

2022-10-22

OBJECTS AND REASONS

This Bill would provide for the protection of plant resources by preventing the introduction of plant pests and controlling the spread of plant pests, in order to facilitate the trade in plants and plant products in accordance with the obligations under the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures, the International Plant Protection Convention and the International Standards on Phytosanitary Measures; and for related matters.

Arrangement of Sections

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

ADMINISTRATION

3. Establishment of the National Plant Protection Organization
4. Functions of the Organization
5. Chief Plant Health Officer and other staff
6. Powers of Minister
7. Delegations and authorizations
8. Appointment of plant protection inspectors
9. Designation of official analysts, official laboratory and reference laboratory
10. Advisory Working Group
11. Vacancy in membership of Advisory Working Group

12. Phytosanitary Emergency Fund
13. Register
14. Principles for the approval and implementation of phytosanitary measures
15. Duty to assist and co-operate
16. Review and audit

PART III

IMPORTS

17. Duty to declare regulated articles brought in person
18. Restrictions on import
19. Import permit
20. Arrival notification
21. Inspection on importation
22. Inspection facilities
23. Detention or destruction of imports
24. Release of imports
25. Minister may restrict certain imports
26. Designation of plant quarantine stations and places for inspection
27. Duty to report and seize certain imports

PART IV

EXPORTS AND CONSIGNMENTS IN TRANSIT

- 28. Restriction on exports
- 29. Issuance of a phytosanitary certificate
- 30. Re-export
- 31. Transit

PART V

CONTAINMENT AND ERADICATION OF PESTS

- 32. Phytosanitary control measures
- 33. List of declared pests
- 34. Duty to notify Organization
- 35. Surveillance
- 36. Declaration of provisional quarantine
- 37. Declaration of quarantine
- 38. Procedure when quarantine pest on premises
- 39. Service of quarantine notice in absence of occupier
- 40. Duration of quarantine notice
- 41. Declaration of phytosanitary emergency

- 42. Lifting of quarantine
- 43. Declaration of low pest prevalence area and pest free area
- 44. Pest free places of production and pest free production sites

PART VI

ENFORCEMENT

- 45. Powers of a plant protection inspector
- 46. Notice of seizure
- 47. Storage or removal of affected items
- 48. Confiscation and disposal of unclaimed items
- 49. Appeals

PART VII

OFFENCES AND PENALTIES

- 50. Offences
- 51. Liability of officials
- 52. Procedure for offences
- 53. Administrative penalty
- 54. Powers of the Chief Agricultural Officer in administrative proceedings
- 55. Fixed penalty notice for prescribed offences

- 56.** Evidence
- 57.** Limitation on liability
- 58.** Good faith defence
- 59.** Unpaid administrative fine or fixed penalty to constitute a debt to the State
- 60.** General provisions as to prosecutions under Act
- 61.** Compensation
- 62.** Forfeiture

PART VIII

MISCELLANEOUS

- 63.** Control of waste from vessels
- 64.** Documents may be submitted in electronic format
- 65.** Regulations
- 66.** Repeal and savings
- 67.** Act binds the State
- 68.** Commencement

BARBADOS

A Bill entitled

An Act to provide for the protection of plant resources by preventing the introduction plant pests and controlling the spread of plant pests in order to facilitate the trade in plants and plant products in accordance with the obligations under the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures, the International Plant Protection Convention and the International Standards on Phytosanitary Measures; and for related matters.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Plant Protection Act, 2022*.

Interpretation

- 2.(1) In this Act,

“affected” means infected or infested with a pest;

“area” means an officially defined whole or part of Barbados and includes a place or site of production;

“area of low pest prevalence” means an area, whether all or part of Barbados or all or parts of several countries, as identified by the competent authorities, in which a specific pest is present at low levels and which is subject to effective surveillance or control measures;

“area under cultivation” includes a field, plantation, nursery, garden, green house and laboratory;

“beneficial organism” means any organism, (including fungi, bacteria, viruses, virus-like organisms and invertebrate or other animals), which is identified by a competent authority to be directly or indirectly advantageous to flora or agricultural production;

“buffer zone” means an area surrounding or adjacent to an area officially delimited for phytosanitary purposes in order to minimize the probability of spread of the target pest into or out of the delimited area;

“consignment” means a quantity of plants, plant products or other regulated articles (which may be composed of one or more commodities or lots) being moved from one country to another and covered, when required, by a single phytosanitary certificate;

- “consignment in transit” means a consignment which passes through a country without being imported, and may be subject to phytosanitary measures;
- “contain” means to apply phytosanitary measures in and around an affected area to prevent the spread of a pest;
- “container” means a box, bag, wrapper, covering or other receptacle in which any plant, plant product or other regulated article that may carry pests has been or is being transported;
- “containment” means the application of phytosanitary measures in and around an affected area to prevent the spread of a pest;
- “control” means the suppression, containment or eradication of a pest population;
- “control area” means a defined zone established to prevent the spread of a disease or a pest from an infected area to an area free of that disease or pest;
- “conveyance” means any vessel, aircraft, vehicle, cart, container, animal or other thing that can convey a plant, plant product, pest, beneficial organism or other regulated article from one place to another;
- “detain” means to keep a consignment in official custody or confinement as a phytosanitary measure;
- “emergency measure” means a phytosanitary measure including a provisional measure established as a matter of urgency in a new or unexpected phytosanitary situation;
- “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”
- (a) in relation to 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;

(b) in relation to a consignment, means the movement of the consignment through a port of entry into an area;

“eradicate” means to apply phytosanitary measures to eliminate a pest from an area;

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

“export” means to send outside Barbados to another country any plant, plant product, pest, beneficial organism or other regulated article by means of a conveyance;

“exporter” means any person who, whether as owner, consignor, consignee, agent, broker or otherwise, is in possession of, or in any way is entitled to the custody or control of any plant, plant product, beneficial organism or other regulated article to be taken out of Barbados for arrival in another country;

“Fund” means the Phytosanitary Emergency Fund established under section 12;

“germplasm” means a plant intended for use in breeding or in a conservation programme;

“import” means to bring into Barbados from another country any plant, plant product, pest, beneficial organism or other regulated article by means of a conveyance;

“import permit” means an official document or its electronic equivalent authorizing the importation of a commodity in accordance with specified phytosanitary import requirements;

“importer” means a person who, whether as owner, consignor, consignee, agent, broker or otherwise, is in possession of or in any way is entitled to the custody or control of any plant, plant product, pest, beneficial organism or other regulated article landed or likely to be landed in Barbados from another country;

- “infestation” means the presence in a commodity of a living pest of the plant or plant product concerned and includes an infection;
- “inspection” means official visual examination of a plant, plant product or other regulated article to determine if pests are present or to determine compliance with phytosanitary requirements;
- “introduction” means the entry of a pest resulting in its establishment in Barbados;
- “IPPC” means the new Revised Text of the International Plant Protection Convention;
- “IPPC Secretariat” means the Secretariat of the Commission on Phytosanitary Measures established under the International Plant Protection Convention;
- “Minister” means the Minister responsible for Agriculture;
- “Ministry” means the Ministry responsible for Agriculture;
- “national pest of concern” means a non-regulated pest with a significant economic impact, the biological and epidemiological characteristics of which determine that its control in Barbados
- (a) must be performed beyond a local level; and
 - (b) requires the official intervention of the National Plant Protection Organization for its management within Barbados, for technical coordination or for enforcement;
- “National Plant Protection Organization” or “Organization” means the competent authority for Barbados established under section 3;
- “occupier” in relation to any land or building, means a person in actual occupation thereof;
- “official” means established, authorised or performed by the National Plant Protection Organization;

“official control” means the active enforcement of mandatory phytosanitary requirements and the application of mandatory phytosanitary procedures with the objective of

- (a) eradicating or containing quarantine pests; or
- (b) managing regulated non-quarantine pests;

“operator” means a person who imports or exports plants, plant products or other regulated articles;

“outbreak” means

- (a) a recently detected pest population, including an incursion, in an area;
or
- (b) a sudden significant increase of an established pest population in an area;

“owner” includes any person having for the time being the possession, custody or control of a plant, plant product or other regulated article;

“packaging” means any material used in supporting, protecting or carrying a plant, plant product or other regulated article;

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

“pest free area” means an area in which a specific pest is absent 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 an organism is a pest that should be regulated and the strength of any phytosanitary measures to be taken against it;

“phytosanitary action” means

- (a) the conduct of an official procedure, including inspection, testing, surveillance or treatment; or
- (b) official control undertaken to implement any phytosanitary measure;

“phytosanitary certificate” means an official paper document or its electronic equivalent that

- (a) is consistent with the model certificate of the IPPC stating that a consignment meets phytosanitary import requirements; and
- (b) is issued under section 29;

“phytosanitary emergency” means an emergency declared under sections 25(c) and 41;

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

“plant” means any living plant and its parts and includes a seed or germplasm;

“plant product” means any unmanufactured material of plant origin, including grain, and a manufactured product which, by its nature or that of its processing, may create a risk for the introduction and spread of a pest;

“plant protection inspector” or “inspector” means a person designated or appointed under section 8;

“port of entry” means an airport or seaport;

“port of exit” means an airport or seaport;

“pre-shipment inspection” means an inspection conducted in the exporting country under the supervision of the National Plant Protection Organization of the importing country, before a consignment is exported, to verify that the consignment complies with phytosanitary requirements of the importing country;

- “premises” includes any building or other structure, permanent or otherwise, together with the land on which the same is situated and any adjoining land situated in Barbados;
- “processing” means the act of washing, peeling, scraping, mincing, scrubbing or any other method used on any plant, plant product or other regulated article;
- “quarantine” means official confinement of plants, plant products or other regulated articles for observation and research or for further inspection, testing or treatment;
- “quarantine area” means an area where a quarantine pest is present and is being officially controlled;
- “quarantine pest” means a pest declared under section 33;
- “quarantine station” means a plant quarantine station designated under section 26;
- “regular business hours” means the normal working hours of a Government office in Barbados;
- “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, and includes a beneficial organism;
- “regulated non-quarantine pest” means any pest which is not a quarantine pest and whose presence in a plant for planting affects the intended use of the plant with an economically unaccepted impact and which is regulated in Barbados, and declared as such by regulations;
- “regulated pest” means a quarantine pest or a regulated non-quarantine pest;
- “sell” includes to offer, advertise, keep, store, display, transmit, consign, convey or deliver for sale, or to exchange or dispose of to any person in any manner whether for consideration or otherwise;

“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 a plant, 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 Barbados is a party;

“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 presence or absence by surveying, monitoring or other procedure;

“treatment” means an officially authorised procedure for

(a) the killing, inactivation or removal of pests; or

(b) rendering a pest infertile or for devitalisation;

“vehicle” means any vessel, aircraft, conveyance, cart, container, motor vehicle, animal or other thing that can transport plants, plant products or other regulated articles from one place to another;

“vessel” means any ship, aircraft or other means of travel by sea or air;

“WTO” means the World Trade Organization established in 1995, of which Barbados is a member.

(2) This section shall be interpreted in accordance with the IPPC’s International Standard for Phytosanitary Measures No. 5 Glossary on Phytosanitary Terms, as may be amended from time to time.

PART II

ADMINISTRATION

Establishment of the National Plant Protection Organization

3.(1) There is established an Organization to be known as the National Plant Protection Organization for the regulation of plant health in Barbados.

(2) The Minister shall inform the IPPC Secretariat of the establishment of the National Plant Protection Organization to serve as the Organization of for Barbados.

(3) The Organization shall be equipped with

- (a) inspection and testing facilities; and
- (b) tools and equipment,

for the detention, treatment and destruction of intercepted consignments.

Functions of the Organization

4. The functions of the Organization are as follows:

- (a) to implement the IPPC including the following:
 - (i) issuing phytosanitary certificates for export, re-export and transit;
 - (ii) carrying out surveillance of any ornamental and growing plant, including areas under cultivation and wild flora, and of any plant and plant product in storage or in transport, for the purpose of reporting the occurrence, outbreak and spread of pests, and controlling those pests;
 - (iii) inspecting and testing any consignment of a plant and plant product and, where appropriate, inspecting any other regulated

article, for the purpose of preventing the introduction and spread of pests;

- (iv) conducting pre-shipment inspections;
- (v) supervising the treatment and consignment of any plant, plant product and other regulated article;
- (vi) protecting endangered areas, and designating, maintaining and surveying pest free areas and areas of low pest prevalence;
- (vii) conducting pest risk analyses;
- (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 any plant, plant product and other regulated article for phytosanitary certification;
- (xii) establishing minimum qualifications for and overseeing the training and development of inspectors and other Organization 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 enactments;
- (xv) notifying phytosanitary measures to other countries in accordance with international obligations;

- (xvi) providing information regarding import and export regulations in force, and technical requirements for any plant, plant product and other regulated article, on the request of any interested international, regional or other national plant protection organization;
 - (xvii) conducting research and investigation in the field of plant protection;
 - (xviii) preventing and controlling the introduction of regulated pests;
 - (xix) restricting the movement and spread of regulated pests and national pests of concern;
 - (xx) controlling all plant pests, including living modified organisms, biological control agents and invasive alien species;
 - (xxi) developing a list of quarantine pests, regulated non-quarantine pests, regulated articles and pests of national concern and regularly updating and publishing those lists;
 - (xxii) requiring phytosanitary action as conditions or prohibitions for the importation of plants and plant products and other regulated articles;
 - (xxiii) establishing and implementing certification programmes for planting material and plant products;
 - (xxiv) issuing import permits;
 - (xxv) establishing internal operations manuals; and
 - (xxvi) establishing and maintaining registers of operators, nurseries, farmers and phytosanitary service providers;
- (b) to enforce this Act, as well as of any other enactment relating to plant protection, as the Minister may direct;
- (c) to develop pest diagnostic, investigative and analytical capabilities;

- (d) to co-ordinate laboratories, plant quarantine stations and other phytosanitary facilities;
- (e) to establish procedures for the accreditation of any official laboratory, plant quarantine station, official analyst or any other institution or person from the public or private sector involved in phytosanitary matters;
- (f) to carry out and supervise the treatment and consignment of any plant, plant product and other regulated article including disinfesting or disinfecting; and
- (g) any other function that the Minister considers necessary for the purposes of this Act.

Chief Plant Health Officer and other staff

5.(1) There shall be a Chief Plant Health Officer who shall be the head of the National Plant Protection Organization.

(2) The post of Chief Plant Health Officer shall be established in accordance with the *Public Service Act, Cap. 29*.

(3) The Chief Plant Health Officer

- (a) shall be responsible for the operations of the Organization; and
- (b) shall report to the Chief Agricultural Officer.

(4) The functions of the Chief Plant Health Officer shall be as follows:

- (a) to provide technical and administrative direction to the Organization;
- (b) to liaise with other ministries and foreign authorities;
- (c) to make recommendations to the Chief Agricultural Officer regarding the declaration of emergencies and the establishment of pest free areas, areas of low pest prevalence, pest free places of production and pest-free production sites;

- (d) to formulate proposals for work programmes for the National Plant Protection Organization in collaboration with other government entities;
 - (e) to serve as the IPPC contact point; and
 - (f) to submit to the IPPC a description of the structure of the National Plant Protection Organization and of any changes to that structure.
- (5) The Chief Plant Health Officer shall be assisted by such staff appointed in accordance with subsection (6), as is required for the purpose of carrying out the functions of the Organization under this Act.
- (6) The offices of the staff required for the purposes of subsection (5) shall be established in accordance with the *Public Service Act*, Cap. 29.

Powers of Minister

6. The Minister shall
- (a) designate by notice official and reference laboratories;
 - (b) designate by notice quarantine stations; and
 - (c) declare by order control areas, quarantine areas and pest free areas on the advice of the Chief Agricultural Officer.

Delegations and authorizations

- 7.(1) The Minister may by order delegate to the Chief Plant Health Officer, any power or function conferred or imposed on him under this Act except the power to make subsidiary legislation.
- (2) The Chief Agricultural Officer may, on the advice of the Chief Plant Health Officer, authorize any person or entity to perform the functions of the Organization except the following functions:
- (a) official liaison duties with other ministries or foreign authorities or any notification responsibilities to other ministries or foreign authorities;

- (b) the granting of approval of phytosanitary measures or requirements;
and
 - (c) the issuance of phytosanitary certificates.
- (3) The Chief Agricultural Officer may, on the advice of the Chief Plant Health Officer, authorize any qualified public officer who is not a member of staff of the Organization, to issue phytosanitary certificates under the direct supervision of the Organization.
- (4) Where the Chief Agricultural Officer authorizes the functions of the Organization in accordance with subsection (2) to be performed by an individual or public or private entity, the authorization shall include the following:
- (a) the duration of the authorization;
 - (b) the specific tasks to be covered by the authorization;
 - (c) the control, supervision and payment of the person to whom the authorization is granted;
 - (d) the competencies and skills required by the person or entity to whom the function has been authorized; and
 - (e) the conditions of withdrawal of the authorization.

Appointment of plant protection inspectors

- 8.(1) There shall be plant protection inspectors who shall have appropriate experience in plant health or a related field of agriculture.
- (2) The post of plant protection inspector shall be established in accordance with the *Public Service Act*, Cap. 29.
- (3) Where a person who is appointed as an inspector has any actual or reasonably perceived interest in a matter or other action to be taken by the Organization, whether such interest is direct or indirect, that interest shall be communicated to the Chief Agricultural Officer, and where such interest is in

conflict with the impartiality, integrity, objectivity or independence of an inspector, the *Third Schedule* to the *Public Service Act*, Cap. 29 shall apply.

(4) For the purposes of subsection (1), “plant health” includes entomology, plant pathology and pest diagnostics.

Designation of official analysts, official laboratory and reference laboratory

9.(1) For the purposes of this Act, the Minister shall on the recommendation of the Organization designate by notice such number of

- (a) analysts to be official analysts for the purpose of conducting inspections and tests required under this Act;
- (b) laboratories to be reference laboratories; and
- (c) laboratories to be official laboratories for the purpose of conducting specified laboratory tests required under this Act.

(2) An official laboratory or official analyst designated under subsection (1) shall be impartial and independent.

(3) A reference laboratory shall be used

- (a) for comparative testing in the case of conflicting results or contested results;
- (b) to facilitate the collaboration with official laboratories in their area of competence;
- (c) to disseminate information relating to plant health testing procedures to official laboratories;
- (d) to provide scientific and technical assistance to the Organization for the implementation of this Act; and
- (e) to facilitate the carrying out of such other duties as may be prescribed.

(4) For the purposes of subsection (3), the services of a reference laboratory outside Barbados may be procured by such contractual or other means as may be considered appropriate.

Advisory Working Group

10.(1) There is established an Advisory Working Group which shall advise the Minister and the Organization on issues of plant protection and which shall be responsible for

- (a) advising on phytosanitary policy;
- (b) making recommendations for the enactment of legislation;
- (c) assisting in the determination of criteria for the declaration of a phytosanitary emergency under sections 25(c) and 41;
- (d) serving as a mechanism through which emergencies can be co-ordinated under the technical leadership of the Chief Agricultural Officer; and
- (e) serving as a mechanism for the co-ordination and consultation among public entities or between public and private entities for the purposes of scientific advice on phytosanitary matters.

(2) The Advisory Working Group shall consist of 15 members comprised as follows:

- (a) three staff members of the Ministry, including the Chief Plant Health Officer; and
- (b) one person from each of the following:
 - (i) the Ministry responsible for the environment;
 - (ii) the Ministry responsible for health;
 - (iii) the Ministry responsible for trade;
 - (iv) the Ministry responsible for legal affairs;

- (v) the Customs Department;
 - (vi) the Barbados Police Service;
 - (vii) the University of the West Indies or other tertiary institution;
 - (viii) the Barbados Chamber of Commerce;
 - (ix) the Barbados National Standards Institution; and
 - (x) a farmers' organization;
- (c) one person representing the interests of importers; and
- (d) one person representing the interest of exporters.
- (3) The members of the Advisory Working Group shall serve for a period not exceeding 3 years and be eligible for re-appointment.
- (4) The members of the Advisory Working Group shall be remunerated as the Minister may determine from time to time.
- (5) Nine members of the Advisory Working Group shall constitute a quorum.
- (6) The Advisory Working Group shall meet at least 3 times each year.
- (7) The Advisory Working Group shall elect a Chairman at its first meeting, which shall take place within 6 months from the date of commencement of this Act.
- (8) The Advisory Working Group shall regulate its own procedure.

Vacancy in membership of Advisory Working Group

11.(1) The Chairman or a member of the Advisory Working Group may at any time resign his office by instrument in writing addressed to the Minister and from the date of receipt of the instrument that person shall cease to be a member of the Advisory Working Group.

- (2) A vacancy shall be deemed to arise in the membership of the Advisory Working Group in the case of
- (a) the death or resignation of a member;
 - (b) the revocation by the Minister of the appointment of a member;
 - (c) the failure of a member to attend 3 consecutive meetings of the Advisory Working Group unless such failure to attend was approved by the Minister.

Phytosanitary Emergency Fund

12.(1) There shall continue to be a Phytosanitary Emergency Fund which shall be administered by the Ministry and into which funds, donations, grants, awards and endowments given to the Advisory Working Group shall be paid to facilitate the work of the Organization.

(2) All monies collected or received in accordance with subsection (1) 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 *Financial Management and Audit (Financial) Rules* (S.I. 2011 No. 54).

(3) When a phytosanitary emergency is declared in accordance with sections 25(c) and 41, the resources of the Fund shall be made available to the Organization.

Register

13. The Organization shall establish a register of operators and shall keep records relating to imports, exports, domestic producers and nurseries of plants, plant products and other regulated articles.

Principles for the approval and implementation of phytosanitary measures

14.(1) In accordance with the principles contained in the SPS Agreement, the Organization shall develop and implement phytosanitary measures for Barbados which shall

- (a) be in harmony with international standards;
- (b) be technically based on pest risk analyses or risk assessments and science-based decisions;
- (c) be favourable to the development of regionalization;
- (d) be favourable to trade; and
- (e) be proportional to the risk.

(2) The phytosanitary measures developed in accordance with subsection (1) shall be kept under review every 3 years and published on the government portal.

Duty to assist and co-operate

15.(1) The Organization may request from public officers, ministries and departments of Government, statutory bodies and private organizations the provision of adequate facilities and services to assist a plant protection inspector in the performance of his functions and the exercise of his powers under this Act.

(2) The Organization may enter into agreements to establish collaborative arrangements, for the purposes of subsection (1).

Review and audit

16.(1) The Organization shall arrange for its own performance to be subject to review, evaluation and audit by an external body or shall carry out a self-audit.

(2) The Organization shall periodically review the effectiveness of phytosanitary measures issued under this Act every 3 years.

- (3) The Organization shall, in collaboration with any entity responsible for agricultural health and food control
- (a) monitor and evaluate the implementation of this Act; and
 - (b) set out the conclusions based on the monitoring and evaluations under paragraph (a), in a report.
- (4) The first report prepared under subsection (3) shall be published no later than 5 years after this Act comes into force and thereafter shall be published at intervals not exceeding 3 years.

PART III

IMPORTS

Duty to declare regulated articles brought in person

17.(1) Every person who arrives in Barbados at a designated port of entry and has in his possession any plant, plant product or other regulated article, shall declare that plant, plant product or other regulated article to a plant protection inspector and if there is no inspector present, the declaration shall be made to a customs officer.

(2) The customs officer referred to in subsection (1) shall take custody of the regulated article until such time as a plant protection inspector is available to inspect the regulated article.

(3) The master of every vessel arriving in Barbados shall inform passengers that they have a duty to declare any plant, plant product, or other regulated article on arrival at a designated port of entry.

Restrictions on import

18.(1) Subject to section 17, a plant, plant product and other regulated article shall be imported into Barbados only at a designated port of entry.

- (2) No person shall import a plant, plant product or other regulated article into Barbados except
- (a) by virtue of an import permit granted under section 19(2); and
 - (b) the plant, plant product or other regulated article is accompanied by
 - (i) an original phytosanitary certificate issued by the country of export, where required; and
 - (ii) any other documentation that may be prescribed.
- (3) A plant, plant product or other regulated article that does not comply with the requirements under subsection (2) shall be prohibited from entry into Barbados.
- (4) The Minister, on the recommendation of the Organization, shall by notice specify the phytosanitary import requirements and measures for plants, plant products and other regulated articles which shall
- (a) apply to regulated pests; and
 - (b) be based on a pest risk analysis or existing international standards.
- (5) Where there is a change in conditions or as new facts become available, the Minister shall amend the notice referred to in subsection (4).
- (6) Where the Organization has modified or revoked a phytosanitary import requirement or measure, the Minister shall, place those changes on the government portal for the benefit of importers.
- (7) A copy of the notice made under subsection (4) or (5) shall be placed at the designated ports of entry.
- (8) The Minister, on the recommendation of the Organization, shall prescribe the plants, plant products and other regulated articles for which no import permit is required.

(9) A person who contravenes subsection (2) is guilty of an offence and is liable on summary conviction to a fine of \$50 000 dollars or to imprisonment for a term of one year or to both.

Import permit

19.(1) A person who intends to import a plant, plant product or other regulated article into Barbados shall obtain an import permit from the Organization, where that plant, plant product or other regulated article

- (a) is from a country of origin where there are confirmed or suspected quarantine pests;
- (b) is subject to post-entry quarantine requirements;
- (c) is for a prescribed end use or for research purposes;
- (d) is required in response to a humanitarian crisis or natural disaster;
- (e) is required to be traced over a period of time; or
- (f) is subjected to a pest risk analysis conducted by the Organisation and the Organisation determines that there is a risk.

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

(3) In evaluating an application for an import permit, the Organization shall consider existing international standards or conduct a pest risk analysis to determine the phytosanitary requirements that would apply.

(4) The Organization may review, modify or revoke an import permit for a plant, plant product or other regulated article issued, at any time where

- (a) the type or quantity of the plant, plant product or other regulated article has changed;
- (b) there is a change in pest status of the country of export;
- (c) the country of origin has changed; or

- (d) the period of validity of the import permit has been exceeded.
- (5) The Organization shall revoke an import permit where it is satisfied that
 - (a) the holder of the permit
 - (i) made a false declaration or statement in the application for the permit;
 - (ii) provided incorrect information in the application for the permit;
 - (iii) failed to comply with any of the terms of the permit; or
 - (b) the level of risk associated with the importation is no longer acceptable.
- (6) Where the Organization has reviewed, modified or revoked a permit pursuant to subsection (4) or (5), the Organization shall inform the holder of the permit in writing.

Arrival notification

20. An importer shall notify the Organization in advance of the arrival of a regulated article in Barbados from another country.

Inspection on importation

- 21.(1)** A person who imports a plant, plant product or other regulated article into Barbados, shall present it for inspection to a plant protection inspector at a designated port of entry.
- (2) Notwithstanding subsection (1), and subject to subsection (3), any plant, plant product or other regulated article may be inspected on the payment of the prescribed fee, at
- (a) a quarantine station or other designated facility; or
 - (b) the final port of destination.
- (3) An inspection may be carried out under subsection (2)
- (a) on the application by an importer; and

- (b) if the container in which the plant, plant product or other regulated article is contained has been sealed and marked, as prescribed.
- (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 other regulated article
 - (a) is in transit;
 - (b) is extremely perishable; or
 - (c) is delayed in its arrival,

in which case, on application by the importer and on payment of the prescribed fee, the Organization may grant permission for the inspection to be carried out at **some** other time.

- (6) Every plant, plant product or other regulated article imported into Barbados shall be under the phytosanitary detention of the Organization until it is officially released by the Organization to the importer.
- (7) The Organization may determine with an exporting country
 - (a) the arrangements relating to pre-shipment inspections in the country of origin; and
 - (b) the evaluation, and where feasible, the acceptance of alternative phytosanitary measures proposed by an exporting country's national plant protection organization as being equivalent to the phytosanitary measures required by the Organization.

Inspection facilities

22.(1) The Minister shall prescribe standards and requirements for inspection facilities on the advice of the Organization.

- (2) The owner or operator of an inspection facility shall provide and maintain adequate areas and offices, including buildings, furnishings and fixtures for the purpose of inspecting a plant, plant product or other regulated article.

- (3) The Minister may, where the inspection facility is not a private residence,
- (a) serve notice on the owner or operator of any improvements that he considers desirable to any area, office, or other facility provided pursuant to subsection (1); or
 - (b) post, on or about the area, office, or other facility for as long as is required, a notice of compliance in relation to subsection (1).

Detention or destruction of imports

23.(1) Where, on an inspection carried out in accordance with section 21, the inspector determines that the imported plant, plant product or other regulated article

- (a) is not accompanied by the relevant documentation required under section 18(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 stating that part or all of the imported plant, plant product or other regulated article may be subject, within the time period specified in the notice, to the phytosanitary actions set out in subsection (2).

(2) In accordance with subsection (1), the phytosanitary actions to which part or all of an imported plant, plant product or other regulated article may be subject are as follows:

- (a) detention until the receipt of the relevant documentation is presented within a reasonable time;
- (b) testing;
- (c) phytosanitary treatment in order to remove the risk;
- (d) removal to a quarantine station or other approved facility;
- (e) sorting or re-configuring;
- (f) re-exportation;

(g) confiscation; or

(h) destruction.

(3) An inspector may forego notice and carry out any of the actions listed under subsection (1) where in his opinion, the destruction of the imported plant, plant product or other regulated article is urgently required or the giving of notice is impracticable.

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

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

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

(7) Where any action is taken under subsection (1), (3) or (4), the method used to calculate the costs charged shall be prescribed.

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

(9) Where the Organization intercepts a pest or where emergency action is required, the Organization shall notify the exporting country and the IPPC Secretariat of any action taken and the grounds for such action.

Release of imports

24. Where on an inspection carried out under section 21, the inspector determines that the imported plant, plant product or other regulated article does not present any risk for the importation and spread of pests, and otherwise

complies with the requirements of this Act, the inspector shall release the consignment to the importer.

Minister may restrict certain imports

25. The Minister, on the advice of the Organization, and in order to protect plant resources, human health, animal health or the environment, may

- (a) permit the entry into Barbados of any plant, plant product or other regulated article for scientific or experimental purposes, subject to such terms and conditions that the Minister, may consider appropriate;
- (b) prohibit or restrict the entry of any plant, plant product or other 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.

Designation of plant quarantine stations and places for inspection

26. The Organization 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 plants, plant products or other regulated articles be kept or cultivated at a plant quarantine station, or at any other location identified by the Organization, and kept under the Organization's supervision for such time as the Organization considers necessary;
- (c) designate certain places for the purpose of inspecting plants, plant products and other regulated articles; and

- (d) approve facilities owned and operated by public or private entities to be used for inspections under the supervision of the Organization.

Duty to report and seize certain imports

27.(1) A postal officer, customs officer, a member of the Police Service, a member of the Defence Force, a postal courier or any other person designated by the Organization who has knowledge of the arrival or importation of any plant, plant product or other regulated article into Barbados shall, on its arrival, if a plant protection inspector is not present,

- (a) where practicable, notify the Organization of the arrival or importation of the plant, plant product or other regulated article; and
- (b) detain the plant, plant product or other regulated article for inspection by a plant protection inspector.

(2) With respect to subsection (1), a postal officer, customs officer, a member of the Police Service, a member of the Defence Force, a postal courier or any other person designated by the Organization shall not release or dispose of the plants, plant products or other regulated article unless authorised by an inspector.

(3) A detention carried out under subsection (1)(b) shall be deemed to be an action taken by or on the authorization of the Organization.

(4) The Organization shall take custody of any item detained under subsection (1)(b) within 3 days of its detention.

PART IV

EXPORTS AND CONSIGNMENTS IN TRANSIT

Restriction on exports

28.(1) Where an importing country requires a phytosanitary certificate, treatment or testing before authorising the importation of a plant, plant product

or other regulated article, no person shall export a plant, plant product or other regulated article from Barbados unless that person

- (a) applies to the Organization for a phytosanitary certificate in the prescribed manner;
 - (b) submits all prescribed documents to the Organization;
 - (c) makes the plant, plant product or other regulated article available for inspection in accordance with section 29;
 - (d) pays the prescribed fee; and
 - (e) is granted a phytosanitary certificate.
- (2) Where a person intends to export a plant, plant product or other regulated article from Barbados, the Organization shall
- (a) have the sole authority for the control, issuance and revocation of the phytosanitary certificate; and
 - (b) be responsible for the phytosanitary security and integrity of a plant, plant product or other regulated article after it has been certified.

Issuance of a phytosanitary certificate

29.(1) The Organization shall, on an application of an exporter in accordance with section 28(1)(a) and on the payment of the prescribed fee in accordance with section 28(1)(d), cause an inspection of the consignment to be carried out and

- (a) issue a phytosanitary certificate, in such 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 requirement for export specified by the Organization or under any other enactment in Barbados; or
- (b) deny the issue of a phytosanitary certificate where the requirements specified in section 28 have not been met.

(2) Where a phytosanitary certificate has been issued to an exporter, the exporter shall export the consignment in accordance with the instructions of the Organization in order to maintain the phytosanitary security and physical integrity of the consignment.

(3) The Organization shall certify all exports of plants, plant products or other regulated articles in accordance with the requirements of the importing country.

Re-export

30.(1) Where a consignment of plants, plant products or other regulated articles is imported into Barbados and thereafter exported to a third country of destination, the exporter shall

- (a) apply to the Organization for a re-export phytosanitary certificate;
- (b) submit all prescribed documents to the Organization;
- (c) make the consignment available for phytosanitary inspection; and
- (d) pay the prescribed fee.

(2) Where an exporter makes an application in accordance with paragraph (a) of subsection (1), the Organization shall, immediately on the receipt of the application, carry out a phytosanitary inspection of the consignment.

(3) Where the inspection reveals that

- (a) the consignment is not infested; and
- (b) the documents comply with the phytosanitary requirements of the country of destination,

the Organization shall issue a re-export phytosanitary certificate in the prescribed form.

(4) The exporter shall re-export the consignment in accordance with any instructions or directives issued by the Organization for maintaining the phytosanitary security and integrity of the consignment.

(5) A consignment for re-export shall be accompanied by the original documentation and phytosanitary certificates issued from the country of origin.

(6) Where a consignment for re-export has, while in Barbados,

(a) been exposed to infestation or contamination by a pest;

(b) lost its phytosanitary security or integrity; or

(c) been processed to change its nature,

the Organization shall issue a phytosanitary certificate which indicates the country of origin and shall include the original documentation relating to the consignment.

(7) Where a re-export phytosanitary certificate has been issued to an exporter, the exporter shall re-export the consignment in compliance with instructions of the Organization concerning the maintenance of the phytosanitary security of a consignment after certification.

Transit

31.(1) A person who intends to transit a consignment of plants, plant products or other regulated articles through Barbados shall apply to the Organization in the prescribed form and pay the prescribed fee for transit authorization.

(2) Where the Organization receives an application for transit authorization, the Organization shall apply existing international standards and conduct a risk assessment to determine whether to grant authorization for the transit of a consignment of plants, plant products or other regulated articles through Barbados.

(3) The Organization shall

(a) approve the application for transit authorization where it is satisfied that the level of risk is acceptable or can otherwise be successfully managed or mitigated; or

- (b)* deny the application where it fails to meet the requirements under paragraph *(a)*; and
 - (c)* inform the applicant in writing of the decision made pursuant to paragraph *(a)* or *(b)*.
- (4) Phytosanitary requirements are not applicable to a consignment in transit through Barbados where
 - (a)* the consignment has been packed so as not to permit any 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 consignment is accompanied by the phytosanitary certificate of the country of origin.

PART V

CONTAINMENT AND ERADICATION OF PESTS

Phytosanitary control measures

32.(1) A pest free area, area of low pest prevalence, buffer zone or an area or premises infested or suspected of being infested by a regulated pest may be subject to the following phytosanitary control measures:

- (a)* treatment or disposal of plants, plant products or other regulated articles, including the treatment of vehicles whether or not they have been found to be infested;
- (b)* mandatory pest control treatment;
- (c)* prohibition or restriction of the movement of any plant, plant product or other regulated article within, from or to the area or zone;

- (d) prohibition of planting or replanting specific plants in a specified location; or
- (e) any other phytosanitary action which the Organization thinks is necessary.

(2) The phytosanitary control measures specified in subsection (1) may be applied to other pests of national concern based on the economic impact of such pests and the potential regional movement of such pests.

List of declared pests

33.(1) The Organization may, by order declare, with the approval of the Minister, a pest to be

- (a) a quarantine pest, where the Organization is satisfied that the pest is of potential economic importance to the area endangered and
 - (i) is not yet present; or
 - (ii) is present but is not widely distributed and is being officially controlled;
- (b) a regulated non-quarantine pest, where the Organization is satisfied, based on a pest risk analysis that
 - (i) the pest is not a quarantine pest; and
 - (ii) the presence of the pest in a plant for planting would affect the intended use of the plant with an economically unacceptable impact; or
- (c) a national pest of concern, based on surveillance and the potential local economic impact of the pest.

(2) Where the Organization makes a declaration pursuant to subsection (1), the Organization shall

- (a) maintain and periodically review the lists of regulated pests and national pests of concern; and

- (b)* submit the lists of regulated pests to the IPPC Secretariat.
- (3) The Organization shall provide the list of regulated pests to an international or regional organization or other national plant protection organization, where a request for the list is made from such a body.

Duty to notify Organization

- 34.(1)** An occupier or owner of any premises who has knowledge of or reasonably suspects the presence of a quarantine pest on his premises shall immediately notify the Organization.
- (2) Any person who has knowledge of or reasonably suspects the presence of a new pest or a regulated pest shall immediately notify the Organization.

Surveillance

- 35.** The Organization, through general and specific surveillance, shall gather the following data for regulated pests and pests of national concern:
 - (a)* the biology of the pest;
 - (b)* the distribution of the pest; and
 - (c)* the potential impact of the pest.

Declaration of provisional quarantine

- 36.(1)** Where a plant protection inspector reasonably believes that a quarantine pest may be present in any area or premises, he may
 - (a)* enter into such area or premises in accordance with section 45;
 - (b)* inspect any plants, plant products or other regulated articles; and
 - (c)* take such samples as he may consider necessary to verify the presence of the quarantine pest.

- (2) Where an inspection under subsection (1) provides further grounds for the inspector to believe that a quarantine pest is present in the area or on the premises, he may declare that area or the premises to be under provisional quarantine.
- (3) Where an inspector has declared an area or premises to be under provisional quarantine, he shall inform the Organization in writing of the proposed measures to limit the spread of any quarantine pest and shall give reasons for those measures.
- (4) Where the Organization has considered the proposed measures referred to in subsection (3), the Organization may within the prescribed period
- (a) take emergency measures to limit the spread of any quarantine pest; and
 - (b) advise the Minister
 - (i) to declare the premises or area that is affected or is suspected of being affected with a quarantine pest to be under quarantine in accordance with section 37; or
 - (ii) to revoke the declaration of provisional quarantine made under subsection (2).

Declaration of quarantine

- 37.** The Minister may, on the advice of the Organization,
- (a) declare any premises or area that is affected or is suspected of being affected with any quarantine pest to be under quarantine;
 - (b) prescribe measures for the treatment or disposal of a plant, plant product or other regulated article, and the treatment of a conveyance 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; and
 - (d) set any conditions for subsequent renewals of the declaration.

Procedure when quarantine pest on premises

38.(1) Where the Organization reasonably believes that a quarantine pest is present on any premises, the Organization may, subject to subsection (2) of section 45,

- (a) authorise an inspector to
 - (i) enter the premises at any reasonable time,
 - (ii) inspect any plant, plant product or other regulated article on the premises;
 - (iii) take such samples as he may consider necessary; and
 - (iv) destroy any plants that may not be affected but may have been exposed to the quarantine pest in buffer zones surrounding the affected plants; and
- (b) require, by notice in writing, the owner or occupier of the premises, and where the Organization deems it appropriate, the owner or occupier of any premises in the vicinity, to take within a specified period, such measures on his premises as the Organization considers appropriate to eradicate, contain or restrict the spread of the pest.

(2) If any owner or occupier of premises fails to comply with any term of a notice issued under paragraph (b) of subsection (1), the Organization may direct an inspector or other authorised person to enter the premises in question in order to carry out the requirements of the notice and, where necessary, destroy the plant, plant product or other regulated article in order to eradicate, contain or restrict the spread of the pest.

(3) The owner of the plant, plant product or other regulated article shall be liable to pay the costs for any action taken under subsection (2), except where in exceptional cases, the Organization determines that the State should take responsibility for the associated costs on prescribed grounds including food security.

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

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

(6) Without prejudice to subsections (3) and (4), the State shall not be liable for the destruction or disposal of any plant, plant product or other regulated article carried out in accordance with this section.

Service of quarantine notice in absence of occupier

39. Where 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 of notice.

Duration of quarantine notice

40.(1) A notice issued under section 38 or 39 shall remain in force until an inspector gives the owner or occupier concerned, a certificate in writing stating 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 other regulated article from the premises or area under quarantine while a notice issued under section 38 or 39 is in force.

Declaration of phytosanitary emergency

41.(1) The Minister may declare a phytosanitary emergency on the advice of the Organization where there is a grave threat to plant resources or food security based on

(a) a risk analysis; or

(b) evidence obtained from

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

- (ii) an analysis of a sample taken under section 38(1)(a)(iii).
- (2) A phytosanitary emergency declaration made under this section shall
- (a) enable the application of emergency measures and responses by the Organization in the manner prescribed in a phytosanitary emergency plan;
 - (b) be time-bound and subject to periodic review and evaluation as prescribed in regulations and in the phytosanitary emergency plan; and
 - (c) cause the Organization to request assistance from the Advisory Working Group and other authorities or persons as may be required to carry out an effective response.

Lifting of quarantine

42.(1) The Organization shall regularly assess an area declared to be under quarantine to determine whether

- (a) the quarantine pest continues to be present; or
 - (b) quarantine is no longer required in respect of some or all of the affected area or premises.
- (2) Where the Organization determines that
- (a) the relevant quarantine pest is no longer considered to be present; or
 - (b) it is no longer appropriate for the quarantine to be maintained in respect of some or all of the affected area or premises,

the Chief Plant Health Officer shall recommend to the Minister that the declaration of quarantine made under section 37, be revoked.

- (3) Where the Minister revokes a declaration that an area or premises is under quarantine, the Organization shall serve written notice on all owners or occupiers of the affected area or premises that the quarantine is lifted.

Declaration of low pest prevalence area and pest free area

43. The Chief Agricultural Officer may, on the recommendation of the Chief Plant Health Officer,

- (a) declare by order an area of low pest prevalence where he is satisfied that
 - (i) a pest is present at low levels in the 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; or
- (b) declare by order an area pest free where the Organization is satisfied that
 - (i) a pest is not present in the 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.

Pest free places of production and pest free production sites

44.(1) The Organization may declare a place of production or production site to be pest free where the Organization is satisfied that,

- (a) a pest is not present in the area;
- (b) phytosanitary measures have been implemented to keep the place of production or production site free of the pest; and
- (c) a surveillance system has been instituted to verify that the place of production or production site remains free of the pest.

(2) For the purpose of this section, a place of production or production site is pest free where a specific pest is absent as demonstrated by scientific evidence and in which, where appropriate, the condition is being officially maintained for a defined period.

PART VI

ENFORCEMENT

Powers of a plant protection inspector

45.(1) For the purpose of detecting a regulated pest or ensuring compliance with the provisions of this Act, a plant protection inspector may

- (a) stop and, without a warrant, search a person, vehicle, container or conveyance entering or moving within Barbados that the inspector believes on reasonable grounds is harbouring a regulated pest;
- (b) subject to subsections (2) and (3), at a reasonable time enter any premises to inspect plants, plant products and other regulated articles under cultivation, in storage or in transport in order to report the presence of regulated pests or regulated non-quarantine pests;
- (c) open any container, receptacle or other thing that the inspector believes on reasonable grounds contains anything in respect of which this Act applies;
- (d) examine any thing in respect of which this Act applies and take a sample of it;
- (e) request any information, including documents, regarding any plants, plant products and other regulated articles from the owner or person in charge of the area or premises;
- (f) examine, make copies of or take extracts from any book, statement or other document found at the area or premises, and request from the

owner or any person in charge, an explanation relating to an entry found in any book, statement or other document;

- (g) take phytosanitary action such as but not limited to treatment, disposal, reshipment, or confinement of plants, plant products or other regulated articles in such area or on such premises;
- (h) take any photographs;
- (i) seize any plant, plant product, other regulated article, object, book, statement or document which appears to provide proof of a contravention of any provision of this Act providing a signed receipt in the prescribed form which shall be countersigned immediately by the owner or person in charge;
- (j) ensure that the treatment of plants, plant products or other regulated articles for import into Barbados is undertaken in accordance with the phytosanitary import requirements;
- (k) issue phytosanitary certificates and re-export phytosanitary certificates on the behalf of the Organization to ensure compliance with the import requirements of other countries, and where necessary, carry out any required treatment;
- (l) order the treatment, disposal, reshipment, or confinement in a quarantine station, of pests, any plant, plant product or other regulated article, imported into Barbados or in transit, whether or not covered by a phytosanitary import permit or a phytosanitary certificate;
- (m) stop the distribution, sale or use of any plant, plant product or other regulated article for a prescribed period, where the inspector believes that a plant, plant product or other regulated article is being distributed, sold or used in contravention of the provisions of this Act;
- (n) seize any plant, plant product or other regulated article where the inspector believes that a plant, plant product or other regulated article is being distributed, sold or used in contravention of the provisions of this Act;

- (o) conduct inquiries and request information or documentation where the inspector suspects that the provisions of this Act have been or are being contravened; and
 - (p) carry out any other necessary phytosanitary action.
- (2) An inspector may not enter a dwelling except with the consent of the occupier or under the authority of a warrant issued by a magistrate.
- (3) Subject to subsection (2), an inspector may enter and search any premises where there is reasonable cause to believe that an offence under this Act has taken place or is taking place.
- (4) An inspector shall be present where the seal on a sealed container containing a plant, plant product or other regulated article is to be broken.
- (5) An inspector may, in the performance of his duties under this section, be accompanied and assisted by a member of the Police Service.
- (6) In the course of an inspection carried out under subsections (1), (2) and (3), an inspector may, as he considers necessary,
 - (a) seize, destroy, detain, treat or otherwise dispose of any plant, plant product or other regulated article, or order that any such action be taken, at the expense of the owner; and
 - (b) serve a written notice on the owner with a description of the action taken and the reasons for so doing.
- (7) An inspector may carry out an inspection in the territory of an exporting country, as a pre-shipment inspection, at the invitation of the exporting country.
- (8) An inspector shall, in the course of the performance of his duties,
 - (a) identify himself as an inspector by showing his identification card or other proof of his appointment or designation as an inspector;
 - (b) maintain and secure any proprietary or confidential information, received or uncovered during the execution of his function;

- (c) be accompanied and assisted by one or more members of the Police Service or such other persons as may reasonably be required for the performance of that function; or
- (d) use any aids, including any equipment or device, subject to compliance with any enactment regarding the use of such aids.

Notice of seizure

46.(1) A plant protection inspector who seizes and detains a plant, plant product or other regulated article

- (a) shall immediately provide to the owner of the plant, plant product or other 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 other regulated article may be subject within a specified time to any action specified under section 48; or
- (b) may forego advising the owner of the plant, plant product or other 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 other regulated article.

(2) Notwithstanding subsection (1)(b) an inspector shall provide notice of the seizure to the owner or person in charge of the plant, plant product or other regulated article as soon as may be practicable after the seizure has been carried out.

Storage or removal of affected items

47. Where an inspector seizes and detains a plant, plant product or other regulated article under this Act, the inspector or any other person designated by the Organization, may

- (a) store, treat, quarantine or dispose of the plant, plant product or other regulated article at the place where it was seized or move it to any other place for storage, treatment, quarantine or disposal; or

- (b) require the owner or the person in charge of the plant, plant product or other regulated article to store, treat, dispose of, export or move it to any other place.

Confiscation and disposal of unclaimed items

- 48.(1)** An inspector may confiscate and dispose of
- (a) any plant, plant product or other regulated article that, after treatment, following its entry into Barbados, remains unclaimed for a prescribed time;
 - (b) any quarantine pest or regulated non-quarantine pest; or
 - (c) anything 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 other 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 the confiscation; or
 - (b) may forego advising the owner of the plant, plant product or other regulated article or pest of the reason for the confiscation if the giving of reasons for the confiscation is impractical.

Appeals

- 49.(1)** Any person aggrieved by an action or decision of a plant protection inspector or an official analyst may, within 10 days of the action or decision appeal in writing to the Chief Plant Health Officer.
- (2) The Chief Plant Health Officer shall give a decision within 28 days of receiving the appeal.
- (3) An appeal from a decision of the Chief Plant Health Officer shall lie to the Chief Agricultural Officer within 10 days of the decision of the Chief Plant Health Officer.

- (4) The Chief Agricultural Officer shall give a final decision within 14 days of receiving the appeal.
- (5) An aggrieved party may appeal to a Judge in Chambers from a decision given pursuant to subsection (2) or (4), on a matter of law.
- (6) Notwithstanding subsections (1), (2), (3), and (4) the Organization shall act in a timely manner in response to a regulated pest or a perishable item.

PART VII

OFFENCES AND PENALTIES

Offences

50.(1) A person who

- (a) grows, sells, offers for sale, transports or distributes in any manner any plant, plant product or other regulated article knowing that it is affected by a quarantine pest;
- (b) assaults, resists, intimidates, threatens, abuses in any manner whatsoever, or obstructs an inspector exercising lawful powers under this Act;
- (c) tampers with any sample taken pursuant to this Act;
- (d) fails to comply with any order or direction lawfully made or given under this Act;
- (e) imports any plant, plant product or other regulated article at a place other than a designated port of entry;
- (f) imports any plant, plant product or other regulated article contrary to any other requirement that is prescribed;
- (g) intentionally permits, introduces or causes the introduction or spread of a quarantine pest;

- (h) exports any plant, plant product or other regulated article except in accordance with Part IV;
- (i) fails to safeguard the phytosanitary security of a consignment after the issuance of a phytosanitary certificate under subsection (1) of section 28;
- (j) fails to allow a search or inspection authorised under this Act;
- (k) fails to allow the taking of any sample authorised under this Act;
- (l) breaks the seal on a sealed container containing a plant, plant product or other regulated article except in the presence of an inspector;
- (m) knowingly or recklessly provides information which is false;
- (n) alters, forges, defaces or destroys any document issued under this Act;
- (o) submits any written material for publication referring to the occurrence of a quarantine pest in Barbados without prior or simultaneous communication of the existence of the pest to the Organization; or
- (p) otherwise contravenes a provision of this Act,

is guilty of an offence and liable on summary conviction to a fine of \$ 50 000 or to imprisonment for a term of one year or to both.

(2) Paragraph (l) of subsection (1) shall not apply to a customs officer who breaks a seal on a sealed container in accordance with the provisions of any enactment relating to customs.

Liability of officials

51. An inspector, official analyst or other Organization staff or the representative of the Organization who

- (a) asks for or takes any personal payment or other reward in connection with any official duties;

- (b) agrees to do, abstains from doing, permits, conceals or connives 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 Barbados;
- (c) discloses any information acquired in the performance of his 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; or
- (d) otherwise abuses his powers granted under this Act,

is guilty of an offence.

Procedure for offences

52.(1) Where a plant protection inspector reasonably believes that a person has contravened any of the provisions of this Act, he shall provide such information to the Chief Plant Health Officer.

(2) The Chief Agricultural Officer on the advice of the Chief Plant Health Officer shall determine whether the matter shall be subject

- (a) to an administrative penalty;
- (b) to criminal prosecution; or
- (c) to both an administrative penalty and criminal prosecution.

Administrative penalty

53.(1) Where the Organization is satisfied that a person has committed an act which does not warrant criminal prosecution, the Organization may issue an administrative penalty notice in the prescribed form specifying the nature of the act constituting the contravention and the penalty.

(2) Pursuant to subsection (1), the Organization may

- (a) issue a fine not exceeding \$500;
- (b) suspend or revoke any licence or other authorization; or

- (c) issue any other administrative penalty.
- (3) Where the administrative penalty is the issue of a fine the administrative notice shall specify the amount of the penalty to be paid and shall require the person to whom it is addressed to pay the fine within a period of 14 days from the date of the notice.
- (4) A person who is in receipt of an administrative penalty notice issued under subsection (3) shall, in the manner prescribed, pay the amount of the fine and comply with any additional requirement contained in the notice on or before the date specified in the notice.
- (5) A person to whom an administrative penalty notice is addressed and who wishes to challenge the notice, may make an appeal in accordance with section 49.
- (6) In cases of serious or repeated violations of this Act, a licence or any other authorization issued by the Organization, the Organization shall recommend to the ministry responsible for industry and commerce that the business license be revoked.

Powers of the Chief Agricultural Officer in administrative proceedings

54. Where a matter is to be dealt with administratively by the Chief Agricultural Officer, the Chief Agricultural Officer, on the advice of the Chief Plant Health Officer, may

- (a) seize a regulated article;
- (b) stay the proceedings for condemnation of anything forfeited under this Act;
- (c) restore anything seized under this Act, subject to any conditions he thinks fit;

- (d) impose penalties or fines as the case may be, in respect of a breach that does not warrant criminal prosecution but is the subject of an administrative penalty.

Fixed penalty notice for prescribed offences

55.(1) This section shall apply to any offence prescribed by regulations as a fixed penalty offence.

(2) For the purposes of this Act, a fixed penalty offence is any offence for which the maximum penalty, excluding any additional fines if the offence is a continuing one, does not exceed \$2 500 or 50 per cent of the value of the regulated article, whichever is the greater.

(3) Where on any occasion an inspector finds a person who he has reason to believe is committing, or has committed, a fixed penalty offence, he may on the spot, issue that person a fixed penalty notice, and shall inform the person

- (a) to appear before the magistrate on the date specified; or
- (b) pay the fixed penalty, *in lieu* of appearance before a magistrate.

(4) Where a person is issued a fixed penalty notice in respect of a fixed penalty offence and he

- (a) pays the fine within the time prescribed in the fixed penalty notice, no proceedings shall be instituted for that offence and he 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 the payment was made; or
- (b) does not pay the fine within the time prescribed in the fixed penalty notice, the Organization shall decide whether to
 - (i) increase the fine to be paid through written notice, specifying a new time period for payment; or
 - (ii) take other action as established under this Act.

- (5) A fixed penalty notice shall
- (a) be in the form set out in regulations;
 - (b) give such reasonable particulars of the circumstances alleged to constitute the offence to which the notice relates; and
 - (c) state
 - (i) the amount of the fixed penalty, which shall not exceed 20 % of the maximum amount of any fine or fines that are specified under this Act in respect of the offences to which the fixed penalty notice relates;
 - (ii) the period for paying the fixed penalty, which shall not exceed 21 days upon receipt of the fixed penalty notice; and
 - (iii) the person to whom, and the address at which
 - (A) the fixed penalty may be paid; and
 - (B) any correspondence relating to the fixed penalty notice maybe sent;
 - (iv) the method or methods by which payment may be made; and
 - (v) the consequences of not making a payment within the period for paying the fixed penalty.
- (6) The Chief Agricultural Officer on the advice of the Chief Plant Health Officer may extend the period for paying the fixed penalty in any particular case if he considers it appropriate to do so by sending notice to the person to whom the fixed penalty notice was given.
- (7) The admission of guilt and the fixed penalty paid under this section shall be dealt with by the magistrate in the same manner as adjudication in court of an offence punishable on summary conviction and for which no conviction is recorded.

Evidence

- 56.** In any prosecution for an offence under this Act
- (a) a declaration, certificate, report or other document of the Organization or an official analyst, inspector or member of the Police Service, purporting to have been signed on behalf of the Organization or the official analyst, inspector or member of the Police Service, is in the absence of evidence to the contrary, proof of the matters asserted in it; and
 - (b) a copy of an extract from any record or other document that is made by the Organization, an official analyst, inspector or member of the Police Service, as a true copy or extract, is admissible in evidence.

Limitation on liability

- 57.(1)** The costs of any action taken by an inspector under section 45 shall be borne by the owner, except where in exceptional cases the Organization determines that the State shall bear the costs.
- (2) Subject to section 61, the State is not liable for loss resulting from the destruction or disposal of any plant, plant product or other regulated article carried out under this Act.

Good faith defence

58. No member of the Organization, inspector, official analyst, official or reference laboratory or any other government entity with a role in phytosanitary matters shall be liable to prosecution in respect of anything done in good faith in the performance of their official functions under this Act.

Unpaid administrative fine or fixed penalty to constitute a debt to the State

59. Any administrative fine or penalty that remains unpaid after the expiration of one month after it becomes due and payable under this Act is a debt

due to the State and may be recovered as a debt due to the State in civil proceedings before a magistrate for District "A", notwithstanding that the amount exceeds the monetary limit on the jurisdiction of a magistrate's court.

General provisions as to prosecutions under Act

60. A plant protection inspector or other officer may, although not an attorney-at-law, prosecute or conduct before a court of summary jurisdiction any proceedings under this Act.

Compensation

61.(1) The Minister may, on the recommendation of the Advisory Working Group out of money voted for that purpose by Parliament, order compensation to be paid in respect of

- (a) the treatment required of affected premises;
- (b) the prohibition or restriction imposed under this Act on the use of premises; and
- (c) owners affected by pest eradication procedures implemented by the Organization.

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

Forfeiture

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

(2) Where the owner or person in charge of a plant, plant product, other regulated article, or other thing is convicted of an offence under this Act and a

fine is imposed, the plant, plant product, other regulated article or other thing may be

- (a) detained until the fine is paid; or
- (b) sold in satisfaction of the fine.

(3) Where the court does not order the forfeiture of a regulated article, that regulated article, or any proceeds realized from its disposition shall be returned to the owner or person in charge at the time of its seizure.

(4) The Organization shall determine the appropriate holding of a regulated article seized or forfeited under this Act, prior to its disposition by a magistrate

(5) Any plant, plant product, other regulated article or other thing ordered to be forfeited under this Act, at the expiry of the time limited for appeal and if no appeal is lodged, may be destroyed, sold, leased or donated to a charitable organization.

(6) The proceeds of any sale of an item forfeited in accordance with this section shall be paid into the Consolidated Fund.

PART VIII

MISCELLANEOUS

Control of waste from vessels

63. The Organization shall establish the requirements for the handling and disposal of waste from any conveyance.

Documents may be submitted in electronic format

64. For the purposes of this Act, where

- (a) a notice is required to be furnished in writing; or
- (b) a document is required to be furnished to the Minister or an inspector,

such notice or document may be furnished in an electronic format.

Regulations

65. The Minister may, after consultation with the Advisory Working Group and the Organization, make regulations to give effect to the provisions of this Act, for all or any of the following matters:

- (a) procedures to be followed by an inspector in the exercise of his duties;
- (b) conditions for the import of any plant, plant product or other regulated article;
- (c) the designation of the ports of entry in Barbados that are appropriate for the import and export of any plant, plant product and other regulated article;
- (d) the circumstances under which phytosanitary requirements for import may be modified based on a pest risk analysis;
- (e) procedure and guidelines for pre-shipment inspections;
- (f) the manner in which permits and certificates shall be issued and their form, content and language;
- (g) the procedure by which an importer may apply for inspection to take place at any location other than the port of entry, or at a time outside regular business hours;
- (h) the manner in which containers shall 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 other regulated article shall be stored or transported in Barbados;
- (j) the procedures to be adopted for the treatment of any imported plant, plant product or other regulated article and the conveyance bringing it into Barbados;

- (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 other regulated article kept or maintained at a plant quarantine station;
- (m) the manner in which an inspection shall be arranged for the destruction, removal, uprooting or treatment of any plant, plant product or other 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 anything in all or part of an area declared as under quarantine;
- (o) the manner in which any sample being transported or stored must be taken, marked and retained under this Act;
- (p) the operating procedures of any official laboratory designated under this Act;
- (q) the procedure by which an area may be declared pest-free or an area of low pest prevalence;
- (r) the conditions for the export of any plant, plant product or other regulated article;
- (s) the operating procedures for the inspection of any plant, plant product or other regulated article, and any physical structure or premises containing such a product or article, for the purposes of export;
- (t) the offences subject to the fixed penalty procedure outlined in section 55;
- (u) the criteria for the declaration of a phytosanitary emergency under sections 25(c) and 41;

- (v) the guidelines, policy directives or protocols promoting co-operation between relevant departments relating to plant protection;
- (w) any additional measures to be taken for the purpose of preventing the introduction or spread of a pest.

Repeal and savings

66.(1) The following Acts are repealed:

- (a) the *Plant Pest and Disease (Eradication) Act*, Cap. 266A; and
- (b) the *Plant Protection Act*, Cap. 268.

(2) Notwithstanding subsection (1)(a), all statutory instruments made under the *Plant Pest and Disease (Eradication) Act*, Cap. 266A shall continue in force with such modifications as are necessary to bring them into conformity with this Act and shall have effect as if made under this Act, until revoked.

Act binds the State

67. This Act shall bind the State.

Commencement

68. This Act shall come into force on a date to be fixed by Proclamation.

Read three times and passed the House of Assembly this
day of _____, 2022.

Speaker

Read three times and passed the Senate this _____ day of
_____, 2022.

President

PLANT PROTECTION BILL, 2022

EXPLANATORY MEMORANDUM

This Bill would provide for the protection of plant resources by preventing the introduction and controlling the spread of plant pests in order to facilitate the trade in plants and plant products in accordance with the obligations under the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures, the International Plant Protection Convention and the International Standards on Phytosanitary Measures; and for related matters.

PART I PRELIMINARY

- Clause 1:** Clause 1 of the Bill provides for the title of the Bill.
- Clause 2:** Clause 2 of the Bill provides for the definitions of various terms appearing in the Bill and are consistent with the most recent version of International Standard for Phytosanitary Measures No. 5 Glossary on Phytosanitary Terms. Provision is made in subclause (2) for the terms defined in the Bill to be interpreted in accordance with the International Standard for Phytosanitary Measures No. 5 Glossary on Phytosanitary Terms notwithstanding any amendments to the Glossary.

PART II ADMINISTRATION

- Clause 3:** Clause 3 of the Bill seeks to incorporate Article IV of the International Plant Protection Convention; it establishes a National Plant Protection Organization for Barbados. In this clause, the Minister is required to inform the IPPC Secretariat

of the establishment of the National Plant Protection Organization to serve as the Organization of for Barbados.

- Clause 4:** Clause 4 of the Bill seeks to further incorporate Article IV of the International Plant Protection Convention. Sub-clause (1) provides for the functions of the National Plant Protection Organization. Included in the list of functions are: developing lists of regulated pests and preventing and controlling the introduction of regulated pests.
- Clause 5:** Clause 5 of the Bill provides for the role of the Chief Plant Health Officer. Sub-clause (3) provides that the Chief Plant Health Officer would be the officer responsible for the general administration of the National Plant Protection Organization and would report to the Chief Agricultural Officer. Sub-clause (4) lists the functions of the Chief Plant Health Officer. The functions include providing technical and administrative direction to the National Plant Protection Organization, liaising with other ministries and foreign authorities and serving as the contact point for the International Plant Protection Convention. Sub-clauses (5) and (6) make provision for the appointment of the staff of the National Plant Protection Organization in accordance with the *Public Service Act*, Cap. 29.
- Clause 6:** Clause 6 of the Bill lists the powers of the Minister responsible for Agriculture which include the designation of official laboratories and reference laboratories.
- Clause 7:** Clause 7 of the Bill seeks to make provision for the Minister to by order delegate the Chief Plant Health Officer any power or function conferred or imposed on him under this Act except the power to make subsidiary legislation. Provision is also made in sub-clause (2) for the Chief Agricultural Officer, on

the advice of the Chief Plant Health Officer to authorize any person or entity to perform the functions of the Organization except official liaison duties with other ministries or foreign authorities; any notification responsibilities with other ministries or foreign authorities; and the approval of phytosanitary measures or requirements. Sub-clause (3) allows the Chief Agricultural Officer on the advice of the Chief Plant Health Officer to authorize any qualified public officer who is not a member of staff of the Organization, to issue phytosanitary certificates under the direct supervision of the Organization. This provision allows for the designation of certain responsibilities to other public officials or to private parties. In certain situations e.g. in phytosanitary emergencies or where there is a temporary shortage of phytosanitary officers etc. the National Plant Protection Organization may require support by other administrative agencies on a temporary basis. In some other cases, co-ordination within other public bodies (e.g. extension or research services for the reporting of pest outbreaks) may be needed on a more regular basis. Sub-clause (4) lists the terms which must be included in any instrument authorising the performance of functions.

Clause 8:

Clause 8 of the Bill seeks to provide for the appointment of plant protection inspectors. This clause provides that a plant protection inspector is to be impartial and free of improper or undue influence or conflict of interest. This clause provides that where a plant protection inspector has any interest in a matter or action of the National Plant Protection Organization, that interest is to be communicated to the Chief Agricultural Officer. Where it is found that the interest conflicts with the impartiality or independence of a plant protection inspector, the Chief Agriculture Officer may recommend that the appointment be withdrawn in accordance with the *Third*

Schedule to the Public Service Act, Cap. 29. Sub-clause (4) of the Bill defines “plant health”.

- Clause 9:** Clause 9 of the Bill seeks to make provision for the Minister of Agriculture on the recommendation of the National Plant Protection Organization to designate laboratories and analysts as official laboratories and official analysts respectively for the purposes of the Act. Sub-clause (2) establishes the standards under which the operation of official laboratories and the work of the official analysts is to be conducted: impartially and independently. Sub-clause (3) establishes the purpose of reference laboratory.
- Clause 10:** Clause 10 of the Bill seeks to establish an Advisory Working Group to advise the Minister and Organization on plant protection issues. This clause makes provision for the membership of the Advisory Working Group; the terms of membership and sets the minimum times for assembling for meetings.
- Clause 11:** Clause 11 of the Bill in sub-clause (1) provides the circumstances under which a vacancy in the membership of the Advisory Working Group may be created.
- Clause 12:** Clause 12 of the Bill provides for the continuation of the Phytosanitary Emergency Fund to be used by the National Plant Protection Organization to facilitate the work of the Organization. Sub-clause (2) provides that all monies of the Fund are to be administered in accordance with the *Financial Management and Audit (Financial) Rules*, (S.I. 2011, No. 54) and sub-clause (3) provides that monies in the Phytosanitary Emergency Fund are to be made available to the Organization when a phytosanitary emergency is declared.

- Clause 13:** Clause 13 of the Bill provides for the National Plant Protection Organization to establish and maintain registers. The registers are to keep records relating to imports, exports, domestic producers and nurseries of plants, plant products and other regulated articles to facilitate the management of the import and export systems.
- Clause 14:** Clause 14 of the Bill seeks to incorporate Articles 2.2, 3 and 5 of the SPS Agreement, International Standard for Phytosanitary Measures 1 (Phytosanitary Principles for the Protection of Plants and the Application of Phytosanitary Measures in International Trade) and Article VII.2.g of the International Plant Protection Convention to establish the basis on which phytosanitary measures are developed and implemented in Barbados. Sub-clause (1) lists: that measures are to be in harmony with international standards, technically based on pest risk analysis or risk assessment and science-based decisions; be favourable to the development of regionalization and trade and proportionate to the risk. These principles must directly inform and shape the measures that are implemented under the Bill. Sub-clause (2) places the obligation on the National Plant Protection Organization to keep the measures under review every 3 years to ensure that they are current in light of frequently evolving international standards.
- Clause 15:** Clause 15 of the Bill seeks to incorporate International Standard for Phytosanitary Measures 15 section 6 and International Standard for Phytosanitary Measures 20 sections 2 and 5.1. to provide for co-operation from a broad range of actors who may have a role in assisting enforcement. This clause specifically recognizes the importance of collaboration for effective co-operation.

Clause 16: Clause 16 of the Bill makes provision for the National Plant Protection Organization to be assessed both externally and internally. This is an important mechanism by which the National Plant Protection Organization can periodically gauge its performance in the implementation of the Act and in the effectiveness of the measures adopted. In sub-clause (3), the Bill provides for collaboration between the Veterinary Authority and the entity responsible for agricultural health and food control to monitor and evaluate the implementation of the provisions of the Bill and based on the findings, to prepare a report which is to be published in the first instance, five years after the Act comes into force thereafter every three years.

PART III IMPORTS

Clause 17: Clause 17 of the Bill creates the obligation of persons entering the country to declare any plants, plant products or other regulated articles in their possession as this is a pathway for the entry of pests and diseases that should be controlled. Sub-clause (2) provides that where a plant protection inspector is not available to inspect an item that a customs officer is to have custody of the item until a plant protection inspector is available. Sub-clause (3) places an obligation on the master of every vessel entering Barbados to inform passengers that they must declare on arrival any plant, plant product or other regulated article in their custody.

Clause 18: Clause 18 of the Bill identifies designated ports of entry as the only points at which a plant, plant product or other regulated article is to enter Barbados. Sub-clause (2) sets out the documents that must accompany a consignment, namely, an import permit, original phytosanitary certificate issued from

the country of export and any other document that may be prescribed. Sub-clause (3) provides that non-compliant goods shall be prohibited from entry; and in recognition of the principle of equivalence, that Barbados will recognize alternative phytosanitary measures proposed by exporting contracting parties as equivalent when those measures are demonstrated to achieve the appropriate level of protection for Barbados. Also, very important is the specification that phytosanitary measures should not be applied for non-regulated pests. This clause also states that the Organization, in considering whether the requirements have been satisfied for the issue of an import permit, shall have regard to international standards or conduct a pest risk analysis. This clause also provides the penalty for contravention; summary conviction to a fine of \$50 000 dollars or to imprisonment for a term of one year or to both.

Clause 19: Clause 19 of the Bill sets out the grounds for which an import permit is required and the grounds on which an import permit may be reviewed, modified or revoked. This clause is important for the purposes of transparency for compliance with the SPS Agreement – i.e. the grounds for which a permit can be issued, revoked or modified, section 4.2 of International Standard for Phytosanitary Measures No. 20 (Guidelines for a Phytosanitary Import Regulatory System and also International Standard for Phytosanitary Measures No. 23 (Guidelines for Inspection).

Clause 20: Clause 20 of the Bill seeks to foster the collaboration of the customs department to ensure that all arrivals of regulated articles are brought to the attention of the National Plant Protection Organization in advance of their arrival.

Clause 21: Clause 21 of the Bill provides for the mandatory inspection, on the payment of a fee, of all consignments imported to Barbados at designated ports of entry except where Barbados is not the final port of destination and the importer has applied for the inspection to be done at the port of final destination or the container has been sealed and marked. Sub-clause (5) makes provision for inspections to be conducted during regular business hours but in circumstances where the consignment is in transit, extremely perishable or delayed, an inspection may be conducted outside of regular business hours. However, for an inspection to be conducted outside of regular business hours, the importer must have applied to the National Plant Protection Organization and paid the prescribed fee. Sub-clause (6) is included to confirm the authority of the National Plant Protection Organization in relation to regulated articles until they are cleared for entry. Sub-clause (7) empowers the National Plant Protection Organization to conduct inspections in the country of origin. This clause is aligned with section 5 of International Standard for Phytosanitary Measures No. 20, which outlines the operation of an import system.

Clause 22: Clause 22 of the Bill provides that there are to be established standards for the facilities to accommodate inspections of consignment at the ports of entry. Through this provision, whether the owner of a facility is public or private, the required space and furnishings must be provided to enable the Organization to carry out its functions. Sub-clause (3) allows for the Minister to serve a notice to the owner or operator of an inspection facility of desired improvements to an inspection facility where that facility does not comply with the established standards and requirements. An exception is made where the inspection is conducted at a private residence.

In that case the Minister has no jurisdiction to cause any improvements to be made.

Clause 23:

Clause 23 of the Bill provides for the circumstances which may cause a plant protection inspector to detain and eventually destroy a consignment and the actions which may be taken against a consignment which is detained whether with or without issuing written notice to the importer. Sub-clause (1) identifies two circumstances which may cause the detention of a consignment: where the consignment is not accompanied by the relevant documents or where the consignment presents a risk of the introduction or spread of pests. Sub-clause (2) sets out the phytosanitary actions which may be applied to a consignment which is not accompanied by the relevant documents or where the consignment presents a risk of the introduction or spread of pests. The clause provides that written notice may not be given if it is impractical to do so. With respect to the cost of any emergency action, sub-clause (5) provides that that cost is to be borne by the importer except where the case is an exceptional one, the National Plant Protection Organization determines that the cost is to be borne by the State. In sub-clause (6), provision that in circumstances where the State assumes the financial responsibility for the destruction of an imported article, the State can notwithstanding recover the amount paid as a debt owed to the State. Sub-clause (8) excludes the State from any liability where an article any action is taken against an article in accordance with this clause. Sub-clause (9) requires the National Plant Protection Organization to notify an exporting country in circumstances where there was cause to intercept a pest or take emergency action in respect of a consignment originating from that country.

- Clause 24:** Clause 24 of the Bill sets out the conditions on which a consignment will be released to the importer after it has been inspected i.e. where there is no risk for the importation and spread of pests in Barbados.
- Clause 25:** Clause 25 of the Bill relates to import regulatory matters and provides that such a decision is made by the Minister on the advice of the Organization as the Minister should not make final decisions on import regulatory matters; this is the role of the National Plant Protection Organization and ultimately the Chief Plant Health Officer.
- Clause 26:** Clause 26 of the Bill seeks to provide for plant quarantine stations. In this clause, the National Plant Protection Organization may designate places as plant quarantine stations the purpose of which is to hold consignments for observation, research, inspection, testing, treatment, detention or destruction or for imported materials be kept or cultivated under the supervision of the National Plant Protection Organization for as long as the National Plant Protection Organization considers necessary.
- Clause 27:** Clause 27 of the Bill sets out a list of persons who are required to report the arrival or importation of a consignment to the National Plant Protection Organization and to detain that consignment on its arrival in the absence of an inspector. According to sub-clause (2), a consignment detained by any of the persons listed in sub-clause (1) is to be treated as an action on the authorization of the National Plant Protection Organization. Sub-clause (3) provides that the article detained is to be submitted to the National Plant Protection Organization within 3 days of it being detained.

PART IV
EXPORTS AND CONSIGNMENTS IN TRANSIT

- Clause 28:** Clause 28 of the Bill prohibits the export of a plant, plant product or other regulated article without a phytosanitary certificate. Sub-clause (1) sets out the requirements for the grant of a phytosanitary certificate. It is important to note that the National Plant Protection Organization has the sole authority with respect to the issue, control and revocation of phytosanitary certificates and for the security and integrity of consignments after they are certified as it is important to ensure that the phytosanitary security of a consignment is maintained after certification.
- Clause 29:** Clause 29 of the Bill provides for the National Plant Protection Organization to inspect a consignment, provided the exporter pays the fee, to determine whether a consignment meets the requirements for the issue of a phytosanitary certificate.
- Clause 30:** Clause 30 of the Bill provides the requirements for the issue of a re-export certificate. The requirements for the issue of re-export certificate differ from regular export requirements and should be distinguished accordingly. According to International Standard for Phytosanitary Measures No. 12, when a consignment is imported into a country and then re-exported to another, the National Plant Protection Organization should issue a phytosanitary certificate for re-export in conformity with the International Plant Protection Convention model certificate for re-export. A re-export certificate is still valid even where the consignment has been stored, split up, combined with other consignments or re-packaged, provided that it has not been exposed to infestation or contamination by pests. It is important to note that a consignment that is intended to be re-exported is to be sent

with the original documents and phytosanitary certificate issued by the country of origin. However, if a consignment is exposed to infestation or contamination by a pest; loses its phytosanitary security or integrity; or has been processed to change its nature, the National Plant Protection Organization shall issue a phytosanitary certificate and not a re-export phytosanitary certificate; the country of origin is to be included in the certificate and the original documentation is to accompany the consignment. Sub-clause (7) establishes that an exporter is bound to comply with the instructions contained in a reexport phytosanitary certificate.

Clause 31: Clause 31 of the Bill makes provision for the issue of a transit authorization and seeks to incorporate the provisions of Article VII.4 of the International Plant Protection Convention which requires parties to apply measures to transit consignments only where technically justified and necessary to prevent the introduction and or spread of pests. This clause also reflects the provisions of International Standard for Phytosanitary Measures No. 12 (in particular section 3.3) under which the National Plant Protection Organization is not required to issue a phytosanitary certificate where a consignment is in transit and is not exposed to infestation or contamination by pests. Conversely where it has been contaminated, or if the consignment is combined, repackaged or split up, a re-export phytosanitary certificate is required.

PART V CONTAINMENT AND ERADICATION OF PESTS

Clause 32: Clause 32 of the Bill provides for the control measures that may be applied to a pest free area, area of low pest prevalence, buffer zone or an area or premises that is infested or suspected

of being infested by a regulated pest. This provision is useful to further transparency and accountability by specifying the different control options that are available to inspectors when a pest is detected. This section is aligned with Article VI of the International Plant Protection Convention and International Standard for Phytosanitary Measures No. 9 (Guidelines for Pest Eradication Programmes) sections 3.2 and 3.3. Subclause (2) provides that the control measures provided in sub-clause (1) may also be applied to other pests of national concern based on the economic impact of those pests and the potential intra-island or inter-island movement of those pests.

Clause 33: Clause 33 of the Bill provides for the National Plant Protection Organization to declare a pest to be a regulated pest, based on a pest risk analysis or a national pest of concern based on surveillance and the potential local impact of the pest. Sub-clause (2) relates to the development and treatment of pest lists. The development of pest lists is a key function of the National Plant Protection Organization. According to International Standard for Phytosanitary Measures No. 19 (Guidelines on Lists of Regulated Pests), lists of regulated pests may also be useful as the basis for harmonization of phytosanitary measures where several contracting parties with similar and shared phytosanitary concerns agree on pests that should be regulated by a group of countries or a region.

Clause 34: Clause 34 of the Bill makes provision for persons who have knowledge of or reasonably suspect the presence of a quarantine pest to report the appearance of that pest to the National Plant Protection Organization.

Clause 35: Clause 35 of the Bill provides for surveillance which is a key function of the National Plant Protection Organization.

According to this provision surveillance shall be concerned with the biology, distribution and potential impact of a pest.

- Clause 36:** Clause 36 of the Bill provides for a plant protection inspector to declare an area or premises to be under provisional quarantine. The current Act does not provide for a declaration of provisional quarantine. The provisional declaration mechanism enables the National Plant Protection Organization to take swift and rapid action while benefitting from a prescribed period to carry out the necessary tests and procedures to confirm findings. This mechanism allows for the taking of specific measures while laboratory results and other analyses are pending.
- Clause 37:** Clause 37 of the Bill provides for an area or premises to be declared under quarantine. The Chief Plant Health Officer is the technical head of the National Plant Protection Organization and thus should have the authority to decide when a declaration of a quarantine area is needed. While the Chief Agriculture Officer may consult with the Advisory Working Group on various matters, the decision rests with the Chief Agriculture Officer. Paragraph (a) to (d) sets out the various measures that are available to the National Plant Protection Organization where an area or premises is declared under quarantine.
- Clause 38:** Clause 38 of the Bill provides for the procedures to be followed when a quarantine pest is suspected to be on the premises. Authority was previously granted in the current Act for the destruction of regulated articles affected by a quarantine pest infestation but this provision extends the scope of action to buffer zones and any regulated article that may have been even exposed to the quarantine pest.

- Clause 39:** Clause 39 of the Bill provides for the method in which a notice may be served where a person is not in actual occupation of the premises. According to this clause, affixing the notice in a conspicuous place on the premises is to be regarded as sufficient service.
- Clause 40:** Clause 40 of the Bill prohibits the removal of a plant, plant product or other regulated article from an area or premises for which a quarantine notice is in force. According to sub-clause (1), a quarantine notice is to remain in force until an owner or occupier receives a certificate in writing that the area or premises is free from pests. Sub-clause (2) prohibits a person from removing or allowing or causing the removal of any plant, plant product or other regulated article from the premises or area under quarantine while a quarantine notice is in force
- Clause 41:** Clause 41 of the Bill provides for the declaration of a phytosanitary emergency on the recommendation of the Organization. Sub-clause (2), enables the National Plant Protection Organization to apply emergency measures, require the co-operation and assistance of other actors, and ensure that any emergency action or measure is limited in time and subject to review (to avoid the abuse of this provision that grants authorities wide powers).
- Clause 42:** Clause 42 of the Bill seeks to set out the conditions under which a quarantine notice is to be lifted from an area or premises affected by pests. Those conditions are: that the pest is no longer present; or that the National Plant Protection Organization determines that the declaration of quarantine is no longer appropriate. Sub-clause (2) further provides for the revocation of the declaration order where it is determined that the relevant quarantine pest is no longer considered to be

present or that it is no longer appropriate for the quarantine to be maintained in respect of some or all of the affected area or premises. Sub-clause (3) provides that the written notice must be served on all owners or occupiers of premises that were subject to quarantine.

Clause 43: Clause 43 of the Bill provides for the conditions which would cause the Chief Agricultural Officer to declare an area pest free or one of low pest prevalence. For example, that a pest is not present in the area or a pest is present at low levels in the area.

Clause 44: Clause 44 of the Bill makes provision for the conditions which would satisfy the National Plant Protection Organization to declare that a place of production or a production site is pest free based on scientific evidence and where the absence of pests is maintained for a specific period of time.

PART VI ENFORCEMENT

Clause 45: Clause 45 of the Bill is an extensive and important provision which seeks to provide robust powers to plant protection inspectors in accordance with International Standard for Phytosanitary Measures No. 20 section 4.6 (Legal powers of NPPO officers) and International Standard for Phytosanitary Measures No. 23 section 1.3 (NPPO responsibility for inspections). It is to be borne in mind that the robust powers granted to a plant protection inspector are for the purpose of detecting a regulated pest or ensuring that persons to whom the Bill applies, comply with its provisions. Sub-clause (2) clearly provides for the conditions under which a plant protection inspector is permitted to enter a dwelling equipped with an identification card or other proof of appointment or

designation as an inspector, i.e. the occupier must grant consent to the inspector, or the inspector must be in possession of a warrant issued by a Magistrate. By extension, provided the conditions in sub-clause (2) are satisfied, a plant protection inspector is authorised to search any premises where there is reasonable belief that an offence under the Bill has been committed. Recognizing the risks that may be associated with entering and searching premises, provision is made in sub-clause (5) for a member of the Police Service to accompany an inspector in the execution of his duties. Sub-clause (6) sets out the course of action which a plant protection inspector may take if the circumstances warrant action. The clause provides that an inspector may *inter alia* seize, destroy or treat a plant, plant product or other regulated article and serve a written notice on the owner describing the action taken with reasons for the action. In sub-clause (7), provision is made for inspectors to conduct pre-shipment inspections at the invitation of an exporting country, in that country. Finally, sub-clause (9) makes provision for what constitutes good notice where a premises is unoccupied. In those circumstances, affixing the notice to a conspicuous place on the premises is considered to be good service

Clause 46:

Clause 46 of the Bill makes provision for a plant protection inspector to issue a detention certificate where a plant, plant product or other regulated article is seized and detained. This clause provides that a plant protection inspector may exercise his discretion whether to advise the owner of the article of the possible actions that the article may be subject. The conditions that may determine whether an owner is not advised are: if in the opinion of the inspector, the article must be destroyed or it is impractical to do so. Sub-clause (2) provides that where an inspector does not give notice of a seizure that he shall

provide notice of the seizure to the owner or person in charge of the plant, plant product or other regulated article as soon as may be practicable after the seizure has been carried out.

- Clause 47:** Clause 47 of the Bill seeks to make provision that a plant, plant product or other regulated article which is seized and detained by an inspector must be stored at the place where it was seized or removed from the place that it was seized.
- Clause 48:** Clause 48 of the Bill seeks to make provision for two circumstances where an inspector may confiscate and dispose of any plant, plant product or other regulated article. In the first instance, where a plant, plant product or regulated item is imported to Barbados, is treated and after treatment is unclaimed; and secondly where an inspector believes that a quarantine pest or regulated pest is being harboured. Sub-clause (2) places a duty on the inspector to provide the owner with reasons where there has been a confiscation but only where it is practical to do so.
- Clause 49:** Clause 49 of the Bill makes provision for a two-tier system of review where any person is aggrieved by a decision or action taken by a plant protection inspector or an official analyst. In the first instance an aggrieved person may appeal in writing to the Chief Plant Health Officer within 10 days of any decision or action taken. Sub-clause (2) provides that the Chief Plant Health Officer is required to give a decision within 28 days after receiving the appeal. Sub-clause (3) provides that an appeal from a decision of the Chief Plant Health Officer shall lie to the Chief Agricultural Officer within 10 days of the decision of the Chief Plant Health Officer. According to sub-clause (4), where an appeal is made to the Chief Agricultural Officer, the Chief Agricultural Officer is required to give a decision within 14 days of receiving the

appeal. In addition, sub-clause (5) provides that an aggrieved person may appeal to a Judge in Chambers from a decision given by the Chief Veterinary Officer or the Minister, on a matter of law. Sub-clause (6) requires that the Organization acts in a timely manner in responding to an appeal involving a regulated pest or a perishable item.

PART VII OFFENCES AND PENALTIES

- Clause 50:** Clause 50 of the Bill seeks to list the specific actions that are to be treated as criminal offences.
- Clause 51:** Clause 51 of the Bill lists the categories of behaviour that are to be treated as offences under the Bill for an inspector, official analyst or other official of the National Plant Protection Organization, where that behaviour is outside of their authority. These behaviours include a failure to take action, as well as more specifically, abuse of power, taking bribes, failing to disclose a financial interest etc. and any other abuse of power granted under the Bill. This clause provides the penalties to which an inspector, official analyst or other official of the National Plant Protection Organization is subject: dismissal or any other disciplinary action under the *Public Service Act*, Cap. 29.
- Clause 52:** Clause 52 of the Bill makes provision for how contraventions of the provisions of the Bill are to be treated. Under this clause, a plant protection inspector is under an obligation to inform the Chief Plant Health Officer where he reasonably believes that there has been a contravention. Sub-clause (2) provides that the Chief Agricultural Officer on the advice of the Chief Plant Health Officer may determine whether the

contravention warrants criminal prosecution, an administrative penalty or both.

Clause 53: Clause 53 of the Bill seeks to provide for the National Plant Protection Organization to issue administrative penalty notices in circumstances where it is satisfied that the act which a person has committed does not warrant criminal prosecution. An administrative penalty provides an enforcement mechanism, which can be more cost-effective, timely and practical than criminal penalties. Sub-clause (2) provides the following forms of penalties: fine; suspension or revocation of a licence or other authorization; or any other administrative penalty. In sub-clause (3), provision is made for the content of the notice and the time-frame within which the penalty is to be paid is 14 days. Sub-clause (5) makes provision for a person to whom an administrative notice has been issued to appeal the notice in accordance with clause 49. Sub-clauses (6) and (7) seek to make provision for the revocation of a business licence in cases of repeated violations.

Clause 54: Clause 54 of the Bill sets out the matters that the Chief Agricultural Officer may settle administratively and includes the seizure of regulated articles, staying the proceedings for condemnation of anything forfeited under this Act and the restoration of anything seized under the Bill.

Clause 55: Clause 55 of the Bill provides for the issue of fixed penalty notices for offences to be prescribed in regulations as fixed penalty offences. Sub-clause (2) provides the maximum penalty for a fixed penalty offence. Sub-clause (3) sets out the procedure for the issue of a fixed penalty notice. Sub-clause (4) describes the consequences where a person to whom a notice is issued, pays the fine or fails to pay the fine. Sub-

clause (5) describes the form of and particulars to be contained in a fixed penalty notice. Sub-clause (6) makes provision for the Chief Agriculture Officer on the advice of the Chief Plant Health Officer to extend the period for the payment of the fixed penalty notice. Sub-clause (7) makes provides that fixed penalty notices are to be treated in the same way as an offence for summary conviction for which no conviction is recorded.

Clause 56: Clause 56 of the Bill provides that in any prosecution for an offence under the Bill, matters that are certified by the National Plant Protection Organization or other public official, shall be taken as *prima facie* evidence of the matters stated therein unless there is evidence or grounds to believe that such matters are inaccurate or false and are inadmissible in evidence.

Clause 57: Clause 57 of the Bill provides that unless the State determines otherwise, the owner is responsible for the cost where an inspector seizes a plant, plant product or other regulated article. Sub-clause (2) seeks to protect the State from actions that are taken in good faith, and on a scientific basis for the purposes of preventing the introduction or spread of disease in the country.

Clause 58: Clause 58 of the Bill provides that a member of staff of the National Plant Protection Organization, inspector, official laboratory or any other entity involved in phytosanitary matters is not liable to a civil suit or to prosecution for anything done in good faith while performing their functions set out in the Bill.

Clause 59: Clause 59 of the Bill provides that unpaid administrative fines or penalties will be treated as a debt due to the State and may

be recovered as a debt due to the State in civil proceedings before a magistrate for District “A”.

Clause 60: Clause 60 of the Bill provides that a plant protection inspector may conduct a prosecution for an offence under the Bill irrespective of not being an attorney-at-law.

Clause 61: Clause 61 of the Bill makes provision for the Minister on the recommendation of the Advisory Working Group to order compensation to be paid in circumstances where: the National Plant Protection Organization requires treatment of premises; the use of a premises is prohibited; or premises are affected by measures implemented by the National Plant Protection Organization

Clause 62: Clause 62 of the Bill seeks to provide that where a person is convicted of an offence, any item used in the perpetration of that offence may be forfeited. Sub-clause (2) provides that where a fine is imposed, the plant, plant product or other regulated article may be detained until the fine is paid or sold in satisfaction of the fine. Sub-clause (3) provides that where forfeiture is not ordered that the plant, plant product or other regulated article is to be returned to the owner and where it has been disposed, the proceeds realised from the disposition are to be transferred to the owner or person in charge of the plant, plant product or other regulated article. Sub-clause (4) provides that the National Plant Protection Organization is responsible for determining the conditions under which a plant, plant product or other regulated article is to be held prior to the Magistrate’s ruling. This is an important provision to ensure that any goods that may carry pests, are treated in a manner that does not increase the risk of spread of such pests. Sub-clause (5) provides for the sale, lease or donation to a charitable organization of any good that is ordered to be

forfeited, provided that the time period for appeal has expired. Sub-clause (6) provides that the proceeds of any sale are to be paid into the Consolidated Fund.

PART VIII
MISCELLANEOUS

- Clause 63:** Clause 63 of the Bill provides that it is the responsibility of the National Plant Protection Organization to determine the manner in which waste is disposed.
- Clause 64:** Clause 64 of the Bill seeks to provide that where any notice is required in writing or a document is required to be submitted that it may be submitted in an electronic format.
- Clause 65:** Clause 65 of the Bill provides for the Minister on the advice of the Advisory Working Group and the Chief Agricultural Officer to make regulations to give effect to the provisions of the Bill.
- Clause 66:** Clause 66 of the Bill repeals the *Plant Pest and Disease (Eradication) Act, Cap. 266A* and the *Plant Protection Act, Cap. 268*.
- Clause 67:** Clause 67 of the Bill provides that the provisions of this Bill shall apply to the State.
- Clause 68:** Clause 68 of the Bill provides that the Bill shall come into force on a date to be fixed by Proclamation.