



Lima, September 3, 2013

**Letter N° 094-2013/SPDE**

**Ambassador Michael Froman  
United States Trade Representative  
600 17th Street NW  
Washington, DC 20508  
U.S.A.**

*Request: Enabling of Mechanism for Compliance Matter within the scope of the Trade Promotion Agreement between the United States and Peru, and filing of new evidence.*

Dear Sir,

Please receive cordial greetings on behalf of the institution *Sociedad Peruana de Ecodesarrollo-SPDE*, a non-profit civil organization which main aim is to consolidate the foundations of sustainable human development in a participatory and consensus manner with the stakeholders in the country, from the aspects of land management and planning; the conservation and protection of biodiversity, natural resources and environmental management.

We are pleased to address you to express that by Letters N° 039-2013-SPDE and N° 078-2013-SPDE, under the provisions set forth in the subsections 1) and 2) of Article 18.8 of the Trade Promotion Agreement between the United States and Peru<sup>1</sup>, our institution filed with you a Request for Enabling of Mechanism for Compliance Matter, given the damages to the integrity and preservation of primary tropical forests in Peru, while the expansion policy of the agricultural frontier promoted by the Peruvian State through the Ministry of Agriculture, for the cultivation of oil palm in the Amazon region, has been affecting land suitable for forest, this being contrary to the commitments assumed by Peru within the framework of the Trade

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<sup>1</sup> "Article 18.8: Applications on Enforcement Matters

1. Any person of a Party may file a statement to the effect that a Party is failing to effectively enforce its environmental law. Such requests must be filed with a Ministry or other appropriate body (Secretariat Office) the Parties may agree to.
2. The Ministry may consider a submission under this Article if it finds that the request:
  - (a) is written in English or Spanish;
  - (b) clearly identifies the person making the request;
  - (c) provide sufficient information to allow the Ministry to review the request, including any documentary evidence on which the application is based and identification of environmental laws for which the breach is invoked;
  - (d) appears to be aimed at promoting enforcement rather than harassing industry;
  - (e) states that the matter has been communicated in writing to the relevant institutions of the Party and indicates the Party's response, if any; and
  - (f) it is made by a person of a Party, except as provided in Paragraph 3".

Promotion Agreement between the United States<sup>2</sup> and Peru, and its Amendment Protocol<sup>3</sup>, effective<sup>4</sup> in the Peruvian legal system as from February 1, 2009, which in relation to the levels of protection that should be met by each country, states in Article 18.1 as follows: “(...) *each Party shall endeavor to ensure that their laws and policies provide for and encourage high levels of environmental protection and shall strive to continue improving their level of environmental protection.*”

In this regard, although Peru under the framework of the Trade Promotion Agreement with the United States has recognized the importance of conservation and sustainable use of biological diversity and its role in achieving sustainable development<sup>5</sup>, as well as endeavor to ensure that their laws and policies provide for and encourage high levels of environmental protection; Sociedad Peruana de Ecodesarrollo states that such commitments and obligations have been affected by the Ministry of Agriculture of the Peruvian State given the expansion policy for cultivation of oil palm and other agro-energy crops, which has been causing deforestation of primary tropical forests, as well as a loss in biodiversity and emission of greenhouse gases.

For such reasons, and given the imminent effect on the National Forest and Wildlife Heritage, breach of national regulations and international treaties concerning the preservation and protection of primary forest ecosystems and their biodiversity, the Sociedad Peruana de Ecodesarrollo is asking the **Presidency of the Council of Ministers of the Peruvian Government to immediately pass the following measures that will make it possible to remedy any irregularities being caused by the Ministry of Agriculture and the Regional Governments:**

- 1. Approval of the proposed Supreme Decree setting forth the mandatory status of the binding opinion of the Ministry of the Environment to approve the studies relating to the classification and/or reclassification of land according to their capacity of greater use, issued by the Ministry of Agriculture, as well as for the preparation of soil studies for the setting up of agro-industrial and agro-energy projects.**
- 2. Suspend the issuance of authorizations for change of land use until the approval of the Regulations for the Forestry and Wildlife Act, Law No. 29763.**
- 3. Approval of transfer of the National Forestry and Wildlife Service – SERFOR, to the Ministry of the Environment.**
- 4. Derogation of Supreme Decree No. 015-2000-AG, declaring the setting up of oil palm plantations to be of national interest.**
- 5. Two-year postponement of the transfer of soils change of use to the regions, remaining under the governance of SERFOR.**

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<sup>2</sup> Signed on April 12, 2006 and approved by the Congress of the Republic by Legislative Resolution N° 28766, published on June 29, 2006. Ratified by Supreme Decree No. 030-2006-RE dated June 30, 2006.

<sup>3</sup> Approved by the Congress of the Republic through Legislative Resolution No. 29054, published on June 29, 2007, ratified by Supreme Decree No. 040-2007-RE, dated July 3, 2007.

<sup>4</sup> Approved by Supreme Decree No. 009-2009-MINCETUR, published on January 17, 2009

<sup>5</sup> Article 28.11 of the Trade Promotion Agreement between the United States and Perú

6. **Amendment to the Regulations for the Soil Classification in accordance with Law No. 29763 and regulations thereto, containing an express prohibition to reclassify soils with aptitude for forests and protection, to soils with aptitude for farming.**
7. **Amendment to Article 2 of Ministerial Resolution No. 0434-2006-AG<sup>6</sup>, removing the following conditions for the Redimensioning of Permanent Production Forests:**  
*“Empower the National Natural Resources Institute – INRENA, to undertake the redimensioning of Permanent Production Forests nationwide, as a result of:*
  - *Concerning areas which technical substantiation determines that they do not relate to natural primary forests with biotic and non-biotic characteristics, suitable for preferred exploitation of timber and other resources and wildlife.*
  - *Concerning areas which through environmental, economic and social studies, it is determined that they must not continue to be classified as Permanent Production Forests”.*
8. **Declaration to the effect that the Ministry of the Environment has a prior binding opinion over the redimensioning of Permanent Production Forests.** Approval of technical and legal directives that will determine standards and guidelines for the assessment of requests for redimensioning of Permanent Production Forests
9. **Amendment to Article 48 of Legislative Decree No 653 “Law for the Promotion of Investments in the Agrarian Sector”, removing the condition for the adjudication of 10 000 hectares for projects accrediting to be of an agro-industrial type.**
10. Preparation of:
  - **Rural cadaster nationwide**
  - **Forest and deforested areas cadaster,**so that an expansion of agro-energy crops shall not become a threat to natural forests and for the generation of incentives that shall promote mass deforestation processes, burning of fields and occupation of primary forests, through the trafficking of land for the establishment of agro-energy single crops.

Finally, please find attached hereto the following documents:

- Letter N° 092-2013-SPDE sent to the Presidency of the Council of Ministers of the Peruvian Government.
- Report on Aerial Survey for the Identification of Threats to the Allpahuayo Mishana National Reserve, which includes parcels which have been deforested for the setting up of oil palm single crops. This report has been prepared by the Head Office of the National Allpahuayo-Mishana Reserve (National Service of Protected Natural Areas).

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<sup>6</sup> Published on May 20, 2006

- Journalistic articles published in nationally and regionally distributed newspapers concerning deforestation of areas for the setting up of oil palm crops, threatening Protected Natural Areas.: Allpahuayo Mishana National Reserve and Tamshiyacu – Tahuayo Regional Community Protected Area, in the Region of Loreto.

Thanking you in advance for your kind attention, we avail ourselves of this opportunity to remain,

Yours sincerely,



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**Directora Ejecutiva**  
**Sociedad Peruana de Ecodesarrollo**  
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