

## EXPLANATORY STATEMENT 6 OF 2010

### Amendments to the Plant Protection Agreement for the Asia and Pacific Region adopted in November 1999 by the FAO Council

#### Practical and legal effect

1. The proposed treaty action will update the *Plant Protection Agreement for the Asia and Pacific Region* (the Agreement) to align the Agreement with the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the 1997 revision of the International Plant Protection Convention (IPPC). The first set of amendments strengthens and refreshes the Asia and Pacific Plant Protection Commission (APPPC), the governing body for the Agreement, to accommodate contemporary plant protection requirements of the SPS Agreement and the IPPC. The second set of amendments deletes provisions requiring a mandatory ban on imports of rubber (*Hevea*) plants to the region to prevent the entry of a devastating pest, South American Leaf Blight. The mandatory ban is inconsistent with the SPS Agreement which requires all trade restricting measures to be based on a risk analysis.
2. The treaty amendments do not entail new obligations and have no financial or legal consequences for Australia. As a member of the WTO and a party to the IPPC, Australia already meets the obligations and responsibilities of these agreements and the amendments make no changes to these.

#### Nature and timing of proposed treaty matter

3. The 117<sup>th</sup> session of the Food and Agriculture Organisation (FAO) Council in 1999 approved two sets of amendments to the Agreement. The first set of amendments were circulated for acceptance in June 2000, but have not yet entered into force as most parties waited to accept both sets of amendments at the one time. At the request of the APPPC, the second set of amendments were not circulated by the FAO until after the adoption of a regional standard on South American Leaf Blight of *Hevea*. After completion of a pest risk analysis, a regional standard was developed and adopted by the APPPC in September 2009. The FAO Legal Office subsequently circulated the second set of amendments in May 2010.
4. It is proposed that this action be taken as soon as practicable after endorsement of the action.

#### Reasons for Australia to take the proposed action relating to the treaty matter

5. The amendments bring the Agreement into line with the SPS Agreement and the IPPC, for which Australia actively engages. The amendments also strengthen the APPPC, in which Australia actively participates, including in the development of regional phytosanitary standards. Australia has accepted all previous amendments to the Agreement. There are no other outstanding amendments.
6. The amendments will enter into force generally for all contracting governments from the thirtieth day after acceptance by two-thirds of contracting governments – currently 16 out of the 24 contracting governments. Three countries have accepted the first set of amendments, none the second set. The APPPC and its members look to Australia as a major player in regional plant protection for leadership, so it would be appropriate for Australia to accept the amendments as soon as possible.
7. Because of the Agreement's basis as a platform for trade, acceptance of the first set of amendments alone would have left the Agreement inconsistent with the SPS Agreement and could have indicated that Australia was endorsing the inconsistency. It is appropriate to accept both sets of amendments, as together they remove the provisions that are non-compliant with the SPS Agreement.

#### Implementing legislation

8. The proposed treaty action entails no legislative change.