

**For discussion on
30 March 2009**

Legislative Council Panel on Environmental Affairs

**Proposed Extension of the Convention on Biological Diversity and the
Cartagena Protocol on Biosafety to Hong Kong**

INTRODUCTION

This paper seeks Members' views on the proposal to extend the Convention on Biological Diversity ("the Convention") and the Cartagena Protocol on Biosafety ("the Protocol") to Hong Kong, for better protection of biological diversity by controlling the trans-boundary movement of living modified organisms (LMOs)^{Note 1} intended for release into the environment.

BACKGROUND

The Convention

2. The Convention was adopted at the 1992 Earth Summit on Sustainable Development and came into operation on 29 December 1993. It provides a comprehensive approach to the conservation of biological diversity, and sets overall goals and general obligations. Conservation of biological diversity can be achieved by various measures by the Parties. There are currently over 190 Parties to the Convention, including China but the Convention has yet to be extended to Hong Kong.

The Protocol

3. The Protocol was adopted under the Convention in 2000 to provide for the safe transfer, handling and use of LMOs that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, with specific focus on trans-boundary movements of LMOs. The Protocol seeks to protect individual Parties from potentially adverse impacts of imported LMOs on their biological diversity through the regulation of import and

^{Note 1} Living modified organisms (LMOs) means any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology. LMOs may cover a variety of food crops (e.g. tomatoes, rice grains and soya beans), seeds, live fish etc. They however, do not include living organisms with genetic materials altered through traditional breeding and selection techniques (e.g. Hybrid Rice and Golden Sweet Corn).

export of LMOs which are intended to be released to the environment. The Protocol came into force on 11 September 2003. There are currently over 150 Parties to the Protocol including China.

4. The main objective of the Protocol is to protect biological diversity from possible adverse impacts arising from trans-boundary movement of LMOs intended for release to the environment, which mainly involves commercial farming or field trials of scientific researches. The Protocol requires Parties to the Protocol to adopt an Advance Informed Agreement (AIA) procedure under which the exporting party needs to have the explicit consent of the importing party before an LMO is to be exported for the first intentional introduction into the environment at the importing end. The notification made by the exporting party shall be accompanied by a risk assessment report prepared according to the Protocol's requirements with the objective of assisting the importing party to decide whether the importation should be allowed.

5. The AIA procedure does not apply to LMOs in transit or trans-boundary movement of LMOs intended for direct use as food or feed, or for processing (FFP), or for contained use. However, the exporting party is still required to produce documentation to accompany these LMO shipments which are intended for direct use as FFP so as to clearly state that they contain or may contain LMOs and are not intended for release to the environment. The documentations accompanying LMOs for contained use or LMOs in transit shall clearly identify them as LMOs and shall specify the requirements for their safe handling, storage, transport and use.

EXTENSION OF THE CONVENTION AND PROTOCOL TO HONG KONG

6. Our existing nature conservation policy and measures are generally in line with the objectives and requirements of the Convention. The only major area in the Convention that would need our further examination is how to develop appropriate measures to meet the requirements for regulating, managing, or controlling the risks associated with the use and release of LMOs. The Convention and the Protocol cannot be extended to Hong Kong unless we have appropriate measures to meet the specific requirements of the Protocol.

7. The Convention and the Protocol are important international agreements on protection of biological diversity and global sustainable development. The extension of the Convention and the Protocol to Hong Kong will demonstrate Hong Kong's commitment in cooperation with the international community to protect the natural environment. Moreover, Hong Kong, as an international city, is expected to share similar international obligations relating to the protection and sustainable use of biological diversity. We also need to follow the Protocol's requirements where our trading partners have joined the Protocol.

THE LEGISLATIVE PROPOSAL

8. To extend the Convention and the Protocol to Hong Kong, we need to enact a new piece of legislation. The legislative proposal will largely follow the requirements in the Protocol. Key elements are -

- (a) To stipulate that no person should release any LMO, or import any LMO for the purpose of releasing it, into the environment unless it is an approved LMO listed in a register. Having regard to the Protocol provisions, these restrictions would not apply to LMOs in transit, LMOs for direct use as FFP, or for LMOs that are pharmaceuticals for humans;
- (b) To establish a mechanism for applying to the Director of Agriculture, Fisheries and Conservation (DAFC) for approval of an LMO for release into the environment;
- (c) To establish Expert Groups comprising experts from the academic field, industry and non-governmental organisations to advise DAFC on matters related to the operation of the proposed legislation, including approval of applications received;
- (d) To stipulate the requirements over the export of LMOs to places outside Hong Kong for release into the environment;
- (e) To establish a public register containing information on applications received, decisions made, and any other information relating to the enforcement of the proposed legislation;
- (f) To empower authorised officers with powers for the enforcement of the proposed legislation;
- (g) To empower the Secretary for the Environment to make subsidiary legislation with respect to the control regime, such as to stipulate the requirements on the provision of documentation on trans-boundary movement of LMOs, covering that of LMOs for release into the environment, LMOs for FFP and LMOs for contained use; and
- (h) To provide transitional arrangement within a certain period of commencement of the legislation.

PUBLIC CONSULTATION

9. In 2004, the Government consulted the relevant stakeholders and the general public on the proposed extension of the Convention and the Protocol to Hong Kong, and on the framework of a proposed legislation for the implementation

of the Protocol. Noting that the provisions under the proposed legislation were in line with international requirements and equally applied to their trading partners in overseas jurisdictions, local traders had no objection to the proposed legislation. Green groups in general welcomed the proposal. In 2003 and 2005, the Government also consulted the Legislative Council Panel on Environmental Affairs on the proposed extension of the Convention and the Protocol, and members had no objection to it.

10. Having regard to recent international developments, we recently conducted another round of public consultation exercise. The consultation paper was posted to the website of the Agriculture, Fisheries and Conservation Department (AFCD) and the Business Consultation e-Platform under the GovHK website to inform the public on the consultation exercise and to invite comments on the legislative proposal. Letters were also sent to relevant stakeholders (including green groups, relevant academics, biotechnology companies, trade associations, food and beverage traders, local chain stores, seed and vegetable traders, flower and aquarium fish traders, and organic farms) inviting them to join respective focus-group consultation meetings. Relevant overseas authorities were also notified through the World Trade Organization notification system. Copies of the consultation paper had been mailed to some stakeholders as requested. We also consulted the Advisory Council on Food and Environmental Hygiene, the Advisory Council on the Environment (ACE) and its Nature Conservation Subcommittee, and the Advisory Committee on Agriculture and Fisheries.

11. The consulted parties in general supported the extension of the Convention and the Protocol to Hong Kong, and had no objection to the proposed legislation. On the technical issues, some consultees had asked about the impact of the legislative proposal on local biotechnology research and development. We have explained that the Protocol, and thus the proposed legislation, aims at regulating the release of LMOs into the environment, not “contained use”. Researches using LMOs in laboratories are “contained use” and under the proposed legislation, there is no need to apply for DAFC’s approval for the “contained use” of LMOs or the import of LMOs for “contained use”. Some members of the trade enquired about the documentation requirements for the import and export of LMOs. We have advised them that we would adopt the relevant Protocol’s requirements which equally apply to over 150 parties, including most of our overseas trading partners. There is no need for a stand-alone document and the use of a commercial invoice or a document required by other existing documentation systems would be acceptable, provided that it clearly provides the required information. Representatives of the organic farms had also questioned about the possible contamination of organic crops by LMOs growing outside their fields. We have explained that, under the proposed legislation, AFCD would be able to regulate the release of LMOs into the environment (including growing LMOs as crops in the fields), and eradicate unapproved LMOs from the fields. The

proposed legislation would help preventing and minimizing the possibility of contamination of organic crops by LMOs. Most consulted parties suggested that more public education programmes should be organized to promote public awareness on LMOs. We agree, and shall organize more public education programmes upon the enactment of the legislation.

12. The drafting of the proposed legislation is in progress. We shall take into account views collected during the public consultation in finalizing the legislative proposal.

WAY FORWARD

13. Subject to members' views, we plan to introduce the proposed legislation to the Legislative Council in the second half of the legislative year 2008-09. Members are invited to comment on the Administration's proposal to enact a new piece of legislation to enable extension of the Convention and the Protocol to Hong Kong.

**Environmental Protection Department
Agriculture, Fisheries and Conservation Department
March 2009**