



COMMISSION ON PHYTOSANITARY MEASURES

EIGHTEENTH SESSION

INTERNATIONAL PLANT PROTECTION CONVENTION DISPUTE SETTLEMENT PROCEDURES

AGENDA ITEM 16.4

(Prepared by the IPPC Secretariat with inputs from the Bureau lead on Dispute Settlement)

Background

- [1] The International Plant Protection Convention (IPPC) provides non-binding dispute settlement assistance to contracting parties.
- [2] CPM-16 (2022) adopted revised IPPC Dispute Settlement Procedures and transferred oversight¹ of the dispute settlement process from the Implementation and Capacity Development Committee (IC) to the Commission on Phytosanitary Measures (CPM) Bureau, recognizing the need to consider how best to institutionalize this oversight function on a more permanent basis. CPM-16 (2022) requested the Bureau to consider whether the newly adopted IPPC Dispute Settlement Procedures could be simplified, be more user-friendly (including a diagram of the procedures), analyze this question of long-term oversight, and present its options and recommendations to the CPM-17 (2023).
- [3] CPM-17 (2023) approved the recommendations of the CPM Bureau to have the IPPC Secretary as primary intake point for IPPC dispute submission. The CPM also approved the establishment of a non-permanent sub-body of the CPM Bureau, composed of three bureau members, to function as the Dispute Settlement Oversight Body under CPM Bureau oversight.

Terms of reference and Rules of procedure of the Dispute Settlement Oversight Body

- [4] CPM-17 (2023) requested that the CPM Bureau develop, with the support of the FAO Legal Office, the terms of reference for the Dispute Settlement Oversight Body.
- [5] In June 2023, the CPM Bureau reviewed the draft Terms of reference and Rules of procedure for the Dispute Settlement Oversight Body (DSOB) with the technical support of the FAO legal Office.
- [6] During that meeting, the Bureau agreed to revise the modified draft Terms of reference and Rules of procedure for the DSOB at the October 2023 Bureau meeting, and then submit them for consideration to the Strategic Planning Group (SPG). The Bureau also requested the IPPC secretariat to ensure that the IPPC Dispute Settlement Procedures are available on the IPP².

¹ CPM-16 Report: https://assets.ippc.int/static/media/files/publication/en/2022/07/CPM-16_FINAL_REPORT-2022-07-20__Syh4mHt.pdf

² IPPC Dispute Settlement Procedures: <https://www.ippc.int/en/publications/92515/>

- [7] The SPG 2023 invited the Bureau to consider the amendments suggested to the draft Rules of procedure for the DSOB (amending Rule 1 in relation to the WTO and other organizations, adding a new rule (Rule 8) on conflicts of interest, and deleting the reference to covering costs in Rule 4).
- [8] SPG also asked the secretariat to clarify whether amendments to the rules of procedure for the Dispute Settlement Oversight Body need to be approved by the CPM or could be approved by the Bureau.
- [9] In October 2023, the CPM Bureau suggested further amendments to the draft Terms of reference and Rules of procedure for the DSOB and the FAO Legal Office representative provided some amendments and clarifications.
- [10] The modifications agreed on the DSOB Terms of reference and Rules of procedures are presented in Appendix 1.

Simplified diagram of the Dispute Settlement Procedures

- [11] CPM-17 (2023) agreed on the simplified diagram of the IPPC Dispute Settlement Procedures.
- [12] The SPG 2023 invited the Bureau to review the simplified diagram of the IPPC Dispute Settlement Procedures adopted by CPM-17 (2023) and confirm that it matched the text of the IPPC Dispute Settlement Procedures, with a view to resubmitting it to the CPM-18.
- [13] During its October 2023 meeting, the CPM Bureau proposed further adjustments on the simplified diagram of the Dispute Settlement Procedures and the revised version is presented in Appendix 2.
- [14] CPM is invited to:
- (1) *approve* the Terms of reference and Rules of procedure for the Dispute Settlement Oversight Body presented in Appendix 1.
 - (2) *approve the* revised version of the simplified diagram of the Dispute Settlement Procedures presented in Appendix 2.
 - (3) *request* the IPPC secretariat to consult with the FAO Legal Office if future amendments to the Terms of reference and rules of procedure for the Dispute Settlement Oversight Body need to be approved by the CPM or could be approved by the CPM bureau.

Appendix 1: Draft Terms of Reference and Rules of Procedure for the Dispute Settlement Oversight Body

TERMS OF REFERENCE

1. Objective

The Dispute Settlement Oversight Body (DSOB) administers and oversees the IPPC dispute settlement process in close collaboration with the IPPC Secretary.

2. Structure of the Dispute Settlement Oversight Body

The DSOB is composed of three CPM Bureau members without the need for regular meetings except when a dispute settlement case is occurring.

Members of the DSOB must be free from any real or perceived conflict of interest relating to the parties involved in a dispute or the topic of a dispute.

3. Functions of the Dispute Settlement Oversight Body

The DSOB has the following functions. The DSOB will:

3.1. Provide guidance to the Secretariat and disputing parties in selecting appropriate dispute resolution mechanisms and may assist in conducting or administering consultation, conciliation, good offices, mediation, or arbitration according to the IPPC Dispute Settlement Procedures.

3.2. When the conciliation (expert committee) process is chosen:

- a) Propose nominations for independent members of an expert committee;
- b) Assist the disputing parties develop Terms of Reference for an expert committee;
- c) Check that expert committee reports accurately reflect the outcome of the discussion once they have been reviewed by the IPPC Secretary.

3.3. Undertake other functions as directed by the CPM.

4. IPPC Secretariat

The Secretariat provides administrative and technical support as required by the DSOB. The Secretariat is responsible for reporting and record keeping regarding the dispute settlement activities.

5. Amendments

Amendments to the terms of reference of the DSOB will be approved by the CPM.

RULES OF PROCEDURE

Rule 1. Membership

The Dispute Settlement Oversight Body (DSOB) is composed of three CPM Bureau members selected by the Bureau. The DSOB manages the IPPC dispute settlement functions of the CPM and provides assistance to the CPM with regard to dispute settlement in the WTO and other organizations.

Since the DSOB is convened to support the resolution of a specific dispute case, members serve for the duration of that case but not beyond the duration of their term as CPM Bureau member.

Rule 2. Replacement of members

A member of the DSOB will be replaced by the CPM Bureau if the member resigns from the Bureau or is unable to attend two consecutive meetings of the DSOB.

Rule 3. Chair

The DSOB shall select its Chairperson from among its membership.

Rule 4. Meetings

Timing of meetings to deliver the functions of the DSOB in relation to an active dispute, shall be set by the DSOB in consultation with the Secretariat as required.

The DSOB will work in the most cost-effective manner, in person or in virtual mode, within the available resources.

A meeting of the DSOB shall not be declared open unless there is a quorum. The presence of a majority of the members of the DSOB is necessary to constitute a quorum.

Rule 5. Decision-making

The DSOB shall strive for consensus on all decisions. Considerations leading to decisions made by DSOB shall include dissenting opinions where requested.

Rule 6. Amendments

Amendments to the rules of procedures of the DSOB will be approved by the CPM.

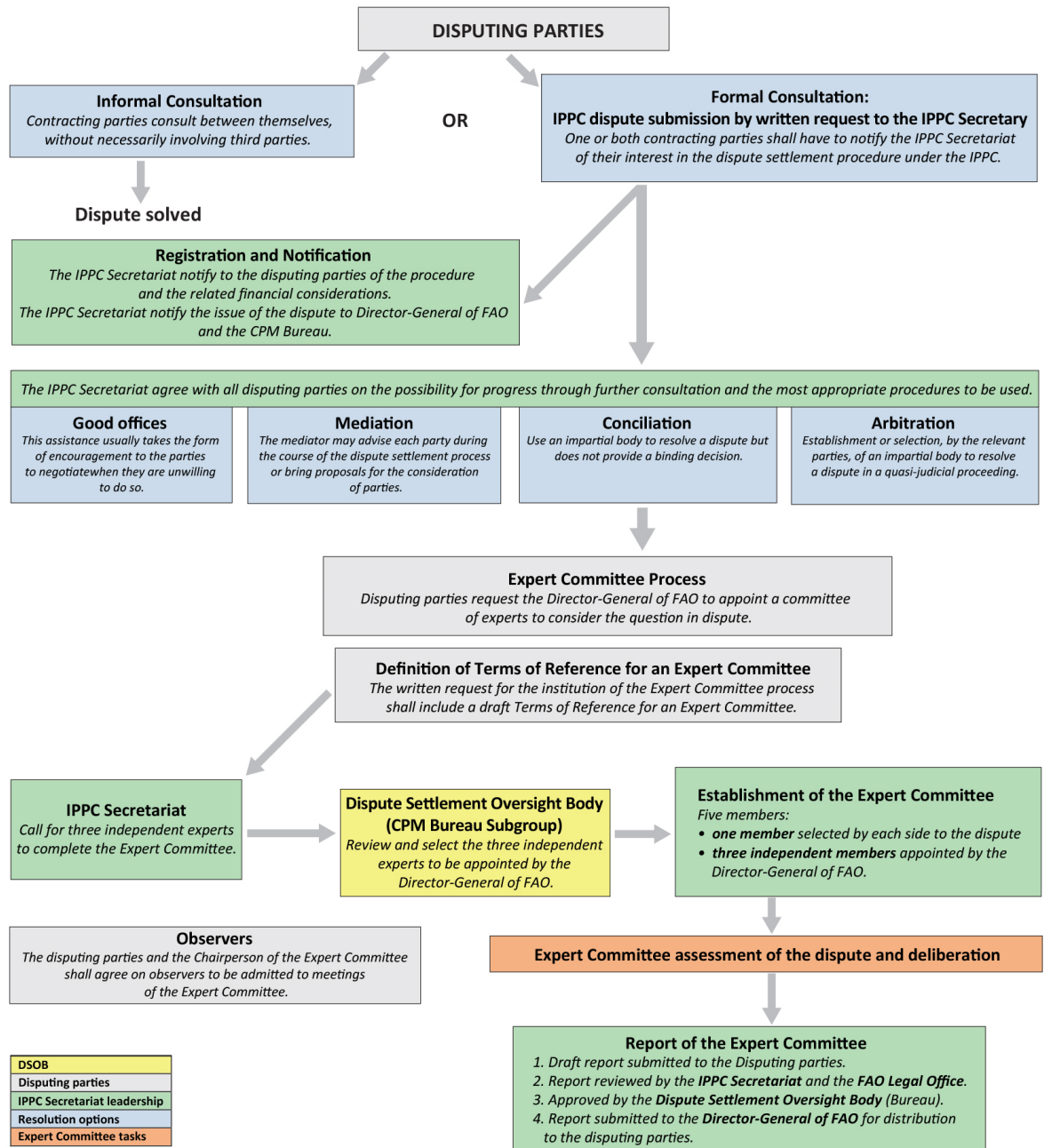
Rule 7. Confidentiality

The DSOB shall exercise due respect for confidentiality of sensitive information provided by disputing parties.

Rule 8. Conflict of interest

The DSOB members must exercise their dispute function free from any real or perceived conflict of interest.

Appendix 2: Simplified diagram of the IPPC Dispute Settlement Procedures³



[15]

³ 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.