



Lima, April 3, 2003

IPEC\_024/2003

**COMMENTS FOR THE DOCKET No. 02N-0278 SECTION 307 (PRIOR NOTICE OF IMPORTED FOOD SHIPMENTS )**

**INTRODUCTION**

The Instituto Peruano del Espárrago – IPE ( Peruvian Asparagus Institute ) is a non profitable association established to strengthen the competitive position of the Peruvian asparagus in both, domestic and international markets, through the following services: training, research, technology transfer and information provider, as well as to represent producers and processors in governmental and international organizations.

Our members are producers and exporters of fresh, frozen and canned asparagus. If we focus in the fresh presentation, our entity represented 80 % of the total fresh asparagus exports from the last year ( volume ).

Our product has an important positioning value in the United States market and the consumers recognize the Peruvian asparagus quality. Last year Peruvian fresh asparagus had a participation of 44 % from the total fresh asparagus imports ( volume) to the USA *Source: US Dept of Commerce.*

The U.S. General Accounting Office issued a report in March 2001 supporting the fact that the importation of fresh asparagus has benefited the market and has not harmed the domestic producers. Not only have imports made asparagus available to the U.S. consumer for the first time on a year-round basis, but also for less. The price has dropped over two dollars per pound over the last few years, stimulating demand. Reports have shown, just like the winter fruit phenomenon, that the availability of asparagus year-round has actually benefited all producers in the industry because consumers know it is available and become more frequent purchasers. U.S. government statistics show per capita consumption of fresh asparagus has increased along with greater off-season availability through imports, from .6 pounds in 1986 to 1.0 pound currently.

Peruvian asparagus in the United States not only benefit American producers and consumers as mentioned above, but it is also favorable for other economic activities, such as shipments to the US and local destinations, airlines,



specialized storage, sanitary and Customs controls, wholesalers and retailers, etc.

For every dollar spent on the Peruvian fresh asparagus produce, 60% stays in U.S. hands. Last year it represented an estimated of \$80 million dollars that stay in the U.S. economy. Most retailers in America are supportive of Peruvian asparagus and have used it to build a successful category year-round, again benefiting a large segment of the U.S.

The Peruvian growers and their U.S. importers have made a significant level of investment in infrastructure and systems to accommodate the requirements of U.S. retailers, and assure the quality of the product. These developments include Good Agricultural Practices in the farms, HACCP and U.S. third-party independently-audited plants. This business is not one that has come easy to the people involved, both in Peru and in the U.S.

The fresh asparagus exports represented an estimated of 75 % of the total Peruvian exports (volume) commercialized by air transportation in the last year.

Approximately, 80 % of the total fresh asparagus volume is exported in the period July to December.

We represent more than 20 companies who make a living producing and exporting fresh asparagus from our country. This proposal has also the comments of the logistic operators in Peru such as airlines, cargo agents, cold – warehouses, between others.

We would like to share some of our comments focus in the Section 307 : Prior Notice in the fresh asparagus presentation and the air transportation complex problematic.

We are very concern in this answer

***May the prior notice be amended or updated?*** Yes, under the proposed rule, **amendments are accepted once, under specified, limited circumstances**, for information regarding **product specificity or quantity** that did not exist at the time the original prior notice was submitted. Under the proposed rule, amendments cannot be used to change the nature of the article of food. The proposed rule provides that amendments must be submitted no later than 2 hours prior to arrival. The proposed rule provides that anticipated arrival information must be updated to indicate a change in the anticipated **port, date, or time of arrival.**

Source: SOURCE: <http://www.cfsan.fda.gov/~dms/fsbtact7.html>

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We do not know what do you refer by “amendments are accepted once, under specified, limited circumstances” ? Also we do not see the possibility to make amendments on the carrier.

In 90 % of the cases the quantity of the shipment and the carrier is changed very close to the time of the airplane departure. The quantity variability is due mostly of external factors such as the climate, for instance, if there is a sunny day we will have a high harvesting production to be shipped fresh to the USA. The carrier variability is mostly due to the lack of the air craft space availability in Peru. Maintenance problems with aircrafts causes cancellation of flights and therefore bookings have to be made on other airlines. Overbooking of space by the airlines or weight restrictions creates partial shipments to be sent and that information might not be available until actual flight arrival. Most of the cases, these changes are known at the very last minute of the shipment departure.

Peru has limited number of cold warehouses near the airport therefore with these new procedures, our produce could be in transit longer time needed to be storage and can be threaten to loose quality due to the inadequate maintenance of the cold chain.

## **PROPOSAL**

### **Information procedure**

1. Peruvian cargo agents can furnish the required information to the importer or broker in the USA so they could send the PRIOR NOTICE to the FDA in the time frame the regulations establish ( noon the calendar day before the day that the imported food arrives at the border crossing at the port of entry ). But we have to re-confirm through an update or amendment, just after the plane has left our country, the data referred to quantity and carrier. Unfortunately this proceeding has to be done in all cases due to the reasons explained above. The time frame of 24 hours for the PRIOR NOTICE may not be an issue, however the amendment or update feature needs to be **more flexible** specially for air shipments.

The broker or importer in the USA will surely receive and transmit the accurate information at least 2 hours before the plane arrives to the USA.

## **OR**

2. The Broker or the Importer in the USA must send the Real Information once after the aircraft had departure our country, to be received by the FDA authorities at least 2 hours before the plane arrives to the USA, without a PRIOR NOTICE.



**Additional Time Required**

3. Finally we would like to suggest to change the effective date of the rule to February 2004 due to the fact that December is one of the most busy month in the airline industry in Peru.

We appreciate your consideration of our comments.