

DRAFT

PLANT PROTECTION AND QUARANTINE LAW

OF THE ISLAMIC REPUBLIC of AFGHANISTAN

January 15, 2012

Chapter One

General Provisions

Justification

Article 1:

This law has been promulgated to give effect to Article 11, 14 and 15 of the Constitution of Afghanistan to facilitate trade, provide for the implementation of effective programs for the development of agriculture and to protect the environment.

Objectives

Article 2:

The primary purposes of this Law are to:

1. protect plant resources;
2. prevent the introduction and control the spread of plant pests;
3. facilitate trade in plants and plant products;
4. promote the reconstruction and sustainable development of the national economy;
5. improve livelihoods and food security; and
6. regulate other matters connected thereto.

Responsibility for Administration

Article 3:

The primary responsibility for the administration of this Law lies with the Ministry.

Definitions

Article 4:

In this Law, unless the context otherwise requires –

1. “**area**” means an area, place or site of production;
2. “**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;,

3. “**consignment**” means a quantity of plants, plant products and/or other regulated articles being moved from one country to another and covered, when required, by a single phytosanitary certificate;
4. “**containment**” means to apply phytosanitary measures in and around an infested area to prevent the spread of a pest; “**control**” (of a pest) means to suppress, contain or eradicate a pest population;
5. “**conveyance**” means any aircraft, train, vehicle, cart, container, animal or other thing that can convey plants, plant products, pests, beneficial organisms or other regulated articles from one place to another;
6. “**entry**”(of 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;
7. “**eradication**” means to apply phytosanitary measures to eliminate a pest from an area
8. “**establishment**” means the perpetuation, for the foreseeable future, of a pest within an area after entry;
9. “**import permit**” means an official document authorizing importation of a commodity in accordance with specified phytosanitary import requirements described in Article 18 , as set forth in Schedule 7;
10. “**importer**” means anyone who, whether as owner, consignor, consignee, agent, broker or otherwise, is in possession of or in any way entitled to the custody of any plant, plant product, pest, beneficial organism or other regulated article landed or likely to be landed in Afghanistan from another country;
11. “**inspection**” means official visual examination of plants, plant products and/or other regulated articles to determine if pests are present or to determine compliance with phytosanitary regulations;
12. “**inspector**” means a person authorized and authorised by the NPPO under Article 9 to discharge its functions;
13. “**introduction**” means the entry of a pest resulting in its establishment in Afghanistan;
14. “**IPPC**” means the International Plant Protection Convention, as deposited in 1951 with FAO in Rome and as subsequently amended;
15. “**International Standards**” means, for the purpose of this law, the International standards, guidelines and recommendations for plant health developed under the auspices of the Secretariat of the IPPC in cooperation with regional organizations operating within the framework of the IPPC;
16. “**Ministry**” means the Ministry responsible for agriculture;
17. “**National Plant Protection Organization**” or “**NPPO**” means the official service designated by the Ministry under Article 4 to discharge the functions specified to such service under the IPPC;

18. “**official control**” means the active enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or for the management of regulated non-quarantine pests;
19. “**outbreak**” means a recently detected pest population, including an incursion, or a sudden significant increase of an established pest population in an area;
20. “**owner**”, in relation to anything, includes any person having for the time being the possession, custody or control thereof;
21. “**pest**” means any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products;
22. “**pest free area**” 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 or disease does not occur.
23. “**pest risk analysis**” means the process of evaluating biological or other scientific and economic evidence to determine whether an organism is a pest, whether it should be regulated, and the strength of any phytosanitary measures to be taken against it;
24. “**phytosanitary certificate**” means a certificate patterned after the model certificate of the IPPC, as set forth in Schedule 6;
25. “**Phytosanitary Measure**” means any measure in respect of any plant, plant product or land designed to protect plant or plant health or life within Afghanistan and includes all relevant laws, decrees, regulations, requirements and procedures applied:
 - to protect plant or plant life or health within the territory of Afghanistan from risks arising from the entry, establishment or spread of pests (including weeds), diseases, disease-carrying organisms or disease-causing organisms;
 - to protect human life or health within the territory of Afghanistan from risks arising from diseases carried by plants, plants or products thereof, or from the entry, establishment or spread of pests;
 - to protect plant life and health within the territory of Afghanistan from the risks arising from the introduction and/or spread of regulated pests in Afghanistan, or reduce those risks; or
 - to prevent or limit any damage resulting from the introduction and/or spread of regulated pests;
26. “**plant products**” means any unmanufactured material of plant origin (including grain) and those manufactured products that, by their nature or that of their processing, may create a risk for the introduction and spread of pests;
27. “**plants**” means living plants and parts thereof, including seeds and germplasm;

28. “**provincial authorities**” means the provincial-level administration in the Ministry responsible for agriculture and any provincial-level officials responsible for implementing this Law, including governors and law enforcement agents.
29. “**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 in Schedule 1 to this Law;
30. “**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;
31. “**regulated non-quarantine pest**” means a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the territory of Afghanistan, and which is declared as such in Schedule 2 to this Law;
32. “**regulated pest**” means a quarantine pest or a regulated non-quarantine pest;
33. “**surveillance**” means an official process which collects and records data on pest occurrence or absence by survey, monitoring or other procedures;
34. “**this Act**” includes any regulations, orders, schedules or notices made under it;
35. “**technically justified**” means justified on the basis of conclusions reached by using an appropriate pest risk analysis.

Chapter Two **Administration**

Designation of the National Plant Protection Organization

Article 5:

The Ministry shall designate a government unit to serve as the National Plant Protection Organisation (NPPO) of Afghanistan, and shall report the name of that unit to the IPPC Secretariat.

Functions of the National Plant Protection Organization

Article 6:

The National Plant Protection Organization shall perform at least the following functions –

- (a) implementation of the IPPC and the International Standards for Phytosanitary Measures established thereto, including the following responsibilities –
 - (i) issuing phytosanitary certificates;

- (ii) carrying out surveillance of growing plants, including areas under cultivation and wild flora, and of plants and plant products in storage or in transport, for the purpose of reporting the occurrence, outbreak and spread of pests, and of controlling those pests;
 - (iii) inspecting consignments of plants and plant products and, where appropriate, inspecting other regulated articles, for the purpose of preventing the introduction and/or spread of pests;
 - (iv) carrying out pre-clearance inspections where requested;
 - (v) disinfesting or disinfecting consignments of plants, plant products and other regulated articles;
 - (vi) protecting endangered areas and designating, maintaining and surveying pest-free areas and areas of low pest prevalence;
 - (vii) preventing or controlling the spread of pests within the country, in particular between provinces;
 - (viii) providing justification to other countries concerning phytosanitary measures applied, either through pest risk analysis or by reference to applicable international standards;
 - (ix) notifying trading partners of relevant instances of non-compliance with import requirements;
 - (x) ensuring the phytosanitary security of consignments after certification and before export;
 - (xi) establishing auditing and trace-back procedures for plants, plant products and other regulated articles for phytosanitary certification;
 - (xii) establishing any minimum qualifications for and overseeing training and development of inspectors and other NPPO staff;
 - (xiii) Communicating and coordinating with the provincial authorities in charge of plant protection and providing them with the necessary technical assistance and training to implement this Law at the provincial level;
 - (xiv) distributing information on regulated pests and the means of their prevention and control to growers, nurseries and landowners, and organizing community-level informational workshops as necessary;
 - (xv) proposing, reviewing, preparing and enforcing phytosanitary measures and other necessary legislation;
 - (xvi) notifying phytosanitary measures to other countries and international organizations in accordance with international obligations;
 - (xvii) liaising with regional and national Plant Protection Organizations to keep abreast of the latest developments in the field of plant health and plant quarantine;
 - (xviii) providing information regarding import and export regulations in force, and technical requirements for plants, plant products and other regulated articles, on request of any interested international, regional or other national plant protection organization.
- (b) where international standards are not used or do not exist, development of appropriate pest risk assessments to establish phytosanitary inspection, quarantine and control measures;

- (c) the enforcement of the present Act, as well as any other legislation relating to plant protection that the Ministry may identify;
- (d) the representation of Afghanistan in bilateral, regional and international forums related to phytosanitary matters;
- (e) the development of pest diagnostic, investigative and analytical capabilities as well as the establishment of laboratories and quarantine stations at such places as may be deemed necessary;
- (f) the establishment of procedures for accreditation of any quarantine station, official analyst, official laboratory or any other person or institution from the public or private sector involved in phytosanitary matters; and
- (g) the performance of any other functions the Ministry deems necessary to achieve the objectives of this Law.

Designation of the Plant Protection Advisory Board

Article 7:

- (1) A Plant Protection Advisory Board is hereby established, to consist of –
 - (a) three staff members of the Ministry responsible for agriculture, including the head of the NPPO, who shall be the Chairperson;
 - (b) at least one of the members of the National Seed Board listed under Article 4(a) of the Seed Law of [2008]; and
 - (c) one representative of each of the following –
 - (i) the institution responsible for the conservation of the environment;
 - (ii) the Ministry responsible for trade;
 - (iii) the Customs Department;
 - (iv) the Ministry of Interior;
 - (v) the Ministry responsible for health
 - (vi) the General Attorney’s office
 - (vii) the Faculty of Agriculture of Kabul University;
 - (viii) importers;
 - (ix) exporters;
 - (x) growers;
 - (xi) nursery owners;
 - (xii) legal experts; and
 - (xiii) one additional member as may be necessary to carry out the functions of the Board.

- (2) Members of the Board shall be nominated by their respective Ministry or president/chair, and appointed by the Ministry responsible for agriculture, who shall award a sitting allowance to the non-governmental representatives where eligible.
- (3) The Board shall invite experts to its meetings as it deems necessary to provide advice and technical inputs.
- (4) Members shall serve for a period of three years and shall be eligible for reappointment.
- (5) The quorum at a meeting of the Board shall be at least one half of the membership.
- (6) The Board shall meet at least three times per year.
- (7) Except as provided in paragraphs (1)-(6) and Article 7, the Board shall regulate its own procedure

Functions of the Plant Protection Advisory Board

Article 8:

- (1) The Board shall act in an advisory role vis-à-vis the Ministry and the NPPO on issues of plant protection, and shall be responsible for –
 - (a) suggesting and preparing regulations, orders, schedules and notices to be issued or amended under this Law;
 - (b) assisting in the determination of criteria for the declaration of a phytosanitary emergency under Article 20(7)(c) or Article 29; and
 - (c) determining appeals filed in respect of decisions and actions taken by inspectors, in the manner to be prescribed by regulation.
- (2) The Board may appoint such sub-committees as it may consider necessary, consisting of members of the Board or non-members or both, to provide advice and technical inputs.

Phytosanitary Emergency Fund

Article 9:

- (1) There is hereby established a Phytosanitary Emergency Fund, which shall be supplied with all necessary resources to enable the NPPO to respond to a phytosanitary emergency.
- (2) The resources of the Fund shall be made available to the NPPO immediately upon declaration of a phytosanitary emergency under Article 20(7)(c) or Article 29 or for the compensation of land owners where diseased or healthy plants are ordered destroyed according to Article 26(1).
- (3) The management of the Fund shall be governed by regulation.

Appointment of Inspectors

Article 10:

The Head of NPPO may appoint or designate officers of the central NPPO to carry out the functions assigned to inspectors under this Law. Officers at the provincial level are appointed or designated according to the legislation of Afghanistan.

Function of Inspectors

Article 11:

- (1) Inspectors shall, where necessary –
 - (a) inspect plants, plant products or other regulated articles under cultivation, in storage or in transit in the territory of Afghanistan, in order to report the existence, outbreak and spread of pests listed in Schedule 1 or Schedule 2;
 - (b) inspect consignments of plants, plant products or other regulated articles destined for import into or export from Afghanistan to determine whether they are affected, and where necessary verify the pest status of consignments by the taking of samples or otherwise;
 - (c) ensure the disinfection or disinfestation or disinfection of consignments of plants, plant products or other regulated articles destined for import into or export from Afghanistan, as well as their containers, packaging, storage places and transport facilities;
 - (d) ensure that where waste is being disposed of from –
 - (i) aircraft arriving in Afghanistan; and
 - (ii) premises which process or wash imported plants, plant products or other regulated articles; no threat to plant resources in Afghanistan is caused.
 - (e) issue phytosanitary certificates on behalf of the NPPO;
 - (f) inspect and certify exports of plants, plant products and other regulated articles from Afghanistan;
 - (g) carry out detection activities and maintain up-to-date information on the pest status of Afghanistan and communicate such information to the NPPO and the provincial government units responsible for plant protection as appropriate;
 - (h) institute inquiries and request information or documentation upon suspicion that the provisions of this Law are being violated;
 - (i) when necessary, carry out the measures set forth in Article 20 (Post-Inspection Measures), Article 26 (Control Measures for Regulated Pests) and Article 11 (Powers of Inspectors) of this Law;
 - (j) attend to such other matters as the NPPO may prescribe.
- (2) At the invitation of an exporting country, an inspector may carry out an inspection under paragraph (1)(b) on the territory of the exporting country as a pre-clearance inspection.
- (3) Where the seal on a sealed container containing plants, plant products or other regulated articles is to be broken, an inspector must be present.

Power of Inspectors

Article 12:

- (1) If an inspector has reason to believe that an offence under this Law has been, is being, or is about to be committed, or for the purposes of verifying that the provisions of this Law are being complied with, or if the presence of a regulated pest is suspected in any place, he or she may, without a warrant -
 - (a) enter and inspect any land, area or premises where they suspect that a violation of this Law has taken or is taking place;
 - (b) stop and search any person, container or conveyance entering or moving within Afghanistan that is suspected of harbouring a regulated pest;
 - (c) require any person to produce any documentation required under this Law and inspect, examine and make copies of such documentation, and/or seize registers or records; or
 - (d) stop the distribution, sale or use of any plant, plant product or any other regulated article which the inspector has reason to believe is harbouring a regulated pest, for a defined time period.
- (2) In the course of an inspection carried out under paragraph (1), an inspector may, based on scientific evidence and consistent with a scientific risk assessment that has identified a risk related to animal, plant or human life or health in Afghanistan, seize, destroy, detain, treat or otherwise dispose of any plants, plant products or other regulated articles, or order that any such action be taken, at the expense of the owner.
- (3) Where exercising any authority under Article 10(1) or paragraphs (1) or (2) of this Article 11, an inspector shall upon request identify him- or herself as an inspector carrying out official duties under this Law by showing his or her identification card.
- (4) An inspector may, in the performance of his or her functions under this article, be accompanied and assisted by a police officer.
- (5) Inspection, control and assessment procedures shall be non-discriminatory and minimally restrictive to trade, including:
 - (a) such procedures are undertaken and completed without undue delay and in no less favourable manner for imported products than for like domestic products;
 - (b) the standard processing period of each procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body shall promptly examine the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the procedure in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the procedure if the applicant so requests; and that upon request, the applicant shall be informed of the stage of the procedure, with any delay being explained;
 - (c) information requirements shall be limited to what is necessary for appropriate control, inspection and approval procedures, including for approval of the use of

- additives or for the establishment of tolerances for contaminants in food, beverages or feedstuffs;
- (d) the confidentiality of information about imported products arising from or supplied in connection with control, inspection and approval shall be respected in a way no less favourable than for domestic products and in such a manner that legitimate commercial interests are protected;
 - (e) any requirements for control, inspection and approval of individual specimens of a product shall be limited to what is reasonable and necessary;
 - (f) any fees imposed for the procedures on imported products shall be equitable in relation to any fees charged on like domestic products or products originating in any other Member and shall be no higher than the actual cost of the service;
 - (g) the same criteria shall be used in the siting of facilities used in the procedures and the selection of samples of imported products as for domestic products so as to minimize the inconvenience to applicants, importers, exporters or their agents;
 - (h) whenever specifications of a product are changed subsequent to its control and inspection in light of the applicable regulations, the procedure for the modified product shall be limited to what is necessary to determine whether adequate confidence exists that the product still meets the regulations concerned; and
 - (i) a procedure shall exist to review complaints concerning the operation of such procedures and to take corrective action when a complaint is justified.

Detention Certificates

Article 13:

Any inspector who causes anything to be seized, detained, treated, disposed of or destroyed in accordance with this Law shall immediately provide a detention certificate in the form of Schedule 11, and shall, as soon as practicable, notify in writing the owner or person in possession of the thing of the steps taken and the reasons therefore.

Appeals

Article 14:

- (1) Any owner or occupier of land, owner or operator of a conveyance or owner or importer of plants, plant products or other regulated articles who is aggrieved by the decision of an inspector to destroy, dispose of or treat such plants, plant products or other regulated articles may lodge an appeal before the head of the NPPO in the manner prescribed by regulation.
- (2) Any owner or occupier of land, owner or operator of a conveyance or owner or importer of plants, plant products or other regulated articles who is aggrieved by the decision of the head of the NPPO under sub-section (1) may lodge a second appeal before the Ministry in the manner prescribed by regulation.

- (3) The decision of the Ministry on any appeal lodged under sub-section (2) shall not prejudice the right of any aggrieved party to seek recourse in the courts.

Designation of Official Laboratories and Analysts

Article 15:

The Head of the NPPO may designate one or more –

- (a) laboratories to be official laboratories; and
- (b) analysts to be official analysts and carry out analyses;

under this Act.

Chapter Three **Imports**

Phytosanitary Requirements and Phytosanitary Measures

Article 16:

- (1) In order to prevent the introduction and spread of regulated pests, the Ministry shall establish phytosanitary requirements, phytosanitary measures and prohibitions on the import of plants, plant products and other regulated articles based on existing international standards, or when such international standards are not available or applicable, the measure shall be based on scientific principles and available scientific evidence.
- (2) Phytosanitary measures shall be applied only to the extent necessary to protect animal, plant or human life or health. As conditions change or new facts become available, the NPPO shall modify or revoke phytosanitary requirements and phytosanitary measures as well as prohibitions without delay.
- (3) The NPPO shall evaluate and accept alternative phytosanitary measures proposed by the NPPO or equivalent institution(s) of the exporting country as being equivalent to the phytosanitary measures required under paragraph (1) of this article if the alternative phytosanitary measures achieve the level of protection applied by Afghanistan.
- (4) The NPPO shall communicate phytosanitary requirements and prohibitions established under paragraph (1) and any modification to the same under paragraph (2) to the Ministry for publication in the Official Gazette or any other official publication of the Government.
- (5) Phytosanitary measures shall be based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.
 - (a) The following shall be taken into account in the assessment of risks: available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest-free areas; relevant ecological and environmental conditions; and quarantine or other treatment.

- (b) In assessing the risk to plant life or health and determining the measure to be applied for achieving the appropriate level of phytosanitary protection from such risk, the following shall be taken into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of Afghanistan; and the relative cost-effectiveness of alternative approaches to limiting risks.
- (c) When determining the appropriate level of phytosanitary protection, the objective of minimizing negative trade effects shall be taken into account”
- Measures shall not be more trade-restrictive than required to achieve their appropriate level of phytosanitary protection, taking into account technical and economic feasibility.
 - With the objective of achieving consistency in the application of the concept of appropriate level of phytosanitary protection against risks to human life or health, or plant life or health, arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations shall be avoided, if such distinctions result in discrimination or a disguised restriction on international trade.

Official Ports of Entry

Article 17:

Plants, plant products and other regulated articles may be imported into Afghanistan only at the approved ports of entry listed in Schedule 4.

Duty of Notification

Article 18:

- (1) Importers shall report the arrival of any consignment and apply for phytosanitary inspection to the inspector in charge of the point of entry.
- (2) any employee of the Afghan Postal Service, Afghan Telecom or any private shipping concern, who learns of the arrival of any plants, plant products or other regulated articles in Afghanistan, shall promptly report such arrival to the NPPO and shall detain such plants, plant products or other regulated articles until the inspector takes custody of them.
- (a) Any detention carried out under this paragraph (2) shall be deemed an action taken on delegation from the NPPO.
- (b) The NPPO shall take custody of any items detained under this article (2) within [three days] of their detention. Appropriate care shall be administered to the plants or plant products until the NPPO takes custody of them.

Phytosanitary Import Permits

Article 19:

- (1) In cases where the NPPO establishes phytosanitary requirements pursuant to Article 16, paragraph (1) of this Law, a consignment shall only be imported into Afghanistan:

- (a) by authority of an import permit granted by the NPPO upon application by an importer in the manner prescribed by regulation using the form set forth in Schedule 7, including payment of any fee set forth in Schedule 9; and
 - (b) where accompanied by an original phytosanitary certificate issued by the responsible authority of the exporting country and dated not more than [fourteen days] before the entry of the items into Afghanistan.
- (2) In the evaluation of an application for an import permit, the NPPO shall apply existing international standards or conduct pest risk analysis in order to determine the applicable phytosanitary requirements
 - (3) In specific circumstances, the NPPO may exempt specific plants, plant products and other regulated articles from an import permit based on pest risk analysis.
 - (4) The NPPO may establish a term of validity for an import permit and review or revoke an import permit at any time by written notice.
 - (5) Any fees for import permits shall be limited to the cost of providing the service.

Phytosanitary Inspections of Imports

Article 20:

- (1) Plants, plant products and other regulated articles shall, upon importation into Afghanistan, be subject to inspection by an inspector at the port of entry.
- (2) Upon application by the importer and where the container has been sealed and marked as prescribed, certain plants, plant products and other regulated articles may be inspected by an inspector at their final destination.
- (3) Any inspections carried out under paragraph (1) or (2) are subject to any applicable fee set out in Schedule 9. Fees shall reflect the cost of providing the service.
- (4) Inspections under paragraphs (1) or (2) shall be carried out during regular government business hours, except where the plants, plant products or other regulated articles are in transit or extremely perishable or where their entry has otherwise been delayed, in which case, upon application by the importer and upon payment of any prescribed fee set out in Schedule 9, the NPPO may agree to an inspection being carried out at any other time.

Post Inspection Measures

Article 21:

- (1) If, upon inspection carried out in accordance with Article 19 of this Law, the inspector determines that the consignment is accompanied by all relevant documentation required by Article 18(1) of this Law and does not present any risk for the introduction or spread of quarantine pests, or for the economic impact of regulated non-quarantine pests, he or she shall clear the consignment for delivery to customs control by written notice served to the importer.

- (2) Customs officers shall only clear a consignment for entry upon presentation of written notice in accordance with paragraph (1) of this article
- (3) If, upon inspection carried out in accordance with Article 19, the inspector determines that any portion of the imported plants, plant products or other regulated articles is not accompanied by all relevant documentation required by Article 18(1), or presents any risk for the introduction or spread of pests of quarantine concern, the inspector shall detain the items and immediately serve written notice on the importer that some or all of the imported plants, plant products or other regulated articles may be subject within the time period specified in the notice to –
 - (a) appropriate treatment in order to remove the risk;
 - (b) re-exportation;
 - (c) confiscation; or
 - (d) destruction
- (4) The inspector may forgo notice and carry out any of the actions listed under paragraph (1) where destruction of the imported plants, plant products or other regulated articles is urgently required or the giving of notice is impracticable.
- (5) Where, after their entry into Afghanistan or after treatment, imported plants, plant products or other regulated articles lie unclaimed for a period of time specified by regulation, the NPPO may take action to destroy them.
- (6) The costs and responsibility for any action taken under paragraphs (2), (3) or (4) of this Article 20 shall be borne by the importer, except where in exceptional cases the NPPO determines that the government should take responsibility for the associated costs.
 - (a) The methods used to calculate such costs shall be those set out in Schedule 8. Fees shall reflect the cost of providing the service.
 - (b) The government's assumption of financial responsibility for the cost of any such action shall be without prejudice to its later recovering the costs as a debt.
- (7) The Government of Afghanistan shall bear no liability for the destruction or disposal of plants, plant products or other regulated articles imported into Afghanistan as a result of the implementation of any post-inspection measure under this article.
- (8) On the advice of the Board, the NPPO may, to protect plant resources and/or the environment from pest and diseases–
 - (a) prohibit or restrict the entry of any plant, plant product or other regulated article;
 - (b) take any other necessary action to prevent the introduction or spread of quarantine pests as listed in Schedule 1;
 - (c) declare a phytosanitary emergency; or

- (d) permit the entry of any plant, plant product or regulated article for scientific or experimental purposes, subject to such terms and conditions as the Ministry, on the advice of the Board, considers appropriate

Plant Quarantine Stations

Article 22:

- (1) The NPPO shall –
 - (a) designate certain places as plant quarantine stations where plants, plant products or other regulated articles may be kept for phytosanitary observation, research, inspection, testing, treatment, detention or destruction;
 - (b) 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 deems necessary.
- (2) Upon entry into force of the present Law, pre-existing plant quarantine stations shall be deemed to be official plant quarantine stations under this article.

Chapter Four **Export, Re-Export and Transit**

Phytosanitary Certification for Export

Article 23:

- (1) In cases where an importing country’s phytosanitary requirements for the import of plants, plant products or other regulated articles from Afghanistan require the issuance of a phytosanitary certificate or treatment or testing, the exporter shall –
 - (a) apply to the NPPO in the manner prescribed by regulation;
 - (b) provide all documentation required by regulation;
 - (c) make the consignment available for inspection under paragraph (2) below; and
 - (d) pay any applicable inspection fee set out in Schedule 9.
- (2) Upon application by an exporter under paragraph (1) above, The NPPO shall cause an inspection of the consignment to be carried out in a timely manner, and shall –
 - (a) grant phytosanitary certification and issue a phytosanitary certificate in the form set out in Schedule 6 where –
 - (i) the consignment meets the importing country’s phytosanitary, documentary and other requirements for export;
 - (ii) the consignment satisfies any other requirements for export elaborated by the NPPO or established under any other applicable legislation in Afghanistan.
 - (b) deny certification where the requirements listed in paragraph (1)(a) have not been met.

- (3) Upon issuance of a phytosanitary certificate under paragraph (1)(a), the exporter shall pay any applicable certification fee set out in Schedule 9.
- (4) Following issuance of a phytosanitary certificate, the exporter shall export the consignment in accordance with any NPPO directives providing for the security of consignments after phytosanitary certification and prior to export.

Consignments for re-export

Article 24:

- (1) When a consignment is imported into Afghanistan and then exported to another country, the exporter shall –
 - (a) apply to the NPPO for a re-export phytosanitary certificate;
 - (b) provide all documentation required by regulations accompanying this Law;
 - (c) pay any applicable fee set out in Schedule 9; and
 - (d) make the consignment available for phytosanitary inspection.
- (2) The NPPO shall, upon application by an exporter under paragraph (1) and payment of any applicable inspection fee in Schedule 9, cause a phytosanitary inspection of the consignment to be carried out without undue delay.
- (3) Upon phytosanitary inspection under paragraph (2) the NPPO shall issue a re-export phytosanitary certificate where the NPPO has reasonable grounds to determine that –
 - (a) the consignment has not been subject to the risk of infestation;
 - (b) the phytosanitary requirements of the destination country are equivalent to or less stringent than those of the country of origin, and
 - (c) the accompanying documents comply with the phytosanitary requirements of the country of destination.
- (4) The exporter shall re-export the consignment after the issuance of a phytosanitary certificate for re-export using the form set forth in Schedule 12 and in compliance with directives of the NPPO providing for the security of consignments after phytosanitary certification and prior to re-export.
- (5) The original phytosanitary certificate shall accompany any consignment to be re-exported under paragraph (4).
- (6) Upon issuance of a re-export phytosanitary certificate under paragraph (2) the exporter shall pay any applicable fee.
- (7) In cases where any of the requirements of paragraph (3) are not met, the NPPO shall issue a phytosanitary certificate for export in accordance with Article 22 of this Law.
- (8) Phytosanitary certificates issued under paragraph (7) shall indicate the country of origin of the consignment.

Consignments in transit

Article 25:

- (1) Transit of consignments of plants, plant products or other regulated articles for which phytosanitary requirements are established under Article 15 of this Law through the territory of Afghanistan shall be cleared by written notice of the NPPO upon application by the importer and payment of any applicable fee.
- (2) The phytosanitary requirements of Afghanistan, including phytosanitary certification for import under Article 18 of this Law, shall not apply to a consignment in transit through its territory provided that –
 - (a) the consignment has been packed in such a way that there is no 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 phytosanitary certificate of the country of origin is in conformity with the consignment.

Chapter Five **Containment and Eradication of Pests**

Declaration of Regulated Pests

Article 26:

- (1) The NPPO may declare a pest to be a quarantine pest or a regulated non-quarantine pest based on pest risk analysis.
- (2) The NPPO shall compile a list of quarantine and regulated non-quarantine pests and shall communicate such lists, and any amendments thereto, to:
 - (a) the Ministry responsible for Agriculture for approval and publication in the Official Gazette or any other official publication of the Government;
 - (b) the provincial authorities; and
 - (c) growers, nurseries and landowners as part of the information, education and training under Article 5(1)(a)(xiv).
- (3) The NPPO shall, in consultation with the provincial authorities, periodically update such lists as necessary, and shall promptly communicate the changes to the entities in (2)(a)-(c) above as well as to trading partners. Upon their publication under (a) above, Schedule 1 to this Law shall be automatically updated accordingly.

Control Measures for Regulated Pests

Article 27:

- (1) Any area that is infested or suspected to be infested by a regulated pest, any pest-free area, area of low pest prevalence and buffer zone may be subject to the following official control measures –
 - (a) treatment, disposal or destruction of plants, plant products or other regulated articles, including the treatment of conveyances whether or not they have been found to be infested, in order to limit the spread of a specific pest, keep the area free from a specific pest or keep the level of a specific pest low, as the case may be;
 - (b) mandatory pest control treatments;
 - (c) prohibition or restriction of the movement of any plant, plant product or other regulated article within, from or to those areas;
 - (d) prohibition of planting or replanting of specific plants in a specified location; and
 - (e) any other phytosanitary action which the NPPO may deem necessary.
- (2) The NPPO may notify the owner of any area that he or she is required to implement one or more of the control measures under paragraph (1) in such area within a defined period of time
- (3) If an owner or occupier fails to comply with any term of a notice issued under paragraph (2), the NPPO may authorise an inspector or other person to enter upon the land or premises in question in order to carry out the requirements of the notice and, where circumstances so require, destroy plants, plant products or other regulated articles in order to eradicate, contain or restrict the spread of the pest
- (4) The costs and responsibility for any action taken under paragraphs (2) or (3) shall be borne by the owner.
 - (a) The methods used to calculate the costs shall be those set out in Schedule 8.
 - (b) In exceptional cases, the NPPO may determine that the government shall pay the associated costs, provided, however, that any such payment shall be without prejudice to the government's later recovering the costs as a debt
- (5) The Government of Afghanistan shall bear no liability for the destruction or disposal of plants, plant products or other regulated articles carried out under this article, although in prescribed circumstances compensation may be payable.

Duty of notification of quarantine pests

Article 28:

The occupier or owner of any land or premises on which a quarantine pest is present or is suspected to be present shall immediately notify the NPPO or any provincial or district authority, who in turn shall notify the NPPO.

Declaration of Quarantine Areas

Article 29:

- (1) If, upon inspection carried out in accordance with Article 10, an inspector believes that a quarantine pest is or may be present at any place, he or she may declare such place a provisional quarantine area and prescribe measures for the treatment or disposal of plants, plant products or other regulated articles, and the treatment of conveyances whether or not they have been found to be affected, in order to limit the spread of any quarantine pest.
- (2) Where a provisional quarantine area has been declared under paragraph (1), the NPPO shall within three (3) weeks either –
 - (a) declare the area or premises that is infested or is suspected of being infested with any quarantine pest to be a quarantine area under paragraph (3) below; or
 - (b) revoke the provisional quarantine declaration.
- (3) Where the NPPO determines that an area is infested or suspected of being infested with any quarantine pest, it may declare the area a quarantine area, which shall entail:
 - (a) publishing the declaration of quarantine area by written instrument specifying:
 - (i) the precise area of quarantine and the control measures imposed under Article 26;
 - (ii) the period of quarantine; and
 - (iii) the conditions for subsequent renewals of the declaration; and
 - (b) reviewing regularly the area's quarantine status
- (4) As soon as either –
 - (a) the relevant quarantine pest is considered no longer to be present; or
 - (b) the NPPO determines that it is no longer appropriate for the quarantine to be maintained in respect of some or all of the infested area;
- (5) The NPPO shall lift the quarantine by written notice served on all affected owners or occupiers of the quarantine area and by publication in the same instrument in which quarantine was declared under paragraph 3(a) above.

Phytosanitary Emergency

Article 30:

Based on any inspection carried out under Article 10, the NPPO may declare a phytosanitary emergency.

Declaration of Pest Free Areas

Article 31:

- (1) Where the NPPO is satisfied through adequate surveillance that a pest is not present in an area, and adopts phytosanitary measures to keep the area free of the pest, and institutes a

monitoring system to verify that that condition is maintained, it may declare the area free of pests.

- (2) The NPPO may, on request by any international, regional or national plant protection organization or by its own initiative, provide the technical justification for any declaration made under sub-section (1) above.

Declaration of Areas of Low Pest Prevalence

Article 32:

- (1) Where the NPPO is satisfied that a regulated pest occurs at low levels in an area and adopts control measures under Article 26 of this Law to keep the pest levels low; and institutes a surveillance system to verify that the pest levels remain low, it may declare it an area of low pest prevalence.
- (2) The NPPO may, on request by any international, regional or national plant protection organization or by its own initiative, provide the technical justification for any declaration made under sub-section (1) above.

Recognition of Pest Free Areas and Areas of Low Pest Prevalence

Article 33:

- (1) The NPPO shall work with exporting countries to implement the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.
- (2) The NPPO shall ensure that phytosanitary measures are adapted to the phytosanitary characteristics of the area — whether all of a country, part of a country, or all or parts of several countries — from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, NPPO shall take into account, *inter alia*, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.

Chapter Six **Offences and Penalties**

Offences

Article 34:

It shall be an offence for any person, either personally or indirectly through an employee or agent to –

- (a) grow, possess, sell, offer for sale, transport or distribute in any manner any plants, plant products or other regulated articles knowing that they are affected by a pest listed in Schedule 1;
- (b) assault, resist, intimidate, threaten or obstruct any inspector exercising lawful powers under this Act;

- (c) tamper with any samples taken under Article 10(1)(b) or 11 of this Law;
- (d) fail to comply with any order or direction lawfully made or given under this Act;
- (e) import any plants, plant products or other regulated articles at a port of entry not listed in Schedule 4;
- (f) import any plants, plant products or other regulated articles contrary to any other requirements prescribed under this Law;
- (g) intentionally permit or cause the introduction or spread of any pest listed in Schedule 1;
- (h) export any plants, plant products or other regulated articles contrary to any requirement of this Law;
- (i) fail to safeguard the phytosanitary security of a consignment after issuance of a phytosanitary certificate as required by Article 22(4);
- (j) fail to allow a search or inspection or the taking of any sample authorised under this Law;
- (k) break the seal on a sealed container containing plants, plant products or other regulated articles except in the presence of an inspector;
- (l) knowingly or recklessly provide information which is false, for the purpose of obtaining any document under this Law;
- (m) alter, forge, deface or destroy any document issued under this Law;
- (n) submit any written material for publication referring to the occurrence of a quarantine pest in Afghanistan without prior or simultaneous communication of the existence of the pest to the NPPO;
- (o) otherwise contravene the provisions of this Law.

Offenses by Public Officials

Article 35:

In addition to the offences listed in Article 32, it shall be an offence for any inspector, official analyst or other staff performing duties under this Law to –

- (a) in connection with any official duties, directly or indirectly ask for or take any personal payment or other reward;
- (b) agree to do, abstain from doing, permit, conceal or connive at any act or thing which is contrary to the proper execution of official duties under this Law or otherwise contrary to the laws of Afghanistan;
- (c) disclose any information acquired in the performance of official duties relating to any person, firm or business, except when required by his or her supervisor in the course of official duties or where ordered to do so by any court.

Penalties

Article 36:

- (1) Any person who commits an offence under this Law shall be punishable –
 - (a) on a first conviction by a fine from ____ to ____, or by imprisonment for a period not to exceed _____, or both;
 - (b) on a subsequent conviction by a fine from ____ to ____, or by imprisonment for a period not to exceed _____ or both.
- (2) A court convicting a person of an offence under this Law may, in addition to any other penalty imposed, order that any thing used in the perpetration of the offence be forfeited to the government.

Notice of Offence, Fixed Penalties

Article 37:

- (1) Notwithstanding anything to the contrary in this or any other Law, where an inspector has reason to believe that any person (hereafter in this article referred to as the “alleged offender”) is committing or has committed an offence specified in Article 32, the inspector may then and there serve notice in writing upon the alleged offender that he or she has committed an offence under the Act.
- (2) The inspector shall at the time of the service of notice referred to in paragraph (1) inform the alleged offender that he or she must appear before the magistrate on the date specified, or in accordance with procedures set out in paragraphs (3) and (4), pay the fixed penalty set out in Schedule 10 in lieu of appearance before the magistrate.
- (3) An alleged offender who chooses to pay the fixed penalty referred to in paragraph (2) shall within the time specified in the notice, sign the notice in acknowledgement of guilt and return it, together with the sum cited therein, to the clerk of the magistrate’s court, and shall be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for, convicted of or sentenced for the offence in respect of which payment was made.
- (4) The admission of guilt and the fixed penalty paid under this paragraph shall be dealt with by the magistrate in the same manner as an adjudication in court of an offence punishable on summary conviction and for which no conviction is recorded.
- (5) For purposes of this paragraph, inspectors exercise powers equal to those of police officers.

Chapter Seven

Transparency of Phytosanitary Measures

National Enquiry and Notification Center

Article 38:

- (1) A National Sanitary and Phytosanitary Enquiry and Notification Point (hereinafter SPS ENP), shall be established at the Ministry of Agriculture Irrigation, and Livestock to process enquiry regarding all sanitary and phytosanitary measures of Afghanistan and provide notification regarding all relevant draft and adopted sanitary and phytosanitary measures.
- (2) The Council of Ministries shall prescribe the regulations on the SPS ENP, procedure for providing information and payment of costs for carrying out the above work and rendering of services.

Notification and Publication of Phytosanitary Measures

Article 39:

- (1) All proposed phytosanitary measures, that do not conform to international standards or for which no international standards exist, and it is expected that they may have a significant effect on export opportunities of interested trading partners, a notice of the availability of the proposed phytosanitary measure shall be published and such measure shall be notified through the SPS ENP no less than 60 days before preparing a final draft phytosanitary measure in accordance with the provisions of relevant international agreements.
- (2) Comments received as a result of the notification and publication of proposed new or changed phytosanitary measures shall be taken into consideration in a non-discriminatory manner before such measures are adopted. When requested in writing by a person or interested trading partner, the SPS ENP shall provide the text of the proposed phytosanitary measure, and, whenever possible, identify the provisions, which in substance deviate from international standards, guidelines and recommendations.
- (3) In urgent circumstances however, phytosanitary measures may be adopted before notification, provided that such notification is done promptly and without delay.
- (4) All new and revised phytosanitary measures after their adoption shall be published promptly in the relevant official gazette and shall come into force no earlier than 6 months from the date of relevant publication.
- (5) In the case of urgent circumstances, and also in case of application of measures that reduce import restrictions, a phytosanitary measure may come into force as of the date of adoption, provided it is subsequently published in the relevant official publication.
- (6) The Council of Ministries shall ensure adoption of normative-legal acts to implement the provisions of this Article.

Provision of Information on Relevant Phytosanitary Measures

Article 40:

Upon the request of any person in accordance with obligations of international agreements, the SPS ENP shall provide the latter with any information concerning phytosanitary measures for objects subject to phytosanitary measures. Such information shall include the following:

- (1) Scientific justification for phytosanitary measures that are applied on both imported and domestic food products;
- (2) Procedures and means of risk assessment of food-borne hazards for human health, as well as the data of the reports related to such risk assessment;
- (3) Procedures and means of controlling food products in Afghanistan;
- (4) Current instructions, requirements, and procedures of food product inspection and control;
- (5) Information about membership and participation of Afghanistan in the relevant international organizations or international agreements regarding phytosanitary measures and the texts of such agreements;
- (6) Any other relevant information.

Chapter Eight

Final Provisions

Financial resources

Article 41:

The Ministry responsible for agriculture shall request the allocation of appropriate financial resources for implementation and enforcement of the provisions of this Law from the development and operational budgets, which requests shall be processed in accordance with financial laws and regulations.

Power to Issue Regulations

Article 42:

- (1) The Ministry may, on the advice of the Board, make, amend or revoke regulations, orders, schedules or notices which he or she considers appropriate to give effect to any of the purposes of this Law.
- (2) In particular and without prejudice to the generality of paragraph (1), the Ministry may, on the advice of the Board, by order –
 - (a) amend any schedules to this Law;
 - (b) make any other regulations, orders, schedules or notices prescribing all or any of the following matters –
 - (i) procedures to be followed by inspectors in the exercise of their powers under this Law;
 - (ii) conditions for the import of any plants, plant products or other regulated articles;

- (iii) which ports of entry in Afghanistan are appropriate for the import and export of plants, plant products and other regulated articles;
- (iv) the circumstances under which phytosanitary requirements for import may be modified based on pest risk analysis;
- (v) procedures and guidelines for pre-clearance inspections;
- (vi) the manner in which permits and certificates shall be issued under this Law, and their form, content and language;
- (vii) the procedures by which an importer may apply for inspection to take place at any location other than the port of entry, and/or outside of regular business hours, and pay any applicable fees;
- (viii) the manner in which containers must be sealed and marked if they are to be inspected at their final destination rather than at the port of entry;
- (ix) the way in which plants, plant products and other regulated articles must be stored or transported in Afghanistan;
- (x) the procedures to be adopted for the treatment of imported plants, plant products or other regulated articles and the conveyances bringing them into Afghanistan;
- (xi) the location, management and functioning of any plant quarantine stations established under this Law;
- (xii) the requirements for the control and care of plants, plant products and other regulated articles kept or maintained at plant quarantine stations;
- (xiii) the manner in which inspectors shall arrange for the destruction, removal, uprooting or treatment of plants, plant products or other regulated articles within an area or location declared as under quarantine;
- (xiv) the period within which it shall not be lawful to plant or re-plant any thing in all or part of an area declared as under quarantine;
- (xv) the manner in which any samples must be taken, marked and retained under this Law;
- (xvi) the operating procedures of any official laboratories designated under this Law;
- (xvii) the process by which an area may be declared pest-free or an area of low pest prevalence;
- (xviii) conditions for the export of any plants, plant products or other regulated articles;
- (xix) operating procedures for the inspection of plants, plant products or other regulated articles for purposes of export;
- (xx) the offences subject to the fixed penalty procedure outlined in Article 35;
- (xxi) the procedures to be followed for lodging an appeal against actions taken by inspectors under this Law;

(xxii) criteria for the declaration of a phytosanitary emergency under Article 20(7)(c) or Article 29;

(xxiii) additional measures to be taken for the purpose of preventing the introduction or spread of pests.

Entry into Force

Article 43:

- (1) This Law may be cited as the Plant Protection and Quarantine Law
- (2) This Law shall come into force six months after publication in official gazette subsequent to the signature by the President of Afghanistan.
- (3) The Ministry of Agriculture, Irrigation and Livestock shall prepare and adopt all relevant implementing regulations and procedures for this law within six months from the date of its publication in the official gazette.
- (4) Upon entry of force of the present Law, the Plant Quarantine Services Law, Official Gazette No. 647 of 1987, and the Plant Quarantine Services Regulation, Official Gazette No. 647 of 1987, and any later amendments are hereby repealed

SIGNATURE
PRESIDENT OF THE
ISLAMIC REPUBLIC OF AFGHANISTAN