

**REGULATION 258/97 OF THE EUROPEAN PARLIAMENT AND
OF THE COUNCIL CONCERNING NOVEL FOODS**

Communication from Peru

The following communication, received on 31 March 2006, is being circulated at the request of the delegation of Peru.

1. Peru would like to state before the Members of the WTO its trade concern regarding Regulation No. 258/97 of the European Parliament and of the Council, the application of which restricts entry into the European market of certain foods and food ingredients (described as "novel foods") that were not marketed in Europe prior to 15 May 1997.
2. Thanks to policies aimed at promoting non-traditional exports and international cooperation efforts including resources from member States of the European Communities, the trade potential of exotic traditional products has developed considerably over the past few decades. High potential Peruvian products such as camu-camu, maca, araza juice, lucuma and other Amazonian fruits are being imported into major markets like Japan and the United States.
3. The Andean tropics, which cover part of Peru, are the source of significant phytogetic resources, accounting for an estimated 35 per cent of the world's agrifood and industrial production, contributing to world food security. Peru is seeking to foster the sustainable use of this biodiversity through sustainable trade, in accordance with the objectives of the Convention on Biological Diversity.
4. Peru's concern is that the implementation of the Regulation on novel foods is directly affecting trade in exotic traditional products from the country's mega-biodiversity, blocking their entry into the EC market. Thus, for example, shipments of dehydrated lucuma that had regularly been entering through ports in Italy and Portugal, were detained and denied entry through the port of Valencia, Spain, in 2000, on the grounds that this was a new food ingredient which had to comply with the said Regulation. On 23 March of this year, in a letter addressed to representatives of Peru's private sector, the European Commission also identified yacon (*Smallanthus sonchifolius*) – a food consumed by the inhabitants of Peru since pre-Colombian times – as a novel food on the grounds that it had not been consumed on the EC market prior to 15 May 1997. This means that it can only be marketed within the EC subject to an authorization under Regulation 258/97.
5. According to Regulation No. 258/97, for food qualified as novel to be able to enter Europe, it must go through a long, complex and very costly registration process which includes providing scientific information on the safety of the product. The Regulation 258/97 requirements involve

clinical studies that call for significant investments for each product to be registered, and would take three to five years to complete.

6. In spite of the interest shown by various importers from the EC member States, the entry into the European market of exotic traditional products has been seriously affected by Regulation 258/97 and way in which it is being applied.

7. While Peru respects and understands the need to protect consumer health, Regulation 258/97 constitutes, in practice, an unjustified barrier to trade. Indeed, in the period of almost eight years since the Regulation was brought into force, exotic traditional products have suffered discrimination merely because they were not significantly marketed in Europe prior to a totally arbitrary date (May 1997), although these products have a long history of safe human consumption in their countries of origin.

8. This is why Peru is expressing its concern at the inconsistency in the application of Regulation 258/97 with the principles and obligations set forth in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, in particular Articles 2.2, 5.1, 5.4 and 5.6 and Annex C of the Agreement, and at the implications of this legislation for the joint efforts of the European Communities and Peru to facilitate sustainable trade.

9. Also worth mentioning is the social and economic impact of the development of trade in exotic traditional products on the efforts of various countries, including a number of EC member States, to reduce extreme rural poverty, to substitute illicit crops such as Coca, and to promote the conservation and sustainable use of biodiversity.

10. We understand that the main reason underlying Regulation 258/97 was the need to regulate trade in genetically modified foods, which are currently governed by their own regulation. This is apparently the context in which the ongoing revision of the mentioned legislation is taking place: as it currently stands, the Regulation would appear to equate exotic traditional products that have been known and consumed on our continent for thousands of years with genetically modified organisms.

11. Peru acknowledges the EC's positive attitude and readiness to revise Regulation 258/97 and encourages it to continue with that effort. In that connection we reiterate to the European Communities the request submitted by the Ambassadors of the Andean countries to the Directorate-General for Health and Consumer Affairs (DG SANCO) in Brussels on 27 January 2006, calling for:

- (a) "Exotic traditional products or food" should be excluded from the scope and coverage of the said Regulation and from its amended version. In other words, all unjustified restrictions on the entry of such foodstuffs which have a history of safe consumption in their country of origin should be eliminated.
- (b) There should be transparency and clarity in the procedures and definitions for certification, where applicable, of the history of safe consumption in the country of origin without negatively or unjustifiably undermining the exportation of such products.
- (c) Likewise, the requirements, tests and procedures must be proportionate to the nature of the foodstuffs concerned and the risks that they could entail for the consumer.
- (d) There should be harmonization of procedures and of the competent authorities.

- (e) All exotic traditional products should remain in the public domain and no private entity be granted privileged access to the European market.
- (f) There should be no duplication or adoption of measures that discriminate against exotic traditional products as regards the assessment of their safety for human consumption.

12. Similarly, during the revision of Regulation No. 258/97, we reiterated the request submitted to the DG SANCO by the Ambassadors of the Andean countries in Brussels on 13 March 2006 concerning the need for the European Communities to adopt some kind of transitional mechanism or measure to exclude exotic traditional products from the scope of the Regulation pending their definitive exclusion in the new, amended regulation.

13. Finally, we would be grateful if the European Communities would explain the objectives of the Regulation in question and how it can be reconciled with the above-mentioned articles of the Agreement on the Application of Sanitary and Phytosanitary Measures. We would also like to know how long they expect it will take to complete the revision and issue the new Regulation.
