



**Report  
of the  
Fifth Meeting  
of the  
Subsidiary Body on Dispute Settlement  
(SBDS)**

**21 & 22 March 2007**

**Rome,  
Italy**

## **Fifth Meeting of the CPM Subsidiary Body for Dispute Settlement**

**Date:** 21 & 22 March 2007

**Present:** Mr Hedley (New Zealand – chairperson), Mr Jeong (Rep. Korea), Mr Katbeh-Bader (Jordan), Ms Gerritsen (The Netherlands), Mr Greifer (USA), Mr Lopian (CPM Bureau) and Ms Bast-Tjeerde (CPM Bureau), Ms Sarah Olembo (African Union), and Mr Nowell (Secretariat). Mr Kenmore (Secretary) and Mr Ivess (Secretariat: Coordinator) present for part of the first day.

**Not present:** Mr Moumen (Algeria) and Mr Rojas (Dominican Republic).

### **1. Opening of the Session and Welcome Address**

Mr Hedley opened the Fifth Session of the SBDS and welcomed everyone to Rome. Mr Kenmore was welcomed as the new Secretary to the IPPC.

### **2. Adoption of Agenda**

The agenda was adopted as it had been circulated (see Annex I).

### **3. Matters arising from the previous report**

The FAO Legal Office had provided input into the IPPC Dispute Settlement Manual before finalization and suggested that a footnote to the form for requesting “Advise on ISPMs” in the IPPC Dispute Settlement Manual was not necessary given the statements already present.

There are a number of issues arising from the 2006 SBDS report that the Secretariat has not addressed due to lack of resources e.g. promotion of IPPC Dispute Settlement system and a questionnaire on the status of compliance to the IPPC as requested by the SPTA in October 2006.

During discussions on the issues of a possible compliance mechanism for the IPPC, the meeting queried whether a compliance mechanism would only apply to the IPPC and not the ISPMs as they are not legally binding. A compliance mechanism may result in an opinion on a specific issue but, as is the case with Dispute Settlement under the IPPC, the decisions would not be legally binding and enforceable. The meeting generally felt that the OEWG on a possible compliance mechanism would need to investigate the inclusion of ISPMs. Mr Hedley thought the intention would be to address issues of inability to comply with the IPPC and ISPMs, rather than be judgemental on a particular case. It was felt all these options need to be investigated carefully before any decisions or recommendations are made to CPM. The general consensus of the SBDS was that compliance deals more about capacity of countries to comply, rather than the “disciplinary” approach for not complying i.e. a complementary system for technical assistance and capacity building. This process is seen as separate from the existing IPPC Dispute Settlement system. The meeting noted that compliance of the IPPC Secretariat and FAO with provisions of the IPPC should also be investigated.

The meeting adopted the 2006 SBDS report and requested that in future the report of the SBDS meeting be made available to the CPM the following week in order to improve transparency.

### **4. Report of IPPC Secretariat on Dispute Settlement Activities**

The FAO Legal Office has indicated that all phytosanitary related disputes brought to FAO and / or the IPPC Secretariat for advice or resolution should be recorded as being dealt within the framework of the IPPC Dispute Settlement system, and reported to the SBDS and CPM as appropriate. The meeting believed that a process should be developed so that a phytosanitary dispute entering through FAO is always referred to the IPPC Secretariat so as to maintain impartiality of FAO. The Secretariat

would then inform the SBDS and take the necessary action. It was noted that FAO may supply “Good Offices” within the framework of the IPPC Dispute Settlement system, if needed. The meeting also noted that according to agreed procedures, phytosanitary disputes can be initiated by one party only, the notification would then be fed into the formal IPPC system and it would need both parties involved from that stage onwards. The Secretariat needs to bring this to the attention of the CPM and the FAO permanent representatives (the meeting agreed this should be placed on the relevant FAO website for FAO permanent representatives).

All information distributed to the SBDS is completely confidential and will be placed on the IPP under password protection in the SBDS work area. The Secretariat will only provide a very general annual report to the CPM, but a detailed annual report will be made to the SBDS.

## **5. Promotion of the IPPC Dispute Settlement System**

5.1 Dispute Settlement Manual: This was finalised during 2006 after receiving comments from FAO Legal Office. Funding has been made available to translate and print these in Arabic and Chinese. However, the Secretariat will need to make funds available for French and Spanish translation and printing. It is expected this will be achieved before the end of May 2007.

5.2 Dispute Settlement Advocacy Document: Funding has been made available to translate and print these in Arabic and Chinese. However, the Secretariat will need to make funds available for French and Spanish translation and printing. It is expected this will be achieved before the end of May 2007.

The IPPC Dispute Settlement system will be a subject for discussion in an informal session (half day with OIE) at the next SPS Committee meeting in June 2007. Mr Lopian will make the presentation at the SPS Committee informal meeting on behalf of the CPM. The meeting agreed that it is essential that the IPPC Dispute Settlement Manual and Advocacy document be available in English, French and Spanish for this meeting.

## **6. Update on the Expert Rosters**

The Secretariat noted no nominations for experts had been received, nor was a call for experts made.

## **7. Advice on ISPMs**

The Secretariat noted no requests for advice had been received.

## **8. OEWG on Compliance**

The meeting discussed the planned OEWG on a possible compliance system for the IPPC and made the following comments and recommendations:

8.1 The Secretariat should request the FAO Legal Office whether or not it is possible to have a compliance mechanism under the IPPC. It is essential to get a response before the invitations are distributed. It is also necessary to get clarity from the FAO Legal Office if such a system would be compatible with the existing IPPC Dispute Settlement system.

8.2 The Secretariat noted that SBDS members need to assist the Secretariat with the organization of the planned OEWG meeting. Mr Jeong suggested that a questionnaire on issues relating to compliance to the IPPC be developed.

8.3 The meeting would be planned for 4 days.

8.4 Participants:

- ✓ The meeting decided SBDS members attend the OEWG.

- ✓ Two experts on compliance mechanisms should be invited. One of these could be a contributor to the paper on the compliance system of the ITPGR for food and agriculture. One other person with different experiences should be identified.
- ✓ Invite additional members e.g. Mr. Canale as chairperson of the PCE Technical Assistance Working Group to talk about implementation issues) and Mr. Day of CABI.
- ✓ All Contracting Parties and RPPOs are welcome to attend.
- ✓ RPPOs will be invited to make a 10 minute presentation.
- ✓ A relatively small amount of funding would be available through the IPPC Secretariat to support developing country participants, in order to ensure that appropriate developing country participation in this process.
- ✓ Invite representatives from Codex and OIE to attend the OEWG.

#### 8.5 Draft ToRs (see Annex II)

#### 8.6 Organizational arrangements for the OEWG meeting.

The SBDS proposed that the OEWG has three parts: review, possible mechanism and possible recommendations. The organizational arrangements are as follows:

##### *Part I: Review compliance mechanisms used by other organizations:*

- i) Need invited speakers to present experiences from other conventions and treaties (ensure they address cost). Obtain advice from Clive Stannard. Secretariat to undertake this work and the deadline for identifying speakers is 30 April 2007.
- ii) First draft of papers by invited experts by 31 May 2007 and to be finalised and distributed by 30 June 2007. Only invite 2 speakers due to resource constraints. At least half a day for this purpose.
- iii) Other organizations will be invited to contribute in writing if they want to do this.
- iv) List all relevant support documents on the IPP in the public area.
- v) Questionnaire (see Annex III)
  - to ensure feedback on other compliance mechanisms
  - to provide initial input on possible compliance requirements under the IPPC
  - structured in a similar way to agenda of the meeting
  - to help focus participants considerations on important issues

##### *Part II: Possible mechanisms for the IPPC:*

The SBDS examined the terms of reference as stated in CPM 2007/17 and decided to modify the ToRs as per Annex II. The ToRs were used to structure the second part of the OEWG. The areas to be covered include:

##### Scope

- relationship with respect to IPPC and ISPMs
- encouragement or disciplinary mechanism

##### Objectives

Potential benefits

Potential negative impacts

IPPC relevant specialized structures

Legal compatibility and relationship with the IPPC Dispute Settlement system

##### *Part III: Recommendations to the CPM to include:*

The SBDS believed the OEWG should provide recommendations for further action to the CPM through the SPTA in the area of compliance.

##### Option 1:

Justification for the IPPC adopting a compliance mechanism

How to proceed

- further WGs for specific topics to develop an IPPC compliance mechanism

Time scale for this development

## Costs of such a system

Option 2:

Possible alternate mechanism/s should a compliance mechanism not be feasible or practical under the IPPC

**9. Other business**

9.1 The SBDS considered CPM 2007/19 (Informal Working Group on Phytosanitary Capacity Evaluation Review of the CABI Analysis of the Application of the PCE Tool – paragraph 8, recommendation 5) and noted implementation monitoring is not seen as a function of the SBDS. Recommendation 5 fits in with the implementation recommendations from the IPPC Independent Evaluation.

9.2 The Chairperson noted the members for the Latin America and Caribbean region and African region had not attended the last 3 SBDS meetings.

9.3 CPM 2007/12 (Amendments to the ToRs and RoP for the SBDS) introduces changes to the RoP for the SBDS that would allow non-attending members to be replaced, and that replacement members could attend when regular members are not available to attend SBDS meetings. The SBDS welcomed the proposed changes and expected confirmation of the potential replacements would be undertaken during CPM-3 (2008).

9.4 The Secretariat currently has great difficulty adequately supporting the SBDS due to the lack of resources within the IPPC Secretariat.

9.5 Mr Hedley noted that the preliminary IPPC Evaluation Report does not adequately reflect the fact that the IPPC Dispute settlement process is in fact a *system* that provides more than one mechanism for settling disputes.

9.6 In regard to the proposed business plan (CPM2007/23) it was noted that under Goal Area 5.4 it is stated that the IPPC is supported by a compliance programme. The SBDS believed that this goal area would be more appropriately placed under Goal 7 dealing with issues still to be investigated.

**10. Closure**

The meeting was closed on 22 March 2007 at 15:00

**Annex I**

**SUBSIDIARY BODY ON DISPUTE SETTLEMENT**

**FIFTH MEETING**

**21 & 22 MARCH 2007**

**AG Meeting Room - B640  
ROME, ITALY**

**AGENDA**

1. Opening
2. Adoption of Agenda
3. Matters arising from the previous report
4. Report of IPPC Secretariat on dispute settlement activities
5. Promotion of the SBDS
6. Update on the Expert Rosters
7. Advice on ISPMs
8. OEWG on Compliance
9. Other business
10. Closure

## Annex II

### Draft Terms of Reference for the Open-ended Working Group on Compliance

The open-ended working group:

1. Will 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. Will decide whether or not to recommend to CPM-3, via the SPTA, that a mechanism for the promotion and implementation of compliance under the IPPC be adopted by the CPM.

4. Include persons with experience in other relevant compliance mechanisms.

**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.

**Annex III****OEWG Compliance Questionnaire****Question 1 (Review of Compliance and Systems):**

- a. What does compliance, as used in Multilateral Environmental Agreements (MEAs), mean to you and what benefits are there, and how do these relate to the IPPC, including specific benefits?
- b. Which of the compliance procedures have qualities you see useful for the IPPC?
- c. Are there any mechanisms in other compliance procedures that could be useful under the IPPC? Please describe.
- d. Are there current barriers to compliance with the IPPC and its standards?

**Question 2 (Scope):**

- a. What do you think the scope of an IPPC compliance mechanism might be?
- b. Should it encompass the IPPC and its standards?
- c. Should this include facilitative and/or disciplinary aspects?

**Question 3 (Objectives)**

- d. What do you see as the basic objectives of this system for the IPPC e.g. safer trade, implementation of the IPPC, environmental and biodiversity protection?
- e. What do you see as the possible benefits particularly for developing and least developing countries?
- f. What do you see as the possible negatives components (e.g. cost occurring to establish of a compliance mechanism)?

**Question 4 (Structures)**

- a. How could the IPPC implement such a compliance mechanism and what structure could it use?
  - compliance committee taking into account other MEAs
  - other specialised structures such as symposia or workshops?

**Question 5**

If you decide not to use a compliance mechanism, what other systems/ methods could be used to encourage the implementation of the IPPC and its standards?

**Annex IV****LIST OF PARTICIPANTS**

<p><b>Mennie Gerritsen</b> Senior Staff Officer Phytosanitary Affairs Plant Health Division Ministry of Agriculture, Nature Management and Fisheries P.O. Box 20401 2500 EK The Hague The Netherlands Tel: +31-70-3785782 Fax: +31-70-3786156 Email: <a href="mailto:m.j.gerritsen@minlnv.nl">m.j.gerritsen@minlnv.nl</a></p>	<p><b>John Greifer</b> Director, Trade Support Team Department of Agriculture Animal and Plant Health Inspection Service International Services 1400 Independence Av. S.W. Washington D.C. 20250 USA Tel: +1-202-7207677 Fax: +1-202-6902861 e-mail: <a href="mailto:john.k.greifer@usda.gov">john.k.greifer@usda.gov</a></p>
<p><b>John Hedley</b> Principal Advisor Biosecurity Coordination - International Ministry of Agriculture and Forestry P.O. Box 2526 Wellington Tel: +64-4-8940428 Fax: + 64-4-8940731 e.mail: <a href="mailto:john.hedley@maf.govt.nz">john.hedley@maf.govt.nz</a></p>	<p><b>Mohammad Katbeh-Bader</b> Assistant Director Plant Protection Division Ministry of Agriculture P.O. Box 961043-2099 Amman Tel: +962-6-5686151 Fax: +962-6-5686310 e-mail: <a href="mailto:katbehbader@moa.gov.jo">katbehbader@moa.gov.jo</a></p>
<p><b>Young-Chul Jeong</b> Deputy Director International Quarantine Cooperation Div. National Plant Quarantine Service Ministry of Agriculture &amp; Forestry 433-1, Anyang 6-dong, Manan-Gu Anyang-City, Gyeonggi-Do 430-016 The Rep. of Korea Tel: +82-31-446-1926 Fax: +82-31-445-6934 E.Mail: <a href="mailto:ycjeong@npqs.go.kr">ycjeong@npqs.go.kr</a></p>	
<p><b>IPPC Secretariat</b></p> <p><b>David C. Nowell</b> IPPC Secretariat FAO-AGPP viale delle Terme di Caracalla 00153 Rome Italy Tel.: +39-06-57052034 Fax.: +39-06-5705 4819 E-mail: <a href="mailto:Dave.Nowell@fao.org">Dave.Nowell@fao.org</a></p>	<p><b>Richard Ivess</b> Coordinator: IPPC Secretariat FAO-AGPP viale delle Terme di Caracalla 00153 Rome Italy Tel.: +39-06-5705 3588 Fax.: +39-06-5705 4819 E-mail: <a href="mailto:Richard.Ivess@fao.org">Richard.Ivess@fao.org</a></p>

<p>Peter <b>Kenmore</b>  Secretary: IPPC Secretariat  FAO-AGPP  viale delle Terme di Caracalla  00153 Rome  Italy  Tel.: +39-06-5705 2188  Fax.: +39-06-5705 4819  E-mail: <a href="mailto:Peter.Kenmore@fao.org">Peter.Kenmore@fao.org</a></p>	
<p><b>CPM Bureau</b></p> <p>Ralf <b>Lopian</b>  Senior Adviser  Food and Health Department  Ministry of Agriculture and Forestry  P.O. Box 30  00023 Helsinki  Finland  Phone: +358 9 16052449  Fax: +358 9 16052443  E-mail: <a href="mailto:ralf.lopian@mmm.fi">ralf.lopian@mmm.fi</a></p>	<p>Reinouw <b>Bast-Tjeerde</b>  Adviser  Canadian Food Inspection Agency  59 Camelot Drive  Ottawa, Ontario K1A 0Y9  Canada  Phone: +1 613 2214344  Fax: +1 613 2286602  E-mail: <a href="mailto:rbast@inspection.gc.ca">rbast@inspection.gc.ca</a></p>
<p><b>Observer</b></p> <p>Sarah <b>Olembo</b>  Senior Policy Officer- SPS issues for Africa  Department of Rural Economy and Agriculture  African Union,  Box 3243  Addis Ababa  Ethiopia  Tel.: +39-06-570 55480  Fax.: +39-06-570 53057  E-mail: <a href="mailto:OlemboS@africa-union.org">OlemboS@africa-union.org</a>;  <a href="mailto:ahono_olembo@yahoo.com">ahono_olembo@yahoo.com</a></p>	