

INTERNATIONAL LAW RELATED TO PRECAUTIONARY APPROACHES TO NATIONAL REGULATION OF PLANT IMPORTS

Peter T. Jenkins¹

1. BACKGROUND

This article addresses international law as it relates to attempts by countries to strengthen their national laws regulating the import of live plants from other countries.² This is emerging as a lively area of policy discussion as countries seek stronger protections for their environmental and economic interests, particularly from the weed, pest, and pathogen risks of imported non-native plants and plant parts. A need exists to reconcile those aspects of the international legal regime that promote a relatively unrestricted plant trade with the aspects that allow trade restrictions in order to accommodate a country's acceptable level of risk from imported weeds, pests, and pathogens (or, in World Trade Organization (WTO) terminology, the country's "appropriate level of protection".³)

This paper thus addresses a sub-part of the unrelenting global phenomenon of harmful invasions by non-native species of all kinds into both human-managed and relatively wild areas. Invasive species often have devastating effects on natural areas, human health, agriculture, human-built structures, and industry. The number and diversity of potentially harmful organisms being moved around the world is steadily increasing. Compounding this, changes in land use and climate are rendering some habitats more susceptible to damaging invasions.

¹ Peter T. Jenkins is an Attorney and Policy Analyst at the International Center for Technology Assessment in Washington, DC, email: peterjenkins@icta.org. He specializes in legal and policy issues related to alien invasive species, genetically modified organisms, and the conservation of endangered species. He has given several invited speeches related to invasive species policy in international forums, most recently in Beijing, and has written or co-authored more than a dozen articles, reports, or book chapters on conservation topics. He is a member of the Washington, DC Bar Association and the Invasive Species Specialist Group of IUCN - The World Conservation Union. This article evolved from legal consultation the author provided to World Wildlife Fund of Australia on the weed policies of that country.

² This article applies to both terrestrial and aquatic imported plants, including any plant part or product. Additional specialized provisions of international law would apply to genetically engineered plants, parts, and products, which are not addressed here. This article does not analyze any national laws or regional or bilateral agreements that may apply to the regulation of plant imports. It seeks only to provide the global-level international law context. Also, it is not limited in its coverage only to imports of plants that are non-native, or alien, to the importing country. In some cases, weediness or pathogen risks may require a country to prohibit further importation of a species that is native in some areas of that country.

³ "Appropriate level of protection" is the phrase used in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, Art. 5, to describe the risk of harm from a proposed import that a country is willing to accept, as reflected in its regulatory regime. Zero risk is seldom feasible; but, on the other hand, seldom is it seen that countries are entirely *laissez-faire*, willing to accept 100% of such risks. Thus, a country's level of acceptable risk typically will fall somewhere between those extremes.

A major reason to regulate the intentional importation of a new plant species is the possibility that the plant itself may become a weed. In many countries, the majority of harmful non-native weeds have resulted from escaped plants that were intentionally imported in the past for ornamental, agricultural, forestry, hobby, and other uses. They have caused extensive economic losses, necessitated the spraying of expensive and damaging herbicides, and altered landscapes and bodies of water, causing impacts that cascade through ecosystems. A few examples: invading water hyacinth in Lake Victoria and elsewhere across Africa and Asia has blanketed thousands of kilometers of shorelines, blocked human access for fishing and other uses, damaged key wildlife areas, and promoted the growth of disease vectors. Introduction of the Australian Melaleuca tree in south Florida in the United States has converted thousands of hectares of the unique “Everglades” marsh to monospecific forest islands that are inhospitable to native wildlife.

In addition to resulting in many weed invasions, imported plants have carried plant pests such as the wood-devouring Asian long-horned beetle and plant pathogens such as the microbes that caused Dutch Elm disease and chestnut blight, with devastating environmental and economic consequences. While precise figures are not available, global crop losses and other costs and damages from all introduced weeds, plant pests, and plant pathogens are estimated to amount to many tens of billions – perhaps hundreds of billions - of dollars (US) annually.⁴

At the same time that the problems of freely imported plants are receiving greater recognition, most major importing and exporting countries of plants are now parties to trade-facilitating agreements that impose international standards on national regulatory measures. Focusing on the Key Question, below, which reflects the current trend in strengthening national approaches, this article addresses the relevant international conventions and decisions of the WTO Appellate Body. Pertinent provisions of the conventions are excerpted in Appendices 1 and 2.⁵

2. KEY QUESTION

What international law requirements must be met in order to shift a country’s regulatory approach for plant imports to the precautionary three-list (“clean/dirty/gray”) approach, in which species proposed for import are classified as either: 1) allowed (clean list); 2) non-provisionally prohibited (dirty list), or 3) provisionally prohibited pending further information (gray list)?⁶

3. DISCUSSION

Several precautionary systems for regulating plant imports have come into effect in the last ten years in the form of clean/dirty/gray list approaches. Thus, for example, all proposed live plant imports of new species for New Zealand or Western Australia as a general matter require a risk

⁴ Pimentel, D. 2002. *Biological Invasions – Economic and Environmental Costs of Alien Plant, Animal, and Microbe Species*. CRC Press, Boca Raton, Florida, US.

⁵ The applicability of the various conventions to a particular country depends of course on whether the country is a party.

⁶ This three-list approach has also been called “white/black/gray” or “green/red/amber.” Also, while this paper looks mostly at national regulation, the same issues as are discussed herein may arise at the sub-national level, such as in a regulatory approach adopted by a province or state.

analysis and a regulatory approval decision before they are allowed in.⁷ One reason for the trend toward adopting stricter import controls is the emergence of better science on invasive species. That is, general scientific recognition now exists of the environmental risk associated with unregulated plant imports. Also, better, more reliable, and faster predictive tools now exist for assessing weed and disease risks based on models, decision trees, international databases, data sharing networks, and so on, allowing more precautionary approaches to be implemented without unduly restricting trade.

The clean/dirty/gray list approach can be generally illustrated by the example of an exporter proposing to ship a new (not previously categorized) plant species - Species X - into a potential importing country that has the three-list approach in place. If Species X, after assessment, meets that country's acceptable level of risk it is placed on the clean list and **allowed** to be imported. If, after assessment, Species X fails to meet the country's acceptable level of risk it is placed on the dirty list and is **non-provisionally prohibited**. Various gradations of allowance and prohibition may exist, including exemptions for research and display, quarantine and fumigation requirements, emergency provisions, processes for amending lists based on new information, and so on.

The potential point of greatest controversy arises when significant information about the risk, if any, associated with Species X is missing, such that uncertainty exists as to which list it should be assigned. It then goes on the gray list. Gray listed species are **provisionally prohibited pending further information** needed to conduct a full risk assessment adequate to satisfy the country's regulators.

This gray list approach is allowed under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) provisions that are excerpted in Appendix 1 (Key WTO Provisions with Respect to Regulating Plant Imports). The SPS Agreement Art. 2.1, 2.2, 5.1, and 5.7 provisions therein affirm that WTO members have the right to take protective measures that prohibit proposed new imports so long as they are scientifically-based and that they may "provisionally" take such measures in the absence of scientific evidence, so long as they make reasonably timely attempts to obtain the missing information. Thus, placing Species X on the gray list in the above illustration amounts, in WTO terminology, to applying an Art. 5.7 provisional measure to X. The importing member can, if it chooses, put the burden on the entity proposing the import of Species X to obtain the further information needed to satisfy the member's requirements in order to undertake the risk analysis.

In any national regulatory approach, care must be taken to recognize and accommodate WTO and International Plant Protection Convention (IPPC – discussed below) procedures, as well as substantive requirements such as transparency, general reliance on science-based risk assessment, avoidance of discriminatory import controls, consistency of regulatory protection across comparable risks, and so on. These requirements are too numerous and technical to elaborate on or critique here, except to observe that they are restrictive in several respects.

⁷ New Zealand's Hazardous Substances and New Organisms Act of 1996; Western Australia's Dept. of Agriculture plant import regulations and Weed Risk Assessment process.

a. Significance of Existing Clean Lists and Other Past National Practices Allowing Imports

As countries seek more precautionary approaches the question may arise as to the significance of a country's existing clean list of plants under international law and of other past national practices of allowing relatively unrestricted plant imports. This may particularly be the case for countries with lengthy lists of permitted plants that actually are "hold-overs" from the earlier era when alien plant imports were broadly encouraged and species were permitted without adequate risk analyses, often with no analysis whatsoever.⁸ Is a country in that situation bound in any way to keep those species on its permitted list? The answer is no.

The starting point for this answer is Appendix 2 (Key WTO and IPPC Provisions with Respect to Changes to Existing Clean Lists). The WTO SPS Agreement excerpts illustrate how the IPPC is designated by the WTO as the competent body to promulgate guidelines related to national regulation of plant imports. It should be noted that the IPPC does not offer specific recommendations or lists regarding which plants are safe or unsafe for international trade.

The IPPC's International Standard for Phytosanitary Measures (ISPM) 19, Guidelines on Lists of Regulated Pests, excerpted in pertinent part in Appendix 2, defines the term "pest" to potentially include an imported plant itself to the extent that, as a weed, it may be injurious to other plants and plant products. This has been interpreted broadly by the IPPC parties to include environmental effects, such as threats to a country's native plants.⁹ Other definitions therein help the reader understand IPPC terminology and that the convention focuses only on "regulated pests," that is, those plants, animals, or pathogens that may be prohibited, quarantined, or otherwise subjected to "pest risk management" by the country to which they are being considered for import. The excerpt from p. 9 of ISPM 19 in Appendix 2 provides the key point relevant to the legal significance of clean lists:

In developing lists of regulated pests, some contracting parties identify non-regulated pests. There is no obligation for listing such pests. Contracting parties shall not require phytosanitary measures for nonregulated pests (Article VI.2 of the IPPC, 1997). The provision, however, of this information may be useful, for example for facilitating inspection.

⁸ Australia is an example, which for historical reasons has more than 2,900 genera of plants – comprised of an estimated 125,000 species – on its Permitted list, almost none of which were permitted pursuant to science-based risk analysis. The government now is reviewing this list with the stated aim of dramatically tightening its approach to regulating imports (see "Review of permitted seeds list," press release of the Senator The Hon. Ian Macdonald, Minister for Fisheries, Forestry and Conservation, dated 20 January 2005, online at www.mffc.gov.au/releases/2005/05002m.html). For more background see, A. Glanznig. 2005. Closing Australia's Quarantine Law Loophole. WWF-Australia, Sydney; online at www.wwf.org.au/News_and_information/Publications/PDF/Policies_position/issuespaper_quarantine_loophole.pdf

⁹ The more recent ISPM 11, adopted in 2004, on "Pest Risk Analysis for Quarantine Pests, Including Analysis of Environmental Risks and Living Modified Organisms," at Annex 1 - "Comments on the Scope of the IPPC in Regard to Environmental Risks," emphasizes that the scope include weeds that threaten native biological diversity, providing: "The full range of pests covered by the IPPC extends beyond pests directly affecting cultivated plants. The coverage of the IPPC definition of plant pests includes weeds and other species that have indirect effects on plants, and the Convention applies to the protection of wild flora."

Thus, a non-regulated or clean list has no foundation in international legal obligations. It is merely considered to provide useful information. Most critically, no formal international requirement exists that species be added or removed from a clean list pursuant to a pest risk assessment (PRA) or any other formal assessment. A PRA is only needed, under the definition of that term and as it is used throughout the IPPC ISPMs, to determine whether a plant species should be regulated, that is, put on a dirty list. A clean list is akin to a courtesy list; it may be modified for any reason the country chooses.

If a country has an outdated clean list that it seeks to tighten, this must be done carefully so as not to violate IPPC requirements. The act of removing species (or genera) of plants from an old clean list should not as a policy matter be deemed to automatically place those taxa onto a prohibited/dirty list because, again, the designation of specific regulated pests is subject to IPPC PRA requirements. Taxa that the country desires to remove from its old clean list should simply be removed and not formally listed elsewhere further until such time as they might be proposed for import, when they can be individually assessed. At that point, their appropriate status as clean, dirty, or gray can be determined under the recommended three-list approach.

These same considerations apply to common past national practices of allowing relatively unrestricted plant imports. That is, even if particular species have never officially been placed on a permitted list, such as Australia's, a country may, by past practice, have allowed numerous species to be imported without a PRA. For example, in the United States, the agency responsible for overseeing plant imports estimated in a recent official announcement that horticultural plants "from representative species of more than 2,000 genera are being imported or have been in the past".¹⁰ The agency then states that most of them were imported without a PRA. The announcement indicates that the United States, as Australia, is considering the option of shifting to a modified clean/dirty/gray list approach. Its past practice of allowing those thousands of "in trade" taxa does not lock it into continuing to allow them. International trade law is not so rigid.

b. Conducting Pest Risk Assessments on Broad National Policy Changes

Under the IPPC, a proposal to change a country's existing regulatory approach for plant imports in order to adopt a stricter clean/dirty/gray list approach could require a PRA under ISPM 11 on PRA procedures, quoted in pertinent part in Appendix 2. This indicates, at provision 1.1 - Initiation Points, that a PRA "may" be initiated by:

- the review or revision of phytosanitary policies and priorities.

The subsequent ISPM 11 provisions in Appendix 2 add some explanation as to how a PRA might be done on a decision by a member to tighten its import regulations, although these provisions are somewhat ambiguous. Nevertheless, provisions 1.3.1, 1.4, and Section 2 make clear enough that a PRA may be conducted at the level of an individual potential pest, at the pathway level, or at the

¹⁰ U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, Advance Notice of Proposed Rulemaking on Nursery Stock Regulations and Request for Comment, 69 Federal Register 71736-71744, Dec. 10, 2004, at p. 71737.

policy level, and that the PRA should not be more technically complex than is called for by the circumstances being assessed. Thus, a policy-level PRA should indicate the need for the member country to adopt the stricter approach, presumably based on evidence of unwanted risks resulting from the country's existing too-lenient policy. This might include prominent examples of unregulated imported plant species that vectored pests, became weeds themselves, or caused plant disease outbreaks in that country in the past and others that foreseeably could do so in the future absent the proposed policy change. As a practical matter it appears unlikely that any plant pest, weed, plant pest, or disease risk would be found to be associated with moving to a stricter policy because the change plainly would lead to less risk for the country, not more.

The context of the PRA provisions indicates that moving to a stricter national policy for plant imports does not require a PRA on every possible species that might be affected by such a change; such a conclusion would be absurd. The future importation of hundreds of thousands of plant species that presumably are not native to the member country might be affected. Plainly, PRAs are not required under the IPPC for each one of those species **before** a policy change can occur.

c. Significance of the Convention on Biological Diversity

The precautionary approach to invasive plant prevention enabled by WTO SPS Agreement Art. 5.7, as previously discussed, also is reflected in another key global agreement. The Convention on Biological Diversity (CBD), to which almost all countries belong, provides:¹¹

Art. 8. In-situ Conservation - Each Contracting Party shall, as far as possible and as appropriate: (h) Prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species.

In 2002, the CBD's Conference of the Parties (COP) fleshed this provision out when it overwhelmingly adopted its Guiding Principles for the Implementation of Article 8(h), on alien invasive species (COP Decision VI/23). A small number of parties expressed reservations to the adoption of these Principles, but they are nonetheless considered by the CBD Secretariat to be in effect as recommended, non-binding, international guidelines, on the basis of legal advice from the UN Office for Legal Affairs.¹² They provide, in pertinent part:

Guiding principle 10: Intentional introduction

1. No first-time intentional introduction or subsequent introductions of an alien species already invasive or potentially invasive within a country should take place without prior authorization from a competent authority of the recipient State(s). An appropriate risk analysis, which may include an environmental impact assessment, should be carried out as part of the evaluation process before coming to a decision on whether or not to authorize a proposed introduction to the country or to new ecological regions within a country. States should make all efforts to permit only those species that are unlikely to threaten biological

¹¹ The United States is the only major exception.

¹² Letter dated 17 June, 2002, from UN Office of the Legal Counsel to Hamdallah Zedan, Executive Secretary, CBD.

diversity. The burden of proof that a proposed introduction is unlikely to threaten biological diversity should be with the proposer of the introduction or be assigned as appropriate by the recipient State. Authorization of an introduction may, where appropriate, be accompanied by conditions (e.g., preparation of a mitigation plan, monitoring procedures, payment for assessment and management, or containment requirements).

2. Decisions concerning intentional introductions should be based on the precautionary approach, including within a risk analysis framework, set forth in principle 15 of the 1992 Rio Declaration on Environment and Development, and the preamble of the Convention on Biological Diversity. Where there is a threat of reduction or loss of biological diversity, lack of sufficient scientific certainty and knowledge regarding an alien species should not prevent a competent authority from taking a decision with regard to the intentional introduction of such alien species to prevent the spread and adverse impact of invasive alien species.

This strengthens the justification under international law for countries to adopt the clean/dirty/gray list approach for plant imports if they choose to.¹³

d. Other International Law and Guidance

The United Nations Convention on the Law of the Sea includes an article which could be used by member countries to support stricter regulation of intentional imports of potentially invasive or harmful marine plants:

Art. 196. States shall take all measures necessary to prevent, reduce, and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto.

Additionally, a large volume of “soft” law exists to support tighter invasives prevention efforts.¹⁴ Non-binding guidance issued by international bodies, expert guidelines, industry codes of conduct, and other forms of proposed voluntary measures for preventing plant invasions have been proliferating globally.

f. Relevant WTO Appellate Body Decisions

¹³ The CBD alien species authority also strengthens the justification for precautionary national approaches to regulating animal imports. Many of the conceptual issues discussed in this article with respect to implementing a clean/dirty/gray list approach for plants also would apply in the case of animals.

¹⁴ For useful sources of both hard and soft law see: Executive Secretary, CBD. 2003. Invasive Alien Species: Identification of Specific Gaps and Inconsistencies in the International Regulatory Framework (UNEP/CBD/SBSTTA/9/INF/32). Note prepared for the CBD Subsidiary Body on Scientific, Technical, and Technological Advice, Ninth Meeting, Montreal, online at: www.biodiv.org/programmes/cross-cutting/alien/documents.asp; and C. Shine, N. Williams, and L. Gundling. 2000. A Guide to Designing Legal and Institutional Frameworks on Alien Invasive Species. IUCN, Gland, Switzerland; Cambridge and Bonn. 138 pp.

No international trade disputes have been decided to date under the WTO Dispute Settlement process related to either permitted or prohibited plant lists. Nevertheless, light is shed on the issues herein by certain statements made in pertinent WTO Appellate Body decisions.

In the dispute involving the European Community's measures to restrict the proposed entry of beef from North America treated with hormones, the Appellate Body, addressing the issue of appropriate government measures when confronted with uncertain scientific evidence, noted:

*[T]he precautionary principle indeed finds reflection in Article 5.7 of the SPS Agreement.*¹⁵

This statement supports the notion discussed above of exercising precaution through provisional placement of species of uncertain risk on an Art. 5.7 gray list. The Appellate Body's later decision involving Japan's attempt to keep out fruit varieties proposed for import due to perceived pest risks expands on such provisional measures:

Article 5.7 of the SPS Agreement sets out four requirements which must be met in order to adopt and maintain a provisional SPS measure. Pursuant to the first sentence of Article 5.7, a Member may provisionally adopt an SPS measure if this measure is:

(1) imposed in respect of a situation where 'relevant scientific information is insufficient'; and

(2) adopted 'on the basis of available pertinent information'.

Pursuant to the second sentence of Article 5.7, such a provisional measure may not be maintained unless the Member which adopted the measure:

(1) 'seek[s] to obtain the additional information necessary for a more objective assessment of risk'; and

(2) 'review[s] the ... measure accordingly within a reasonable period of time'.

*These four requirements are clearly cumulative in nature and are equally important for the purpose of determining consistency with this provision. Whenever one of these four requirements is not met, the measure at issue is inconsistent with Article 5.7.*¹⁶

A properly administered gray list approach could and should comply with these requirements. Further, neither the SPS Agreement nor the WTO Appellate Body decisions block a member from adopting a provisional measure that places upon a permit applicant the practical burden of seeking to obtain the needed further information to resolve the risk uncertainties. Also, the obligation to review the measure within a reasonable time was recognized in the Japan - Varietals case (par. 93) to depend on the difficulty of obtaining the missing information. No language in SPS Agreement Art. 5.7 or elsewhere mandates that the information must ever

¹⁵ WTO Appellate Body Report on EC – Hormones, WT/DS26/AB/R, WT/DS48/AB/R (adopted 13 Feb. 1998), par. 124.

¹⁶ WTO Appellate Body Report on Japan - Varietals, WT/DS76/AB/R (adopted 19 Mar. 1999), par. 89.

actually be obtained, such as in a case when the scientific uncertainty remains too high to make a reliable, non-provisional, decision to either allow or prohibit a new species proposed for import.

4. CONCLUSION

Neither the WTO SPS Agreement, the IPPC, nor other international laws require a country to allow the entry of a proposed plant import for which it lacks adequate evidence of safety, regardless of whether it is a novel plant or a plant that had been previously allowed by that country. Clean/dirty/gray list approaches have succeeded in New Zealand, Australia, and elsewhere without sustaining a formal WTO challenge. SPS Art. 5.7 provides the time needed to provisionally prohibit species of uncertain risk and to seek to prepare adequate PRAs for them. So long as such gray lists are professionally administered on the basis of the best available information and do not become bogged down in endless unreasonable delays while missing information is pursued, Art. 5.7 is satisfied.

Adoption of similar precautionary approaches in more countries would provide greater protection for agricultural, horticultural, forestry, and other interests from weeds, plant pests, and plant pathogens. It also would serve to protect broader environmental and economic interests from the risks associated with unrestricted trade in alien plants, consistent with CBD Art. 8(h) and other international laws discussed herein. This amounts to a “smart plant trade” agenda.

APPENDIX 1

KEY WTO PROVISIONS WITH RESPECT TO REGULATING PLANT IMPORTS

Key WTO SPS Agreement Provisions

(available at [http:// www.wto.org/english/docs_e/legal_e/legal_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm))

Article 2 - Basic Rights and Obligations

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

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

.....

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

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

.....

7. In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

APPENDIX 2

KEY WTO AND IPPC PROVISIONS WITH RESPECT TO CHANGES TO EXISTING CLEAN LISTS

Key Provisions of the WTO SPS Agreement

Article 3- Harmonization

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

Annex C, paragraph 3(c) defines the above phrase “International standards, guidelines and recommendations” as follows:

- for plant health, the international standards, guidelines and recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention [IPPC] in cooperation with regional organizations operating within the framework of the International Plant Protection Convention;...”

Key IPPC Standards:

(<https://www.ippc.int/servlet/CDSServlet?status=ND0zMjU0OCY2PWVuJjMzPSomMzc9a29z>)

- Excerpts below, except as indicated, are from International Standard for Phytosanitary Measures (ISPM) 19 - Guidelines on Lists of Regulated Pests

(pp. 4-5)

Definitions:

pest - Any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products

phytosanitary measure - Any legislation, regulation or official procedure having the purpose to prevent the introduction and/or spread of pests

regulated pest - A quarantine pest or a regulated non-quarantine pest

.....

(p. 8)

Article VII.2i of the IPPC (1997) states:

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

Therefore, contracting parties to the IPPC have the explicit obligation to prepare and make available, to the best of their abilities, lists of regulated pests.

.....

(p. 9)

In developing lists of regulated pests, some contracting parties identify non-regulated pests. There is no obligation for listing such pests. Contracting parties shall not require phytosanitary measures for nonregulated pests (Article VI.2 of the IPPC, 1997). The provision, however, of this information may be useful, for example for facilitating inspection.

- Excerpts below are from ISPM 11 - Pest Risk Analysis for Quarantine Pests, Including Analysis of Environmental Risks and Living Modified Organisms

Definitions - Pest Risk Analysis [PRA] - The process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it.

.....

1.1 Initiation points

The PRA process may be initiated as a result of:

- the identification of a pathway that presents a potential pest hazard
- the identification of a pest that may require phytosanitary measures
- the review or revision of phytosanitary policies and priorities.

.....

1.1.3 PRA initiated by the review or revision of a policy

A requirement for a new or revised PRA originating from policy concerns will most frequently arise in the following situations:

- a national decision is taken to review phytosanitary regulations, requirements or operations
- a proposal made by another country or by an international organization (RPPO, FAO) is reviewed
- a new treatment or loss of a treatment system, a new process, or new information impacts on an earlier decision
- a dispute arises on phytosanitary measures
- the phytosanitary situation in a country changes, a new country is created, or political boundaries have changed.

.....

1.3.1 Previous PRA

A check should also be made as to whether pathways, pests or policies have already been subjected to the PRA process, either nationally or internationally. If a PRA exists, its validity should be checked as circumstances and information may have changed. The possibility of using a PRA from a similar pathway or pest, that may partly or entirely replace the need for a new PRA, should also be investigated.

1.4 Conclusion of initiation

At the end of Stage 1, the initiation point, the pests and pathways of concern and the PRA area will have been identified. Relevant information has been collected and pests have been identified as possible candidates for phytosanitary measures, either individually or in association with a pathway.

.....

2. Stage 2 - Pest Risk Assessment

.....Pest risk assessment needs to be only as complex as is technically justified by the circumstances.