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para la
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y la
Alimentación

INTERIM COMMISSION ON PHYTOSANITARY MEASURES

Sixth Session

Rome, 29 March – 2 April 2004

Adoption of the Terms of Reference for the Subsidiary Body on Dispute Settlement

Agenda Item 10.2 of the Provisional Agenda

1. The first meeting of the Subsidiary Body on Dispute Settlement (SBDS) was convened in Rome, 3-4 April 2003. The decision to form a SBDS was taken at ICPM 3. An informal report on the first meeting of the SBDS was given to ICPM 5 by the Chair of the SBDS, Mr Hedley.
2. ICPM 3 had agreed on Rules of Procedure for the SBDS and requested that the SBDS develop terms of reference for approval by the ICPM. The proposed terms of reference (TOR) are provided in Annex 1.
3. In relation to reporting to the ICPM on IPPC dispute settlement activities, it was decided that the Chairperson of the SBDS would give a general overview of the activities of the SBDS and the Secretariat would report on the outcome of dispute settlement cases during every session of the ICPM. It was agreed the SBDS Chairman would request that this reporting process become a formal agenda item of each ICPM session. ICPM 5 agreed that the report of the Subsidiary Body on Dispute Settlement be placed on the agenda for ICPM 6.
4. The SBDS discussed the issue of non-compliance and noted that there was a need:
 1. For new methods to help countries to resolve issues.
 2. To increase awareness of problems and issues.
 3. To foster trust between countries.
 4. For systems that support the IPPC, particularly ways of improving communication and transparency.
5. The SBDS also considered that there would be benefit in assessing the experiences of other dispute settlement bodies to determine whether there were trends and lessons that would be of relevance to the ICPM. The meeting proposed that the IPPC Secretariat write to the WTO-SPS Secretariat to request a synopsis of information on SPS phytosanitary issues and an analysis of the trends and issues that have arisen. The meeting also proposed that the SBDS review non-compliance again in 2-3 years.

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6. The SBDS reviewed the work programme in relation to the functions described in the SBDS TOR and also in relation to the strategic goals in Strategic Direction No. 3 of the IPPC Strategic Plan. Issues that will be further discussed at the second meeting of the SBDS include: the production of guidance documents and promotional material on the IPPC dispute settlement procedure, an inventory of other dispute settlement systems and a system for creating a roster of experts for dispute settlement.
7. The second meeting of the SBDS is scheduled for the week before the ICPM meeting. The Chair of the SBDS will be invited to give an informal report to ICPM.
8. ICPM is invited to:
 1. *Adopt* the proposed terms of reference for the SBDS shown at Annex 1.
 2. *Agree* that reports on dispute settlement cases and SBDS activities be regular items on the ICPM agenda.

Annex I

Proposed Terms of Reference (TOR) for the Subsidiary Body on Dispute Settlement (SBDS)

(Note: Relevant provisions relating to length of membership and selection of Chair approved at ICPM-3 have been included for easy reference)

1. Establishment of the Subsidiary Body on Dispute Settlement

The Subsidiary Body on Dispute Settlement has been established by the Third Interim Commission on Phytosanitary Measures.

2. Scope of the Subsidiary Body on Dispute Settlement

The Subsidiary Body on Dispute Settlement manages the dispute settlement functions of the ICPM and provides assistance to the ICPM with regard to dispute settlement in the WTO and other organizations.

3. Objective

The main objective of the Subsidiary Body on Dispute Settlement is the oversight, administration and support of the IPPC dispute settlement procedures.

4. Structure of the Subsidiary Body on Dispute Settlement

The Subsidiary Body on Dispute Settlement consists of 7 members, one member drawn from each of the FAO Regions.

Members of the subsidiary body serve for a minimum of two years, and a maximum of six years (approved at ICPM-3).

The subsidiary body elects its Chairperson from among its membership (approved at ICPM-3).

5. Functions of the Subsidiary Body on Dispute Settlement

The Subsidiary Body on Dispute Settlement has the following functions:

1. Provide guidance to the Secretariat and disputing parties in selecting appropriate dispute resolution methods and may assist in conducting or administering consultation, good offices, mediation, or arbitration.
2. Propose nominations for independent experts using Expert Committee procedures (see the report of the second session of the ICPM, Appendix IX, Section 4 and the report of the report of the third session of the ICPM, Appendix XI, Section H, paragraph 27b) where the disputing parties cannot agree on experts proposed by the Secretariat.
3. Approve reports of Expert Committees including verification of all points in Expert Committee procedures (see the report of the second session of the ICPM, Appendix IX, Section 4 and the report of the third session of the ICPM, Appendix XI, Section F); and
4. Undertake other functions as directed by the ICPM, which may include:
 - a) assist the Secretariat with requests from WTO or other organizations;
 - b) report on IPPC dispute settlement activities as well as dispute settlement activities undertaken or completed by other organizations that have implications for the phytosanitary community;
 - c) assist in identifying appropriate experts (e.g. for WTO dispute settlement);
 - d) assist in review and maintenance of expert rosters; and

- e) identify appropriate training opportunities.

6. IPPC Secretariat

The Secretariat provides administrative, technical and editorial support as required by the Subsidiary Body on Dispute Settlement. The Secretariat is responsible for reporting and record keeping regarding the standard dispute settlement activities.