



***IPPC***  
***DISPUTE SETTLEMENT***  
***SYSTEM***

**Developed by**  
**the**  
**IPPC Subsidiary Body**  
**for**  
**Dispute Settlement (SBDS)**

Rome, Italy, 2006

## A brief guide to dispute settlement under the International Plant Protection Convention

### Overview

Phytosanitary trade disputes may arise between contracting parties to the International Plant Protection Convention (IPPC). These disputes are caused by disagreement over phytosanitary measures associated with trans-boundary movement of plants and/or plant products or over the interpretation or application of the IPPC. Such disagreements are fairly common in the work of National Plant Protection Organizations (NPPOs), and usually originate from the use or misuse of the phytosanitary measures that are included in phytosanitary import regulations for plants and plant products.

Article XIII of the IPPC (1997) sets out the basis of the dispute settlement system under the Convention. It states that, when a dispute arises, the disputing contracting parties *shall* consult among themselves as soon as possible with a view to resolving the dispute. If they cannot resolve the dispute in this way, one or both parties may request the Director-General of the Food and Agriculture Organization of the United Nations (FAO) to appoint a committee of experts, with the mandate to prepare a report and (non-binding) recommendations on technical aspects of the dispute. The parties also are free to develop other means to resolve the dispute.

Building upon these provisions, the Commission on Phytosanitary Measures (CPM)<sup>1</sup> developed a dispute settlement system, providing for procedures and administrative support, to assist contracting parties in resolving disputes and to implement the process set out in Article XIII.

*Administrative support.* A subsidiary body known as the *Subsidiary Body on Dispute Settlement (SBDS)* is specifically devoted to overseeing, administering and supporting the IPPC's dispute settlement procedures. The SBDS consists of seven experts, one from each of the seven FAO geographic regions. It is working with the IPPC Secretariat in assisting contracting parties in dispute settlement. A major role of the SBDS is to provide guidance to the Secretariat and disputing parties in selecting appropriate dispute resolution methods. For further information, see the *Terms of reference and rules of procedure of the SBDS* in the IPPC Procedural Manual.

*Procedures.* These procedures are aimed primarily at objectively evaluating the *technical aspects* of phytosanitary disputes, and they encourage contracting parties to enter into dialogue based on technical issues.

### Benefits of the IPPC system

The main benefits of the IPPC dispute settlement system are as follows:

- it offers dispute settlement processes at a different level from those offered by the World Trade Organization (WTO) and therefore offers complementary alternative processes for IPPC contracting parties;
- it operates at a technical level. The disputing parties have the opportunity to resolve their differences at this level instead of using potentially more complex legal processes of other dispute settlement systems;
- it offers a range of mechanisms that contracting parties can select from to deal with their specific dispute;
- it has the potential to be less costly than other dispute settlement systems;
- it has the potential to allow resolution of disputes more quickly than other dispute settlement systems – recognizing that most IPPC mechanisms do not provide binding decisions;

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<sup>1</sup> The IPPC (1997) came into force on 2 October 2005, and the first meeting of the Commission for Phytosanitary Measures (CPM) was held in April 2006.

- it offers support to disputing parties from the Secretariat, subject to available resources, and from the SBDS. This may take the form of advice on how to use the system and facilitating the efforts of parties to resolve their dispute.

### **The process**

In cases where a phytosanitary dispute arises, contracting parties are encouraged to consult with the IPPC Secretariat concerning the range of dispute settlement procedures that are available and what might be appropriate for the dispute in question. There are three main types of procedures:

- *informal consultation, formal consultation, good offices, mediation or arbitration.* These procedures may be conducted by, or administered with assistance from, the IPPC Secretariat and/or the SBDS.
- *the formal non-binding conciliation process* offered under the terms of the Convention using an expert committee as under Article XIII of the IPPC (1997).
- a dispute settlement procedure established under Article XVI of the IPPC (1997) as a *supplementary agreement*. Such a dispute settlement may produce a binding agreement for the parties to the agreement.

Once the disputing contracting parties have agreed on which procedure they wish to use, the Secretariat will usually be able to facilitate further arrangements.

### **IPPC dispute settlement procedures**

#### **Informal consultation**

The IPPC (1997) stresses consultation among contracting parties as the first option in case of a phytosanitary dispute. If such informal consultations are unsuccessful, formal consultations can be arranged.

#### **Formal consultation**

For this process to begin, one or both parties contact the Secretariat to request formal consultations. The parties then agree on the procedure, location, etc for the formal consultation. They may seek assistance from the SBDS and/or the Secretariat in carrying out these consultations.

#### **Further action**

If the formal consultation is unsuccessful, the parties discuss with the Secretariat the next steps that are appropriate for that particular dispute. These could be:

- the use of an expert committee as per Article XIII.2 of the IPPC (1997), or
- other procedures initiated with the Secretariat's assistance e.g. mediation and arbitration.

#### **IPPC expert committees procedures**

In the process described in the IPPC (1997) and further elaborated by the dispute settlement procedures, the contracting party or contracting parties concerned may ask the Director-General of FAO to appoint a committee of experts. This committee includes representatives designated by each disputing party. Where more than two parties have become involved in the dispute, the two parties initially involved make these designations. In addition, three independent experts will be selected by the disputing parties from a list of experts supplied by the IPPC Secretariat. One of the independent experts will be elected as chairperson.

At the completion of its deliberations, the expert committee prepares a report summarizing the technical aspects of the dispute and recommending how to resolve it. The recommendations are non-binding on the parties involved, but will become the basis for renewed consideration of the matter out of which the disagreement arose by the contracting parties concerned.

The committee's draft report is submitted to the Secretariat for technical review and, if appropriate, to the FAO Legal Office for legal review. The SBDS also needs to approve the report, including verification of all points in the procedures followed by the expert committee. The final report is submitted by the IPPC Secretariat to the CPM, and the Director-General of FAO will distribute the report to the disputing parties.

### **Further action through the WTO**

If a phytosanitary trade dispute remains unresolved after using the technically-oriented procedures under the IPPC, contracting parties might consider using the WTO dispute settlement procedures. Any such action would be subject to the rules of dispute settlement of the WTO. In such a case, the findings of the IPPC dispute settlement committee would likely form an important part of the documentation considered during the WTO process.

### **Technical assistance**

Technical assistance, as advocated by the IPPC, can contribute to the avoiding or resolving of phytosanitary trade disputes. The CPM is exploring how to increase the capacity for developing countries to participate in the IPPC dispute settlement procedures.

The CPM and disputing parties are encouraged to consider the special needs of developing countries. IPPC Secretariat assistance may be obtained, subject to available resources. Training on dispute settlement procedures may be added to other training activities.

### **More information and contacts**

Further information can be found on the International Phytosanitary Portal (IPP – the IPPC web site) (<https://www.ippc.int/id/13412?language=en>), or by contacting the National Plant Protection Organization (NPPO) in your country. The following additional information is also available on the IPP:

- ❖ IPPC Dispute Settlement Manual - see <https://www.ippc.int/id/144843?language=en>
- ❖ Form to initiate a dispute – see <https://www.ippc.int/id/145143?language=en>
- ❖ Forms to nominate experts for possible IPPC disputes – see <https://www.ippc.int/id/115695?language=en>