

ANTIGUA AND BARBUDA



THE PLANT PROTECTION ACT, 2012

No. 18 of 2012

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THE PLANT PROTECTION ACT, 2012

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[L.S.]



I Assent,

Dame Louise Lake-Tack,
Governor-General.

28th February, 2013

ANTIGUA AND BARBUDA

THE PLANT PROTECTION ACT, 2012

No. 18 of 2012

AN ACT to prevent the introduction and to control the spread of plant pests; to protect plant resources; facilitate trade in plants and plant products; to regulate other matters connected thereto.

ENACTED by the Parliament of Antigua and Barbuda as follows:

PART I
PRELIMINARY

1. Short title

This Act may be cited as the Plant Protection Act, 2012.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“affected” means infected or infested with a pest;

“area” includes a place or site of production;

“area of low pest prevalence” means an area, whether all of Antigua and Barbuda or part of Antigua and Barbuda, as prescribed, in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures;

“beneficial organism” means any organism including fungi, bacteria, viruses, virus-like organisms and invertebrate or other animals which is declared by the Minister in writing to be beneficial to flora or agricultural production;

“Board” means the Plant Protection Board established pursuant to section 9 of this Act;

“consignment” means a quantity of plants, plant products or other regulated articles being moved from one country to another and covered, when required, by a single phytosanitary certificate;

“contain” means to apply phytosanitary measures in and around an infested area to prevent the spread of a pest;

“container” means a box, bag, wrapper, covering or other receptacle in which plants, plant products or other regulated articles that may carry pests have been or are being transported;

“control” means to suppress, contain or eradicate a pest population;

“conveyance” means any vessel, 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;

“detain” means to keep a consignment in official custody or confinement for phytosanitary reasons, and “detention” shall have a corresponding meaning;

“endangered area” means an area where ecological factors favour the establishment of a pest whose presence in the area will result in economically important loss;

“entry” 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;

“eradicate” means to apply phytosanitary measures to eliminate a pest from an area, and “eradication” shall have a corresponding meaning;

“establishment” means the perpetuation, for the foreseeable future, of a pest within an area after entry;

“Fund” means the Phytosanitary Emergency Fund established under section 14;

“germplasm” means plants intended for use in breeding or conservation programmes;

“import permit” means a permit issued under section 16(1);

“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 Antigua and Barbuda from another country;

“inspection” means official visual examination of plants, plant products or other regulated articles to determine if pests are present or to determine compliance with phytosanitary regulations;

“inspector” means a plant protection officer and any person designated or appointed under section 6;

“introduction” means the entry of a pest resulting in its establishment in Antigua and Barbuda;

“IPPC” means the New Revised Text of the International Plant Protection Convention;

“IPPC Secretariat” means the Secretariat of the International Plant Protection Convention;

“Minister” means the Minister responsible for plant protection;

“Ministry” means the Ministry responsible for plant protection;

“National Plant Protection Organisation” or “NPPO” means the official unit, department or office designated by the Minister under section 4;

“occupier”, in relation to any land or building, means a person in actual occupation thereof;

“official” means established, authorized or performed by the NPPO;

“official control” means the enforcement of mandatory phytosanitary regulations and the application of mandatory phytosanitary procedures with the objective of eradication or containment of quarantine pests or for the management of regulated non-quarantine pests;

“outbreak” means an isolated pest population, recently detected and expected to survive for the immediate future;

“owner”, in relation to any thing, includes any person having for the time being the possession, custody or control thereof;

“packaging” means any material used to pack, contain or keep plants, plant products or other regulated articles;

“pest” means any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products;

“pest free area” means an area in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained;

“pest risk analysis” means the process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it;

“phytosanitary certificate” means a certificate patterned after the model certificate of the IPPC;

“phytosanitary emergency” means an emergency declared under section 21(c) or 28;

“phytosanitary measure” means any legislation, regulation or official procedure having the purpose of preventing the introduction and or spread of quarantine pests, or limiting the economic impact of regulated non-quarantine pests;

“plant products” means any unmanufactured material of plant origin (including grain) and those manufactured products which, by their nature or that of their processing, may create a risk for the introduction and spread of pests;

“plants” means living plants and parts thereof, including seeds and germplasm;

“pre-clearance” means phytosanitary certification or clearance in the exporting country, performed by or under the supervision of the NPPO;

“premises” means land or any building or other structure situated on land;

“prescribed” means prescribed by regulations made under this Act;

“quarantine pest” means a pest of potential economic importance to the area endangered thereby, not yet present there, or present but not widely distributed and being officially controlled, and declared as such in regulations;

“regular business hours” means the normal operating hours of government offices in Antigua and Barbuda;

“regulated article” means any storage place, packaging, conveyance, container, soil and any other organism, object or material capable of harbouring or spreading pests, deemed to require phytosanitary measures, particularly where international transportation is involved, and includes beneficial organisms;

“regulated non-quarantine pest” means any pest listed in regulations made under this Act, whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact;

“regulated pest” means a quarantine pest or a regulated non-quarantine pest;

“soil” means material wholly or partly derived from the upper layer of the earth’s crust which is capable of sustaining plant life and which contains solid organic substances such as parts of plants, humus, peat or bark, but excluding any medium which is sterile, composed entirely of unused peat or otherwise incapable of harbouring or transmitting pests;

“SPS Agreement” means the WTO Agreement on the Application of Sanitary and Phytosanitary Measures to which Antigua and Barbuda is a party;

“storage place” means a place where a plant, plant product or regulated article is stored;

“suppression” means the application of phytosanitary measures in an affected area to reduce a pest population;

“surveillance” means an official process which collects and records data on pest occurrence or absence by survey, monitoring or other procedures;

“treatment” means an officially authorized procedure for the killing or removal of pests or rendering pests infertile;

“WTO” means the World Trade Organisation established in 1995 of which Antigua and Barbuda is a member.

PART II ADMINISTRATION

3. Powers of the Minister

(1) The Minister shall have primary responsibility for the administration of this Act.

(2) Notwithstanding sub-section (1), the Minister may, in writing, delegate specific functions under this Act to the National Plant Protection Organisation or other government officials or agencies as the Minister considers appropriate.

4. Designation of NPPO

(1) The Minister shall designate a government unit, department or office to serve as the National Plant Protection Organization of Antigua and Barbuda, and shall transmit the name of such unit to the IPPC Secretariat.

(2) The Minister may appoint individuals from time to time to serve as members of the National Plant Protection Organisation.

5. Functions of NPPO

The functions of the National Plant Protection Organisation shall include the following—

- (a) the implementation of the IPPC and the SPS-Agreement, and the following responsibilities—
- (i) issuing phytosanitary certificates;
 - (ii) carrying out surveillance of an ornamental and growing plant, including areas under cultivation and wild flora, and of a plant and a plant product in storage or in transport, for the purpose of reporting the occurrence, outbreak and spread of pests, and of controlling those pests;
 - (iii) inspecting any consignment of a plant and plant product and, where appropriate, inspecting any regulated article or storage place, for the purpose of preventing the introduction and spread of pests;
 - (iv) conducting pre-clearance inspections where requested;
 - (v) disinfesting or disinfecting consignments of plants, plant products and other regulated articles;
 - (vi) protecting endangered areas and plant species and designating, maintaining and surveying pest free areas and areas of low pest prevalence;
 - (vii) conducting pest risk analysis;
 - (viii) providing information 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 that may be prescribed;
 - (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) distributing information regarding regulated pests and the means of their prevention and control;
 - (xiv) proposing, reviewing, preparing and enforcing phytosanitary measures and other necessary legislation;

- (xv) notifying phytosanitary measures to the designated national enquiry point for SPS, the IPPC focal point, any local agency affected by the measures and to other countries in accordance with international obligations; and
 - (xvi) 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 organisation.
- (b) the enforcement of this Act, as well as any other legislation relating to plant protection that the Minister may direct;
 - (c) the representation of Antigua and Barbuda in any bilateral, regional and international forum relating to phytosanitary matters;
 - (d) the development and application of pest diagnostic, investigative and analytical capabilities as well as the establishment, of laboratories, plant quarantine stations and other phytosanitary facilities;
 - (e) the establishment of procedures for accreditation of any plant quarantine station, official analyst, official laboratory or any other person or institution from the public or private sector involved in phytosanitary matters; and
 - (f) any other function that the Minister considers necessary for the purposes of this Act.

6. Appointment of inspectors

The Minister, acting in consultation with the Board, may appoint or designate officers of the NPPO to carry out the duties assigned to an inspector under this Act.

7. Duties of an inspector

(1) The duties of an inspector include the following—

- (a) inspecting and certifying any—
 - (i) any plant, plant product under cultivation, in a storage place or in transit; ;
 - (ii) any regulated article in a storage place or in transit; or
 - (iii) storage place in order to discover, prevent and report the existence, outbreak and spread of a pest; and

- (iv) consignment of any plant, plant product or regulated article destined for import or export to determine whether it is affected, and where necessary verifying the pest status of consignments by the taking of samples or otherwise;
- (b) ensuring—
 - (i) the disinfection or disinfestation of the consignment of any plant, plant product or regulated article destined for import or export, as well as its container, packaging, storage place and transport facility;
 - (ii) that no threat to plant resources is caused by waste disposed from –
 - (a) any aircraft, ship, pleasure craft or any vessel arriving in Antigua and Barbuda; and
 - (b) premises which process or wash any imported plant, plant product or regulated article;
 - (c) issuing phytosanitary certificates on behalf of the NPPO;
 - (d) carrying out detection activities and maintaining up-to-date information on the pest status;
 - (e) conducting surveillance and monitoring exercises in any land, premises or area as required under this Act;
 - (f) instituting inquiries and requesting information or documentation on reasonable suspicion that the provisions of this Act are being contravened; and
 - (g) performing any other function relating to inspection or certification as the NPPO may assign to the inspector.

(2) An inspector may carry out an inspection under subsection (1) (a) (iv)) on the territory of an exporting country as a pre-clearance inspection, at the invitation of the exporting country.

(3) In carrying out any duty under subsection (1) or (2), an inspector shall, identify himself as an inspector by showing his identification card or other proof of his or appointment or designation as an inspector.

8. Laboratories, Analysts

The NPPO shall designate one or more—

- (a) laboratories to be official laboratories; and

(b) analysts to be official analysts;

for the purposes of this Act.

9. Establishment, composition, procedure of Plant Protection Board

(1) The Plant Protection Board is hereby established, and shall consist of—

(a) three staff members of the Ministry responsible for agriculture, including —

- (i) the head of the NPPO;
- (ii) the Director of Agriculture; and
- (iii) one other person nominated by the Director of Agriculture;

(b) one representative of each of the following—

- (i) the Ministry responsible for the environment;
- (ii) the Ministry responsible for trade;
- (iii) the Ministry of Legal Affairs;
- (iv) the Customs Department;
- (v) the Antigua and Barbuda Defence Force;
- (vi) Barbuda Council;
- (vii) the Ministry responsible for health;
- (viii) the Royal Police Force of Antigua and Barbuda;

(c) one representative appointed by the Minister from each of the following—

- (i) importer and exporters;
- (ii) growers and nursery owners.

(2) Members of the Board shall be nominated by their respective Minister or president/chair as the case may be, and appointed by the Minister responsible for plant protection.

(3) Members shall be paid an honorarium to be approved by the Minister.

(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, provided that in the case of an emergency declared under this Act, the Board may act notwithstanding the absence of a quorum.

(6) The Board shall meet at least four times per year.

(7) The Board shall elect a Chairperson at its first meeting, which shall take place within three months from the date of commencement of this Act.

(8) Except as provided in sub-sections (1) to (7) and sections 12 and 13, the Board shall regulate its own procedure.

(9) Minutes of each meeting shall be kept in proper form by a public officer who shall be designated by the Permanent Secretary of the Ministry.

10. Disqualification of members of Plant Protection Board

(1) The Minister may, terminate the appointment of the Chairperson or any other member of the Board, if the member—

- (a) becomes of unsound mind, as certified by a duly appointed medical board;
- (b) is an un-discharged bankrupt;
- (c) has been found to be guilty of misconduct which is related to the performance of his functions pursuant to this Act;
- (d) has been absent, in the case of the Chairperson, without leave granted by the Minister and in the case of a member, without leave granted by the Chairperson, from four consecutive meetings of the Board; or
- (e) becomes incapable, wilfully or otherwise, of carrying out his functions pursuant to the provisions of this Act.

(2) The appointment of a member of the Board shall not be terminated unless that member has been given a reasonable opportunity to make representations.

(3) The names of the members of the Board as first constituted and every change in the membership thereafter must be published in the *Gazette*.

11. Resignation of members of Plant Protection Board

A member of the Board, other than the Chairperson, may at any time resign his office by instrument in writing addressed to the Minister and from the date of receipt of the instrument by the member that member shall cease to be a member of the Board.

12 Advisory role of Board

The Board shall act in an advisory capacity to the Minister and the NPPO on issues of plant protection and shall be responsible for—

- (a) recommending changes to relevant legislation as required, and recommending regulations, schedules, notices and orders to be made, issued or amended under this Act;
- (b) assisting in the determination of criteria for the declaration of a phytosanitary emergency under section 21(c) or 32.

13. Sub-committees of Board

The Board may appoint such sub-committees as it may consider necessary, including members of the Board, to provide advice and technical input.

14. Phytosanitary Emergency Fund

- (1) There is established a Phytosanitary Emergency Fund which shall be administered by the Board.
- (2) There shall be paid into the Fund—
 - (a) all monies voted by Parliament for the purposes of this Act;
 - (b) donations, grants, awards and endowments given to the Board; and
 - (c) any proceeds or fees collected under this Act, except fines imposed by a court.
- (3) All monies collected or received under this Act shall be paid into the general account of the Fund in a bank approved by the Minister of Finance, and administered in accordance with the Finance Administration Act, 2006.
- (4) The resources of the Fund shall be made available to the NPPO upon declaration of a phytosanitary emergency under section 21(c) or 31.

PART III
IMPORTS

15. Restrictions on importation

(1) A Plant, plant product or other regulated article may be imported into Antigua and Barbuda only at the prescribed ports of entry.

(2) The NPPO may require that certain plants, plant products or other regulated articles not be imported except—

(a) by authority of an import permit granted under section 16(1);

(b) where accompanied by—

(i) an original phytosanitary certificate issued by the country of export that is dated not more than thirty (30) days before the entry of the plant, plant product or regulated article into Antigua and Barbuda; and

(ii) any other documentation that may be prescribed; and

(c) where all prescribed requirements are satisfied.

16. Import permit

(1) Where an import permit is required under section 15(2)(a), an importer shall apply to the NPPO in the prescribed manner and may be granted a permit on payment of the prescribed fee.

(2) In the evaluation of an application for an import permit, the NPPO shall apply existing international standards or conduct pest risk analysis as the case may be in order to determine the applicable phytosanitary requirements.

17. Declaration to be signed by captain

Where a plant, plant product or regulated article has been imported on a vessel or aircraft, in the absence of the owner, the captain shall sign a declaration in the prescribed form.

18. Inspection on importation

(1) A person who has imported a plant, plant product or regulated article shall present it for inspection by an inspector at the prescribed port of entry.

(2) Notwithstanding subsection (1), a plant, plant product or regulated article may be inspected by an inspector at a place other than the port of entry—

- (a) on the application by an importer, and
- (b) if the container has been sealed and marked as prescribed or in a manner required under any other law.

(3) An inspection carried out under subsection (1) or (2) is subject to the payment of the prescribed fee.

(4) An inspection referred to in subsection (1) or (2) shall be carried out during regular business hours, except where the plant, plant product or regulated article is in transit or extremely perishable or where its entry has otherwise been delayed, in which case, on application by the importer and on payment of the prescribed fee, the NPPO may agree to an inspection being carried out at any other time.

19. Detention or destruction of imports

(1) If, on an inspection that is carried out in accordance with section 18, the inspector determines that the imported plant, plant product or regulated article—

- (a) is not accompanied by any relevant documentation required by section 15(2); or
- (b) presents any risk for the introduction or spread of pests;

the inspector shall detain the item and immediately serve written notice on the importer that part or all of the imported plant, plant product or regulated article may be subject, within the time period specified in the notice, to—

- (i) detention until the receipt of relevant documentation within a reasonable time;
- (ii) appropriate treatment in order to remove the risk;
- (iii) re-exportation;
- (iv) confiscation; or
- (v) destruction.

(2) The inspector may forgo notice and carry out any of the actions listed under subsection (1) where in [his or her] opinion destruction of the imported plant, plant product or regulated article is urgently required or the giving of notice is impracticable.

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

(4) The costs and responsibility for any action taken under subsection (1), (2) or (3) shall be borne by the importer, except where in exceptional cases the NPPO determines that the State should take responsibility for the associated costs.]

(5) The State may assume financial responsibility under subsection (4) without prejudice to its right to recover costs from the importer as a debt.

(6) Where any action is taken under subsection (1), (2) or (3), the method used to calculate costs charged shall be in accordance with the prescribed procedure.

(7) The State shall not be liable for the confiscation, destruction or disposal of any plant, plant product or regulated article carried out in accordance with this section.

20. Release of imports

If upon inspection carried out under section 18 the inspector determines that the imported plant, plant product or other regulated article do not present any risk for the importation and spread of pests, he may release the consignment to the importer.

21. Minister may restrict certain imports

In order to protect plant resources, human and animal health or the environment, the Minister may, on the advice of the Board—

- (a) permit the entry of any plant, plant product or regulated article for scientific or experimental purposes, subject to such terms and conditions that the Minister, on the advice of the Board, considers appropriate;
- (b) prohibit or restrict the entry of any plant, plant product or regulated article;
- (c) declare a phytosanitary emergency; or
- (d) take any other necessary action to prevent the introduction or spread of a quarantine pest and regulated non-quarantine pest.

22. Plant quarantine stations

The NPPO may—

- (a) designate certain places as plant quarantine stations where a plant, plant product or other regulated article may be kept for phytosanitary observation, research, inspection, testing, treatment, detention or destruction;
- (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.

23. Duty to report and detain imports

(1) An employee of the postal service or an official of the Customs Department, Port Authority, Royal Police Force or Defence Force who has knowledge of the arrival or importation of any plant, plant product or regulated article, shall, in the absence of an inspector—

- (a) as soon as practicable, notify the arrival or importation to the NPPO; and
- (b) detain the plant, plant product or regulated article for inspection by an inspector.

(2) A detention carried out under subsection (1) shall be deemed to be an action taken by or on delegation from the NPPO.

(3) The NPPO shall take custody of any item detained under subsection (1) within three days of its detention.

24. Consignments in transit

(1) The movement of consignments of regulated articles which pass through Antigua and Barbuda without being imported and which may present a phytosanitary risk to Antigua and Barbuda shall be subject to the application of measures to reduce or remove this risk. The elements of such a transit system shall be as prescribed.

(2) Notwithstanding subsection (1) above, all consignments containing regulated articles as described, shall, in no less than 48 hours prior to arrival in Antigua and Barbuda, be notified in writing to the NPPO and written permission sought to facilitate the transit of such regulated articles through Antigua and Barbuda.

PART IV EXPORTS

25. Restriction on exports

A person shall not export a plant, plant product or regulated article unless that person—

- (a) applies to the NPPO in the prescribed manner;
- (b) provides to the NPPO all documentations that are prescribed;
- (c) makes the consignment available for inspection under section 26;
- (d) pays the prescribed fees; and

has been granted a phytosanitary certificate.

26. Inspection of exports

(1) The NPPO shall, on application by an exporter under section 25, cause an inspection of the consignment to be carried out, and:

- (a) issue a phytosanitary certificate, in a form as may be prescribed, where the consignment—
 - (i) meets the documentary and other requirements for import of the country to which the consignment is to be exported; and
 - (ii) satisfies any other requirements for export specified by the NPPO or under any applicable law; or
- (b) deny the issue of a phytosanitary certificate where the requirements specified in paragraph (a) have not been met.

(2) The issuance of a phytosanitary certificate shall not release the exporter from compliance with this Act or any other law.

PART V

CONTAINMENT AND ERADICATION OF PESTS

27. Duty of occupier to notify NPPO

The occupier or owner of any land or premises, who has knowledge of or suspects the presence of a quarantine pest thereon shall immediately notify the NPPO.

28. Declaration of quarantine

(1) The Minister may, on the advice of the Board—

- (a) declare any land, premises or area that is affected or is suspected of being affected with any pest to be under quarantine;
- (b) prescribe measures for the treatment or disposal of a plant, plant product, regulated article, and the treatment of a storage place whether or not it has been found to be affected, in order to limit the spread of any quarantine pest;
- (c) prescribe the period of quarantine.

(2) For the purpose of sub-section (1), "quarantine" includes—

- (a) prohibiting the movement of people, conveyances, plants, plant products or other regulated articles from or to a specified location (land, premises or area);
- (b) prohibiting the planting or replanting of a specified location;
- (c) the taking of any other measure which the Minister on the advice of the Board deems necessary under the circumstances.

29. Procedure when quarantine pest is on premises

(1) If the NPPO believes that a quarantine pest is present on any premises, it may, subject to section

35 (2)—

- (a) authorize an inspector to—
 - (i) enter the premises at any reasonable time,
 - (ii) inspect any plant, plant product, regulated article or storage place, and
 - (iii) take a sample as he may consider necessary; and
- (b) require, by notice in writing, the owner or occupier of the premises, and where the NPPO deems it appropriate, the owner or occupier of any premises in the vicinity, to take within a specified period such measures on his premises that the NPPO considers appropriate to eradicate, contain or restrict the spread of the pest.

(2) If an owner or occupier of premises fails to comply with any term of a notice issued under subsection (1) (b), the NPPO may direct an inspector or other authorized person to enter the premises in question in order to—

(a) - carry out the requirements of the notice;

(b) where necessary, destroy the plant, plant product or regulated article; and eradicate, contain or restrict the spread of the pest.

(3) The owner shall be liable to pay the costs for any action taken under subsection (2), except where in exceptional cases the NPPO determines that the State should take responsibility for the associated costs.

(4) The State may assume financial responsibility under subsection (3) without prejudice to its right to recover its costs from the owner as a civil debt.

(5) Where the NPPO takes any action under subsection (2), the method used to calculate the costs shall be as prescribed.

(6) The State shall not be liable for the destruction or disposal of any plant, plant product or regulated article carried out in accordance with this section.

30. Service of quarantine notice in absence of occupier

If a person is not in actual occupation of any premises, or if the occupier cannot be found, service of any notice under this Act may be made by affixing the same in a conspicuous place on the premises, and such affixing shall be deemed to be sufficient service or notice

31. Duration of quarantine notice

(1) Any notice issued under section 29 (1) (b) or 30 shall remain in force until an inspector gives any affected owner or occupier a certificate in writing that the premises or area is free from pests.

(2) A person shall not remove, or allow or cause to be removed any plant, plant product or regulated article from the premises or area under quarantine while a notice issued under section 29 (1) (b) or 30 is in force.

32. Declaration of phytosanitary emergency

The Minister may, on the advice of the NPPO, declare a phytosanitary emergency based on—

(a) an inspection carried out under this Act; or

(b) an analysis of a sample taken under section 29 (1) (a) (iii).

33. Lifting of quarantine

The Minister shall, upon the advice of the Board, serve written notice on all affected owners or occupiers of land to lift the quarantine where—

- (a) he determines that the relevant quarantine pest is no longer considered 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 affected land.

34. Declaration of pest free or low pest prevalence area

The Minister may, on the recommendation of the NPPO—

- (a) declare an area pest free where the NPPO is satisfied that—
 - (i) a pest is not present in an area;
 - (ii) phytosanitary measures have been implemented to keep the area free of the pest; and
 - (iii) a surveillance system has been instituted to verify that the area remains free of the pest.
- (b) declare an area of low pest prevalence where the NPPO is satisfied that—
 - (i) a pest occurs at low levels in an area
 - (ii) phytosanitary measures have been implemented to keep the pest levels low; and
 - (iii) a surveillance system has been instituted to verify that the pest levels remain low.

PART VI ENFORCEMENT

35. Entry and search by an inspector

(1) For the purpose of detecting a quarantine pest or a regulated quarantine pest or ensuring compliance with this Act, an inspector may—

- (a) stop and without a warrant search a person, container or conveyance, entering or moving within Antigua and Barbuda that the inspector believes on reasonable grounds is harbouring such pest;

- (b) subject to subsections (2) and (3), at a reasonable time, enter and inspect any premises;
- (c) open any container, receptacle or other thing that the inspector believes on reasonable grounds contains any thing in respect of which this Act applies;
- (d) examine any thing in respect of which this Act applies and take a sample of it.

(2) An inspector shall not enter a dwelling house except with the consent of the occupier or under the authority of a warrant issued by a Magistrate.

(3) An inspector may, with a warrant issued by a Magistrate, enter and search any premises, where there is reasonable cause to believe that an offence against this Act has taken or is taking place.

(4) A person shall not break a seal on a sealed container containing a plant, plant product or regulated article unless an inspector is present.

(5) An inspector may, in the performance of his duties under this section, be accompanied and assisted by a police officer.

(6) In the course of an inspection carried out under subsections (1), (2) and (3), an inspector may, as he considers necessary, seize, destroy, detain, treat or otherwise dispose of any plant, plant product or regulated article, or order that any such action be taken, at the expense of the owner.

36. Seizure and notice of seizure

(1) In the course of an inspection carried out under this Act, if an inspector believes on reasonable grounds that a provision of this Act has been or is being contravened, or any plant, plant product or regulated article presents a risk of the introduction or spread of a pest, the inspector may seize the plant, plant product or regulated article—

- (a) by means of or in relation to which he believes on reasonable grounds that the contravention has been or is being committed;
- (b) that he believes on reasonable grounds will afford evidence in respect of the contravention of the provision of this Act.

(2) An inspector who seizes and detains a plant, plant product or regulated article under this Act—

(a) shall immediately issue to the owner of the plant, plant product or regulated article a detention certificate in the prescribed form and shall, as soon as practicable, advise the owner that part or all of the plant, plant product or regulated article may be subject within a specified time to any action specified in section 37; or

- (b) may forego advising the owner of the plant, plant product or regulated article of the reason for the seizure if, in the opinion of the inspector, it is urgently required to destroy the plant, plant product or regulated article or the giving of the reason for the seizure is impractical.

37. Storage or removal of affected items

Where an inspector has seized and detained a plant, plant product or regulated article under this Act—

- (a) the inspector, or
- (b) any other person designated by the NPPO,

may—

- (i) store, treat, quarantine or dispose of the plant, plant product or regulated article at the place where it was seized or move it to any other place for storage, treatment, quarantine or disposal,
- (ii) require its owner to store, treat, dispose of, re-export or move it to any other place.

38. Confiscation and disposal of unclaimed items

(1) An inspector may confiscate and dispose of—

- (a) any plant, plant product or regulated article that, after its entry into Antigua and Barbuda after treatment, remains unclaimed for a prescribed time; or
- (b) any thing that the inspector believes on reasonable grounds contains or harbours a quarantine pest or regulated non quarantine pest.

(2) An inspector who confiscates a plant, plant product or regulated article or a quarantine pest or regulated non quarantine pest—

- (a) shall, as soon as is practicable, advise the owner of the reason for its confiscation and issue a confiscation certificate; or
- (b) may forego advising the owner of the plant, plant product or regulated article or pest of the reason for the confiscation if the giving of the reason for the confiscation is impractical.

39. Appeal

(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 within fourteen days in the manner prescribed under this Act.

(2) Where an appeal has been filed the Minister shall take reasonable steps to stay the destruction, disposal or treatment of the articles pending a determination of the appeal by the committee appointed, except where in the opinion of the Minister any delay would create a significant risk or harm to plant resources in Antigua and Barbuda.

(3) Subject to sections 19(7) and 29(5), a determination by the committee under sub-section (4) shall not prejudice the right of any aggrieved party to seek recourse in the courts.

(4) The committee, which shall hear and determine any matter within three working days, shall comprise three persons appointed by the Board and shall regulate its own procedure.

(5) The committee may, upon hearing any appeal, confirm, vary or set aside the decision of the inspector or determine the matter and impose additional conditions.

40. Offences

It shall be an offence for any person, either personally or indirectly through an employee, servant 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 quarantine pest;
- (b) assault, resist, intimidate, threaten, abuse in any manner whatsoever, or obstruct any inspector exercising lawful powers under this Act;
- (c) tamper with any samples taken pursuant to this Act;
- (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 regulations;
- (f) import any plants, plant products or other regulated articles contrary to any other requirements prescribed under this Act;
- (g) intentionally permit or cause the introduction or spread of any pest;

- (h) export any plants, plant products or other regulated articles except in accordance with Part IV of this Act. †
- (i) fail to safeguard within 48 hours the phytosanitary security of a consignment after issuance of a phytosanitary certificate under section 26(1)(a);
- (j) fail to allow a search or inspection or the taking of any sample authorized under this Act;
- (k) break the seal on a sealed container containing plants, plant products or other regulated articles or removing detained items from a re-sealed container 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 Act;
- (m) intentionally or deliberately alter, forge, deface or destroy any document issued under this Act;
- (n) submit any written material for publication referring to the occurrence of a quarantine pest in Antigua and Barbuda without prior or simultaneous communication of the existence of the pest to the NPPO;
- (o) otherwise contravene the provisions of this Act.

41. Liability of officials

It shall be an offence for any inspector, official analyst or other NPPO staff to—

- (a) directly or indirectly ask for or take any personal payment or other reward in connection with any official duties;
- (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 Act, or otherwise contrary to the laws of Antigua and Barbuda;
- (c) disclose any information acquired in the performance of official duties relating to any person, firm or business, except when required by his supervisor in the course of official duties, or where ordered to do so by any court.

42. Penalty

A person who commits an offence under this Act is liable—

- (a) in the case of a first offence, on summary conviction, to a fine of five thousand dollars, or to imprisonment for a period of one year, or both;
- (b) in the case of a second or a subsequent offence, to a fine of ten thousand dollars, or to imprisonment for a period of two years, or both.

43. Forfeiture

Where a person is convicted of an offence under this Act the court may, in addition to any other penalty imposed, order that any thing used in the perpetration of the offence, be forfeited to the State.

44. Notice to Offender

(1) This section applies to any offence as may be prescribed.

(2) Where an inspector has reason to believe that a person is committing or has committed an offence to which this section applies, the inspector may immediately serve that person with the prescribed notice in writing offering the discharge of any liability to conviction of the offence by payment of a fixed penalty under this section.

(3) Where a person is served with a notice under subsection (2)—

- (a) that person shall not be liable to be convicted for the offence if the fixed penalty is paid in accordance with this section —
 - (i) before the expiration of twenty-one days following the date of the notice or such longer period as may be specified therein, or
 - (ii) before the date on which proceedings are begun, whichever is later;
- (b) proceedings shall not be taken against the person for the offence by any inspector or other authorized officer until the end of the twenty-one days following the date of the notice or such longer period as may have been specified in the notice.

(4) Payment of a fixed penalty under this section shall be made to the NPPO or to such body, on behalf of the NPPO, as the Minister may, by order, designate and the NPPO may retain the amount paid, which shall be allocated to the Fund.

(5) In any proceedings, a certificate that payment of a fixed penalty was or was not made to the NPPO, or to a body designated under subsection (4), by a date specified in the certificate shall, if the certificate purports to be signed by the inspector or other authorized officer of the NPPO, or of that body, be sufficient evidence of the facts stated, unless the contrary is proved.

(6) A notice served under subsection (2) must—

- (a) specify the offence alleged;
- (b) give such particulars of the offence as are necessary for giving reasonable information of the allegation; and
- (c) state—
 - (i) the period during which, by virtue of subsection (3), proceedings will not be instituted against any person for the offence; and
 - (ii) the amount of the fixed penalty.

(7) In any proceedings for an offence to which this section applies, reference shall not be made after the conviction of the accused to the giving of any notice under this section or to the payment or non-payment of a fixed penalty hereunder unless, in the course of the proceedings or in some document which is before the Court in connection with the proceedings, reference has been made by or on behalf of the accused to the giving of such notice or, as the case may be, to such payment or non-payment.

(8) In this section “proceedings” means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice served under subsection (2), and “convicted” shall be construed in like manner.

45. Limitation on liability

(1) The costs for any action taken by an inspector under section 35 shall be borne by the owner, except where in exceptional cases the NPPO determines that the State shall bear the costs.

(2) Subject to section 46, the State shall not be liable for loss resulting from the destruction or disposal of any plant, plant product or regulated article carried out under this Act.

46. Compensation

(1) The Minister may, on the recommendation of the Board, out of money voted for that purpose by Parliament, order compensation to be paid in respect of—

- (a) the treatment required of premises for the purposes of this Act; or
- (b) the prohibition or restriction imposed under this Act on the use of premises.

(2) Compensation is not payable to a person who commits an offence under this Act and claims compensation in respect of any premises or thing by means of or in relation to which the offence was committed.

PART VII
MISCELLANEOUS

47. Documents

(1) A document required to be furnished to the Minister or an inspector under this Act or any regulation or order made thereunder may be furnished in electronic form.

(2) Where a document referred to in subsection (1) is furnished in electronic form, an original hard copy of the document must be furnished to the Minister or an inspector within a reasonable period after the document is furnished in electronic form.

48. Regulations

(1) The Minister may, on the advice of the Board, make regulations and issue orders or notices which he considers appropriate to give effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of subsection (1), regulations, orders or notices made under subsection (1) may provide for all or any of the following matters—

- (a) procedures to be followed by an inspector in the exercise of his duties under this Act;
- (b) conditions for the import of any plant, plant product or regulated article;
- (c) the designation of the ports of entry that are appropriate for the import and export of any plant, plant product and regulated article;
- (d) the circumstances under which phytosanitary requirements for import may be modified based on pest risk analysis;
- (e) procedures and guidelines for pre-clearance inspections;
- (f) the manner in which permits and certificates shall be issued under this Act, and their form, content and language;
- (g) 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;
- (h) the manner in which containers must be sealed, marked and transported if they are to be inspected at their final destination rather than at the port of entry;
- (i) the way in which any plant, plant product and regulated article must be stored or transported in Antigua and Barbuda;

- (j) the procedures to be adopted for the treatment of any imported plant, plant product or regulated article and the conveyance used for its importation;
- (k) the location, management and functioning of any plant quarantine station established under this Act;
- (l) the requirements for the control and care of any plant, plant product and regulated article kept or maintained at a plant quarantine station;
- (m) the manner in which an inspector shall arrange for the destruction, removal, uprooting or treatment of any plant, plant product or regulated article within an area or location declared as under quarantine;
- (n) the period within and conditions under which it shall not be lawful to plant or re-plant any thing in all or part of an area declared as under quarantine;
- (o) the manner in which any sample being transported or in storage must be taken, marked and retained under this Act;
- (p) the operating procedures of any official laboratories designated under this Act;
- (q) the process or procedure by which an area may be declared pest free or an area of low pest prevalence;
- (r) conditions for the export of any plant, plant product or regulated article;
- (s) operating procedures for the inspection of any plant, plant product or regulated article, and any physical structure or premises containing such a product or article, for purposes of export;
- (t) the offences subject to the fixed penalty procedure outlined in section 44;
- (u) the notice to be issued to an offender pursuant to section 44;
- (v) criteria for the declaration of a phytosanitary emergency under section 21(c) or 32;
- (w) determination or scale of fees to be charged;
- (x) guidelines, policy directives or protocols promoting cooperation between relevant departments relating to plant protection;
- (y) additional measures to be taken for the purpose of preventing the introduction or spread of a pest.

49. Repeal and Savings

(1) The Plant Protection Act, CAP. 329 is hereby repealed.

(2) An order issued by the Minister under section 48 may revoke or modify any permit or certificate granted by authority of the legislation referred to in sub-section (1).

(3) All regulations in effect upon the coming into force of this Act shall continue in force as if they were issued under the present Act, except where they conflict with the provisions or purposes of this Act.

50. Act to bind State

This Act binds the State.

Passed by the House of Representatives on
the 26th November, 2012.

D. Gisele Isaac-Arrindel,
Speaker.

Romona Small
Clerk to the House of Representatives.

Passed by the Senate 29th November,
2012.

Hazelyn M. Francis,
President.

Romona Small
Clerk to the Senate.