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International legal framework for phytosanitary protection: obligations and responsibilities under the IPPC

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The purpose of this presentation is to introduce the international regulatory framework for plant protection, taking into consideration the Agreement on Sanitary and Phytosanitary Measures approved in the framework of the World Trade Organization (hereinafter the SPS Agreement), as well as the International Plant Protection Convention (hereinafter the IPPC). To conclude, we will briefly summarize how countries implement the IPPC in their national plant protection legislation. In the interest of time, this presentation will not provide an exhaustive explanation of all the elements included in the IPPC and its international standards for phytosanitary measures (ISPMs), but just a quick revision of key principles that countries should take into consideration to draft their national phytosanitary legislation. The presentation does not enter into some aspects of the IPPC such as the establishment of regional plant protection organizations that are exhaustively covered by other speakers.

International regulatory framework for phytosanitary protection

The main international obligations for states with regard to the protection of plants and the natural environment from the negative effects of pests derive from the WTO SPS Agreement and the IPPC.

The SPS Agreement aims to facilitate trade by preventing the use of sanitary and phytosanitary measures as disguised barriers to international trade. WTO members can apply phytosanitary measures to achieve their desired level of phytosanitary protection as long as these measures are applied only to the extent necessary to protect plant and environmental health, and comply with a number of principles, which will be explained in detail. The SPS Agreement refers to the standards approved in the framework of the IPPC as international reference standards for plant protection.

Together with the SPS Agreement and the IPPC, the Convention on Biological Diversity (CBD) is also relevant for the trade of plants and plant products. The CBD imposes obligations on contracting parties with regard to invasive alien species. Article 8(h) of the CBD requires each contracting party to “prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species.” Since most invasive species can be categorized as plant pests, the CBD reinforces governments’ responsibility to address these threats under phytosanitary legislation.

The SPS Agreement

The SPS Agreement recognizes that countries have the right to define their desired level of sanitary protection and to adopt sanitary and phytosanitary measures to protect such status, as long as a number of principles are met.

Sanitary and phytosanitary measures must be based on a science-based risk analysis and be technically justified, proportional to the risk and not stricter than necessary to achieve their desired impact (principles of **technical justification, proportionality and necessity**). Countries

might be requested to demonstrate that these conditions are met. Article 5.7 recognizes the right of countries, in cases where relevant scientific evidence is insufficient, to “*provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information*” (...). In this case, members should “*seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time*”.

To facilitate this scientific justification and to foster global **harmonization** on sanitary and phytosanitary measures, the agreement recognizes the standards of three international standard setting organizations as reference for SPS matters (article 3 and Annex A). The measures included in the standards approved by these three organizations (the Codex Alimentarius, the OIE and the International Standards for Phytosanitary Measures (ISPM)) are considered science-based and not stricter than necessary to maintain the desired level of sanitary protection. Countries may decide to apply measures stricter than the international reference standards, as long as they can demonstrate that these measures are science-based, necessary to achieve their desired level of protection and applied in a proportionate and **non-discriminatory** manner.

For the implementation of the SPS Agreement, importing countries are obliged to accept the measures of other member states if the exporting country demonstrates that its measures achieve the importing country's desired level of protection (principle of **equivalence**). Because this desired level of phytosanitary protection can often be achieved in several manners, and if those alternatives are economically feasible and provide the same level of phytosanitary protection, governments should select those which are not more trade restrictive than necessary to meet their desired level of phytosanitary protection (principle of **minimal impact**).

The SPS is aimed at improving transparency in the implementation of sanitary and phytosanitary measures. Accordingly, SPS measures must be approved on the basis of an appropriate assessment of the actual risks involved, and, if requested, countries should make known what factors they took into consideration, the assessment procedures they used, and the level of risk they determined to be acceptable. The SPS Agreement further introduces obligations of notification and information sharing to other member countries and to the SPS secretariat, including notification of phytosanitary requirements, which may affect trade.

Finally, WTO members are admonished, where they apply phytosanitary measures as a condition for import of plants and plant products, not to arbitrarily or unjustifiably discriminate between countries with identical or similar phytosanitary status (principle of **non-discrimination**).

The IPPC

The IPPC was adopted in 1951 and revised twice, in 1979 and in 1997. The 1997 text (the “New Revised Text”) came into force in October 2005. The IPPC is a multilateral treaty whose main purpose is to secure “common and effective action to prevent the spread and introduction of pests of plants and plant products and to promote appropriate measures for their control”. The New Revised Text reflects the role of the IPPC as recognized by the SPS Agreement, which, as noted above, identifies the IPPC as the organization responsible for international phytosanitary standard-setting and promotes the harmonization of phytosanitary measures to facilitate trade.

The IPPC introduces a number of principles, some of which must be reflected in national legislation, such as the principle of state **sovereignty**, which recognizes the right of countries to use phytosanitary measures, including emergency measures to protect plant health and the environment from risk associated to plant pests. This principle is tempered by other principles such as the principle of **necessity**, which requires countries to adopt restrictive measures only when they are necessary for phytosanitary protection. The principles of **proportionality** and **minimum impact** require restrictive measures to have the least possible impact on international trade. Other important principles are **cooperation** among countries to prevent the introduction

and spread of pests, and **non-discrimination** between countries with the same phytosanitary status and, in the case of regulated pests within a country, between domestic and imported consignments.

As a multilateral treaty, the IPPC becomes binding for its contracting parties once it is adopted and ratified according to their constitutional systems. By virtue of its first article, contracting parties are also requested to adopt national legislation for the implementation of the IPPC in their territories. This legislation should apply not only to plant and plant products, but also to all materials, objects and organisms capable of harbouring or spreading plant pests (regulated articles).

Among the obligations included in the IPPC, by virtue of Article IV, contracting parties are requested to designate a national entity as a National Plant Protection Organization (NPPO), and to give this organization the legal mandate necessary to undertake a number of functions, including surveillance on growing plants, plant products and regulated articles. Countries must regulate the issuance of phytosanitary certificates and assurance of the phytosanitary security of consignments after certification, the approval of import requirements and conduction of pest risk analysis, inspection, and when necessary, disinfestation of consignments in international trade. Finally, countries are called to share of phytosanitary information with the IPPC and with other contracting parties.

The NPPO should verify that all exported plant, plant products and regulated articles comply with the import requirements of the country of destination and, to this purpose, they must issue a phytosanitary certificate following the model approved by the IPPC. Phytosanitary certificates are official documents and must be signed by a public officer.

Article VI on regulated pests recognizes the right of contracting parties to require phytosanitary measures for regulated pests (quarantine and non-quarantine pests), as long as these measures are not more stringent than the measures applied to the same pests if present within the territory of the importing contracting party (principle of non-discrimination); they are limited to what is necessary to protect plant health and/or safeguard the intended use, and can be technically justified by the contracting party concerned (principles of non-discrimination and technical justification).

Import requirements are regulated in Article VII, which recognizes the sovereign right of contracting parties to regulate the entry of plant, plant products and regulated items, including prohibiting restrictions of regulated pests and biological control agents. These measures must be based on phytosanitary considerations, pest risk analysis, sufficient technical justification and be notified.

The IPPC further recognizes the duty of contracting parties to cooperate by exchanging information on phytosanitary threats and by providing technical and biological support and participating in campaigns to combat pests that need action at the international level.

Contracting parties should also cooperate in the development and implementation of International Standards for Phytosanitary Measures (ISPMs) to be approved by the Commission on Phytosanitary Measures (Article X). As we mentioned, the ISPMs are recognized by the SPS agreement as the international reference standards for plant protection. Additionally, article X of the IPPC recognizes the duty of contracting parties to participate in the adoption and to implement ISPMs.

The 36 existing ISPMs are of very different nature, from general reference standards (such as ISPM 1 or 5) to very specific and technical standards prescribing concrete surveillance methods and treatments, such as ISPM 27. Depending on their nature, the ISPMs would have different effects and be implemented in a different manner in national legislation.

ISPM 1 recognizes and develops the content of the general principles embraced by the IPPC. These include (i) the principle of **sovereignty** of contracting parties to prescribe and adopt

phytosanitary measures; (ii) the principle of **necessity**: measures should be adopted only where necessary to prevent the introduction and/or spread of quarantine pests, or to limit the economic impact of regulated non-quarantine pests; (iii) the principle of **managed risk**, according to which contracting parties “shall institute only phytosanitary measures that are ... consistent with the pest risk involved ...” (Article VII.2(g)); (iv) the principle of **minimal impact**: contracting parties shall institute only phytosanitary measures that ... represent the least restrictive measures available, and result in the minimum impediment to the international movement of people, commodities and conveyances” (Article VII.2(g)); and (v) the principle of **technical justification** of phytosanitary measures “on the basis of conclusions reached by using an appropriate pest risk (...)” (Article II.1) parties shall not, under their phytosanitary legislation, take any of the measures specified in paragraph 1 of this Article [VII] unless such measures ... are technically justified.” (Article VII.2(a), Article VI.1(b)). IPSPM 1 also addresses the principles of transparency, harmonization, non-discrimination, cooperation and equivalence, among others.

Other relevant ISPMs for the purposes of this meeting are ISPM 6, on surveillance, ISPM 9, on pest eradication; ISPM 11 on pest risk analysis of quarantine pests; ISPM 14 on integrated measures for pest risk management and ISPM 29 on the recognition of pest-free areas and areas of low pest prevalence.

Implementation of the IPPC in national legislation

To conclude, we will provide a snapshot of how countries implement the IPPC and the ISPM in their national legislation. As we mentioned, contracting parties are obliged to implement the obligations in the IPPC and their ISPMs in their national legislation, and this implies an obligation to designate an NPPO with the functions included in Article IV of the IPPC. The NPPO should further receive the legal mandate (and capacity) to undertake risk assessment (through PRA) and risk management decisions, and could also contribute to risk communication. The NPPO should be legally responsible to implement the legislation, and should also find in legislation the inspection and enforcement powers necessary for this purpose. Countries may also want to take into consideration the impact of the obligations included in legislation through a regulatory impact assessment, including the socio-economic impact of specific phytosanitary measures.