

For discussion on
25 April 2005

Legislative Council Panel on Environmental Affairs

Proposed Legislation for Implementation of the Cartagena Protocol on Biosafety

INTRODUCTION

This paper seeks Members' view on our proposal to enact a new legislation for the implementation of the Cartagena Protocol on Biosafety ("the Protocol") in Hong Kong for better protection of biological diversity in Hong Kong by controlling the introduction of living modified organisms (LMOs)^{Note 1}.

BACKGROUND

The Convention and the Protocol

2. The Convention on Biological Diversity (the Convention) was adopted in the 1992 Earth Summit on Sustainable Development and came into operation in 1993. There are currently over 180 Parties to the Convention, including Mainland China but the Convention has yet to be extended to the Hong Kong Special Administrative Region.

3. The objectives of the Convention are –

- a) conservation of biological diversity^{Note 2};
- b) sustainable use of the components of biological diversity;

Note 1 LMOs mean any living organism that possess a novel combination of genetic material obtained through the use of modern biotechnology, but do not include processed food products.

Note 2 According to the Convention, "biological diversity" means the variability among living organisms from all sources including, *inter alia*, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part. "Biological diversity" includes diversity within species, between species and of ecosystems.

and

- c) fair and equitable sharing of the benefits arising from the utilization of genetic resources.

4. 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 mainly seeks to protect Parties from potentially adverse impacts from the introduction of LMOs into their local environments through the regulation of import and export of LMOs. The Protocol came into effect in September 2003. There are currently over 110 Parties to the Protocol. The Mainland has signed the Protocol and will become a Party to it upon completion of the ratification procedure.

5. The Convention and the Protocol are important international agreements on protection of biological diversity and global sustainable development. The Protocol in particular can better ensure protection of our local biological diversity from possible adverse impacts of imported LMOs. The application of the Convention and the Protocol to Hong Kong will demonstrate Hong Kong's commitment in cooperating with the international community to protect the natural environment. Hong Kong, being part of China, is expected to share similar international obligations set out in the Convention and the Protocol. We also need to follow the Protocol's requirements on trans-boundary movement of LMOs where our trading partners have joined the Protocol.

Public Consultation

6. We consulted the Legislative Council Panel on Environmental Affairs in December 2003 on our proposal to extend the application of the Convention and the Protocol to Hong Kong. We have also consulted different stakeholders, including the relevant trade, green groups, academics, Advisory Council on Food and Environmental Hygiene, Advisory Council on the Environment, Advisory Committee on Agriculture and Fisheries and other concerned parties, on the proposal.

Most of them supported the extension of the Convention and the Protocol to Hong Kong. Some respondents, however, expressed concerns about the impact of the proposal on local biotechnology research and development. Representatives of the trade were concerned about the documentation requirements for the import and export of LMOs. Some green groups were concerned whether the Government and the relevant trade had sufficient technical capabilities to fulfill all the requirements of the Protocol. They also suggested that more public education programmes should be organized to promote public awareness on the protection of biodiversity.

THE LEGISLATIVE PROPOSAL

7. We have assessed the requirements under the Convention and concluded that no legislative amendments are required for the implementation of the Convention in Hong Kong. Our nature conservation policy and measures are in line with the objectives and requirements of the Convention.

8. To implement the Protocol in Hong Kong, we need to enact a new piece of legislation to regulate the trans-boundary movement of LMOs that may have adverse effects on the conservation and sustainable use of biological diversity. The main objective of the proposed legislation is to provide a regulatory framework to restrict and control the introduction of LMOs into the local environment. It would enable Hong Kong to fulfill the requirements of the Protocol and other relevant decisions of the Meeting of the Parties to the Protocol.

9. The proposed new legislation will contain provisions governing the following matters: –

- a) To establish 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 Advance Informed Agreement (AIA) procedure stipulated in the Protocol. Under the licensing system, the importer has to provide detailed written information, including contact details

of the exporter and importer, identity and relevant traits and characteristics of the LMO, risk assessment report of the LMO, and suggested method for the safe handling, storage, transport and use of the LMO, to AFCD in advance of the first shipment. The importer has to obtain AFCD's explicit prior consent of the importation before the shipment. The system ensures that AFCD has the opportunity to assess any risks that may be associated with the LMO before importation.

- b) To require an exporter in Hong Kong to send a notification enclosing information in accordance with the AIA procedure to the competent authority of the importing party and obtain its prior consent for the first trans-boundary movement of LMO for intentional introduction into the environment of the importing party.
- c) To require the application of a licence from AFCD prior to the domestic use of a locally developed LMO for intentional introduction into the environment or for food, feed or processing. A risk assessment report will be required for the application.
- d) To require the provision of documentation on trans-boundary movements of LMOs. For LMOs intended for direct introduction into the environment, the accompanying documentation must clearly state that the shipment contains LMOs. It must specify the identity and relevant traits and characteristics of the LMO; any requirements for its safe handling, storage, transport and use; and the contact details of the importer and exporter. For LMO intended for direct use as food or feed or for processing, the importer is required to make a declaration that the shipment "may contain" LMOs and that the LMOs are not intended for introduction into the environment. For LMOs intended for contained use^{Note 3}, the documentation accompany the shipment must clearly identify them as LMOs. It must also specify any requirements for the

^{Note 3} According to the Protocol, "contained use" means any operation, undertaken within a facility or other physical structure, which involves LMOs that are controlled by specific measures that effectively limit their contact with, and their impact on, the external environment.

safe handling, storage, transport and use of the LMOs.

- e) To provide for penalties for violation of the import, export or documentation requirements set out in (a) to (d) above.
- f) To establish a public register containing information such as summaries of risk assessment reports and decisions regarding importation, domestic use or introduction to the environment of LMOs.
- g) To provide AFCD officers with appropriate power for effective enforcement of the legislation such as power to require information and inspect premises etc.
- h) To empower the Secretary for the Environment, Transport and Works (SETW) to make regulations with respect to the detailed technical requirements of the control regime, such as requirements of the risk assessment report, information for application of licence, etc. SETW would also be empowered to set the fees payable under the control regime. In this regard, we will work out the manpower requirements for issuing of licences and consult the trade before deciding on the fee level.

IMPLEMENTATION PLAN

10. We will further consult the relevant trade and stakeholders on the implementation details of the control regime before finalizing the proposed legislation for introduction into the Legislative Council.

ADVICE SOUGHT

11. Members are invited to comment on the proposal.

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