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Committee on Sanitary and Phytosanitary Measures

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EUROPEAN UNION RESTRICTIONS ON EXPORTS OF CHOCOLATE AND COCOA PRODUCTS DUE TO THE APPLICATION OF COMMISSION REGULATION (EU) NO. 488/2014 OF 12 MAY 2014 AMENDING REGULATION (EC) NO. 1881/2006 AS REGARDS MAXIMUM LEVELS OF CADMIUM IN FOODSTUFFS (NO. 503)

COMMUNICATION FROM PERU

The following communication, received on 25 March 2021, is being circulated at the request of the delegation of Peru.

1. Peru would like to present to 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. In specific terms, the European Regulation establishes maximum levels for cadmium in chocolate and other cocoa products that, in practice, have a negative impact on trade in cocoa beans and cocoa powder.

2. First, Peru would like to highlight the trade performance and social importance of the cocoa production chain:

- a. Peru presents comparative advantages in production and trade in the cocoa production chain, especially with regard to cocoa beans, cocoa butter, cocoa paste and cocoa powder;
- b. Exports from this chain exceeded USD 278 million in 2020.¹ While exports have decreased by 5.6% in relation to 2019, the chain's export potential is estimated at over USD 165 million;²
- c. Peru is the world's ninth largest producer of cocoa beans. Cocoa-related activity has a decentralizing and inclusive impact in Peru. It involves 16 cocoa-producing regions³, 90,000 cocoa-producing families, a harvested area of 136,000 hectares and an output of 108,000 tonnes. Women participate extensively in agricultural cocoa production, and account for 21.3% of all producers;⁴
- d. In Peru, cocoa is considered the second most important alternative product to illicit crops, after coffee.⁵

3. Second, Peru considers Commission Regulation (EU) No. 488/2014 to be in violation of Article 2 of the SPS Agreement, for the following reasons:

- a. It is not based on scientific principles or on an international standard, as no standard has yet been finalized. At the 77th meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA) in 2013, it was stated that the levels of cadmium in cocoa were not

¹ Information based on data from the National Supervisory Authority for Customs and Tax Administration (SUNAT).

² Information based on data from the ITC Export Potential Map.

³ Amazonas, Ayacucho, Cajamarca, Cusco, Huánuco, Junín, La Libertad, Lambayeque, Loreto, Madre de Dios, Pasco, Piura, Puno, San Martín, Tumbes and Ucayali.

⁴ Ministry of Agrarian Development and Irrigation (MIDAGRI) (2019). Cocoa chain performance analysis. Lima: MIDAGRI.

⁵ Ministry of Agrarian Development and Irrigation (MIDAGRI) (2019). Cocoa chain performance analysis. Lima: MIDAGRI.

considered a risk to public health. The European Union should have taken this into account when developing its Regulation. In this regard, it should be noted that the justification for the European Regulation is based on earlier JECFA reports, and not the 2013 report;⁶

- b. According to the statements made by FAO on behalf of the JECFA Secretariat at the 42nd Session of the Codex Alimentarius Commission in July 2019, dietary exposure to cadmium from cocoa is insignificant compared to other sources of dietary exposure and does not amount to a public health concern;⁷
- c. Document JECFA/91/SC of 5 March 2021 indicates that the cadmium contribution of cocoa products continues to be minor, even in countries where the consumption of such products is high.⁸

4. Third, the negative consequences of the European Regulation must be emphasized:

- a. There is complementarity in Peruvian trade in cocoa and cocoa products with the European Union, which has made it possible to consolidate Peru's comparative advantages in that market.⁹ However, since the entry into force of the European Regulation in 2019, exports of cocoa and cocoa products to the European Union have decreased and have had to be redirected to Asian markets, where the purchase value of cocoa is up to 30% lower;
- b. In fact, in 2020, exports of cocoa and cocoa products to the European Union fell by 5.59% compared to exports in 2019. Furthermore, Peruvian exports of cocoa and cocoa products to the European Union have fallen at an average annual rate of -10.79% over the last five years;¹⁰
- c. European producers, without technical or regulatory justification, are specifying maximum levels for cocoa beans. The maximum level requirements range from 0.7 to 0.8 ppm in the case of German buyers and up to 1.0 ppm for Dutch and French buyers.¹¹ Furthermore, cocoa bean purchase orders from Spanish importers state that a "cadmium certificate" is required, even though this product is not regulated.
- d. European importers also want to know the cadmium levels in cocoa powder, and state that "*due to the new European Union regulation, your cocoa powder must contain less than 0.6 mg of Cd*"¹², even where this product is not intended for final consumption and, therefore, not regulated by Regulation (EU) No. 488/2014. In practice, the European Regulation is being used for all cocoa powder, regardless of the risk that it may pose. This situation is made worse by the inaccurate messages sent out by the European Union, which indicate that a maximum cadmium level of 0.6 ppm is applicable to all cocoa powder¹³. Peru has bilaterally requested that such messages be rectified.
- e. The maximum levels have thus become a trade negotiation tool used against producers, rather than a tool for protecting human health. In this respect, it should be noted that producers consider a secure market for cocoa to be one of the most important factors for remaining in this sector, together with a good selling price and the ability to adapt to climatic

⁶ The full report of the 77th JECFA meeting is available at: http://apps.who.int/iris/bitstream/10665/98388/1/9789241209830_eng.pdf.

⁷ The full report of the 42nd Session of the Codex Alimentarius Commission is available at: www.fao.org/fao-who-codexalimentarius/sh-proxy/en/?Ink=1&url=https%253A%252F%252Fworkspace.fao.org%252Fsites%252Fcodex%252Fmeetings%252F52FCX-701-42%252FReport%252FREP19_CACe_Final.pdf.

⁸ The document is available at: https://cdn.who.int/media/docs/default-source/food-safety/jecfa/summary-and-conclusions/jecfa91-1to12march2021-summary-and-conclusions.pdf?sfvrsn=1d79351f_5.

⁹ Information based on the trade complementarity index developed by the Ministry of Foreign Trade and Tourism of Peru (MINCETUR).

¹⁰ Information based on data from the National Supervisory Authority for Customs and Tax Administration (SUNAT).

¹¹ [G/SPS/GEN/1870](https://www.wto.org/press/pr/2019/190301.htm).

¹² Direct quote from correspondence from European buyers.

¹³ EU factsheet: https://ec.europa.eu/food/sites/food/files/safety/docs/cs_contaminants_catalogue_cadmium_chocolate_en.pdf.

conditions¹⁴; however, price reductions greater than 10% have an impact on the cocoa-based alternative development strategy, since they cause the profitability of cocoa to decline in relation to that of coca¹⁵.

- f. Around 44% of Peruvian cocoa bean producers, i.e. more 39,600 families, have been impacted by the European Union Regulation, in particular those from alternative development zones, such as San Martín, Huánuco, Ucayali and Junín, where 80% of Peru's cocoa is produced¹⁶.

5. Fourth, Peru would like to refer once again to the case presented at the WTO SPS Committee meeting in November 2020¹⁷. In this regard, it was explained that a specific company had exported 100 and 140 tonnes of cocoa powder in 2017 and 2018, respectively. However, given that, in practice, European importers specify a maximum level of 0.6 ppm (even where the cocoa powder is not intended for final consumption), the company was only able to export 40 tonnes in 2019, and was unable to make any sales in October, November and December of 2020. Last year, this Peruvian company's total exports amounted to only 25 tonnes.

6. In light of the above, Peru calls upon the European Union to rescind Commission Regulation (EU) No. 488/2014 with respect to chocolate and other cocoa products, since it is inconsistent with the WTO SPS Agreement and creates unnecessary barriers to trade.

¹⁴ Ministry of Agrarian Development and Irrigation (MIDAGRI) (2019). Cocoa chain performance analysis. Lima: MIDAGRI.

¹⁵ [G/SPS/GEN/1870](#).

¹⁶ [G/SPS/GEN/1870](#).

¹⁷ [G/SPS/GEN/1870](#), paragraph 13.