



COMMISSION ON PHYTOSANITARY MEASURES
SEVENTEENTH SESSION
IPPC DISPUTE SETTLEMENT – OPTIONS FOR OVERSIGHT &
ADMINISTRATION

AGENDA ITEM 15.2

(Prepared by the CPM Bureau with input of the IPPC Secretariat)

1. Background

- [1] The International Plant Protection Convention (IPPC) provides non-binding dispute settlement assistance to contracting parties.
- [2] To implement Article XIII, in 2006 the CPM 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] When the CPM-12 (2017) established the Implementation and Capacity Development Committee (IC), it also agreed to dissolve the SBDS¹. No formal disputes were occurring under the auspices of the IPPC, the procedures had been elaborated and adopted, and there was no strong and clear reason for the SBDS to continue meeting.
- [4] CPM-12 agreed that the National Reporting Obligations Advisory Group (NROAG), Triennial Review Group (TRG) and Subsidiary Body on Dispute Settlement (SBDS) be dissolved at the same time as the IC is established and the functions and procedures of these committees be transferred to the IC.
- [5] There were an occasional informal and confidential request for IPPC Secretariat guidance on technical disagreements, but the parties never went beyond these informal discussions with the Secretariat. These tended to be about clarifying the technical, scientific, or biological aspects of some plant health issue rather than over a phytosanitary trade quarrel. There was one formal request for DSP services over these past 25 years involving the EU and South Africa. However, the DSP process stalled due to the parties not reaching agreement on the composition of the expert panel.
- [6] In October 2021, the SPG discussed the revised IPPC Dispute Settlement Procedures². The SPG recommended in the revision of the IC Terms of Reference and Rules of Procedure that the oversight of the IPPC Dispute Settlement Procedures be removed from the IC and be assigned to the CPM Bureau. The SPG also agreed that this should be flexible, and that the IPPC DSP should state that the oversight would ultimately be assigned to a Dispute Settlement Oversight Body (DSOB) as determined by the CPM.
- [7] In March 2022, CPM-16 (2022) transferred the oversight of the dispute settlement process from the 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 a diagram of the procedures),

¹ CPM-12 (2017) report, paragraph 58: <https://www.ippc.int/en/cpm-sessions/>

² https://assets.ippc.int/static/media/files/publication/en/2021/12/FINAL_SPG_Oct_Report_2021-12-07.pdf

analyze this question of long-term oversight, and present its options and recommendations to the CPM-17 (2023).

- [8] Despite the fact that the IPPC DSP was recently clarified updated, and approved by CPM-16 (2022)³, there remains the need to clarify the institutional arrangements for administering this activity.

Proposed administration of the dispute settlement

- [9] 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).
- [10] 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 (except when a dispute settlement case is occurring). For the composition of the DSOB, the CPM Bureau also agreed on the importance of avoiding any risk of conflict of interest in dispute settlement considering the disputing parties.
- [11] Among the options proposed for the administration of dispute settlement, the CPM Bureau determined the best approach is to:
- establish the Office of the IPPC Secretary as the primary intake point for initial requests, consultations, and coordination.
 - and establish a small sub body of the Bureau to work closely with the Secretary to administer and have oversight of the process.

- [12] The CPM Bureau agreed to present the outcomes of the discussion on the Dispute Settlement Oversight Body to the Strategic Planning Group, particularly the role of the IPPC Secretary as **primary intake point for IPPC dispute submission** and the establishment of a **sub body of the CPM Bureau** to play the role of Dispute Settlement Oversight Body under the CPM Bureau oversight.

- [13] In October 2022, the SPG discussed the dispute settlement future oversight function of the CPM Bureau. The SPG supported 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 requests for IPPC assistance in disputes. SPG also supported the establishment of a sub body of the CPM Bureau to work closely with the secretary in overseeing the process (i.e. to serve as the Dispute Settlement Oversight Body).

Simplified diagram of the IPPC Dispute Settlement Procedures

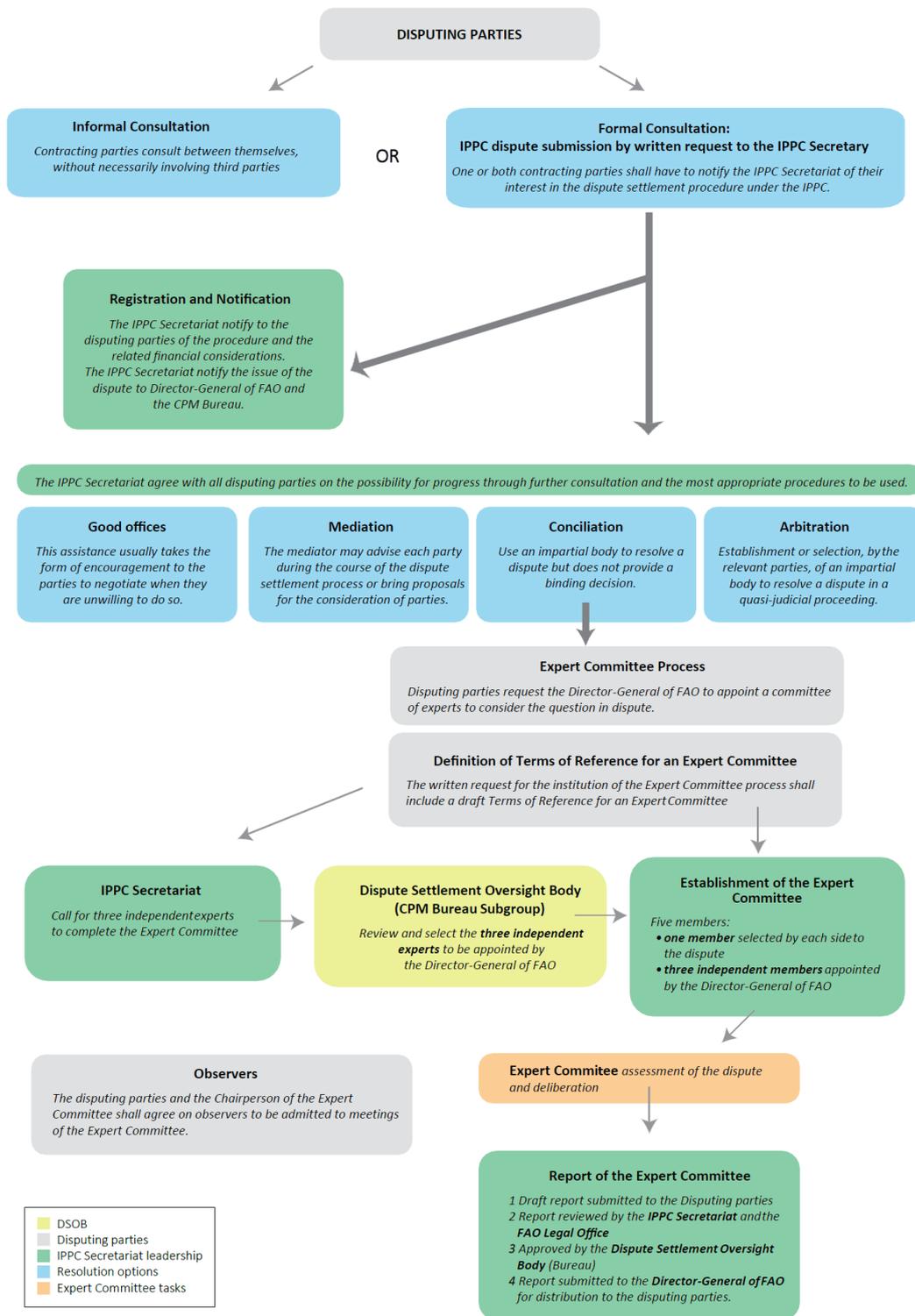
- [14] In June 2022, the CPM Bureau asked the IPPC Secretariat to prepare a simplified paper for discussion on dispute settlement oversight requesting new ideas and enrichment from SPG prior to sharing with CPM-17 (2023).
- [15] The proposed simplified presentation of the IPPC Dispute Settlement Procedures aims to improve understanding of the procedure and improve support by the contracting parties. This simplified presentation is consistent with the DSP adopted by CMP-16 in 2022 and includes the administration options agreed by the CPM Bureau.
- [16] In October 2022, the SPG⁴ invited the CPM Bureau to take account of the amendments to the diagram of the IPPC Dispute Settlement Procedures offered.
- [17] The simplified diagram of the IPPC Dispute Settlement Procedures is presented in Appendix 1.
- [18] The CPM is invited to:

³ CPM-16 report (Appendix 03) : https://assets.ippc.int/static/media/files/publication/en/2022/07/CPM-16_FINAL_REPORT-2022-07-20__Syh4mHt.pdf

⁴ SPG 2022 report : https://assets.ippc.int/static/media/files/publication/en/2022/12/SPG_Oct_Report_2022.pdf

- (1) *approve* the role of the IPPC Secretary as primary intake point for IPPC dispute submission.
- (2) *approve* the establishment of a non-permanent **sub body of the CPM Bureau** to function as the Dispute Settlement Oversight Body under the CPM Bureau oversight.
- (3) *review and agree* on the simplified diagram of the IPPC Dispute Settlement Procedures.
- (4) *request* the CPM Bureau to develop with the support of FAO Legal Office, the terms of reference of the Dispute Settlement Oversight Body.

Appendix 1: simplified diagram of the IPPC Dispute Settlement Procedures⁵



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⁵ The parties will develop agreed terms of reference for the chosen mode of resolving their dispute to guide the process from beginning to end. The process cannot proceed without first reaching agreement on process and roles.