**Discussion paper from Australia**

**Subsidiary Body on Dispute Settlement (SBDS)**

**Issue**

The role and function of the Subsidiary Body on Dispute Settlement (SBDS) be reviewed taking into account obligations conferred by the International Plant Protection Convention (IPPC) in relation to dispute settlement. More broadly, the review should consider why contracting parties are not using the IPPC dispute settlement process and what they are using instead to resolve technical phytosanitary disputes.

**Considerations**

The SBDS was established by the Commission on Phytosanitary Measures (CPM) in 2006. Its role is to manage the dispute settlement provisions of the Convention and provide assistance to the CPM with regard to dispute settlement in the WTO and other organisations. It does this by providing guidance in selecting appropriate methods and experts to undertake dispute resolution activities and to approve any reports.

Contracting parties raise unresolved conflicts with the IPPC Secretariat and may seek to start the dispute settlement process. Under the current Terms of Reference for the SBDS, it does not get involved in any of the preliminary discussions. The IPPC Secretariat deals with the conflicts and provides advice to the party/ies. These conflicts and the IPPC Secretariat advice are not communicated to other parties.

The IPPC Secretariat reported to CPM 6 (2011) that it was attempting to service the first dispute under the IPPC but that its resources were limited and there had been some communication issues. The SBDS has played no role in any dispute settlement activity since its establishment.

The existence of the SBDS was queried at CPM 6 and the suggestion made that it was time to review the workings of the SBDS given the lack of resources for this body. The Secretariat reported that steps had already been taken to address this, including that the SBDS would only meet as necessary. In addition, following completion of the first dispute, the IPPC would be in a better position to evaluate the SBDS and the dispute settlement process.

Of more fundamental concern and relevant to consideration of the role and function of the SBDS is the lack of use of the IPPC dispute resolution provisions by contracting parties. In Australia’s experience, technical disagreements on SPS measures do occur between trading partners. An analysis of the nature of these disagreements and the processes used for their resolution without resorting to the IPPC could inform CPM on the relevance and role of its own processes.

A more active role for the SBDS could be achieved by revising its responsibilities. This might including earlier involvement in dispute negotiations to reduce the role of the IPPC Secretariat in the early stages of dispute settlement, freeing up resources for other core functions.

The scope of activities of the SBDS could be expanded to see it take on a more active role in the implementation of the IRSS as a vehicle to assist contracting parties implement the Convention. The SBDS could play a role in exploring and identifying issues impacting on parties’ ability to implement the standards adopted by the CPM; issues that are of a more multilateral concern rather than bilateral disputes; and consider the issues raised as topics for proposed standards to determine if the issue is suitable for a standard or would be better resolved by other mechanisms.

**Recommendations**

Australia requests SPTA discussion on the future of the body with recommendation that CPM 7 in 2012 consider:

1. Undertaking a review of the nature and frequency of disputes between contracting parties relating to compliance with their obligations to the IPPC and the application of SPS measures, and identifying the processes applied to resolve them; and,

2. Through the review also determine why IPPC dispute resolution processes are not being used.

3. Within the context provided by the review and taking into account obligations conferred by the International Plant Protection Convention (IPPC) in relation to dispute settlement, review the role and function of the SBDS.

4. Separately explore opportunities for the SBDS to expand its role to assist earlier in dispute resolution processes, thereby freeing up Secretariat resources, as well as, opportunities for the SBDS to take an active role in the identification, analysis and resolution of issues impacting on the ability of contracting parties to implement their IPPC obligations and feeding these into standard setting and technical assistance/capacity building priorities.

Australia

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