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IPPC DISPUTE SETTLEMENT MANUAL

Submission by the Secretariat of the International Plant Protection Convention (IPPC)

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(i) *INTERNATIONAL PLANT PROTECTION CONVENTION*

**IPPC
DISPUTE SETTLEMENT
MANUAL**

Developed by the Subsidiary Body for Dispute Settlement (SBDS)

Rome, Italy, 2006

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CONTENTS

1.	INTRODUCTION
2.	BACKGROUND
3.	COMPONENTS OF THE IPPC DISPUTE SETTLEMENT SYSTEM
3.1	IPPC.....
3.2	IPPC Secretariat.....
3.3	Subsidiary Body for Dispute Settlement (SBDS)
3.4	IPPC Dispute Settlement Procedures
4.	OPERATION OF THE IPPC DISPUTE SETTLEMENT PROCEDURES
4.1	Options for informal action before the initiation of formal procedures.....
4.1.1	Informal consultations.....
4.1.2	Discussion with the IPPC Secretariat
4.1.3	Dispute avoidance
4.2	Formal Procedures - Consultation
4.3	The selection of a dispute settlement procedure.....
4.3.1	Consultations.....
4.3.2	Good offices
4.3.3	Mediation
4.3.4	Arbitration
4.3.5	Supplementary agreements.....
4.4	The use of the IPPC Conciliation system
4.4.1	The Expert Committee
4.4.2	Terms of Reference for the Expert Committee.....
4.4.2.1	Identification of parties and issues
4.4.2.2	The conduct of the proceedings.....
4.4.2.3	Evaluation of information and formulation of recommendations
4.4.2.4	Form of the report - <i>IPPC Dispute Settlement Expert Committee Report</i>
4.4.3	The conducting of the proceedings.....
4.4.4	The report
4.4.5	Approval of the report
4.5	IPPC Secretariat's reports on formal consultations and other dispute settlements that members wish to have recorded
4.5.1	Reporting from the IPPC dispute settlement system
4.5.2	Reports of other disputes that contracting parties wish to have recorded.....
4.6	Role of Regional Plant Protection Organizations.....
Table 1	References

APPENDICES

Appendix 1	Form: Request for the Initiation of the IPPC Dispute Settlement System
Appendix 2	Form: Request for advice on phytosanitary issues concerning the IPPC and ISPMs (generally issues not to be taken to dispute settlement)
Appendix 3	Hypothetical example of terms of reference for an IPPC dispute settlement expert committee ...

1. INTRODUCTION

1. Many contracting parties to the International Plant Protection Convention (IPPC) have problems with some of the phytosanitary measures of their trade partners. These problems, generally involving issues associated with gaining market access or with new/revised phytosanitary measures being imposed, frequently go back many years and remain unresolved. Few contracting parties use international dispute settlement systems to resolve such problems. Those contracting parties that have done so have usually used the dispute settlement mechanism provided for by the World Trade Organization (WTO). This can be a relatively expensive and time-consuming procedure and, therefore, is usually reserved for the most important trade issues.

2. There is a need for less expensive yet effective systems for the majority of smaller phytosanitary trade problems. In this respect, Article X of the IPPC establishes specific dispute settlement mechanisms which could be ideal to assist with resolving some of these issues. While these do not generally result in legally-binding solutions, they do provide a structure to identify and resolve phytosanitary issues before significant economic and political consequences arise. They are also especially well-suited to resolve technical phytosanitary issues that often lie at the heart of disputes involving phytosanitary measures. However, although the IPPC expert committee method has been available for the more than fifty years since the early Convention was ratified, it has not been used to date. A small number of phytosanitary disputes have been effectively settled over the past 10 years through FAO involvement and before the current IPPC dispute settlement system was developed.

3. As concerns the dispute settlement procedures set forth in Article XIII of the New Revised Text of the IPPC, the Interim Commission on Phytosanitary Measures (ICPM) has provided rules and procedures for their implementation. It is hoped that the IPPC dispute settlement mechanism will provide means for contracting parties to resolve some of their phytosanitary disputes in a cost-effective manner.

4. The purpose of this document is to facilitate the use of agreed procedures for dealing with phytosanitary disputes between contracting parties to the IPPC. It is written in the form of a user's guide and includes:

- a background to the system
- a description of the parts of the system
- guidelines to the operation of the system
- appendices.

5. If contracting parties have questions regarding the operation of the IPPC dispute settlement mechanism, they should contact the IPPC Secretariat or members of the IPPC Subsidiary Body on Dispute Settlement (contact details for SBDS members are available on the IPPC website, hereafter the IPP, at <https://www.ippc.int>).

2. BACKGROUND

6. The original text of the IPPC (1951) included an article on the settlement of disputes that has been in force since 1952 and was unchanged by the 1979 amendments to the IPPC. It provided, among other things, for a conciliation mechanism where contracting parties may request the FAO Director-General to establish a committee to consider issues in dispute among parties.

7. The 1997 amendments to the IPPC expanded upon the original approach to include requirements for consultation prior to establishing a dispute settlement committee under the IPPC (Article XIII.1 of the IPPC, 1997). They maintained, in revised form, the conciliation mechanism

(Article XIII.2), and also provided for the Commission on Phytosanitary Measures (CPM) to develop rules and procedures for the resolution of disputes in accordance, and to prepare rules and procedures for IPPC expert committees and their reports established under the dispute settlement system (Articles XI.2(c) and XIII.2).

8. Since 1997, detailed IPPC dispute settlement procedures have been developed and adopted by the ICPM with the aim of making the IPPC system more acceptable and useful to contracting parties.

9. The Subsidiary Body on Dispute Settlement (SBDS) was established by ICPM-3 (2001) and its first members confirmed by ICPM-4 (2002).

10. Under the IPPC dispute settlement system, a contracting party or contracting parties to the IPPC has the right to initiate the settlement under Article XIII of the IPPC. The dispute settlement procedures are limited to issues falling within the scope of the Convention and its standards. It is expected that the IPPC mechanism will be used primarily for resolving technical phytosanitary problems.

3. COMPONENTS OF THE IPPC DISPUTE SETTLEMENT SYSTEM

3.1 IPPC

11. As indicated below, Article XIII provides for specific dispute settlement procedures. From this, the ICPM has expanded and clarified the procedures to meet the perceived needs of parties.

ARTICLE XIII of the IPPC (1997)

“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.”*

The parts of this article are explained in subsequent sections.

3.2 IPPC Secretariat

12. By facilitating the implementation of the IPPC work programme as established by the CPM annually, the Secretariat services the IPPC in the following areas: development and adoption of International Standards for Phytosanitary Measures (ISPMs); exchange of phytosanitary information; development of phytosanitary capacities; and dispute settlement. In relation to dispute settlement, the IPPC Secretariat has a coordinating role and supplies information on the dispute settlement systems that are available, provides advice if requested on appropriate dispute settlement mechanisms (based on established procedures and guidance provided by the CPM), maintains a roster of experts, and reports on the consultations and settlements undertaken according to the requirements of the system.

3.3 Subsidiary Body for Dispute Settlement (SBDS)

13. The SBDS is composed of seven experts, one from each of the seven FAO geographic regions. The role of the SBDS is to assist the Secretariat in helping contracting parties select a suitable dispute settlement system. In addition, the SBDS may assist with conducting settlement procedures in areas such as consultation, good offices, mediation or arbitration. It also assists with nominating experts for IPPC Expert Committees and has a specific role in approving their reports. The CPM has approved Terms of Reference and Rules of Procedure for the SBDS (see Table 1 for reference).

14. The implementation of the IPPC dispute system is under the responsibility of the IPPC Secretariat and of the SBDS in accordance with its Terms of Reference and Rules of Procedures.

15. The SBDS held its first meeting in April 2003. It meets annually just prior to, or during, CPM sessions, and a report is presented to each session of the CPM.

3.4 IPPC dispute settlement procedures

16. ICPM-2 (1999) and ICPM-3 (2001) adopted a series of procedures that now make up the IPPC dispute settlement system (see Table 1 for the list of procedures and specific references). These procedures involve a series of steps including informal and formal consultation followed by the use of an IPPC Expert Committee in a conciliation process. The detailed systems supporting this series of steps from consultation to conciliation are described in the section 4.

4. OPERATION OF THE IPPC DISPUTE SETTLEMENT PROCEDURES

17. Appendix 1 provides a form that can be used as a guide by contracting parties when initiating the IPPC dispute settlement system. This background information will provide the basis for discussions with the contracting parties involved.

4.1 Options for informal action before the initiation of formal procedures

4.1.1 Informal consultations

18. Informal consultations are those where the contracting parties consult among themselves to resolve a technical phytosanitary dispute. Parties are recommended to consider this approach carefully.

19. Where contracting parties have had a technical problem for a long period, it is unlikely that such informal consultations will be successful. However, if the problem is new and no real discussion has taken place, informal discussions may be successful in solving the problem.

20. Parties should consider arranging for legal or technical assistance to facilitate their informal consultations. An example of such assistance is the SBDS providing advice on the clarification of ISPMs (such advice on clarifications would not involve justification of measures). Appendix 2 provides a form that may be used by contracting parties when initiating the IPPC dispute settlement system. The information outlined in this form may be used as the basis for discussions between the parties.

4.1.2 Discussion with the IPPC Secretariat

21. A contracting party that is considering further action relating to a particular dispute should initially contact the IPPC Secretariat, via its official contact point, to ensure that it:

- has the latest information concerning the IPPC dispute settlement procedures;
- fully understands the context of the particular dispute prior to initiating the more formal steps of the IPPC dispute settlement;
- considers its position in relation to such things as costs, time commitments etc.

22. Once the initiating country is satisfied with the above matters, these initial discussions can then be followed through with a formal request for assistance with dispute settlement procedures. Subsequent communications should then involve contracting parties on both sides of the dispute in accordance with the agreed procedures outlined in this document. The Secretariat can then discuss the dispute settlement options available to the parties.

4.1.3 Dispute avoidance

23. The Secretariat may be able to suggest suitable dispute avoidance action. 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 Secretariat staff can be helpful in considering informal action and critical aspects of the dispute can be resolved at an early stage.

4.2 Formal procedures - consultation

24. In this manual, consultations among parties are regarded as a formal procedure as they are contemplated in Article XIII.1 which states that *“if a contracting party considers that any action by another contracting party is in conflict, the contracting parties concerned shall consult among themselves as soon as possible with a view to resolving the dispute”*. Therefore, even if only one party wants to consult, both parties are obliged to undertake a consultation because of these provisions.

25. For a formal consultation to begin, it is recommended that one or both parties contact the IPPC Secretariat (see sections 4.1.1 and 4.1.2 above). The Secretariat and the parties then discuss and agree on the most appropriate procedure for the consultation, the location for the consultation, a facilitator if required, any confidentiality requirements, who may attend the consultation, and any other conditions that may be required. If the parties cannot agree on some of the conditions, the Secretariat may be able to suggest compromise conditions.

26. 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.

27. 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 the parties may decide to go on to use a dispute settlement procedure.

4.3 The selection of a dispute settlement procedure

28. Paragraphs 2 to 5 of Article XIII describe the use of an expert committee for resolving disputes. This is basically a conciliation procedure for dealing with technically-based problems, under which one or both contracting parties may request the Director-General of FAO to appoint a committee of experts to consider questions in dispute.

29. However, contracting parties should take note of section 6 of *General Considerations* in Appendix IX of the report of ICPM-2:

“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).”

30. Parties may discuss with the Secretariat and others to determine which is the most appropriate procedure for the dispute. The above procedures and the IPPC conciliation procedure may be

considered. If parties cannot agree on a procedure, the initiating party may decide to use the IPPC conciliation procedure or to initiate other dispute settlement procedures.

4.3.1 Consultations

31. Consultations have been discussed above. It could be stressed that the form of the consultation can be changed to suit the requirements of the contracting parties involved. Such changes could include:

- a facilitator who is experienced in such negotiations can be employed to assist the parties
- the venue for the meeting can be in a country not involved in the dispute
- the agenda can be arranged to provide the maximum opportunities to develop understanding of the problems involved.

32. 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, 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.

4.3.2 Good offices

33. 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 does not involve the third party becoming involved in the substance of the discussions on the dispute.

34. 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 SBDS providing advice on the clarification of ISPMs (see section 4.1.1 and Appendix 2).

4.3.3 Mediation

35. 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.

4.3.4 Arbitration

36. 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.

37. Arbitration clauses are found in many agreements and are part of most large commercial contracts. For example, Annex II of the Convention of Biological Diversity describes Arbitration procedures (Part 1) and Conciliation procedures (Part 2) which contracting parties may accept. The WTO dispute settlement systems include a range of procedures from consultation, good offices, mediation, conciliation, arbitration and the panel system. So in fact, an agreement to arbitrate may exist well before any dispute arises. Procedures may be detailed and institutional, or relatively informal. However, most arbitrations follow a series of rules set up by the institution under which the arbitration is being carried out. The recognized international standard is that provided by United Nations Commission on International Trade Law (UNCITRAL).

38. Although the 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.

39. There are many national and international organizations around the world that arrange and run arbitrations for disputing parties, but these are usually for commercial entities and are not for disputing governments. However, if both parties were prepared to agree to use a certain organization, follow its rules and agree that the result of the dispute settlement would be binding, such mechanisms could be used.

40. 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.

41. A similar procedure that uses an impartial body to resolve a dispute but does not provide a binding decision is referred to by many texts as conciliation. 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, could be termed conciliation (see section 4.4).

4.3.5 Supplementary agreements

42. Article XVI of the IPPC provides for the construction of 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.

43. 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.

44. 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 SBDS and the IPPC Secretariat in the event they wish to consider such an approach.

4.4 The use of the IPPC conciliation system

45. The IPPC conciliation system is meant to be a technically-based system which enables parties to discuss technical matters that are being disputed. This system is set forth in Paragraphs 2 to 5 of Article XIII of the IPPC and dispute-settlement procedures adopted by the ICPM. The key steps in this system are described below.

4.4.1 Establishment of an Expert Committee

46. The dispute settlement procedure is started when one or both parties to the dispute formally request the Director-General of FAO to set up an Expert Committee under Article XIII.2 of the IPPC. Parties should also inform the IPPC Secretariat of this request. Before the Secretariat can initiate the establishment of an Expert Committee, consultations need to have taken place as required under Article XIII.1 of the IPPC and section 4.2 above.

47. The Expert Committee for any particular dispute will consist of five members: two members selected by the disputing parties (one each) and three members proposed by the Secretariat based on nominations received from CPM members.

48. The steps for the selection of these three members are as follows:

- The Secretariat will solicit nominations from CPM members, using the IPP as appropriate, of experts to serve on the Expert Committee for a particular dispute;
- The experts should have:
 - a scientific/technical background relevant to the subject of the dispute,
 - independence from the dispute,
 - an ability to become a Committee member and serve in an individual capacity as expert;
- Taking into consideration nominations by CPM members, the Secretariat proposes three experts as members of the Expert Committee for the particular dispute. At least one of the experts should be familiar with the IPPC and its associated ISPMs. The Secretariat should avoid, where possible, proposing experts from the disputing parties.
- The three experts are part of the Expert Committee (see below) recommended to the Director-General of FAO, unless one or both of the disputing parties objects to the proposed experts.

49. At least one of these independent experts should be familiar with the IPPC and its associated ISPMs. If the disputing parties cannot agree, the SBDS will make a selection. If the disputing parties cannot agree to this selection, the conciliation cannot proceed.

50. The other two members of the Expert Committee are selected directly by the disputing parties. Specifically, each of the disputing parties directly designates one expert for the Expert Committee.

51. Where several parties are involved in the initiating or responding roles, they must consult and select only one expert for the respective party roles (see report of ICPM-3, Appendix XI, section H). If agreed by parties, more than one expert may be designated with equal numbers for each respective party role.

52. The five experts (or whatever number of experts constitute the Expert Committee) proposed are recommended to the Director-General for appointment, taking into account that Article XIII.3 indicates that the committee shall include representatives designated by each contracting party concerned. The experts elect a Chairperson from amongst the three independent experts.

4.4.2 Terms of Reference for the Expert Committee

53. The Terms of Reference are prepared by the Expert Committee and the disputing parties, with assistance from the IPPC Secretariat. Before the Expert Committee can begin work to consider the dispute, it must have the disputing parties agree to the terms and also sign an agreement on all the points identified under 4.4.2.1 and 4.4.2.2.

54. The Terms of Reference includes four operational areas:

- signed agreement of the disputing parties to the identification of the issues and the proceedings
- presentation of information to the Expert Committee
- evaluation of information, and development of conclusions and recommendations
- preparation of the Expert Committee report.

55. A hypothetical example of such terms of reference can be found in Appendix 3.

56. It is extremely important that the administrative and procedural issues in the first two of these areas are agreed to before the Expert Committee begins work. The points allow the committee to work effectively and avoid possible areas of disagreement that may arise later in the process. It is preferable to work out any difficulties before the meeting starts rather than during the working time of the Expert Committee.

4.4.2.1 Identification of participants and issues

57. All the participants of the conciliation must be identified. This includes:

- initiator(s),
- respondent(s),
- expert Committee, including Chairperson, and
- observers, if they are permitted.

58. 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.

4.4.2.2 The conduct of the proceedings

59. It is extremely important to have all the procedural matters agreed to before the meeting of the committee begins.

Presentation of information

60. The disputing parties and expert committee must agree on the way that technical information will be presented by disputing parties.

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

Language(s)

61. 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

62. 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. Where there is no agreement on the number and type of observers, none should be allowed; where there is no agreement on conduct, observers will only attend and not contribute.

Costs

63. There may be a considerable cost incurred in setting up and operating an Expert Committee. Costs can include:

- the administration and arrangements for the committee meetings
- interpretation for meetings and translation of documents where necessary
- travel and per diem for committee members plus fees for the independent experts (unless otherwise agreed), and for any additional experts called.

64. Normally, costs are shared between the disputing parties as determined when discussing the Terms of Reference for the Expert Committee. Disputing parties are requested to show some flexibility when providing for costs and take into account any special needs of developing countries where such countries are parties to the dispute. The provision of assistance for developing countries by the Secretariat or developed countries is suggested. Where the dispute is initiated by a developed country, that country may provide all or partial funding for the dispute settlement process for a developing country.

Location and facilities

65. 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.

Administrative support

66. Arrangements for appropriate administrative support should be determined and agreed by the disputing parties. This support will include matters such as the recording of the proceedings, verbal contributions and discussions, photocopying and other administrative services.

Timetable

67. 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 documents or contributions from additional experts if necessary; the meeting(s) of the committee to be held; the completion and presentation of the report, etc.

4.4.2.3 Evaluation of information and formulation of recommendations

68. The Terms of Reference will contain, as required by the disputing parties, specific instructions on the reviewing of scientific and other information by the Expert Committee. The requirements of the parties regarding the assessment of the relationship of the issue and provided information 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 Experts Committee.

4.4.2.4 Form of the report - *IPPC Dispute Settlement Expert Committee Report*

69. The disputing parties should describe in the Terms of Reference for the Expert Committee the form of the report they would wish to receive. The following format is suggested:

Executive summary

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.

70. If the disputing parties cannot agree to Terms of Reference for the Expert Committee, the IPPC Secretariat may provide a general format with terms of reference proposed by the SBDS for the consideration of the parties.

4.4.3 Conduct of the proceedings

71. The Expert Committee conducts its proceedings according to the Terms of Reference. All the major elements described in section 4.4.2.2 (i.e. *Presentation of information, Language(s), Conduct of observers, Costs, Location and facilities, Administrative support and Timetable*) are important for the smooth conduct of the proceedings and, as noted earlier, need to be agreed to before the proceedings begin.

72. The Expert Committee should also take into account in its considerations the special needs of developing countries where such countries are parties to a dispute.

73. The evaluation of information and the formulation of recommendations is likewise a most important part of the proceedings. The Expert Committee should take into account any specific instructions and requirements outlined by the disputing parties.

4.4.4 Report

74. The report consists of two main parts, a summary of the technical aspects of the dispute and the recommendations for resolving the dispute (see section 4.4.2.4 for more detail).

75. The Expert Committee seeks to develop consensus 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.

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

4.4.5 Approval of the report

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

78. The first draft report is submitted to the IPPC Secretariat in English for technical review and/or 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.

79. This second draft report is submitted to the IPPC Secretariat to be sent to the SBDS for approval. The SBDS verifies that the steps taken by the Expert Committee have followed the Expert Committee procedure, and that standard review and reporting format have been followed. This approved report is then submitted to the Director-General of FAO by the Expert Committee Chairperson for distribution to the disputing parties.

80. The approved report may also be made available on request to competent bodies of international organizations responsible for resolving trade disputes.

4.5 IPPC Secretariat reports on formal consultations and other dispute settlements that members wish to have recorded

4.5.1 Reporting from the IPPC dispute settlement system

81. The IPPC Secretariat is required to report to the CPM or the SBDS on the conduct and outcome of formal consultations. The Secretariat is also required to maintain records concerning disputes notified to the Secretariat. The ICPM decided that the IPPC Secretariat report on formal consultations should include:

- a statement of the issue under consultation and its background
- the identities of the parties to the informal consultation
- a summary of the positions of the consulting parties
- the outcome.

82. Regarding disputes considered by an Expert Committee, the parties to the dispute may report to the CPM on further action or progress based on the recommendations provided by the Expert Committee.

4.5.2 Reports of other disputes that contracting parties wish to have recorded

83. The reports of the IPPC Secretariat on other disputes that contracting parties wish to have recorded by the CPM should follow the format of the *IPPC Dispute Settlement Expert Committee Report* described in section 4.4.2.4. These reports will be based on information supplied by contracting parties in this format.

4.6 Role of Regional Plant Protection Organizations

84. Regional Plant Protection Organizations (RPPOs) may be able to assist parties in the undertaking of dispute settlement procedures. The disputing parties and the RPPO have to agree to this before assistance can be arranged. Not all RPPOs will have the capability to assist with such procedures. Where they can, RPPOs may be able to:

- assist with obtaining nominations for expert rosters
- assist with administrative support, and the provision of facilities or resources for dispute settlement among parties in their region
- facilitate consultations for contracting parties within their region
- provide technical or other support on the request of contracting parties.

TABLE 1

References

For specific details on aspects of the dispute settlement procedures, the following references in the IPPC and various ICPM/CPM reports should be consulted.

IPPC or report*	Article or Appendix/Section	Subject	Manual Section
IPPC	Article XIII	Dispute settlement procedures	2; 3
IPPC	Article XI.2c	Establishment of the rules of procedure for dispute settlement	2
ICPM-3	Appendix XI, section D	Structure and membership of a subsidiary body on dispute settlement	3.3
ICPM-3	Appendix XI, section C	Functions of the subsidiary body on dispute settlement	3.3
CPM-1	Appendix V	Terms of reference and rules of procedure for the Subsidiary Body on Dispute Settlement	3.3
ICPM-2	Appendix IX, section 1	IPPC dispute settlement procedures	2; 3.4; 4.11 – 4.1.3; 4.3
ICPM-2	Appendix IX, section 2	Formal consultation	2; 4.2; 4.3.1
ICPM-2	Appendix IX, section 3	The Selection of a Dispute Settlement Procedure after Consultation	4
IPPC	Article XVI	Supplementary agreements	4.3.5
ICPM-3	Appendix XI, section H	Selection of experts	4.4.1; 4.4.2
ICPM-2	Appendix IX, section 4	The <i>IPPC</i> expert committee procedures	4.4.2; 4.4.3
ICPM-3	Appendix XI, section M	General format for expert committee terms of reference	4.4.2
ICPM-3	Appendix XI, section J	Rules for observers in the expert committee procedure	4.4.2.2
ICPM-3	Appendix XI, section I	Financial considerations	4.4.2.2
ICPM-3	Appendix XI, section K	Enhancing participation of developing countries	4.4.2.2; 4.6
ICPM-2	Appendix IX, section 4 d)	Agreement of Terms of Reference	4.4.2; 4.4.2.3
ICPM-2	Appendix IX, section 4 e), f) and g)	Preparation of report	4.4.2.4; 4.4.4
ICPM-2	Appendix IX, section 4 h)- k)	Finalization of report	4.4.4; 4.5.1; 4.4.5
ICPM-3	Appendix XI, section F	Procedure for approval of expert committee reports	4.4.5
ICPM-2	Appendix IX, section 2 f)	IPPC Secretariat should report on the conduct and outcome of formal consultations	4.5.1
ICPM-2	Appendix IX, after section 4.1) The ICPM decided: 1) c)	IPPC Secretariat responsibility for rosters, guidelines and records	3.2; 4.5
ICPM-2	Appendix IX, section 4. l)	The parties may report to the ICPM on further action or progress	4.5.1
ICPM-3	Appendix XI section L	Role of RPPO's	4.6
	UNCITRAL	http://www.uncitral.org/	

The relevant decisions and procedures relating to the IPPC dispute settlement system are detailed in the IPPC Procedure Manual in a single section relating to dispute settlement under the IPPC.

* Dates corresponding to sources in the table are: IPPC (1997); ICPM-2 (1999); ICPM-3 (2001); CPM-1 (2006).

APPENDIX 1

Form: Request for the
Initiation of the IPPC Dispute Settlement System

To: IPPC Secretariat
FAO-AGPP
Viale delle Terme di Caracalla
00100 Rome
Italy

E-mail: ippc@fao.org

Fax: +39-06-5705 4819

1. Initiating country	
2. Country/ies involved	
3. Issues Outline (include commodity/ies)	
4. Brief background / Historical aspects	
5. Sources of information (references etc.)	
5. Responsible person & contact details (contact person or designated officer)	

.....
IPPC contact point (initiating contracting party)

Date:

APPENDIX 2

Form: Request for Advice on Phytosanitary Issues
Concerning the IPPC and ISPMs (generally issues
not to be taken to dispute settlement)

This advice can be associated with informal consultations between disputing parties (see section 4.1.1 and 4.3.2 of the IPPC Dispute Settlement Manual). It is recommended that all parties concerned are made aware of the request for this advice. This advice is not meant to take the place of recommendations of an expert committee of the IPPC dispute settlement system.

To: IPPC Secretariat
FAO-AGPP
Viale delle Terme di Caracalla
00100 Rome
Italy

E-mail: ippc@fao.org

Fax: +39-06-5705 4819

1. Requesting country	
2. Country/ies involved	
3. Affected commodity	
4. Summary of request	
5. IPPC Articles involved	
6. ISPMs involved	
7. Identification of the difficulties with the IPPC or ISPMs related to the above issues	

.....
IPPC contact point (requesting party)

Date:

SBDS clarification	
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.....
Chairperson: SBDS

Date:

APPENDIX 3

Hypothetical Example of Terms of Reference for an IPPC Dispute Settlement Expert Committee

The undersigning representatives of the government of the **Federal Republic of F** and the government of **Kingdom of R** agree on the following terms of references for the establishment of an IPPC dispute settlement expert committee. With their signature the undersigning representatives declare their governments' agreement with the terms of reference and its included procedures and their determination to carry out the expert committee procedures in good faith.

<i>Initiating party:</i>	Federal Republic of Fu
<i>Responding party:</i>	Kingdom of R
<i>Members of Expert Committee:</i>	Dr. Jeremy Abitol (Chairperson, neutral) Prof. Rachael Mkize (neutral) Mr Xiaoning Hu (neutral) Dr Nassor Ahmed (Federal Republic of F) Dr Jeronimas Mallikarjuna (Kingdom of R)
<i>Observers:</i>	Observers, according to Rule VII of the Rules of Procedure of the ICPM, shall be admitted.
<i>Issue(s) at dispute: (based on submission of initiating party)</i>	<p>The issues identified by F are related to the new Ministerial Decision 2002/657 by the Ministry of Agriculture of the Kingdom of R. Decision 2002/657 lays down detailed rules for the acceptance of phytosanitary certificates for imports of plants and plant products into Kingdom of R. Article 3 of the decision lays down that phytosanitary certificates must include information on the monetary value of the consignment as well as, in case of grain, fruits and vegetables, information specifying pesticide residue levels of the consignment.</p> <p>These requirements stand in contradiction to the IPPC (1997) and to ISPM No. 12 (<i>Guidelines for phytosanitary certificates</i>).</p> <p>F claims that decision 2002/657 is in conflict with Article V.3 of the IPPC (1997) which states that countries undertake not to require consignments to be accompanied by phytosanitary certificates inconsistent with the model set out in the Annex to the IPPC (1997).</p> <p>F also claims that decision 2002/657 is in conflict with section 2 of ISPM No. 12 (<i>Guidelines for phytosanitary certificates</i>) which states that phytosanitary certificates should not include references to pesticide residues or commercial information.</p>

Tasks of the Expert Committee:

The Expert Committee is assigned to:

- determine if the Ministerial Decision 2002/657, and especially article 3 therein, by the Ministry of Agriculture of the Kingdom of R is in conflict with Article V of the IPPC (1997),
- determine if the Ministerial Decision 2002/657, and especially article 3 therein, by the Ministry of Agriculture of the Kingdom of R is in conflict with ISPM No. 12 (*Guidelines for phytosanitary certificates*),
- recommend specific actions and options to resolve the dispute taking into account the status of the Kingdom of R as a least developed country and
- prepare an IPPC Dispute Settlement Expert Committee Report according to the procedures laid down in the report of ICPM-3, Appendix XI, point 36 (d).

Means of presentation of information:

Each party to the dispute shall have the right to present information in any form (audio, video, printed matters etc). Each party shall have the right to appoint three national experts to present this information. Each presentation shall also be submitted in a written form to the Chairperson of the Expert Committee.

All written submissions shall be addressed to the Chairperson of the Expert Committee via the IPPC Secretariat. The Chairperson shall transmit all written submissions to the other members of the Expert Committee.

Language:

Written submissions to and the deliberations in the Expert Committee shall be made in either in French or English.

Conduct of observers:

Observers shall neither participate in the deliberations of the Expert Committee nor be allowed to make written contributions.

Observers shall also refrain from revealing information which has been identified by the Expert Committee as confidential. The Chairperson of the Expert Committee and the parties have the right to request observers to leave the Expert Committee in case of discussions on confidential matters.

Written submissions shall not be made available to observers.

Distribution of costs:

The Government of the Federal Republic of F will bear all costs specified below:

- costs incurring to administering and arranging the meetings of the Expert Committee,
- costs for translation and interpretation, and
- fees, salaries, and travel and subsistence for the three neutral members of the Expert Committee (Abitol, Mkize, Hu).

Each party to the dispute will be responsible to carry the costs related to fees, salaries, and travel and subsistence of their own national experts, and own members of the Expert Committee (for F: Ahmed; for R: Mallikarjuna).

- Location and facilities:* The location for the meetings of the Expert Committee shall be:
FAO
Viale delle Terme di Caracalla
00100 Rome, Italy
- The IPPC Secretariat is requested to provide for a meeting room with interpretation facilities.
- Administrative arrangements:* *support* The proceedings of the Expert Committee shall be tape recorded. The IPPC Secretariat is requested to provide secretarial support throughout the Expert Committee's meetings (including modern communication facilities).
- Timetable of proceedings:* Both parties to the dispute express their wish to proceed and conclude with the Expert Committee procedure expeditiously. For this reason the following timetable shall apply:
1. Submission of preliminary information to Expert Committee members by 17 May 2003
 2. First meeting of the Expert Committee on 10-13 June 2003
 3. Final submission of information to Expert Committee by 1 September 2003
 4. Second meeting of Expert Committee 1-3 October 2003
 5. Submission of draft expert committee report to FAO for technical and/or legal analysis and to parties for informal consultation by 31 December 2003
 6. Submission of FAO comments to Expert Committee by 21 January 2004
 7. Submission of 2nd draft of Expert Committee report to Subsidiary Body on Dispute Settlement by 1 March 2004
- Other provisions:* None

Read and signed

Dr Jeremy Abitol
Expert Committee Chairperson

Dr Nassor Ahmed
Director of Plant Protection Service
(Federal Republic of F)

Dr Jeronimas Mallikarjuna
Director of Plant Protection Service
(Kingdom of R)
