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Paper for the House Committee meeting on 22 June 2012

**Report of the Subcommittee on Genetically Modified Organisms
(Control of Release) (Exemption) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee on Genetically Modified Organisms (Control of Release) (Exemption) Notice (the Subcommittee).

Background

2. Genetically modified organism (GMO) refers to any living organism that possesses a novel combination of genetic materials obtained through the use of modern biotechnology. The Cartagena Protocol on Biosafety (the Protocol) to the Convention on Biological Diversity (the Convention) was adopted in 2000 to provide for the safe transfer, handling, storage and use of GMOs that may have adverse effects on the conservation and sustainable use of biological diversity, taking into account risks to human health.

3. The Genetically Modified Organisms (Control of Release) Ordinance (Cap. 607) (the Ordinance) was enacted in March 2010 to give effect to the Protocol, and to control, among others, the import of GMOs as well as their release into the environment. The Ordinance came into effect on 1 March 2011. Under the Ordinance, release of a GMO or import of a GMO that is intended for release into the environment requires prior approval from the Director of Agriculture, Fisheries and Conservation (the Director) unless exemption from the application of sections 5 or 7 of the Ordinance is granted.

The Exemption Notice

4. The objectives of the Exemption Notice are to exempt –
 - (a) genetically modified (GM) papaya and any GMO that is contained in a veterinary vaccine from the application of section 5 of the Ordinance; and
 - (b) two varieties of GM papaya and any GMO that is contained in a veterinary vaccine from the application of section 7 of the Ordinance.
5. The Exemption Notice was published in the Gazette on 27 April 2012 and tabled at the Legislative Council meeting on 2 May 2012. The Exemption Notice will come into operation on 23 June 2012.

The Subcommittee

6. At the House Committee meeting held on 4 May 2012, Members agreed to form a Subcommittee to study the Exemption Notice. Under the chairmanship of Hon WONG Ting-kwong, the Subcommittee has held three meetings. The membership list of the Subcommittee is in **Appendix I**. Apart from examining the Exemption Notice with the Administration, the Subcommittee has also invited views from interested parties, including green groups and related sectors. A list of organizations/individuals which have made oral/written representations to the Subcommittee is in **Appendix II**. A summary of the Administration's response to written representations is given in Annex to LC Paper No. CB(1) 2096/11-12(02).
7. To allow sufficient time for scrutiny of the Exemption Notice, the Subcommittee agreed that the Chairman should move a motion at the Council meeting on 23 May 2012 to extend the period for amending the Exemption Notice from 30 May 2012 to 20 June 2012. However, the motion was not dealt with at the Council meetings that commenced on 23 and 30 May 2012¹ respectively owing to the heavy agenda for these meetings. As the motion was not passed at the Council meeting that commenced on 30 May 2012, the 28-day period for amendment under the negative vetting procedure as specified in section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) expired without being extended.

¹ The motion could not be dealt with at the Council meeting of 23 May 2012 and was included in the agenda at the Council meeting of 30 May 2012.

Deliberations of the Subcommittee

8. In general, the Subcommittee has no objection to the proposed exemption of GMOs contained in live recombinant veterinary vaccines. Noting that the majority of deputations are opposed to the proposed exemption of GM papaya, Subcommittee members have sought clarification on a number of policy and legal issues in relation to the proposed exemption of GM papaya. The deliberations are summarized in the ensuing paragraphs.

Proposed exemption of GM papaya from the application of section 5 of the Ordinance

9. Section 5 of the Ordinance provides that a person must not knowingly cause a GMO to be released into the environment or maintain the life of a GMO that is in a state of being released into the environment, unless the conditions specified in section 5(4) are complied with.

10. Some members have enquired about the rationale for the blanket exemption of all varieties of GM papaya from the application of section 5 of the Ordinance, and the effect if no exemption is given. According to the Administration, papaya growing is very popular in Hong Kong, particularly in the backyards of village houses, farmlands and orchards. At present, there are around 350 000 papaya trees in the territory, of which some 60% to 70% may be genetically modified. To ascertain the possible effect of GM papaya on the conservation and sustainable use of biological diversity in the local environment, the Agriculture, Fisheries and Conservation Department (AFCD) has conducted a risk assessment which concludes that it is highly unlikely for GM papaya to pose any adverse biosafety effect on the biological diversity of the local environment, mainly because papaya is an exotic species with no close relatives in Hong Kong. As the continued planting of GM papaya by the general public would not have an adverse effect on the local biological diversity, the Administration has taken the decision to exempt all varieties of GM papaya from the application of section 5 of the Ordinance so that any member of the public who wants to grow or maintain GM papaya will not be subject to threats of enforcement. It is worth noting that at the resumption of the Second Reading debate on the Genetically Modified Organisms (Control of Release) Bill, the Secretary for the Environment, also stated the Administration's intention to exempt GM papaya from the control of the Ordinance given the prevalence of GM papaya in Hong Kong.

11. The Administration has further advised that growing or maintenance of GM papaya in the field is considered as a release of GMO into the environment. If no exemption is given under section 5 of the Ordinance, anyone who intends to continue to grow papaya will need to carry out chemical test to ascertain whether the papaya being grown is GM or not. If the test confirms that the papaya concerned is a GM variety, he is required under the Ordinance to submit an application for approval of release of the GMO into the environment with a risk assessment report (the application fee of which is \$14,250 at present) to AFCD for approval. Otherwise, he would have to remove the concerned papaya tree or he will be liable to a fine at level 6 (i.e. \$100,000) and to imprisonment for one year. Given the highly technical nature of the process, this will cause considerable frustration to a person who simply grows papaya as a hobby. If the person chooses not to go through the process, he/she will need to remove the papaya trees concerned in order to avoid being caught by the Ordinance. This will not only cause intense and unnecessary disturbance to the person but also mean a loss of income if the papaya trees are grown for a living.

12. While acknowledging that the proposed exemption of all varieties of GM papaya from the application of section 5 of the Ordinance will enable members of the public to continue planting of GM papaya trees (which are no different from non-GM ones in appearance) without worrying about being caught under the Ordinance, members have sought elaboration on overseas experience in dealing with GM papaya. According to the Administration, the purpose of developing GM papaya is to prevent infection by the papaya ringspot virus (PRSV) which is one of the major limiting factors for commercial cultivation. Apart from resistance to PRSV, GM papaya is also developed for other traits such as delayed ripening of the fruits. As one of the major crops cultivated in many subtropical and tropical countries, branding of specific cultivar of GM papaya is important for commercialization. Hence, approval of specific cultivars of GM papaya rather than exemption of broad varieties of GM papaya is adopted for commercial production or field planting. For Hong Kong, approval on a case-by-case basis will create intense and unnecessary nuisance to the public who are growing papaya as a hobby. Most importantly, due to the species barrier, the release of GM papaya to the environment will unlikely result in adverse biosafety effect on the local biological diversity. It is also worth noting that similar exemption as the current proposal under the Exemption Notice has been made in Canada. As set out in Canada's Seeds Regulation, GM plants are exempted from authorization requirements if the plants have been openly grown and formed a stable population in Canada.

13. Some members are concerned about the safety of GM papaya for human consumption, and enquired if consideration can be given to introducing a labelling requirement for GM papaya to differentiate these from non-GM ones.

The Administration has advised that the objectives of the Ordinance are to give effect to the Protocol, and to control the import/export of GMOs as well as their release into the environment. The food safety aspect of GM food has to be dealt with separately.

Proposed exemption of two varieties of GM papaya from the application of section 7 of the Ordinance

14. Section 7 of the Ordinance provides that a person must not knowingly import a GMO that is intended for release into the environment, unless the conditions specified in sections 7(2)(a) to (c) are complied with.

15. The Subcommittee sought elaboration on the two varieties of GM papaya which are to be exempted from the application of section 7 of the Ordinance. According to the Administration, the two exempted varieties of GM papaya are GM papaya with the unique identifier code of CUH-CP551-8 and GM papaya with the transformation event code of Huanong 1 which have already been approved for cultivation on a commercial scale. The proposed exemption aims to address the main concerns of some local environmental groups and organic farmers as prior approval from AFCD shall be obtained for importing any unexempted varieties of GM papaya for planting in Hong Kong.

16. In response to members' further enquiry on whether legislative amendment is required to exempt new varieties of GM papaya from the application of section 7 of the Ordinance, the Administration has explained that prior approval from AFCD will need to be obtained for import of GM papaya other than the two proposed commercialized varieties under the Exemption Notice. Any new exemption from the application of section 7 will be subsidiary legislation and subject to scrutiny by the Legislative Council. However, it is worth noting that import of papaya seeds for planting is rare because papaya growing in Hong Kong is more of a hobby. In fact, most of the papaya trees in Hong Kong are grown from seeds after consumption of the fruits. So far, no applications for approval for import of GM papaya seeds have been received.

Phasing out of GM papaya

17. Having regard to deputations' grave concerns about GM papaya, members hold the view that measures (including the voluntary one-to-one papaya exchange programme launched by some non-governmental organizations) should be put in place to promote the planting of non-GM papaya, with a view to progressively phasing out all GM papaya in the long run. According to the Administration, it is an established agriculture policy to advocate diversified

farming practices (including the promotion of both conventional and new farming methods). Basic infrastructure, technical support and credit facilities would be provided for the development of modern, efficient, safe, and environmentally acceptable farming.

18. Some members have enquired whether financial assistance would be provided to encourage participation in the voluntary one-to-one papaya exchange programme. The Administration has advised that environmental and organic farming groups may seek funding support from relevant statutory funds (such as the Sustainable Development Fund as well as the Environment and Conservation Fund) to implement the exchange programme. AFCD would also continue to provide assistance on GM test and other relevant technical support.

Way forward

19. Following the expiry of the 28-day period for amending the Exemption Notice on 30 May 2012 without being extended as mentioned in paragraph 7 above, members note that it is technically not feasible for the Subcommittee or any Member to amend the Exemption Notice (which would come into operation on 23 June 2012 as stated in paragraph 5 above without amendment), and that the Administration would not introduce another piece of subsidiary legislation to repeal the Exemption Notice. Noting from the Administration that AFCD will carry out a review of the exemption of GM papaya and live recombinant veterinary vaccines in three years' time, some members suggest that the subject should be referred to the Panel on Environmental Affairs for necessary follow up.

Advice sought

20. Members are invited to note the deliberations of the Subcommittee and its views on the way forward as set put in the preceding paragraph.

**Subcommittee on Genetically Modified Organisms
(Control of Release) (Exemption) Notice**

Membership list

Chairman Hon WONG Ting-kwong, BBS, JP

Members Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon WONG Yung-kan, SBS, JP (since 15 May 2012)
Hon Audrey EU Yuet-mee, SC, JP
Hon CHIM Pui-chung
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Hak-kan (up to 6 June 2012)
Hon CHAN Kin-por, JP

(Total : 8 Members)

Clerk Miss Becky YU

Legal Adviser Miss Winnie LO

Date 6 June 2012

List of organizations/individuals which/who have made written and/or oral representations to the Subcommittee

1. Ark Eden
2. Dr Kenneth LEUNG Mei-yee, School of Biological Sciences, The University of Hong Kong
3. EM Association
4. EM Bio Technology Company Ltd
5. Genetically Modified Organisms (Control of Release) Expert Group
6. Greenpeace
7. Green Collar
8. Green Lantau Association
9. Green Power
10. Green Resources
11. Green Sense
12. Green Wish Farm
13. Ground Works
14. Health Fruits Garden
15. Heung Yee Kuk
16. HK Wildlife.net
17. HKUST Division of Life Science
18. Hong Kong Sustainable Agriculture Association
19. Ma Po Po Farm
20. Mr CHENG Siu-kei
21. Mr CHU Kam-min

22. Mr Dominic WONG
23. Mr KWOK Tung-sum
24. Mr LING Yan-ying
25. Mr MAK Sheung-yuen
26. Mr NG To-sun
27. Mr TANG Yuk-wah
28. Mr TO Yat-man
29. Mr TSANG Chu-kwong
30. Ms CHAN Yan-yiu
31. Ms CHEUNG Wai-yee
32. Ms CHICK Hiu-lai
33. Ms CHUI Yee-ting
34. Ms Fanny LEE
35. Ms HAU Min-yim
36. Ms Jacqueline HO
37. Ms KIU Kin-yan
38. Ms LIN Pui-yi
39. Ms MA Suk-ying
40. Ms Michelle Melana MITTRICH
41. Ms Tania WILLIS
42. New Choi Yuen Village Villager
43. Produce Green Foundation
44. Professor LAM Hon-ming, The Chinese University of Hong Kong

45. Professor Mei SUN, School of Biological Sciences, The University of Hong Kong
46. Professor Samuel SUN, The Chinese University of Hong Kong
47. Professor T H HUNG, National Taiwan University
48. Queen Elizabeth School Old Students' Association Secondary School
49. R.T.C. Gaia School
50. SEED
51. Sustainable Green Ltd
52. Tai Po Environmental Association
53. The Conservancy Association
54. The Federation of Vegetable Marketing Co-operative Societies Ltd
55. The Green Patch
56. The Organic Farm
57. Transition South Lantau
58. Yuen Long Organic Farm House Association
59. 農本多肥
60. 支持香港無基改種植聯盟
61. 健康有機農場
62. 南涌有機蔬果
63. 歐羅有機農場
64. 集體購買隊
65. 反基改種植聯會
66. 綠色人間