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# COMMISSION ON PHYTOSANITARY MEASURES

## Ninth Session

Rome, 31 March - 4 April 2014

### Recommendations by the SBDS on the Review of the IPPC Dispute Settlement

#### Agenda item 16.2

Prepared by the IPPC Secretariat

1. CPM will recall that the IPPC Dispute Settlement system is in the process of being reviewed by the Subsidiary Body on Dispute Settlement (SBDS).
2. CPM will recall that the Secretariat presented 12 draft recommendations to the Eighth Session of the CPM for their consideration and feedback (CPM 2013/CRP04). This paper also outlined the challenges associated with the role and functions of the SBDS, the dispute settlement process and the SBDS.
3. Contracting parties were requested to respond to the attached questionnaire by 30 June 2013 to provide appropriate feedback on which the SBDS could make adjustments to the draft recommendations if relevant.
4. A total of 10 National Plant Protection Organizations (NPPOs) and 1 Regional Plant Protection Organization (RPPO) responses were received by the Secretariat. A disappointing and not very representative number of responses from contracting parties to the questionnaire about the dispute settlement process. In summary, the key points from contracting parties were:
  - Contracting parties are aware of the existence of the Dispute Settlement Process.
  - Countries prefer to resolve disputes bilaterally, within their region.
  - Most important obstacles in using the IPPC dispute settlement system are;
    - 1) the length and costs of the process,
    - 2) lack of transparency,
    - 3) the results are not binding,
    - 4) possible harm to the relationship with trade partners, etc.
  - The view of several Contracting Parties is that a communication plan can be helpful in raising awareness, but others react with caution communicating this is not the main focus.

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- Finally the respondents in general supported the 2013 draft SBDS recommendations.
5. After consideration of comments from the SBDS, contracting parties and the Bureau, the resulting recommendations are attached as Appendix 1.
  6. The CPM is invited to:
    - 1) *consider* the recommendations by the SBDS.
    - 2) *adopt* the SBDS recommendations as presented in Appendix I to this document.

**Appendix 1****Recommendations from the Review of the SBDS****SBDS Actions**

1. The chair of the SBDS will regularly report to CPM on all dispute avoidance actions undertaken. The Parties will only be named if they have agreed or the information is already public (if posted on the IPP) as this action would help promote transparency and effectiveness of the process.
2. The report to CPM on dispute avoidance actions will focus on the questions or technical inputs and concerns, actions taken by the IPPC Secretariat and the Parties in question, and the result and the status of the issue under dispute. Neutral language should be used in the report and it should be based on facts.
3. The procedures for the SBDS will be changed to promote greater use of the informal processes and to encourage dispute avoidance and may help the process work more efficiently and effectively:
  - a) explaining how the informal process works (informal consultation, etc.)
  - b) ensuring the confidentiality of the process and the parties involved, if required;
  - c) strengthening the dispute avoidance phase;
  - d) focusing on solving the problem/answering the question while still in the informal process; and,
  - e) encouraging countries to provide feedback after using either the informal dispute avoidance or the formal process.
4. SBDS will encourage countries to utilize the revised dispute avoidance process, given that this is a more timely and cost effective process, before taking a dispute further under the IPPC or WTO dispute settlement systems .
5. SBDS should review and revise their Terms of Reference and present them to the CPM for adoption, taking into account the following:
  - 1) provide clarifications on the standards and Convention by the SBDS (coordinate the activity), with possible advisory input from the Standards Committee, and the IPPC Secretariat;
  - 2) monitor the IPPC Dispute Settlement System material to make sure it is updated and appropriate;
  - 3) monitor trade concerns within the WTO-SPS and suggest use of the available IPPC process during the dispute avoidance phase as an option to the WTO-SPS Dispute Settlement System;
  - 4) monitor/evaluate recurrent issues and determine possible implementation issues that may need to be addressed; and,
  - 5) assist with awareness raising within regions and the SPS Committee.

**Secretariat Actions**

6. The IPPC Secretariat will work with SBDS to use various communications channels to increase awareness of the revised dispute avoidance process (RPPOs, CDC, SC, SPS, CPM) using easy to read materials (publications, presentations, etc.).
7. Whenever possible, the IPPC Secretariat should offer the services of the IPPC dispute avoidance process to Contracting Parties while the issue is still at its early stages and before the r phytosanitary trade concerns are registered with WTO SPS Committee.
8. IPPC Secretariat resources should be matched to the demand of dispute avoidance and settlement services. In case that additional resource are required, the Parties concerned will cover the direct additional costs incurred by the IPPC Secretariat.

9. The IPPC Secretariat will remind regions, when nominating members for SBDS, that the regions are responsible for ensuring their SBDS member from their region can participate fully in the SBDS activities recognizing that all SBDS activities are conducted in English language.

10. The IPPC Secretariat should have some flexibility in funding SBDS members that require assistance.

**Other Actions**

11. The CPM should review the need for the SBDS again in 5 years (in 2018).