

**CONSULTATION PAPER**

**PROPOSED APPLICATION OF  
THE CONVENTION ON BIOLOGICAL DIVERSITY  
AND THE CARTAGENA PROTOCOL ON BIOSAFETY  
TO HONG KONG**

**INTRODUCTION**

The Administration proposes to extend the application of the Convention on Biological Diversity (“the Convention”) and its Cartagena Protocol on Biosafety (“the Protocol”) to Hong Kong for better protection of biological diversity in Hong Kong. The justifications and the proposed implementation plan are set out in the ensuing paragraphs.

**BACKGROUND -**

**The Convention**

2. The Convention was adopted at the 1992 Earth Summit on Sustainable Development and came into operation in 1993. There are currently 188 Parties to the Convention, including Mainland China. The objectives of the Convention are -

- (a) conservation of biological diversity<sup>Note1</sup>;
- (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. In general, individual Parties to the Convention 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. The Convention’s main requirements include developing strategies, plans or programmes for the conservation and sustainable use of biological diversity, or

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<sup>Note1</sup> 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.

adapting for this purpose existing strategies, plans or programmes; identifying and monitoring important components of biological diversity; promoting conservation by, for example, establishing a system of protected areas; rehabilitating degraded ecosystems and threatened species; preventing the introduction of and controlling invasive alien species; carrying out environmental impact assessment on proposed works projects; and promoting research, training and public education.

## **The Protocol**

3. The Protocol was adopted under the Convention in 2000 to provide for the safe transfer, handling and use of living modified organisms (LMOs)<sup>Note2</sup> that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health<sup>Note3</sup>, 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 export of LMOs. The Protocol has come into force since 11 September 2003. There are currently 76 Parties to the Protocol. The Mainland has signed the Protocol and will become a Party to it upon completion of the ratification procedure.

4. The Protocol requires that the first export of a LMO for intentional introduction into the environment of the importing party mainly involving commercial farming or field trials of scientific researches must follow an Advance Informed Agreement (AIA) procedure. 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 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 (FFP), or for contained use. Nevertheless, like LMOs intended for intentional introduction into the environment, shipments containing these LMOs have to comply with documentation requirements during import and export. The purposes are to enable easy identification of their LMO status; to facilitate tracing of LMO shipments if necessary; and to provide information which may help contain the damage in the event of accidental release during transportation.

5. To promote exchange of information among the Parties to the Protocol and facilitate their compliance with the Protocol requirements, the Protocol also

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<sup>Note2</sup> Living modified organism (LMO) means any living 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 (e.g. tomatoes, grains and soya beans), seeds, fish, etc. but does not include processed food products.

<sup>Note3</sup> 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.

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. The major requirements of the Protocol are summarized at the Annex.

## **THE PROPOSAL**

6. We propose to extend the Convention and the Protocol to Hong Kong. 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 our commitment to the worthy causes and enhance our image as a responsible global citizen. The Protocol in particular can better ensure protection of our local biological diversity from possible adverse impacts of imported LMOs. Moreover, Hong Kong, being part of China, is expected to share similar international obligations concerning protection and sustainable use of biological diversity. In any event, we need to follow the Protocol's requirements on trans-boundary movement of LMOs where our trading partners have joined the Protocol.

7. Our existing nature conservation policy and measures are generally in line with the objectives and requirements of the Convention. In the context of the nature conservation policy review, we are identifying practicable measures to better achieve the nature conservation objective, in particular enhancing conservation of ecologically important habitats on private land. That will also facilitate our compliance with the Convention. The only major area in the Convention that would also need our 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 and release of LMOs. We will deal with this under the Protocol as proposed in paragraph 8 below.

8. To implement the regulatory controls over the trans-boundary movement of LMOs stipulated under the Protocol, we propose 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 AIA procedure mentioned in paragraph 4 above;
- (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 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 our 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.

9. Although application of the Protocol to Hong Kong will impose additional controls on import and export of LMOs, the impact on stakeholders located in Hong Kong is unlikely to be significant. As both agricultural activities and researches on biotechnology are limited in Hong Kong, we do not expect there will be much importation of LMOs for intentional introduction into the environment. The majority of the cases are likely to involve importation of LMOs for FFP. Although details on documentation to accompany these LMO shipments are yet to be worked out by Parties to the Protocol, the documentation requirements that also need to be compiled with by other Parties to the Protocol are not expected to pose too much burden on the local traders.

## **IMPLEMENTATION PLAN**

10. According to Article 153 of the Basic Law, the application to the 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 the HKSAR, and after seeking the views of the Government of the HKSAR. We have 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 Legislative Council, and upon completion of other necessary preparatory work, we will request the CPG

to complete the formalities on the extension. Our plan is to complete the exercise around 2005/06, after taking into account the time required for consultation with the key stakeholders, preparing the Bill for implementing the Protocol and going through the legislative process.

11. The first meeting of the Conference of the Parties (COP) serving as the meeting of the Parties (MOP) to the Protocol will be held in Malaysia in February 2004. The 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. At the first meeting of the COP-MOP, issues including compliance; handling, transport, packaging and identification of LMO; and information sharing will be discussed. AFCD will participate at the COP-MOP as part of China's delegation to keep track of the latest development and decisions made under the Protocol. We will take developments at the meeting into account when drawing up the detailed regulatory framework for implementing the Protocol in Hong Kong.

## **PUBLIC CONSULTATION**

12. We will arrange briefing sessions to consult the key stakeholders concerned including food trade associations, relevant importers / traders, environmental groups and academics, and the relevant advisory committees on the proposal to extend the application of the Convention and the Protocol to Hong Kong. Any members of the public are also welcome to send in their views to us before the end of March 2004 by e-mail, fax or post -

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13. We will take into account the views received in deciding the way forward and drawing up the detailed implementation plan.

**Environment, Transport and Works Bureau  
Agriculture, Fisheries and Conservation Department  
December 2003**

**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"> <li>➤ 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.</li> <li>➤ The competent authority of the importing party shall acknowledge receipt of the notification within 90 days of receipt.</li> <li>➤ 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.</li> </ul>	<ul style="list-style-type: none"> <li>➤ To clearly identify them as LMO.</li> <li>➤ To specify its identity and relevant traits and/or characteristics.</li> <li>➤ To specify any requirements for the safe handling, storage, transport and use.</li> <li>➤ To specify the contact point for further information and, as appropriate, the name and address of the importer and exporter.</li> <li>➤ To contain a declaration that the movement is in conformity with the requirements of the Protocol.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Nil</li> </ul>

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)*	➤ Not applicable	<ul style="list-style-type: none"> <li>➤ To clearly identify that they “may contain” LMO and are not intended for intentional introduction into the environment.</li> <li>➤ To specify a contact point for further information.</li> <li>➤ 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.</li> </ul>	➤ Nil

Categories of LMO	Requirements		
	Advance Informed Agreement Procedure	Documentation during import and export	Others
LMO for contained use*	➤ Not applicable	<ul style="list-style-type: none"> <li>➤ To clearly identify them as LMO.</li> <li>➤ To specify any requirements for the safe handling, storage, transport and use.</li> <li>➤ To specify the contact point for further information including the name and address of the individual and institution to whom the LMOs are consigned.</li> </ul>	➤ Nil
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.