



NAPPO

North American Plant Protection Organization
Organización Norteamericana de Protección a las Plantas

NAPPO Executive Committee Decision Sheet

D No. 6

Issue: A Dispute Settlement Mechanism for NAPPO countries

Background:

In order to resolve phytosanitary disputes among NAPPO member countries, a mechanism has been developed to facilitate a rapid, science-based resolution to such disputes.

Decision:

The NAPPO Executive Committee agrees to the establishment of a dispute settlement mechanism to be managed by the NAPPO Secretariat. For those phytosanitary disputes among NAPPO member countries which cannot be resolved through further bilateral discussions, NAPPO member countries may use the NAPPO Dispute Settlement Mechanism, approved on October 17, 2004.

Signed:

Gary Koivisto
Executive Committee Member
Canada

Date: Oct 17/04

Jorge Hernandez Baeza
Executive Committee Member
Mexico

Date: Oct. 17 / 04

Richard Dunkle
Executive Committee Member
United States

Date: 17 Oct 2004

NAPPO DISPUTE SETTLEMENT MECHANISM

1. INTRODUCTION

The North American Plant Protection Organization (NAPPO) has been one of the most active regional plant protection organizations in the development of phytosanitary standards. A number of international phytosanitary standards of the International Plant Protection Convention (IPPC) have been modeled after NAPPO regional standards.

Despite this success in the standard setting area, there remain frustrations in both public and private sectors in North America that the standards are not being adhered to. A number of bilateral irritants have been reported at NAPPO Annual Meetings for several years in a row. These issues for the most part have reached a standstill. Bilateral discussions may have broken down and the disputing parties may be reluctant to initiate a formal dispute settlement process under the Sanitary and Phytosanitary Committee of the North American Free Trade Agreement (NAFTA) or the World Trade Organization (WTO).

Following the NAPPO Annual Meeting in October of 2002, the Executive Committee agreed to investigate the possibility of establishing a rapid, low-cost dispute settlement mechanism within NAPPO.

More specifically, NAPPO member countries are seeking a mechanism to facilitate discussions between two or more members in circumstances where there are differing views on the science, risk assessment or risk management measures proposed or implemented by another member country. NAPPO member countries (hereafter referred to as the "parties") are encouraged to resolve disputes at a technical level wherever possible.

2. SCOPE

This mechanism is aimed primarily at evaluating the technical aspects of phytosanitary disputes.

Issues will be limited to those falling within the scope of the International Plant Protection Convention (IPPC) and its International Standards for Phytosanitary Measures and NAPPO Regional Standards for Phytosanitary Measures. The mechanism will complement but not duplicate the North American Free Trade Agreement processes by providing an option for settlement of phytosanitary disputes affecting trade.

3. OBJECTIVES

The objectives are:

to achieve a rapid, science-based resolution of potential and actual phytosanitary disputes by applying regional and international phytosanitary standards; and

to position NAPPO to carry out a more effective role under Articles 722 and 723 of the North American Free Trade Agreement (NAFTA).

4. AUTHORITY

Under Article 722.3(a), the NAFTA Committee on Sanitary and Phytosanitary Measures,, “shall, to the extent possible, in carrying out its functions, seek the assistance of relevant international and North American standardizing organizations to obtain available scientific and technical advice and minimize duplication of effort” and (b) “may draw on such experts and expert bodies as it considers appropriate”.

Under NAFTA Article 723.2, “Each party should use the good offices of relevant international and North American standardizing organizations, including those referred to in Article 713 (5) NAPPO, for advice and assistance on sanitary and phytosanitary matters within their respective mandates”. (Article 713 (5) refers to NAPPO) NAPPO is also recognized by the IPPC as the regional plant protection organization for Canada, Mexico and the United States.

The NAPPO dispute settlement mechanism does not replace the technical consultations cited under Article 723.3 of the NAFTA, nor does it constitute consultations under Article 2006 in the NAFTA chapter covering dispute settlement procedures. The NAPPO mechanism is meant to seek early resolution of problems in a streamlined dispute resolution process which would complement the NAFTA provisions.

Recommendations resulting from a NAPPO dispute settlement procedure are non-binding in nature. They will, however, be made available to the NAFTA-SPS Committee, upon request.

Participation in the NAPPO dispute settlement process does not prevent any of the parties from using the IPPC, NAFTA, WTO or other dispute settlement mechanisms for the same or any other phytosanitary matters.

5. INITIATING THE NAPPO DISPUTE SETTLEMENT MECHANISM

A NAPPO Executive Committee member provides a written request to the NAPPO Executive Director to initiate the mechanism and provides evidence that attempts to resolve the dispute bilaterally have failed. The notice must state the nature of the dispute and the claimant’s position. A commencement fee of \$5,000 U.S. must be provided to the NAPPO Secretariat by the initiating party. These funds will be used to offset that party’s portion of the costs related to the dispute settlement process.

The NAPPO Executive Director will verify that bilateral negotiations have taken place between the disputing parties. Parties will be required to provide detailed background information to the NAPPO Executive Director who will then prepare Terms of Reference for the dispute.

Another NAPPO member country may seek to join the process by written request and with the written agreement of the other two parties.

6. TERMS OF REFERENCE

The NAPPO Executive Director will prepare Terms of Reference for the dispute based on information provided by the two parties. Agreement to the Terms of Reference by the parties will be required before engaging the Independent Expert.

The Terms of Reference will include:

1. Identification of the issue(s);
2. Identification of the party initiating the dispute settlement mechanism;
3. Identification of the responding party;
4. Brief statement by the initiating party specifying points alleged to be in conflict with the interpretation or application of the IPPC, ISPMs or NAPPO Regional Standards for Phytosanitary Measures;
5. Position statement prepared by the responding party relevant to the issue
6. Expectations of the independent expert (re: report requirements and deadlines);
7. Means of presentation of information (documents and/or verbal presentations);
8. Distribution of costs;
9. Facilities required;
10. Administrative support arrangements, including whether/how proceedings are recorded; and
11. Timetable, including submission of information and presentation of report.

7. EXPERTS

7.1 Selection of an Independent Expert

In disputes in which only one independent expert is required, the Executive Director of NAPPO will provide a list of 3 names (if possible) of potential candidates to the disputing parties, preferably of persons not residing in, or citizens of, any of the countries in dispute. Each party shall have 10 days to remove one name from the list, number the remaining names in order of preference, and return the list to the NAPPO Secretariat. If a party does not respond within this time, all persons named therein shall be deemed to be acceptable to that party.

In disputes where knowledge of different disciplines may be required, the selection of more than one independent expert may be necessary. In such cases, the list of prospective candidates may be increased accordingly.

The independent experts must have a scientific/technical background relevant to the

dispute; independence from the issue at hand (no financial or other personal interest in the outcome of the dispute); and ability to serve in his/her capacity as an expert.

7.2 Country Contacts

Each party will designate one contact point to facilitate communication, data collection etc. by the independent expert.

7.3 Method of Work

The normal method of work will involve review and analysis of written documents by the independent expert. A meeting with country representatives should not normally be necessary. However, the independent expert will have free access to the designated representatives of the parties to clarify or request additional information. Oral presentations are an option if the independent expert feels that face-to-face meetings would facilitate the work. This would normally be done separately with each party.

7.4 Independent Expert Report

The Expert Report should include the following elements:

1. An Executive Summary
 2. Terms of Reference*
 3. An introduction*
 - identifying disputing parties;
 - stating background and issue(s) at dispute;
 4. A summary and analysis of the technical aspects of the dispute
 5. An assessment of compliance with the IPPC, ISPMs and NAPPO Regional Standards for Phytosanitary Measures;
 6. Conclusions and Recommendations; and
 7. An appendix listing documents and sources (if not confidential)
- (* Provided by the NAPPO Executive Director)

7.5 Acceptance of Expert Report

The report is submitted to the NAPPO Executive Director for verification that the Terms of Reference have been met. The independent expert prepares a final report taking into account comments by the NAPPO Executive Director. The final report is submitted to the NAPPO Executive Director for distribution to the disputing parties as the basis for renewed consideration of the matter out of which the disagreement arose.

8. FINANCIAL CONSIDERATIONS

Costs associated with a specific dispute settlement will be estimated by the NAPPO Executive Director. Each party will be expected to deposit one half of the estimated costs in an account established for this purpose, unless otherwise indicated in the Terms of Reference (see Section 6.8). Costs may include, among others: professional fees, and travel and subsistence for the independent expert and NAPPO Secretariat personnel involved in the process.

Costs will normally be shared equally by the disputing parties.

9. LANGUAGE

Documents may be submitted in English or Spanish. The NAPPO Secretariat will arrange for translation as necessary, within the financial resources made available for the dispute settlement. Interpretation services will be provided by NAPPO at the request of either party.

10. CONFIDENTIALITY

Parties are not required to submit confidential commercial information.

The independent expert will be required to sign confidentiality and impartiality statements.

There will be no stenographic record of any oral hearings.

An executive summary of the independent expert report will be made public. The full report will remain with the disputing parties. The report will be made available, on request, to the NAFTA-SPS committee. The independent expert will be required to sign a statement agreeing not to disclose any information related to the dispute.

11. COMMUNICATION

The main points of contact for the independent expert will be the designated representative of each party. The independent expert report will be released through the NAPPO Executive Director.

12. IMPLEMENTATION

Unless otherwise agreed by the parties, they will meet within three months of receiving the independent expert report to determine the actions necessary to implement the report recommendations.

13. DEADLINES

Approximate time limits for each stage of the process are provided in Appendix 1

14. REVIEW

This mechanism will be reviewed in 2 years or upon a request of a NAPPO Member Country.

Approximate timelines for the NAPPO Dispute Settlement Mechanism

1. Notice from claimant to NAPPO Executive Director to initiate the process
2. NAPPO Executive Director notifies the other party in writing and requests a written response. (one week)
3. Respondent provides written response to the NAPPO Executive Director (one month)
4. The NAPPO Executive Director prepares Terms of Reference for engaging an independent expert. (two weeks)
5. The NAPPO Executive Director seeks agreement of both parties on Terms of Reference (two weeks)
6. Expert selection process is undertaken and at the same time parties prepare documents for independent expert consideration (one month)
7. Expert analysis and report (3-6 months depending on the complexity of the issue and including translation)