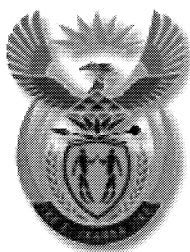

GENERAL NOTICE

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DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES

PLANT HEALTH (PHYTOSANITARY) POLICY

for

SOUTH AFRICA

MAY 2014

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1. INTRODUCTION

Plants are capable of harbouring potentially damaging pests. A plant pest as defined by the International Plant Protection Convention (IPPC) is any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products. Two categories of plant pests are directly subject to official regulation, namely quarantine pests and regulated non-quarantine pests. Quarantine pests are pests of potential economic importance to the area endangered thereby and not yet present there or which, if present, are not widespread and are officially controlled. On the other hand, regulated non-quarantine pests are pests which are already present in an area: the presence of such pests in plants for planting has an economically unacceptable impact on the intended use of those plants, however, so they are regulated within the territory of the importing party.

Plant health regulations or phytosanitary measures focus on preventing, controlling and mitigating the introduction, spread and establishment of quarantine pests of plants. The negative impacts of quarantine pests are widespread, affecting the environment and economy and therefore society in general. Pest introductions and outbreaks cost governments, farmers and consumers millions of Rand every year due to loss of earnings from lower yields or destruction of crops and the implementation of control measures. Once pest species become established, their eradication is often impossible or not economically feasible. At the very least, pest control takes up a significant percentage of the cost of producing food. Such costs impact negatively on the availability, quality and international competitiveness of South African agricultural and forestry commodities.

According to the United Nations' Food and Agriculture Organisation (FAO) *Multilingual thesaurus on land tenure* (2003: ISBN 9251042837, <http://www.fao.org/DOCREP/005/X2038E/x2038e0b.htm>), a narrow definition of agriculture includes cultivation of crops and animal husbandry as well as forestry, fisheries, and the development of land and water resources, whereas a broader definition includes agro-industries, manufacturing of agricultural inputs and

machinery, regional and river development as well as rural development. Considering the mandate of the Department of Agriculture, Forestry and Fisheries, as well as the inclusion of quarantine weeds, aquatic plants and associated environmental concerns in the scope of the IPPC, the broad definition, as appropriate in respect of plants, would apply in this policy.

The task of protecting South African agriculture and forestry against the introduction and spread of new pests is becoming increasingly challenging due to increased international trade and travel on the one hand and growing stringency regarding the use of chemical pesticides on the other. In turn, pests that occur in South Africa may endanger the agricultural and forestry sectors as well as other plant resources in countries to which South Africa exports the relevant products. If pests of concern are intercepted in a country importing commodities produced in South Africa, this could result in stricter and more expensive phytosanitary measures, or even closure of the export programme in question, at least temporarily until bilaterally agreed risk mitigation measures are in place, resulting in negative impacts on the South African economy.

Political and social impacts associated with regulated pests include the hampering of sustainable development opportunities as pests negatively affect food security and rural stability. Pest outbreaks reduce income, with significant effects on smallholder farmers and beneficiaries of agrarian reform, and may lead to the deepening of poverty in rural areas due to the destruction of livelihoods.

South Africa is a signatory to the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures (WTO-SPS Agreement), and the IPPC. These international treaties speak to the rights and obligations embodied in the respective agreements and the national capacities that should be in place for the country to meet its obligations and thus fully realise the benefits under these agreements. The importance of an effective plant health regulatory system is therefore vital for the country to ensure compliance with international plant health obligations and responsibilities in the interest of

ensuring free, safe, fair and sustainable trade and the desired expansion and sustainability of the agricultural and forestry sectors.

The WTO-SPS Agreement provides a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of phytosanitary measures in order to enhance non-discriminatory and safe trade. The Agreement gives members the right to apply sanitary and phytosanitary measures necessary for the protection of the life and health of humans, animals and plants, provided that such measures are not in contravention of the provisions of that Agreement. The IPPC is an international treaty relating to phytosanitary matters. The purpose of the IPPC is to secure common and effective action to prevent the introduction, spread and establishment of regulated pests of plants and plant products, to promote appropriate measures for their control and promote fair and safe trade between member countries. It requires a single, national government authority to be in charge of specific responsibilities regarding phytosanitary controls.

Government, therefore, has an important role to play in protecting South Africa's plant health status and ensuring safe trade, thereby helping to safeguard the livelihood of producers and support the sustainability and profitability of the agricultural and forestry sectors as well as the economic wellbeing of the communities that rely upon them. In addition to government's important role in ensuring an efficient plant health system, it should also be recognised that a multi-stakeholder approach is considered the most effective method to manage plant pests. Accordingly, Government should collaborate with producers, traders and the general public in this respect: all stakeholders play a critical role in maintaining the national phytosanitary system as their activities impact upon and depend on it.

Members of the WTO-SPS Agreement and the IPPC, especially developing countries, have access to technical assistance through these bodies. Contracting parties to the IPPC agree to promote provision of technical assistance to other contracting parties with the aim of facilitating implementation of the Convention. In particular, the IPPC encourages support

to developing countries in order to improve the effectiveness of their National Plant Protection Organizations (NPPOs) and increase their potential for realizing the benefits of safe trade. The IPPC also encourages participation in regional plant protection organizations as the basis for cooperation in achieving the aims of the IPPC at a regional level and upgrading phytosanitary systems as well as regional harmonization and policy alignment.

Within the Southern African Development Community (SADC), the SADC Protocol on Trade constitutes the framework for cooperation in phytosanitary matters as one of the requirements for integration and facilitation of regional trade. Supporting harmonization in the interest of free, fair and safe trade, and the protection of national and regional pest status, this policy will also provide a platform through which the South African stance can be advanced.

2. GLOSSARY OF TERMS (INCLUDING ACRONYMS AND ABBREVIATIONS)

See Annexure I.

3. PROBLEM STATEMENT

3.1 Nature and extent of the problem

3.1.1 Definition of terms

In respect of terminology, 'plant health' is usually applied as a general descriptor referring to the physical condition or vigour of plants, covering phytopathology as well as pesticides, fertilizers and other aspects of plant production. In accordance with IPPC definitions, on the other hand, the term 'phytosanitary' refers to official regulations that aim to either prevent the introduction and/ or spread of quarantine pests, or to limit the economic impact of regulated non-quarantine pests. The terms 'plant health' and 'phytosanitary' are often used interchangeably, together with 'plant protection', although the latter may be defined more specifically as 'the activity of protecting plants from diseases by bio-control, cultivation practices

and especially by the application of pesticides' (Science-Dictionary.com: <http://www.science-dictionary.com/definition/plant-protection.html>).

3.1.2 Science based regulations

Phytosanitary measures must be based on science. Technical justification is achieved through a process of pest risk analysis (PRA) that assesses and predicts risks associated with pests. This requires a dedicated body of academically qualified and appropriately experienced scientists. The required skills in plant pathology (including bacteriology, virology and mycology) as well as entomology, nematology and acarology, are currently among South Africa's scarcest. Besides this, pest risk analysis is a very specific competency. The factors to be considered in assessing potential hazards are complex and further complicated by the increasing threat of climate change.

3.1.3 Trade and economy

In the Second Industrial Policy Action Plan of the South African Department of Trade and Industry (the dti: IPAP2), important aspects relate to manufacturing and processing, which cannot succeed without competitive production levels. In addition, it is pointed out that economic growth in South Africa has not been sufficiently underpinned by growth in the production sectors of the economy. Consequently, IPAP2 indicates the need for a process to ensure stronger articulation and integration of policies, including actions to raise levels of production and sustainable jobs in agriculture, and policies to develop the 'Green Economy'.

Sustainable agriculture and forestry are important potential drivers for growing 'green' jobs, i.e. jobs that are not environmentally damaging. In the formulation of a Draft Green Economy Strategy on conclusion of the Green Economy Summit (20/05/2010), South Africa through its Department of Environmental Affairs (DEA) committed itself to sustainable consumption and production in a resource-efficient, labour-absorbing growth path. Among other targets, this aims to mobilise and further develop the relevant scientific and technological capacities, and improve agricultural productivity.

Furthermore, the Economic Development Department (EDD) has set out 'The New Growth Path' (NGP) for South Africa, which demands large-scale creation of sustainable employment, identifies agriculture as one of the pillars of rural development and consequently views support for employment creation in the agricultural value chain as a priority. This includes comprehensive support for extension services, small-scale agriculture and smallholder schemes in forestry.

The introduction and spread of potentially damaging alien pests of plants, plant products and related regulated articles in South Africa could have a significantly negative impact on South African bio-security, agricultural and forestry production, food security as well as trade competitiveness. On the other hand, South Africa's ability to deal with regulated pests improves its global competitiveness with respect to trade in plants and plant products by reducing phytosanitary risks and facilitating compliance with phytosanitary import conditions of targeted export markets. It is of fundamental importance, therefore, for every role-player to ensure that the introduction and spread of these pests is prevented.

In addition, South Africa's trading partners demand that imported commodities meet the food safety and phytosanitary standards of their markets. Increased emphasis on phytosanitary requirements in major export markets means that international trade and economic growth can also be affected if any countries thereby restrict domestic exporters from accessing their markets. In order to maintain and expand current export markets as well as to enter new markets, South Africa needs to keep up to date with international phytosanitary advances and changes. Keeping abreast of the increased complexity of risk analysis procedures will not only assist South Africa to enter more markets, but may also increase market access opportunities for its regional counterparts. Regionally, South Africa plays an important role in terms of driving trade and strives to increase its imports of agricultural commodities from other African countries in order to redress the current trade imbalance.

Trade in healthy and safe agricultural and forestry commodities plays a vital role in realising the departmental strategic objectives of ensuring global

competitiveness and promoting safe food by managing the level of risks associated with food, diseases, pests, natural disasters and trade. The rationale for government's intervention in plant health regulation therefore relates to issues of market access, food security, rural development and equity. Losses resulting from market access failure due to pest outbreaks are incurred by farmers, exporters, consumers and society in general. Plant health is therefore a good initiative and government intervention is necessary in order to mitigate the negative impacts of pests.

3.1.4 National policy

Considering its active agricultural and forestry sectors, South Africa needs sound, nationally coordinated phytosanitary surveillance, preparedness and quarantine pest prevention systems in order to maintain and expand its position in the global trading arena. This should be expressed through a strong policy promoting such services, for which the key responsibility lies with the Government.

Since the inception of the national legislation currently providing the mandate for phytosanitary regulation as well as the regulation of other pests of agricultural interest in South Africa, there has not been a written policy to guide its implementation and evolution. The premise of this Policy is that an effective phytosanitary system is needed in support of trade-driven growth in the sector encompassing market access, regional economic integration and protection of natural resources.

3.2 Present position, approach and responsibilities

3.2.1 International obligations

As a signatory member of both the IPPC and WTO-SPS Agreement, South Africa is obliged to apply harmonized standards in order to facilitate safe, fair and free trade. South Africa, therefore, applies the principles set out in the IPPC's International Standards for Phytosanitary Measures (ISPMs). The intention of the ISPMs is to harmonise phytosanitary measures applied in international trade in order to assist countries to attain equal market access and simultaneously

protect plant health within their territories with minimum disruption to international trade and travel. These principles are also applied on a regional level, where the Southern African Development Community (SADC) Protocol on Trade constitutes the framework for cooperation in sanitary and phytosanitary matters.

3.2.2 Present approach and responsibilities

The national phytosanitary system of South Africa is currently administered under the Agricultural Pests Act, 1983 (Act No. 36 of 1983). However, there have been major changes and developments in South Africa and the IPPC, which has been aligned with the principles of the WTO-SPS Agreement since that legislation was promulgated. Moreover, phytosanitary compliance in respect of the exportation of regulated articles is controlled in terms of the IPPC and its ISPMs as this aspect is not covered in the current legislation. Since the core of international trade in goods is import and export, without providing for exports the above Act is incomplete.

As the Agricultural Pests Act, 1983 (Act No. 36 of 1983) and some of its Regulations were promulgated before the drafting of the new revised text (1997) of the IPPC and the WTO-SPS Agreements (1995), they have many deficiencies. For example, they do not provide for the establishment and responsibilities of the national plant protection contact point, the establishment and declaration of pest free areas and export control of plants, plant products and other regulated articles. Moreover, although Directorate Plant Health (DPH) and Directorate Inspection Services (DIS), together with the Directorate Food Import Export Standards (DFIES), serve as the National Plant Protection Organization of South Africa (NPPOZA), the current legislation does not mandate the existence and function of a National Plant Protection Organisation (NPPO). Article IV of the IPPC requires that countries should make provision for an official NPPO with the following responsibilities:

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

- (b) Surveillance of growing plants, including areas under cultivation (such as fields, plantations, nurseries, gardens, greenhouses and laboratories) and wild flora, and of plants and plant products in storage or in transportation, particularly with the object of reporting the occurrence, outbreak and spread of pests, and of controlling those pests;
- (c) Inspection of consignments of plants and plant products moving in international traffic and, where appropriate, the inspection of other regulated articles, particularly with the object of preventing the introduction and/or spread of pests;
- (d) Disinfestation of consignments of plants, plant products and other regulated articles moving in international traffic, to meet phytosanitary requirements;
- (e) Protection of endangered areas and the designation, maintenance and surveillance of pest free areas and areas of low prevalence;
- (f) Conducting of pest risk analyses;
- (g) Ensuring through appropriate procedures that the phytosanitary security of consignments after certification regarding composition, substitution and reinfestation is maintained prior to export; and
- (h) Training and development of staff.

It is important, therefore, that South Africa aligns the above Act with the principles of the WTO-SPS Agreement and the IPPC. This alignment will increase the credibility of national phytosanitary systems for trading partners, enhance South Africa's capacity to participate in international agricultural and forestry trade according to the principles of these international agreements and assist in preventing the use of unjustifiable measures as technical barriers to trade.

4. OBJECTIVES

This policy seeks to address gaps and challenges in the current phytosanitary system in view of the requirements of this country's major trading partners and the requirements under the relevant international agreements and treaties to which South Africa is a signatory member. It aims to support the South African

Government's objectives and priorities such as the following: sustainable management and use of natural resources; provision of effective national regulatory services and risk management systems, and increased contribution of the sector to economic growth and development. The policy will serve as a national framework to guide the adoption and enforcement of phytosanitary measures in order to reduce pest risks associated with plants, plant products and associated regulated articles relating to international trade and national control, as well as the development of capacity to support this.

The policy identifies issues faced by Government that hinder the development of an efficient plant health system. The policy will therefore guide the revision of existing legislation and building of institutional capacity, scientific systems, quarantine capacity, emergency response to pest outbreaks, surveillance systems for regulated pests and increased public awareness (advocacy). This will ensure that the phytosanitary management system for South Africa operates in compliance with international and national plant health obligations and responsibilities in support of trade, food security and sustainable resource management.

The premise of the draft Plant Health (Phytosanitary) Policy is that an effective phytosanitary system is needed in support of trade-driven growth in the sector encompassing market access, regional economic integration and protection of natural resources. It is therefore focused on preventing, controlling and mitigating the introduction, spread and establishment of quarantine pests and to limit the economic impact of regulated non-quarantine pests of plants in new areas and thus not at regulating the provision of basic plant health services. Fundamentally important at the production level, the matter of plant pathology support services is being addressed within DAFF through the appropriate linkages between the research and extension components, in collaboration with the Agricultural Research Council (ARC).

The general goals of the policy are, therefore, to:

- (a) Guide the application of the Agricultural Pests Act, 1983 (Act No. 36 of 1983) and revised legislation when promulgated;
- (b) Better align the current phytosanitary system in accordance with national and international plant health responsibilities and obligations in the interest of safe and fair trade;
- (c) Harmonise the phytosanitary legislative, regulatory and institutional frameworks with the appropriate international standards;
- (d) Ensure the further development of plant health systems that prevent the introduction and spread of regulated pests as well as facilitate their eradication and/or control; and
- (e) Increase public awareness on the role of stakeholders, including the general public, in protecting the phytosanitary status of South Africa.

The above can be achieved through:

- (a) Maintaining appropriate phytosanitary legislation, regulations, policies, norms and standards as well as assisting stakeholders with the interpretation of these documents and the relevant international standards;
- (b) Providing for an effective PRA service to facilitate international trade in compliance with international agreements and standards as well as promoting harmonisation of phytosanitary measures;
- (c) Developing and implementing surveillance systems for the early detection of regulated pests, and contingency plans for their efficient and effective control;
- (d) Ensuring effective plant health diagnostic and post-entry plant quarantine services with regard to regulated pests;
- (e) Maintaining an effective national plant protection contact point;
- (f) Participating in the standard setting process of the IPPC and regional phytosanitary bodies; and
- (g) Developing and managing phytosanitary awareness programmes in order to support international and national market access and rural development.

5. POLICY OPTIONS AND RECOMMENDATIONS

5.1 Policy options

The following four policy options may be considered individually or in suitable combinations in order to achieve the appropriate regulatory plant health system in South Africa:

5.1.1 Limited action

Align the Agricultural Pests Act, 1983 (Act No. 36 of 1983) and its Regulations with the Constitution of the Republic of South Africa (1996). In terms of technical content, these pieces of legislation will continue to be applied as they are, with export control measures applied according to the relevant ISPMs and phytosanitary services provided according to the Department of Agriculture, Forestry and Fisheries' (DAFF) strategic plan.

5.1.2 Amendment

Amend the current plant health legislation in order to ensure that it:

- (a) Is in line with the principles of the WTO-SPS Agreement as well as those of the IPPC and its ISPMs;
- (b) Designates the NPPOZA as well as its responsibilities as outlined above;
- (c) Provides for phytosanitary control of exports as well as imports;
- (d) Includes a broader range of potentially harmful regulated pests;
- (e) Excludes diseases certifiable under the World Organisation for Animal Health (OIE) and any other pests or disease carriers that are pests of agricultural interest outside the mandate of the national phytosanitary authority; and
- (f) Is in line with the applicable national requirements and needs

5.1.3 Comprehensive review

Conclude a comprehensive review of the existing phytosanitary legislation with the view of aligning it with the principles of the WTO-SPS Agreement as well as the IPPC and its ISPMs. This process shall include clarification, simplification and technical updating of existing legislation, instituting mandatory reporting

procedures and further rapid response mechanisms as well as optimizing the deployment of inspection agencies and assignees. This would be a positive step towards facilitating the development of a harmonised regional approach to quarantine pests of plants and to plant bio-security. Furthermore, Article XVI of the IPPC supports parties entering into supplementary agreements for the purpose of complementing the provisions of the Convention by meeting special problems of plant protection such as regional agreements or arrangements relating to specific pests, plants and plant products or specific methods of international transportation. This could include procedures such as regional PRA mechanisms.

5.1.4 Form a statutory body or agency

Form a dedicated statutory body or agency tasked with coordinating the management of national bio-security risks, and integrate the national phytosanitary regulatory activities into this body. This alternative could follow a model whereby an independent expert-based panel (e.g. National Biosecurity Commission) within an independent statutory body (e.g. National Biosecurity Authority) undertakes bio-security import risk analyses and makes science-based bio-security import policy determinations independent from political intervention. The DAFF would guide these bodies on the overall national appropriate level of protection (ALOP) from bio-security risks. This means that the Minister of DAFF would have the power to provide guidelines on the principles that underpin bio-security import risk analyses, import policy determinations and import permit decisions as well as to set the ALOP. Furthermore, a statutory office of the Inspector General of Biosecurity, with comprehensive audit powers and reporting directly to the Minister of DAFF, would have broad powers of auditing and reviewing the bio-security programs carried out by the National Biosecurity Authority. The sole functions of the proposed agency would be to protect the national bio-security status and certify exports. As such it would combine the current national animal and plant health quarantine and inspection services.

5.1.5 Recommended options

Considering the status of South Africa as a developing country, policy options 2 and 3, as outlined above, are recommended.

5.2 Justification of the recommendation in terms of efficiency, effectiveness, social effects, environmental impact and technical feasibility

Phytosanitary measures based on revised legislation which is better aligned with the WTO-SPS and IPPC and the relevant ISPMs will embody the principles of ALOP and minimal impact as well as economic and operational feasibility. If all Members of SADC and the Southern Africa Customs Union (SACU) do likewise, harmonisation of regulatory measures with international standards will support regional economic integration.

5.3 Political, institutional, legal, social and economic viability

In terms of the existing signatory membership of South Africa to the WTO-SPS Agreement and to the IPPC, this policy must be based on the principles of the IPPC and its ISPMs. Furthermore, it must be implemented in accordance with relevant DAFF strategic goals and capacity as well as strategic planning for further capacity building. In terms of the IPPC and the WTO-SPS Agreement, South Africa subscribes to the principle of transparency. Accordingly, it already provides for a national plant protection contact point, PRA as well as plant health awareness and promotion components, through which its plant health regulatory measures and their technical justification are made internationally available.

5.4 Institutional implications

The DAFF has the mandate for this Policy on Plant Health Matters (phytosanitary matters). In respect of institutional capacity and structure, the relevant components of the NPPOZA, in terms of South Africa's membership of the IPPC, have been put in place including the provision of quarantine facilities and diagnostic laboratories as well as phytosanitary inspection services.

A specialized unit, namely DFIES, facilitates national phytosanitary awareness programmes. In respect of potential pest risks, an Early Warnings component has also been instituted. This component is responsible for developing detection and surveillance programmes as well as contingency plans and control procedures for recently introduced/detected regulated pests.

For the effective implementation of this policy, further strengthening of the NPPOZA's capacity and infrastructure is required. The PRA process specifically requires further strengthening, because of the demand for market access and therefore PRAs and the current phytosanitary capacity do not balance.

5.5 Financial implications

The national phytosanitary regulatory system includes DAFF directorates Plant Health (DPH): policy unit, Inspection Services (DIS) and Food Import and Export Standards (DFIES): operational units as well as the Perishable Products Export Control Board (PPECB). Focusing on the policy unit alone, for 2012/13, 2013/14 and 2014/15 the current budget allocation for Directorate Plant Health (DPH) is R32.175 million, R31.526 million and R32.740 million, respectively. It is envisaged that an additional R35 million (thirty five million Rand) per annum may be needed; a request for an additional R10 million has already been incorporated in the Medium-Term Expenditure Framework (MTEF) of the DAFF for quarantine pest surveillance and awareness programmes as core functions of the NPPO. The further R35 million may be required to include additional PRA personnel (i.e. 9 Scientist Production and 3 Scientific Technicians) in order to strengthen the current division's capacity (i.e. 14 Scientist Production, 2 Scientific Technicians and 1 Plant Health Officer) in the face of increasing market access demands from South African Industries, including the fruit industries in their drive to maintain global competitiveness, and the demand for reciprocity within South Africa's increasing number of bilateral and multinational agreements. Concurrently, it must be ensured that the current PRA component functions effectively and produces optimal output. In addition, the cost-effectiveness of outsourcing PRAs must be explored and compared.

5.6 Communication implications

A dedicated unit within the DAFF structure, namely DFIES, facilitates national phytosanitary awareness and promotion programmes. In accordance with the international principle of transparency, the NPPOZA must engage in the WTO-SPS notification system and maintain a plant protection contact point and website. It is obliged to notify the IPPC Secretariat of any detection, outbreak or spread of regulated pests within its territory and to participate in the activities of the IPPC as well as the appropriate Regional Plant Protection Organisation (RPPO), namely the Inter-African Phytosanitary Council of the African Union (AU- IAPSC). The development of this policy was communicated to all relevant stakeholders according to the relevant departmental prescripts.

5.7 Legislative and regulatory implications

The effective and efficient implementation of this Policy on Plant Health (phytosanitary matters) is the primary responsibility of the NPPOZA. It is important that the current phytosanitary legislation is amended in order to align it with national requirements as well as international plant health obligations and responsibilities for managing phytosanitary risks and to protect the country's agriculture and forestry sectors as well as biodiversity from the risks posed by foreign pests.

5.8 Implementation and monitoring of risk management strategies, policies, and legislation

This policy is intended to support the development, implementation and monitoring of risk management strategies, policies, legislation and other phytosanitary measures for the control of pests of plants, plant products and related regulated articles. It places emphasis on the need for sufficient skilled people to provide appropriate measures with regard to the relevant phytosanitary services, and that all role-players, including traders and the traveling public as well as the provincial departments, are well informed. This

policy will also contribute towards the increased alignment of the plant health regulatory system of South Africa with international principles, standards and guidelines in accordance with the country's signatory membership of the WTO-SPS and the IPPC.

5.9 Instruments of implementation

The plant health (phytosanitary) policy will be implemented in terms of the following Act or its substitute legislation (and in harmony with the relevant national priorities and legislation and international agreements and treaties in support of the inherent needs of all role players and stakeholders engaged in the relevant agricultural and forestry activities, primarily those listed in Annexure II):

5.9.1 Agricultural Pests Act, 1983 (Act No. 36 of 1983)

The aim of the current Act is to provide for measures to prevent and control the importation of agricultural and forestry pests, and to provide measures for their national control and matters connected therewith. In terms of its provisions, no person is allowed to import into South Africa any controlled goods except under the authority of a permit or regulation and in compliance with the relevant import requirements. The Act also provides for preventing the spread of pests within the country by allowing for the control of movement of plants and plant products from one area to another. Its scope covers plants, plant products and their pathogens including biological control agents, insects and exotic animals as defined, as well as growth media, honey, beeswax and used apiary equipment as well as other regulated articles.

This Act is administered by the DAFF, it currently has three executive officers, namely the Director of each of the following directorates: DPH, DIS and Climate Change and Disaster Management (DCCDM). The DPH provides PRAs, import regulations and control measures, while the relevant phytosanitary inspections are conducted by DIS in terms of the Border Control Strategy of the DAFF. The parts of this Act dealing with migratory pests such as locusts and red-billed quelea are administered by DCCDM.

The execution of the provisions of the Agricultural Pests Act is aligned with other relevant Acts to ensure smooth intergovernmental relations. Accordingly, mechanisms and procedures are provided to ensure that clients are advised of any additional authorisations they need prior to importing, including the following:

- (a) Regarding genetically manipulated organisms, permit applicants are required to declare that the relevant commodity does not constitute or contain any Genetically Modified Organisms (GMOs). Such imports are dealt with in terms of the Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997), administered by the DAFF Directorate Genetic Resources.
- (b) Before permitting the importation and release of biological control agents, the relevant Acts are taken into consideration according to the envisaged impact of the agent as shown by the risk assessment.
- (c) Plant propagating material is subject to the provisions of the Plant Improvement Act, 1976 (Act No. 53 of 1976) and the Plant Breeders Rights Act, 1976 (Act No. 15 of 1976), as indicated in Annexure II.
- (d) The importation of tropical fish, currently dealt with under the Agricultural Pests Act, 1983 (Act No. 36 of 1983) under its definition of “exotic animal”, is subject to the relevant nature conservation regulations, namely Section 81 of the Nature Conservation Ordinance, 1983 (Ordinance 12 of 1983). This responsibility was transferred to the DAFF Directorate Animal Health in 2012 which is mandated to deal with imports of vertebrate animals in terms of the Animal Diseases Act, 1984 (Act no. 35 of 1984). Importers are accordingly referred to the appropriate authority.
- (e) On request of the relevant directorate dealing with animal health in DAFF, the importation of specific plants that are toxic to cattle is prohibited. Similarly, specific plants with narcotic properties are prohibited entry on request of the South African Police Service (SAPS). In this regard the SAPS will cooperate with DAFF and these two entities will assist and support one another in accordance with the provisions of Chapter 3 of the Constitution of the Republic of South Africa, 1996 (Act No.108 of 1996), which provides for co-operative governance.

The export of plants, plant products and other regulated articles from South Africa takes place in accordance with the relevant import conditions, directives or bilaterally agreed protocols of the importing country. Compliance is officially verified by means of phytosanitary procedures including inspections, sampling and testing as well as the issuance of the relevant certification in accordance with the principles and model certificates of the IPPC.

6. PERFORMANCE INDICATORS

Performance indicators that will be used to measure the extent to which the desired objectives are being attained as well as an indication of how monitoring of implementation and evaluation of impact is to be conducted, will include the number of:

- (a) Phytosanitary legislative documents available;
- (b) Completed PRA reports;
- (c) Import and export protocols and programs as well as bilateral engagements and inputs contributing to the facilitation of safe trade and harmonisation of phytosanitary measures;
- (d) Import permits issued;
- (e) Interceptions of phytosanitary non-compliance in respect of exports;
- (f) Interceptions of phytosanitary non-compliance in respect of imports;
- (g) Early Warning protocols/programs and contingency plans;
- (h) Documents on phytosanitary norms, standards and guidelines;
- (i) Training actions, seminars and workshops;
- (j) Plant health promotion and curriculum development programs successfully completed and their positive effect in changing public attitude regarding plant health issues;
- (k) Provincial interventions to ensure exposure to the latest plant health (phytosanitary) information;
- (l) Information packages and information materials available on an effective and interactive website;
- (m) Client inputs and surveys as well as client-DAFF phytosanitary forums; and
- (n) Effectively and efficiently controlled outbreaks of regulated pests.

7. TIMETABLE AND IMPLEMENTATION

- (a) Promulgation of revised legislation and regulations within five years upon approval of this policy;
- (b) Availability of appropriate infrastructure as well as training, development and deployment of appropriate personnel in order to ensure efficient and effective service delivery as well as compliance with international norms and standards within five years upon approval of this policy

7.1 Key role-players responsible for implementation, and their resource requirements

The responsibilities of DPH are to develop policy, legislation, norms and standards and guidelines to manage phytosanitary risks as well as to ensure compliance with national and international plant health obligations. The DIS is responsible for rendering risk inspection/auditing services at official ports of entry, national plant risk management inspection/auditing services as well as national plant quarantine and diagnostic services. Among other responsibilities, the DFIES is responsible for facilitating national phytosanitary awareness and promotion programmes. Furthermore, the ARC provides information and services that support the effective implementation of this plant health (phytosanitary) policy. Based on request or relevant arrangements, Provincial Departments of Agriculture assist in disseminating information on phytosanitary matters to subsistence, smallholder and commercial farmers as well as the general public.

7.2 Resource requirements

- (a) Effective and efficient teams of appropriately trained, experienced and equipped personnel to ensure pest risk management through the execution of:
 - PRA
 - Policy, norms and standards
 - Early warning systems

- Plant health promotion and awareness
 - Plant health national contact point responsibilities
 - Plant diagnostic services
 - Plant quarantine services
 - Phytosanitary inspection, implementation and enforcement activities.
- (b) Effective and efficient teams of appropriately trained, experienced and equipped personnel for relevant assignees, state owned enterprises as well as relevant research organizations;
- (c) Adequate and fully functional infrastructure and information systems to accommodate and facilitate the provision of effective phytosanitary services;
- (d) Appropriate role player and stakeholder coordination mechanisms and forums.

8. MAIN POLICY AREAS CONCERNING THE DAFF CLUSTERED AROUND THE INHERENT NEEDS OF THOSE ENGAGED IN AGRICULTURAL AND FORESTRY ACTIVITIES

The implementation of this policy and associated legislation, besides being in accordance with the WTO-SPS Agreement and the IPPC, will be in support of the inherent needs of all role players and stakeholders engaged in the relevant agricultural and forestry activities, namely:

- (a) Confidence and stability brought about by objective and effective regulation, by pest risk alleviation measures, sound customer relations and effective governance of the sector.
- (b) Sustainable utilisation of natural resources such as land, water and plants.
- (c) Capacity to optimally utilise the resources dependent on infrastructure, finance, technology, services and skills development.
- (d) Competitiveness of the individual enterprises and the entire sector relative to that of similarly endowed or competing economies to be addressed through improved efficiency and productivity, free and fair markets as well as innovation.

- (e) Responsibility underpinned by the sector's strategic role as society's basic food provider, employer of the less skilled, and as a socio-economic safety net for rural society.

9. REFERENCE DOCUMENTS

Documents that directly underpin this Policy are the following:

- (a) *Agricultural Pests Act, 1983* (Act No. 36 of 1983) as amended
- (b) *Agricultural Policy of South Africa - a Discussion document. Ministry of Agriculture and Land Affairs, 1998.*
- (c) *Constitution of the Republic of South Africa (Act No.108 of 1996) as amended. Republic of South Africa.*
- (d) *Draft Policy on Agriculture in Sustainable Development - A discussion document. Department of Agriculture, 2002.*
- (e) *Industrial Policy Action Plan (IPAP2), 2010-11/ 2012-13 the dti 2010.*
http://www.thedti.gov.za/ipap/lpap_Part1_Part1.pdf
- (f) *International Plant Protection Convention, 1997.* Secretariat of the International Plant Protection Convention, FAO, Rome, Italy.
- (g) *International Standards for Phytosanitary Measures. All ISPMs of the IPPC.*
- (h) *Medium Term Strategic Framework, 2009. A framework to guide Governments Programme in the Electoral Mandate Period (2009-2014), The Presidency, Republic of South Africa.*
- (i) *Statement on conclusion of the Green Economy Summit (20/05/2010) DEA 2010.* <http://www.polity.org.za/article/sa-draft-statement-by-the-department-of-environmental-affairs-on-the-conclusion-of-the-green-economy-summit-20052010-2010-05-20>
- (j) *Strategic Plan for the Department of Agriculture, Forestry and Fisheries 2011/12 to 2014/15.* Department of Agriculture, Forestry and Fisheries,
- (k) *The New Growth Path: The Framework. EDD 2010.*
<http://www.pmg.org.za/files/docs/110216growthpath.pdf>
- (l) *White Paper on Agriculture, 1995. Department of Agriculture. Printed and published by the Department of Agriculture. ISBN 0-621-16111-x*

(m) *World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures*, 1994. World Trade Organization, Geneva.

10. POLICY OWNER

The Directorate Plant Health (DPH) of the DAFF.

11. DOCUMENT INFORMATION

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ANNEXURE I**Definitions/Glossary of terms (including acronyms/abbreviations)**

The definitions provided below for phytosanitary terms are from the IPPC ISPM No. 5: *Glossary of phytosanitary terms*.

Agriculture	A narrow definition of agriculture includes cultivation of crops and animal husbandry as well as forestry, fisheries, and the development of land and water resources, whereas a broader definition includes agro-industries, manufacturing of agricultural inputs and machinery, regional and river development as well as rural development (FAO <i>Multilingual thesaurus on land tenure</i> (2003: ISBN 9251042837, http://www.fao.org/DOCREP/005/X2038E/x2038e0b.htm),
ALOP (Appropriate Level of Protection)	The level of protection deemed appropriate by the WTO Member establishing a sanitary or phytosanitary measure to protect human, animal, or plant life or health within its territory (WTO-SPS Agreement, Annexure A)
ARC	Agricultural Research Council of South Africa
Area	An officially defined country, part of a country or all or parts of several countries (FAO, 1990; revised FAO, 1995; CEPF, 1999; based on the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures)
Area endangered	An area where ecological factors favour the establishment of a pest whose presence in the area will result in economically important loss (FAO, 1995)
Area of low prevalence	An area, whether all of a country, part of a country, or all parts of several countries, as identified by the competent authorities, in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures (IPPC, 1997)
AU	African Union
AU-IAPSC	Inter-African Phytosanitary Council of the African Union
Authority	The national Plant Protection Organisation, or other

	entity or person officially designated by the government to deal with matters arising from the responsibilities set forth in the Code (ISPM No. 3, 1996)
Biological control agent	A natural enemy, antagonist or competitor, or other organism, used for pest control (ISPM No. 3, 1996; revised ISPM No. 3, 2005)
Biological pesticide (biopesticide)	A generic term, not specifically definable, but generally applied to a biological control agents, usually a pathogen, formulated and applied in a manner similar to a chemical pesticide, and normally used for the rapid reduction of a pest population for short-term pest control (ISPM No. 3, 1996)
Bio-security	A strategic and integrated approach that encompasses the policy and regulatory frameworks for analyzing and managing relevant risks to human, animal and plant life and health, and associated risks to the environment. As such, bio-security covers the introduction of plant pests, animal pests and diseases, and zoonoses, the introduction and release of genetically modified organisms (GMOs) and their products, and the introduction and safe management of invasive alien species and genotypes (FAO COAG/2003/9).
CEPM (Committee of Experts on Phytosanitary Measures)	Now known as the Standards Committee (SC) of the CPM
Certificate	An official document which attests to the phytosanitary status of any consignment affected by phytosanitary regulations (FAO, 1990)
Commodity	A type of plant, plant product, or other article being moved for trade or other purpose (FAO, 1990; revised ICPM, 2001)
Control (of a pest)	Suppression, containment or eradication of a pest population (FAO, 1995)
CPM (Commission on Phytosanitary Measures)	The governing body of the IPPC
DAFF	Department of Agriculture, Forestry and Fisheries
DEA	Department of Environmental Affairs
DIS	Directorate Inspection Services of the DAFF
DCCDM	Directorate Climate Change and Disaster Management of the DAFF
DPH	Directorate Plant Health

EDD	Economic Development Department
Entry (of a pest)	Movement of a pest into an area where it is not yet present, or present but not widely distributed and being officially controlled (FAO, 1995)
Eradication	Application of phytosanitary measures to eliminate a pest from an area (FAO, 1990; revised FAO, 1995; formerly eradicate)
Establishment	Perpetuation, for the foreseeable future, of a pest within an area after entry (FAO, 1990; revised FAO, 1995; IPPC, 1997; formerly established)
Exotic	Not native to a particular country, ecosystem or ecoarea (applied to organisms intentionally or accidentally introduced as a result of human activities) (ISPM No. 3, 1996)
FAO	Food and Agriculture Organisation of the United Nations
GMO	Genetically Modified Organism (<i>also see LMO</i>)
Harmonisation	The establishment, recognition and application by different countries of phytosanitary measures based on common standards (FAO, 1995; revised CEPM, 1999; based on the WTO-SPS Agreement)
Harmonised phytosanitary measures	Phytosanitary measures established by contracting parties to the IPPC, based on international standards (IPPC, 1997)
Import	Introduction of regulated articles into South Africa, or to bring about the introduction of such articles into South Africa (based on the Agricultural Pests Act, 1983 - Act No. 36 of 1983 - currently being amended)
Import permit	Official document authorizing importation of a commodity in accordance with specified phytosanitary import requirements (FAO, 1990; revised FAO, 1995, ICPM, 2005)
Import permit (of a biological control agent)	An official document authorizing importation (of a biological control agent) in accordance with specified requirements (ISPM Publ. No. 3, 1996)
Infestation (of a commodity)	Presence in a commodity of a living pest of the plant or plant product concerned - infestation includes infection (CEPM, 1997; revised CEPM, 1999)
Inspection	Official visual examination of plants, plant products or other regulated articles to determine if pests are present and/or to determine compliance with

	phytosanitary regulations (FAO, 1990; revised FAO, 1995; formerly inspect)
Interception (of a pest)	The detection of a pest during inspection and testing of an imported consignment (FAO, 1990; revised CEPM, 1996)
Introduction	The entry of a pest resulting in its establishment (FAO, 1990; revised FAO, 1995; IPPC, 1997)
IPAP2	Second Industrial Policy Action Plan of the South African Department of Trade and Industry (the dti)
IPPC (International Plant Protection Convention)	An international plant health agreement that aims to protect cultivated and wild plants by preventing the introduction and spread of pests, as deposited with FAO in Rome in 1951 and as subsequently amended (FAO, 1990)
ISPMs (International Standards for Phytosanitary Measures)	An international standard adopted by the Conference for Phytosanitary Measures of the FAO, the CPM, established under the IPPC (CEPM, 1996; revised CEPM, 1999)
Legislation	Any act, law, regulation, guideline or other administrative order promulgated by a government (ISPM Publ. No. 3, 1996)
Living Modified Organism (LMO)	Any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology (<i>Cartagena Protocol on Biosafety to the Convention on Biological Diversity, 2000</i>)
Micro-organism	A protozoan, fungus, bacterium, virus or other microscopic self-replicating biotic entity (ISPM Publ. No. 3, 1996)
Monitoring	An official ongoing process to verify phytosanitary situations (CEPM, 1996)
MTEF	Medium Term Expenditure Framework
NGP	New Growth Path
NPPO	National Plant Protection Organisation (Official service established by a government to discharge the functions specified by the IPPC) (FAO, 1990; formerly Plant Protection Organisation (National))
NPPOZA	National Plant Protection Organisation of South Africa
Occurrence	The presence in an area of a pest officially recognised to be indigenous or introduced and not officially reported to have been eradicated (FAO,

	1990; revised FAO, 1995; ISPM No. 17; formerly occur)
Official	Established, authorized or performed by a National Plant Protection Organisation (FAO, 1990)
Official control	The active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or for the management of regulated non-quarantine pests (<i>see Glossary Supplement No. 1</i>) [ICPM, 2001]
OIE	World Organisation for Animal Health (prior to May 2003 known as the "Office International des Epizooties", hence the historical acronym "OIE" which has been retained) [OIE, April 2009]
Pest	Any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products (FAO, 1990; revised FAO, 1995; IPPC, 1997)
PRA (Pest Risk Analysis)	The process of evaluating biological or other scientific and economic evidence to determine whether an organism is a pest, whether it should be regulated, and the strength of any phytosanitary measures to be taken against it (FAO, 1995; revised IPPC, 1997; ISPM No.2 2007)
Pest risk assessment (for quarantine pests)	Evaluation of the probability of the introduction and spread of a pest and of the associated potential economic consequences (FAO, 1995; revised ISPM No. 11, 2001)
Pest risk assessment (for regulated non-quarantine pests)	Evaluation of the probability that a pest in plants for planting affects the intended use of those plants with an economically unacceptable impact (ICPM, 2005)
Phytosanitary legislation	Basic laws granting legal authority to a National Plant Protection Organisation from which phytosanitary regulations may be drafted (FAO, 1990; revised FAO, 1995)
Phytosanitary measure (agreed interpretation)	Any legislation, regulation or official procedure having the purpose to prevent the introduction and/or spread of quarantine pests, or to limit the economic impact of regulated non-quarantine pests (FAO, 1995; revised IPPC, 1997; ISPM, 2002)
Phytosanitary regulation	Official rule to prevent the introduction and/or spread of quarantine pests, or to limit the economic impact of regulated non-quarantine pests, including

	establishment of procedures for phytosanitary certification (see Glossary Supplementary No. 2; FAO, 1990; revised FAO, 1995; CEPM, 1999; ICPM, 2001)
Plant products	Unmanufactured material of plant origin (including grain) and those manufactured products that, by their nature or that of their processing, may create a risk for the introduction and spread of pests (FAO, 1990; revised IPPC, 1997; formerly plant product)
Planting (including re-planting)	Any operation for the placing of plants in a growing medium, or by grafting or similar operations, to ensure their subsequent growth, reproduction or propagation (FAO, 1990; revised CEPM, 1999)
Plants	Living plants and parts thereof, including seeds and germplasm (FAO, 1990; revised IPPC, 1997)
Point of entry	Airport, seaport or land border point officially designated for the importation of consignments, and/or entrance of passengers (FAO, 1995)
PPECB	Perishable Products Export Control Board
Quarantine	Official confinement of regulated articles for observation and research or for further inspection, testing and/or treatment (FAO, 1990; revised FAO, 1995; CEPM, 1999)
Quarantine pest	A pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled (FAO, 1990; revised FAO, 1995; IPPC, 1997)
Quarantine station	Official station for holding plants or plant products in quarantine (FAO, 1990; revised FAO, 1995; formerly quarantine station or facility)
Regulated article	Any plant, plant product, storage place, packaging, conveyance, container, soil and any other organism, object or material capable of harbouring or spreading pests, deemed to require phytosanitary measures, particularly where international transportation is involved (FAO, 1990; revised FAO, 1995; IPPC, 1997)
Regulated non-quarantine pest	A non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of

	the importing contracting party (see Glossary Supplement No.2; IPPC, 1997)
Regulated pest	A quarantine pest or a regulated non-quarantine pest (IPPC, 1997)
RPPO (Regional Plant Protection Organisation)	An intergovernmental organisation with the functions laid down by Article IX of the IPPC (FAO, 1990; revised FAO, 1995; CEPM, 1999; formerly plant protection organisation - regional)
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAPS	South African Police Service
Spread	Expansion of the geographical distribution of a pest within an area (FAO, 1995)
Standard	Document established by consensus and approved by a recognised body that provides - for common and repeated use - rules, guidelines or characteristics for activities or their results, aimed at the achievement of the optimum degree of order in a given context (FAO, 1995; ISO/IEC Guide 2: 1991 definition)
Surveillance	An official process which collects and records data on pest occurrence or absence by survey, monitoring or other procedures (CEPM, 1996)
Survey	An official procedure conducted over a defined period of time to determine the characteristics of a pest population or to determine which species occur in an area (FAO, 1990; revised CEPM, 1996)
Technically justified	Justified on the basis of conclusions reached by using an appropriate pest risk analysis or, where applicable, another comparable examination and evaluation of available scientific information (IPPC, 19979)
the dti	Department of Trade and Industry
Transparency	The principle of making available, at the international level, phytosanitary measures and their rationale (FAO; 1995; revised CEPM, 1999; based on the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures)
Treatment	Officially authorized procedure for the killing or removal of pests or rendering pests infertile (FAO, 1990; revised FAO, 1995; ISPM Publ. No. 15, 2002)
WTO-SPS Agreement	World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures

ANNEXURE II**Legislation relevant to the Plant Health (Phytosanitary) Policy**

The Plant Health Policy is implemented in terms of the Agricultural Pests Act, 1983 (Act No. 36 of 1983) and in harmony with the following legislation, international agreements and treaties:

1. Genetically Modified Organisms Act, 1997 (Act No. 15 of 1997)

The key aim of the GMO Act is to provide measures to ensure that all activities involving GMOs are conducted in a manner that will limit the potential risks in respect of the environment, human, animal or plant health that are associated with such activities. In terms of this Act, risk assessment data are subject to a multidisciplinary evaluation process.

The scope of the plant health policy includes GMOs only as Living Modified Organisms (LMOs), specifically where they pose a phytosanitary risk as pests that may potentially endanger agriculture, horticulture, forestry or the environment.

2. Plant Breeders Rights Act, 1976 (Act No. 15 of 1976)

The Plant Breeders Rights Act, 1976, provides for a system in terms of which breeders' rights relating to the varieties of certain kinds of plants may be granted and registered, and for the protection of such rights. It therefore protects the intellectual property rights of persons who have bred or developed new varieties of plants. The holder of a plant breeders' right is entitled to royalties for the use of the relevant variety by other persons. Anyone who wants to use a protected variety may do so only when issued with the relevant license to do so. Although there is no direct link between the Agricultural Pests Act, 1983 and this Act, plants and seeds in international trade are subject to its terms.

3. Plant Improvement Act, 1976 (Act No. 53 of 1976)

This Act provides for the registration of premises from which the sale of certain plants, or the cleansing, packing and sale of certain propagating material may be undertaken. It prescribes the conditions subject to which such plants or propagating material may be sold for the purposes of cultivation, and provides for the recognition of certain varieties of plants, for a system of certification of plants and propagating material to maintain the quality of certain plants and propagating material, and for controlling the import and export of certain plants and propagating material. It enhances and promotes the quality of plant propagation material available in the trade. This is achieved through various programs which include provisions for the establishment and maintenance official certification schemes for those plant types declared in terms of this Act.

The aim of these certification schemes is to set quality standards for plant material. The standards include norms for physical quality as well as the health status of the respective propagation material. In terms of this Act, establishment and maintenance of varieties takes place to ensure that plant material complies with the characteristics of a specific variety. It also covers certification of seed for planting in accordance with the International Orange Certificate, which provides minimum quality standards for the specific plant species.

This Act is important in terms of the import of listed varieties to ensure optimum yield in order to support national food security. Certified plant material ensures the availability of healthy plant material that complies with minimum quality standards, thus promoting and supporting high yields, and supporting the national food security program.

4. National Environmental Management Act, 1998 (Act No. 107 of 1998)

This Act, commonly known as the NEMA Act, provides for co-operative environmental governance by establishing principles for decision making on matters affecting the environment, institutions that will promote co-operative

governance, and procedures for coordinating environmental functions exercised by organs of state. It is administered by DEA.

For the import of biological control organisms, DPH makes use of risk evaluation inputs from a panel of technical experts, and co-operates closely with DEA regarding approval for the release of such organisms.

5. National Environmental Management Biodiversity Act, 2004 (Act No. 10 of 2004)

Enacted within the framework of NEMA and administered by DEA, the National Environmental Management Biodiversity Act, 2004 institutes special requirements for the introduction of three categories of living organisms, namely: alien species, listed invasive species, and threatened or protected species.

This Act should synchronise closely with the importation of plants, plant products and related regulated articles. Its provisions include the protection of species and ecosystems that warrant national protection, and the sustainable use of indigenous biological resources. Currently, however, there is an in-depth debate as to whether this it is practically implementable or whether it should be revised. The DAFF and DPH need to ensure participation in the relevant discussions.

6. Fertilizers, Farm Feed, Agricultural Remedies and Stock Remedies Act, 1947 (Act No. 36 of 1947)

This Act provides for the registration of fertilizers, farm feeds, agricultural remedies, stock remedies, sterilizing plants and pest control operators. It also regulates or prohibits the importation, sale, acquisition, disposal or use of fertilizers, farm feeds, agricultural remedies and stock remedies.

Its links to the Agricultural Pests Act, 1983 include:

- (a) Registration of imported biological control agents imported in terms of the Agricultural Pests Act, 1983, for use as biopesticides;

- (b) Provision of information on registered pesticides for the control of outbreaks of regulated pests, and for use in mandatory phytosanitary treatments, particularly for imports intercepted because they do not comply with the relevant import conditions; as well as
- (c) Registration of pesticide operators for the fumigation of wood packaging material used in international trade in accordance with the relevant international phytosanitary standard of the IPPC.

7. Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)

The key aim of this Act is to give effect to the constitutional right of access to information held by the State, and any information held by another person and that is required for the exercise or protection of any rights.

In accordance with the WTO-SPS Agreement and IPPC principle of transparency, as well as the above Act, the DAFF must facilitate access to relevant information while protecting individual role-players' rights to confidentiality.

8. Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)

The Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) aims to give effect to the right to administrative action that is lawful, reasonable and procedurally fair, as well as to the right to written reasons for administrative action as reflected in Section 33 of the Constitution of the Republic of South Africa, 1996.

In accordance with the provisions of the Promotion of Administrative Justice Act, 2000, the DAFF must ensure effective consultation with role-players and stakeholders, and facilitate effective management of information pertaining to its activities in terms of the relevant Acts.

9. International agreements and treaties:

As outlined in the relevant sections of the Plant Health (Phytosanitary) Policy document, the key international agreements relating to plant health are the:

9.1 WTO-SPS Agreement

The WTO-SPS Agreement came into force with the establishment of the WTO on January 1995. In terms of the WTO framework, the SPS Agreement recognizes the right of its Members to adopt science based measures necessary to food safety, human, animal or plant life or health; or to protect the territory of a country from pests and diseases. These measures should not arbitrarily or unjustifiably discriminate between countries where similar conditions prevail or act as a disguised restriction to international trade.

The SPS Agreement has the following main provisions that member countries should adhered to:

9.1.1 Non-discrimination

“Members shall ensure that their sanitary and phytosanitary measures do not unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and as well as the measures of other Members. Sanitary and phytosanitary measures shall not be applied in a way that would lead to unnecessary restrictions on international trade.”

9.1.2 Scientific Justification

“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.”

9.1.3 Harmonization

“Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist”

“Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health.”

9.1.4 Equivalence

“Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member’s appropriate level of sanitary or phytosanitary protection.”

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

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

“Members shall ensure that their sanitary or phytosanitary measures are based on an assessment of the risks to human, animal or plant life or health, recognizing the risk assessment techniques developed by the relevant international organizations.”

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

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

“When there is no sufficient scientific evidence, 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.”

9.1.6 Regionalization

“Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area, whether all of a country, part of a country, or all or parts of several countries, from which the product originated and to which the product is destined.”

“Members shall, in particular, recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence.”

“Exporting Members claiming that areas within their territories are pest or disease free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Member that such areas are indeed pest or disease free areas or areas of low pest or disease prevalence.”

9.1.7 Transparency

“Members shall notify changes in their sanitary or phytosanitary measures, regulations, legislation and shall provide information on their sanitary or phytosanitary measures.”

9.1.8 Control, Inspection and Approval Procedures

“Members shall observe and follow the relevant provisions of the WTO SPS Agreement in the operation of control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs.”

9.1.9 Technical Assistance

“Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust

to, and comply with sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.”

9.1.10 Special and Differential Treatment

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

9.2 IPPC

According to the new revised text of the IPPC, phytosanitary measures should be based on the on the IPPC’s principles. These principles are related to the rights and obligations of contracting parties to the IPPC. They should be considered collectively, in accordance with the full text of the IPPC and not interpreted individually. The following basic principles apply:

9.2.1 Sovereignty

“Contracting parties have sovereign authority, in accordance with applicable international agreements, to prescribe and adopt phytosanitary measures to protect plant health within their territories and to determine their appropriate level of protection for plant health.”

9.2.2 Necessity

“Contracting parties may apply phytosanitary measures only where such measures are necessary to prevent the introduction and/or spread of quarantine pests or to limit the economic impact of regulated non-quarantine pests.”

9.2.3 Managed risk

“Contracting parties should apply phytosanitary measures based on a policy of managed risk, recognizing that risk of the spread and introduction of pests

always exists when importing plants, plant products and other regulated articles.”

9.2.4 Minimal impact

“Contracting parties should apply phytosanitary measures with minimal impact.”

9.2.5 Transparency

“Contracting parties shall make relevant information available to other contracting parties.”

9.2.6 Harmonization

“Contracting parties should cooperate in the development of harmonized standards for phytosanitary measures.”

9.2.7 Non-discrimination

“Contracting parties should, in accordance with the IPPC, apply phytosanitary measures without discrimination between contracting parties if contracting parties can demonstrate that they have the same phytosanitary status and apply identical or equivalent phytosanitary measures.”

9.2.8 Technical justification

“Contracting parties shall technically justify phytosanitary measures on the basis of conclusions reached by using an appropriate pest risk analysis or, where applicable, another comparable examination and evaluation of available scientific information.”

9.2.9 Cooperation

“Contracting parties should cooperate with one another to achieve the objectives of the IPPC.”

The DAFF should therefore ensure that it participates in the activities of these bodies, particularly regarding the setting and harmonisation of phytosanitary measures to the benefit of trade for South Africa and the African region.