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Organización  
de las  
Naciones  
Unidas  
para la  
Agricultura  
y la  
Alimentación

## COMMISSION ON PHYTOSANITARY MEASURES

### Third Session

Rome, 7 – 11 April 2008

Optional proposal from COSAVE for document CPM 2008/17

Agenda Item 9.10 of the Provisional Agenda

1. An optional proposal from COSAVE for document CPM 2008/17 on practical guidelines on the use of “must”, “shall”, “should” and “may” in ISPMs is attached.

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## Practical guidelines on the use of “must”, “shall”, “should” and “may” in ISPMs

1. The First Session of the Commission on Phytosanitary Measures (CPM-1) took a decision on the use and translation of certain terms that may be used in standards (contained in Annex 1). Included in this decision was a request for the International Plant Protection Convention (IPPC) Secretariat to develop practical guidelines with examples for the use of the terms in ISPMs.

This paper was written to fulfil the CPM-1 request giving guidance for the use of the four terms. This annex could be added to the IPPC Procedural Manual.

### 1. Background and understanding on the use of terms and the CPM-1 decision

#### 1.1 *May*

The word, ‘may’ is used in ISPMs to express either a choice in possible approaches or an optional action. “May” expresses a choice between several actions or the presence of optional provisions. Depending on the context of its use, implementation of the standard may not be dependent upon the condition(s) being met.

#### 1.2 *Should*

Within the CPM-1 decision, the following key points on the meaning of ‘should’ were made:

In future ISPMs, the word ‘should’ in English [will] be interpreted to mean a type of moral or political commitment. It creates an expectation (though non-binding) that something will be done.

This term implies a moral or political commitment and is to be used for relevant provisions of the standard/actions.

#### 1.3 *Shall and must*

Further in relation to wording conveying obligations, CPM-1 also decided that:

for future ISPMs there would be no limit on the use of “shall” and “must” as long as their use was justified and was within the framework of the Convention and the legal status of the standards

This decision contains two linked aspects, neither of which can be interpreted separately from the other.

Firstly it states that there is no limit on the use of the fully obligatory words, ‘shall’ and ‘must’, but, crucially, also indicates that these words can only be used freely when the obligation to which they refer is technically justified and within the framework of the Convention and the legal status of the standards.

The implementation of the standard/actions is dependent of the fulfilment of this obligation (such as when it is technically justified and where technical requirements are mandatory in the case of diagnostic protocols and treatment or when observing the IPPC text).

#### 1.4 Use of other terms and/or wording

CPM-1 agreed that:

the use of the present tense of verbs (without “should”, “shall”, “must” or “may”) should not be used in ISPMs to express a level of obligation.

Wording that does not use the words, ‘should’, ‘shall’, ‘must’ or ‘may’ should be avoided (such as the present tense, or wordings such as ‘needs to’, ‘has to’, ‘is required to’). Such usage may be

grammatically correct, but their level of obligation has not been clarified as is the case for 'should', 'shall', 'must' and 'may', and the comparative levels of obligation implied might, therefore, be ambiguous.

### 1.5 Languages

The CPM-1 decision provided clear guidance on the undetermined meaning of "should" in English and its translation into French and Spanish that should ensure consistency in these languages and convey the same level of obligation as the English usage. Analysis of consistent translation into Arabic and Chinese is also required and will be completed in due course.

## 2. Examples of use of terms in existing standards

Within the various standards adopted to date (after CPM-1), there exist appropriate examples of the usage of the terms 'must', 'shall' and 'should' that comply with the CPM-1 decision. Since 'may' does not convey a level of obligation, and specific meaning was not attributed to it in the CPM-1 decision, the use of this word will not be discussed further in this paper, as its use is clear and unlimited.

### 2.1 Use of terms in the IPPC 1997

As described above, use of the word 'shall' (or 'must') is acceptable for use in relation to obligations contained within the IPPC (1997). In ISPMs adopted to date, obligations from the IPPC are often presented as direct quotes (most usually between quotation marks). If they are not presented as a direct quote (or presented without the use of quotation marks) the wording is either:

- identical to that contained in the IPPC (i.e. not expanding or restricting on the requirement), and the same verb is also used, or;
- the wording / content is not the same (e.g. additional elements) and "should" is used.

Using direct quotes from the IPPC, with or without quotation marks, is recommended whenever possible as it clarifies the intended obligation and removes ambiguity as to whether the wording is intended to exactly reflect the IPPC or to differ in some respect.

It should also be recognized that it is not always possible to use directly the language of the IPPC, especially when the standard relates only to one part of an obligation, or if the wording of the IPPC cannot be used in its direct form in a standard because of a grammatical problem, the desire to maintain a smooth flow of text, or the context within which the obligation arises.

## **Annex I to the IPPC Secretariat's practical guidelines on the use of "must", "shall", "should" and "may" in ISPMs**

CPM-1 decisions related to the use and translation of the Terms "must", "shall", "should" and "may" in ISPMs

### 11.5.1 Use and Translation of the Terms "must", "shall", "should" and "may" in ISPMs

86. The CPM discussed and modified the recommendations made both by the TC-RPPOs and the Informal Working Group on Strategic Planning and Technical Assistance (SPTA).

87. The CPM:

1. Agreed that a policy for the use of "must", "shall", "should" and "may" in standards should be implemented;
2. Adopted the following statement on the use of "should" in ISPMs: "In future ISPMs, the word 'should' in English be interpreted to mean a type of moral or political commitment. It creates an expectation (though non-binding) that something will be done.";
3. Decided that for future ISPMs there would be no limit on the use of "shall" and "must" as long as their use was justified and was within the framework of the Convention and the legal status of the standards;
4. Requested the Secretariat to develop practical guidelines with examples for the use of the terms in ISPMs;
5. Agreed that the use of the present tense of verbs (without "should", "shall", "must" or "may") should not be used in ISPMs to express a level of obligation;
6. Agreed that the decisions on use and translation would not apply to ISPMs for adoption at CPM-1 (i.e. those in document CPM 2006/2);
7. Agreed that the Spanish and French translations to be used consistently for ISPMs be:  
for should: debería and devrait  
for shall: verb in the future tense  
for must: debe and doit  
for may: podrá and peut;
8. Agreed that already adopted ISPMs be reviewed for the use of the terms "must", "shall", "should" and "may", and for adjustment of their translations; and
9. Requested the Secretariat to undertake an analysis of the translation of "must", "shall", "should" and "may" in ISPMs in Arabic and Chinese, and submit a proposal to the CPM.