

December 2001



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INTERIM COMMISSION ON PHYTOSANITARY MEASURES

Third Session

Rome, 2-6 April 2001

Items Arising from the Second Session of the Interim Commission on Phytosanitary Measures Dispute Settlement Procedures

Agenda Item 6.2 of the Provisional Agenda

I. DECISIONS REGARDING DISPUTE SETTLEMENT

1. At its first session, in October 1998, the ICPM decided to establish an informal working group on dispute settlement, At its second session in October 1999, the ICPM reviewed the report of the working group and took the following decisions regarding dispute settlement procedures of the IPPC:

1. The terms *dispute settlement* and *resolution of disputes* as used in the Convention are considered to be equivalent terms referring to the same procedures.
2. The promotion of technical assistance provided for in Article XX applies to dispute settlement as it applies to other provisions of the Convention.
3. Dispute settlement procedures of the IPPC are limited to issues falling within the scope of the Convention and its associated standards and complement dispute settlement procedures of the World Trade Organization by providing options for dispute settlement for phytosanitary issues affecting trade.
4. IPPC dispute settlement procedures are primarily aimed at evaluating the technical aspects of phytosanitary disputes. Contracting parties are encouraged to resolve disputes at a technical level wherever possible.
5. Only contracting parties have the right to initiate the dispute settlement procedures under Article XIII. Disputes may be between two or more contracting parties.
6. Requests for dispute settlement and the distribution of reports should be through official IPPC contact points.
7. Contracting parties that wish to undertake a dispute settlement procedure under the IPPC must first consult (Article XIII.1).
8. Article XIII does not preclude contracting parties from using any form of dispute resolution, including mediation or other procedures provided that the parties agree to them, and does not limit the contracting parties to the Expert Committee procedures

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described in Article XIII.2. Contracting parties are encouraged to consult with the Secretariat or others concerning the range of dispute settlement procedures that may be appropriate for the dispute in question.

Options include but are not limited to:

- *Consultation, good offices, mediation, or arbitration* - Contracting parties are encouraged to pursue options such as Good Offices and mediation as alternatives to the Expert Committee procedure provided in Article XIII. These procedures may be conducted or administered with assistance from the Secretariat and/or a Subsidiary Body designated by the ICPM;
 - *Supplementary agreements* - Dispute settlement procedures may be agreed under Article XVI (Supplementary Agreements). Such procedures may be binding, but are only binding for the parties to the agreement;
 - *Expert Committee (Article XIII)* - The outcome of the Expert Committee procedure initiated under Article XIII is non-binding (Article XIII.4);
9. Any dispute that contracting parties wish to have recorded by the ICPM should be notified to the Secretariat and its outcome reported according to the procedures set out by the ICPM.
10. IPPC dispute settlement procedures should be conducted as expeditiously as possible;
11. The Secretariat:
- a) maintains and makes public the rosters used for the purpose of identifying experts for dispute settlement procedures associated with phytosanitary measures and the interpretation or implementation of the Convention;
 - b) undertakes to develop guidelines and other reference information for parties interested in options and procedures for dispute settlement;
 - c) maintains records concerning disputes notified by members to the Secretariat.

II. PROCEDURES

2. Procedures adopted by the Interim Commission are as follows:
1. Informal consultation
 - a) contracting parties are encouraged to consult between themselves as soon as possible with a view to resolving the dispute or taking a decision that further informal consultation is not considered productive;
 - b) no normal consultation is required if both parties agree that informal consultations have resolved the dispute. If either party indicates that additional consultation is needed, then the parties shall engage in formal consultations (Article XIII.1).
 2. Formal consultation
 - a) for formal consultation to begin, one or both contracting parties would notify the Secretariat of their interest in dispute settlement procedures under the IPPC;
 - b) the Secretariat discusses with both parties the possibility for progress through further consultation and the most appropriate procedure to be used;
 - c) the parties in consultation mutually agree on the procedure, location, facilitator (if requested), confidentiality, and other conditions for the consultations. In the instance that parties cannot agree on procedures and conditions, the procedures and conditions may be proposed by the Secretariat;
 - d) persons not party to the dispute are not admitted to the consultations unless agreed by the consulting parties;
 - e) formal consultation may result in:
 - i) resolution of the dispute;
 - ii) non-resolution, where one party does not cooperate. This may occur when only one party, although obliged to take part in consultation, does not cooperate to the satisfaction of the other party. Either party may initiate further dispute settlement procedures;

- iii) non-resolution, where both parties cooperate. This results from agreement by the parties that formal consultation has been completed. Either party may initiate further dispute settlement procedures.
 - f) the Secretariat should report to the ICPM or subsidiary body designated by the ICPM on the conduct and outcome of formal consultations.
3. The Selection of a Dispute Settlement Procedure after Consultation
- a) Parties consult with the Secretariat and others agreed by the parties with a view towards determining the most appropriate dispute settlement procedure. This includes consideration of:
 - i) the Expert Committee procedure from Article XIII.2 of the IPPC (see 4 below);
 - ii) other procedures initiated with the Secretariat's assistance;
 - iii) procedures initiated without additional Secretariat assistance;
 - b) dispute settlement procedures are initiated if parties agree on a procedure. In the event parties do not agree on a procedure, the complaining party may:
 - i) request Article XIII.2 procedures; or
 - ii) initiate other dispute settlement procedures. The IPPC Expert Committee Procedures (Article XIII.2).
4. The IPPC Expert Committee Procedures (Article XIII.2)
- The IPPC provides the opportunity for contracting parties to use any dispute settlement procedure but it identifies an Expert Committee procedure implemented through FAO as a specific option. The following describes the Expert Committee procedure:
- a) one or both parties submit a formal request to the Director General of FAO;
 - b) the Secretariat verifies that mandatory consultations have occurred and that parties wish to use the Expert Committee procedure;
 - c) an Expert Committee is formed as follows:
 - i) at least one expert is designated by each party to the dispute. The designation of more than one expert requires mutual agreement by the parties on the number of experts for which there should be equal numbers for each party;
 - ii) three independent experts, one of which is familiar with the IPPC and associated international standards, are selected by the ICPM or its subsidiary body from a roster of experts supplied by the Secretariat;
 - iii) the experts are recommended to the Director-General for appointment;
 - iv) the appointed experts constitute the Expert Committee and elect a Chairperson from among the three independent experts;
 - d) The Expert Committee agrees, and conducts its proceedings, on terms of reference, including:
 - i) taking account of the special needs of developing countries where such countries are parties to the dispute;
 - ii) provision for the use of outside experts; and
 - iii) rules for the presence and conduct of observers.If terms of reference cannot be agreed upon, a general format may be provided by the Secretariat, including rules for the presence and conduct of observers established by the ICPM or its relevant subsidiary body;
 - e) upon completion of the proceedings, the Expert Committee prepares a report consisting of two parts:
 - i) a summary of the technical aspects of the dispute, and
 - ii) recommendations for resolving the dispute;
 - f) the Expert Committee seeks to develop consensus on all points in the report. In the event consensus is not possible, the Chairperson ensures that the draft report provides recommendations for the resolution of the dispute while adequately reflecting dissenting views;

- g) in the event the proceedings cannot be completed, the Chairperson ensures that a report is prepared on the proceedings up to the point of termination;
- h) the draft report is submitted to the Secretariat for technical review and/or the FAO Legal Office for legal review. Any comments from FAO review are returned to the Committee;
- i) the Committee prepares a final report taking into account comments by FAO;
- j) the final report is submitted to the Secretariat for transmission to the ICPM or its designated subsidiary body for approval;
- k) the final report is submitted by the Chairperson to the Director-General. The Director-General transmits the report to the disputing parties as the basis for renewed consideration of the matter out of which the disagreement arose. The approved report may also be made available on request to competent bodies of the international organizations responsible for resolving trade disputes;
- l) the parties may report to the ICPM on further action or progress based on the recommendations on the matter out of which the disagreement arose.