Revision of the Implementation and Capacity Development Committee (IC) Terms of Reference and Rules of Procedure - EU proposal to move the function to oversee the dispute settlement process from the IC to the Bureau

*Prepared by the EU*

1. Background

Article XIII of the IPPC (1997) sets out the basis of the dispute settlement system under the Convention. It states that, when a dispute arises, the disputing contracting parties shall consult among themselves as soon as possible with a view to resolving the dispute. If they cannot resolve the dispute in this way, one or both parties may request the Director-General of the Food and Agriculture Organization of the United Nations (FAO) to appoint a committee of experts, with the mandate to prepare a report and (non-binding) recommendations on technical aspects of the dispute. The parties also are free to develop other means to resolve the dispute.

Building upon these provisions, the (Interim) Commission on Phytosanitary Measures ((I)CPM) developed a dispute settlement system, providing for procedures and administrative support, to assist contracting parties in resolving disputes and to implement the process set out in Article XIII.

Since 1997, detailed IPPC dispute settlement procedures have been developed and adopted by the (I)CPM with the aim of making the IPPC system more acceptable and useful to contracting parties.

To provide support to contracting parties in this area, the IPPC Dispute Settlement Manual was published in 2006. It was however removed from the IPP in 2017 and since then has been under the review.

The Subsidiary Body on Dispute Settlement (SBDS) was established by ICPM-3 (2001) and its establishment re-confirmed by CPM-1 (2006). In CPM-12 (2017), the SBDS was dissolved and its functions and procedures were transferred to the newly established Implementation and Capacity Development Committee (IC).

The IPPC Secretariat revised the IC Terms of Reference and Rules of Procedure to get clarity on IC membership and submitted the proposal to CPM-15 (2021).

During the CPM-15, the EU expressed their opinion that:

“*Changing the IC Terms of Reference and Rules of Procedure is not an urgent issue. There is a need to have a more extended period to observe the Committee’s work and a necessity to pay attention to the IC's recommendations regarding the issue before changing the TOR and ROP*.”

Within the preparation for the SPG in 2021, the IPPC Secretariat asked the EU, in July 2021, for clarification. The EU responded on 26/072021 with the following extended statement:

“*During the CPM 15, the EU and its Member States thought that changing the IC Terms of Reference and Rules of Procedure is not an urgent issue. The EU would like to reemphasize a need to have a more extended period to observe the Committee work and a necessity to pay attention to the IC's recommendations regarding the issue before changing the TOR and ROP.*

*However, considering that the issue now moved to the SPG, we would like to express our views about the IC TOR draft proposals. The EU and its Member States think that the IC should be composed of twelve members who are experts with relevant skills and experience in implementing phytosanitary related instruments and/or capacity development. Seven of these members should be representatives of each of the FAO regions while five members should be experts. To enhance cooperation with the RPPOs and the SC, representatives of those bodies need to be nominated as permanent observers.*

*In addition, we believe a function to oversee the dispute avoidance and settlement processes should be removed from the IC scope and assigned to the Bureau. To facilitate the progress, the topic needs the involvement of the CPM government body.*”

During August 2021, the IPPC Secretariat requested a paper outlining the justification for the proposed change to move dispute settlement oversight from the IC to the Bureau.

This paper addresses that request from the IPPC Secretariat.

2. EU proposal to move the function of the dispute settlement oversight from the IC to the Bureau

Following the request by the IPPC Secretariat, the EU held an additional internal consultation on its position expressed in its written communication of 26 July 2021. During the consultation, it was agreed to slightly modify the EU position and to make the following proposal:

1. To move only the dispute settlement (DS) oversight function from the IC to the Bureau, and to keep the dispute avoidance oversight function with the IC;
2. To move the DS to the Bureau only until the review of the IPPC DS procedure is finalized, and to decide then anew, in the light of the revised DS procedures, where to position the DS oversight function within the structure of the IPPC Secretariat/CPM bodies.

The proposal is based on the following reasons:

* The proposal to move the DS oversight function to the Bureau is driven by the fact that the IPPC DS mechanism has been dormant for a couple of years. The IPPC DS Manual (2006) was removed from the IPPC website already in 2017 and is since under the review by the FAO Legal Office. According to the CPM and the IC reports, there is no progress in the dispute settlement procedure. We believe that the Bureau has a greater leverage, and is better placed than the IC, to liaise with the FAO Legal Office and facilitate the finalization of the review of the DS mechanism.
* The EU considers that the IPPC DS mechanism should play a significant role in the international trading system, as foreseen in Article XIII of the Convention. The IPPC Secretariat has a unique opportunity to contribute to the facilitation and stability of the global trade. The involvement of the executive body of the Commission in the ongoing review of the DS mechanism will better indicate the importance of the topic.
* We believe that the review of the IPPC DS mechanism is broader than an implementation issue, therefore going beyond the IC mandate, and that the involvement of the Bureau would be more appropriate.