



**Open Ended Working Group
on a
Possible IPPC Compliance Mechanism:**

The IPPC Implementation Review and Support System

18 - 21 September 2007

Kuching, Malaysia

Report

1. OPENING OF THE MEETING

The meeting was opened by Ms Wan Normah (Deputy Director, Department of Agriculture, Malaysia) on behalf of Dato Sofian Mohd. Salleh (Director General of Agriculture, Malaysia) who welcomed all the delegates to Kuching, Sarawak, Malaysia. She said Malaysia was pleased to host the meeting and looked forward to fruitful deliberations during the week. It is an honour to host the meeting and looking forward to the deliberations during the week. Dato Sofian Mohd. Salleh hosted the evening welcome dinner. He noted Malaysia's activate participation in the Commission on Phytosanitary Measures (CPM) work programme and was pleased Malaysia could play a part in this programme as protecting Malaysian agriculture from foreign pests was important.

Mr Hedley (Chair) welcomed everyone and looked forward to working with everyone during the week to explore the issue of compliance. He thanked Malaysia for their work in arranging the meeting.

Mr Nowell (International Plant Protection Convention - IPPC - Secretariat) welcomed everyone to the Open Ended Working Group (OEWG) and thanked Malaysia for the organizing of the meeting. Participants were present from most FAO regions, with the exception for Latin America and the Near East (these participants were unfortunately unable to attend), and this should assist in having diverse and fruitful discussions during the week.

The 22 participants from 16 countries introduced themselves to provide some background on their expertise and experience with compliance mechanisms. Two experts were also present: Mr J-P Chiaradia-Bousquet (FAO Legal Office) and Ms A Hindman (a Multi-lateral Environment Agreement – MEA – compliance expert).

2. ADOPTION OF THE PROVISIONAL PROGRAMME

The programme was adopted as presented in Appendix 1.

3. INTRODUCTION AND BACKGROUND

Mr Hedley briefly discussed the Terms of Reference for the OEWG as adopted by the CPM (see Appendix 2). The questionnaire on compliance issues that was distributed to participants before the meeting was intended to encourage participants to read some of the background documents on compliance posted on the International Phytosanitary Portal (IPP). After examining the responses from participants, he noted that many points had been raised including the lack of experience with such mechanisms, the lack of capacity to deal with compliance, that both International Standards on Phytosanitary Measures (ISPMs) and the IPPC should be covered by a compliance mechanism, that the mechanism should be a facilitative process, that such a mechanism allowed directed technical assistance, and that the challenges of putting such a mechanism in place would include capacity, cost and additional work for contracting parties. It was suggested that a specific process for dealing with compliance under the IPPC would be worthwhile considering. It was recognised that, although beneficial, the process would have many practical challenges, especially financial ones, to overcome.

Mr Hedley suggested other issues that need to be considered when developing a compliance mechanism included:

- the understanding of the terms compliance and implementation;
- whether the governing body is the overall authority for any decisions concerning compliance;
- the use of incentives and disincentives – enforcement procedures;
- the position of complementary dispute settlement procedures, including consultation, conciliation, arbitration;
- the administration of the non-compliance procedures: under the convention or maybe a specialised body to deal with this on behalf of the governing body, such as a Compliance and Implementation Committee;
- monitoring and review are essential components of compliance mechanisms, and the results of reviews are assessed for compliance;
- multi-lateral assistance is preferred to bilateral assistance as the latter leaves too much to the discretion of the donor country; and
- technical assistance is key to facilitate a compliance process.

4. REVIEW COMPLIANCE MECHANISMS USED BY OTHER ORGANIZATIONS

Ms. Hindman (international compliance expert) gave a presentation on compliance, implementation and the nature and use of compliance mechanisms. She noted that compliance is essential to give a convention effect, but compliance mechanisms are just one way to improve compliance and implementation. The mechanisms that are most successful are specifically tailored to the nature of the convention and the needs of the contracting parties. The objectives of the compliance mechanism will play a large role in determining its structure and operation.

Depending on how one defines the term, there are about ten compliance mechanisms currently in effect under multilateral environmental agreements. In some cases, the text of the convention calls for the creation of such a mechanism, but in others, the contracting parties took a subsequent decision to create one. Such mechanisms typically involve the creation of a compliance committee of about eight to fifteen members who meet on a regular (as opposed to ad hoc) basis. The mechanism's functions include addressing compliance difficulties of individual parties, analyzing general issues of compliance and reviewing compliance with reporting obligations.

Mechanisms can provide for the use of both facilitative and enforcement measures to improve compliance, but in practice facilitative measures are the ones actually employed in the majority of cases.

There are a number of different ways a compliance issue can be brought to the attention of the committee – these are often referred to as “triggers.” A party can “self-trigger” and request the assistance and advice of the compliance committee. In these cases the committee can act as a kind of “help desk,” developing an action plan for the party and recommending to the supreme body of the convention that capacity assistance of a particular nature be provided. In other instances, a “party-to-party” trigger can be employed; this occurs when one party to the convention brings the potential non-compliance of another party to the attention of the committee for its consideration. Depending on the terms created for the mechanism, other entities that could trigger an issue for review can include the committee itself, the secretariat, NGOs and the public.

A number of procedural safeguards are provided for in the terms of reference for each compliance mechanism. These can include provisions for due process, transparency, timetables, deadlines, requirements for representation and entitlement to participate as well as standards for decision-making and reasoning by the committee. Provisions for confidentiality can also be made (an issue raised by the OEWG as important in this context) but in most current mechanisms these provisions only apply to the provision of information and the question of whether the committee meets in open or closed session.

Most compliance mechanisms cover any and all issues of compliance that may arise under the convention, but particular requirements may be given priority. There is also a need to tailor a compliance mechanism for a convention to ensure usefulness and benefits to members.

Compliance mechanisms entail both administrative and “substantive action” costs. A “typical” mechanism (for example a committee of eight members meeting twice yearly) will have an annual cost of about \$100,000 to \$120,000. It should be noted that these are administrative costs alone and the costs of any technical assistance, capacity building or action plan developed to address cases of non-compliance will be additional.

When compliance mechanisms work well, the biggest and most obvious benefit is improved compliance with the convention. However, not all operational mechanisms are widely regarded as “success stories.” In some cases, mechanisms do not apparently answer the needs of the contracting parties and they are under-used.

Compliance can be promoted and enhanced in a variety of ways. For example, the UN Environment Programme (UNEP) developed a set of guidelines on compliance with and enforcement of Multilateral Environmental Agreements – a non-binding set of recommendations and suggestions designed to help contracting parties improve their compliance with MEAs. These guidelines were then further elaborated in a compliance manual – creating another tool for countries to rely upon in their compliance and enforcement efforts. The guidelines and manual, although developed for MEAs, provide an illustration of how different resources and tools may be employed to promote convention compliance without formal procedures or enforcement-based approaches. The outcome is compliance in a way that best suits a given country.

In the context of the discussion the OEWG relied on the following definitions:

“*Compliance*” means the fulfilment by the contracting parties of their obligations under the convention.

“*Compliance Mechanisms*” are systems designed to promote and improve compliance with a convention to better ensure its implementation and functioning. Depending on their scope, they may address any and all aspects of the convention and its standards, or may be limited to a single aspect of the convention.

Most conventions have a formal reporting mechanism on compliance issues, but the IPPC does not have such a national reporting system requirement. Ability to make binding decisions varies substantially between mechanisms – final decisions are made by the governing body. The IPPC does not have a mechanism to report on compliance issues in general, but it does have provisions for reporting that could be used to determine the level of compliance or identify specific compliance issues.

There are many common compliance components between conventions and they can often be built on existing organizational process and structure. The compliance mechanism does not have to be a binding and formal process as it can be flexible, informal and non-binding. A beneficial way of facilitating compliance through a less formal process would be for contracting parties to request assistance so they can comply with provisions of a treaty i.e. in this case a compliance mechanism almost becomes a “Help Desk”.

Most compliance mechanisms have both facilitative and enforcement components, and enforcement is often a last resort if facilitation has not been successful. Many compliance mechanisms have not had to resort to enforcement.

Compliance committees normally have geographical representation and members must have technical expertise i.e. not political appointments.

With respect to international standards relating to sanitary and phytosanitary measures used by the World Trade Organization, it was clarified that they are developed by three entities with entirely different legal status: the Codex Alimentarius Commission (created by FAO and the World Health Organization “*to develop food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme*”; the International Office of Epizootics (established in 1924 as an intergovernmental organization “*to promote...all experimental and other research work concerning the pathology or prophylaxis of contagious diseases of livestock for which international collaboration is deemed desirable...*” (OIE is not a specialized agency of the United Nations); and the IPPC (a statutory body of FAO under the provisions of Article XIV of its Constitution).

The OEWG noted that notification by a country may create awareness of its inability to comply with a specific provision of the IPPC or an ISPM. This may in fact allow trading partners to respond by imposing additional phytosanitary measures, or even allow issues to be taken up through the WTO Dispute Settlement process. This point needs to be considered carefully if a compliance mechanism is developed for the IPPC. There are confidentiality clauses in other conventions but these usually relate to the provision of information. It would be easier to deal with the confidentiality issue in a “help desk” type compliance facility.

5. POSSIBLE MECHANISMS UNDER THE IPPC

Mr Chiaradia-Bousquet (FAO Legal Office) explained that the first element to be clarified should be the definition of the concept of compliance as the CPM would wish to run it. He provided a summary of the legal aspects of a possible compliance mechanism within the framework of the IPPC, a statutory body of the Organization established under the provisions of Article XIV of the FAO Constitution. He noted that there is no legal reason why a compliance mechanism could not be developed under the IPPC; that such development does not need to amend the Convention as that there is a number of specific provisions under which a compliance system could be accommodated. In this respect, he recalled that Art. VIII deals with the need for international cooperation to “... to provide a framework for the development and implementation of harmonised phytosanitary measures ...” technical assistance and capacity building; that pursuant to Article II.2, contracting parties have the obligation to comply with the provisions of the IPPC; and that under a classical system of compliance, it would be the responsibility and decision of the

contracting parties to acknowledge that they have difficulties complying and that they need technical assistance to ensure their obligations are met.

From a legal point of view, it was also recalled that:

- the IPPC, as well as the bodies which it establishes, are clearly placed, and operate, within the framework of FAO;
- its constituent instrument (the Convention) does not entrust it with a legal personality, i.e. capacity to hold rights and obligations of its own, and therefore the IPPC have to act through FAO and drawing on the legal capacity of FAO;
- similarly, it is FAO and the Director-General as its legal representative that have to respond for any liabilities arising from the activities of bodies which, like the IPPC are set up under Article XIV of the FAO Constitution, for instance (as observed by the Committee on Constitutional and Legal Matters at its 77th Session in October 2004) in connection with arbitration proceedings that may be brought against it.

It was indicated that consistent with general principles of international law, as well as international jurisprudence, a body such as the IPPC possesses legal capacity to take decisions with a view to attaining its objectives. However, in accordance with the consistent practice, FAO has, in the end, the ultimate formal responsibility for those bodies. In particular, in case of claims or arbitrations against such bodies, or whenever their immunity is at stake, the Director-General of FAO is called to intervene. Consequently, it would be advisable to limit the scope of a system of verification of compliance and not to include a punitive mechanism.

Subsequently, it was explained that the International Treaty for Plant Genetic Resources in Food and Agriculture (ITPGRFA) formally provides for a system of compliance under the provisions of its Article 21. In this case compliance is a procedure or an operational procedure to promote the application of the Treaty.

From a general point of view, it was underlined that monitoring and offering advice are the options available to ensure compliance. This could relate to various provisions in the IPPC in particular the dispute settlement (Art. XIII) which, from a more “judicial” point of view, would compliment a compliance process. In this respect, it was noted that Article XIII.1 provides that “... the contracting parties concerned shall consult among themselves as soon as possible with a view to resolving the dispute”. This could also be considered as a first step in a compliance system.

From an institutional point of view, it was noted that pursuant to Article XI.2.d), the CPM may establish such subsidiary bodies as may be necessary for the proper implementation of its functions

From a technical point of view, it was then observed that a process that involves enforcement of compliance of ISPMs would require that they be mandatory. However, in case the objective of a potentially established compliance mechanism is to facilitate and encourage contracting parties to implement the IPPC, the mandatory character of ISPMs is not required.

In this respect, the OEWG noted that the implementation of ISPMs facilitates trade between countries by harmonizing measures. In an operational sense, this is on a bilateral basis and is essentially a bilateral issue between trading partners. The ISPMs are not mandatory, but part of a trade functioning successfully.

The OEWG agreed that it was necessary to have a clear view of dealing with “compliance” before developing a system for compliance. Therefore, various compliance systems and related issues were reviewed and discussed by the OEWG and included:

- reporting obligations established by the IPPC are reported inconsistently or not at all, in particular information relating to trade e.g. import requirements, pest lists etc.;
- difficulties in implementing phytosanitary standards can be considered as limiting factors for developing countries to participate fully in international trade;
- there is a need for a mechanism to identify key areas / issues where assistance with ISPM implementation is required;
- there is a lack of compliance with PRA, reporting and surveillance
- effective implementation of ISPMs is often facilitated by the national regulations which are aligned with the IPPC
- compliance with the IPPC is often very difficult and there is a need for incentives
- is it possible to facilitate this process i.e. eliminate the obstacles
- compliance with IPPC provisions is an obligation but contracting parties only take account of the ISPMs i.e. they are not obligatory within the framework of the IPPC
- ISPMs have different legal implications for non-WTO members - how to deal with this different status?

The OEWG agreed that a compliance or system within the framework of the IPPC would be consistent with, and supportive of, the aims of the Convention, and that an ongoing monitoring system to provide the information that could be used to measure compliance was essential, a “facilitation process for compliance” being more efficient in the context than strong enforcement procedures.

As concerns compliance and dispute settlement, Mr. Chiaradia-Bousquet pointed out that those concepts share a common goal: to promote the objectives of a given agreement. They also have in common the fact that they permit the resolution of problems, through conciliation and consultation mechanisms. Nevertheless, while dispute settlement systems redress the consequences of a distorted situation, compliance mechanisms give parties not only the opportunity to redress a given situation but also a chance to avoid similar difficulties or inadequacies in the future. The development of a compliance mechanism could be based on Article XI.2.(g) and (h), and the Preamble of the IPPC which, i.a., reads: “The contracting parties, recognizing the necessity for international cooperation in controlling pests of plants and plant products and in preventing their international spread, and especially their introduction into endangered areas; ... desiring to ensure close coordination of measures directed to these ends...”

It was also stressed that FAO Governing Bodies would prefer to encourage compliance and that, in any case, there is no specific legal process to build a punitive mechanism under the IPPC. In addition, as the ISPMs are non-binding under the IPPC it would be very difficult to enforce.

Furthermore, experience in MEA treaties suggests a facilitative process would be most suited to a convention such as the IPPC, particularly where implementation is governed by trade. Under the IPPC it would also be more desirable to encourage and develop capacity and this could best be achieved through a facilitative process. Such a process would also avoid placing additional reporting burdens on contracting parties and would also be more cost effective in terms of impact than an enforcement process.

6. RECOMMENDATIONS OF THE OPEN ENDED WORKING GROUP

After careful consideration of the nature of compliance issues arising under the IPPC, the OEWG determined that, rather than a conventional compliance mechanism, a comprehensive implementation review and support system specifically designed to take account of the situation of the IPPC would best suit the need of contracting parties. This system builds on existing CPM activities which the OEWG considered efficient and cost effective. The OEWG considered capacity limitations to be the primary cause for lack of compliance with IPPC requirements and

implementation of ISPMs, therefore an assistance based and facilitative approach was determined to be more desirable than a mechanism that would include enforcement aspects.

The OEWG noted that although the legal obligations for contracting parties are different for IPPC and ISPMs, they are closely bound together and compliance support for both should be provided. Employing a facilitative approach allows the coverage of both the IPPC and ISPMs.

The IPPC dispute settlement procedure provided in Article XIII sets forth a process for the settlement of disputes between contracting parties. In contrast, the “*implementation review and support system*” proposed by the OEWG is designed to review and assess overall compliance with the convention, to provide compliance support to parties upon their request, and to promote full implementation of the IPPC on a forward looking basis. Therefore, the OEWG recognised the existing Dispute Settlement system as a complementary system to the following proposal.

The OEWG noted that a number of compliance issues addressed with this process specifically address concerns raised in the report of the Independent IPPC Evaluation, specifically the review of the state of plant protection in the world and the development of procedures to monitor the implementation of standards.

The term implementation as used in this document follows the definition used by UNEP:

Implementation – refers to, inter alia, all relevant laws, regulations, policies, and other measures and initiatives that contracting parties adopt and/or take to meet their obligations under a multilateral environmental agreement and its amendments if any.

6.1 Scope

The scope of the “*IPPC Implementation Review and Support System*” would cover both the IPPC and associated ISPMs. There are two components to this system comprising:

- an *implementation review system*, and
- an *implementation support system*.

The *implementation review system* has two key elements:

- i) active ongoing monitoring of IPPC reporting obligations (see Appendix 4);
- ii) triennial implementation review of additional national obligations under the IPPC.

The *implementation support system* would consist of an active “standard implementation support programme” in the form of a help desk available to all contracting parties.

The two components will be a source of data and information for developing a general report and associated action plans on compliance. These action plans will provide valuable input for strategic planning.

6.2 Objectives

The “*IPPC Implementation Review and Support System*” would further the objectives contained in the IPPC preamble which states “... to provide a framework for the development and application of harmonized phytosanitary measures and the elaboration of international standards to that effect.”

The objectives would include the:

- i) identification of the degree of compliance with the IPPC and ISPMs;
- ii) identification of barriers to compliance and underlying causes of non-compliance with the IPPC and ISPMs;
- iii) promotion of targeted technical assistance by relevant international organizations;

- iv) avoidance of non-compliance issues before they become disputes;
- v) responses on an ongoing basis to requests for advice on implementation difficulties; and
- vi) development of action plans to address specific issues that need action to promote the widest possible implementation and use of ISPMs.

6.3 Recommended Components

6.3.1 Active ongoing monitoring of IPPC reporting obligations

The OEWG recommended that the Secretariat of the IPPC monitors, on an ongoing basis, the fulfillment of reporting obligations by contracting parties undertaken through the IPP. In order to encourage contracting parties to fulfill their reporting obligations, the Secretariat would indicate the non-compliance of contracting parties in the IPP. The Secretariat would prepare an annual report on these activities for the CPM.

This would involve minimal additional work and would involve no additional reporting requirements for contracting parties.

6.3.2 Triennial review of the implementation of obligations other than reporting obligations

A *triennial review* will be undertaken to evaluate the implementation of other obligations contained in the IPPC. This will be done through a questionnaire developed to elicit data and information from contracting parties regarding compliance to the IPPC obligations, in particular to Articles IV, V, VII and VIII.

The questionnaire should be developed by the IPPC Secretariat, reviewed by the CPM Bureau and other experts including the SBDS, and approved for distribution to all contracting parties by the CPM Bureau. Data received should be compiled by the IPPC Secretariat and analysed by a specifically established triennial review group. The results of the analysis will be published in a report to be considered by the CPM.

The questionnaire should be as concise as possible to ensure work for contracting parties is kept to a minimum necessary to elicit the required information. This process would also incur some costs (administrative time costs) to RPPOs and NPPOs (this should not take more than 2 - 5 days to complete, and some countries will incur translation costs).

6.3.3 Implementation support system

The OEWG recommended the creation of an *ISPM implementation support system* for contracting parties that will link with the existing capacity building initiatives of the CPM and FAO.

The Secretariat would operate an IPPC Help Desk that would deal with:

- countries requesting assistance on the implementation of ISPMs;
- provision of advice relating to ISPMs (with assistance of the SBDS);
- monitoring, identification and reporting of compliance and implementation issues; and
- ensuring contracting parties requesting assistance are put in contact with potential funding sources.

When problems are perceived to be multi-lateral, workshops and seminars could be organised on a regional basis when appropriate.

The tasks of the help desk will be coordinated by a standards implementation officer already called for in the CPM Business Plan. Confidentiality would be ensured to protect trade sensitive information and encourage parties to seek necessary assistance.

The Secretariat would provide an annual summary report on Help Desk activities to the CPM.

6.3.4 A general report and associated action plans on implementation

Every three years a general report, including appropriate action plans, will be developed by the CPM Bureau for consideration by the SPTA and CPM. This report will be based on the following elements and inputs:

Implementation review

- i) report on the contracting parties complying with the IPPC reporting obligations – Secretariat;
- ii) report of the triennial review – Triennial Implementation Review Group;

Implementation support

- iii) report from the Help Desk – Secretariat;

Additional information sources

- iv) reports from TC amongst RPPO on implementation difficulties on ISPMs – Secretariat;
- v) summary input on compliance trends from the PCE – Secretariat; and
- vi) reports from other relevant international organizations e.g. WTO SPS Committee and CBD – Secretariat.

On the basis of this general report, future activities could be developed to enhance the implementation of the Convention and ISPMs for incorporation into the CPM work programme. These proposals are key input for IPPC strategic and technical assistance planning.

6.4 Potential benefits

Potential benefits include:

- i) a monitoring and compliance system as a means to monitor, encourage and support the harmonised implementation of the IPPC and its ISPMs by contracting parties;
- ii) providing a means to identify and address emerging and potential problems before they become disputes through an assistance-based and non-confrontational process;
- iii) a means to identify and focus on specific areas on which contracting parties may require assistance in implementing the provisions of the IPPC;
- iv) the application of international standards in a more harmonized way allowing protection against the spread of pests;
- v) identifying implementation problems that may require the revision of an ISPM;
- vi) enhancing information exchange on plant quarantines systems and quarantine pests; and
- vii) addressing a number of recommendations of the report of Independent IPPC Evaluation, specifically the review of the state of plant protection in the world and the development of procedures to monitor the implementation of standards.

6.5 Potential Disadvantages

The OEWG considered the potential advantages outweighed the disadvantages, which were considered only to include:

- i) partial reliance on the IPPC Trust Fund;
- ii) some administrative burden for some contracting parties; and potential trade-off issues with other IPPC work programme priorities.

6.6 Costs

The extra costs for the IPPC budget would be mainly for the review process. Costs incurred for the help desk would be expected to be from the IPPC Trust Fund or other sources.

6.6.1 **Active ongoing monitoring of IPPC reporting obligations**

This is seen as part of existing work programme for Secretariat, RPPOs and countries.

6.6.2 **Triennial implementation review** (costs would be spread over a 3 year cycle):

Secretariat – consultant	USD 10,000
Review group – one session.	USD 25,000
Translation – questionnaire & report	USD 10,000
Extending the CPM Bureau meeting	USD 10,000

6.6.3 **Implementation support system**

Additional person on Secretariat staff (IPPC trust fund) to deal with ISPM implementation / compliance. Half a P3 at USD 140,000 per annum. USD 70,000

SBDS to provide advice USD 5,000

Operational costs e.g.

- implementation manuals
- workshops (e.g. 2 standards per year) and capacity building
- travel (national capacity building and workshops)

Additional funding would need to be made available through the IPPC Trust Fund to ensure implementation assistance is possible for ISPMs (funding needed would vary depending upon the objectives and standard). This would build on existing CPM and FAO capacity building initiatives for the implementation of the IPPC and ISPMs.

Total Cost USD 130,000

6.7 Time frame

Due to the importance of promoting IPPC implementation as a key CPM function, and given the relatively straightforward implementation of the proposed process, the OEWG had consensus on presenting the report of the meeting to the SPTA in 2007 and not 2008 (as agreed by the CPM 2) as most of the recommendations are part of the adopted or planned work programme. This would allow the development of this programme a year earlier than initially planned and the first general report for CPM could be expected in 2010.

7. CLOSING

The Malaysian government was thanked by all participants for the very well organised meeting and hospitality during the week. This had contributed significantly towards the success of the meeting. The Chair thanked Ms Wan Normah and Mr Ho Haw Leng in particular, and their team, for their hard work in organizing the meeting and ensuring all funded participants arrived as planned. Dato Sofian Mohd. Salleh was thanked for allowing the IPPC to hold a meeting once again in Malaysia and for hosting the dinner on Tuesday evening. He also thanked Ms Hindman and Mr Chiarada-Bousquet for their valuable contributions as experts and resource persons, and noted this contributed significantly to the success of the meeting.

The Chair noted the systems recommended provided a means of reviewing the implementation of the IPPC and its standards and supporting contracting parties in their efforts in implementation. The systems did not set up expensive committees or mechanisms but made use of the present resources as much as possible. The final outcome of the systems was a worthwhile input into the Business plan in the form of action plans specifically designed to deal with implementation

problems. He noted that delegates hoped the proposals would be acceptable to the SPTA and the CPM.

After thanking all participants for contributions to the meeting and again the Malaysian government for their highly efficient organization of the meeting, Mr Hedley closed the meeting at 15:00 on Friday, 21 September 2007.

**Open Ended Working Group
on a
Possible IPPC Compliance Mechanism**

**18 - 21 September 2007
Kuching, Malaysia**

Provisional Programme

Date	Time	Activity
1st day 18 Sept. 2007 (Tuesday)		
Session I: <i>Opening</i>		
Chair: Host institution - Crop Protection and Plant Quarantine Division, Department of Agriculture		
	08:30- 09:00	Registration
	09:00-09:15	Opening: Host institution
	09:15-09:30	Opening: FAO / IPPC
	09:30- 09:45	Photo Session
	09.45-10.00	Organizational announcements
Tea/Coffee		
Session II: <i>Introduction and Background</i>		
Chair: Chair of the SBDS		
	10:45-11:15	Introduction of Participants (incl. brief summary of experience with compliance mechanism)
	11:15-11:30	Discussion of the meeting programme – Adoption of programme
	11:30-12:30	Background (including TORs) and purpose of meeting & feed back on the IPPC “Compliance” Questionnaire -- SBDS Chair
Lunch		
Session III: <i>Review compliance mechanisms used by other organizations</i>		
Chair: Chair of the SBDS		
	14:00-17:00	General review of experiences from other conventions and treaties <ul style="list-style-type: none"> • noting, in particular, encouragement or assistance mechanisms • noting, in particular, aspects of disciplinary mechanisms

2nd day 19 Sept. 2007 (Wednesday)		
Session IV: <i>Possible mechanisms for the IPPC:</i>		
Chair: Chair of the SBDS		
	09:00-10:30	<p>General review of experiences from other conventions and treaties</p> <ul style="list-style-type: none"> • noting, in particular, encouragement or assistance mechanisms • noting, in particular, aspects of disciplinary mechanisms <p>(Cont.)</p>
Tea/Coffee		
Session V: <i>Possible mechanisms for the IPPC: (cont.)</i>		
Chair: Chair of the SBDS		
	10:45-12:00	<p>Legal comment on inclusion of compliance systems within IPPC ambit</p> <p>Terms of reference as stated in Appendix I (CPM 2 Appendix 16)</p> <p>Discussion will include:</p> <p>Scope :</p> <ul style="list-style-type: none"> - relationship with respect to IPPC and ISPMs - encouragement or disciplinary mechanism Potential
Lunch		
Session VI: <i>Possible mechanisms for the IPPC: (Cont.)</i>		
Chair: Chair of the SBDS		
	14:00-17:00	<p>Terms of reference as stated in Appendix I (CPM 2 Appendix 16)</p> <p>Discussion will include :</p> <p>Objectives</p> <p>Potential benefits negative impacts</p>

3rd day 20 Sept. 2007 (Thursday)		
Session VII: <i>Output for the consideration of the SBDS and SPTA to include:</i> Chair: Chair of the SBDS		
	09:00 -10:30	Terms of reference as stated in Appendix I (CPM 2 Appendix 16) Discussion will include : IPPC relevant specialized structures Legal compatibility and relationship with the IPPC Dispute Settlement system
Tea/Coffee		
Session VIII: <i>Output for the consideration of the SBDS and SPTA to include (Cont.)</i> Chair: Chair of the SBDS		
	10:45-12:30	OEWG provide a summary of discussions based on the topics outlined above, and possibly including: 1. Justification for the IPPC adopting a compliance mechanism, noting advantages and disadvantages
Lunch		
Session VIII: <i>Output for the consideration of the SBDS and SPTA to include: (Cont.)</i> Chair: Chair of the SBDS		
	14:00-17:00	OEWG provide a summary of discussions based on the topics outlined above, and possibly including: 2. How to proceed i) further WGs for specific topics to develop an IPPC compliance mechanism ii) other options if appropriate iii) time scale for these developments iv) costs of such a system iv) Possible alternate mechanism/s should a compliance mechanism not be feasible or practical under the IPPC

4th day 21 Sept. 2007 (Friday)		
Session IX: <i>Output for the consideration of the SBDS and SPTA to include:</i>		
Chair:	09:00-10:30	Conclusions and recommendations from the meeting
Tea/Coffee		
Session X: <i>Output for the consideration of the SBDS and SPTA to include:</i>		
	10:45-12:30	Conclusions and recommendations from the meeting
Lunch		
Session XI: Closing		
	14.00 - 1700	Adoption of Report Closing Session

**OPEN ENDED WORKING GROUP
ON
A POSSIBLE IPPC COMPLIANCE MECHANISM**

18 - 21 SEPTEMBER 2007

KUCHING, MALAYSIA

**TERMS OF REFERENCE FOR THE OPEN-ENDED WORKING GROUP ON
COMPLIANCE**

The open-ended working group will:

1. Review mechanisms used by other organizations, including the benefits and costs for the promotion and implementation of compliance.
2. Explore the possibilities of such a potential compliance mechanism under the IPPC, including:
 - Scope
 - relationship with respect to IPPC and ISPMs
 - encouragement or disciplinary mechanism
 - Objectives
 - Potential benefits
 - Potential negative impacts
 - IPPC relevant specialized structures
 - if possible, an estimated resource cost
 - Legal compatibility and relationship with the IPPC Dispute Settlement system
3. Include persons with experience in other relevant compliance mechanisms.

The output of the open-ended working group will be considered by the SBDS and SPTA before submission to CPM-4 (2009).

Note: All the information available for this meeting will be posted on the IPP and delegates are encouraged to study the documentation before the meeting. Participants are encouraged to complete the questionnaire in order to focus discussions, and responses will be posted on the IPP before the meeting.

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A. REPORTING OBLIGATIONS UNDER THE IPPC

10.

- Pest reports (Articles IV.2 (b) & VIII.1 (a) & VIII.1 (c))
- Description of the NPPOs (Article IV.4)
- Phytosanitary restrictions, requirements and prohibitions (Article VII.2 (b))
- List of regulated pest lists (Article VII.2 (i))
- Emergency actions (Article VII.6)
- Official contact points (Article VIII.2)

B. SECRETARIAT INFORMATION

11. Provision of ISPMs, meeting reports, work programme activities, and other items of interest to ICPM Members and the general public.

C. ADDITIONAL INFORMATION

12. There is a large section of information that countries are not obligated to provide but may voluntarily provide because it would be of considerable use to other countries. This includes:

- phytosanitary diagnostics information (laboratories, experts, collections etc.);
- official pest risk analyses;
- technical and biological information (data sheets, databases, maps, pest lists etc.);
- treatments; and
- post-entry quarantine facilities.

13. Access to the information would be provided through the IPP, recognizing that a CD-ROM is periodically needed for countries with limited or no Internet access.

D. LINKS TO OTHER INFORMATION RESOURCES

14. The Working Group recommended that the IPP include links to other resources that are helpful to NPPOs (e.g. EcoPort, ProMed, CABI, etc.).

III. SPECIFIC RECOMMENDATIONS

15. The Working Group considered specific information exchange obligations in the Convention and recommended interpretations for the understanding and application of each as described below.

Pest reports (Articles IV.2 (b) & VIII.1(a))

16. An ISPM on pest reporting is under development and is expected to be submitted to the ICPM for adoption in 2002. The present draft recommends that countries meet their pest reporting obligations using a global system put in place by the (I)CPM. The Working Group recommends that the Secretariat, in the framework of the IPP, develop a template for reporting that can be used by member countries with or without Internet access. It was noted that recommendations on a reporting time limit should be included in this ISPM. This system could also be used for transmitting information on pest free areas.

Description of the NPPO (including organizations that act under the authority of the NPPO) (Article IV.4)

17. The meeting recommended that the description of the official plant protection organization according to Article IV.4 should also identify the organizations that act under the authority of the NPPO as provided in Article IV.2 (a-g).

Phytosanitary restrictions, requirements and prohibitions (Article VII.2 (b))

18. The Working Group recommended that all information on restrictions, requirements, and prohibitions be:

- made available in electronic format;
- available through national or RPPO websites and/or national Web pages within the IPPC website linked through IPP; and
- published in at least one FAO language (as noted in Article XIX.2(b)), preferably in English.

List of regulated pest (Article VII.2(i))

19. An ISPM on the preparation of lists of regulated pests is under development and is expected to be submitted to the ICPM for adoption in 2002. The Working Group recommended that countries supply the data according to the ISPM in the form of a link to a national or RPPO Website or in electronic format to the Secretariat. However, in view of the importance of the availability of such pest lists, the Working Group recommended that countries provide pest lists in the currently available format (preferably electronically) with the aim of moving toward an Internet-based format as soon as possible.

Emergency actions (Article VII.6)

20. The Working Group noted that descriptions for the concepts of emergency actions and emergency measures are under development. It recommended that Article VII.6 be understood to involve both actions and measures (refer also to Principle 14 in ISPM #1). While emergency actions are usually only reported to affected trade partners, emergency measures should be reported to the relevant trade partners, the Secretariat and RPPOs.

21. The Working Group noted the WTO system of emergency notification and suggested that the IPPC and WTO systems be considered together to avoid duplication. It recommended that the Secretariat provide a similar form and procedures for countries to use to notify emergency measures. It was proposed that this be used in the same manner as for pest reporting.

Official contact point (Article VIII.2)

22. The Secretariat has invited countries to identify their designated contact points in conformity with their obligations under the interim measures corresponding to Article VIII.2. The information is provided by the contracting party, i.e., the Ministry of Foreign Affairs or equivalent. Listings for contact points are managed, updated, and made available by the Secretariat.

IV. TECHNICAL ASSISTANCE PROGRAMME RECOMMENDATIONS

23. The Working Group noted the concerns of developing countries regarding aspects of information management, including:

- the need for up-to-date surveillance data on pest incidence to facilitate trade;
- PRA training, inspection;
- institutional framework (in particular a sustainable information system, sustainable financial mechanisms, feedback mechanisms, and dissemination and communication across sectors);
- Internet access combined with information technology training at minimum for every contact point
- diagnostic facilities and expertise at points of entry; and
- the lack of resources for adequate representation at relevant international meetings.

24. The Working Group also noted the benefits of cooperation, sharing information, and harmonizing phytosanitary measures on a regional and sub-regional basis.

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25. The Working Group highlighted the importance of institutional frameworks in the development and maintenance of plant health systems. This included factors such as communication with the public and commercial sectors, sustainable financing, etc.

Table 1. IPPC information exchange requirements already implemented

The following information exchange procedures have already been implemented by the IPPC Secretariat and are ongoing in nature.

Article	Responsible party	Function	Receiving parties	Medium / Languages	Status
VIII.2	Contracting party	Contact point for the exchange of information	Not specified	On paper in 5 languages On the Web in 3 languages	Implemented, ongoing Implemented, ongoing
XII.4(a)	Secretary	International standards	All contracting parties within sixty days of adoption	On paper and electronically in 5 languages On the Web in 3 languages	Implemented, ongoing Implemented, ongoing
XII.5	Secretary	Translations of international standards	Commission	On paper and electronically in 5 languages	Implemented, ongoing
XVII	Director-General of FAO	Adherence to IPPC	Contracting parties	On paper in one FAO language FAO Legal Office database	Implemented, ongoing

Table 2. IPPC information exchange requirements under development

The following information exchange procedures have already been initiated. Once implemented they shall all be ongoing in nature.

Article	Responsible party	Function	Receiving parties	Status / Possible Mechanism
IV.2(b) & VIII.1(a)	NPPO Contracting party	Pest reporting* Exchange of information on plant pests, particularly the reporting of the occurrence, outbreak or spread of pests that may be of immediate or potential danger	Not specified by the Convention, but should follow Commission procedures	Development of an ISPM on pest reporting, scheduled for possible adoption at ICPM 4 <i>Bilateral, regional or global mechanism need to be discussed and developed</i>
IV.4	NPPO	Description of NPPO and changes (as described in Art IV.2 (a-g))	Secretary	Secretariat to draft letter to NPPOs <i>Mechanism initiated</i>
VII.2 (f)	Importing contracting party	Significant instances of non-compliance with phytosanitary certification	Exporting or re-exporting contracting party	Development of an ISPM on non-compliance
	Exporting contracting party	Result of its investigation	Importing country on request	Scheduled for possible adoption at ICPM 3 <i>Bilateral communication only</i>
VII.2(i)	Contracting party	Lists of regulated pests	Secretary, RPPOs of which they are members, other contracting parties on request	Development of an ISPM
VII.6	Contracting party	Emergency action	Contracting parties concerned, Secretary, RPPOs of which the contracting party is a member.	Covered by the ISPM on non-compliance

Article	Responsible party	Function	Receiving parties	Status / Possible Mechanism
XII.4(c)	Secretary	Lists of regulated pests	All contracting parties and RPPOs	Scheduled for possible adoption at ICPM 4 Recommended as an interim action in its present format (electronically)
XIII.3	Director-General of FAO	Report of Dispute Resolution Committee	Contracting parties concerned	Rules of procedure for dispute resolution Scheduled for possible adoption at ICPM 3 <i>Director-General of FAO to implement</i>

* Art. IV 2(b) & VIII 1(a) were identified by Resolution 12/97 of the 29th FAO Conference and the meeting participants as requiring a high priority status for reporting to the Secretary.

Table 3. IPPC information exchange requirements that need no ICPM action

Article	Responsible party	Function	Receiving parties	Status
VIII.1(c)	Contracting party, to the extent practicable	Technical and biological information necessary for PRA	Other contracting parties	This deals with bilateral cooperation and no action is required by the ICPM. However, the proposed IPP may give access to any information which countries choose to provide

Table 4. IPPC information exchange requirements that need further consideration and possible discussion by the ICPM

The following information exchange obligations generated considerable discussion. The working group made the following recommendations for the text in the NRT of the IPPC that needed interpretation.

Article	Responsible party	Function	Receiving parties according to the Convention	Recommendations
IV.4	NPPO	Organizational arrangements for plant protection	Other contracting parties upon request	This requirement does not relate to the general structure of an NPPO (mentioned in the first sentence), but to organizational arrangements described in Article IV.2 & 3
VII.2(b)	Contracting party	Publish and transmit phytosanitary requirements, restrictions and prohibitions	Any contracting party or parties that they believe may be directly affected by such measures	The Working Group recommends that the Contracting Parties make phytosanitary requirements more widely available than in the past through inclusion in the IPP (available to all countries whether affected or not)
VII.2(c)	Contracting party	Rationale for phytosanitary requirements, restrictions and prohibitions	On request, to any contracting party	'Rationale' is understood to refer to compliance with the requirements stated in Article VI.1(a) and (b)

VII.2(d)	Contracting party	Consignments of particular plants or plant products to be imported only through specified points of entry	Secretary, RPPOs of which the contracting party is a member, all contracting parties which the contracting party believes to be directly affected, other contracting parties upon request	Recommend to the ICPM that this point is already covered by Art. VII.2(b) and this information should be reported as part of the information reported under VII.2(b)
VII.2(j)	Contracting party, to best of ability	Adequate information on pest status in order to support categorization of pests, and for the development of appropriate phytosanitary measures	Contracting parties, on request	Recommends the term 'pest status' is understood to be the same meaning as 'pest status' in ISPM #8. 'Categorization' is understood to refer to the differentiation of regulated and non-regulated pests. ISPM #6 provides guidance on what is meant by 'adequate' information
VII.6	Contracting party	Emergency action	Contracting parties concerned, Secretary, RPPOs of which the contracting party is a member	Clarification being provided in the ISPM on non-compliance. Additional clarification may be provided through the Glossary
VIII.2	Contracting party	Contact point for the exchange of information	Not specified	Recommends that designation is understood to be the official notification of the contact point to the IPPC Secretariat
XII.4(d)	Secretary	Phytosanitary requirements, restrictions and prohibitions	Not specified	Recommends that this paragraph be understood to refer to the phytosanitary requirements, restrictions and prohibitions of those countries wishing to use the IPPC Website for making available to other members. Other Members would use their own Websites (or their RPPOs) making their phytosanitary requirements, restrictions and prohibitions available