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Annual

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Report Highlights:
Peru established 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 cannot be implemented until the Implementing Regulations are published.

Section I. Executive Summary:

On December 9, 2011, President Humala ratified Law 29811 establishing 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.

The MOE's main reason to implement this moratorium is to strengthen national capabilities, develop infrastructure and establish the baselines on native biodiversity which will allow evaluating the release of GMOs to the environment. These three reasons are merely excuses to delay the adoption of biotechnology which is a demand of a growing number of agricultural producers. The baseline for example, MOE's aims at a full survey of plants, insects and micro organisms nationwide, which is practically impossible to accomplish and has no scientific grounds.

The moratorium cannot be implemented until the Implementing Regulations are published. According to the Moratorium Law, this had to occur within sixty days of the publication of the Law. MOE circulated a draft for comments among interested parties which submitted comments. Post has learned that no comments have been accepted nor incorporated in the regulation. Allegedly, MOE will try to force a very restrictive regulation through the Cabinet.

According to Article 37 of the Consumer Defense Code, labeling products containing GMOs 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 problems 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 regulation faces several problems, such as stating that the label must detail the percentage of GM content for each input that exceeds the minimum threshold of detection instead of the final product, it is not clear what would be the process for setting the minimum threshold of detection or what are the scientific and technical considerations that would be consider to establishing such standard, 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 an ambitious task.

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.

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).

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.

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

soybean meal. 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

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 Biotechnology Trade and Production:

Peru imports biotechnology crops, including soybeans, corn, and cotton. Main GM 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.

Peru does not commercially produce any biotechnology crops. However, the International Potato Center (CIP - Centro International de la Papa) 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.

The CIP 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

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.

Section III. Plant Biotechnology Policy:

One of the first measures adopted by the new administration was to establish a GMO moratorium. Obviously, the Humala administration did not think this very well trough since it has been unable to draft implementing regulations to apply the moratorium.

The previous administration had rejected similar initiatives to ban GMOs 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. The highlights of the moratorium are as follows:

1.Objective: Declare a ten year moratorium for imports and production of GMO products.

2.Goal: Strengthen national capabilities, develop infrastructure and establish the baselines on native biodiversity which will allow evaluating the release of GMOs to the environment.

3. Exceptions:

a. GMOs for research in a confined environment.
b. GMOs used for pharmaceutical or veterinary products.
c. GMOs for food, feed or processing.

These products are still subject of a risk assessment before being authorized and must comply with the Cartagena Protocol on risk evaluation, management and communication.

4. Accreditation: All genetic material coming into the country, except the exemptions on Article 3, must prove that is not GMO.

5. Focal Point: The Ministry of Environment is the Focal Point according to Article 19 of the Cartagena Protocol on Biosafety.

6. Competent National Authority: The Ministry of Environment is the competent authority and is responsible for proposing and approving the necessary measures to comply with the objective of this law. The Ministry of Environment establishes the territorial order to assure the conservation of centers of origin and biodiversity.

7. Surveillance and Implementation of Conservation Policies: the Ministries of Agriculture, Health and Production and Environment, in coordination with the Attorney General office and with regional and local governments are responsible for implementing policies to assure conservation of centers of origin and biodiversity, and controlling border movement.

8. Scientific Research Promotion: The Ministry of Environment in coordination with the National Council for Science and Technology encourages to strengthen scientific and technological capabilities of the agencies responsible for biotechnology and biosafety, and to contribute the decision making process by suppliers and consumers.

9. Interagency Advising Committee: Establishes the Interagency Advising Committee to develop the capabilities and tools to manage modern biotechnology, biosafety, and bioethics.

10. Implementing Regulation: The Executive branch has 60 calendar days to issue the implementing regulations of this law.

Final Disposition

The Ministry of Environment must report annually to Congress on its results as Focal Point and National Competent Authority.

Repeal Disposition

Annul Supreme Decree 003-2011-AG.

Supreme Decree 003-2011-AG was the biosafety framework protocol that would had allowed the government to oversee and enforce regulations regarding biotechnology. It established the procedures to register and import GM products and seeds as well as the process for testing.

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.

Section IV. Plant Biotechnology Marketing Issues:

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

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 GM 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 GM 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 GM 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 GM free. Of course these are only rhetorical statements since Peru imports significant amounts of GM products that are distributed nationwide.

Section V. Plant Biotechnology Capacity Building and Outreach:

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 GM trade.

- FAS/Lima has organized 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.

- FAS/Lima, using Department of State funds and Emerging Market has organized a series of seminars to raise awareness among small agricultural producers.

- USDA, through the CGIAR system, provides funds for CIP to carry out research, including biotechnology, on potatoes and other tubers.