

Draft-November 12, 2012

**DRAFT PLANT PROTECTION AND QUARANTINE LAW
OF THE ISLAMIC REPUBLIC of AFGHANISTAN**

Chapter One
General Provisions

Justification

Article 1:

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**”

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**”

spreading pests, deemed to require phytosanitary measures, particularly where international transportation is involved;

31. **“regulated non-quarantine pest**

- (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;

- (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.

(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 appoin(Bobe)4. TD.029(b-6.7(d7vm)-1)-1.2(im4.2(t)9.3(aitteevm)-1s1.1(sa)4.4(ps1.1(sait

- (c) ensure the disinfection or disinfection 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 for export or reexport 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)

- (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, then

- (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

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

- (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) 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:

- (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

existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.

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:3ts-1

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- (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.

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;

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.