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Approved By:
Emiko Purdy
Prepared By:
Gaspar E. Nolte

Report Highlights:
Peru has adopted an anti GMO policy, establishing a 10 year moratorium and mandatory labeling requirement. These measures will restrict trade and will hurt Peruvian agricultural producers and consumers.

REPORT OUTLINE

SECTION I. EXECUTIVE SUMMARY:

Moratorium: On November 14, 2012, the Government of Peru passed Supreme Decree 008-2012-MINAM establishing the implementing regulations to enforce a ten-year moratorium on planting biotech crops anywhere in the country. This regulation was crafted by the anti-biotech Ministry of Environment (MOE), the main agency responsible for the ban on biotech crops. The Ministry of Agriculture (MOA), through its Sanitary and Phytosanitary authority, (SENASA) and through its national agricultural research service (INIA), is relegated to a secondary role in enforcement of the regulation. The Implementing Regulations lack important specifics including a definition of "no biotech", as tolerances for adventitious presence of biotech in conventional seeds for planting are undefined.

In the baseline, for example, the Implementing Regulation (IR) aims at developing a nationwide inventory of animals, plants, insects (target and non-target) and soil microorganisms (fungi and bacteria) that could be affected by genetically engineered (GE) crops. This inventory includes a full survey of organic farms and biodiversity areas. INIA already pointed out the flaw that such an enormous task is practically impossible to accomplish, certainly not in ten years, and besides it lacks justification by any scientific argument.

Regarding building capabilities and developing infrastructure, the IR does not establish objectives, goals and indicators to measure progress and accomplishments. Without this basic information, it would be rather easy to claim, after ten years, that Peru does not have the proper means to enforce biosafety regulation to prevent alleged risks from GE production.

The moratorium allows three exceptions to the biotech prohibition. These are for imports of: GE for research in a confined environment, GE used for pharmaceutical or veterinary products and GE for food, feed, or processing. These products are still subject to a risk assessment before being authorized and must comply with the Cartagena Protocol on risk evaluation, management, and communication. Again, the IR does not detail what is the risk assessment procedure or how long it would take, which could lead to this becoming a serious obstacle to trade.

The IR requires that all seed importers file an affidavit declaring that their product does not contain GE material. It also mandates that SENASA conduct random sampling and testing to enforce compliance. There is no definition of sampling size, procedure, or the words "does not contain." The regulation does not consider adventitious presence and imposes steep fines for offenders. This requirement could constitute a serious barrier to seed trade, since it is scientifically impossible to assure zero presence on GE material, particularly on corn and cotton seeds. There are three classes of offenses under the IR,

mild, serious and very serious. Again, the IR does not specify what constitutes each type of offense but establishes a maximum fine of $14 million (10,000 tax units, currently at 3,650 soles; 1 U.S.$=2.6 soles).

Finally the IR assigns new oversight and enforcement responsibilities to several government agencies including SUNAT (Customs), SENASA, INIA and ITP (Fisheries Institute under the Ministry of Production). Post has been advised that comments and objections from these institutions and others such as the Ministry of Trade have not been incorporated in the IR. Moreover, the IR requires that all institutions adapt their procedures to comply with their new responsibilities within 120 working days from the publication date (mid March 2013) but the IR does not provide budget or resources to carry out the rather burdensome tasks that the IR demands. Hence, the moratorium is not currently enforced.

The biotechnology moratorium was approved on December 9, 2011 by President Humala. Law 29811 establishes a ten year moratorium on genetically modified organisms (GMO). The regulation appoints the Ministry of Environment (MOE), militantly anti biotechnology, as the focal point and main responsible agency for biotechnology and gives the Ministry of Agriculture, through INIA (the national agricultural research service), a secondary role enforcing the regulation. The moratorium contemplates three exceptions: GMOs for research in a confined environment, GMOs used for pharmaceutical or veterinary products and GMOs for food, feed or processing. However the latter will have to go through a risk assessment process which has not been defined yet.

Recently, on June 7, 2013, the Ministry of Environment approved Resolution 167-2013-MINAM establishing the fines and sanctions for importing GE restricted products. Most transgressions are classified as grave and fined with $14 million.

Later on July 4, 2013, the Ministry of Environment issued Resolution 191-2013-MINAM listing the products that are restricted under the moratorium. These include live animals, fish and seeds.

U.S. trade interests lie mainly in the Peruvian agricultural poultry and livestock industries that demand U.S. corn and soybean meal.

Biotechnology is not well understood by the general public in Peru. There is a constant, and well organized, misinformation campaign carried out by anti biotech groups that are permanently spreading fear and non-scientific facts. Capacity building and outreach activities have been, and are continuing to be, executed by FAS/Lima, to inform and create awareness among government officials and the private sector of the benefits of biotechnology. In FY 2013, these activities will include sponsoring seminars and workshops with the public and private sector both in Lima and in provinces, sponsoring Peruvian scientists to international conferences and taking Peruvian farmers to visit farmers in other countries in the region that have adopted biotechnology.

SECTION II. PLANT AND ANIMAL BIOTECHNOLOGY

CHAPTER 2: PLANT BIOTECHNOLOGY

PART A: PRODUCTION AND TRADE

a) PRODUCT DEVELOPMENT:

Peru's National Agricultural Innovation Institute (INIA) has been working on a virus resistant papaya. INIA's work is at a laboratory stage but now that the Biosafety Protocol has been approved, they have plans to run their first field trials.

Peruvian agricultural exports, such as papaya and mangos, could potentially benefit from biotechnology as well. Crops for local consumption, such as corn, potatoes, and cotton also have tremendous potential for benefiting from biotechnology

The International Potato Center (CIP - Centro International de la Papa) transferred a gene to confer resistance to the moth into the Revolution potato variety, which is naturally sterile, hence allaying fears of genes unintentionally flowing into native potato varieties. Specifically, CIP transferred the Bt gene (which produces a toxin similar to that produced by the *Bacillus thuringiensis* bacterium) into the potato, now known as Revolution (Bt). However, this potato will not yet be released into the Peruvian market because the Peruvian government has not yet adopted regulations governing the application of agricultural biotechnology

b) COMMERCIAL PRODUCTION:

Peru does not commercially produce any biotechnology crops. However, the CIP in Lima has developed a genetically modified potato engineered to repel the potato moth. The potato tuber moth (*Phthorimaea operculella*) is the main cause behind the decimation of warehoused potato stocks throughout Peru (and many other countries as well). At present, Peruvian farmers use vast quantities of pesticides to control the moth, which places their health and the environment at risk.

c) EXPORTS: None

d) IMPORTS:

Peru imports biotechnology crops, including soybeans, corn, and cotton. Main GE suppliers to Peru are Argentina, Bolivia, Paraguay, and the United States. Peruvians utilize soybeans as a major source of protein. In Peru, soybeans are used for animal feed, direct consumption, and for processing into oil.

e) FOOD AID RECIPIENT COUNTRIES: Not applicable

PART B: POLICY

a) REGULATORY FRAMEWORK:

According to the new regulations, the MOE is Peru's lead agency for biotechnology issues. Theoretically, MOE has to coordinate policy issues with the Technical Group on Biotechnology (comprised by the agricultural research service, the SPS agency, and the Ministries of Agriculture and Health); however, MOE often bypasses the group. The National Committee of Biological Diversity (CONABID), which is a forum to discuss all biotechnology issues. This body is composed of all government regulating agencies with an interest in biotechnology, private sector, universities and international organizations such as the International Potato Center (CIP).

b) APPROVALS: Not applicable

c) FIELD TESTING: Not applicable

d) STACKED EVENTS: Not applicable

e) ADDITIONAL REQUIRMENTS: Not applicable

f) COEXISTENCE: Not applicable

g) LABELING:

According to Article 37 of the Consumer Defense Code, labeling products containing GE organisms is mandatory. This law, which was approved in March 2011, still cannot be implemented. The law established that the implementing regulations had to be published within 180 days of publication, however after a year and a half, it is still pending. The main problem has been that INDECOPI (Peru's consumer defense institute) is unable to draft implementing regulations that complies with the restrictive law without interrupting normal trade.

This measure has no practical benefit for consumers. There are over 30,000 GE products in the Peruvian market so including this information on all labels does not provide any additional information. There are four main problems with the regulation:

- It mandates that the label include every GE input in the product. This is an unnecessary burden on processing companies that will need to analyze every batch of each product (i.e. a cookie may have 20 different ingredients; the cost per analysis is between $500 and $800).
- There is zero tolerance (no threshold).
- It requires labels in Spanish for imported products.

Traceability is not considered. The exporting country's authority has already approved imported products and inputs. Moreover, local processors may not even be aware that an input may contain GEs.

Additionally, if this regulation is implemented and enforced for imported products it could become a technical barrier to trade with implications in lieu of WTO commitments and the U.S. – Peru Trade Promotion Agreement.

The Consumer Code establishes mandatory labeling, however, the Code is yet to be regulated. If labeling is required and enforced based on consumers' rights, compliance will be a very expensive process for most companies. Labeling would have to include a verifiable description of production technique and all inputs to production. This topic raises questions such as:

- When a product is considered genetically modified? and,
- What constitutes the minimum requirement for a product to be genetically engineered?

There are several problems with the drafted regulation to Article 37 of the Consumer Code:

- The regulation states that the label must detail the percentage of GE content for each input that exceeds the minimum threshold of detection (TLD in Spanish) instead of the final product. It would be extremely costly and practically impossible for the Peruvian industry to test every single input that goes into their final products. Moreover, other countries that enforce mandatory labeling always refer to final products not inputs.

- It is not clear what would be the process for setting the TLD or what are the scientific and technical considerations that would be consider to establishing such standards.

- The government has no capability to enforce this regulation since it would have to trace every input of the food chain and it does not have the infrastructure, personnel, or budget to carry out such a titanic task.

- If this regulation is implemented and enforced for imported products it could become a technical barrier to trade (TBT) with implications in lieu of WTO commitments and the U.S. – Peru Trade Promotion Agreement.

- If the regulation does not apply to imported goods then it would discriminate against local production.

- It will force the industry establish a testing system.

- It would be more efficient if INDECOPI would accept a statement such as "it may contain".

If and when this regulation is approved and enforced, it could potentially create a serious disruption in Peru's food industry. Forcing the industry to test every product and input will cause the prices to rise, thus, affect consumers. According to

industry estimates there are over 30,000 products containing GE elements in the Peruvian market; labeling all of them will not have an effect in terms of improving food safety or assuring the quality of the product.

Several stakeholders continue to oppose the presence of GE products in Peru. The Minister of the Ministry of Environment has proposed declaring Peru "free of GMO products" to both protect native products and develop Peru's organic and natural food product industries. Several regions, including Lima, have declared themselves GE free. Of course these are only rhetorical statements since Peru imports significant amounts of GE products that are distributed nationwide.

h) TRADE BARRIERS:

The moratorium: One of the first measures adopted by the new administration was to establish a moratorium on products derived from genetic engineering. Obviously, the Humala administration did not think through the implementing regulations, that application of a the moratorium is extremely difficult to enforce.

The previous administration had rejected similar initiatives to ban products derived from genetic engineering in Peru. At that time, President Garcia argued that such regulation was incompatibility with Peru's international commitments on biotechnology and it could result in commercial sanctions under multilateral trade agreements. He also stated that Peru needed to increase its food production. Unfortunately, all this reasoning has been outdone by the moratorium.

Previous to the moratorium, Peru had a fairly modern law regarding biotechnology, proposed law N°12033, called "Law to Promote the Use of Modern Biotechnology in Peru," waiting to be discussed in the Peruvian Congress. This law had a completely different approach to biotechnology from previous ones. Instead of referring to the risks of biotechnology and how to prevent them, it talked about promoting biotechnology and improving Peru's economic situation by taking advantage of the benefits of biotechnology.

i) INTELLECTUAL PROPERTY RIGHTS (IPR): Not applicable

j) CARTAGENA PROTOCOL RATIFICATION:

Peru has signed and ratified the Cartagena Protocol on Biosafety; however, approving the moratorium contradicts the Protocol's risk management approach. Peru's MOE is also promoting the signature of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability.

k) INTERNATIONAL TREATIES/FORA: Not applicable

l) RELATED ISSUES: None

m) MONITORING AND TESTING: None

n) LOW-LEVEL PRESENCE POLICY (LLP): Zero tolerance

PART C: MARKETING

a) MARKET ACCEPTANCE: Not applicable

b) PUBLIC/PRIVATE OPINIONS: General public in Peru has developed a very negative opinion regarding GE products which has been fueled by a major newspaper corporation, NGOs and prominent Peruvian cheffs.

c) MARKETING STUDIES:

Labeling constitutes the principal marketing issue for agricultural biotechnology in Peru.

PART D: CAPACITY BUILDING AND OUTREACH

a) ACTIVITIES:

In Peru, US Government/USDA-funded capacity building and outreach activities relating to biotechnology with various purposes include:

- FAS/Lima works closely with the Minister of Agriculture and its advisors in promoting a biotechnology friendly environment among the GOP.
- FAS/Lima also works closely with the Minister of Trade and his staff to assure that they are aware of the commercial consequences of restricting GE trade.
- FAS/Lima has organized nine seminars on biotechnology for policy makers, leaders of agricultural industries, academia and congressmen. Seminars are used to raise awareness in the Peruvian government and private sector on the importance of developing agricultural biotechnology.
- USDA, through the CGIAR system, provides funds for CIP to carry out research, including biotechnology, on potatoes and other tubers.

b) STRATEGIES AND NEEDS:

CHAPTER 2: ANIMAL BIOTECHNOLOGY

PART E: PRODUCTION AND TRADE

a) PRODUCT DEVELOPMENT: Not applicable

b) COMMERCIAL PRODUCTION: none

c) EXPORTS: none

d) IMPORTS: none

PART F: POLICY

a) REGULATION: none

b) LABELING AND TRACEABILITY: none

c) TRADE BARRIERS: none

d) INTELLECTUAL PROPERTY RIGHTS (IPR): none

e) INTERNATIONAL TREATIES/FORA: none

Part G: Marketing

a) MARKET ACCEPTANCE: none

b) PUBLIC/PRIVATE OPINIONS: none

c) MARKET STUDIES: none

Part H: Capacity Building and Outreach

a) ACTIVITIES: none

b) STRATEGIES AND NEEDS: Not applicable