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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 FOOD STUFFS**

COMMUNICATION FROM PERU

The following communication, received on 9 October 2018, is being circulated at the request of the delegation of Peru.

1. Peru would like once again¹ to raise before WTO Members its specific 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.

2. The European Union (EU) has thus far been unable to demonstrate that there is sufficient scientific evidence to support the new limits imposed by its legislation. Firstly, the Joint FAO/WHO Expert Committee on Food Additives (JECFA) considers a food to represent a risk when it contributes 5% or more of the maximum tolerable intake of the contaminant; so that based on this parameter, there were no grounds for including chocolate and cocoa products in Commission Regulation (EU) No. 488/2014, since they contribute only 4.3% to dietary cadmium exposure. Secondly, there is a serious inconsistency in the European Regulation in that it establishes the same maximum levels of cadmium (0.10 mg/kg) for potatoes and chocolate (up to 30% cocoa), in spite of the fact that potatoes contribute 13.2% to overall dietary exposure to cadmium² – a much higher percentage than chocolate – and have a different consumption pattern.

3. Cocoa activities in Peru involve 16 regions, 57 provinces and 259 producing districts, in which 90,000 families are economically dependent on cocoa. Approximately 143,000 hectares are harvested,³ of which 40% receive assistance under the Comprehensive and Sustainable Alternative Development Programme. Producers and exporters, including agricultural cooperatives and producers' associations, are chiefly located in the high poverty areas for which the European market accounts for more than 75% of the value of total exports, as was the case in 2017.⁴ Consequently, the new European legislation would chiefly affect the small and medium-sized cocoa producers, to whose economic development cocoa growing is vital.⁵

4. Cocoa beans are a product of considerable commercial importance to Peru for a number of reasons. Firstly, cocoa is the fifth most important product at the national level in terms of both area and number of producers. Cocoa accounts for 3% of the country's agricultural GDP, or 2% of its

¹ See documents G/SPS/GEN/1587 of 30 October 2017, G/SPS/GEN/1602 of 9 February 2018, and G/SPS/GEN/1624 of 21 June 2018 on the same subject.

² European Food Safety Authority (2012). Cadmium dietary exposure in the European population. *EFSA Journal*, 10(1):2551. Taken from <https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2012.2551>.

³ Ministry of Agriculture and Irrigation, September 2018: *Situación y perspectivas: cadena del cacao y chocolate*.

⁴ SUNAT Aduanas.

⁵ Instituto Nacional de Estadística e Informática, April 2018. *Evolución de la pobreza monetaria 2007-2017*. Taken from https://www.inei.gob.pe/media/cifras_de_pobreza/informe_tecnico_pobreza_monetaria_2007-2017.pdf.

agriculture and livestock GDP.⁶ In terms of international trade, in 2017 exports of cocoa and cocoa preparations exceeded 236 million dollars and accounted for approximately 4% of total agriculture and livestock exports. Cocoa beans represent 76% of the total volume of exports of cocoa and cocoa preparations, and the leading market is the European Union, which receives more than 70% of total cocoa bean exports.⁷ It should be noted that although the new limits established by the European Union apply to chocolate and cocoa products and the legislation has not yet entered into force, they have a direct impact on cocoa bean exports. It is known that certain buyers are already imposing the limits set forth in Regulation (EU) No. 488/2014 for chocolate and cocoa products and using them to cut the price of cocoa beans.

5. Regulation (EU) No. 488/2014 infringes Article 2.2 and Article 2.3 of the SPS Agreement because the maximum limits established for chocolate and cocoa powder are not based on updated scientific principles with respect to the risk to human health of consuming these products, and because the practical application of these limits, *inter alia* to cocoa beans (not included in the Regulation), is resulting in a disguised restriction on international trade in cocoa beans and cocoa products.

6. Similarly, the Regulation violates Article 5.1 and Article 5.4 of the SPS Agreement, since no proper assessment was made of the risk to human health of the consumption of chocolate as a potential relevant source of cadmium consumption. Nor was consideration given, when determining the appropriate level of sanitary protection of the European population, to the objective of minimizing the negative effects on trade in chocolate, cocoa powder and cocoa beans of applying the limits set by the Regulation.

7. The entry into force of the European legislation would not only cause commercial harm, as already mentioned, but it would also undermine Peru's joint efforts with the international community, including the European Union, to combat illicit drug trafficking, in that Peruvian cocoa has become the second most important crop in the country under the comprehensive and sustainable programmes for the development of alternatives to coca leaf production.⁸ The European Union is a strategic ally in the fight against illicit drug trafficking, with 70% of cocaine drugs confiscated destined for the European countries. At the same time, the implementation of Regulation (EU) No. 488/2014 would have a negative environmental impact, since producers would no longer have any incentive to carry on producing cocoa and would return to the illicit cultivation of coca, potentially causing massive deforestation in the cocoa-growing areas.⁹

8. The application of limits as restrictive as those set forth in Regulation (EU) No. 488/2014 without having demonstrated any risk to human health of consuming chocolate and cocoa powder is the manifestation of a "zero risk" sanitary and phytosanitary policy that is at odds with the SPS Agreement which, although it allows Members to adopt sanitary measures to protect human health, does not entitle them, through such measures, to create unjustified barriers to trade.

9. Finally, the Codex Alimentarius is working towards the adoption of a Codex standard for maximum cadmium levels in different types of chocolate and cocoa products. It is worth remembering, however, that decisions taken in this forum with respect to sanitary measures applied by Members must rely on current science and a risk-based approach, without instrumentalizing the adoption of a Codex standard to justify maximum cadmium levels in chocolate that do not correspond to a risk to human health.

10. In view of the foregoing, Peru asks the European Union to exclude chocolate and cocoa products from Regulation 488/2014 until it has updated scientific evidence of the risk level it represents for human health and until the Codex Committee on Contaminants in Foods (CCCF) has been able to finalize the Codex standard that is currently under preparation, thereby avoiding unnecessary restrictions to trade. Should this request not be accepted and pending the completion of the risk analyses needed to provide scientific guarantees for acceptable cadmium content in chocolate and other cocoa products, we would request that the time-period for entry into force of the Regulation be extended until 1 January 2022.

⁶ Ministry of Agriculture and Irrigation, September 2018: *Situación y perspectivas: cadena del cacao y chocolate*.

⁷ SUNAT Aduanas.

⁸ Ministry of Agriculture and Irrigation, September 2018: *Situación y perspectivas: cadena del cacao y chocolate*.

⁹ National Commission for Development and Life Without Drugs (2018).