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Peru Enacts Implementation of Biotech Moratorium

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Report Highlights:

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 nationwide. This vague and cumbersome regulation was crafted by the anti-biotech Ministry of Environment (MOE), the main agency responsible for the ban on biotech crops.

General Information:

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), are 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.

The Ministry of Environment took approximately one year to draft the cumbersome and vague Implementing Regulation (IR), having passed the original Moratorium, Law 29811, on December 9, 2011. To be of practical value, the IR would contain detailed information on law enforcement, including precise definitions of procedures, tolerances, resources to carry out the regulations, and penalties. This implementing regulation fails to fully clarify the vague and general Moratorium. According to the law, MOE’s main reason to implement this moratorium is to strengthen national capabilities, develop infrastructure and establish the baselines on native biodiversity in order to allow the Government of Peru to evaluate the risk of releasing GM crops into the environment. However, the defacto result is likely a delay in the adoption of biotechnology which is in demand by a growing number of agricultural producers. In addition, this adds risk to conventional seed importers and national small producers of corn and cotton.

In the baseline, for example, the IR aims at developing a nationwide inventory of animals, plants, insects (target and non-target) and soil micro organisms (fungi and bacteria) that could be affected by GM 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 GM production.

The moratorium allows three exceptions to the biotech prohibition. These are for imports of: GM for research in a confined environment, GM used for pharmaceutical or veterinary products and GM 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 GM 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 GM 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). FAS 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.