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THE PLANT QUARANTINE ACT AND QUARANTINE NO. 37 *

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Over a period of some 20 years there has been so much prominence given to Quarantine 37 that the fact is almost always completely disregarded that the plant quarantines placed by the United States Department of Agriculture must be placed under authority of the Plant Quarantine Act passed by Congress more than 26 years ago. When any change is made or suggested in nursery stock import requirements there invariably comes a flood of telegrams and petitions, all saying the same thing in just about the same words: "Maintain quarantine No. 37 as is." In general, these demands come from certain groups interested in some one class of nursery stock. They could not come from people familiar with Quarantine 37 because such people would not want Quarantine 37 maintained as is. If they were really interested in keeping the country free of pests they would want Quarantine 37 changed. Not only that, they would want the Plant Quarantine Act so changed as to insure as nearly as such things can be that plant pests be kept out.

Section 1 of the Plant Quarantine Act provides "that it shall be unlawful for any person to offer for entry into the United States any nursery stock unless and until a permit shall have been issued therefor by the Secretary of Agriculture under such conditions and regulations as the said Secretary of Agriculture may prescribe." Please note that this applies only to nursery stock.

Section 6 provides "that for the purpose of this act the term 'nursery stock' shall include all field-grown florists' stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots." However, there is another section which authorizes the Secretary by promulgation to bring other plants and plant products for propagation under the term "nursery stock."

Section 7 provides "that whenever, in order to prevent the introduction into the United States of any tree, plant, or fruit disease or of any injurious insect, new to or not theretofore widely prevalent or distributed within and throughout the United States,

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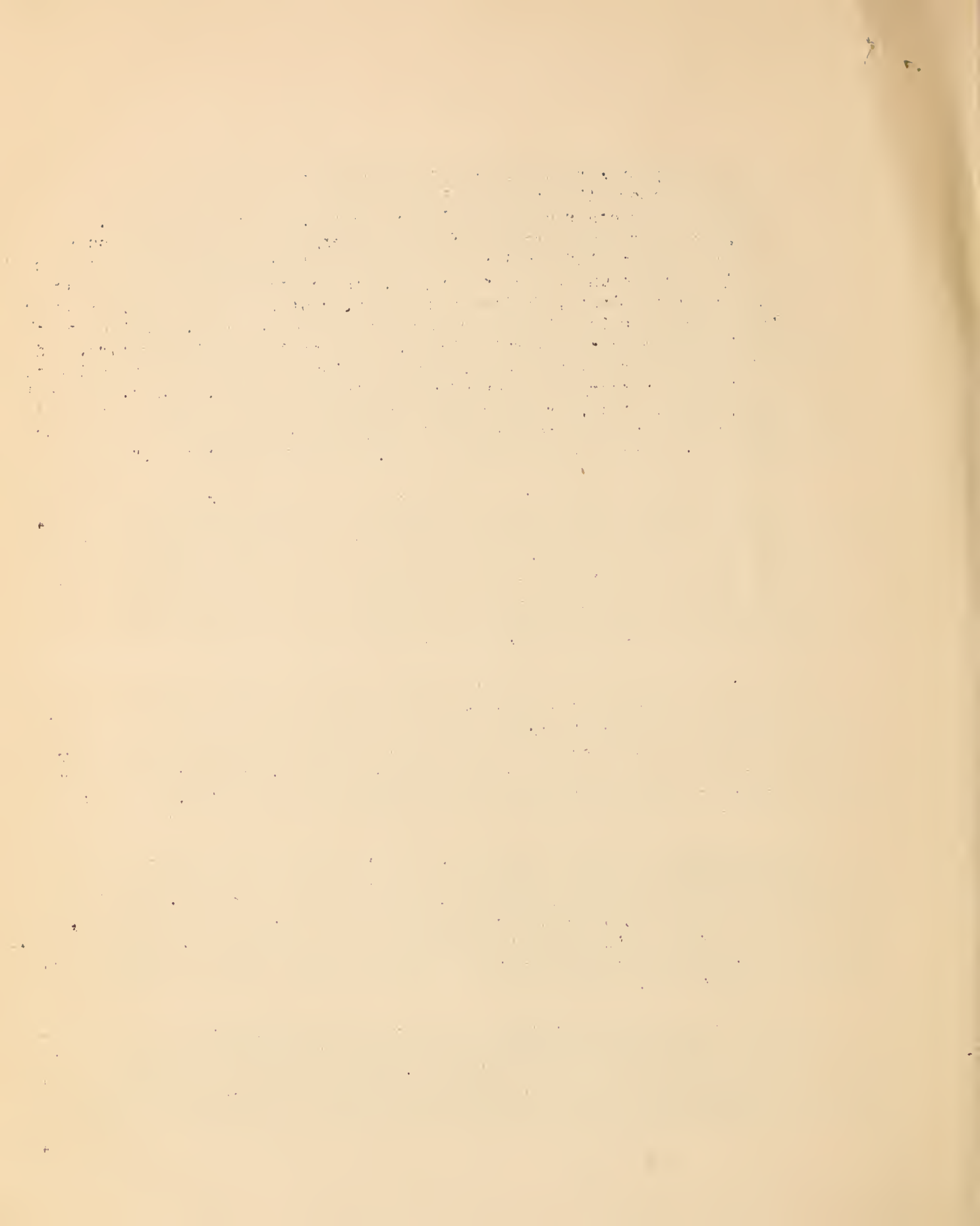
the Secretary of Agriculture shall determine that it is necessary to forbid the importation into the United States of any class of nursery stock or of any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products from a country or locality where such disease or insect infestation exists, he shall promulgate such determination, specifying the country and locality and the class of nursery stock or other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products which, in his opinion, should be excluded. Following the promulgation of such determination by the Secretary of Agriculture, and until the withdrawal of the said promulgation by him, the importation of the class of nursery stock or of other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products specified in the said promulgation from the country and locality therein named, regardless of the use for which the same is intended, is hereby prohibited."

There are two features of this section to be especially noted: First, it does not cover all injurious pests but only those new to or not theretofore widely prevalent or distributed within and throughout the United States. Second, it is not the Secretary's determination that excludes the articles specified; he is authorized merely to determine that their exclusion is necessary and to promulgate that determination and then the Act of Congress excludes them. None of the products so specified is eligible for importation, even under restriction.

It will be noted in all these Plant Quarantine Act sections that jurisdiction of the Secretary extends only to nursery stock as defined except where other plants and plant products not defined as nursery stock may be considered dangerous, such plants and plant products may by promulgation of the Secretary be brought under his jurisdiction as nursery stock as contemplated in the Plant Quarantine Act. However, in no case does the jurisdiction extend beyond nursery stock.

We are informed by legal authorities that Section 1 means that from countries where official inspection exists a permit must be issued by the Secretary for nursery stock when requested. The Secretary can prescribe conditions and regulations providing that the nursery stock must be free of insect pests and plant diseases and subject to departmental inspection to determine whether or not they are so free, but the permit must be issued.

Section 7 means that when the Secretary has promulgated his determination thereunder to the effect that the nursery stock or other plant products are likely to introduce into the United States any tree, plant, or fruit disease or any injurious insect new to or not theretofore widely prevalent and distributed within and throughout the United States



that thereafter all such nursery stock and other plant products are definitely excluded entirely and can not be imported for any purpose under any conditions except by the Department for experimental or scientific purposes. In this case we are advised that it is not the Secretary's determinations that exclude the article specified, that he is authorized merely to determine that their exclusion is necessary and to promulgate that determination and then the Act of Congress, the Plant Quarantine Act, excludes them. Whatever authority there is in the Plant Quarantine Act, I am advised, touching regulations governing the importation of nursery stock, is found in Section 1. A careful consideration of this section will show that it authorizes the Secretary only to prescribe conditions and regulations governing the issuance of permits for the importation, and inasmuch as it provides that the Secretary shall issue the permits for any particular importation of nursery stock when the importer shall have complied with such conditions and regulations, it would seem to follow that the "conditions and regulations" must operate on and be connected with matters and things bearing on such importation before the nursery stock is actually admitted. Apparently, the law does not seek to control or enforce any restrictions on nursery stock after its entry other than the provisions of Sections 2 and 4 which relate only to their subsequent interstate movement. Therefore, any conditions attached to the issuance of the permit to which the importer would assent requiring him to do certain things in connection with the propagation of nursery stock subsequent to its entry, would make the transaction one of contract, a breach of which would not constitute a violation of the statute. Therefore, the opinion is given that regulations made by the Secretary purporting to control nursery stock subsequent to its entry are legally unenforceable.

On November 18, 1918, the Secretary of Agriculture promulgated the following determination under Notice of Quarantine No. 37:

"The fact has been determined by the Secretary of Agriculture, and notice is hereby given, that there exist in Europe, Asia, Africa, Mexico, Central and South America, and other foreign countries and localities certain injurious insects and fungous diseases new to and not heretofore widely distributed within and throughout the United States, which affect and are carried by nursery stock and other plants and seeds, the words 'nursery stock and other plants and seeds,' including, wherever used in this notice and the rules and regulations supplemental hereto, field-grown florists' stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits and other seeds of fruit and ornamental trees or shrubs, also field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots, and other plants and plant products, for, or capable, of propagation.

"Now, therefore, I, D. F. Houston, Secretary of Agriculture, under the authority conferred by the Act of Congress approved August 20, 1912 (37 Stat. 315), do hereby declare that it is necessary in order to prevent the further introduction into

the United States of injurious insect pests and fungous diseases, to forbid, except as provided in the rules and regulations supplemental hereto, the importation into the United States of nursery stock and other plants and seeds from the foreign countries and localities named and from any other foreign locality or country.

"On and after June 1, 1919, and until further notice, by virtue of said act of Congress approved August 20, 1912, the importation of nursery stock and other plants and seeds from the above named and all other foreign countries and localities, except as provided in the rules and regulations supplemental hereto, is prohibited."

Under this promulgation, in accordance with the legal interpretation we have received of the Plant Quarantine Act, all nursery stock from the countries of Europe, Asia, Africa, Mexico, Central and South America and other foreign countries and localities would have been definitely, completely and finally excluded for any purpose by the Plant Quarantine Act itself. However, regulations were set up under the quarantine which provided that certain classes of nursery stock and other plants and plant products would be exempted from the quarantine promulgation. Among these were certain classes of bulbs, fruit stock, rose stocks, nuts, and certain classes of seeds. Provision was made for entry in limited quantities, on the other hand, from all these countries for numerous genera and species of plants. Provision was made in practice, at least, for holding the imported plants in detention for a period of two years for propagation purposes only although the authority for such practice does not appear clearly in the quarantine and does not appear at all in the Plant Quarantine Act.

Quarantine 37 attempts to do those things which should be done by legislative enactment and really places the Department in the position of legislating on things that are considered desirable or necessary in nursery stock and plant importations. When this is done in many cases first consideration is likely to be economic consideration and this may bring the Department into the trade protection field and in many instances entirely out of the quarantine field.

Acting on the theory that to reduce the volume of importations of foreign plants the danger of importation of pests is thereby correspondingly reduced, numerous classes of plants have been completely excluded when they became commercially available in this country. Other plants are permitted entry in unlimited numbers because they are not commercially available in this country. Certainly it can not be denied that there is scientific merit for the conclusion that a logical reduction of the volume of imports does reduce the risk of pest introduction. Particularly is this true in considering the status of obscure and undetectable and unknown insect pests and plant diseases. However, Quarantine No. 37 does not do this.

It is suggested that in order to place the importation of plants from foreign countries and the quarantine governing the importation of such plants on a sound, scientific, fully defensible basis, the Congress of the United States should declare a policy. It should say it is the policy of the United States that in order to safeguard agriculture in the United States by preventing introduction into or the spread within the United States of plant pests which exist in other countries which may be known or unknown, detectable or undetectable by inspection, and which may be carried by plants and plant products of such other countries when offered for importation into the United States, that plants and plant products capable of propagation offered for importation from any foreign country shall not be imported except for propagation under surveillance of the Secretary of Agriculture for such time and under such conditions as the said Secretary may prescribe in order that he may be able to determine by inspection or otherwise whether such plants and plant products are apparently free from plant pests. The term "plant pests" should include any stage of development of insect, nematode or other invertebrate animal, or any virus, or any bacteria, fungi, or other parasitical plant which can injure or cause plant disease in plants or parts thereof, and restrictions should apply to the organisms as such.

Many of the very pests which existing quarantines seek to exclude in or on imported plants and plant products could and still can enter as such divorced from their hosts, since there is no authority to exclude or regulate their entry. Obviously, the door should not be left open for their unrestricted entry and it is highly desirable that authority be secured to control and prevent the entry of plant pathogens along lines recommended in the resolutions passed at the annual meeting of the American Phytopathological Society held in St. Louis in December, 1935. Authority should be continued for the exclusion of plants and plant pathogens known to be dangerous to the United States in their ability to introduce pests, and the provision for such exclusion should apply not only to plants and plant products but to any other article or matter which might be considered likely to introduce pests, and such articles or matter should be understood to include any other substance whatsoever which the Secretary of Agriculture might from time to time determine and declare as likely to be a medium through which plant pests might be introduced from foreign countries into the United States. Such procedure would have a sound, scientific, common-sense basis; it would recognize the need for definitely excluding plants or articles which may carry known pests; it would provide for growing under such surveillance as would be necessary plants not known to be dangerous but in recognition of the principle that all plants may be dangerous through the possible presence of unknown or undetectable pests, would enable sufficient inspection to develop this information in the case of each shipment before final release to the country; it would automatically eliminate the limit difficulties which now exist because there would be no reason for someone to bring in more than was wanted for propagation purposes; it would take the Department out of the economic determinations which are constantly before it;



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it would separate quarantine considerations from trade considerations, and finally, it would accomplish more than Quarantine 37 ever has accomplished and would remove the causes for constant dispute which are always inherent in a quarantine which has so many of the selective features that Quarantine 37 has.

In short, this procedure would do several most desirable things: First, it would definitely exclude plants and other articles known to be pest carriers; second, it would bring under control the importation of insects and plant pathogens as such; third, it would permit the importation for propagation of plants not known to be dangerous by nurserymen, gardeners, and groups or individuals; fourth, it would permit of the holding of imported plants under surveillance of the Secretary of Agriculture for such time and under such conditions as to make possible inspection to determine freedom from pests; fifth, it would settle for all time the selection of people who should be permitted to import plants and how many they should import; sixth, it would do away with just about all the controversial features of the quarantine, and finally, it would do more than anything yet done to prevent the introduction into this country of pests carried by plants and nursery stock. It is encouraging to know that certain members of Congress now have under way steps to bring this about.

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