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Committee on Sanitary and Phytosanitary Measures Original: Spanish

EUROPEAN COMMUNITIES REGULATION 258/97 CONCERNING NOVEL FOODS

Statement by Peru at the Meeting of the Committee
Held on 8 and 9 October 2008

The following communication, received on 17 October 2008, is being circulated at the request of the delegation of Peru.

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1. My delegation would like to take this opportunity to examine, under the current agenda item, an issue which has already been raised on other occasions, one which is a source of concern for Peru and other countries of the Andean region and which has been under discussion for at least three years in this Committee: namely, Regulation 258/97 of the European Commission concerning so-called "novel foods".

2. Peru's intention in addressing this agenda item is to ask the European Communities for further clarification concerning the ongoing review of the Regulation at issue. The European Communities has already provided us with information in this respect on other occasions, for which we duly expressed our thanks and appreciation. However, we understand that a decisive stage has now been reached in the process of reviewing Regulation 258/97, and we think that it is essential that the European Communities update their information and provide a status report on its legislation, for the benefit of my delegation and of other delegations that are or could be affected by this regulation.

3. At the same time, we would like to raise a few new arguments in connection with the study of certain specific cases involving Regulation 258/97, cases which in our view could justify notification thereof in this Committee while at the same time shedding light on how its application concretely and directly affects specific trade interests.

4. For Peru, it is in the application of the Regulation that a number of infringements of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) have occurred, so that it should first have been notified to this Committee, before being notified to the Committee on Technical Barriers to Trade, which in any case was done only recently.

5. Thus, my delegation learned of a recent case study relating to the Nangai nut, which was denied entry to the European market in 2000 without notification to this Committee, a fact which in itself would appear to violate Article 7 of the SPS Agreement on transparency. But there has been no revision of this decision since, so that a "provisional" measure has de facto become a permanent measure without meeting the conditions set forth in Article 5.7 of the SPS Agreement.

6. Although we can only sympathize with a developing country that has to face such barriers in marketing this nut, we note that it is not a product of direct interest to our delegation. However, we

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think that this is a case that could help to shed light on how the application of the Novel Foods Regulation violates several articles of the SPS Agreement, including Article 5.5, by establishing "arbitrary or unjustifiable distinctions". Let me elaborate.

7. In the specific case of the Nangai nut, this product cannot enter the European market, while other types of nuts can enter subject to specific labelling requirements. This, in itself, is already a form of discrimination. It would appear that ultimately, these distinctions, which should be based on scientific criteria, are in fact based on commercial criteria, since in this instance a request by a single country – probably with trade interests rather than sanitary interests – for additional assurances under the Novel Foods Regulation was all that was needed to trigger a request for information that it would be difficult to obtain, and this, in practice, has been prohibitive for the exporters of Nangai nuts.

8. Of even greater concern is the fact that in this instance, the measure has ultimately been imposed not because the product – in this case the nut – is dangerous, but because the applicant is unable to demonstrate its safety under this Regulation. This switching of the burden of proof is contrary to the spirit of the SPS Agreement, which requires that any sanitary or phytosanitary measure be based on scientific criteria or a risk assessment, and not on an inability to demonstrate that a product is not safe. This is of even more concern for countries like Peru and other developing countries, which end up shouldering the burden – in terms of both material and human resources – of demonstrating the safety of a product, with all of the problems that this involves.

9. Peru could face a similar situation when it comes to marketing Yacon, a Peruvian product used as a food supplement which has anti-diabetic and skin rejuvenating qualities, reducing the glucose content in blood.

10. Another factor I would like to mention – specifically in relation to Peru – is the lack of predictability and the mistrust caused by the application of this Novel Foods Regulation which seriously restricts and discriminates against exports of traditional products deriving from the biodiversity of the Peruvian coast or Amazon. For example, producers of fruit with a long history of safe consumption such as Camu Camu, one of the most important sources of vitamin C and widely consumed in Japan, are denied the confidence of European importers because their product is considered to be a novel food (i.e. not marketed in Europe prior to May 1997) and the prospect of being subjected to this disputed legislation and having to produce documents and undergo burdensome examinations hangs over them like the sword of Damocles and precludes any possibility of trade.

11. Even more surprising and paradoxical is the fact that these very products are supported by the biotrade initiatives financed in our countries by certain noteworthy members of the European Union such as the Netherlands. All of these efforts to cooperate in development and market research, the training of small and medium agro-exporters, quality control, process management and contacts with potential importers of traditional products derived from biodiversity could be reduced to nothing when it comes to entering the European customs territory.

12. We therefore call upon the European Commission to notify the Committee on Sanitary and Phytosanitary Measures of its proposed amendment to the Regulation as rapidly as possible. Only then will we be able to monitor closely the evolution of the planned revision of this legislation. We are concerned by the European Parliament's possible course of action with respect to this legislation.

13. Last but not least, it is essential that we should know how the European Union would apply the special and differential treatment provided for in the SPS Agreement to the benefit of the developing countries as regards this legislation.