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# COMMISSION ON PHYTOSANITARY MEASURES

<b>Eighth Session</b>
<b>Rome, 8 -12 April</b>
<b>Update on the IPPC Dispute Settlement System Review and the Ninth Meeting of the SBDS</b>
<b>Agenda item 15</b>
<b>Prepared by IPPC Secretariat</b>

1. The SBDS met on 4-7 March 2013 in Rome for their annual meeting and to review the IPPC Dispute Settlement system (DSS) as requested by the Commission for Phytosanitary Measures (CPM).
2. In 2012, due to other activities on the CPM work programme, it was not possible to hold the SBDS review meeting as planned. It had initially been planned for August 2012.
3. Background material was generated to support the review in addition to the regular update from the Secretariat. Annex 1 is a summary of phytosanitary disagreements/disputes in which the IPPC Secretariat/FAO has formally been requested to assist. However, it should be noted that none of these disagreements/disputes have used the formal IPPC Expert Committee.
4. As noted in previous reports, the IPPC Secretariat has on several occasions been involved in informal consultations on phytosanitary disagreements/disputes and these have either been resolved or dropped without assistance being formally requested from the IPPC Secretariat.
5. Following extensive discussion, the SBDS identified challenges and drafted recommendations for change. In order to test the validity of these challenges and draft recommendations, SBDS now invites Contracting Parties to participate in a survey (deadline for response 30 June 2013). Responses to the survey will be analyzed and then revised challenges and draft recommendations will be provided for discussion by the Strategic Planning Group (SPG) in October 2013. SBDS will then propose changes to its Terms of Reference and Rules of Procedures at CPM 9 in 2014.

## **I. Challenges with the role and functions of the SBDS**

6. The SBDS recognized there are a number of challenges associated with the current dispute settlement system and role and functions of the SBDS. These are listed below in a summarized form.

### **Challenges associated with the Process**

1. Since its establishment, no one has used the formal process (i.e. establishing an expert panel to consider and report on a dispute).
2. The informal process is not well known or understood by contracting parties. It lacks visibility. There is a lack of awareness among contracting parties and industry. Publicity and communication of the system could be improved;
3. There is a lack of confidence that the system will deliver good outcomes. The formal process has never been used. This lack of precedence results in contracting parties being reluctant to be the first to try the process and means there is uncertainty in the quality, timeliness, or cost of the process.
4. Countries prefer to resolve disputes bilaterally, within their region, or by going directly to the WTO SPS Committee to raise trade concerns or to enter a formal disputes process.
5. There is a perceived and potentially real lack of capacity on the IPPC Secretariat to provide the necessary resources to support informal and formal dispute settlement processes.
6. Decisions are not legally binding. This could be a barrier or an incentive to use the IPPC process; some contracting parties may prefer a process that is binding, while other contracting parties will find a non-binding process useful in progressing toward either a bilateral or WTO resolution.

### **Challenges associated with the SBDS**

7. SBDS is seen by some parties to not be a neutral body. This may contribute to the lack of confidence in the system. However, it should be noted that the SBDS function is not to make decisions or judgments but only to provide oversight of the process and assist the parties as they work through the process (e.g. propose a terms of reference for the Experts Committee if the parties cannot agree).
8. As with some other IPPC bodies, SBDS has experienced the same challenges of a reducing commitment by some members to actively participate and attend SBDS meetings. At times it has been hard to get a quorum required to progress the business of the body.
9. The disputes settlement process has not been used much by members. During the informal process much of the facilitation work is carried out by the IPPC Secretariat and there is little requiring SBDS input. There have not been any formal processes requiring SBDS support. With the exception of this current review, there are limited activities that need the attention of the SBDS.
10. The scope of the SBDS is limited to managing the disputes settlement functions of the Commission. It is apparent from the review of ISPM13 and other IRSS reviews that there is a greater need for activities that will assist contracting parties to avoid requiring formal dispute settlement.

## **II. Draft recommendations from the Review of the SBDS**

1. SBDS will regularly report to CPM on all dispute avoidance actions undertaken. The Parties will only be named if agreed or already public (if posted on the IPP).
2. The report on dispute avoidance actions to CPM will focus on the questions of concerns, actions taken by the IPPC Secretariat and the Parties in question (only if they agree that their names be identified), and the result and the status of the concern. Neutral language should be used in the report and should be based on facts.
3. SBDS will change the procedures to promote greater use of the informal processes and will encourage dispute avoidance
  - a) creating clarity of how informal process works (informal consultation, etc.)
  - b) strengthening dispute avoidance phase;
  - c) focus on solving the problem/answering the question while still in informal process; and,
  - d) encourage countries to provide feedback after using informal dispute avoidance/formal process.
4. SBDS will work with IPPC Secretariat to use various outlets to increase awareness of the revised dispute avoidance process (RPPOs, CDC, SC, SPS, CPM) using easy to read materials (publications, presentations, etc.).
5. SBDS will encourage countries to utilize the revised dispute avoidance process before taking a dispute further to the IPPC or WTO as a more timely and cost effective process.
6. IPPC Secretariat should monitor phytosanitary trade concerns registered with WTO SPS Committee and offer to Contracting Parties the services of the IPPC dispute avoidance process.
7. IPPC Secretariat resources should be matched to the demand of dispute avoidance and settlement services. The Parties concerned will cover the direct additional costs incurred by the IPPC Secretariat when additional resources are required.
8. Remind regions when nominating members for SBDS the regions are responsible for ensuring their member can participate fully in the SBDS activities recognizing that all SBDS activities are conducted in English language.
9. The IPPC Secretariat should have some flexibility in funding SBDS members that require assistance.
10. SBDS Terms of Reference should be modified to include the following functions:
  - a) provide clarifications on the standards and convention through input by the SBDS (coordinate the activity), Standards Committee, and the IPPC Secretariat;
  - b) monitor the system to make sure it is updated and appropriate;
  - c) monitor trade concerns within SPS and suggest available IPPC process during the dispute avoidance phase;
  - d) monitor/evaluate recurrent issues and determine possible implementation issues that may need to be addressed; and,
  - e) assisting with awareness raising within regions and the SPS Committee.

11. SBDS believes that there is a need for a greater focus on implementation of the standards. CPM should consider creating a new subsidiary body with responsibility for the full range of activities required for standards' implementation . A greater focus on implementation could lead to fewer disputes by the Contracting Parties.

12. The SBDS should be reviewed again in 5 years (in 2018).

*Given the above information, Annex 2 is a questionnaire on the IPPC Dispute Settlement system by which all IPPC contracting parties are requested to provide feedback to the Secretariat (ippc@fao.org) by 30 June 2013.*

**Annex 1**

A summary of what is known about the formal and informal phytosanitary disputes that have been brought to the IPPC to date

Initiated	Commodity	Pest	Completed
1996	Copra (coconuts)	Coconut lethal yellows (LYD)	Not known
1997	Rice	Khapra beetle (Trogoderma granarium) and Tilletia baclayana	Not known – no feedback.
1998	Coconut	Coconut lethal yellows (LYD)	1999
1999	Rice	Khapra beetle (Trogoderma granarium)	Not known – no feedback.
2005	Rice	Khapra beetle (Trogoderma granarium)	Not known – no feedback.
04/2006	Taro		2007
11/2006	Phytosanitary certificates	Various	03/2007
06/2007	Certification process		Not known – no feedback.
06/2010	Citrus	Citrus black spot	Ongoing

*Note: the names of Contracting Parties have been withheld at this time and will only be published in future with contracting party permission or if the dispute is already public through for example the WTO SPS mechanisms.*

## Review of the IPPC Dispute Settlement System

### *Questionnaire*

**Deadline for Submission: 30 June 2013.**

1. Were you aware of the existence of the IPPC Dispute Settlement Process?

2. If you were aware of its existence and your country has faced phytosanitary technical disagreements with a trading partner in the past, what mechanism did you use to solve the dispute? What could have been the factors that were taken into consideration for not using the IPPC process?

3. Would you consider using the IPPC Dispute settlement process in its current format considering that its decisions are not legally binding?

4. Could you identify the three (3) most important obstacles in using the IPPC Dispute Settlement Process in its current form?

5. What type of improvement should be incorporated to the IPPC Dispute Settlement Process to make it more attractive as an option to resolve phytosanitary issues?

6. What other types of mediation process have you used and are there certain elements of such processes that you would recommend to be incorporated in the IPPC process?

7. Would you be concerned that elevating a dispute to the IPPC level might result in excessive exposure to other trading partners?

8. Would a communication plan be helpful in raising the awareness of the IPPC Dispute Settlement Process?

9. Do you have any specific comments on the draft recommendations list in CPM 2013/CRP/04