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Panel on Environmental Affairs

Meeting on 25 April 2005

**Background brief on application of the
Convention on Biological Diversity and the
Cartagena Protocol on Biosafety to Hong Kong**

Introduction

The Convention on Biological Diversity (the Convention) was adopted at the 1992 Earth Summit on Sustainable Development and came into operation in 1993. The objectives of the Convention are -

- (a) conservation of biological diversity^{Note1};
- (b) sustainable use of the components of biological diversity; and
- (c) fair and equitable sharing of the benefits arising from the utilization of genetic resources.

The Convention seeks to facilitate achievement of these objectives by providing a guidance framework on the essential components of and the key considerations involved in formulating a comprehensive conservation strategy. There are currently 180 Parties to the Convention, including Mainland China. Individual Parties are required to adopt measures with regard to the Convention's provisions as far as possible and as appropriate in the light of specific local circumstances for protecting biological diversity.

2. The Cartagena Protocol on Biosafety (the Protocol) was adopted under the Convention in 2000 to provide for the safe transfer, handling and use of living modified organisms (LMO)^{Note2} that may have adverse effects on the conservation and

^{Note1} "Biological diversity" means the variability among living organisms from all sources. It also refers to genetic differences within each species as well as the variety of terrestrial, marine and aquatic ecosystems.

^{Note2} "Living modified organism" means any organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology. LMO may cover a variety of live food crops, seeds, fish etc but does not include processed food products.

sustainable use of biological diversity, taking into account risks to human health^{Note3}, with specific focus on trans-boundary movements of LMOs. The Protocol mainly seeks to protect individual Parties from potentially adverse impacts of imported LMOs on their biological diversity through the regulation of import and exports of LMOs. It has come into force since 11 September 2003. There are currently 110 Parties to the Protocol. The Mainland has signed the Protocol and will become a Party to it upon completion of the ratification procedure. To promote exchange of information among Parties and facilitate their compliance with the Protocol requirements in the **Appendix**, the Protocol requires the Parties to make available information, such as summaries of risk assessments and decisions regarding importation or release of a LMO, to the Biosafety Clearing House (BCH) which serves as a central information sharing system on matters relating to the implementation of the Protocol.

Extension of the Convention and the Protocol to Hong Kong

3. According to the Administration's paper provided to the Panel on Environmental Affairs (the Panel) in December 2003, both the Convention and the Protocol are important international agreements on protection of biological diversity and global sustainable development. Their application to Hong Kong can reinforce Hong Kong's commitment to the worthy causes and enhance its image as a responsible global citizen. Being a part of China, Hong Kong is also expected to share similar international obligations concerning protection and sustainable use of biological diversity. Besides, Hong Kong needs to follow the Protocol's requirements on trans-boundary movement of LMOs where its trading partners have joined the Protocol.

4. Given that the existing nature conservation policy and measures are generally in line with the objectives and requirements of the Convention, the Administration considers that the only major area in the Convention that would require further examination is how to develop appropriate strategies and measures in order to meet the requirement on establishing or maintaining means to regulate, manage or control the risks associated with the use of LMOs. In this connection, the Administration proposes to enact a new legislation to provide for the following -

- (a) establishment of a licensing system for the Agriculture, Fisheries and Conservation Department (AFCD) to process applications for first imports of LMOs into Hong Kong for intentional introduction into the environment in accordance with the Advanced Informed Agreement (AIA) procedure^{Note4};

^{Note3} The risk to human health in the context of the Protocol refers to the indirect risk imposed as a result of the LMO's adverse impacts on biological diversity.

^{Note4} Under the AIA procedure, the exporting party has to obtain the explicit prior consent of the competent authority of the importing party. The exporting party has to carry out a risk assessment to identify and evaluate the potential adverse impact of the LMO on the biological diversity of the importing party so as to facilitate the latter in deciding whether the import of the LMO should be approved. The AIA procedure however does not apply to LMOs in transit or trans-boundary movements of LMOs for other purposes such as for direct use as food, feed or for processing or for contained use.

- (b) a requirement that an exporter in Hong Kong shall send a notification enclosing the risk assessment report to the competent authority of the importing party and obtain its prior consent for the export of the LMO for first intentional introduction into the environment at the importing end;
- (c) a requirement that approval shall be obtained from AFCD prior to the domestic use or export of a locally developed LMO for intentional introduction into the environment or as food, feed or for processing (FFP);
- (d) documentation requirements on trans-boundary movements of LMOs;
- (e) penalties for violation of the import, export or documentation requirements set out in (a) to (d) above;
- (f) other miscellaneous matters, including designation of the Director of Agriculture, Fisheries and Conservation as the competent authority to discharge the Protocol's obligations in Hong Kong; and
- (g) implementation of measures to fulfill Hong Kong's obligations under the Protocol following future decisions made by Parties to the Protocol, e.g. setting standards for the identification, handling, packaging and transport of LMO.

5. According to Article 153 of the Basic Law, the application of international to Hong Kong Special Administrative Region (HKSAR) of international agreements to which the People's Republic of China is or becomes a party shall be decided by the Central People's Government (CPG) in accordance with the circumstances and needs of HKSAR, after seeking the views of the HKSAR Government. The Administration has obtained the agreement-in-principle of CPG to extend the application of both the Convention and the Protocol to Hong Kong. Subject to the passage of the proposed legislation through the Legislature, and upon completion of other necessary preparatory work, the Administration would request CPG to complete the formalities on the extension. Meanwhile, the Administration would consult stakeholders concerned before deciding on the way forward.

Discussion by Panel

6. The proposal to extend the Convention and the Protocol to Hong Kong was discussed at the meeting of the Panel on 22 December 2003. A number of issues were raised.

7. A member noted that there was an understanding that the HKSAR Government was under the obligation to accept without choice the extension of

applications of international conventions to which CPG was a party. She noted that in this particular Convention, the HKSAR Government did have a choice over the extension. She then enquired about the criteria in deciding whether the extension of an international agreement to Hong Kong should be obligatory as well as the means through which such an agreement would be implemented. The Administration explained that given the different nature of international conventions, it would be better for the responsible policy bureaux to take up the subject with the respective Panels.

8. Question was also raised on the regulatory control on import of LMOs from a non-party to the Protocol. A member expressed concern that importers/exporters might try to evade control by declaring their LMOs as FFP if the proposed regulatory regime was a passive one based on voluntary declarations by importers/exporters. A more active control regime might be necessary to require all imports and exports of living organisms to be checked against the LMO standards. The Administration's response was that apart from requiring importers/exporters to declare their LMOs, failing which would be liable to prosecution, spot checks would also be conducted on imports and exports. The Custom and Excise Department and AFCD would join forces in the control over import and export of LMOs.

9. As regards the standards for identifying LMOs and how these should apply to tertiary institutions conducting genetic studies, the Administration's reply was that the standards would be worked out with reference to overseas experience gained in the meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP)^{Note5}. Given that tertiary institutions usually conducted experiments on LMOs in a contained environment, the more stringent AIA procedure requiring risk assessment of LMOs would not apply. They would only be required to fulfill the documentation requirements and make a statement in this respect. A member however pointed out that it would be difficult to identify genetically modified organisms since genetic materials would mutate over time.

10. As regards public consultation on the proposal, the Administration affirmed that it would solicit views from food trade associations, relevant importers/traders, environmental groups and academics, as well as relevant advisory committees which included the Advisory Council on the Environment, the Advisory Council on Food and Environmental Hygiene and the Advisory Committee on Agriculture and Fisheries. Information on the proposal would also be uploaded onto the Internet for public comments. On the other hand, AFCD would attend the first COP-MOP meeting to be held in Malaysia in February 2004 as part of China's delegation to keep track of the latest development and decisions made under the Protocol. The Administration would take into account developments at the meeting as well as views collected during the public consultation when drawing up the detailed regulatory framework for implementing the Protocol in Hong Kong. It would also keep the Panel informed of the progress.

^{Note5} COP-MOP is the governing body of the Protocol and its primary role is to keep under regular review the implementation of the Protocol and to make decisions necessary to promote its effective implementation.

Relevant papers

LC Paper No. CB(1) 611/03-04(04)

(<http://www.legco.gov.hk/yr03-04/english/panels/ea/papers/ea1222cb1-611-4-e.pdf>)

LC Paper No. CB(1) 611/03-04(05)

(<http://www.legco.gov.hk/yr03-04/english/panels/ea/papers/ea1222cb1-611-5-e.pdf>)

LC Paper No. CB(1) 844/03-04

(<http://www.legco.gov.hk/yr03-04/english/panels/ea/minutes/ea031222.pdf>)

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Summary of the Protocol's Major Requirements

Categories of LMO	Requirements		
	Advance Informed Agreement Procedure	Documentation during import and export	Others
LMO intended for intentional introduction into the environment*	<ul style="list-style-type: none"> ➤ For the first trans-boundary movement of LMOs for intentional introduction into the environment of the importing party, the exporting party shall notify the competent authority of the importing party prior to trans-boundary of the LMOs. The notification shall contain information specified in the Protocol including a risk assessment report, suggested methods for safe handling, storage, transport and use, etc. ➤ The competent authority of the importing party shall acknowledge receipt of the notification within 90 days of receipt. ➤ The competent authority of the importing party shall inform the notifier and the Biosafety Clearing House (BCH) within 270 days of receiving the notification on whether the import is approved, whether additional information is requested or whether the consideration period needs to be extended. However, failure by the importing party to communicate its decision within 270 days of receipt of the notification shall not imply its consent to the intentional trans-boundary movement. 	<ul style="list-style-type: none"> ➤ To clearly identify them as LMO. ➤ To specify its identity and relevant traits and/or characteristics. ➤ To specify any requirements for the safe handling, storage, transport and use. ➤ To specify the contact point for further information and, as appropriate, the name and address of the importer and exporter. ➤ To contain a declaration that the movement is in conformity with the requirements of the Protocol. 	<ul style="list-style-type: none"> ➤ Nil

Categories of LMO	Requirements		
	Advance Informed Agreement Procedure	Documentation during import and export	Others
LMO intended for direct use as food or feed, or for processing (FFP)*	<ul style="list-style-type: none"> ➤ Not applicable 	<ul style="list-style-type: none"> ➤ To clearly identify that they “may contain” LMO and are not intended for intentional introduction into the environment. ➤ To specify a contact point for further information. ➤ The Conference of the Parties serving as the meeting of the Parties to the Protocol shall take a decision on the detailed requirements for documentation, including specification of their identity and any unique identification, no later than two years after the Protocol came into force on 11 September 2003. 	<ul style="list-style-type: none"> ➤ Nil
LMO for contained use*	<ul style="list-style-type: none"> ➤ Not applicable 	<ul style="list-style-type: none"> ➤ To clearly identify them as LMO. ➤ To specify any requirements for the safe handling, storage, transport and use. ➤ To specify the contact point for further information including the name and address of the individual and institution to whom the LMOs are consigned. 	<ul style="list-style-type: none"> ➤ Nil

Categories of LMO	Requirements		
	Advance Informed Agreement Procedure	Documentation during import and export	Others
Domestic use of a LMO that may be subject to trans-boundary movement for direct use as FFP	➤ Not applicable	➤ Not applicable	➤ The Party shall inform BCH.

* According to the Protocol, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall consider the need for and modalities of developing standards with regard to the identification, handling, packaging and transport practices, after the Protocol has come into operation.