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Продовольственная и
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COMMISSION ON PHYTOSANITARY MEASURES

Sixteenth Session

Virtual Meeting, 5, 7 and 21 April 2022

IPPC Dispute Settlement Procedures- revision

Agenda item 8.4

Prepared by the IPPC Secretariat with input from the FAO Legal Services

I. Background

1. Two sets of dispute settlement procedures (DSPs) under the International Plant Protection Convention (IPPC) were developed and adopted by the Interim Commission on Phytosanitary Measures (ICPM). The first version of the DSPs (1999) was adopted by the ICPM at its 2nd Session in 1999. At that Session, the ICPM also mandated the further elaboration of certain aspects of the 1999 DSPs. As a result, at its 3rd Session in 2001, the ICPM adopted specific procedures (2001 DSPs) set forth in Section F to N of Appendix XI to the Report of the 3rd Session of the ICPM.

2. At its 6th Session in 2006, the ICPM established the Subsidiary Body on Dispute Settlement (SBDS) and mandated them to develop an IPPC Dispute Settlement Procedural Manual. A draft Manual was developed by the SBDS drawing upon the 1999 and 2001 DSPs. The Manual was never formally submitted to the Commission on Phytosanitary Measures (CPM) for information, endorsement or adoption.

3. In 2019, the Strategic Planning Group (SPG), a subsidiary body of the CPM, reviewed a document outlining the difficulties with the 1999 and 2001 DSPs.

4. Based on the SPG review, it was agreed that the inconsistencies found in the 1999 and 2001 DSPs should be worked on but this work was postponed until the end of the International Year of Plant Health (IYPH) in June 2021.

5. The IPPC Secretariat requested the FAO Legal Office to help develop an updated DSPs. In further discussions with the CPM Bureau, it was felt that the process might benefit from comments from the SPG and agreed to submit the revised DSPs to the SPG in October 2021. It should be noted that the CPM Subsidiary Body on Implementation and Capacity Development Committee (IC) was assigned

with the oversight responsibility of dispute avoidance and settlement, after the SBDS was dissolved in 2017.

6. The FAO Legal Office drafted the attached IPPC DSP using, as a basis the 1999 and 2001 IPPC DSPs and the Dispute Settlement Manual developed by the SBDS in 2006 and having in mind the need to remove any inconsistencies in the 1999 and 2001 DSPs (which were not significant), as well as making the process clear and simple. Certain elements from the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (as well as other precedents) were also brought in to clarify the process. The source of each clause in the attached DSPs is explained in the footnotes (which will be removed after adoption).

7. In October 2021, the SPG discussed the revised IPPC Dispute Settlement Procedure. It was noted that the SPG, in the revision of the IC Terms of Reference and Rules of Procedure (See agenda item 9.7, CPM 2022/04), had recommended the oversight of the IPPC Dispute Settlement Procedure be removed from the IC and be given to the CPM Bureau, as it was felt it was better suited for overseeing this function. It was agreed that this should be flexible, and in the IPPC DSP, to state that the oversight would be given at a Dispute Settlement Oversight Body (DSOB) as determined by the CPM. The CPM would be requested to initially give this oversight role to the CPM Bureau.

8. The SPG also recommended to increase the number of members of the Expert Committee that were familiar with the IPPC and ISPMs to two. and to submit the revised IPPC dispute settlement procedures to CPM-16 for adoption

9. Upon its adoption, all prior dispute settlement procedures relating to the IPPC, including the 1999 and 2001 DSPs and the 2006 Dispute Settlement Manual, shall be deemed repealed and superseded.

10. The revised CPM dispute settlement procedures is presented in Appendix 1.

11. The CPM is invited to:

- 1) *adopt* the revised IPPC Dispute Settlement Procedure as presented in Appendix 1 to this paper.
- 2) *repeal* and supersede all prior IPPC Dispute Settlement Procedures relating to the IPPC, including the 1999 and 2001 DSPs and the 2006 Dispute Settlement Manual
- 3) *assign* the role of the Dispute Settlement Oversight Body to the CPM Bureau.

Appendix 1

IPPC DISPUTE SETTLEMENT PROCEDURES

Rome, Italy, (proposed revision) [From SPG October] 2021

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[ACRONYMS]

CPM	Commission on Phytosanitary Measures
DSPs	Dispute Settlement Procedures
IC	Implementation and Capacity Development Committee
DSOB	Dispute Settlement Oversight Body
ICPM	Interim Commission on Phytosanitary Measures
IPPC	International Plant Protection Convention
ISPMs	International Standard for Phytosanitary Measures
SBDS	Subsidiary Body on Dispute Settlement
WTO	World Trade Organization

1. Introduction

Article XIII of the International Plant Protection Convention (IPPC) (1997) serves as the basis for the dispute settlement procedures:

“1. If there is any dispute regarding the interpretation or application of this Convention, or if a contracting party considers that any action by another contracting party is in conflict with the obligations of the latter under Articles V and VII of this Convention, especially regarding the basis of prohibiting or restricting the imports of plants, plant products or other regulated articles coming from its territories, the contracting parties concerned shall consult among themselves as soon as possible with a view to resolving the dispute.

2. If the dispute cannot be resolved by the means referred to in paragraph 1, the contracting party or parties concerned may request the Director-General of FAO to appoint a committee of experts to consider the question in dispute, in accordance with rules and procedures that may be established by the Commission.

3. This Committee shall include representatives designated by each contracting party concerned. The Committee shall consider the question in dispute, taking into account all documents and other forms of evidence submitted by the contracting parties concerned. The Committee shall prepare a report on the technical aspects of the dispute for the purpose of seeking its resolution. The preparation of the report and its approval shall be according to rules and procedures established by the Commission, and it shall be transmitted by the Director-General to the contracting parties concerned. The report may also be submitted, upon its request, to the competent body of the international organization responsible for resolving trade disputes.

4. The contracting parties agree that the recommendations of such a committee, while not binding in character, will become the basis for renewed consideration by the contracting parties concerned of the matter out of which the disagreement arose.

5. The contracting parties concerned shall share the expenses of the experts.

6. The provisions of this Article shall be complementary to and not in derogation of the dispute settlement procedures provided for in other international agreements dealing with trade matters.”

2. Applicability

2.1 These DSPs shall apply to any dispute regarding the interpretation or application of the IPPC, or, if a contracting party considers that any action by another contracting party is in conflict with the obligations of the latter under the IPPC, especially regarding the basis of prohibiting or restricting the imports of plants, plant products or other regulated articles coming from its territories.¹

2.2 These DSPs shall be limited to issues falling within the scope of the IPPC and its adopted standards. These DSP are primarily aimed at evaluating the technical aspects of phytosanitary disputes.

3. General principles

3.1 The use of these DSPs should not be intended or considered as contentious acts. In case of dispute, all disputing parties will engage in these procedures in good faith in an effort to resolve the dispute.²

3.2 In any phase of the DSPs, the disputing parties shall be treated with equality and each disputing party shall be given a full opportunity to present its case.³

3.3 The settlement should be conducted as expeditiously as possible.⁴

¹ IPPC, Article XIII, paragraph 1.

² New. From WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (WTO DSU), Article 3, paragraph 10.

³ New. From UNCITRAL Model Law on International Commercial Arbitration, Article 18.

⁴ 1999 DSP, GC paragraph 8.

3.4 The aim of the DSPs is to secure a positive solution to a dispute and consistent with the IPPC and the ISPMs is clearly to be preferred.⁵

3.5 Contracting parties are encouraged to resolve disputes at a technical level whenever possible.⁶

4. Modes for dispute settlement

4.1 Article XIII of the IPPC describes the use of an expert committee for resolving disputes. This is a conciliation procedure for dealing with technically-based problems, under which one or both disputing parties may request the Director-General of FAO to appoint a committee of experts to consider the issues in dispute.

4.2 However, contracting parties should take note of Section 6 of *General Considerations* in Appendix IX of the report of ICPM-2, which provides:

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

The *General Considerations* then list a number of options:

“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 IPPC 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).”

4.3 Parties may consult with the IPPC Secretariat in order to decide which the most appropriate procedure for the dispute is. If parties cannot agree on a procedure, the initiating party may decide to use the IPPC expert committee process or to initiate another mode of settlement.

4.4 In general, the modes of dispute settlement available to the parties are as described in paragraphs 4.5 through 4.10 below.

4.5 Consultations

Consultations could be informal or formal. Informal consultation is when the contracting parties consult between themselves, without necessarily involving third parties (e.g., an expert) and the IPPC Secretariat and without having to agree on procedures and other conditions for the consultation. On the other hand, for formal consultation to begin, one or both contracting parties shall have to notify the IPPC Secretariat of their interest in dispute settlement procedures under the IPPC and they have to mutually agree on the procedure, location, facilitator (if requested), confidentiality and other conditions for the consultation. The contracting parties concerned may, of course, develop other arrangements for consultations as appropriate to their needs. Where consultations are intended to obtain a resolution, they might take the form of negotiations. On many occasions,

⁵ New. From WTO DSU, Article 3, paragraph 7.

⁶ 1999 DSP, General Considerations (GC) paragraph 3.

consultations often achieve a greater understanding of the points of concern and this may prevent a dispute arising or avoid actions leading to a dispute.⁷

4.6 *Good offices*

This term refers to the assistance provided by a body, persons or person widely believed to be able to supply fair and impartial support for discussions among parties, with some prestige that allows successful intervention in situations where others have not succeeded. This assistance usually takes the form of encouragement to the parties to negotiate when they are unwilling to do so. It may even extend to facilitating dialogue by the passing of messages back and forth – particularly when no diplomatic channel exists between the parties. The supplier of good offices is usually on good terms with both parties but not closely aligned to either party. The essence of good offices is the facilitation of negotiation but the third party facilitator does not get involved in the substance of the dispute. Good offices could also include the provision of advice in the nature of clarification of technical issues or points within the IPPC or ISPMs. An example of such facilitation could be the Dispute Settlement Oversight Body (DSOB), determined by CPM, providing advice on the clarification of ISPMs.⁸

4.7 *Conciliation*

Conciliation is a procedure that uses an impartial body to resolve a dispute but does not provide a binding decision. The procedure described in Article XIII of the IPPC, which uses an expert committee as an impartial body and does not have a binding result, is a form of conciliation. The Expert Committee process will be discussed in more detail in the following section.⁹

4.8 *Mediation*

In contrast with good offices, a mediator may become involved in the content and substance of the discussions. More frequently, the mediator discusses the position of each party with that party separately. The mediator may advise each party during the course of the dispute settlement process or bring proposals for the consideration of parties. A result from this process depends on the agreement of the parties, since no decision is imposed on the parties. Therefore, mediation may or may not lead to a settlement of the dispute. The basic difference between mediation and conciliation is based on the role played by the third party who is selected by the parties seeking a settlement, in consensus. In mediation, the mediator acts as a facilitator who helps the parties in agreeing. Conversely, in conciliation, the conciliator is more like an interventionist who provides probable solutions to the parties concerned, to settle disputes.¹⁰

4.9 *Arbitration*

Arbitration involves the establishment or selection, by the relevant parties, of an impartial body to resolve a dispute in a *quasi*-judicial proceeding. In some cases, arbitration may occur pursuant to an existing convention or agreement that sets forth rules and procedures for arbitration. Alternatively, parties may develop an agreement between themselves with respect to a particular dispute, which specifies the relevant rules and other matters for the arbitration process. In either case, the rules may address procedural matters such as the appointment of arbitrators, expertise, representation of parties, the scope of the issues under review, languages, documentation, costs, witnesses, the nature of the award and so forth. A key element is to establish procedures so that each party has a fair and equal opportunity to present its side of the case. The status of the award is usually made clear in the relevant terms of reference or rules of procedure of the arbitration. An arbitral tribunal normally consists of an odd number of members to facilitate a final decision. Most arbitrations follow a series of rules set up by the institution under which the arbitration is being carried out. One of the recognized

⁷ Consultations are mentioned in 1999 DSP, GC paragraph 6. Description is new.

⁸ Good offices is mentioned in the 1999 DSP, GC paragraph 6. Description is largely based on 2006 Dispute Settlement Manual

⁹ Ibid.

¹⁰ Ibid.

international standards is that provided by United Nations Commission on International Trade Law (UNCITRAL). Although the arbitration results are binding and final, the results may not be enforceable unless the framework under which the arbitration is conducted has special allowance for this. Institutions with legally-binding mechanisms, that might be available to countries that are contracting parties to the IPPC, include the International Court of Justice and the dispute settlement procedure of the WTO (as applicable to individual countries). Each of these is governed by its own set of rules and procedures regarding jurisdiction and other matters.¹¹

4.10 Supplementary agreements

Article XVI of the IPPC provides for supplementary agreements “...for the purpose of meeting special problems of plant protection which need particular attention or action... Such agreements may be applicable to specific regions, to specific pests, to specific plants and plant products, to specific methods of international transportation of plants and plant products, or otherwise supplement the provisions of this Convention.” Therefore, supplementary agreements may be used by contracting parties to establish an agreement to resolve a dispute concerning an issue relating to the IPPC. The characteristic of this form of agreement that could interest some contracting parties is that such an agreement could provide additional dispute settlement procedures (e.g., arbitration) between those parties, and could be made binding on the parties if they agreed to this. Such an agreement would be binding only for the parties to that agreement. For contracting parties to use such a procedure, the rules of operation would have to be drawn up and agreed to before such a procedure could begin, in line with the provisions of the IPPC. It is recommended that the parties contact the IPPC Secretariat in the event they wish to consider such an approach.¹²

5. The Expert Committee Process under the IPPC

5.1 Consultations

Article XIII of the IPPC (1997) requires, as a pre-condition to using the Expert Committee process, that the disputing parties first consult among themselves with a view to resolving the dispute. The consultation may be informal or formal. Each disputing party undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another disputing party concerning the interpretation or application of the IPPC.

5.2 Informal consultation

An informal consultation is that where the disputing parties consult among themselves, without the involvement of any third party, including the IPPC Secretariat, to resolve a technical phytosanitary dispute. Parties are recommended to consider this approach in the first instance.¹³

5.3 Formal consultation

5.3.1 Any disputing party wishing to institute formal consultation proceedings shall address a written request to that effect to the IPPC Secretariat which shall promptly send a copy of the request to the other party(ies) to the dispute.¹⁴

5.3.2 Should the disputing parties agree on the formal consultation process, the IPPC Secretariat shall register the request for formal consultation and shall forthwith notify the disputing parties of the registration.¹⁵

5.3.3 The request for formal consultation shall contain information concerning disputing parties, the issues in dispute, and the legal basis for the complaint, including any phytosanitary measures at issue.¹⁶

¹¹ Ibid.

¹² Ibid.

¹³ Based on the 1999 DSP, paragraph 1).

¹⁴ Based on the 1999 DSP, paragraph 2).

¹⁵ New.

¹⁶ New. Based on the WTO DSU, Article 4, paragraph 4.

5.3.4 The party to whom the request is made shall, unless otherwise mutually agreed, reply to the request within 15 days after the date of receipt thereof and shall enter into formal consultation in good faith within a period of no more than 30 days after the receipt of the request, with a view to reaching a mutually satisfactory solution. If the party to whom the request was made does not respond within 15 days after the date of receipt of the request, or does not enter into formal consultation within a period of 30 days or a period otherwise mutually agreed, then the disputing party who requested the formal consultation may have to resort to other modes of dispute settlement, as described in Section 4 above.¹⁷

5.3.5 The IPPC Secretariat shall discuss with all disputing parties the possibility for progress through further consultation and the most appropriate procedure to be used.¹⁸

5.3.6 The disputing parties, with the assistance of the IPPC Secretariat, will mutually agree on the procedure, location, facilitator (if requested), confidentiality, the possibility to obtain advice from independent experts, distribution of costs, and other conditions for the formal consultation.¹⁹

5.3.7 For consultations to succeed, the parties must have the will to resolve the problem and the flexibility to cooperate and make compromises when necessary. This is frequently possible if the consultations consider only technical issues. If some political aspects are included into the discussions, the possibility of compromise diminishes as does the likelihood of resolving the issue.²⁰

5.3.8 If the consultation fails to resolve the dispute, either by one party failing to cooperate fully in the consultation process or by the parties failing to reach a mutually agreed resolution, then any of the parties may decide to initiate another mode of dispute settlement as described in Section 4 above, including the Expert Committee process described in more detail starting in Section 5.5 below.²¹

5.3.9 Without prejudice to the scope of confidentiality agreed to by the disputing parties, the IPPC Secretariat shall keep records and inform the DSOB on the conduct and outcome of formal consultations.²²

5.4 Dispute avoidance

The IPPC Secretariat or the DSOB may be able to suggest suitable dispute avoidance actions. Often, just the clarification of the nature of the problem is helpful, particularly if one of the parties had a misconception over the intent of the other party. On many occasions the experience of the IPPC Secretariat staff can be helpful in considering informal action and critical aspects of the dispute can be resolved at an early stage.²³

5.5 The Expert Committee Process

The Expert Committee process is a conciliation system meant to enable the parties to discuss technical matters that are being disputed, with the help of a panel of experts. This system is set forth in Paragraphs 2 to 5 of Article XIII of the IPPC. No party may initiate the Expert Committee process without first attempting to settle the dispute through consultation, whether formal or informal.²⁴

5.5.1 Initiating the Expert Committee Process

5.5.1.1 Any disputing party wishing to institute the Expert Committee process shall submit a formal written request to the IPPC Secretariat. The request shall provide a summary of the consultation(s) held between the

¹⁷ New. Based on the WTO DSU, Article 4, paragraph 3. ¹⁸ From the 1999 DSP, paragraph 2(b).

¹⁹ From the 1999 DSP, paragraph 2(c).

²⁰ From 2006 Dispute Settlement Manual.

²¹ Ibid.

²² Based on the 1999 DSP, paragraph 2(f).

²³ Based on the 2006 Dispute Settlement Manual.

²⁴ Based on IPPC, Article XIII.

parties, and contain information concerning disputing parties, the issues in dispute, and the legal basis for the complaint, including any phytosanitary measures at issue.²⁵

5.5.1.2 The IPPC Secretariat shall verify the information provided in the written request, including those mandatory consultations has occurred, and shall promptly register the request and send a copy to all other parties named in the request.²⁶

5.5.2 Terms of Reference of the Expert Committee

5.5.2.1 The written request for the institution of the Expert Committee process shall include a draft Terms of Reference for an Expert Committee, which must include all the information contained in Annex 1 to these DSP.²⁷

5.5.2.2 The IPPC Secretariat shall promptly circulate the draft Terms of Reference to all parties named in the request and propose a schedule for the negotiation of the Terms of Reference. The final Terms of Reference shall be signed by the disputing parties and constitute the basis for the Expert Committee process.²⁸

5.5.2.3 If the parties fail to agree on the Terms of Reference of the Expert Committee within the time agreed by the parties, no Expert Committee can be established.²⁹

5.5.3 Establishment of the Expert Committee

5.5.3.1 Unless otherwise agreed between the disputing parties, the establishment of the Expert Committee shall be initiated by the IPPC Secretariat upon signature by the parties of the Terms of Reference of the Expert Committee.³⁰

5.5.3.2 The Expert Committee will consist of five members: one member selected by each side to the dispute and three independent members appointed by the Director-General of FAO (or his/her delegate) pursuant to paragraph 2 of Article XIII of the IPPC.³¹

5.5.3.3 Where more than two disputing parties are involved, the parties to each side of the dispute shall consult with each other to choose one expert for their side, such that the number of members set forth in Section 5.5.3.2 above is maintained.³²

5.5.3.4 The three independent members of the Expert Committee shall be nominated by the IPPC Secretariat through a call for experts as described in Section 5.5.4 below. In case not enough experts are nominated to serve in the Expert Committee, the IPPC Secretariat may solicit nominations from contracting parties and the Regional Plant Protection Organizations.³³

5.5.3.5 The IPPC Secretariat will base its selection of the nominees to serve as the three independent experts on the following criteria:

²⁵ Based on the 1999 DSP, paragraphs 4(a) and 4(b). Per IPPC Secretariat's request, instead of having the formal request sent to the Director-General of FAO, it will be sent to the IPPC Secretariat. This is not inconsistent with the IPPC, Article XIII, and is, therefore, acceptable.

²⁶ Based on the 1999 DSP, paragraph 4(b).

²⁷ New. It clarifies how the initial draft of the Terms of Reference is prepared and refers to Annex 1 of these DSPs which describes the essential information to be included in the Terms of Reference. Here, the recommendation is for the party initiating the process to prepare the initial draft.

²⁸ New. Clarificatory clause.

²⁹ From the 2001 DSP, paragraph 34.

³⁰ New. Clarificatory clause.

³¹ From the 1999 DSP, paragraph 4(c) and the 2001 DSP, paragraph 26, harmonized.

³² From the 2001 DSP, paragraph 26.

³³ New. 1999 and 2001 DSPs refers to a roster of experts maintained by the IPPC Secretariat. According to the IPPC Secretariat, maintaining a roster is difficult and it becomes obsolete quickly.

- a) all nominees shall have scientific/technical background relevant to the subject of the dispute;
- b) all nominees shall be independent, i.e., no financial or other personal interest in the outcome of the dispute;
- c) all nominees must be able to serve in the Expert Committee in his/her individual capacity;
- d) at least two member shall be familiar with the IPPC and ISPMs;
- e) citizens of contracting parties to the IPPC whose governments are disputing parties shall not serve on the Expert Committee, unless all disputing parties agree otherwise; and
- f) when a dispute involves at least one developing country, at least one nominee shall, if the developing country so requests, be from a developing country.³⁴

5.5.3.6 The IPPC Secretariat shall propose the nominees to the disputing parties, who may not oppose any of the nominations, except for compelling reasons.³⁵

5.5.3.7 Pursuant to paragraph 2 of Article XIII of the IPPC, the three independent experts shall be appointed by the Director-General of FAO (or his/her delegate), taking into account the recommendations of the IPPC Secretariat.

5.5.3.8 The Expert Committee shall be deemed to have been constituted on the date that the IPPC Secretariat notifies the disputing parties in writing that all of the selected experts have accepted the appointment.³⁶

5.5.4 Selection of Experts

5.5.4.1 To assist in the selection of independent experts, the IPPC Secretariat shall call for expert as needed. Phytosanitary experts and other individuals with expertise relevant to plant protection or the application of phytosanitary measures will be encouraged to respond to a call.³⁷

5.5.4.2 Experts may be nominated by contracting parties, the Regional Plant Protection Organizations, and other organizations invited by the IPPC Secretariat to provide nominees.³⁸

5.5.4.3 Application for inclusion as an expert is made by submission to the IPPC Secretariat of a completed FAO Personal History Form (PHF) and/or Curriculum Vitae. Minimum information to be supplied includes:

- a) name, age and contact information;
- b) current position;
- c) nationality;
- d) language ability;
- e) period of availability;
- f) scientific and technical (including phytosanitary) background;
- g) professional background; and
- h) knowledge, experience or qualifications with dispute settlement procedures.³⁹

The IPPC Secretariat would review the nominations against the set criteria. Nominations will be reviewed and selected by the DSOB who review and select the experts.

⁴⁰5.5.5 Conduct of the proceedings

5.5.5.1 The Expert Committee shall conduct its proceedings according to these DSPs and the Terms of Reference agreed pursuant to Section 5.5.2 above.⁴¹

³⁴ Based on the 1999 DSP, paragraph 4)(c) and the 2001 DSP, paragraph 27. Also drawn from the WTO DSU, Article 8, paragraphs 3 and 10.

³⁵ New. Based on the WTO DSU, Article 8, paragraph 9.

³⁶ New. Clarificatory clause.

³⁷ New. See footnote 33.

³⁸ Based on the 2001 DSP, paragraph 23. However, nomination from CPM members is not included.

³⁹ From the 2001 DSP, paragraph 24.

⁴⁰ Deleted per IPPC Secretariat. See footnote 33.

⁴¹ Based on the 1999 DSP, paragraph 4)d), but clarifying that these DSPs also apply.

5.5.5.2 The Expert Committee shall elect a Chairperson from among the three independent experts.⁴²

5.5.5.3 The Chairperson of the Expert Committee shall, as soon as practicable and, whenever possible, within 15 days after its establishment, call for a meeting (including the use of virtual meeting tools) of the Expert Committee to fix the timetable for its proceedings based on the Terms of Reference agreed pursuant to Section 5.5.2 above. The Expert Committee shall set precise deadlines for written submissions by the disputing parties and the disputing parties shall cooperate in good faith with and respect the requests from and deadlines imposed by the Expert Committee.⁴³

5.5.5.4 All Expert Committee members shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. They shall not seek or receive instructions from any source with regard to the matter in dispute before the Expert Committee.⁴⁴

5.5.5.5 The Expert Committee shall take into account the special needs of developing countries where such countries are parties to the dispute.⁴⁵

5.5.5.6 The Expert Committee shall take into account any specific instructions and requirements outlined by the disputing parties.⁴⁶

5.5.5.7 The Expert Committee shall make an objective assessment of the matter before it, including an objective assessment of the facts of the dispute and the applicability of and conformity with the IPPC and any applicable ISPMs, and make such recommendations as will assist the disputing parties in solving the dispute. The Expert Committee shall consult regularly with the disputing parties and give them adequate opportunity to develop a mutually satisfactory solution.⁴⁷

5.5.5.8 Deliberations of the Expert Committee shall be confidential.⁴⁸

5.5.5.9 All communications by any disputing party to the Expert Committee shall be copied to the IPPC Secretariat and the other disputing party(ies). Such communications shall be treated as confidential by all parties, including the Expert Committee and the IPPC Secretariat.⁴⁹

5.5.6 Report of the Expert Committee

5.5.6.1 Upon completion of the proceedings, the Expert Committee shall prepare a preliminary report in accordance with the Form of Expert Committee Report described in Annex 1.⁵⁰

5.5.6.2 The Expert Committee seeks to develop consensus among all its members on all points in the report. Where this is not possible, the Chairperson ensures that the draft report provides recommendations for the resolution of the dispute while adequately reflecting the dissenting views.⁵¹

5.5.6.3 If the proceedings cannot be completed, the Chairperson ensures that a report is prepared on the proceedings up to the point of termination.⁵²

⁴² From the 1999 DSP, paragraph 4)c).

⁴³ New. Based on the WTO DSU, Article 12, paragraph 3.

⁴⁴ New. Based on the WTO DSU, Article 8, paragraph 9.

⁴⁵ From the 1999 DSP, paragraph 4)d).

⁴⁶ New. Clarificatory clause.

⁴⁷ New. Based on the WTO DSU, Article 11.

⁴⁸ New.

⁴⁹ New.

⁵⁰ From the 1999 DSP, paragraph 4)e) and the 2001 DSP, paragraphs 21 and 36.d), harmonizing them. ⁵¹ From the 1999 DSP, paragraph 4)f) and the 2001 DSP, paragraph 21.a).

⁵² From the 1999 DSP, paragraph 4)g).

5.5.6.4 The first draft report may be made available by the Expert Committee to the disputing parties for informal consultation.⁵³

5.5.6.5 The draft report is then submitted to the IPPC Secretariat in English for review and to the FAO Legal Office for legal review. Any comments from these reviews are returned to the Expert Committee. The committee prepares a second draft report taking into account the review comments.⁵⁴

5.5.6.6 The second draft report is submitted to the IPPC Secretariat to be sent to the DSOB for approval. Such communications shall be treated as confidential. The DSOB verifies that all principles and requirements set forth in these DSP have been adhered to.⁵⁵

5.5.6.7 The final report is then signed by the members of the Expert Committee and submitted to the Director-General of FAO or his/her delegate) for distribution to the disputing parties, pursuant to paragraph 3 of Article XIII of the IPPC.⁵⁶

5.5.6.8 A report of the proceedings and the outcome of the Expert Committee process is submitted by the IPPC Secretariat to the CPM for information.⁵⁷

6. Others

6.1 Observers

The disputing parties and the Chairperson of the Expert Committee shall agree on observers to be admitted to meetings of the Expert Committee and the applicable rules of conduct of observers. Where there is no agreement among the disputing parties on the number and type of observers, no observers shall be allowed. Where the presence of observers is agreed, but there is no agreement on the conduct of such observers, observers will only be allowed to attend but cannot participate.⁵⁸

6.2 Information from external sources

With the written consent from the disputing parties, the Expert Committee may seek additional information from other sources, as it deems necessary.⁵⁹

6.3 Financial considerations

Costs of the IPPC Secretariat, the DSOB and the Expert Committee associated with any dispute brought under these DSPs shall be borne equally by parties to the dispute. Such costs shall include: (a) the IPPC Secretariat's expenses as registrar or the hiring of consultants to facilitate the process, (b) costs of transcriptions, recording, interpretation and translation, where necessary, and (c) travel and subsistence and fees of the members of the Expert Committee determined in accordance with FAO policy. Where the party that initiated the dispute settlement is a developed country and the other party is a developing country, it is encouraged to voluntarily cover all or part of these costs.⁶⁰

6.4 Role of Regional Plant Protection Organizations

Regional Plant Protection Organizations (RPPOs) may be requested, subject to agreement by the disputing parties, and in coordination with the IPPC Secretariat, to provide assistance in connection with any dispute

⁵³ From the 2001 DSP, paragraph 21.b).

⁵⁴ From the 1999 DSP, paragraph 4)h) and the 2001 DSP, paragraph 21.c). ⁵⁵ From the 2001 DSP, paragraph 21.f).

⁵⁶ From the 1999 DSP, paragraph 4)k) and the 2001 DSP, paragraph 21.g). ⁵⁷ New.

⁵⁸ From the 2001 DSP, paragraph 30.

⁵⁹ From the 2001 DSP, paragraph 36.b).

⁶⁰ From the 2001 DSP, paragraphs 28 and 29, with modifications.

settlement under these DSPs. Such assistance may be in the form of providing technical support or facilitating consultations among the disputing parties.⁶¹

6.5 Amendment of these DSPs

Amendments to these DSPs may be adopted by a majority of the members of the CPM at any plenary meeting.⁶²

6.6 Repeal of prior dispute settlement procedures

Adoption of these DSPs by the CPM shall supersede and repeal all prior dispute settlement procedures issued pursuant to the IPPC, including those issued in 1999, 2001 and 2006.⁶³

⁶¹ Based on the 2001 DSP, paragraphs 32 and 33. ⁶² New.

⁶³ New.

ANNEX 1

Terms of Reference for the Expert Committee⁶⁴

A. Identification of parties and issues

1. All the parties to the conciliation must be identified. This includes:
 - (a) initiator(s),
 - (b) respondent(s),
 - (c) members of the Expert Committee, including Chairperson, and
 - (d) observers, if they are permitted.
2. The issue(s) under dispute should be clearly defined noting the points where the alleged conflicts with the IPPC or ISPMs occur. The disputing parties should expand on this and state their expectations of the Expert Committee by identifying tasks for the committee.

B. The conduct of the proceedings

3. It is extremely important to have all the following procedural matters agreed to among the disputing parties before the meeting of the Expert Committee begins.

Presentation of information: The disputing parties and the Expert Committee must agree on the way that technical information will be presented by disputing parties.

- (a) will there be documents, electronic, hard copy?
- (b) will there be verbal presentations?
- (c) will there be provision for the use of outside experts?, and
- (d) will the Expert Committee be able to ask for further information or advice?

Language(s): The disputing parties and the Expert Committee must agree on the language(s) to be used for the submitted documents, for verbal submissions and for discussion by the Expert Committee. The report must be presented in English.

Conduct of observers: Regarding observers, the disputing parties and the Chairperson of the Expert Committee should decide if observers will be allowed to attend and if they are, if they will be allowed to participate and their extent of participation. Where there is no agreement among the disputing parties on the number and type of observers, no observers shall be allowed. Where the presence of observers is agreed, but there is no agreement on the conduct of such observers, observers will only be allowed to attend but cannot participate. [Cross-reference Section 6.1 of DSPs]

Administrative Support and Costs: Costs of the IPPC Secretariat, the DSOB and the Expert Committee associated with any dispute brought under these DSPs shall be borne equally by parties to the dispute. Such costs shall include: (a) the IPPC Secretariat's expenses as registrar or the hiring of consultants to facilitate the process, (b) costs of transcription, recording, interpretation and translation, where necessary, and (c) travel and subsistence and fees of the members of the Expert Committee. Where the party that initiated the dispute settlement is a developed country and the other party is a developing country, it is encouraged to voluntarily cover all or part of these costs. [Cross-reference Section 6.3 of DSPs]

Location and facilities: The disputing parties and Expert Committee should agree on the location, i.e., whether the committee will meet in the territory of one party or another, or in that of a third party. Acceptable facilities should be agreed on before proceedings commence in order to facilitate the process. Virtual meetings using modern technology may also be considered if both parties agree.

Timetable: A comprehensive timetable with dates should be drawn up. This will include dates and times for: the submission of information to the Expert Committee as well as documents or contributions from additional experts, if necessary; the schedule of meeting(s) of the committee; the completion and presentation of the report, etc.

⁶⁴ Based on the 2001 DSP, paragraph 36.

C. Presentation of information

4. The Expert Committee shall solicit the submission of information from the disputing parties. Methods of presentation may include documents only, and/or verbal presentations as agreed in advance. The Expert Committee may seek additional information from the disputing parties or other sources, as it deems necessary, with the written consent from the disputing parties.

5. The disputing parties shall also agree on confidentiality issues relating to the proceedings, the information provided to the Expert Committee, the report and all other aspects of the process.

D. Evaluation of information and formulation of recommendations

6. The Terms of Reference will contain, as required by the disputing parties, specific instructions on the review of scientific and other information by the Expert Committee. The requirements of the parties regarding the assessment by the Expert Committee of the relationship of the issues and the information provided to it to any specified provisions of the IPPC and ISPMs should be made clear. Any other specifications regarding the form of the conclusions or recommendations required by the parties should be provided to the Expert Committee.

E. Form of Expert Committee Report

7. The disputing parties shall agree on the form of the report they would wish to receive from the Expert Committee. The following format is suggested:

Introduction

- identification of the parties to the dispute
- statement of the issue(s) at dispute with appropriate background

Technical aspects of the dispute

- summary of the positions of the disputing parties
- summary of the analyses of the scientific and technical aspects as provided by the Expert Committee
- assessment of the relationship of the issue to the specified provisions of the IPPC and ISPMs
- conclusions of the Expert Committee Dissenting view(s) if any

Recommendations

- proposal(s) for resolution of the dispute and options if appropriate

Attachments

- Terms of Reference of the Expert Committee
- a list of the members of the Experts Committee, and of observers, if any
- list of documents and source material, including other experts interviewed (if not confidential)
- other information deemed to be useful by the Expert Committee.