IPPC Dispute Settlement – Options for Oversight & Administration

 *(Prepared by the IPPC Secretariat)*

1. Background

1. The International Plant Protection Convention (IPPC) provides non-binding dispute settlement assistance to contracting parties.
2. As per Article XIII of the IPPC, the CPM in 2006 adopted the detailed rules and procedures for dispute settlement – referred to as the IPPC Dispute Settlement Process (DSP). The DSP provides a number of options for addressing a dispute including mediation, arbitration, good offices, expert panels and other mutually agreed approach. In addition, CPM established a Subsidiary Body on Dispute Settlement (SBDS) in 2006 to provide oversight, administration and support of the IPPC dispute settlement procedures.
3. The DSP was recently clarified updated, and approved by CPM-16 (2022)[[1]](#footnote-1). However, there remains the need to clarify the institutional arrangements for administering this activity.
4. In March 2022, CPM-16 (2022) transferred the oversight of the dispute settlement process from the Implementation and Capacity Development Committee (IC) to the Bureau, recognizing the need to consider how best to institutionalize this oversight function on a more permanent basis. CPM requested the Bureau to consider whether the newly adopted IPPC Dispute Settlement Procedures can be simplified, be more user-friendly (including an infographic of the procedures), analyze this question of long-term oversight, and present its options and recommendations to the CPM-17 (2023).
5. The purpose of the current paper is to present, in addition to the options agreed by the CPM Bureau to approach the institutional arrangements for administering IPPC dispute settlement, a proposal for the simplified version of the dispute settlement procedure.

2. Proposed administration of the dispute settlement

1. In June 2022, the CPM Bureau meeting discussed options to institutionalize the newly adopted IPPC Dispute Settlement Process and how to approach the assigned role of the Dispute Settlement Oversight Body (DSOB).
2. During this meeting, the CPM Bureau agreed that the Dispute Settlement Oversight Body should be a non-permanent sub body of the CPM Bureau, with three CPM Bureau members participating in it, without the need for regular meetings. For the composition of the DSOB, the CPM Bureau also agreed on the importance to avoid any risk of conflict of interest in dispute settlement considering the disputing parties.
3. Among the options proposed for the administration of dispute settlement, the CPM Bureau preferred a combination of option a)'' Establish the Office of the Secretary as the primary intake point for initial requests, consultations, coordination, and oversight'' and option c) ''Establish a small sub body of the Bureau (from Bureau itself or from the CPM membership at large) to work closely with the Secretary to administer the process.
4. The CPM Bureau also agreed to postpone the development of the Terms of Reference of the Dispute Settlement Oversight Body after the final decision of CPM-17 (2023).
5. At the end of the discussion, the CPM Bureau took two important decisions as it:
* *agreed* to present the outcomes of the discussion on the Dispute Settlement Oversight Body to the next session of the Strategic Planning Group, particularly the role of the IPPC Secretary as **primary intake point for IPPC dispute submission** and the establishment of a **subsidiary body of the CPM Bureau** to play the role of Dispute Settlement Oversight Body under the CPM Bureau oversight.
* *asked* the IPPC Secretariat to prepare a simplified paper for discussion on dispute settlement oversight requesting new ideas and enrichment from SPG prior to sharing with CPM-17 (2023).
1. Simplified version of the dispute settlement procedure
2. The proposed simplified version of the dispute settlement procedure aims at facilitating the understanding of the procedure and at improving ownership by the contracting parties. This simplified version is consistent with the DSP adopted by CMP-16 in 2022 and includes the administration options agreed by the CPM Bureau.
3. The simplified version of the IPPC Dispute Settlement Procedure is presented in Appendix 1.
4. The Strategic Planning Group is invited to:
5. *discuss* the CPM Bureau outcomes of the discussion on the Dispute Settlement Oversight Body, particularly the role of the IPPC Secretary as **primary intake point for IPPC dispute submission** and the establishment of a **subsidiary body of the CPM Bureau** to play the role of Dispute Settlement Oversight Body under the CPM Bureau oversight.
6. *share* new ideas and enrichment to the options proposed for administering the IPPC Dispute Settlement Procedure.
7. *review, discuss and agree* on the simplified version of the dispute settlement procedure

**Appendix 1: Simplified version of the IPPC Dispute Settlement Procedure**

**Expert Committee Process**

*Disputing parties request the Director-General of FAO to appoint a committee of experts to consider the question in dispute*.

**Disputing parties**

**Formal Consultation: IPPC dispute submission by written request to the IPPC Secretary**

*One or both contracting parties shall have to notify the IPPC Secretariat of their interest in the dispute settlement procedure under the IPPC.*

**Informal Consultation**

*Contracting parties consult between themselves, without necessarily involving third parties*

**Good offices**

*This assistance usually takes the form of encouragement to the parties to negotiate when they are unwilling to do so.*

**Mediation**

*The mediator may advise each party during the course of the dispute settlement process or bring proposals for the consideration of parties.*

**Conciliation**

*Use an impartial body to resolve a dispute but does not provide a binding decision*

**Arbitration**

*Establishment or selection, by the relevant parties, of an impartial body to resolve a dispute in a quasi-judicial proceeding.*

**Registration and Notification**

*The IPPC Secretariat notify to the disputing parties of the procedure and the related financial considerations.*

*The IPPC Secretariat notify the issue of the dispute to Director-General of FAO and the CPM Bureau.*

*The IPPC Secretariat agree with all disputing parties on the possibility for progress through further consultation and the most appropriate procedures to be used.*

**Definition of Terms of Reference for an Expert Committee**

*The written request for the institution of the Expert Committee process shall include a draft Terms of Reference for an Expert Committee*

**IPPC Secretariat**

*Call for three independent experts to complete the Expert Committee*

**Report of the Expert Committee**

*1 –Draft report submitted to the Disputing parties*

*2- Report reviewed by the* ***IPPC Secretariat*** *and the* ***FAO Legal Office***

*3- Approved by the* ***Dispute Settlement Oversight Body*** *(Bureau)*

*4- Report submitted to the* ***Director-General of FAO*** *for distribution to the disputing parties.*

**Observers**

*The disputing parties and the Chairperson of the Expert Committee shall agree on observers to be admitted to meetings of the Expert Committee.*

**Dispute Settlement Oversight Body (CPM Bureau Subgroup**)

*Review and select the three independent experts to be appointed by the Director-General of FAO*

**Establishment of the Expert Committee**

*Five members:*

* *one member selected by each side to the dispute*
* *three independent members appointed by the Director-General of FAO*

**Expert Committee** assessment of the dispute and deliberation

 **‘’OR’’**

**Dispute solved**

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| **DSOB**  |
| **Disputing parties**  |
| **IPPC Secretariat leadership** |
| **Resolution options** |
| **Expert Committee tasks** |

1. CPM-16 (2022) report (Appendix 03) <https://assets.ippc.int/static/media/files/publication/en/2022/07/CPM-16_FINAL_REPORT-2022-07-20__Syh4mHt.pdf> . [↑](#footnote-ref-1)