



Lima, January 9<sup>th</sup>, 2007

## **OPEN LETTER FROM PERUVIAN AGRICULTURAL PRODUCERS**

To the People of the United States of America  
To the Members of the U.S. Congress

We are sending this letter on behalf of the nine million farmers and rural workers of the coast, highlands, and tropical forests of Peru, who are concerned about the final results of the Trade Promotion Agreement (TPA) completed in December 2005 between the trade representatives of Peru and the United States. We wish to appeal to the deepest sentiments of democracy, justice and equality that the people of the United States hold firm in their conscience and hearts and that steer their actions. Democracy, justice and equality have served as guiding principles for the United States Congress and for presidents like Washington, Jackson, Lincoln, Cleveland, Wilson, Roosevelt, Kennedy, Clinton, among others, helping your country to achieve the greatness it has by strengthening a democracy of the people, by the people and for the people.

In the recent April 2006 Peruvian presidential elections, the people of Peru placed their trust in democracy and chose for the runoff elections the two political parties that had offered to reject and/or revise the text of the recently signed TPA in order to reach an Agreement that is fairer and more equitable for both countries. In other words, the majority of the Peruvian people, when consulted at the time, expressed their inconformity with the TPA - or FTA as it is commonly known - particularly on the issues of agriculture, investment and intellectual property, among others.

The political party that won the second round of elections offered to revise the FTA, particularly with respect to agriculture, in order to keep Peruvian farmers from being adversely affected. Now that they are in office, they seek to finalize the process without revising or renegotiating the FTA as they said they would during the election campaign. We are therefore approaching you now to propose a review of the TPA or FTA in a fair and responsible manner.

On behalf of millions of small and medium-scale Peruvian agricultural producers, we call on you to RENEGOTIATE the aspects of the FTA involving agriculture in order to correct those measures that, if applied, could generate social conflicts in our country. Those affected would be forced to migrate to the tropical forests and engage in the illegal cultivation of coca, resulting in a dangerous expansion of coca cultivation that would allow drug trafficking to regain ground.

Prior to our comments on the text of the Agreement, we must point out that this TPA was, unfortunately, negotiated in an unfavorable context for Peru, one in which it was permanently underscored that it would be impossible for U.S. Congress to extend the ATPDEA once it terminates. In other words, failure to reach a trade agreement with the measures demanded

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by the U.S. negotiators was given to mean that there would be no mechanism allowing for a continuation of Peru's market access under the ATPDEA and, as a result, the ruin of hundreds of Peruvian exporters was foreseen.

Furthermore, the U.S. negotiators rejected the Andean countries' proposal to take into account the size of their economies in order to reach an agreement with more favorable conditions for small countries like Peru. Moreover, the U.S. team even demanded reciprocal treatment, which in some cases was more favorable for the United States than that granted by Peru in past trade agreements to neighboring developing countries. Peru even agreed to give preferential treatment, similar to that which Peru might grant in the future to any third country (Extension of Preferences Clause), to a list of products proposed by the United States.

Likewise, the United States rejected the initial proposal of the Andean countries to eliminate all types of trade-distorting subsidies for domestic production, arguing that this issue would have to be addressed in the framework of the World Trade Organization (WTO). As an alternative proposal, Peru suggested that those products benefiting from direct subsidies for production should not be subject to tariff liberalization as long as the subsidies are in place. This proposal was also rejected, and the continuation of the negotiation process was conditioned on Peru's not insisting on this type of proposal.

Lastly, Peru expressed the need for greater understanding from the U.S. delegation to take into account sensitive areas, particularly in agriculture. Since 1991 under the Andean Trade Preferences Act (ATPA-ATPDEA), the United States has adopted the principle of shared responsibility in order to promote the development of alternatives to the cultivation of illicit crops. This request was also rejected by the U.S. agricultural negotiators, who indicated that the negotiations were strictly of a commercial nature. In sum, the minimum criteria that are deemed appropriate in any negotiation, such as the size of economies, fairness in treatment, and equality of conditions, were not taken into account.

We will now focus our comments on the sector we represent: agriculture. We request that the text of the Agreement be revised in order to improve its treatment of agriculture. To that end, even if all the issues that CONVEAGRO has raised over many months cannot be addressed, we urge you to at least take into account the most important ones. With those in mind, we put forward the following questions and comments to establish our renegotiation proposal.

### **1. Why allow the United States to re-introduce export subsidies if these are unacceptable in any agreement?**

Paragraph 3 of Article 2.16 provides for the United States to be able to re-introduce subsidies on agricultural exports at any time when it deems that a third country is subsidizing similar products being exported to Peru and that Peru has not adopted any measures to limit such access.

Yet the following questions and comment must be answered:

- Who is going to justify such subsidies if, in the first place, the famous proof of damage is not demonstrated? The United States or Peru?
- If there is no damage, but the United States says subsidies are being used by a third country, what argument can Peru give to apply a compensatory right or other restrictive measure to trade that could lead the country to a WTO dispute panel by the third country?
- If Peru does not have the necessary evidence to apply measures against the subsidies, is the United States going to be allowed to subsidize their duty free exports that enter Peru because they consider that the third country is doing the same?
- This action would be a set back to any commitment reached in the negotiation process of the Doha Round of the WTO.

**PROPOSAL: Modify the text of paragraph 3 of Article 2.16 so that if a third country is subsidizing its exports, then the WTO rules would be applied, thus eliminating from the current text the possibility of re-introducing export subsidies.**

## **2. Why has the application of the tariff elimination program not been conditioned on the non-application of subsidies, as has been done in the Complementary Economic Agreement # 58 with MERCOSUR and in other trade agreements Peru has signed?**

In the Complementary Economic Agreement #58, which established a free-trade area between Peru and MERCOSUR, the second paragraph of Article 18 of the Title corresponding to the Application and Use of Export Incentives states:

*“The Signatory Parties agree not to apply export subsidies and other measures and practices of equivalent effect, which may distort trade and production of agricultural origin, to reciprocal agricultural trade. Likewise, ..., products that do not comply with provisions in the previous paragraph shall not benefit from the Liberalization Program.”*

However, in the TPA signed with the United States, this issue is not mentioned in spite of the existence of U.S. subsidies that favor domestic production and allow that country to produce surpluses for export under uncompetitive conditions in products such as cotton, yellow corn, rice, wheat, dairy products, soy beans, barley, beef, poultry and pork.

**PROPOSAL: Include a paragraph that makes the non-application of subsidies for export and domestic production that distort trade and production a condition for the application of the liberalization program.**

**3. Why does paragraph 2 of Article 2.18 establish a methodology for applying the Agricultural Safeguard Measure (ASM) that is virtually inapplicable for Peru, given that this is the only defense mechanism domestic agricultural production has in the face of U.S. imports under the TPA? Likewise, why has an ASM been imposed on Peru that is temporary and can only be applied during the tariff elimination period? Why has it not been taken into account that this protection measure becomes increasingly important when there are no longer tariffs for the Peruvian market to defend itself against U.S. imports, which in most cases are subsidized (Article 2.18, paragraph 7)?**

Firstly, the trigger mechanism chosen for the ASM is, questionably, import “volume”, so that imports above a certain volume justify application of the measure. We question why a better trigger for this mechanism was not chosen, such as average import “prices,” since U.S. subsidies push the price of their exported surplus downward. A better way of neutralizing that effect would have been setting a floor “price” so those lower-priced imports would have to face the ASM.

Secondly, many sensitive products have not been included in the scope of the ASM, which only covers a few products (3 tariff lines for beef, 3 for poultry, 4 for rice, and a few for dairy products). In this regard, we are questioning why this measure cannot be applied to all U.S. subsidized products, such as cotton, wheat, barley, yellow corn, oils, pork and all poultry products, all of which Peru produces in significant amounts.

Thirdly, we believe the ASM is a mechanism of protection that must be taken only in special circumstances and when the minimum requirements allow for it, and whose importance grows when all border restrictions disappear. Thus, its duration must not be temporary but last as long as the Agreement is in force, as is the case with other trade agreements Peru has signed and as has been stipulated in the case of the Special Safeguard of the WTO’s Agreement on Agriculture.

**PROPOSAL: Replace the “volume” trigger with a “price” trigger. Furthermore, an additional list of specified products should be allowed to use the ASM, including cotton, yellow corn, barley, wheat, and all poultry and pork products. In addition, the ASM should be applicable as long as the TPA is in force.**

**4. Why has Peru been forced to give up its right to be able to use in the future any Special Safeguard Mechanism (SSM) for agriculture within the framework of the WTO’s Agreement on Agriculture (paragraph 8 of Art. 2.18)?**

Paragraph 8 of Article 2.18 states that no products can apply any duty “pursuant to any agricultural safeguard measure taken under the WTO Agreement on Agriculture or any successor provisions thereof.”



If Peru, heeding the principle of non-discrimination, does not apply these types of duties to U.S. imports in the WTO framework, it would also have to extend this treatment to other WTO member states.

We do not understand why Peru accepted the inability to use a SSM under the WTO's Agreement on Agriculture if it would have enabled us to apply, when circumstances so require, a duty above the WTO's consolidated tariff independently of the fixed tariff that might even be duty free in the framework of a bilateral trade agreement. This measure would have to be applied in a manner that does not discriminate against any WTO member state.

**PROPOSAL: Eliminate paragraph 8 of Article 2.18 from the TPA text.**

**5. Why must Peru renounce its use of the Price Band System on imports from the United States? Does the principle of reciprocity only work when it is in the best interests of the U.S. and not when it is a mechanism to correct for distortions in international prices?**

Subparagraph a) of paragraph 2 of Appendix I of the Tariff Elimination Schedule states that Peru must not apply any price band system to agricultural products imported from the U.S.

We do not comprehend how Peru has accepted this measure even though the U.S. has not reciprocated by eliminating one single dollar from the more than 72 billion dollars it gives, on average, to its agricultural sector annually (latest figures notified to the WTO's Committee on Agriculture). This includes direct subsidies that entirely harm trade and developing countries' production (around \$21 billion annually), and other forms of direct and indirect subsidies (\$51 billion annually) that have not been duly classified by the WTO, such as loans, insurance and guarantees, as well as subsidies to keep low prices for animal feed, other direct payments to producers, structural adjustment programs and so forth that are at the moment considered harmless measures or Green Box subsidies by the WTO. In this context, how can the United States force Peru to give up the only price stabilizing mechanism we have for certain imported products without anything in return?

This sets a bad precedent that MERCOSUR and Chile could also demand.

**PROPOSAL: Eliminate subparagraph a) of paragraph 2 of Appendix I of the Tariff Elimination Schedule from the text or at least ensure that elimination of the price band system is conditioned on the elimination of trade-distorting U.S. subsidies.**

Sincerely,  
Luis Zuñiga Rosas, President of CONVEAGRO (\*)

(\*) National Convention of Peruvian Agriculture - a forum for analyzing, debating, and setting out proposals on agricultural issues. It is comprised of 54 organizations engaged in the agricultural sector, including 21 of the most important agricultural producer associations in Peru, 14 regional forums, and 19 civil society institutions.

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