Disclaimer for CPM recommendations, IPPC guides and training materials – agenda item 8.3

*(Prepared by CPM Bureau Sam BISHOP. Reviewed by the IPPC Secretariat and FAO LEGN)*

1. Introduction

This paper addresses a concern raised by a number of IPPC contracting parties and at least one Regional Plant Protection Organisation (RPPO) to the CPM Bureau, regarding the legal status of CPM Recommendations vis a vis the World Trade Organisation’s Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The concern raised is that there is no clear difference in status between CPM Recommendations and International Standards for Phytosanitary Measures (ISPMs) under this Treaty. As a result, CPM Recommendations could be used by countries to justify sanitary measures in the international trade of plants and plant products, as it is the case for ISPMs.

This was not the intention of the Commission on Phytosanitary Measures (CPM) when it adopted the concept of CPM recommendations at CPM 4 (2009).

2. Background

An introduction to a CPM Recommendation

A Recommendation is an adopted text by the Commission on important issues related to plant health, either to promote action on a specific phytosanitary issue or to address a more generalized issue. They cover issues or actions that national plant protection organizations (NPPOs) and regional plant protection organizations (RPPOs) have some influence, authority or competence to address. They can also provide practical guidance and support for improving the implementation of the convention or a specific ISPM, however they do not provide guidance on implementation.

Current CPM Recommendations procedure

Ten CPM Recommendations have been adopted by the Commission since the first was adopted in 2001. The current CPM Recommendations procedure was adopted by CPM-9 (2014) and revised by CPM-10 (2015). The current procedure says that a contracting party (CP) or the IPPC Secretariat (the Secretariat), following the CPM Recommendations process and the agreed criteria (CPM-12), may propose a topic for a CPM Recommendation and present it to the CPM. It also stipulates that the draft text should be circulated for comments, along with the rationale or justification for its need, for a period of three months.

3. Discussion

In May 2022, a member of the CPM Bureau and the IPPC Secretariat met with FAO legal services and the Secretariat of the SPS Agreement.

The Secretariat of the SPS Agreement confirmed that the SPS Agreement does not discriminate between ISPMs and CPM Recommendations, as it refers generally to the “international standards, guidelines or recommendations, where they exist” (article 3 and Annex A) 3). They suggested that a clear disclaimer or explanation in the body of the Recommendation could help in the interpretation of the purpose of the text, in case a Recommendation is at the basis of a complaint to the WTO Dispute Settlement Body.

This lack of discrimination between ISPMs and CPM Recommendations is a significant concern for several IPPC members given the simplified adoption process of CPM Recommendations as opposed to ISPMs, hence ISPMs are extensively revised and under the scrutiny of the IPPC Standards Committee. The difference in the rigour of the adoption processes reflects the Commissions intention for what ISPMs and CPM Recommendations are intended to do, i.e. unlike ISPMs, CPM recommendations do not provide agreed requirements on the implementation of the IPPC.

It also became apparent in the meeting that the SPS Agreement does not discriminate between ISPMs and the outputs of the Implementation and Capacity Development Committee (IC) either. This causes a similar concern to that for CPM Recommendations but is more acute given that IPPC Implementation and Capacity Development Committee (IC) outputs are not adopted by the Commission.

**4. Recommendations**

FAO legal services have recommended that the Commission develop a paragraph clarifying the scope and intentions to be included in each CPM Recommendation, as well as a ‘well-worded disclaimer’ clarifying that Recommendations do not represent agreed requirements for the implementation of the IPPC and its ISPMs

A disclaimer is already included in IC publications, but this should be reviewed to reflect the advice from FAO Legal Services. The reviewed disclaimer could also be adapted for use in the outputs of the Implementation and Capacity Development Committee (IC) and CPM Recommendations.

The SPG is invited to

1. *Consider* this paper and discuss the concerns raised and proposed solutions.
2. *Agree* to the inclusion of a disclaimer in CPM Recommendations and to prepare a paragraph clarifying their scope and intention.
3. *To request* the IPPC secretariat and the Bureau champion on this topic to draft a disclaimer and summary paragraph.
4. *To request* the CPM Bureau to review the draft texts and send to CPM-17 for agreement.