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Agriculture  
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of  
the  
United  
Nations

Organisation  
des  
Nations  
Unies  
pour  
l'alimentation  
et  
l'agriculture

Organización  
de las  
Naciones  
Unidas  
para la  
Agricultura  
y la  
Alimentación

## COMMISSION ON PHYTOSANITARY MEASURES

### Second Session

Rome, 26 – 30 March 2007

### Amendments to the Terms of Reference and Rules of Procedure for the Subsidiary Body on Dispute Settlement

### Agenda Item 12.2 of the Provisional Agenda

1. The First Session of the Commission on Phytosanitary Measures (CPM) in 2006 adopted the Terms of Reference and Rules of Procedure for the Subsidiary Body on Dispute Settlement (SBDS) and agreed that the issue of languages needed to be reconsidered at CPM-2.
2. The IPPC Secretariat prepared a paper for discussion by the Informal Working Group on Strategic Planning and Technical Assistance (SPTA), in which further amendments to the Rules of Procedure were suggested with the objective of:
  - a) improving consistency with those of the Standards Committee to make it easier for the FAO regions to implement; and
  - b) providing an alternate per region should a nominated member not be able to attend (based on past experience).
3. The SPTA considered the IPPC Secretariat's paper and agreed that the reference to the Rules of Procedure of the CPM in the Rules of Procedure of the SBDS be removed as a number of the CPM provisions did not apply operationally to the SBDS. It also agreed to a number of modifications to the Rules of Procedure of the SBDS. Changes are shown in *italics* in Annex 1.
4. Objectives and justification for changes to the Rules of Procedure include:
  - a) Rule 1: provides for an extension past the maximum of six years for an individual member in exceptional cases, subject to CPM approval – consistent with the Rules of Procedure of the Standards Committee;
  - b) Rule 2: includes a new option for an alternate nomination per region for the SBDS to ensure maximum participation and maximum likelihood of a quorum – consistent with the Rules of Procedure of the Standards Committee;

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- c) Rule 5: makes the quorum explicit – consistent with the Rules of Procedure of the Standards Committee.
5. There were no suggested changes to the Terms of Reference.
6. The SPTA agreed that holding the SBDS in the 5 FAO languages was neither practical nor cost effective given the current severe resource constraints. The SPTA recommended that the SBDS work continue in English at present.
7. The CPM is invited to:
  1. *Adopt* the amended Rules of Procedure for the SBDS as outlined in Annex 1;
  2. *Agree* that because of current resource constraints, the SBDS should continue to work in English until resources became available.

## TERMS OF REFERENCE AND RULES OF PROCEDURE FOR THE SUBSIDIARY BODY ON DISPUTE SETTLEMENT

### Terms of Reference

No suggested changes.

### Rules of Procedure

#### **Rule 1. Membership**

Membership of the SBDS is open to contracting parties. Members serve for terms of two years, with a maximum of six years *unless a region submits a request to the CPM for an exemption to allow a member from within its region to serve an additional term. In that case, the member may serve an additional term. Regions may submit requests for additional exemptions for the same member on a term-by-term basis. Partial terms served by replacements shall not be counted as a term under these Rules.*

#### **Rule 2. Replacement of members**

*Each FAO region shall, following its own procedures, nominate a potential replacement for members of the SBDS and submit it to the CPM for confirmation. Once confirmed, potential replacements are valid for the same period of time as specified in Rule 1. These potential replacements should meet the qualifications for membership set forth in these Rules.*

*A member of the SBDS will be replaced by a confirmed potential replacement from within the same region if the member resigns, no longer meets the qualifications for membership set forth in these Rules, or fails to attend two consecutive meetings of the SBDS.*

*The national IPPC contact point should communicate to the Secretariat any circumstances where a member from its country needs to be replaced. The Secretariat should then inform the relevant FAO regional chair.*

*A replacement will serve through the completion of the term of the original member, and may be nominated to serve additional terms.*

#### **Rule 3. Chair**

The subsidiary body shall elect its Chairperson and Vice-Chairperson from among its membership.

#### **Rule 4. Qualifications of subsidiary body members**

Experts shall have:

1. experience in phytosanitary systems;
2. familiarity with the IPPC and International Standards for Phytosanitary Measures;
3. experience with regulations/legislation; and
4. preferably some form of dispute settlement or conflict resolution knowledge, qualifications and/or experience.

#### **Rule 5. Sessions**

The subsidiary body shall meet at least once per year, preferably on the occasion of the regular session of the CPM. Other meetings shall be set by the Chairperson of the subsidiary body as needed, in particular, for the review and approval of Expert Committee reports and the development of reports for the CPM. The subsidiary body will normally work by mail, facsimile and e-mail, and in the most cost-effective manner within the available resources.

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

**Rule 6. Observers**

Meetings of the subsidiary body are generally open according to Rule VII of the Rules of Procedure for the CPM, but the subsidiary body may determine that certain meetings or business need to be conducted without observers, in particular where confidential or controversial information is involved.

**Rule 7. Decision-making**

The subsidiary body shall strive for consensus on all decisions but may vote where necessary using a 2/3 majority to take decisions. Decisions shall include dissenting opinions where requested.

**Rule 8. Amendments**

Amendments to the functions and procedures of the subsidiary body will be promulgated by the CPM as required.

**Rule 9. Confidentiality**

The subsidiary body shall exercise due respect for confidentiality where sensitive information is identified by disputing parties.