

North American Plant Protection Organization (NAPPO) Executive Committee Decision Sheet

Issue: A phytosanitary Dispute Settlement Process for NAPPO member countries

Background:

To resolve potential phytosanitary disputes among NAPPO member countries, a process was developed in 2004 to support a science-based resolution for issues that cannot be resolved through bilateral discussions. The NAPPO Executive Committee approved the original phytosanitary Dispute Settlement Process (DSP) on 17 October 2004 and agreed that the NAPPO Secretariat would manage the DSP.

Due to the recently ratified North American Free Trade Agreement (known in Canada as CUSMA: Canada, United States and Mexico Free Trade Agreement, in the U.S. as USMCA¹: United States, Mexico and Canada Free Trade Agreement and in Mexico as T-MEC: Tratado de Libre Comercio entre México, Estados Unidos y Canadá) and hereafter referred to as New NAFTA, the NAPPO Advisory Management Committee updated the DSP.

Decision:

The NAPPO Executive Committee approves the amended version of the NAPPO DSP document on December 4, 2023



Steve Côté
Executive Committee Member
Canada

December 4, 2023

Date:



Francisco Ramirez y Ramirez
Executive Committee Member
Mexico

4 de diciembre 2023

Date:



Ibrahim Shaqir
Executive Committee Member
United States

12/4/2023

Date:

¹ New Agreement: <https://can-mex-usa-sec.org/secretariat/dispute-differends-controversias/index.aspx?lang=eng>

NAPPO PHYTOSANITARY DISPUTE SETTLEMENT PROCESS (DSP)

1. INTRODUCTION AND SCOPE

The North American Plant Protection Organization (NAPPO) has been one of the most active regional plant protection organizations (RPPO) in the development of Regional Standards for Phytosanitary Measures (RSPMs). Several International Standards for Phytosanitary Measures (ISPMs) of the International Plant Protection Convention (IPPC) have been modeled after NAPPO RSPMs.

Following the 2002 NAPPO Annual Meeting, the Executive Committee agreed to investigate the possibility of establishing a rapid, low-cost phytosanitary DSP within NAPPO to encourage and facilitate discussion in circumstances where there are differing views on the science, risk assessment, or risk management measures proposed or implemented by another NAPPO member country. However, NAPPO member countries, hereafter referred to as the “parties”, are encouraged to make every effort to avoid resorting to the DSP and instead resolve potential disputes at a technical level.

Even though there are other binding and non-binding² dispute settlement processes available through the Sanitary and Phytosanitary Committee (SPS Committee) of the New NAFTA³, the IPPC⁴, or the World Trade Organization’s (WTO) SPS Committee⁵, the NAPPO DSP provides a rapid and agile option to help resolve potential phytosanitary disputes in our region. Issues discussed during a NAPPO DSP are limited to those falling within the scope of the IPPC and its ISPMs, NAPPO RSPMs, and other NAPPO-relevant documents with a focus on demonstrating how adherence to standards and other documents can facilitate resolution of trade irritants.

2. OBJECTIVES

The objectives of the DSP are to support a science-based resolution of potential and actual technical disagreements of phytosanitary measures with trading partners by ensuring that the text of the IPPC, international phytosanitary standards (ISPMs), NAPPO regional phytosanitary standards (RSPMs), and other relevant NAPPO documents have been considered; and to position NAPPO to fulfill its role under Chapter 9, Article 9.17.3.i⁶ of the New NAFTA.

3. AUTHORITY

Chapter 9, Article 9.17.3⁶ indicates that the New NAFTA SPS Committee may serve as a forum “(i) to seek, to the extent practicable, the assistance of relevant international or regional organizations, such as NAPPO, to obtain available scientific and technical advice and minimize duplication of effort; and (j) to facilitate the development, as appropriate, of common principles, guidelines and approaches on matters covered by this (SPS) Chapter.” The IPPC recognizes NAPPO as the RPPO for Canada, the United States,

² binding vs. non-binding: “binding” is when something is legally enforceable, while “non-binding” does not involve any legal obligations. The outcomes of the NAPPO DSP and the IPPC DSP are non-binding. However, the recommendations and findings resulting from the dispute settlement process of the SPS Committees of both the New NAFTA and WTO become binding upon the parties to the dispute.

³ New NAFTA: <https://can-mex-usa-sec.org/secretariat/dispute-differends-controversias/index.aspx?lang=eng>

⁴ IPPC text: <https://www.ippc.int/en/about/convention-text/>

⁵ WTO: https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c7s1p1_e.htm

⁶ The Agreement: <https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/index.aspx?lang=eng>

and Mexico. In addition, Chapter 31, Article 31.5.6⁷ of the New NAFTA states, “Parties may decide at any time to voluntarily undertake an alternative method of dispute resolution, such as good offices, conciliation, or mediation.”

The NAPPO DSP does not replace the Technical Consultations cited under Chapter 9, Article 9.19⁷ of the New NAFTA, nor does it constitute Consultations under Chapter 31, Article 31.4⁷ covering Dispute Settlement. The NAPPO DSP is meant to seek the resolution of problems in a streamlined process that would complement the provisions set forth in the New NAFTA. Conclusions and recommendations resulting from the NAPPO DSP are non-binding. They may, however, be made available to the New NAFTA SPS Committee upon agreement by the parties involved.

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

4. *INITIATING THE NAPPO DSP*

The NAPPO Executive Committee has agreed to use the following process when initiating a dispute:

- The NAPPO Executive Committee member of the initiating party provides a written request to the NAPPO Executive Director (NAPPO ED) to initiate the DSP and confirms that attempts to resolve the phytosanitary dispute bilaterally have failed.
- The request must state the nature of the dispute and the initiating party’s position.
- The disputing parties must provide a commencement fee. Additional details on financial considerations are outlined in Section 7.
- The NAPPO ED confirms that consultations have taken place between the disputing parties.
- The disputing parties will be required to provide detailed background information to the NAPPO ED, who will then prepare the Terms of Reference (see Section 6).
- Another NAPPO member country may participate as a silent observer if written approval has been provided by the NAPPO ED and with prior written agreement of the disputing parties.

5. *EXPERTS*

5.1 *Selection of Experts*

To maintain neutrality, the disputing parties should strive to select experts from outside of the North American region.

The NAPPO ED, in consultation with the NPPOs of its member countries, will put together a list of three or more potential experts. The NAPPO ED will contact these experts and request a one-page cover letter and CV to confirm their expertise. Each disputing party will have ten business days to review the suggested experts, number their names in order of preference, and return the list to the NAPPO ED. If a disputing party does not respond within this time, all experts named shall be deemed acceptable to that party. The NAPPO ED will compile the order of preference of the experts from the disputing parties and place the two experts ranked the highest on the expert panel.

Should there be no agreement on the experts within twenty business days after the date of the

⁷ The Agreement: <https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/index.aspx?lang=eng>

identification of the proposed experts, the NAPPO ED, in consultation with the disputing parties, shall make the final selection of the expert panel by appointing the experts the NAPPO ED considers most appropriate.

In disputes where knowledge of different disciplines may be required, the selection of additional experts may be necessary. In such cases, the list of prospective candidates may be increased accordingly. In circumstances where the identification of experts outside of North America is inconclusive, the disputing parties may consider the selection of NAPPO regional experts.

The NAPPO DSP will use the following criteria for the selection of experts:

- a. All experts shall have a demonstrated scientific/technical background relevant to the subject of the dispute.
- b. All experts shall be independent, i.e., no financial or other personal interest in the outcome of the dispute.
- c. Experts shall serve in their individual capacities and not as government representatives nor as representatives on any organization. The disputing parties shall therefore not give them instructions nor seek to influence them as individuals with regard to matters of the DSP.
- d. At least one expert shall have knowledge and experience with the IPPC, ISPMs, and NAPPO RSPMs and associated documents; in cases where this expertise is lacking in the expert panel, the NAPPO ED can serve as an independent advisor in these matters.

Expenses incurred by experts, including travel, subsistence allowance, and professional fees, if applicable, shall be reimbursed by the NAPPO Secretariat using the funds provided by the disputing parties prior to the initiation of the DSP. The NAPPO ED should approve the planned expenses of experts before they are incurred.

6. TERMS OF REFERENCE AND REPORT

The NAPPO ED will prepare the Terms of Reference based on information provided by the disputing parties. Agreement to the Terms of Reference by the disputing parties will be required before engaging independent experts.

6.1. Outline of the Terms of Reference

The Terms of Reference will include:

- Description of the issue(s)
- identification of the party initiating the DSP
- identification of the responding party
- brief statement by the initiating party specifying points alleged to conflict with interpretation or application of the IPPC, ISPMs, NAPPO RSPMs, and other NAPPO relevant documents
- position statement prepared by the responding party relevant to the issue
- the number and type of experts required for the dispute
- expectations of the independent experts (e.g., report requirements, communications with NAPPO ED and deadlines)
- means of presentation of information (documents and/or verbal presentations)
- distribution of costs

- facilities required
- administrative support arrangements, including whether/how proceedings are recorded and if interpretation and translation of documents are necessary
- timetable, including submission of information and presentation of report.

6.2. Country Contacts

Each disputing party will identify one designated representative to facilitate communication, data collection, etc., by the independent expert/experts.

6.3. Method of Work

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

6.4. Independent Expert/Experts Report

The Report should include the following elements:

1. Executive summary
2. terms of reference*
3. introduction*
4. identification of disputing parties
5. name(s) of the independent experts**
6. stating background and issue(s) at dispute
7. analysis and summary of the technical aspects of the dispute
8. assessment of concordance with the IPPC, ISPMs, NAPPO RSPMs and other NAPPO relevant documents
9. conclusions and recommendations
10. appendix listing documents and sources (if not confidential)

* Developed and provided by the NAPPO ED

**The names of the independent experts will be included in the full report but should not otherwise be shared without prior written agreement of the disputing parties, the ED, and the independent expert(s)

6.5. Acceptance of Expert Report

The Report is submitted to the NAPPO ED for verification that the Terms of Reference have been met. The independent expert/experts prepare the Final Report considering comments by the NAPPO ED. The Final Report is submitted to the NAPPO ED for distribution to the disputing parties as the basis for renewed consideration of the matter out of which the disagreement arose.

7. FINANCIAL CONSIDERATIONS

To initiate the DSP, a non-refundable commencement fee of USD 7,500 will be paid by each disputing party. The NAPPO ED will estimate costs associated with a specific DSP in consultation with the identified experts. Each disputing party will then be expected to agree and deposit one-half of the remaining estimated costs into an account established by the NAPPO Secretariat for this purpose unless otherwise indicated in the Terms of Reference (see section 6). Costs paid for from these funds may include, among others, professional fees, travel, and subsistence for experts and/or for NAPPO Secretariat personnel involved in the DSP. These costs will be shared equally among the disputing parties. As stated above, any planned expenses must be approved in advance by the NAPPO ED.

8. LANGUAGE

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

9. CONFIDENTIALITY

The NAPPO member countries agreed that confidentiality is crucial to the DSP, noting the following:

- Parties are not required to submit confidential commercial information.
- The independent experts will be required to sign confidentiality and impartiality statements.
- There will be no stenographic record of any oral hearings.
- An executive summary of the final report will be made public by uploading it to the NAPPO website should there be agreement by the disputing parties. The final report will remain with the disputing parties.
- The final report will be made available, on request and by consensus of the disputing parties, to the New NAFTA SPS Committee.
- The independent expert/experts will be required to sign a statement agreeing not to disclose any information related to the dispute.

10. COMMUNICATION

The main points of contact for the independent expert/experts will be the designated representative of each disputing party. The final report will be released through the NAPPO ED.

11. IMPLEMENTATION

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

12. DEADLINES

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

13. REVIEW

The DSP will be reviewed every ten (10) years, when the free trade agreement is renegotiated, or upon a request of a NAPPO member country.

Appendix 1 – Timeline of the NAPPO Dispute Settlement Process

