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Panel on Environmental Affairs

Meeting on 30 March 2009

**Updated background brief on application of the Convention on Biological
Diversity and the Cartagena Protocol on Biosafety to Hong Kong**
(Position as at 24 March 2009)

Purpose

This paper sets out the development of the proposed extension of the Cartagena Protocol on Biosafety (the Protocol) to Hong Kong, and gives a brief account of the views and concerns raised by the Panel on Environmental Affairs.

Background

2. 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. As at April 2005, there were 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.

^{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.

3. 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 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. As at April 2005, there were 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

4. According to the Administration, 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 in cooperating with the international community to protect the natural environment. 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.

5. Given that the existing nature conservation policy and measures are generally in line with the objectives and requirements of the Convention, no legislative amendments are required for the implementation of the Convention in Hong Kong. To implement the Protocol in Hong Kong, the Administration needs 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 object of the proposed legislation is to provide a regulatory framework to restrict and control the introduction of LMOs into the local environment. The A new legislation will provide for the following -

^{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.

^{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.

- (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} stipulated in the Protocol;
- (b) a requirement for 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) a requirement for 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 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) establishment of 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) appropriate power for AFCD officers for effective enforcement of the legislation, such as power to require information and inspect premises; and
- (h) the Secretary for the Environment (SEN) to make regulations with respect to the detailed technical requirements of the control regime. SEN would also be empowered to set the fees payable under the control regime.

6. 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

^{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.

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.

Discussion by Panel

7. The proposal to extend the Convention and the Protocol to Hong Kong was discussed at the Panel meetings on 22 December 2003 and 25 April 2005.

8. While supporting the extension of the Protocol to Hong Kong, some members pointed out that the proposed control regime on LMOs might not contribute much to the protection of local biodiversity, given that trans-boundary movements of LMOs for intentional introduction into the environment was rare in Hong Kong. Instead, more should be done to protect biodiversity from destructive activities, such as felling of trees and illegal dumping. The control over these activities would be more effective in protecting the biodiversity in Hong Kong.

9. Questions were raised on the criteria in deciding whether the extension of an international agreement to Hong Kong should be obligatory, and the means through which such an agreement would be implemented. There was also concern over the lack of details on implementation, impacts of the proposed control on the affected trades, financial implication, penalties for non-compliance, and the control on import of LMOs from a non-Party to the Protocol, without which members would find it difficult to support the proposal. The Administration was urged to apprise the affected trades of the details of the control regime so that they would know exactly what was required of them.

Latest progress

10. The Administration intends to brief members again on the proposed extension of the Protocol to Hong Kong at the Panel meeting on 30 March 2009.

Relevant papers

Fact sheet prepared by the Research & Library Services Division for the EA Panel meeting on 22 December 2003

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

Information paper provided by the Administration for the EA Panel meeting on 22 December 2003

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

Minutes of the EA Panel meeting on 22 December 2003

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

Information paper provided by the Administration for the EA Panel meeting on 25 April 2005

<http://www.legco.gov.hk/yr04-05/english/panels/ea/papers/ea0425cb1-1316-6-e.pdf>

Minutes of the EA Panel meeting on 25 April 2005

<http://www.legco.gov.hk/yr04-05/english/panels/ea/minutes/ea050425.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.