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Committee on Sanitary and Phytosanitary Measures

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**COMMISSION REGULATION (EU) NO. 488/2014 OF 12 MAY 2014 AMENDING
REGULATION (EC) NO. 1881/2006 AS REGARDS MAXIMUM
LEVELS OF CADMIUM IN FOODSTUFFS**

COMMUNICATION FROM PERU

The following communication, dated 27 October 2017, is being circulated at the request of the delegation Peru.

1. Peru would like to express before WTO Members its trade concern with respect to Commission Regulation (EU) No. 488/2014 of 12 May 2014 amending Regulation (EC) No. 1881/2006 as regards maximum levels of cadmium in foodstuffs. Specifically, this European regulation has established maximum levels for cadmium in chocolate and other cocoa products which, upon entry into force on 1 January 2019, would have a negative impact on trade in cocoa beans.

2. Peru is one of the leading centres of genetic diversity for cocoa¹: six of the ten cocoa clusters genetically identified to date grow in the Peruvian Amazon², making Peru the most cocoa biodiverse country in the world. Cocoa has become one of the highest grade Peruvian inputs, recognized worldwide: value added is created in top quality chocolate factories, both domestic and foreign, and in fact, both Peruvian cocoa and Peruvian chocolate makers were awarded prizes at the 2017 International Chocolate Awards. The International Cocoa Organization (ICCO) considers Peru to be a producer and exporter of fine and flavour cocoa, classifying 75% of Peruvian production in that category.³ Indeed, Peru ranks second among world exporters of fine and flavour cocoa after Ecuador.⁴

3. Cocoa activities in Peru involve 16 cocoa-producing regions⁵, 90,000 cocoa families, 136,000 hectares of harvested area and a production of 108,000 tonnes. This has meant that 90% of production in all its forms (beans, paste, powder, butter, chocolate) is exported. In 2016, the value of cocoa exports exceeded US\$294 million, which represents approximately 5% of Peru's total agricultural exports for that year. Compared to 2015, annual growth in the value of cocoa exports was 10.3%. The four leading cocoa export markets in 2016 were Holland, the United States, Belgium and Canada.⁶

¹ Dr Evert Thomas (2017) concerning the potential origin of domestication of cocoa in the south of Peru, <http://science.sciencemag.org/content/355/6328/925/tab-e-letters>.

² "Cocoa Genetic Clusters" by Juan C. Motamayor, Philippe Lachenaud, Jay Wallace da Silva e Mota, Rey Loor, David N. Kuhn, J. Steven Brown, Raymond J. Schnell - Geographic and Genetic Population Differentiation of the Amazonian Chocolate Tree (*Theobroma Cocoa L.*), October 2008.

³ ICCO Ad hoc Panel on Fine or Flavor Cocoa, Fourth meeting, Holiday Inn Hotel Wembley, London Friday, 18 September 2015. See: <https://www.icco.org/about-cocoa/fine-or-flavour-cocoa.html>.

⁴ "Cacao Fino de Aroma de origen peruano: estrella de nuestra biodiversidad nativa", presentation at the Foro Productos de la Biodiversidad Nativa, organized by MINCETUR at EXPOALIMENTARIA 2017. Author: Alianza Cacao Perú.

⁵ Amazonas, Ayacucho, Cajamarca, Cusco, Huánuco, Junín, La Libertad, Lambayeque, Loreto, Madre de Dios, Pasco, Piura, Puno, San Martín, Tumbes and Ucayali.

⁶ Data obtained from the Exporters Association (ADEX) – ADEX Data Trade, 11 October 2017.

4. Although the limits laid down by the European Union (EU) apply to chocolate and cocoa products, they directly affect exports of cocoa beans, since the importers use these limits to cut the international price on the New York and London commodity exchanges, even though they do not apply to cocoa beans, nor indeed are they in force.

5. Peru considers the European Regulation to be contrary to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Under Article 2 of the SPS Agreement, the European Union's measure should be based on scientific principles and should not constitute a disguised restriction on international trade. Since for the moment there is no international regulation in this respect, the opinion of the Joint FAO/WHO Expert Committee on Food Additives (JECFA) has provided the European Union with a basis for considering different cadmium levels. It should be pointed out, however, that the justification for the European Regulation rests on earlier JECFA reports, and not the 2013 report⁷ which does not consider the issue of cadmium and cocoa to present a risk to public health.

6. The European Union was able to establish its level of protection using as scientific evidence a risk assessment by the European Food Safety Authority (EFSA); but it has not been demonstrated that the limits correspond to a scientific opinion as provided for in Article 3 of the SPS Agreement, or that they are based on the "ALARA Principle" (as low as reasonably achievable), which was questioned by the European Union itself in 2005 with the Opinion of the Scientific Committee on a request from EFSA related to a Harmonized Approach for Risk Assessment of Substances which are both Genotoxic and Carcinogenic.⁸ In fact, this Opinion suggests that the risk analysis for substances of this kind should be conducted using the margin of exposure (MOE) approach.

7. We need to ensure that the European Regulation was developed using EFSA's MOE approach as provided for in Article 5 of the SPS Agreement, and not according to the ALARA Principle, since for the risk assessment in question the effects on trade in other countries had to be considered. Using the ALARA Principle, the levels established by the European Union could be qualified as more trade-restrictive than required.

8. Given the impact at that this regulation would have, the Codex Committee on Contaminants in Foods (CCCF) is still in the process of developing a Codex Standard for establishing maximum levels of cadmium in chocolate and other cocoa products. The deadline for completing this standard is 2019.

9. For the above reasons, and in view of the lack of scientific evidence that cadmium in chocolate is of concern from a public health perspective (77th JECFA), pending the completion by the Codex Alimentarius of its work on maximum levels for chocolate, Peru asks the European Union to exclude chocolate from the application of Regulation No. 488/2014 in the light of the market distortions it is already causing.

⁷ The full report of the 77th meeting of the JECFA is available at:
http://apps.who.int/iris/bitstream/10665/98388/1/9789241209830_eng.pdf.

⁸ See <http://onlinelibrary.wiley.com/doi/10.2903/j.efsa.2005.282/epdf>.