

Lima, March 21, 2014

Letter N° 019-2014/SPDE

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

**Mr. Edgar Manuel Vásquez Vela
Viceministro de Comercio Exterior
Calle Uno N° 050 Urb. Córpac – San Isidro
Lima, Perú.
Presente.-**

Request: *Enabling of Mechanism for Compliance within the framework of Chapter XVIII and Annex 18.3.4 of the Amendment Protocol of the Trade Promotion Agreement between Perú and the United States*

References: Letter N° 039-2013/SPDE,
Letter N° 078-2013/SPDE,
Letter N° 094-2013/SPDE,
Letter N° 112-2013/SPDE,
Letter N° 004-2014/SPDE

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, from the aspects of land management and planning; the conservation and protection of forest and its biodiversity, natural resources and environmental management.

We are pleased to address you to express that by Letters of Reference, 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 Peru¹, 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 and Irrigation, for the cultivation of oil palm in the Peruvian Amazon, has been affecting land suitable for forest, this being contrary to the commitments assumed by Peru within the framework of the Trade Promotion Agreement between the United States² and Peru, and its Amendment Protocol³, effective⁴ 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 development⁵, as well as endeavor to ensure that

¹ *"Article 18.8: Applications on Enforcement Matters*

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".

² 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.

³ 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.

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

⁵ Article 28.11 of the Trade Promotion Agreement between the United States and Peru

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 this reason, we would like to reiterate to you our concern regarding the persistence of the Minister of Agriculture and Irrigation to continue promoting oil palm monoculture despite countless complaints and prosecution investigation efforts, connected with irreversible ecological and environmental damages caused by deforestation of 13,0760 hectares of primary forests in the Regions of Loreto and Ucayali, as well as the social conflicts generated by these impacts.

I. PETITION FOR INJUNCTIVE RELIEF PRESENTED BY THE SOCIEDAD PERUANA DE ECODESARROLLO

On July 25, 2013, Sociedad Peruana de Ecodesarrollo appealed to the Second Constitutional Court in and for Lima, an action against the Ministry of Agriculture and Irrigation - MINAGRI, due to certain and imminent danger of infringement of the fundamental right to a healthy and proper life development environment, protected in Article 2, subsection 22 of the 1993 Peruvian Political Constitution. This appeal sought to prevent the General Directorate of Environmental and Agrarian Affairs of the MINAGRI from approving four Environmental Impact Studies for the Agrobusiness Projects: Santa Cecilia, Santa Catalina, Tierra Blanca and Manítí, located in Loreto Region, which totaled 35,528 hectares of high biodiversity primary forest for being deforested.

By Letter No. 082-2013-SPDE, dated July 26, 2013, we advised the General Directorate of Environmental and Agrarian Affairs of the filing of the constitutional guaranty for protection, registered in File No. 19774-2013-0-1801-JR-CI-02, so that it will become aware of the proceeding and refrain from pursuing its intention to approve the Environmental Impact Studies, which facilitate deforestation of 35,528 hectares of primary forest. In this regard, on September 6, 2013, by Letter No. 098-2013/SPDE, the Minister of Agriculture was made aware of the appeal, which

was admitted on September 27, 2013. Complementary to the appeal, Sociedad Peruana de Ecodesarrollo filed an injunction.

However, despite having full knowledge that the judicial process is on course, the General Directorate of Environmental and Agrarian Affairs of the Ministry of Agriculture has approved the Environmental Impact Studies subject matter of litigation, breaching the claimed constitutional right, as well as forestry and wildlife regulations. The Environmental Impact Studies were approved by the following resolutions:

- General Directorial Resolution N° 085-13-MINAGRI-DGAAA, of July 16, 2013, which approved the Manítí EIA.
- General Directorial Resolution N° 154-13-AG-DVM-DGAAA, of November 18, 2013, which approved the Tierra Blanca EIA.
- General Directorial Resolution N° 156-13-AG-DVM-DGAAA, of November 25, 2013, which approved the Santa Cecilia EIA.
- General Directorial Resolution N° 133-13-MINAGRI-DGAAA, of October 9, 2013, which approved the Santa Catalina EIA.

Additionally, in a meeting held on March 12, 2014⁶, the Ministry of Agriculture and Irrigation stated that the areas to be adjudicated, despite contain high conservation value primary forests, are registered in the name of the said entity, which is why they are being transferred to the Regional Governments for sale thereof to the business groups, their subsequent change of use and clear-cutting for the setting up of palm plantations, adding that the political decision to award these areas was taken despite complaints or processes put forth by either party. It should be noted that -to date- it has not been demonstrated that these areas have Studies of Soils attesting to their classification as agricultural land.

⁶ Meeting organized by the General Forest and Wildlife Directorate, attended by the Permanent Secretary for Agrarian Policy of the MINAGRI, the General Directorate of Environmental and Agrarian Affairs and the Agrarian Competitiveness Directorate.

The decision to facilitate the award of these areas to private companies has been taken without having the information from Studies of Soils, identification of deforested areas aptitude for this type of crops, ecological zoning or land use planning maps approves, or technical, social, economic livelihood, nor legal justification. Additionally, two of the agro-industrial projects to be awarded under Legislative Decree No. 653, as if they were rural land⁷, are within the area of Permanent Production Forest No. 5 of Loreto Region⁸. In this regard the General Forest and Wildlife Directorate stated that due to the fact that registration of these areas predates the establishment of the Permanent Production Forests, their exclusion from the BPP is justified.

⁷ *“Article 17 of Legislative Decree 653.- Rustic terrain is that located in rural areas, aimed at or likely to be used for farming purposes, which have not been classified as urban areas”.*

“Article 19 of Legislative Decree No. 653: “Any adjudication of rural land, to any person or entity, shall be made against a consideration under a contract of sale with reservation of title until full settlement of the price. The contract is formalized by private contract with legalized signatures, constituting sufficient title for registration”.

⁸ *Created by Ministerial Resolution N° 1349-2001-AG of December 27, 2001, and amended by Ministerial Resolution N° 521-2009-AG.*

**FORESTS AREAS TO BE AWARDED BY THE MINAGRI
AND THE REGIONAL GOVERNMENT OF LORETO AS RURAL LAND**

**SANTA CECILIA AND MANITÍ AGRIBUSINESS PROJECTS WITHIN THE
PERMANENT PRODUCTION FOREST N° 5 OF LORETO**



TIERRA BLANCA AND SANTA CATALINA – LORETO AGRIBUSINESS PROJECTS



In this sense, we argue that the Ministry of Agriculture, despite being the governing and regulatory body for Forestry and Wildlife, is in breach of its duties set out in Articles 3, 5.1.9 and 6.2 of the Ministry of Agriculture and Irrigation's Organization and Functions Regulations, approved by Supreme Decree N° 031-2008-AG. For its part, the General Forest and Wildlife Directorate, has also stopped performing its functions under Article 58, subsections d) and f) of the Ministry of Agriculture and Irrigation's Organization and Functions Regulations, approved by Supreme Decree N° 031-2008-AG; and Article 4, subsections d) and e) of the Ministry of Agriculture and Irrigation's Organization and Functions Regulations of the National Forest and Wildlife Service, approved by Supreme Decree N° 007-2013 MINAGRI.

With this, the Ministry of Agriculture and Irrigation shows how little respect it has for the guaranty constitutional processes safeguarding the rights of Peruvian citizens, as well as the little respect it has for judicial mechanisms in Peru.

Under these same arguments, and applying MINAGRI policies, it would be at risk of being deforested and private award for installation of industrial activities on forested areas:

- 87 Property registered in Public Records under the name of MINAGRI and 8 Property registered under the name of the Ucayali Regional Government, in the Ucayali Region.
- 24 Property registered in Public Records under the name of MINAGRI and 28 Property registered under the name of the Ucayali Regional Government, in the Ucayali Region.

As well as hundreds of similar property registered in the Regions of Amazonas, San Martín, Huánuco, Pasco, Junín and Madre de Dios. It should be noted that the registration of all these forest areas on behalf of public entities, do not have Soils Studies that justify technically and legally the land classification.

II. DEFORESTATION IN TAMSHIYACU, LORETO REGION

Regarding the case of deforestation of 2,150 hectares in the rural community of Tamshiyacu, District of Fernando Loes – Loreto, on February 27, 2014, the Provincial Prosecutor of the Prosecutors' Office Specializing on Environmental Matters of Loreto (Maynas), Dr. Jhony Ríos, issued statements in the La Región⁹ journal, pointing out that the General Directorate of Environmental and Agrarian Affairs of the Ministry of Agriculture and Irrigation, and the Regional Agrarian Directorate of the Loreto Regional Government, have submitted reports stating that although deforestation and full clearing of forests under tax investigation, the company Cacao del Perú Norte SAC, shall not need a permit to change the use of soils, from forest to agribusiness uses, exempting the company from criminal responsibility for alleged environmental crimes.

⁹<http://diariolaregion.com/web/2014/02/27/concluyo-investigacion-sobre-deforestacion-de-miles-de-hectareas-de-bosques-primarios-en-tamshiyacu/>

In this regard, Sociedad Peruana de Desarrollo asked the General Directorate of Environmental and Agrarian Affairs to provide copies of the communications and reports forwarded to the Prosecutors' Office Specializing on Environmental Matters of Loreto. However, through Memorandum N° 018-2014-MINAGRI-DGAAA-DGA 22819-2014, the MINAGRI DGAAA stated that the entity had not issued any letter, official note or report to the Prosecutors' Office.

However, on December 6, 2013, when the various complaints concerning the devastation of forests in Tamshiyacu had already been made public and the Fiscal Investigation was underway, the General Directorate of Environmental and Agrarian Affairs of MINAGRI DGAAA effectively issued Report No. 1376-13-MINAGRI-DGAAA-DGAA/REA-114912-13, with the following conclusion: *"As set out in Item 2 (Analysis) of this report, we proceed to exclude from the terms for the development of the PAMA for the Tamshiyacu rural property, Recommendation No. 2 set out in Report No. 1081-13-MINAGRI-DGAAA-DGAA/REA-114912-13, relating to the filing of the Change of Use Authorization, because rural land freely available and freely allotted to the beneficiaries of the policy of reintegration of displaced persons under Legislative Decree No. 838 and Supreme Decree No. 018-96-AG, which were acquired by Cacao del Perú Norte S.A.C., should not require authorization for change of use"*.



Deforestación en la Localidad de Tamshiyacu, Loreto.

Additionally, Technical Report No. 1380-13-MINAGRI-DGAAA-DGAA/WSG-148537-13 sets forth as follows: *"The General Directorate of Environmental and Agrarian Affairs of the Ministry of Agriculture and Irrigation approved the Terms of Reference of the PAMA for the Tamshiyacu rural property of Cacao del Perú Norte S.A.C., by Report No. 1081-13- MINAGRI-DGAAA-DGAA/REA-114912-13, including clarification through Report No. 1376-13- MINAGRI-DGAAA-DGAA/REA-114912-13; thus the said company has already begun the process of environmental adaptation"*.

According to the statements of defense of the undertaking Cocoa North Peru SAC, they would find exonerated to have Authorization of Land Use Change, and therefore would not have committed no offense, neither environmental crime made by unauthorized clearcutting. Additionally are covered up by the reports of the Directorate General of Agricultural Environmental Affairs¹⁰ - MINAGRI, which takes this interpretation by arguing that Article 1 of Legislative Decree No. 838 suspends the application of Article 19 of Legislative Decree No. 653, which presumably also would suspend the requirement for Change of Use Authorization, despite being primary forest areas, awarded with exceptional and temporary basis to displaced individuals, not private companies. (See the Video of the Public Hearing and manifestation of Cacao del Perú Norte S.A.C).

However, the Legislative Decree No. 838 is repealed by Act No. 29563, from July 20, 2010. Coincidentally the DGAAA-MINAGRI, as well as the defense of the company Cocoa North Peru SAC, attempt to validate the application of a rule which since 2010 is not part of the current legal system of the country.

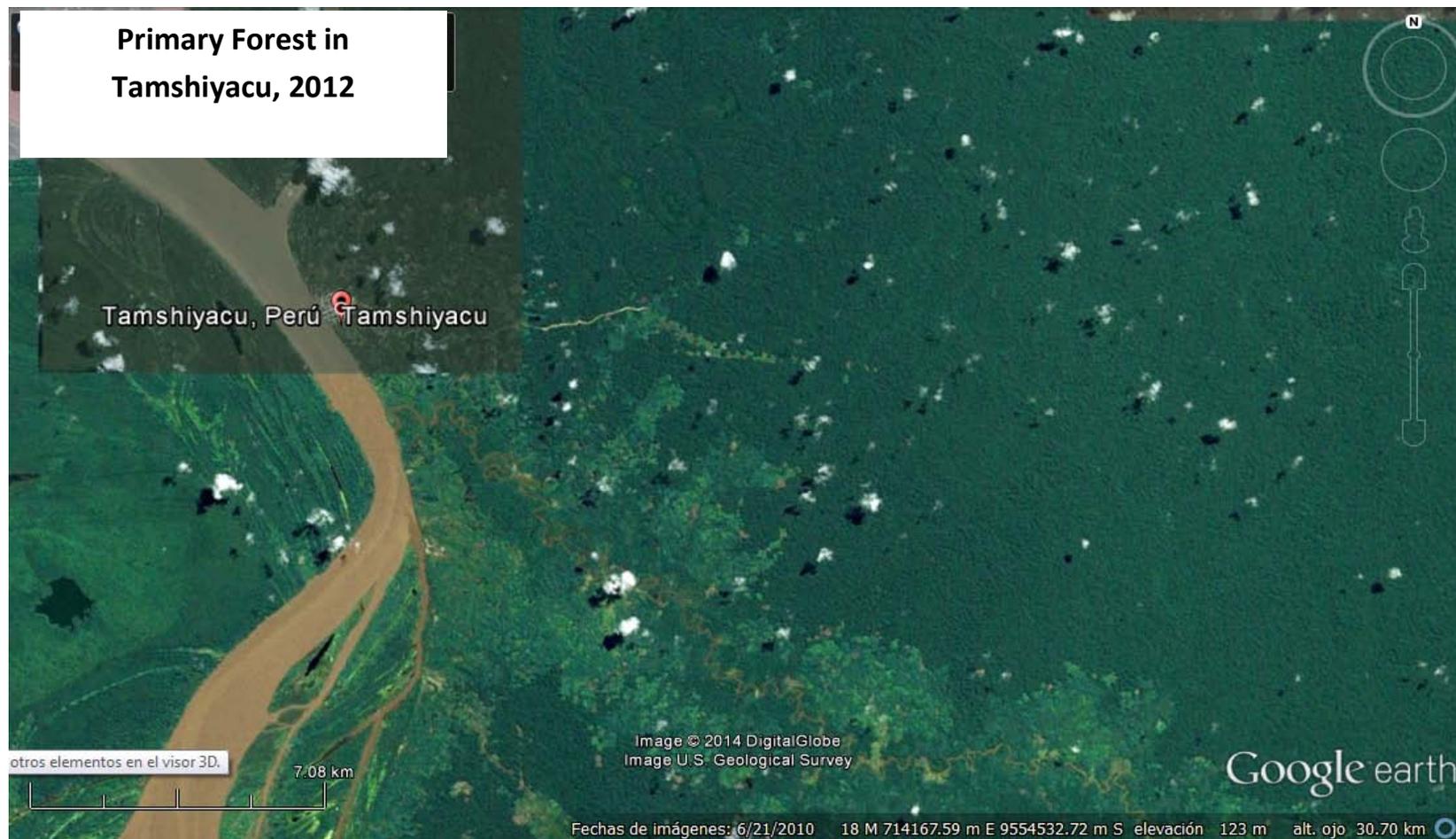
Therefore, this interpretation is not consistent with forest and environmental legislation, since the agricultural land purchased by the company Cacao del Perú Norte S.A.C. was managed under low intensity intervention agroforestry, not evidencing damages to the vegetation or deforested areas, as shown by satellite images of 2010 and 2012, before the operation of the mentioned company, using heavy-duty machinery. For this reason, and with the existence of a forest cover, it was essential to have the Land Use Change Authorization as well as permits issued by the Regional Forestry and Wildlife Authority for the harvest, transportation and marketing of more than 40,000

¹⁰ DGAAA: Dirección General de Asuntos Ambientales Agrarios del Ministerio de Agricultura y Riego del Perú.

m3 of timber logged in such areas. On this point, neither the National Forest and Wildlife Authority, nor OSINFOR have not yet investigate the offenses committed out by the destruction of timber and non-timber resources and wildlife on such forest lands. Nor have they considered the possible existence of threatened species, and / or CITES species in these areas.

DEFORESTATION IN THE RURAL COMMUNITY OF TAMSHIYACU AS FROM 2013

PRIMARY FORESTS AT TAMSHIYACU – 2012



DEFORESTED AREAS AT TAMSHIYACU - SEPTEMBER 2013

ÁREAS DEFORESTADAS EN TAMSHIYACU, LORETO
SETIEMBRE 2013



Thus, the MINAGRI backs illegality and environmental offenses committed by Cacao del Perú Norte S.A.C. and the deforestation of the forest in Tamshiyacu.

Meanwhile, the Regional Agrarian Directorate of the Loreto Regional Government, in Official Note No. 1352-2013-GRL-DRA-L/AAM-1082, submitted to the Provincial Prosecutors' Office on Environmental Matters of Loreto-Maynas Report No. 20-2013/GRL-DRA-Loreto/AAM-JERI-EVC, which accounts for a field survey conducted in areas deforested by the company Cacao del Perú Norte S.A.C, identifying the following controversial issues:

- "a. (...) It is not known how the company will handle the temporary and permanent shade that requires this crop [regarding cacao]*
- b. According to the Political Constitution, forest resources are owned by the State, and no rights are acquired upon them. The company performed felling and cutting works without seeking a forest clearing permit and canceled or paying for the value of the forest species affected.*
- c. It is observed that there has been no respect for the marginal strip of the gorges, which are intangible, according to legal norms.*
- d. Forest degradation affects water resources. It is a known fact that Amazonian soils containing heavy elements, which because of the runoff, wash soil and end up in the gorges, affecting the quality of water consumed by coastal populations. It is recommended that the National Water Authority should monitor this situation".*



Deforestation in Tamshiyacu by Cacao del Perú Norte SAC Company

III. PROHIBITION OF USE OF FOREST LAND AND PROTECTION LAND FOR AGRIBUSINESS:

The development of agribusiness or agro-energy activities are prohibited from being carried on land with a greater capacity for forest use and protection lands, in which only forestry activities under the terms established in the Forestry and Wildlife Act (Law No. 27308) and Regulations thereto, approved by Supreme Decree N° 014-2001-AG, can be performed. This is set forth in Article 7 of Law 27308, which states:

"Article 7: National Forest and Wildlife Heritage

Forest and wildlife resources kept at their source and State land which greater use capacity is for forest, whether or not involving a forest, form part of the National Forest Heritage. They cannot be used for agricultural purposes or other activities affecting vegetation, sustainable use and conservation of forest resources, regardless of their location in the country (...)."

Consecutively, the Regulations of Law 27308 set forth as follows:

"Article 20: Deforestation Prevention and Control

In accordance with Article 3 of Law¹¹, deforestation prevention and control are a national priority. For purposes of these Regulations, deforestation is deemed to originate from any forest formation or natural or planted shrubs, among others, as follows:

- a. Flattening and illegal burning of forests for conversion to other unsustainable uses;*
- b. Illegal felling for logging, firewood and charcoal production;*
- c. Forest overexploitation, with respect to the allowable production capacity of the forest;*

¹¹ "Article 3 of Law No. 27308: Promotion and management of forest and wildlife resources

3.1 The State promotes the management of forest and wildlife resources in the country, as elements essential to ensure sustainable development, with the active participation of the social and economic sectors of the country.

3.2 The State promotes national awareness of the responsible management of watersheds, forests and wildlife and makes prevention and environmental recovery action.

3.3 The Ministry of Agriculture is the regulatory body and promoter of sustainable use and conservation of forest and wildlife resources.

3.4 The National Institute of Natural Resources (INRENA) is the body responsible for the management and administration of forest and wildlife resources at nationwide".

d. Forest fires".

Additionally, the Regulations for the Forestry and Wildlife Act in force identify the unauthorized use change as a violation of forest laws:

"Article 363: Offences on forest issues¹²

On an enunciative basis, the following are considered violations of forestry and wildlife legislation in forest issues:

a. Invasion or usurpation of land comprising the National Forest Heritage.

b. Provocation forest fires.

(...)

e. Changing of unauthorized land use under forest legislation.

(...)

i. Conducting forest extraction activities without proper authorization, or performing them outside the licensed area as well as the processing and marketing of these products.

(...)

k. Deforestation in condition of regeneration, marked for study and as seed and those who do not meet the minimum cutting diameters and their processing and marketing.

l. Failure to comply with the conditions laid down in the logging regulations.

m. Preventing free access by authorized agencies for the supervision and control of forest activities and/or refusing to provide information requested thereby.

(...)

o. Causing the disappearance of trees producing fruits, seeds, syrup or similar substances, due to negligence or abuse in their use.

(...)

u. Breaking environmental nature regulations.

(...)

w. Facilitating the extraction, transport, processing and marketing of forest resources illegally extracted through a concession agreement, management contract, permit or logging authorization". (We have added underlining)

¹² Article amended by Article 2 of Supreme Decree N° 006-2003-AG, published on 30-01-2003.

These offenses are exacerbated when deforestation by changing forest land use is supported by the Ministry of Agriculture and Irrigation, to the consent of the National Forestry and Wildlife Authority.

Regarding the use of land within a private property, Supreme Decree No. 014-2001-AG emphasizes the need for adequate technical studies to determine the capacity of land use and allocation of permitted land uses for each category:

“Article 50: Ordering of Property

The ordering of property on the basis of land classification for its greater capacity for use is mandatory for the determination of permitted uses under the terms of reference approved by the INRENA.

In the case of land with forest coverage allocated for uses involving the conversion of the forest ecosystem, the property ordering is the only legal and technical reference for the determination of permitted uses. Under no circumstances may there be a change to agricultural or livestock uses in land which greater capacity use is for forest or protection”.

Regarding the change of use of agricultural¹³ land in private property, the Regulations of the Forestry and Wildlife Act provides as follows:

Article 284: Requirement for Ordering of Property

A requirement for the signing of agreements allocate land suitable for agriculture in the regions of the jungle and upper jungle, is for the applicant to have filed the proposed classification of the property, as noted in Article 50 of these Regulations, subject to evaluation and approval by INRENA, which forms part of the awarding agreement.

Failure to comply with this requirement configures grounds for termination of the award agreement¹⁴. Even in the use of land suitable for agriculture, the main criteria is soil preservation

¹³ *“Article 283 of Regulations governing Law 27308: Agricultural Land in the jungle and upper jungle. Land classified as being suitable for agricultural in the jungle and upper jungle, with or without forest cover, is that, which due to its use capacity, can be destined to farming activities in accordance with the regulations to ensure the sustainability of the respective ecosystem”.*

and the productive capacity of the ecological systems, prioritizing the development of agroforestry and forestry activities, discarding the clearing-cutting using heavy-duty machinery, which generates the devastation of the soil^{15, 16}.

Regarding the requirements for the authorization of change of use for land suitable for agriculture, the Regulations governing Law 27308 mandate the certifiably studies to demonstrate the aptitude of the soil, as well as an environmental impact assessment, limiting change use of the area:

“Article 287: Authorization and Requirements for Use Change

287.1 Prior Authorization for Use Change

The land referred to in above Article 284 cannot have deforestation and use change in forest land may not be performed prior to authorization by INRENA. The application must be supported by the respective technical dossier prepared in accordance with the terms of reference approved by the INRENA; such dossier should include environmental impact assessment, with the requirements approved by INRENA, considering the area, soil characteristics water sources, biological diversity, among other factors.

287. Requirements

¹⁴ *“Article 285 of Regulations governing Law 27308: Grounds for Termination of the Adjudication Agreement In case of failure of implementing the classification of the property, in accordance with the approved bid, INRENA informs the competent agricultural authority of the relevant observations, so that the bidder may proceed to remedy them. If non-compliance continues, INRENA notifies the competent agricultural authority, which, under liability, goes ahead with the termination of the bidding agreement”.* (We have added underlining)

¹⁵ *“Article 26 of Law No. 27308: Land for agricultural use in the jungle In land for agricultural use in the jungle determined by INRENA, the use of agroforestry and forestry systems is encouraged as a means to protect the soil from erosion and degradation, reserving at least 30% (thirty percent) of its forest mass and a strip of no less than 50 (fifty) meters in the course of rivers, water bodies and the like. The change of use must be authorized by INRENA based on a technical file to ensure the sustainability of the ecosystem, as established in the regulations”.* (We have added underlining)

¹⁶ *“Article 286 of Regulations governing Law 27308: Agroforestry activities on land suitable for agriculture in the jungle and upper jungle On land classified for greater use capacity as agricultural, located in the jungle and upper jungle, referred to in Article 283, principals preferably develop agroforestry and forestry activities, in accordance with Article 26 of the Act, to ensure soil preservation and production capacity.* (...”. (We have added underlining)

The holders of the aforementioned areas must meet the following requirements:

- a. Leave a minimum total of 30% of the area with tree cover;*
- b. Maintain tree cover protection in a total area of no less than fifty (50) meters from the river beds, water surfaces and similar resources, and*
- c. Pay the fees set for forest clearing.*

(We have added bold type and underlining).

In this regard, and as we have noted in previous communications, the Ministry of Agriculture and Irrigation and the Regional Governments of Loreto and Ucayali, are acting with negligence and willful misconduct, to facilitate and conceal the commission of environmental offenses with full knowledge of the legal research processes and prevailing tax proceedings.

Faced with these facts, the Peruvian citizens we find ourselves defenseless for breach of the rule of law by the authorities of the Peruvian State. This is exacerbated by the silence and consent of other competent authorities in forestry and the environment matters, both from the Executive Branch and the Legislative Branch. In this regard, the General Forestry and Wildlife Directorate has not set itself aside from this willful misconduct action, it has not formally assumed the legal defense of Forestry and Wildlife Heritage, and it has not expressed an official position on the conflicting policies within the Ministry of Agriculture despite their effect on forests. Meanwhile, the Public Prosecutors' Office of the Ministry of Agriculture and Irrigation, far from assuming the legal defense of the National Forestry and Wildlife Heritage, advises the General Directorate of Environmental and Agrarian Affairs for the defense of the interests of private companies that have generated irreversible damages in these forest areas.

IV. IMPACTS ON INDIGENOUS POPULATIONS AND LOCAL FARMERS

The deforestation of 10,926 hectares in the rural community of Nueva Requena (Ucayali), has generated a direct impact to the Native Community of Shambo Porvenir, because it is close to the deforested area, and indirect impacts in communities such as: Panaillo Nueva Saposoa, Nueva Patria and Santa Clara de Uchuña. These communities belong to the Shipibo-Conibo Indigenous

People, located in the lower basin of the Aguaytía River. Given that deforestation for the installation of oil palm crops in the middle of the Aguaytía basin, these communities are already suffering a decline in fishing due to the destruction of streams and sedimentation of the material particulate in the aquatic ecosystems. To this is added the decline in the provision of environmental goods and forest services, including the fauna for human consumption, and local microclimate altering. Once the plantations are installed, the downstream communities and local farmers will receive contaminant effluents from the agribusiness activity with high content of pollutants and chemicals. It should be noted that such populations use water directly from the river for drinking and irrigation, as needed for their staple food and livestock activities.

In the case of the town of Tamshiyacu (Loreto), the Ethno-linguistic Map (INDEPA, 2010), identifies the Tamshiyacu River basin as Ancestral Yihambo Population Territory (Family Ethno-Linguistic Peba-Yagua). Additionally, the Tamshiyacu River basin is occupied by settlers and mixed people, distributed in over 25 villages and peasant communities, totaling a population of 20,000 inhabitants (INEI, 2010), of which 75% are rural population. The lack of records for Amazonian Indigenous Communities in Tamshiyacu is due to the presence of populations settled but which are not registered or titled.

The areas which would be awarded to the four agribusiness Projects of the Palmas Group (Santa Catalina, Tierra Blanca, Manití, Santa Cecilia), are situated on territories of Indigenous People: Bora, Cocama-Cocamilla and Huitoto of Loreto Region.

Additionally we wish to state that local populations and authorities in Loreto and Ucayali Regions which are being faced with these attacks, are under pressure and there are threats to their physical and moral integrity on the part of the companies involved, as well as from security companies contracted to give protection to the usurped areas and equipment of these companies.

Therefore, after two years of public complaints and countless communications sent to the various public entities, such as MINAGRI, the Ministry of Environment, Ombudsman's Office, General Comptroller's Office of the Republic, Prosecutors' Office Specializing on Environmental Matters,

and the Cabinet Office, and in the absence of response, the Sociedad Peruana de Ecodesarrollo states to the public opinion and the international community, that effective risk clashes and social conflicts generated in the affected areas, given the level of irreversible damage that has been generated and will be generated in the future in areas where deforestation local native settler populations inhabiting live.

For all the above, we advise that the Sociedad Peruana de Ecodesarrollo has filed a complaint against the Ministry of Agriculture and Irrigation, and the General Directorate of Environmental and Agrarian Affairs of the MINAGRI, at the Prosecutors' Office Specializing on Environmental Matters in and for Lima. Given that these entities have expressed their decision to continue with the widely reported activities, despite the charges and legal proceedings as well as any future actions, which may arise, and reiterate our request to implement the Mechanism for Compliance with Chapter XVIII and Annex 18.3.4 of the Protocol for the Amendment of the Trade Promotion Agreement signed by Peru and the United States, by the Peruvian State, given the imminent and certain infringement of the forestry and wildlife national legal framework, as well as international treaties and agreements in force.

Thanking you in advance for your kind attention.

Yours sincerely,



Lucila Pautrat
Executive Director
Sociedad Peruana de Ecodesarrollo