products coming from its territories, the Government or Governments concerned may request the Director-General of FAO to appoint a committee to consider the question in dispute.
2. The Director-General of FAO shall thereupon, after consultation with the Governments concerned, appoint a committee of experts which shall include representatives of those Governments. This committee shall consider the question in dispute, taking into account all documents and other forms of evidence submitted by the Governments concerned. This committee shall submit a report to the Director-General of FAO, who shall transmit it to the Governments concerned and to the Governments of other contracting parties.

3. 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 Governments concerned of the matter out of which the disagreement arose.

4. The Governments concerned shall share equally the expenses of the experts.

## ARTICLE X

### 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 1981, 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 XI

### Territorial Application

1. Any State 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 State 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 signatory and adhering States of any declaration received under this Article.

## ARTICLE XII

### 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 XIV, it shall be open for adherence by non-signatory States. Adherence shall be effected by the deposit of an instrument of adherence with the Director-General of FAO, who shall notify all signatory and adhering States

### ARTICLE XIII

#### 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 Conference of FAO 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 Conference.

3. Notice of any proposed amendment of this Convention 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 Conference at which the matter is to be considered is dispatched.

4. Any such proposed amendment of this Convention shall require the approval of the Conference of FAO and shall come into force as from the thirtieth day after acceptance by two-thirds of the contracting parties. 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.

5. 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 acceptances and the entry into force of amendments.

### ARTICLE XIV

#### Entry into Force

As soon as this Convention has been ratified by three signatory States it shall come into force between them. It shall come into force for each State ratifying or adhering thereafter from the date of deposit of its instrument of ratification or adherence.

ARTICLE XV

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

MODEL PHYTOSANITARY CERTIFICATE  
(to be typed or printed in block letters)

Plant Protection Organization \_\_\_\_\_ No. \_\_\_\_\_  
of \_\_\_\_\_

TO: Plant Protection Organization(s)  
of \_\_\_\_\_

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 or plant products described above have been inspected according to appropriate procedures and are considered to be free from quarantine pests, and practically free from other injurious pests; and that they are considered to conform with the current phytosanitary regulations of the importing country.

DISINFESTATION AND/OR DISINFECTION TREATMENT

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

Additional declaration:

(Stamp of Organization) \_\_\_\_\_ Place of issue \_\_\_\_\_  
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

Plant Protection Organization of \_\_\_\_\_ No. \_\_\_\_\_  
(country of re-export)

TO: Plant Protection Organization(s) of \_\_\_\_\_  
(country(ies) of re-export)

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 or plant products described above were imported into ... (country of re-export) ... from ... (country 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 regulations of the importing country, and that during storage in ... (country of re-export) ... the consignment has not been subjected to the risk of infestation or infection.

\* Insert tick in appropriate boxes.

DISINFESTATION AND/OR DISINFECTION TREATMENT

Date \_\_\_\_\_ Treatment \_\_\_\_\_  
Chemical (active ingredient) \_\_\_\_\_ duration and temperature \_\_\_\_\_  
Concentration \_\_\_\_\_ Additional information \_\_\_\_\_

Additional declaration:

(Stamp of Organization) Place of issue \_\_\_\_\_  
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.