



VIII CONSTITUTIONAL GOVERNMENT

Decree-Law No. ____/20__ **Plant Health and Quarantine**

The legal framework for plant health was previously established in the *Decree-Law No 21/2003, of 31 of December 2003 on Quarantine and Sanitary Control on Imported and Exported Goods*. This Decree-Law adopted a biosecurity approach that combined plants and animals and their products within one legislative instrument. As the Democratic Republic of Timor-Leste moves towards greater integration in the international trade system, deals with the increased flow of goods into and from the country, and as the Government places an increased emphasis on food security, crop production, and investment in agriculture, this Decree-Law seeks to provide an improved and effective framework to set out mechanisms for the protection of the country's plants and plant products as well as its agricultural activity and environment in a manner that aligns its practices with that of international trading standards. This Decree-Law provides a distinct legal regime for the trade of plants, plant products and regulated articles, separate to that for animals and their products, and provides for a comprehensive system that addresses phytosanitary and quarantine risks within the territory of Timor-Leste as well.

The primary goals of this Decree-Law are to protect plants and plant products, in areas under cultivation or in the wild, from pests and diseases that may harm these resources, the economy, and negatively impact food security. Its objectives are also to provide a clear, efficient and conducive framework for the operation of trade and business activities, to empower public officials, and to facilitate the activities of the private sector.

The Decree-Law establishes a legal foundation for the import and export of plants, plant products and other regulated articles, establishes a framework for domestic surveillance, sets out procedures for responses to the detection of regulated pests, and sets up a framework for phytosanitary measures in general. The Decree-Law creates a framework for the enforcement of provisions by establishing the roles of the responsible Government authority, their powers, and the means by which the rules are enforced. The framework established in this Decree-Law shall be further elaborated through Government Decrees and other implementing regulations which shall set out procedures and other technical details.

Accordingly, pursuant to paragraph article 115(1)(o) and article 116(d) of the Constitution of the

DRAFT DECREE-LAW

Republic, the Government decrees, as a law, the following:

CHAPTER I - GENERAL PROVISIONS

Article 1. Objective

The objective of the present Decree-Law is to establish a phytosanitary framework in Timor-Leste to prevent the introduction, and to control the spread of plant pests, to protect plant resources, and to facilitate trade in plants and plant products.

Article 2. Scope of application

This Decree-Law shall apply to the entire national territory of Timor-Leste.

Article 3. Definitions

For the purposes of the present Decree-Law:

- a) “phytosanitary action” means the conduct of an official procedure, such as inspection, testing, surveillance or treatment, or official control undertaken to implement any phytosanitary measure;
- b) “affected” means infected or infested with a pest;
- c) “AIFAESA” means the Authority of Inspection and Supervision of the Economic, Sanitary and Food Activities as established under Decree-Law No 26/2016 of 29 June 2016;
- d) “pest risk analysis” means 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;
- e) “detention” means keeping a consignment in official custody or confinement, as a phytosanitary measure;
- f) “area” means an officially defined whole or part of Timor-Leste and includes a place or site of production;
- g) “endangered area” means an area where ecological factors favor the establishment of a pest whose presence in the area will result in economically important loss;
- h) “area under cultivation” includes a field, plantation, nursery, garden, greenhouse or laboratory;
- i) “quarantine area” means an area where a quarantine pest is present and is being officially controlled;
- j) “pest free area” means an area in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained;

DRAFT DECREE-LAW

- k) “regulated article” means 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, and includes a beneficial organism;
- l) “phytosanitary certificate” means an official paper document or its official electronic equivalent, attesting that a consignment meets phytosanitary import requirements;
- m) “containment” means to apply phytosanitary measures in and around an affected area to prevent the spread of a pest;
- n) “container” means a box, bag, wrapper, covering or other receptacle in which any plant, plant products or other regulated articles has been or is being transported;
- o) “control” means the suppression, containment or eradication of a pest population;
- p) “official control” means the 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;
- q) “Chief Plant Protection Officer” or “CPPO” means the Head of the NPPO, as appointed by the Minister;
- r) “packaging” means any material used to pack, contain or keep a plant, plant product or other regulated article;
- s) “entry”
 - a. in relation to a pest, means the movement of a pest into an area where it is not yet present, or present but not widely distributed and being officially controlled;
 - b. in relation to a consignment, means the movement of the consignment through a point of entry into an area;
- t) “eradicate” means to apply phytosanitary measures to eliminate a pest from an area, and “eradication” shall have a corresponding meaning;
- u) “invasive alien species” means an exotic species that by its establishment or spread has become injurious to plants, or that by risk analysis is shown to be potentially injurious to plants;
- v) “establishment” means the perpetuation, for the foreseeable future, of a pest within an area after entry;
- w) “exporter” means the person by, or for whom the plant, plant product or regulated article is taken out of Timor-Leste and includes the person who is or becomes the owner, or the holder of the possession, or has control over, or is the beneficiary interested in such plant, plant product or regulated article at the time, or after the declaration of export and before they are exported;
- x) “germplasm” means a plant intended for use in breeding or conservation programmes;
- y) “regular business hours” means the established working hours as prescribed;
- z) “importer” means any person by or for whom any plant, plant product, or other regulated article is landed in Timor-Leste and includes the consignor, consignee, broker, agent or the person who is or becomes the owner or the holder of the possession or the beneficiary

DRAFT DECREE-LAW

interested in such regulated article from the time of importation until the completion of customs formalities;

- aa) “infestation” means the presence in a commodity of a living pest of the plant or plant product concerned -infestation includes infection;
- bb) “inspection” means official visual examination of a plant, plant product or other regulated article to determine if pests are present or to determine compliance with this Decree-Law and phytosanitary regulations, and shall include documentary inspections of documents accompanying a plant, plant product or other regulated article;
- cc) “premises” means any land, building or other structure or conveyance or any marine area;
- dd) “introduction” means the entry of a pest resulting in its establishment in Timor-Leste;
- ee) “pest free place of production” means a place of production in which a specific pest is absent as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained for a defined period;
- ff) “emergency measure” means a phytosanitary measure established as a matter of urgency in a new or unexpected phytosanitary situation, and an emergency measure may or may not be a provisional measure;
- gg) “phytosanitary measure” means any legislation, regulation or official procedure having the purpose of preventing the introduction or spread of quarantine pests, or limiting the economic impact of regulated non-quarantine pests;
- hh) “Minister” means the Minister responsible for agriculture;
- ii) “official” means established, authorized or performed by the NPPO;
- jj) “Beneficial organism” means any organism (including fungi, bacteria, viruses, virus-like organisms and invertebrate, other animals or plants) which is beneficial to flora or agricultural production;
- kk) “living modified organisms” means any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology;
- ll) “pest” means any species, strain or biotype of any plant, animal or pathogenic agent injurious to a plant or plant product;
- mm) “national pest of concern” means a non-regulated pest with a significant economic impact whose biological and epidemiological characteristics determine that its control in Timor-Leste must be performed at more than a local level, requiring the official intervention of the NPPO for its management within Timor-Leste, for technical coordination or for enforcement;
- nn) “regulated pest” means a quarantine pest or a regulated non-quarantine pest;
- oo) “regulated non-quarantine pest” means any pest which is not a quarantine pest and whose presence in a plant for planting affects the intended use of the plant with an economically unacceptable impact and which is therefore regulated in Timor-Leste and declared as such by Ministerial Diploma;
- pp) “quarantine pest” means 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, and declared as such by Ministerial Diploma;

DRAFT DECREE-LAW

- qq) “plant” means any living plant and the parts thereof, including a seed or germplasm;
- rr) “point of entry” means an airport, seaport or a land-border officially designated for the importation or exportation of consignment or arrival of passengers;
- ss) “pre-clearance” means phytosanitary certification or clearance in the exporting country, performed by or under the supervision of the Timor-Leste NPPO;
- tt) “plant product” means any un-manufactured material of plant origin (including grain) and a manufactured product which, by its nature or that of its processing, may create a risk for the introduction and spread of a pest;
- uu) “quarantine” means official confinement of plants, plant products or other regulated articles for surveillance and research or for further inspection, testing or treatment;
- vv) “consignment” means a quantity of plants, plant products or other regulated articles being moved from or to Timor-Leste and covered, when required, by a single phytosanitary certificate;
- ww) “SERVE” means Service for Registration and Verification of Entrepreneurs as established under Decree-Law No 7/2017 of 22 March 2017;
- xx) “soil” means material wholly or partly derived from the upper layer of the earth’s crust which is capable of sustaining plant life and which contains solid organic substances such as parts of a plant, humus, peat or bark, but excluding any medium which is sterile, composed entirely of unused peat or otherwise incapable of harbouring or transmitting pests;
- yy) “suppression” means the application of phytosanitary measures in an affected area to reduce a pest population;
- zz) “outbreak” means a recently detected pest population, including an incursion, or a sudden significant increase of an established pest population in an area;
- aaa) “conveyance” means any vessel, aircraft, train, vehicle, cart, animal or other thing that can convey a plant, plant product, pest, beneficial organism or other regulated article from one place to another;
- bbb) “treatment” means an officially authorized procedure for the killing or removal of pests or rendering pests infertile or for devitalization.
- ccc) “pest free production site” means a production site, which is within a place of production, in which a specific pest is absent, as demonstrated by scientific evidence, and in which, where appropriate, this condition is being officially maintained for a defined period;
- ddd) “vehicle” means any vessel, aircraft, train, conveyance, cart, container, animal or other thing that can transport plants, plant products or other regulated articles from one place to another.
- eee) “sell” includes to offer, advertise, keep, store, display, transmit, consign, convey or deliver for sale, or to exchange or to dispose of to any person in any manner whether for a consideration or otherwise, and “sold”, “selling” and “sale” shall have corresponding meanings;
- fff) “surveillance” means an official process which collects and records data on pest occurrence or absence by survey, monitoring or other procedures;

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

CHAPTER II - NATIONAL PLANT PROTECTION ORGANIZATION

SECTION I. COMPOSITION AND FUNCTIONS OF THE NATIONAL PLANT PROTECTION ORGANIZATION (NPPO)

Article 4. National Plant Protection Organization

1. The National Plant Protection Organization, hereafter NPPO, comprises the following National Directorates as established in the Decree-Law 19/2019 on the Organic Structure of the Ministry of Agriculture and Fisheries:
 - (a) the National Directorate for Quarantine and Biosecurity;
 - (b) the National Directorate for Agriculture and Horticulture;
 - (c) the National Directorate for Coffee and Industrial Crops; and
 - (d) the National Directorate for Forestry, Watersheds and Mangrove Areas.
2. The National Directorates listed in the preceding paragraph shall be coordinated by and receive technical direction from the Chief Plant Protection Officer, as prescribed in article 9, on matters pertaining to this Act.

Article 5. Functions of the NPPO

1. Under the overall coordination and technical oversight of the Chief Plant Protection Officer, the following functions shall be undertaken jointly by all the National Directorates listed in article 4(1) within the scope of their respective mandates as established in legislation on the Organic Structure of the Ministry of Agriculture and Fisheries:
 - a) prevent and control the establishment and spread of regulated pests in Timor-Leste including invasive alien species, living modified organisms and biological control agents;
 - b) propose, review, prepare, implement and enforce the phytosanitary measures established by the Minister under this Decree-Law;
 - c) enable public consultations during the development of phytosanitary measures;
 - d) inspect and test any plant and plant product or regulated article, where appropriate, inspect any other regulated article, for the purpose of preventing the introduction and spread of pests;
 - e) develop a list of quarantine pests, a list of regulated non-quarantine pests, a list of regulated articles and a list of pests of national concern;
 - f) disinfest or disinfect any plant, plant product and other regulated article.

DRAFT DECREE-LAW

- g) distribute information regarding regulated pests and the means of their prevention and control;
- h) communicate and coordinate with local and regional authorities and community leaders as necessary and provide them with the necessary technical assistance and training to implement this Decree-Law at the local level;
- i) carry out research and investigation in the field of plant protection;
- j) develop Manuals and establish procedures for the approval of any quarantine station, official analyst, official laboratory or any other person or institution from the public or private sector involved in the implementation of phytosanitary functions;
- k) as determined by the Chief Plant Protection Officer, represent Timor-Leste in bilateral, regional and international forums related to phytosanitary matters;
- l) training inspectors and equipping agricultural technicians; and
- m) carry out any other function that the Minister considers necessary for the purposes of this Decree-Law.

2. Under the overall coordination and technical oversight of the Chief Plant Protection Officer, the National Directorate for Quarantine and Biosecurity shall carry out the following functions, within its mandate as established in legislation on the Organic Structure of the Ministry of Agriculture and Fisheries, and in addition to the functions listed in paragraph 1:

- a) prevent the introduction and entry of regulated pests into Timor-Leste;
- b) conduct pest risks analyses;
- c) issue import permits;
- d) conduct pre-clearance inspections where requested;
- e) require phytosanitary action as conditions or prohibitions of import of plants and plant products and other regulated articles;
- f) issue phytosanitary certificates for export or re-export;
- g) ensure the phytosanitary security of consignments after certification and before export;
- h) issue transit authorisations;
- i) establish auditing and trace-back procedures for any plant, plant product and other regulated article for phytosanitary certification;
- j) ensure the disinfection where appropriate, of consignments of regulated articles intended for import into or export from Timor-Leste, as well as their containers, packaging, storage places and transport facilities;
- k) through inspections and phytosanitary measures, ensure that waste from vehicles, aircraft arriving in Timor-Leste, ships or other vessels arriving at seaports of Timor-Leste, or premises where regulated articles are handled or stored does not pose a risk to plant health;
- l) supervise and control quarantine stations and related quarantine activities;
- m) recommend to the Minister the quarantine stations and entry points to be used for the purposes of this Decree-Law, and establishing procedures for the same; and
- n) carry out any other function that the Minister considers necessary for the purposes of this Decree-Law.

DRAFT DECREE-LAW

3. Under the overall coordination and technical oversight of the Chief Plant Protection Officer, the National Directorate for the Agriculture and Horticulture, the National Directorate for Coffee and Industrial Crops and the National Directorate for Forestry, Watersheds and Mangrove Areas, shall carry out the following functions within their respective mandates as established in legislation on the Organic Structure of the Ministry of Agriculture and Fisheries, and in addition to the functions listed in paragraph 1:

- a) carry out surveillance of any growing plant, including any area under cultivation and wild flora, and of any plant and plant product in storage or in transport, for the purpose of reporting the occurrence, outbreak and spread of pests, and of controlling those pests;
- b) make determinations of quarantine areas, pest free areas, endangered areas and buffer zones;
- c) protect endangered areas, and designate, maintain and survey pest free areas, pest-free places of production and production sites and areas of low pest prevalence; and
- d) develop pest diagnostics, investigative and analytical capabilities.

4. All the National Directorates identified in paragraph 1 shall carry out the provisions of Chapter VII of this Decree-Law, within the scope of their respective mandates.

Article 6. Delegation of functions of the NPPO

1. The NPPO may, by written agreement or contract, designate any person who has the prescribed qualifications, and who has no conflict of interest in the matters to be delegated, to perform any of its duties under this Decree-Law.

2. Where required the NPPO shall carry out training to ensure that the persons carrying out delegated functions have the required expertise to effectively execute their functions.

3. The NPPO shall not delegate the following functions:

- a) issuance of a phytosanitary certificate;
- b) official liaison duties with other Ministries or foreign authorities, or any notification responsibilities to other Ministries or foreign authorities;
- c) approval of phytosanitary measures or requirements;
- d) other functions as may be prescribed by regulations.

Article 7. Agreement or contract of delegation

The agreement or contract of delegation between the NPPO and the public or private person to whom functions shall be delegated, shall specify such functions, shall otherwise comply with Timor-Leste legislation on contracts, and shall include at least the following aspects:

- a) the applicable time-period;
- b) the specific tasks covered by the delegation and any particular methodologies to be used where appropriate;
- c) the mechanisms for control and supervision of delegated functions;
- d) the financial remuneration for the performance of delegated functions;
- e) the competencies and skills required by the person or entity to whom the function has been delegated; and

- f) the conditions of withdrawals of delegations.

SECTION II – PERSONNEL

Article 8. Ministerial powers

The Minister shall, in accordance with the legally binding advice of the Chief Plant Protection Officer of the NPPO:

- a) designate official and reference laboratories and quarantine stations;
- b) declare a quarantine area and pest free area;
- c) declare a phytosanitary emergency; and
- d) designate points of entry and exit for the purposes of this Decree-Law.

Article 9. Chief Plant Protection Officer of the NPPO

1. The Minister shall appoint a person with the prescribed qualifications in agronomy, plant pathology, entomology or a plant protection-related field to serve as the Chief Plant Protection Officer, or CPPO, and the technical head of the NPPO for Timor-Leste.
2. The Chief Plant Protection Officer shall serve as the chief technical adviser to the Minister on phytosanitary matters and shall be responsible for leading, supervising and directing the NPPO.
3. The Chief Plant Protection Officer shall give technical direction to the National Directorates identified in article 4(1) that comprise the NPPO such that there is an effective, seamless and coordinated institutional structure for implementation of this Decree-Law.
4. The Chief Plant Protection Officer shall liaise with Directors-General and National Directors within the Ministry to ensure the NPPO officials collaborate effectively with each other, and with other Ministries and bodies, in order to promote harmonious, unitary, integrated and coherent performance of plant protection functions.
5. The Chief Plant Protection Officer may propose any specific working arrangements, agreements or other mechanisms for collaboration between the NPPO and another entity, to the Minister for approval.
6. The Chief Plant Protection Officer shall, with the support of the NPPO,
 - (a) negotiate bilateral agreements on matters relating to phytosanitary matters and trade in plants, plant products and other regulated articles;
 - (b) provide information on phytosanitary measures to other countries in accordance with international obligations;
 - (c) provide information regarding the phytosanitary status of an area, or of Timor-Leste; and
 - (d) notify trading partners of relevant instances of non-compliance with import requirements that may be prescribed.

Article 10. Designation of laboratories and analysts

1. The Minister shall, upon the advice of the Chief Plant Protection Officer, designate:

DRAFT DECREE-LAW

- a) any diagnostic, research or other laboratory to be an official laboratory or a reference laboratory and
 - b) any analysts to be official analysts for the purposes of analysing samples taken in accordance with this Decree-Law.
2. Any laboratory or analyst designated under this article shall meet the requirements prescribed by Ministerial Diploma, including the requirements of impartiality and independence.

SECTION III - COORDINATION, CONSULTATION AND COOPERATION

Article 11. Plant health committee

- 1. There is hereby established a Plant Health Committee comprising such members as shall be prescribed by Government Resolution in such manner as ensures broad and representative inclusion of both private and public sector representatives.
- 2. The Chief Plant Protection Officer shall serve as the chair of the Plant Health Committee.
- 3. The Plant Health Committee may prescribe its own operational and procedural rules.
- 4. The Plant Health Committee shall serve in an advisory capacity in support of the NPPO, and shall:
 - a) exchange information on phytosanitary matters;
 - b) serve as a mechanism for coordination of relevant stakeholders and members of the Plant Health Committee;
 - c) share scientific advice on phytosanitary matters;
 - d) serve as a mechanism of regular and periodic consultation, including inviting broader public and private stakeholders that may not be members of the Plant Health Committee, on matters relating to phytosanitary policy and regulations, international trade and other matters related to the implementation of this Decree-Law; and
 - e) provide inputs on phytosanitary legislation, programs, policies and emergency response plans.

Article 12. Biosecurity Working Group

- 1. There is hereby established a Biosecurity Working Group, which shall adopt best practices in biosecurity approaches for animal health and plant health for efficiency and effectiveness in controls and inspections at the border.
- 2. The NPPO shall appoint phytosanitary officers to serve on the Biosecurity Working Group to provide expertise on phytosanitary matters alongside veterinary officers appointed by the Veterinary Authority and alongside officers appointed by AIFAESA.

Article 13. Duty to assist and cooperate

- 1. The Ministries and other bodies that are responsible for Customs, ports and airports, airlines and shipping, post, police, regional and local authorities, public health, the environment and other public authorities as may be relevant, shall assist NPPO inspectors and officials in the performance of their functions and exercise of their powers under this Decree-Law by providing such facilities and assistance as the NPPO may request from time to time.

2. Customs authorities and other border agencies shall work with the NPPO with regard to border controls and shall inform the NPPO when any consignment containing regulated articles arrives at the border for either import or export.

Article 14. Collaboration and working arrangements with AIFAESA

The Authority of Inspection and Supervision of the Economic, Sanitary and Food Activities, hereafter AIFAESA, and the NPPO shall establish working arrangements relating to controls over foods of plant origin in order to:

- (a) enable collaboration in accordance with article 6 and article 7 of Decree-Law No 26/2016 of 29 June, in particular:
 - (i) at the border;
 - (ii) during food production; and
- (b) ensure that the goals and objectives of both the NPPO and AIFAESA are met.

Article 15. Duty of postal authorities and express consignment operator

- 1. Any officer of the postal service or employee of an express consignment operator who has knowledge of, or suspects, the arrival or importation of any plant, plant product or other regulated article into Timor-Leste, shall, in the absence of a phytosanitary inspector, immediately notify the arrival or importation to the NPPO.
- 2. The officer of the postal service shall detain the plant, plant product or other regulated article for inspection by a phytosanitary inspector and shall not release or dispose of the plant, plant product or other regulated article unless so authorised by a phytosanitary inspector.
- 3. A detention carried out in the previous number shall be deemed to be an action taken by or on delegation from the NPPO.
- 4. The NPPO shall take custody of any item detained under number 2 within three days of being notified of the detention.

SECTION IV - DOCUMENTATION, REQUIREMENTS AND MEASURES ISSUED BY THE NPPO

Article 16. Principles for the approval and implementation of phytosanitary measures

The phytosanitary measures approved by the NPPO shall be:

- a) harmonized with the international standards;
- b) based on risk analysis or risk assessment and science-based actions;
- c) the least-trade restrictive option that achieves Timor-Leste appropriate level of plant health protection;
- d) necessary to achieve Timor-Leste appropriate level of plant health protection; and
- e) proportional to the risk to plant health.

Article 17. Revision and update of phytosanitary measures and regulations

DRAFT DECREE-LAW

1. The NPPO shall periodically review and recommend revisions to the Minister where required, any phytosanitary measures, requirements and regulations:
 - a) where new facts have become available,
 - b) where there are changes to international standards and requirements;
 - c) upon the basis of a pest risk analysis; or
 - d) where conditions change necessitating the need for a revision.
2. The NPPO shall publicize and disseminate proposed changes to this Decree-Law and any legislation issued under it, to the general public, through the Plant Health Committee, and by posting on Ministry of Agriculture websites and other means.
3. The NPPO shall provide at least sixty days for stakeholders to comment on proposed changes before approval of the proposed measure or legislation, except in emergency cases or for provisional measures.
4. The Minister shall cause any changes or modifications to phytosanitary measures and regulations to be published in the Jornal Republica and to be publicized widely by the NPPO.

Article 18. Dissemination and publication of phytosanitary regulations

1. At the request of an interested person, the NPPO shall provide free of charge, any information relating to this Decree-Law and any legislation issued under it, and shall establish contact points to answer enquiries pertaining to plant health legislation.
2. The NPPO shall widely publicise phytosanitary regulations including forms and notices, caused to be published by the Minister and shall enable broad dissemination among stakeholders and among the general public, and shall share these regulations with trading partners as prescribed.
3. The NPPO shall ensure any phytosanitary regulations, including forms and notices, are made promptly and freely available via websites or other electronic or other media.

Article 19. Review and technical audit

1. The Chief Plant Protection Officer shall oversee a periodic review and technical audit of the NPPO services, and the effectiveness of measures under this Decree-Law.
2. The NPPO shall monitor and evaluate the implementation of this Decree-Law and shall provide an annual report of the findings to the Minister.

Article 20. Manuals

The NPPO shall develop detailed guidance in Manuals and Standard Operating Procedures documents to prescribe the actions, measures and procedures to be taken by its officials in implementing this Decree-Law.

Article 21. Register and records

1. The NPPO shall establish a register of operators and shall keep records relating to imports and exports as shall be prescribed.
2. For the purposes of this article, the NPPO may use and have access to the record systems

DRAFT DECREE-LAW

established by other Government authorities and shall enter into arrangements for information sharing and collaboration with such Government authority.

Article 22. Confidentiality

Without prejudice to restrictions on disclosure under other laws of Timor-Leste, the NPPO may disclose confidential information to:

- a) a court, where authorized or obligated to do so by a judge in connection with a legal proceeding;
- b) the appropriate authority of the government of Timor-Leste for purposes of:
 - (i) the prevention, detection, investigation, prosecution, and punishment of offences;
 - (ii) the protection of the health and safety of members of the public;
 - (iii) the protection of plant health; and
 - (iv) border security;
- c) the appropriate authority of a foreign country pursuant to an international treaty or agreement; or
- d) a border authority for purposes of carrying out the functions of that authority related to the processing of the import, export or transit of goods, subject to such procedures and conditions as NPPO shall agree with such border authority to ensure the security and protection of the information.

CHAPTER III - IMPORTS

SECTION I. IMPORT REQUIREMENTS, RESTRICTIONS AND PROHIBITIONS

Article 23. Agreements for equivalence and other plant health matters

Without prejudice to the competence of the Ministry of Foreign Affairs, the NPPO may negotiate bilateral and multilateral agreements for the evaluation, and where feasible, the acceptance of alternative phytosanitary measures proposed by an exporting country's NPPO as being equivalent to the phytosanitary measures required by the Timor-Leste NPPO under this Decree-Law.

Article 24. Import requirements

1. A person shall import a plant, plant product or other regulated article into Timor-Leste only where he or she is in possession of:
 - a) an import permit granted under this Decree-Law, where required;
 - b) a phytosanitary certificate issued by the country of export, where required;
 - c) any other documentation that may be prescribed by this Decree-Law or its regulations or any other commercial or customs legislation; and
 - d) where all prescribed requirements are satisfied.
2. A plant, plant product or other regulated article may be imported into Timor-Leste only at a designated point of entry where covered by a phytosanitary certificate or where so indicated in the import permit.

DRAFT DECREE-LAW

3. The Minister shall approve the list of designated points of entry for the purposes of imports of regulated articles under this Decree-Law.
4. The NPPO may, where the circumstances necessitate, require that imported material be kept or cultivated at a plant quarantine station, or at any other location identified by the NPPO, and kept under the NPPO's supervision for such time as the NPPO considers necessary.
5. The Customs or other border authority shall notify the NPPO where it receives information that a shipment containing a plant, plant product or other regulated article has arrived or is due to arrive at a point of entry.
6. The NPPO and Customs shall ensure an effective collaboration process for the purposes of this Decree-Law.

Article 25. Import restrictions and prohibitions

1. Any person who does not meet the requirements of this Decree-Law shall not import any plant, plant product or other regulated article.
2. Any import of a plant, plant product or other regulated article that does not comply with the phytosanitary requirements established by the NPPO shall be prohibited from entry into Timor-Leste.
3. The Minister may, upon the advice of the NPPO and on the basis of risk analysis or risk assessment, prohibit or restrict the entry of any plant, plant products or other regulated article at any time where temporary measures are necessary, or declare a phytosanitary emergency or take any other necessary action to prevent the introduction or spread of a quarantine pest or a regulated non-quarantine pest.
4. The Minister shall publish in a Ministerial Diploma, upon the advice of the NPPO, a specific regime for the import of certain prescribed goods and a list of prohibited regulated articles.

Article 26. Special imports

Notwithstanding the provisions of the preceding article, in the event of a natural disaster and for humanitarian or research, educational, experimental or other purposes, the NPPO may authorize the importation of any plant, plant product or other regulated article in such quantities, and subject to any conditions and safeguards, as may be required.

Article 27. Imports of regulated articles containing non-regulated pests

Phytosanitary import requirements and phytosanitary measures for imports issued by the NPPO shall not apply to non-regulated pests.

Article 28. Propagating material

Any regulated article imported for propagation purposes shall be subject to post-entry quarantine.

Article 29. Import permit

1. Any person intending to import a plant, plant product or other regulated article shall require an import permit issued by the NPPO where so required by the NPPO in the following cases:

DRAFT DECREE-LAW

- a) Where the importation is from a country of origin where there are confirmed or suspected quarantine pests;
- b) Where the importation is subject to post-entry quarantine requirements;
- c) Where the importation is for a designated end use or for research purposes;
- d) Where the importation is required in response to a humanitarian crisis or natural disaster; or
- e) Where there is a need to trace the importation of plant, plant product or other regulated articles after entry over a period of time.

2. Where an import permit is required under this article, an importer shall apply to the NPPO in the prescribed manner and together with the prescribed service cost.

3. In evaluating an application for an import permit, the NPPO shall apply existing international standards and conduct a pest risk analysis or risk assessment.

4. The NPPO shall approve the application where it demonstrates that the Timor-Leste requirements relating to plant health have been met or deny the application where it fails to meet the requirements, in either case, informing the applicant in writing of the decision.

5. The NPPO may include whatever conditions in the import permit as may be required.

6. The NPPO may review, modify or revoke an import permit for a plant, plant product or other regulated article where:

- a) there is a change in pest status, or an outbreak in the exporting country of a pest regulated by the NPPO, or new pest status information is received;
- b) a new or unknown pest is detected in a consignment at the designated port of entry;
- c) the quantity or the type of plants, plant products or other regulated articles has changed;
- d) there is information that importing the consignment presents a phytosanitary risk above the appropriate level of protection for Timor-Leste;
- e) where with respect to a plant, plant product or other regulated article covered by a phytosanitary certificate, there has been an interception of a regulated pest on import or the non-compliance is otherwise significant; or
- f) there is repeated non-compliance by the importer.

Article 30. Border inspection facility

1. The owner or operator of a border inspection facility at a designated point of entry shall, where required in writing by the Minister, provide and maintain adequate areas, offices, and such facilities as may be prescribed by Ministerial Diploma, including buildings, furnishings and fixtures, to be used by the NPPO for inspection or for any other purpose related to the administration of this Decree-Law.

2. Where the owner or operator of a border inspection facility at a designated point of entry fails to comply with a request made under this article, the Minister may cause the construction or repairs to be carried out and the owner or operator shall be liable for all reasonable costs incurred by the Minister.

SECTION II. INSPECTION OF IMPORTS

DRAFT DECREE-LAW

Article 31. Arrival and inspection

1. An importer shall provide the prescribed arrival notification form to the NPPO of consignments of plants, plant products or other regulated articles.
2. Any plant, plant product or other regulated article imported into Timor-Leste, may be subject to any documentary or physical inspection by a phytosanitary inspector, and where required samples may be taken from a consignment for the purposes of testing in accordance with prescribed sampling procedures and methodologies.
3. All imports of regulated articles are under the phytosanitary detention of the NPPO until officially released by the NPPO.

Article 32. Place and time

1. An import inspection shall be carried out by a phytosanitary inspector at the designated point of entry, at points of transshipment or at a quarantine station or other NPPO approved facility.
2. Notwithstanding the previous number, an import inspection shall be carried out by a phytosanitary inspector at its final destination on application by an importer and the payment of the prescribed service cost, and on the condition that the container has been sealed and marked as prescribed.
3. An import inspection shall be carried out during regular business hours, except where the plant, plant product or other regulated article is perishable or where its entry has otherwise been delayed, in which case, on application by the importer and on payment of the prescribed service cost, the NPPO may agree to an inspection being carried out at any other time.
4. The NPPO may establish bilateral or other agreements with trading partners to carry out pre-shipment inspections in the country of origin.

SECTION III. PHYTOSANITARY ACTIONS ON IMPORTS

Article 33. Non-compliance actions

1. Following an inspection, where a phytosanitary inspector determines that the imported plant, plant product or other regulated article is not accompanied by the prescribed documentation, or presents any risk for the introduction or spread of pests, the phytosanitary inspector shall detain the item and carry out or order any of the following actions:
 - a) require the submission by the importer of the correct documentation within the prescribed time;
 - b) testing;
 - c) phytosanitary treatment in order to remove the risk;
 - d) transfer the regulated article to a quarantine station or other approved facility;
 - e) sorting or re-configuring;
 - f) re-shipment to the country of export; or
 - g) destruction.
2. The methods and procedures for actions to be taken shall be prescribed by the NPPO in accordance with the law.

3. Where, after its entry into Timor-Leste or after treatment, any imported plant, plant product or other regulated article remains unclaimed for a period of time as may be prescribed, the NPPO may take action to destroy the imported plant, plant product or other regulated article.

Article 34. Written notice for non-compliance actions

1. In accordance with the previous article, any non-compliance action taken by a phytosanitary inspector shall be preceded by the issuance of a written notice provided to the importer providing the justifications for the selected action.
2. Notwithstanding the previous number, the phytosanitary inspector may forego advance notice and carry out any of the non-compliance actions where in his or her opinion destruction of the imported plant, plant product or other regulated article is urgently required or the giving of notice is impracticable.

Article 35. Notification of non-compliance

The NPPO shall notify the exporting country of instances of interception, emergency actions and non-compliance where required.

Article 36. Costs for actions and liability

1. Where non-compliance action is taken, the method used to calculate costs charged shall be in accordance with the prescribed procedure and shall be made on the basis of cost recovery only.
2. The costs and responsibility for any action taken under this Part shall be borne by the importer.
3. The State shall not be liable for the confiscation, destruction or disposal of any plant, plant product or other regulated article carried out in accordance with this Decree-Law.

Article 37. Release of imports

Where the phytosanitary inspector determines that the imported plant, plant product or other regulated article does not present any risk for the introduction and spread of pests, and otherwise complies with the requirements of this Decree-Law, he or she may release the consignment by official communication to the importer.

**SECTION IV. PLANT HEALTH-RELATED CONTROLS FOR OTHER RISKS
COMING FROM OUTSIDE OF TIMOR-LESTE**

Article 38. Vehicles

Any road, water or aircraft vehicle may be subject to such phytosanitary measures as may be prescribed by the NPPO in accordance with the law.

Article 39. Duty to declare

1. Any person arriving in Timor-Leste and bringing in any plant, plant product or other regulated article shall make a declaration upon arrival in Timor-Leste, to a Customs or NPPO

DRAFT DECREE-LAW

official and where such declaration is made to a Customs official, he or she shall convey the information to the NPPO in the prescribed manner.

2. Any inbound commercial flight, ship or other forms of travel into Timor-Leste shall, prior to the arrival at a point of entry, inform the passengers and crew of their duty to declare any plant, plant product, or other regulated article upon arrival.

Article 40. Designated points of entry

1. The Minister shall, upon the advice of the Chief Plant Protection Officer, designate through Ministerial Diploma, the points of entry for plants, plant products and other regulated articles that require a phytosanitary certificate or for which inspections or treatment are required, from the list of existing entry points established by the Customs authority.

2. Designated points of entry shall be equipped with prescribed facilities and equipment.

3. The NPPO shall display phytosanitary import requirements at designated points of entry.

Article 41. Emergency landing

1. Where for reasons beyond the control of its captain, a vehicle calls or lands somewhere other than at a designated point of entry, or is forced to land or port in Timor-Leste though not having intended to do so owing to an emergency, the captain of the vehicle shall immediately notify the nearest NPPO or other port authority.

2. No plants, plant products or other regulated articles shall be permitted to leave the vicinity of the docking or landing place until the measures prescribed by the NPPO have been carried out.

3. Where the NPPO considers that the risk has been lowered to an acceptable level, the NPPO may authorise the vehicle to proceed to the point of entry at which it was originally scheduled to call or land, or an alternative point of entry.

4. The captain of the vehicle shall take all necessary measures to maintain the health and safety of the passengers, crew, attendants and animals on board.

CHAPTER IV - QUARANTINE

Article 42. Plant quarantine stations and other facilities

1. The NPPO may designate certain premises as plant quarantine stations where a plant, plant product or other regulated article may be kept for phytosanitary observation, research, inspection, testing, treatment, detention or destruction.

2. Quarantine stations shall be established for both international trade-related quarantine as well as domestic quarantine.

3. The NPPO may designate certain places for the purpose of inspection and may approve facilities owned and operated by public or private third parties to be used for inspections under the supervision of NPPO.

CHAPTER V - EXPORTS, RE-EXPORTS AND CONSIGNMENTS IN TRANSIT

SECTION I. EXPORT AND RE-EXPORT

Article 43. Application for export

1. Where an importing country requires the issuance of a phytosanitary certificate, treatment or testing, an exporter shall apply to the NPPO for export certification of his or her regulated article for export.
2. The exporter shall apply to the NPPO in the prescribed manner, including all prescribed documentation and shall pay the prescribed service cost.

Article 44. Application for re-export

1. An exporter shall apply to the NPPO for re-export certification of his or her regulated article, when the regulated article is imported into Timor-Leste and then re-exported to a third country of destination, including where the consignment has been stored, split up, combined with other consignments or re-packaged, provided that the regulated article has not been exposed to infestation or contamination by pests.
2. The exporter shall apply to the NPPO in the prescribed manner, including all prescribed documentation and shall pay the prescribed service cost.

Article 45. Inspection of regulated article for export or re-export

The exporter shall make the consignment available for inspection and the NPPO shall upon receipt of an application for export, inspect the consignment without undue delay.

Article 46. Issuance of a phytosanitary certificate and phytosanitary certificate for re-export

1. All exports or re-exports shall be certified in accordance with the requirements of the importing country.
2. The NPPO shall have sole responsibility for the issuance of phytosanitary certificates and phytosanitary certificates for re-export.
3. Where the consignment meets the documentary and other phytosanitary import requirements of the recipient importing country and where the exporter satisfies any other requirements of applicable laws in Timor-Leste, a phytosanitary inspector shall issue a phytosanitary certificate or a phytosanitary certificate for re-export as the case requires, in the prescribed form.
4. A phytosanitary inspector shall deny the issuance of a phytosanitary certificate or phytosanitary certificate for re-export where the consignment is infested or otherwise does not meet the documentary or other phytosanitary import requirements of the recipient importing country, or where the exporter fails to satisfy any other requirements of applicable laws in Timor-Leste.
5. For re-export consignments, all original documentation and phytosanitary certificates from the country of origin shall accompany consignments that are covered by the NPPO's re-export phytosanitary certificate.
6. Where a consignment intended for re-export has, in Timor-Leste, been exposed to infestation or contamination by a pest, or lost its phytosanitary security or integrity, or been

DRAFT DECREE-LAW

processed to change its nature, the NPPO shall issue a phytosanitary certificate which indicates the country of origin and includes the original documentation or certified true copy of the original.

Article 47. Phytosanitary security of consignment

Where a phytosanitary certificate or phytosanitary certificate for re-export has been issued, the exporter shall export the consignment in compliance with instructions of the NPPO in order to maintain the phytosanitary security and physical integrity of the consignment.

Article 48. Designated points of exit

1. The Minister shall, upon the advice of the Chief Plant Protection Officer, designate through Ministerial Diploma, the points of exit for a plant, plant product, or regulated article from the list of existing points of exit established by the Customs authority.
2. Designated points of exit shall be equipped with prescribed facilities and equipment.

SECTION II. TRANSIT

Article 49. Application for consignment in transit

Any person wishing to transit a consignment of plants, plant products or other regulated articles through Timor-Leste shall apply to the NPPO in the prescribed manner together with the prescribed service cost.

Article 50. Issuance of transit authorisation

The NPPO shall approve a transit application where it meets prescribed requirements or shall deny the application where it fails to meet prescribed requirements.

Article 51. Phytosanitary measures for consignments in transit

1. Phytosanitary measures shall not apply to a consignment in transit through Timor-Leste on the conditions that:
 - a) the consignment has been packed so as not to permit any risk of the spread of regulated pests that might be present in the consignment;
 - b) the consignment as well as the accompanying documents comply with the phytosanitary requirements of the country of destination; and
 - (c) the consignment is accompanied by the phytosanitary certificate of the country of origin.
2. At the point of entry, the phytosanitary inspector may, inspect a plant, plant product or other regulated article in transit through Timor-Leste and may, upon the detection or suspicion of a regulated pest, notify and request the approval of the Chief Plant Protection Officer, to refuse entry, to detain or confiscate the regulated article and apply treatment, or to destroy the consignment.
3. Vehicles carrying plants, plant products or other regulated articles stopping at a port or airport or passing through a port situated in the territory of Timor-Leste, on their way to another country, shall comply with the conditions prescribed by the NPPO in accordance with the law.

4. Consignments in transit through the territory of Timor-Leste shall be taken from the point of entry by a route and within a time period specified by the NPPO to the point of exit from the country, at which point a phytosanitary inspector shall confirm that the consignment has left the country.

CHAPTER VI - CONTROL OF PESTS

SECTION I. CONTROL AND SURVEILLANCE

Article 52. Phytosanitary control measures

1. Any plant, plant product or other regulated article, or any area or premises that is infested or suspected to be infested by a regulated pest or pest of national concern, as well as any pest free area, area of low pest prevalence, pest-free place of production or production site, or buffer zone may be subject to the phytosanitary control measures and actions listed in this article.
2. A phytosanitary inspector may, where required, carry out:
 - a) treatment, including the treatment of vehicles whether or not they have been found to be infested, in order to limit the spread of the quarantine pest, keep the area free from a specific pest or keep the level of a pest low, as the case may be;
 - b) disposal of plants, plant products or other regulated articles, including the treatment of vehicles whether or not they have been found to be infested, in order to limit the spread of the quarantine pest, keep the area free from a specific pest or keep the level of a pest low, as the case may be;
 - c) prohibition or restriction of the movement of any plant, plant product or other regulated article within, from or to the area, place, site or zone;
 - d) prohibition of planting or replanting specific plants in a specified location; or
 - e) any other phytosanitary action which the NPPO deems necessary.
3. The NPPO shall ensure collaboration with other Government units in the Ministry responsible for agriculture, regarding the contribution of phytosanitary measures, surveillance and diagnostics systems to integrated pest management, in an ecosystem approach to crop production and protection.

Article 53. List of regulated pests

1. The NPPO shall develop a list of regulated pests in Timor-Leste, and shall maintain and periodically review the list, and shall communicate and publish the list as prescribed to trading partners, or international organizations.
2. The NPPO shall categorise pests that are regulated pests, including quarantine and non-quarantine pests, based on risk analysis for inclusion on the list.
3. The NPPO shall identify pests of national concern, based on surveillance and the potential local economic impact of the pest.

Article 54. Duty to notify NPPO

DRAFT DECREE-LAW

1. The occupier or owner of any premises, who has knowledge of or suspects the presence of a regulated pest or a national pest of concern thereon, shall immediately notify the NPPO or the person in charge of the nearest police station or the person in charge of the nearest agricultural authority.
2. Where the person to whom notice under the previous number is not an official of the NPPO, such person shall immediately convey the information to the NPPO.
3. Public and private entities, researchers, universities, and other persons that identify the occurrence of a new pest or a regulated pest, shall report this occurrence as soon as possible to the NPPO.

Article 55. Surveillance

The NPPO shall gather data on pest biology, distribution, host range and potential for impact, and other information as may be prescribed through general and specific surveillance for listed pests in Timor-Leste.

SECTION II. QUARANTINE DECLARATIONS

Article 56. Suspected presence of quarantine pest

1. Where a phytosanitary inspector believes that a quarantine pest may be present in any area or premises, he or she may enter such area or premises and inspect, take samples of, or carry out any prescribed provisional phytosanitary measure on any plant, plant product or regulated article suspected of harbouring a quarantine pest.
2. The phytosanitary inspector shall immediately inform the Chief Plant Protection Officer and shall ensure immediate submission of the sample to a laboratory for analysis.
3. The Chief Plant Protection Officer may place any restrictions or order the implementation of any phytosanitary measure, including emergency actions for a prescribed period as provisional measures, to prevent the possible spread of the pest pending confirmation.

Article 57. Declaration of quarantine

1. Where the NPPO confirms the presence of a quarantine pest in any area or premises, the Minister shall, upon the advice of the Chief Plant Protection Officer, make a declaration of quarantine.
2. The Minister shall declare a quarantine area by Ministerial Diploma, upon advice of the Chief Plant Protection Officer.
3. A declaration of quarantine issued by the Minister under this article shall set out the geographical scope, the period of quarantine, the phytosanitary measures to be taken in order to prevent the spread of the pest and the conditions for subsequent renewals of the declaration and shall set out such other particulars as may be prescribed.
4. The declaration of quarantine and the conditions that necessitate its maintenance shall be subject to regular review by the NPPO.

5. Written notice shall be provided by the NPPO to the owners of affected premises in the area under the declaration of quarantine, and in addition, shall communicate orally to ensure all persons in the area are aware of the applicable restrictions and requirements.

Article 58. Procedures in response to quarantine pest

1. The NPPO shall establish the procedures to be followed by phytosanitary inspectors where a quarantine pest is suspected or confirmed and also procedures for actions to be taken in buffer zones.

2. Phytosanitary inspectors shall provide written notice of the quarantine area to the owner or occupier or premises where a quarantine pest has been detected or is suspected of being present, or premises in a buffer zone, and such written notice may specify:

- a) the limits of the quarantine area;
- b) the actions that the owner or occupier must take in order to contain or eradicate the pest;
- c) any restrictions, prohibitions or other measures to be applied in the quarantine area;
- d) the duration of the quarantine period or the duration of the measures that must be taken;

3. The Chief Plant Protection Officer may, as the case requires:

- a) inform the NPPO of trading partners, neighbouring countries, and any relevant international organizations where required;
- b) review the issuance of any recent phytosanitary certificates from the quarantine area in light of the requirements of countries to which Timor-Leste exports; or
- c) suspend export certification where required.

4. Where the owner or occupier of the premises does not comply with the written notice within the time specified in the notice, the Chief Plant Protection Officer may authorise a phytosanitary inspector to enter the premises and carry out the required action to limit the spread of the pest or to eradicate the pest.

5. The owner of the plant, plant product or other regulated article shall be liable to pay the costs for any action taken on his or her premises, except where the Minister, upon the advice of the Chief Plant Protection Officer, determines that the Government of Timor-Leste shall take responsibility for the associated costs and may pay compensation on such grounds as may be prescribed in article 89 of this Decree-Law.

Article 59. Revocation of quarantine

1. Where the NPPO determines that the quarantine pest is no longer present or that it is no longer appropriate for the quarantine status to be maintained in respect of part or all of the area or premises, the Chief Plant Protection Officer shall advise the Minister to revoke the declaration of quarantine.

2. The NPPO shall provide written notice to all owners or occupiers of the area or premises of the revocation of the declaration of quarantine.

Article 60. Movement controls

1. The NPPO may prescribe restrictions or prohibitions on the movement of regulated articles during emergencies, or in quarantine areas, buffer zones or such other area, place or site as may be prescribed.
2. Any restrictions on movement shall be justified on the basis of a risk assessment and shall be subject to a specific time period.
3. Where a prohibition is in place under number 1, no person shall,
 - a) without a written permit issued by a phytosanitary inspector, remove from, or take into, a quarantine area, buffer zone or such other area, place or site, a regulated article covered under a movement restriction or prohibition made under this Decree-Law; or
 - b) leave a quarantine area without having complied with such reasonable precautions for preventing the spread of the quarantine pest as may be required by a phytosanitary inspector.
4. Any communication with the owner or person in charge of a regulated article shall be in writing and shall be delivered in person, and in addition, may be required to be communicated orally to facilitate understanding of requirements by such person.

SECTION III. PHYTOSANITARY EMERGENCY

Article 61. Phytosanitary emergency response plan

1. The NPPO shall develop a phytosanitary emergency response plan, which shall identify the responsibilities of different National Directorates within the NPPO and in other Ministries, create contingency arrangements, identify required pest-specific contingency measures, and identify phytosanitary measures to be taken in response to the emergency.
2. The emergency response plan shall be elaborated by the NPPO, subject to broad consultation including the participation of local and regional authorities and community leaders, and shall be updated annually.

Article 62. Phytosanitary emergency declaration

1. Where there is a grave threat to plant resources or environment of Timor-Leste, or to food security or other prescribed condition, the Chief Plant Protection Officer may recommend to the Minister to declare a phytosanitary emergency by Ministerial Diploma.
2. The NPPO may activate the phytosanitary emergency response plan, and coordinate assistance and response from such other Ministries, departments and persons as may be identified in the phytosanitary emergency response plan.
3. The Minister, upon the advice of the Chief Plant Protection Officer, may request and shall have the right to receive cooperation from the Ministries responsible for health, the environment, trade, disaster preparedness and response and civil protection, law enforcement and other public authorities to respond to the phytosanitary emergency in accordance with the technical directions issued by the NPPO.

DRAFT DECREE-LAW

4. Any declaration made under this article shall be time-bound, be based on risk assessment and be proportionate and limited to the extent necessary to minimize the threat.
5. A declaration made under this article shall be subject to periodic review and evaluation by the NPPO.
6. The NPPO shall ensure information regarding the phytosanitary emergency declaration and the phytosanitary measures and actions that shall be taken as a result, are widely published and disseminated to the general public, to stakeholders and to other Ministries.

Article 63. Revocation of phytosanitary emergency declaration

Where the NPPO determines that it is no longer appropriate for the phytosanitary emergency status to be maintained, the Chief Plant Protection Officer shall advise the Minister to revoke the declaration of quarantine, who shall revoke the declaration of quarantine by Ministerial Diploma.

Article 64. Operational budget for phytosanitary emergencies

The operational budget to be used exclusively for phytosanitary emergencies, and upon the declaration of a phytosanitary emergency under this Decree-Law, shall be made available from regular funds allocated to the Ministry responsible for agriculture.

SECTION IV. PEST-FREE AREAS, AREAS OF LOW PEST PREVALENCE, PEST-FREE PRODUCTION SITE, AND PEST-FREE PLACE OF PRODUCTION

Article 65. Declaration of pest free area

1. Where the NPPO is satisfied that a regulated pest is not present in an area, phytosanitary measures have been implemented to keep the area free of the pest and a surveillance system has been instituted to verify that the area, place or site remains free of the pest, the Chief Plant Protection Officer shall recommend to the Minister the declaration of a pest free area.
2. The Minister shall make a declaration of a pest-free area, upon the advice of the Chief Plant Protection Officer, and shall publish the declaration by Ministerial Diploma.
3. Where the area loses its pest-free status, the Chief Plant Protection Officer shall advise the Minister to revoke the pest free area declaration.

Article 66. Declaration of area of low pest prevalence

1. Where the NPPO is satisfied that a regulated pest is present at low levels in the area, phytosanitary measures have been implemented to keep the area free of the pest and a surveillance system has been instituted to verify that the area has a low pest prevalence, the Chief Plant Protection Officer shall recommend to the Minister the declaration of an area of low pest prevalence.
2. The Minister shall make a declaration of an area of low pest prevalence, upon the advice of the Chief Plant Protection Officer, and shall publish the declaration by Ministerial Diploma.
3. Where the area loses its low pest prevalence status, the Chief Plant Protection Officer shall advise the Minister to revoke the declaration of an area of low pest prevalence.

Article 67. Pest free places of production and pest free production sites

Where the NPPO is satisfied that a regulated pest is not present in a place of production or production site, phytosanitary measures have been implemented to keep the place of production or production site free of the pest and a surveillance system has been instituted to verify that the place of production or production site remains free of the pest, the Chief Plant Protection Officer shall declare a pest free place of production or a pest free production site as the case may be.

CHAPTER VII - ENFORCEMENT

SECTION I. PHYTOSANITARY INSPECTOR POWERS

Article 68. Conduct, rights and obligations of a phytosanitary inspector

1. A phytosanitary inspector shall carry out his or her duties in accordance with rules governing public civil servants in Timor-Leste.
2. In carrying out any duty under this Decree-Law, a phytosanitary inspector shall identify himself or herself as a phytosanitary inspector by showing his or her identification card or other proof of his or her appointment or designation as a phytosanitary inspector.
3. A phytosanitary inspector may conduct inquiries and request information or documentation upon suspicion that the provisions of this Decree-Law have been or are being violated.
4. In carrying out any duty under this Decree-Law, a phytosanitary inspector may request and shall have the right to receive, the assistance of such police and other law enforcement personnel as the Chief Plant Protection Officer considers necessary for the effective execution of the phytosanitary inspector's functions.
5. A phytosanitary inspector may be accompanied by a dog or may bring and use any thing to assist in the exercise of the power to inspect.
6. No person shall block or impede the work of a phytosanitary inspector, and any person who is subject to an inspection, or who owns or is in charge of an item that is subject to inspection, shall extend full assistance and cooperation to the phytosanitary inspector.
7. A phytosanitary inspector may require an owner or person in charge of the regulated article or premises to give assistance or carry out instructions as may be reasonably necessary to facilitate the exercise of the phytosanitary inspector's functions or to implement the provisions of this Decree-Law.
8. A phytosanitary inspector may, when authorized by the Chief Plant Protection Officer, make announcements, issue a warning and provide information on phytosanitary matters.
9. A phytosanitary inspector shall carry out inspections promptly, without delay and in such manner as to facilitate the conduct of business and trade.

Article 69. Rights of persons during an inspection

1. Any person who is subject to an inspection or who is the owner or person in charge of the premises to be inspected shall have the right to accompany the phytosanitary inspector at all times

during inspections of his or her premises.

2. Any owner or person in charge of an plant, plant product or other regulated article shall have the right to receive information regarding the reasons for the inspection.

Article 70. Written notice for phytosanitary measures

1. Any phytosanitary inspector who causes any plant, plant product or other regulated article to be seized, detained, treated, disposed of or destroyed in accordance with this Decree-Law shall immediately provide the owner or person in charge with a signed written notice in the prescribed form, which includes a description of the action taken, or to be taken, or a description of the activity to be prohibited and the reasons there for, and this form shall be countersigned immediately by the owner or person in charge.

2. In addition to the written notice issued under the previous number, where required, the inspector shall communicate orally to facilitate understanding of requirements by the owner or person in charge.

3. If the owner or person in charge is not present on the premises, the phytosanitary inspector shall affix in a conspicuous place, notification for the owner or person in charge, and shall, as soon as practicable, provide the owner with the written notice.

4. A phytosanitary inspector may forego advising the owner of the reason for the confiscation if in the circumstances it is impractical to give reasons for the confiscation, or where the situation requires emergency action, in which case written notice shall be provided to the owner or person in charge, within forty-eight hours after the action has been carried out.

5. A phytosanitary inspector may notify in writing, the owner of any area or premises, or of a regulated article, that he or she is required to implement one or more of the phytosanitary measures under this Decree-Law within a defined period of time.

6. If an owner fails to comply with any term of the written notice the phytosanitary inspector may enter upon the land or premises in question in order to carry out the requirements of the notice and, where circumstances so require, carry out any of the phytosanitary measures in order to eradicate, contain or restrict the spread of the pest.

7. A phytosanitary inspector shall lodge a copy of any written notice issued with the NPPO within seventy-two hours of issuing the written notice.

Article 71. Documentary inspections

During an inspection, a phytosanitary inspector may take photographs, or demand any information regarding any regulated article from the owner or person in charge of such area or premises, including official documents, and may examine, make copies of or take extracts from any book, statement, or other physical or electronic document found at such area or premises, and demand from the owner or any person in charge an explanation of any information contained therein.

SECTION II – ENFORCEMENT ACTIONS

Article 72. Sampling, phytosanitary measures and phytosanitary actions

DRAFT DECREE-LAW

1. A phytosanitary inspector may carry out any prescribed phytosanitary measure or phytosanitary action in order to prevent the introduction or spread of pests.
2. A phytosanitary inspector may enter any area or premises in order to inspect plants, plant products and regulated articles or any area under cultivation, in storage or in transport, or may inspect consignments for import, transit or export, and may:
 - a) inspect, examine and take samples of any plant, plant product or other regulated article or its package or container, and may send such samples to be tested at an official laboratory; or
 - b) carry out such phytosanitary measures and phytosanitary actions as shall be prescribed in inspectional manuals of the NPPO.
3. A phytosanitary inspector shall not enter a dwelling place without the consent of the owner under this Decree-Law unless he or she has a warrant signed by a judge.
4. A phytosanitary inspector may seize, destroy, carry out treatment on, dispose of, reship or confine in a quarantine station any regulated article.
5. An owner of a plant, plant product or other regulated article may request a second test of a sample taken under this Decree-Law and in such case, the phytosanitary inspector shall ensure the sampled or seized regulated articles remain under NPPO detention or are subject to such storage or quarantine as may be stipulated by the NPPO as necessary, until the second test results are available.
6. The cost of the test and storage or quarantine under this article shall be the responsibility of the owner of the plant, plant product or other regulated article sampled or seized.

Article 73. Seizure of objects and subsequent actions

1. A phytosanitary inspector may seize any regulated article, document, electronic device or other object that appears to provide proof of a contravention of any provision of this Decree-Law and shall immediately issue a written notice to the owner, which shall be countersigned by the owner.
2. Where a phytosanitary inspector takes possession of a document under the previous number, he or she may make a copy certified under the mark or stamp of the relevant authority in accordance with applicable laws as a true copy, and every copy so certified is admissible in evidence in all courts as if it were the original.
3. The NPPO may store, treat, quarantine or dispose of the plant, plant product or other regulated article at the place where it was seized or move it to any other place for storage, treatment, quarantine or disposal in the manner and procedure prescribed by the NPPO in accordance with the law, or require the owner or person in charge to take the specified action.
4. A plant, plant product or other regulated article, or other thing seized and detained under this Decree-Law shall not be detained after a determination by the NPPO that the plant, plant product or other regulated article, or other thing is in conformity with the provisions of this Decree-Law.
5. The NPPO may destroy and dispose of a seized plant, plant product or other regulated article, or require its owner or person in charge to dispose of it, where such regulated article has been infested or is suspected of being infested with a pest.

6. No person shall remove or interfere in any way with any regulated article or other thing seized and detained under this Decree-Law.

Article 74. Stop and search of vehicles and persons

1. A phytosanitary inspector may stop and search any person, where the phytosanitary inspector has reasonable grounds to believe an offence under this Decree-Law is being committed.

2. A phytosanitary inspector may stop and search any vehicle, on land or at sea, in which a plant, plant product or other regulated article is being or is suspected of being transported or stored.

3. Where a phytosanitary inspector is satisfied that there has been a failure on the part of the captain of any vehicle to comply with a requirement of this Decree-Law or with a condition imposed pursuant thereto, and this poses a plant health risk, he or she shall immediately inform the Chief Plant Protection Officer, who may:

(a) detain or authorise the detention of the vehicle for a maximum period of four hours;

(b) where relevant immediately inform the Customs authority;

(c) immediately provide a written and signed notice of detention justifying the particulars of the non-compliance to the owner or person in charge of the vehicle.

4. Upon receipt of the communication by the phytosanitary inspector under this article, the Chief Plant Protection Officer shall, immediately order an investigation and shall continue such detention or stopping of the vehicle for a prescribed period for the taking of such phytosanitary measures as may be appropriate.

Article 75. Stopping distribution

1. Where a phytosanitary inspector considers it necessary to stop distribution for the purposes of preventing the spread of disease or otherwise in contravention of this Decree-Law, the phytosanitary inspector shall make a prescribed request to the Chief Plant Protection Officer, and the Chief Plant Protection Officer may issue a written notice suspending distribution, sale or use of any plant, plant product or other regulated article for a prescribed period.

2. Where required on phytosanitary grounds, the Chief Plant Protection Officer may request the Minister to prohibit permanently the distribution or sale of the plant, plant product or other regulated article.

3. Upon the advice of the Chief Plant Protection Officer, the Minister may issue a written notice to the owner or person in charge, ordering the immediate cessation of distribution of the plant, plant product, or other regulated article, and the reasons for the order.

Article 76. Confiscation and disposal of unclaimed items

1. The NPPO may confiscate or dispose of any plant, plant product or other regulated article that, after its entry into Timor-Leste, remains unclaimed for a prescribed time, and in such case, the NPPO shall notify in writing the owner or person in charge of the reason for its confiscation and disposal.

2. The NPPO shall claim the costs of actions taken under this article from the owner or person in charge of the unclaimed regulated article.

Article 77. Issuing of NPPO decisions

1. Where a person makes any application to the NPPO under this Decree-Law, such person shall submit all requested documentation and any samples or other particulars as may be required in connection with the application.
2. Where the NPPO requests further information regarding an application submitted under the previous article, the applicant shall comply with the time indicated in the NPPO's written request.
3. Without prejudice to the time limits for specific decisions as prescribed in this Decree-Law or in Ministerial Diploma indicating alternative time limits, the NPPO shall make a decision on application or other request made to it no later than thirty working days from the date of full submission of documents.
4. Where the NPPO is not able to comply with the time limit in number 2, the NPPO shall inform the applicant in writing, prior to the expiry of the deadline, citing the reasons for the extension of time and indicating a new time frame in which a decision will be issued.
5. Prior to the NPPO decision, the person concerned shall be notified in writing to a prior hearing.
6. Where the application is rejected, the applicant shall be notified in writing and the notification shall state the reasons for the refusal and the right of appeal.
7. Without prejudice to any urgent action that may be required on phytosanitary grounds, the NPPO decision shall take effect after the expiry of the period of appeal in accordance with this Decree-Law.

Article 78. Right to administrative appeal

1. Any person aggrieved by an action or decision of a phytosanitary inspector or an official analyst under this Decree-Law may, within fifteen days of the action or decision and in the prescribed manner, appeal to the Chief Plant Protection Officer.
2. Where the person, following a decision of the Chief Plant Protection Officer, which must be provided within thirty days, remains unsatisfied with the outcome, he or she may, within the prescribed time and in the prescribed manner appeal to the Minister.
3. The Minister shall issue his or her decision on the appeal submitted under the previous section within the prescribed time.
4. The decision of the Minister is final on technical matters but shall not prejudice the right of any aggrieved party to seek recourse to the relevant adjudicatory body on matters of law.
5. Such right to an administrative appeal does not preclude the right of the NPPO to take urgent phytosanitary action as the situation requires.

Article 79. No liability for NPPO actions and good faith defense

1. The Government shall bear no liability for loss resulting from the destruction or disposal of any plant, plant product or other regulated article carried out in accordance with this Decree-Law.
2. No member of the NPPO, official analyst or official or employee of a reference laboratory or any government entity shall be liable to suit or to prosecution in respect of anything done in good faith in the performance of official functions under this Decree-Law.

SECTION III. ADMINISTRATIVE OFFENCES AND PENALTIES

Article 80. Penalties for grave administrative offences

The following constitutes an administrative offence under this Decree-Law that is punishable by fine of between ____ and ____ United States dollars:

- a) growing, selling, offering for sale, transporting or distributing in any manner any regulated article knowing that it is infested by a quarantine pest;
- b) intentionally permitting, introducing or causing the introduction or spread of a quarantine pest;
- c) distributing a regulated article that has been placed under bond, or following an administrative penalty or following an inspection that results in such regulated article being prohibited from distribution; and
- d) assaulting, resisting, intimidating, threatening, abusing in any manner whatsoever, or obstructing a phytosanitary inspector exercising lawful powers under this Decree-Law.

2. Where a person commits an offence on two or more separate occasions, within a period of twelve months when already under adjudication or having received a penalty for the first offence, the prescribed fine for the second offence shall be doubled.

Article 81. Penalties for serious administrative offences

1. The following constitutes an administrative offence under this Decree-Law that is punishable by a fine between ____ and ____ United States dollars:

- a) failing to comply with any order or direction lawfully made or given under this Decree-Law;
- b) importing any plant, plant product or other regulated article contrary to any requirement that is prescribed;
- c) exporting any plant, plant product or other regulated article except as prescribed;
- d) failing to safeguard the phytosanitary security of a consignment for export after the issuance of a phytosanitary certificate;
- e) failing to allow a search or inspection or the taking of any sample authorized under this Decree-Law;
- f) breaking the seal on a sealed container containing a plant, plant product or other regulated article except in the presence of a phytosanitary inspector, except where this is done by a customs officer in accordance with the provisions of the Customs legislation;
- g) knowingly or recklessly providing information which is false, for the purpose of obtaining any document under this Decree-Law;
- h) altering, forging, defacing or destroying any document issued under this Decree-Law; and
- i) otherwise contravening a provision of this Decree-Law.

2. Where a person commits an offence on two or more separate occasions, within a period of twelve months when already under adjudication or having received a penalty for the first offence, the prescribed fine for the second offence shall be doubled.

DRAFT DECREE-LAW

Article 82. Penalty for minor administrative offences

Administrative offences not stipulated in the previous two articles shall carry a maximum penalty, excluding any additional fines if the offence is a continuing one, of _____US dollars.

Article 83. Suspension and revocation of licenses, permits and other authorisations

1. The Chief Plant Protection Officer may suspend or revoke any permit or other authorization issued under this Decree-Law in addition to any other penalty imposed, for any breaches of this Decree-Law.
2. In cases of serious or repeated violations, the NPPO may recommend the revocation of the business license and a shutting down of the business, to SERVE or other authority that issued the business license or any other license to operate, and where such license to operate is not required by law, may shut down the business directly.
3. Upon receipt of such recommendation, the authority issuing the business license or other license to operate, shall revoke the license within three days.

Article 84. Offences by public officials and penalties

1. A phytosanitary inspector, official analyst or other NPPO staff commits an offence if he or she:
 - a) directly or indirectly asks for or takes any personal payment or other reward in connection with any official duties;
 - b) agrees to do, abstains from doing, permits, conceals or connives at any act or thing which is contrary to the proper execution of official duties under this Decree-Law, or otherwise contrary to the laws of Timor-Leste;
 - c) discloses any information acquired in the performance of his or her official duties relating to any person, firm or business, except when required by his or her supervisor in the course of official duties including for border cooperation purposes, where ordered to do so by any court, or otherwise in accordance with article 22; or
 - d) otherwise abuses his or her powers granted under this Decree-Law.
2. If found guilty under this article by a court of law, a phytosanitary inspector official analyst or other NPPO staff shall be liable to dismissal, shall cease to function in such capacity, may be ineligible for reappointment and shall be subject to such other penalty applicable to civil servants in Timor-Leste.

SECTION IV. PENALTY PROCEDURES

Article 85. Decision and procedure on penalty for offence

1. Where a phytosanitary inspector reasonably believes that a person has contravened any of the provisions of this Decree-Law, he shall provide such information to the Chief Plant Protection Officer, who shall determine whether:
 - a) the matter warrants application of a criminal penalty and in such case, shall forward the case to the relevant authority for criminal prosecution;

DRAFT DECREE-LAW

b) an administrative penalty shall be applied in accordance with articles 80-83 and paragraph 2 of this article; or

c) both such administrative and criminal penalties apply .

2. For the payment of fines a phytosanitary inspector may issue a spot fine to the offender which indicates that the offender shall either appear before the adjudicating body in accordance with normal procedures following written summons, or shall have the option to pay the fine instead at the prescribed authority.

3. Where the offender does not pay the fine within the prescribed time, the Chief Plant Protection Officer shall decide whether to:

a) allow the offender an additional grace period to pay the fine;

b) increase the fine to be paid through written notice, specifying a new time period for payment; or

c) refer the case to an adjudication body.

Article 86. Guiding factors for administrative penalties

In considering the gravity of the offence and the administrative penalty to apply, the Chief Plant Protection Officer shall consider:

a) the damage or threat of damage caused by the offence;

b) the degree of intention or negligence with which it was committed;

c) the economic situation of the offender;

d) the estimated benefit that the offender has removed; and

e) whether or an offence has been committed by the offender on more than one occasion.

Article 87. Forfeiture

1. Where a person is convicted of an offence relating to this Decree-Law the adjudicating body may, in addition to any other penalty imposed, order that any item used in the perpetration of the offence be forfeited to the Government.

2. Where the court does not order the forfeiture of a regulated article, that regulated article or any proceeds realized from its disposition, these shall be returned to the owner or person in charge at the time of its seizure, except if such return poses a phytosanitary risk in which case the regulated article shall be destroyed.

3. The NPPO shall determine the appropriate holding of a regulated article seized or forfeited under this Decree-Law prior to its disposition by the adjudicating body, at the cost of the owner of the regulated article.

4. The NPPO shall ensure that any decision made under this article does not create a risk of the entry or spread of pests and where such risk exists shall take the actions prescribed in article 76 and shall carry out phytosanitary measures to remove the risk.

5. Any item forfeited following the conviction of the offender, shall if no appeal is lodged or upon the expiry of such appeal, be destroyed, sold, leased or donated to a charitable organization.

6. The proceeds of any sale of any item forfeited in accordance with this article shall be deposited with the ____ authority.

CHAPTER VIII - FINAL PROVISIONS

Article 88. Costs of phytosanitary actions

1. The owner of a regulated article, consignor or premises shall be liable to pay the costs for any action taken on his or her regulated article, consignment or premises, except where the NPPO determines that the Government of Timor-Leste shall take responsibility for the associated costs on such grounds as may be prescribed.
2. The costs for phytosanitary actions under this Decree-Law and the method used to calculate the costs shall be as prescribed by regulation.

Article 89. Compensation

1. The Minister or a court, may, on the recommendation of the NPPO, order compensation to be paid in respect of the following cases:
 - a) within quarantine areas or buffer zones, or during emergency declarations, or where treatment is required on premises or where there is a prohibition or restriction on the use of premises, or where the owners of the premises or regulated articles are affected by pest eradication measures; or
 - b) where the economic circumstances and livelihood of the person affected require the Government to compensate the owner of the premises or regulated articles affected by phytosanitary actions taken under this Decree-Law.
2. Compensation shall not payable to a person who commits an offence under this Decree-Law and claims compensation in respect of any premises or thing by means of or in relation to which the offence was committed.
3. Schedules and rates of compensation shall be established in a Ministerial Diploma.

Article 90. Dispute settlement with trading partners

The NPPO shall establish procedures for consultation and exchange of information with other NPPOs for swift bilateral consultations to settle disputes, without prejudice to the right to seek international mechanisms for dispute resolution.

Article 91. Charging of service costs

1. Subject to any general law governing cost recovery, the NPPO shall charge service costs for inspections, sampling and analysis, treatment and the issuance of permits and other NPPO services as specified by this Decree-Law, and such service costs shall be based on a recovery of the actual costs only.
2. The Minister shall by Ministerial Diploma, publish the service costs chargeable under this Decree-Law and the respective regulations in accordance with the recommendations proposed by the NPPO.

Article 92. Documents and declarations

DRAFT DECREE-LAW

1. A document or declaration required to be furnished under this Decree-Law or any regulation made thereunder may be furnished in electronic form as shall be prescribed, in accordance with rules governing electronic transactions as may be established by the Minister in a Ministerial Diploma, in consultation with the Information and Communication Technologies Agency of Timor-Leste.
2. The NPPO shall establish requirements relating to creating, receiving, storing, sharing and sending phytosanitary certificates in electronic form.

Article 93. Regulations

1. Except where expressly provided otherwise, the Minister shall approve all regulations under this Decree-Law by Ministerial Diploma.
2. Where the Decree-Law gives the NPPO the competence to set rules or technical standards these shall be published in the Official Journal by means of a Ministerial Order..
3. Any approved legislation must be publicized through the websites of MAF and other National Directorates that comprise the NPPO.

Article 94. Repeal and Savings

1. The Decree-Law No 21/2003 is hereby repealed.
2. The Government-Decree No 1/2006 is hereby repealed.
3. All other regulations issued under the legislation revoked in number 1 and number 2 shall remain in force, with the necessary adaptations, until the entry into force of the regulations of this Decree-Law that replace such regulations.

Article 95. Entry into force

The present Decree-Law enters into force six months after its publication.

Approved by the Council of Ministers on the ____ of ____ of 20__.

The Prime Minister

The Minister of Agriculture and Fisheries

Promulgated on ____, 20__.

To be published

The President of the Republic
