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para la
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y la
Alimentación

INTERIM COMMISSION ON PHYTOSANITARY MEASURES

Fourth Session

Rome, 11-15 March 2002

Establishment of a Subsidiary Body on Dispute Settlement

Agenda Item 6.2 of the Provisional Agenda

1. The Third Session of the ICPM received the second report from the Informal Working Group on Dispute Settlement. This dealt with a number of issues including rules and procedures for the approval of Expert Committee reports by the ICPM or its Subsidiary Body, the need for the establishment of a Subsidiary Body, standard formats for dispute settlement reports and terms of reference for the Expert Committee.
2. In modifying and adopting the procedures put forward by the Informal Working Group, the Third Session of the ICPM decided to establish a Subsidiary Body on Dispute Settlement (see paragraph 22/3 of the Report of the Third Session of the ICPM). The ICPM discussed options for establishing the Subsidiary Body on Dispute Settlement, its size, composition and geographical representation and decided that the Subsidiary Body would be independent of the Standards Committee and be composed of one representative from each FAO region.
3. The agreed functions, structure and membership and rules of procedure of the Subsidiary Body are shown below (adapted from the Report of the Third Session of the ICPM, Appendix XI):

A. FUNCTIONS OF A SUBSIDIARY BODY ON DISPUTE SETTLEMENT

4. The Subsidiary Body on dispute settlement assumes the following functions:
 - a) 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
 - b) propose nominations for independent experts in IPPC Expert Committee procedures where the disputing parties cannot agree on experts proposed by the Secretariat
 - c) approve reports of Expert Committees including verification of all points in Expert Committee procedures (point 4 of the adopted procedure) and
 - d) undertake other functions as directed by the ICPM, which may include:
 - i) assist the Secretariat with requests from WTO or other organizations

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- ii) 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
- iii) assist in identifying appropriate experts
- iv) assist in review and maintenance of expert rosters and
- v) identify appropriate training opportunities.

B. STRUCTURE AND MEMBERSHIP OF A SUBSIDIARY BODY

5. *The size and composition of the Subsidiary Body:* The composition of the Subsidiary Body is based on geographical representation, including one delegate from each FAO region (at least three members from developing countries). Four members are required for a quorum.

6. *Qualification of members:* It is considered essential that members have an interest and experience in dispute resolution. Qualifications of Subsidiary Body members include:

- a) experience in phytosanitary systems
- b) familiarity with the IPPC and standards
- c) experience with regulations/legislation and
- d) preferably some form of dispute settlement or conflict resolution knowledge, qualifications and/or experience.

Governments should recognize the time, resources, and support necessary for Subsidiary Body members to adequately fulfil their roles before nominating them.

7. *Selection of Chairperson:* The Subsidiary Body elects its Chairperson from among its membership.

8. *Duration of membership:* Members of the Subsidiary Body serve for a minimum of two years, and a maximum of six years.

9. *Review:* The need for a Subsidiary Body, and its functions and operation will be reviewed by the ICPM after three years, taking into account experience and changing conditions.

C. RULES OF PROCEDURE OF THE SUBSIDIARY BODY

10. Except as indicated below, the rules of procedure of the ICPM will apply *mutatis mutandis* to the Subsidiary Body.

1. *Meetings:* The Subsidiary Body meets at least once per year, preferably at the occasion of the regular session of the ICPM. Other meetings shall be set by the Chairperson of the Subsidiary Body as needed, in particular, for the review and approval of Expert Committee reports and the development of reports for the ICPM. The Subsidiary Body will normally work by mail, facsimile and e-mail, and in the most cost-effective manner within the available resources.
2. *Observers:* Meetings of the Subsidiary Body are generally open according to Rule VII of the Rules of Procedure for the ICPM, but the Subsidiary Body may determine that certain meetings or business need to be conducted without observers, in particular where confidential or controversial information is involved.
3. *Language:* The working language of the Subsidiary Body will be English.
4. *Decision-making:* The Subsidiary Body strives for consensus on all decisions but may vote where necessary using a 2/3 majority to take decisions. Decisions shall include dissenting opinions where requested.
5. *Amendments:* Amendments to the functions and procedures of the Subsidiary Body will be promulgated by the ICPM as required.
6. *Confidentiality:* The Subsidiary Body shall exercise due respect for confidentiality where sensitive information is identified by disputing parties.

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11. The Third Session of the ICPM agreed that nominations for the Subsidiary Body on Dispute Settlement would be submitted to the IPPC Secretariat before 1 December 2001. In a letter to all IPPC contact points dated 5 November 2001, the Secretariat reminded Members to submit the names and curricula vitae of experts to serve on the Subsidiary Body. Responses to this letter indicated that certain regions experienced difficulty with appropriate mechanisms for consulting and deciding on nominations before 01 December 2001.
12. Therefore, the Secretariat, in consultation with the Bureau, extended the nomination period to 11 March 2002 (the opening day of the ICPM). Also, provision has been made in the course of the Fourth Session of the ICPM to allow Members to meet in regional groups with the aim of consulting and confirming their nominations.
13. Members are reminded that nominations for the Subsidiary Body on Dispute Settlement should have the qualifications noted above, and that the provision of adequate time, resources and support are necessary for the participation of their experts in the Subsidiary Body.
14. The ICPM is invited to:
1. *Confirm* the experts nominated by the countries of the FAO regions for membership of the Subsidiary Body on Dispute Settlement.