

立法會
Legislative Council

LC Paper No. CB(1) 288/09-10
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/08/2

**Bills Committee on
Genetically Modified Organisms (Control of Release) Bill**

**Minutes of fourth meeting
held on Tuesday, 27 October 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Members present : Hon Audrey EU Yuet-mee, SC, JP (Chairman)
Dr Hon Margaret NG
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan
Hon Tanya CHAN

Members absent : Hon WONG Ting-kwong, BBS, JP
Dr Hon LEUNG Ka-lau

Public officers attending : Environmental Protection Department

Mr Albert LAM
Deputy Director of Environmental Protection (2)

Mr Vincent TANG
Assistant Director (Nature Conservation & Infrastructure Planning)

Miss Vivien LI
Senior Administrative Officer (Nature Conservation)

Agriculture, Fisheries and Conservation Department

Mr C C LAY
Assistant Director (Conservation)

Mr Simon CHAN
Senior Conservation Officer (Biodiversity) (Atg)

Department of Justice

Ms Mabel CHEUNG
Senior Government Counsel

Miss Elaine NG
Government Counsel

Clerk in attendance : Miss Becky YU
Chief Council Secretary (1)1

Staff in attendance : Miss Kitty CHENG
Assistant Legal Adviser 5

Mrs Mary TANG
Senior Council Secretary (1)2

I. Confirmation of minutes

(LC Paper No. CB(1) 102/09-10 — Minutes of the meeting held on 8 October 2009)

The minutes of the meeting held on 8 October 2009 were confirmed.

II. Meeting with the Administration

(LC Paper No. CB(1) 133/09-10(01) — List of follow-up actions arising from the discussion at the meeting on 8 October 2009

LC Paper No. CB(1) 133/09-10(02) — Administration's response to CB(1) 133/09-10(01))

Relevant papers

(LC Paper No. CB(1) 2224/08-09(02) — Assistant Legal Adviser's letter dated 2 July 2009 to the Administration

LC Paper No. CB(1) 2224/08-09(03) — Administration's response to CB(1) 2224/08-09(02)

LC Paper No. CB(1) 2646/08-09(07) — List of follow-up actions arising from the discussion at the meeting on 13 July 2009

LC Paper No. CB(1) 2646/08-09(08) — Administration's response to CB(1) 2646/08-09(07)

LC Paper No. CB(1) 2646/08-09(09) — Assistant Legal Adviser's letter dated 31 July 2009 to the Administration

LC Paper No. CB(1) 2646/08-09(10) — Administration's response to CB(1) 2646/08-09(09))

2. The Bills Committee deliberated (Index of proceedings attached at **Annex**).
3. The Administration was requested to -
 - (a) refine the Chinese rendition of Clause 3(2)(a);
 - (b) advise whether the exemptions granted by Secretary for the Environment (SEN) under Clause 42 are subsidiary legislation, and whether consultation with the expert group and the public would be conducted in advance. To also explain the legal and practical effects of the other provisions of the Bill on the person(s), group(s) or genetically modified organism (GMO)(s) which are exempted from the application of Clauses 5, 7 and 23 of the Bill;
 - (c) advise the specific subsidiary legislation to be made under the Bill, and provide the relevant drafts to the Bills Committee, if available;
 - (d) consider including in Clause 43 the possible sectors from which members to the expert group might be appointed;
 - (e) consider the need for a new clause to provide for the requirement under Clause 46 for documentation in relation to the import and export of a GMO intended for direct consumption as food or feed or for processing, which was not a subject of control under the Bill according to Clause 7(1)(b); and
 - (f) include in the speech to be delivered by SEN at the Resumption of Second Reading debate on the Bill the policy intent that enforcement would mainly focus on the control of import of GMOs and target at large enterprises producing or using GMOs, and that members of the public (such as schools and hospitals) who might have inadvertently grown or kept GMOs would not be the target group of enforcement. To also include in the speech an undertaking that the gist of the operation manual for enforcement officers would be made available for public inspection, as well as a clarification on the powers of entry and inspection in relation to premises used exclusively as a dwelling house.
4. The Clerk was requested to consult members on the possible meeting slots in November 2009 for continuation of discussion on the Bill.

(Post-meeting note: After consultation with members and with the concurrence of the Chairman, the next two meetings would be held on 11 and 30 November 2009, at 8:30 am.)

III. Any other business

5. There being no other business, the meeting ended at 4:30 pm.

**Bills Committee on
Genetically Modified Organisms (Control of Release) Bill**

**Proceedings of the fourth meeting
on Tuesday, 27 October 2009, at 2:30 pm
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes</i>			
000001 - 000009	Chairman	The minutes of the meeting held on 8 October 2009 (LC Paper No. CB(1) 102/09-10) were confirmed.	
<i>Agenda Item II - Meeting with the Administration</i>			
000100 - 001259	Chairman Administration Mr KAM Nai-wai Miss Tanya CHAN	Members' request that the Administration's response to deputations views as set out in Annex A to LC Paper No. CB(1) 133/09-10(02) should be forwarded to the relevant deputations.	The Clerk to provide the relevant deputations with the Administration's response as set out in Annex A to LC Paper No. CB(1) 133/09-10(02).
001300 - 002259	Chairman Administration Miss Tanya CHAN	Discussion on the Administration's response to the list of follow-up actions arising from the discussion at the meeting on 13 July 2009 (LC Paper No. CB(1) 2646/08-09(08)). Chairman's request to include in clause 43 the possible sectors from which members to the expert group might be appointed.	The Administration to consider including in Clause 43 the possible sectors from which members to the expert group might be appointed.
002300 - 003250	Chairman Administration Miss Tanya CHAN	Administration's explanation on its response to the list of follow-up actions arising from the discussion at the meeting on 8 October 2009 (LC Paper No. CB(1) 133/09-10(02)). Discussion on Annex B regarding the contained use of genetically modified organisms (GMOs). Miss Tanya CHAN's enquiry on whether there was any difference between the Cartagena Protocol on Biosafety (the Protocol) and the Bill in respect of "contained use". ALA5's enquiry on the use of "physical barrier" in clause 3(2)(a) of the Bill rather than "physical structure" as adopted in Article 3(b) of the Protocol.	The Administration to refine the Chinese rendition of clause 3(2)(a).

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		<p>Administration's explanation that there was no significant difference between the Protocol and the Bill, except that "physical barrier" as used in the Bill was more readily understood as any physical means that could effectively limit the contact of GMOs with the environment.</p> <p>Discussion on the drafting of clause 3(2)(a).</p>	
003251 - 003710	Chairman Miss Tanya CHAN Administration	<p>Discussion on Annex C regarding the threshold on adventitious presence of GMOs.</p> <p>Administration's explanation -</p> <p>(a) threshold for adventitious presence of GMOs in materials intended to be used as food, feed or for processing (FFP) would be set at 5%. The threshold would be promulgated in the regulations to be made by the Secretary for the Environment (SEN) under clause 46(1)(a)(i);</p> <p>(b) zero tolerance for adventitious presence of GMO in seeds would be adopted; and</p> <p>(c) import of GMO-FFP was not subject to control according to clause 7(1)(b).</p>	
003711 - 004511	Chairman Dr Margaret NG Administration	<p>Dr Margaret NG's enquiry on the basis upon which the threshold of 5% for adventitious presence of GMOs in non-GMO-FFP was arrived at.</p> <p>Administration's explanation that the adventitious presence of GMOs in non-GMO-FFP was not uncommon, and that the adoption of a 5% threshold was considered an acceptable arrangement as Hong Kong was not an agricultural centre.</p>	
004512 - 005614	Chairman ALA5 Administration	<p>Chairman's concerns –</p> <p>(a) the Bill did not control the import of GMO-FFP, and hence there was no legal ground for setting a 5% threshold for non-GMO-FFP; and</p>	

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		<p>(b) amendment to the Bill might be needed if it was the Administration's intention to set a 5% threshold for non-GMO-FFP.</p> <p>Administration's response -</p> <p>(a) the import of GMO-FFP was not subject to control according to clause 7(1)(b); and</p> <p>(b) SEN would be empowered under clause 46(1)(a) to make regulations to require documentation for the import and export (I/E) of GMO-FFP.</p>	
005615 - 010324	<p>Chairman Ms Cyd HO Administration Dr Margaret NG ALA5</p>	<p>Ms Cyd HO's concerns -</p> <p>(a) the 5% threshold was too high and should be lowered to 3% as in the case of South Korea; and</p> <p>(b) the requirements of documentation under clause 46(1)(a) would only apply to I/E of GMO-FFP, and should have no relevance to the proposed 5% threshold for non-GMO-FFP.</p> <p>Administration's explanation -</p> <p>(a) there were cost and manpower implications in tightening the adventitious presence of GMOs in non-GMO-FFP from 5% to 3%;</p> <p>(b) the Bill was meant to control I/E of GMOs which were intended for release into the environment and not GMOs intended for FFP; and</p> <p>(c) documentation would be required for I/E of non-GMO-FFP containing more than 5% GMOs. Spot-check would be carried out to ensure compliance.</p>	
010325 - 013040	<p>Chairman Administration Ms Cyd HO Dr Margaret NG ALA5</p>	<p>Chairman's reiteration -</p> <p>(a) while approval was required for GMOs intended for release into the environment, this was not applicable to I/E of GMO-FFP;</p>	<p>The Administration to consider the need for a new clause to provide for the requirement under clause 46 for documentation in relation to I/E of a GMO intended</p>

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		<p>(b) there was no provisions for the 5% threshold for GMOs in non-GMO-FFP nor penalties for exceeding the threshold; and</p> <p>(c) given that GMO-FFP was not subject to control under the Bill, it would be necessary for the Administration to spell out clearly the requirement for documentation in relation to I/E of GMO-FFP. Otherwise, this could not form part of the regulations to be made under clause 46 of the Bill.</p> <p>Dr Margaret NG's views that unless the Bill had provided for documentation in relation to I/E of GMO-FFP, the Secretary could not be empowered to make regulations to stipulate such requirement.</p> <p>Administration's explanation -</p> <p>(a) the purpose of the Bill was to extend the Protocol, which aimed to control the release of GMOs into the environment, to Hong Kong;</p> <p>(b) the Bill was not intended to control GMO-FFP; and</p> <p>(c) the requirement for documentation in relation to I/E of GMO-FFP, GMO for contained use and GMO for release was mainly for identification and enforcement purposes, which were ancillary and incidental to the purpose of the Bill, and could be included in the regulations.</p>	<p>for direct consumption as food or feed or for processing, which was not a subject of control under the Bill according to clause 7(1)(b).</p>
013041 - 013621	Chairman Administration Ms Cyd HO	<p>Discussion on the threshold on the adventitious presence of GMOs in non-GMO-FFP and in seeds.</p> <p>Administration's explanation -</p> <p>(a) the proposed threshold of 5% for adventitious presence of GMOs in non-GMO-FFP reflected a pragmatic and realistic level for the Administration to manage the possible risks to biological diversity;</p>	

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		<p>(b) the 5% threshold was also adopted in some overseas countries such as Japan and Thailand; and</p> <p>(c) the Administration would keep abreast of the latest control on adventitious threshold for GM seeds, and ensure that the relevant requirements were in line with those of the Protocol and standards recommended by the International Seed Federation.</p>	
013622 - 014808	Chairman Dr Margaret NG Administration	<p>Discussion on Annexes D and E regarding the enforcement plan, promotion of public awareness and enforcement powers.</p> <p>Dr Margaret NG's requests -</p> <p>(a) the Administration should uphold the policy intent that enforcement would mainly focus on the control of import of GMOs and target at large enterprises producing or using GMOs, and that members of the public (such as schools and hospitals) who might have inadvertently grown or kept GMOs would not be the target group of enforcement.;</p> <p>(b) efforts should be made to promote public awareness on the control of release of GMOs into the environment;</p> <p>(c) the operation manual for enforcement officers should be made available for public inspection; and</p> <p>(d) need to clarify the powers of entry and inspection in relation to premises used exclusively as a dwelling house.</p> <p>Administration's response -</p> <p>(a) public education on the control of release of GMOs would be stepped up;</p> <p>(b) the gist of the operation manual for enforcement officers would be set out in information pamphlets; and</p>	<p>The Administration to include in the speech to be delivered by SEN at the Resumption of Second Reading debate on the Bill the policy intent that enforcement would mainly focus on the control of import of GMOs and target at large enterprises producing or using GMOs, and that members of the public (such as schools and hospitals) who might have inadvertently grown or kept GMOs would not be the target group of enforcement. To also include in the speech an undertaking that the gist of the operation manual for enforcement officers would be made available for public inspection, as well as a clarification on the powers of entry and inspection in relation to premises used exclusively as a dwelling house.</p>

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		(c) the purpose for which the premises were used would be the determining factor in considering whether the premises were only used for dwelling purpose.	
014809 - 015920	Chairman Dr Margaret NG ALA5	<p>Discussion on the scope of exemption</p> <p>Administration's explanation -</p> <p>(a) unintentional release of GMOs into the environment would not be caught under the Bill;</p> <p>(b) consideration would be given to exempting locally grown GM papayas as these would unlikely affect the biodiversity in Hong Kong; and</p> <p>(c) SEN was empowered under clause 42 to grant exemptions from application of clauses 5, 7 and 23.</p> <p>ALA5's enquiry on the implications of other provisions of the Bill (e.g. whether clause 8 on application for approval of GMOs for release into the environment would apply to GM papayas if these were exempted by virtue of clauses 5, 7 and 23).</p>	The Administration to advise whether the exemptions granted by SEN under Clause 42 were subsidiary legislation, and whether consultation with the expert group and the public would be conducted in advance.
015921 - 020200	Chairman Ms Cyd HO Administration	Schedule of meetings.	