

## **Questions regarding the practical use of the wood packaging mark in ISPM No. 15**

Secretariat of the IPPC, May 2004

### **Introduction**

The IPPC Secretariat has received numerous requests for information regarding practical aspects of how to use the wood packaging mark in ISPM No. 15 (*Guidelines for regulating wood packaging material in international trade*).

These questions relate to: the registration and use of the mark in the context of intellectual property issues; whether and under what conditions producers or others may use and apply the ISPM No. 15 mark; and the appearance of the mark, and whether particular reproductions of it proposed at the national level are in line with Annex II of ISPM No. 15.

Many of these questions about appearance can be answered by reference to specific provisions of the standard itself. In such cases, the Secretariat may note these provisions in response to individual requests. Examples of these types of questions are provided below.

For other questions, however, the standard does not appear to provide explicit guidance and issues of interpretation are raised. In this regard, it is emphasized that contracting parties, not the Secretariat, have the responsibility to interpret and implement the standard. Accordingly, while the Secretariat may in some cases identify factors for consideration based on the standard, it is up to the parties to determine whether they are in compliance with the standard. Input from the Secretariat should not be regarded as an official legal interpretation. Consistent with this, commercial users of this standard should contact the National Plant Protection Organization in their country to resolve questions that they might have.

Parts 4 – 9 below also provide information on other questions of a practical nature that have been put to the Secretariat regarding the implementation of ISPM No. 15.

### **1. Registration and use of the mark: intellectual property considerations**

FAO has indicated that ISPM No. 15 including the mark is available for use by all contracting parties to the IPPC and FAO members according to the IPPC and to relevant principles and standards. FAO has filed the application to register the ISPM No. 15 mark in many countries.

FAO considers that these facts provide sufficient authorization for the use of the mark by any user authorized by the National Plant Protection Organizations (NPPO). In accordance with ISPM No. 15, the NPPO needs to have a system in place to assure proper use of the mark.

FAO acknowledges that authorized users may, on their own responsibility, exercise any rights provided by applicable law on intellectual property protection to protect the mark. FAO also agrees that such authorized users may exercise any rights available to join in any infringement proceedings relating to the mark.

In light of the above, FAO considers that it is not necessary to have an individual license agreement to use the mark, unless required as a matter of national law. Also, the negotiation of such agreements would consume significant time and resources.

Other considerations relating to the registration of the mark may also be relevant. The report of ICPM-6 (available on the IPP website - <http://www.ippc.int>) contains further information in this regard, including on the status of the registration process.

## **2. Use of a mark by a producer of wood packaging material**

As noted above, the ISPM No. 15 mark may be used by any producer authorized by the NPPO in a country. Per Annex II of ISPM No. 15, the NPPO will assign a unique number to the producer of wood packaging material, who is responsible for ensuring that appropriately treated wood is used and properly marked. This unique number should be included on the mark, along with other information as set forth in Annex II of ISPM No. 15.

## **3. Appearance of the mark**

Annex II of ISPM No. 15 displays the model of the wood packaging mark and sets forth details regarding what it should include and how it should appear. Set forth below are some questions that have been received by the Secretariat by countries in this context.

### **3.1 Perimeter lines, and interior dividing line**

Some have asked whether the mark needs to include the perimeter lines shown in Annex II of ISPM No. 15, as well as the interior dividing line. In this regard, the following considerations may be noted:

- Annex II of ISPM No. 15 indicates that markings should be according to the model shown
- The mark shown includes perimeter lines and the interior dividing line.

Accordingly, a mark with the perimeter lines and the interior line is consistent with Annex II of ISPM No. 15. Whether a mark without such lines due to technical difficulties is consistent with the Annex would have to be determined by Parties.

### **3.2 Size of mark**

Some have asked how large the mark should be. In this regard, the following considerations may be noted:

- Annex II of ISPM No. 15 indicates that markings should be according to the model shown, legible
- Section 3.1 of ISPM No. 15 notes that the universally recognized, non-language specific mark “facilitates” verification during inspection
- There do not appear to be specific indications about precisely how large the mark should be.

In light of the above, it could be considered that there is no specific size set for the mark, but that it should be sufficient in size to be legible and to facilitate verification during inspection. For example, it should be large enough to enable the codes contained within the mark to be

read by a front-line inspector. The size of these codes and the IPPC symbol in relation to each other should be according to the model shown.

### **3.3 Variations in the form of the mark**

Several questions have asked whether parties may vary the form of the mark, for example to make it into the shape of a circle rather than the rectangular form in Annex II of ISPM No. 15. In this regard, the following considerations may be noted:

- Annex II of ISPM No. 15 indicates that markings should be according to the model shown
- The model shown is in the form of a rectangle, divided by an interior line.

In this light, it may be noted that the (rectangular) form provided in Annex II of ISPM No. 15 is that which was accepted by the parties, and is consistent with the Annex.

### **3.4 Internal layout of the codes and IPPC symbol**

Some questions have asked whether the codes and the IPPC symbol may vary from the internal layout indicated in Annex II of ISPM No. 15. For example, would it be acceptable to have a slight shift in the positions of the codes within the mark as compared to the model in Annex II of ISPM No. 15.

In this regard, Annex II of ISPM No. 15 indicates that markings should be according to the model shown. For the IPPC logo itself, the design and its proportion need to correspond to the design in the annex; otherwise, it will not be protected under intellectual property law. With respect to the layout of other elements of the mark (the country code etc.), while it is possible that a Party could accept very minor variations in this layout, as a general rule the layout should be according to the model shown. Any variations run the risk of being considered not in compliance with the standard.

### **3.5 Placement of the mark**

Several questions have asked where the mark should be placed on the wood packaging. In this regard, the following considerations may be noted:

- Annex II of ISPM No. 15 provides that markings should be in a visible location, preferably on at least two opposite sides of the article being certified, so that if some sides are hidden in stacking, a mark can still be seen
- Annex II of ISPM No. 15 provides that shippers should be encouraged to use appropriately marked wood for dunnage
- Section 3.1 of No. ISPM 15 notes the role of the mark in facilitating verification during inspections.

This suggests that the mark should be placed so it will be visible to inspectors and facilitate the inspection process. If inspection staff are not able to read the mark, the shipment could be rejected. As a practical matter, the number of markings may depend on the nature of the packaging. If wood packaging is loose, as is much of the timber used for dunnage, it might be appropriate for each item to be marked. Where component parts are likely to be used again, it might be appropriate for each component to be marked. How this should be interpreted in individual situations is, again, a matter to be determined by Parties.

### **3.6 Additional information on the mark**

Some have raised questions about whether additional information may be introduced on the mark, such as a logo of an NPPO. In this regard, it may be noted that:

- Annex II of ISPM No. 15 identifies information that the mark should include “at a minimum”
- Annex II of ISPM No. 15 states that other information may also be included provided it is not confusing, misleading, or deceptive.

In this light, additional information may be included within the mark; however, it should not be confusing, misleading or deceptive and the basic mark should remain legible. How this should be interpreted in individual situations is a matter to be determined by Parties.

## **4. Uncertainties regarding origin and phytosanitary status of material**

There have been questions about how to address uncertainties regarding, for example, the origin of certain pieces of wood packaging material (e.g. in re-used, recycled or re-manufactured material), and how to know whether all pieces have been treated.

Some of these issues may be considered in the context of an upcoming workshop on ISPM No. 15, per discussions at ICPM-6. In the meantime, it should be noted that Section 1 of ISPM No. 15 notes practical difficulties that might arise in, for example, determining the origin and phytosanitary status of wood packaging material.

Some have asked whether ISPM No. 15 calls for the elimination of all pests. In this context, Section 1 states:

“. . . For this reason, this standard describes globally accepted measures that are approved and that may be applied to wood packaging material by all countries to practically eliminate the risk for most quarantine pests and significantly reduce the risk from a number of other pests that may be associated with that material.”

How these terms are interpreted in practice is a matter to be determined by Parties.

## **5. Implementation by countries**

The IPPC Secretariat does not maintain data on actions relating to the implementation of ISPM No. 15 in individual countries.

However, NPPOs are encouraged to make available any official information, such as reproductions of their wood packaging mark, on the IPPC website (International Phytosanitary Portal [IPP]-<http://www.ippc.int>). This information can be published in the “News” section of the IPP and in the sub-section “NPPO”.

A number of countries have taken advantage of this facility. See: <http://www.ippc.int/IPP/En/news.jsp> At the moment, NPPO News contains data for several European countries, the USA, and Canada.

## **6. Determining the requirements of other countries**

NPPOs and commercial enterprises should contact the NPPOs of other countries to find out about their import requirements relating to wood packaging. The contact points for NPPOs are available on the IPP (<http://www.ippc.int>) under the heading NPPO.

## **7. Types of wood packaging covered by the standard**

Set forth below are two provisions of ISPM No. 15 relevant to the question of the types of wood packaging that are covered by the standard. How these apply in particular cases should be determined by Parties.

Section 2 of the standard provides as follows:

### **“2. Regulated Wood Packaging Material**

These guidelines are for coniferous and non-coniferous raw wood packaging material that may serve as a pathway for plant pests posing a threat mainly to living trees. They cover wood packaging material such as pallets, dunnage, crating, packing blocks, drums, cases, load boards, pallet collars, and skids which can be present in almost any imported consignment, including consignments which would not normally be the target of phytosanitary inspection.

Wood packaging made wholly of wood-based products such as plywood, particle board, oriented strand board or veneer that have been created using glue, heat and pressure or a combination thereof should be considered sufficiently processed to have eliminated the risk associated with the raw wood. It is unlikely to be infested by raw wood pests during its use and therefore should not be regulated for these pests.

Wood packaging material such as veneer peeler cores, sawdust, wood wool, and shavings, and raw wood cut into thin pieces may not be pathways for introduction of quarantine pests and should not be regulated unless technically justified.”

The definitions section defines “wood packaging material” as follows:

“Wood or wood products (excluding paper products) used in supporting, protecting or carrying a commodity (includes dunnage) [ISPM Pub. No. 15, 2002]”

## **8. Languages**

Standards are available in the official FAO languages (Arabic, Chinese, English, French, & Spanish) - these are available directly from <http://www.ippc.int/IPP/En/ispmp.jsp>.

If assistance is required with other languages, NPPOs should contact countries concerned directly. Their contact information can be found at: <http://www.ippc.int/IPP/En/nppo.jsp>. However, versions in non-official FAO languages are not considered official versions of the standard.

## 9. New treatments

Section 3.1 of ISPM No. 15 indicates that other treatments or processes for wood packaging material may be approved when it can be demonstrated that they provide an appropriate level of phytosanitary protection. It adds that the current measures identified in Annex I of ISPM No. 15 continue to be under review. It also notes that NPPOs should be aware that measures may be added or changed and should have sufficiently flexible import requirements for wood packaging to accommodate changes as they are approved.

Section 3.2 and Annex III of ISPM No. 15 identify other treatments/measures being considered for approval under ISPM No. 15. Section 3.4 of ISPM No. 15 provides that the approved measures specified in Annex I and the list of new measures under consideration in Annex III of ISPM No. 15 should be reviewed based on new information provided to the Secretariat by the NPPOs. It notes that the standard should be amended appropriately by the ICPM.

Accordingly, it is envisioned that any new treatments would have to be approved by the ICPM through the standard setting process.

The first meeting of the International Forestry Quarantine Research Group (IFQR) took place in Rome Feb 17-19, 2004. The IFQRG was asked by ICPM-5 to review certain data on treatments. This group is developing procedures for submitting new treatment proposals.

### Reference to other organizations

- WTO: refer to SPS: [http://www.wto.org/english/tratop\\_e/sps\\_e/sps\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/sps_e.htm)
- International Organization for Standardization (ISO): refer to : <http://www.iso.ch/iso/en/prods-services/iso3166ma/02iso-3166-code-lists/index.html> (as text file: <http://www.iso.ch/iso/en/prods-services/iso3166ma/02iso-3166-code-lists/list-en1-semic.txt> )