

An introduction to the IPPC Dispute Avoidance and Settlement System

**IPPC Secretariat
Regional IPPC Workshop
2015**



What is a phytosanitary dispute?

A phytosanitary dispute is a disagreement over the imposition of a phytosanitary measure between two or more countries.



Dispute avoidance: measures to prevent the occurrence of a formal dispute

- Actions that can be taken to avoid a dispute
- Informal processes and many options

Dispute settlement: dispute resolution

- The “last resort” if dispute avoidance options have failed



Governments have the right to restrict international trade when it is necessary to protect plant health (or human, animal health)

however ...

Contracting parties have the right to disagree on the phytosanitary measures, or on the strength of these measures.



Reasons for disagreement

Trade disputes between contracting parties may arise due to a number of reasons:

- **Gaining or maintaining market access**
- **Interpretation and application of the:**
 - ✓ **IPPC**
 - ✓ **ISPMs**
- **Phytosanitary measures**
 - ✓ **strength**
 - ✓ **type**
 - ✓ **use or misuse of measures.**
- **New or revised phytosanitary measures.**

What is the IPPC trying to achieve?

Provide an IPPC dispute avoidance and dispute settlement system (DASS) to support contracting parties in resolving phytosanitary disputes

- **The Commission on Phytosanitary Measures (CPM) agreed that dispute avoidance should be the first step in solving phytosanitary disputes.**

Provide a flexible informal forum for dispute avoidance

The formal Dispute Settlement is a “last resort” if dispute avoidance has failed.

Primarily designed and expected to solve technical phytosanitary problems.

Provisions under the IPPC as it relates to DASS

Article XIII of the IPPC: “contracting parties *shall* consult among themselves as soon as possible with a view to resolving the dispute”.

Dispute avoidance is the initial step that needs to be undertaken to avoid a formal dispute.

Dispute Avoidance



Step 1: Implementation of the IPPC Framework

The IPPC framework is at its core a way in which CP's can avoid dispute:

- **which encourages bilateral consultation in setting and accepting phytosanitary measures**
- **which communicates risk in a number of ways and via various channels**
- **when the harmonized standards and the IPPC are properly implemented, reduces the instances of non-compliance thus avoiding disputes, and**
- **by meeting National Reporting Obligations (NROs) to improve transparency and availability of relevant official information.**



Step 1: Start at the national level

Dispute Avoidance begins at the national level and as such the IPPC works with its CPs and their NPPOs by:

- **strengthening capacity:**
 - to determine appropriate phytosanitary measures e.g. through PRA, participation in Std Setting etc.
 - national reporting and notification capabilities
 - NPPO capacity for import verification and export certification
 - NPPO capacity for detection of non-compliance including reporting of, investigation and response
- **encourage bilateral engagement among CPs and their NPPOs for discussion and resolution of all of the above.**

Step 2: Dispute Avoidance

Parties are encouraged to consult with the IPPC Secretariat at an early stage of a phytosanitary disagreement concerning the range of dispute avoidance options that are available.

Best practices:

- **Early before positions are fixed**
- **Flexibility and compromise**
- **Will take time**
- **Political will to solve the problem**

Step 2: Dispute Avoidance (Informal)

Informal consultations which may include:

- ✓ **technical assistance**
- ✓ **capacity development among parties**
- ✓ **discussion with IPPC Secretariat**
- ✓ **Consultations and good offices to resolve the disagreement (which may involved all parties to the disagreement)**

Results:

- 1. Resolve dispute**
- 2. No further action necessary**
- 3. Proceed with the formal dispute settlement**



Dispute Settlement



Dispute Settlement (formal action)

It is an obligation of the IPPC (Article XIII.1) to consult

- ✓ **Consult amongst each party - discussion focuses on technical issues and this may take place more than once. These could include one or more of the following: Consultation, Good offices, Mediation, Arbitration**
- ✓ **Agree on consultation format and processes by both parties and the role of the IPPC Secretariat**
- ✓ **The failure of the formal consultation would lead to the establishment of the formal dispute settlement expert committee**

Dispute Settlement: IPPC Dispute Settlement Expert Committee

**Request for the establishment of the IPPC Dispute Settlement Expert
Committee**

IPPC Dispute Settlement Rules of Procedure (ICPM-3 2001)

Negotiate the ToRs for the Expert Committee

Establishment of the Committee

Report to parties through SBDS and FAO Director-General

NOT legally binding

IPPC DASS: Reporting

The IPPC Secretariat is required to report to the CPM on the work of the SBDS and on the conduct of formal consultations.

At all stages, confidentiality of information will be respected.

Subsidiary Body on Dispute Settlement (SBDS)

- Provides oversight and guidance

IPPC Dispute Avoidance and Settlement System (DASS)

More information is available on the International
Phytosanitary Portal at:

<https://www.ippc.int/en/core-activities/dispute-settlement/>



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