

16 July 2021

(21-5634)

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Committee on Sanitary and Phytosanitary Measures

Original: Spanish

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

COMMUNICATION FROM PERU

The following communication, received on 13 July 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 importance of the cocoa production chain:

- a. Peruvian exports of cocoa and cocoa products reached USD 64 million during the January-March 2021 period, an increase of 15.62% compared to the same period in 2020. Of this total, approximately 39.2% was destined for the European Union¹;
- b. Organic cocoa exports account for 23% of total cocoa bean exports;
- c. Peru is the world's eighth largest producer of cocoa beans with an estimated production of 150,000 tonnes for 2021. Government and private strategies to promote and develop the cultivation of fine or flavour cocoa have contributed to the upward trend in production²;
- d. Peru estimates that by 2030 its production will have reached approximately 250,000 tonnes, representing a 65% increase on 2020³;
- e. Peru, together with other Members, is leading the development of the code of practice for the prevention and reduction of cadmium contamination in cocoa beans within the framework of the Codex Committee on Contaminants in Foods;
- f. Peru has spearheaded the creation of the cadmium working group under the International Cocoa Organization (ICCO);
- g. In Peru, cocoa is considered the most important alternative product to illicit crops, after coffee.

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

² International Cocoa Organization (ICCO). (2021). Quarterly Bulletin of Cocoa Statistics. Volume XLVII No.2.

³ Information based on data from the Ministry of Agrarian Development and Irrigation (MIDAGRI).

3. Peru considers that Commission Regulation (EU) No. 488/2014 violates Article 2 of the SPS Agreement because sanitary measures should only be applied to the extent necessary to protect, *inter alia*, human health and life; however, 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.⁴ This document presents additional evidence that the presence of cadmium in chocolate and cocoa products does not constitute a public health concern and that the application of maximum levels of cadmium in chocolate and cocoa products is of no significant benefit in reducing dietary exposure to cadmium.

4. It should also be noted that, while document JECFA/91/SC refers to a hypothetical public health concern that could not be ruled out involving European children who only consume cocoa products from Latin America, such a hypothetical situation has not actually occurred. Even if all cocoa bean exports from Latin America and the Caribbean were shipped to the European Union, they only accounted for an average of 20.8% of total European market imports in the period 2016-2020.⁵

5. In addition, chocolate intake accounts for a tiny fraction of the European population's total food basket, and is even lower elsewhere in the world. Most cadmium consumed comes from cereals, fruits, vegetables, fish and seafood.⁶ A slight increase in maximum cadmium levels in any of these food groups would have a greater impact than could be expected from the maximum levels in any kind of chocolate. Therefore, reducing cadmium intake from food by reducing cadmium in different types of chocolates does not significantly contribute to reducing total cadmium intake, including in children.

6. The European Union has established maximum cadmium levels in different types of chocolate based on a possible maximum tolerable intake (TWI) of 2,5 µg/kg body weight per week⁷, while the level used by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) is 5,8 µg/kg body weight per week. Thus, the level established by the European Food Safety Authority (EFSA) is less than half (43.1%) of that established by the JECFA, resulting in lower maximum levels in its regional regulations. We therefore call on the European Union to share scientific evidence demonstrating that European Union citizens are 232% more sensitive to cadmium than citizens elsewhere in the world.

7. Furthermore, Peru remains concerned that maximum cadmium levels in chocolate and cocoa products are still being used as a negotiation tool against producers, who have seen their incomes fall due to maximum levels ranging from 0.7 to 0.8 ppm required by German buyers and up to 1 ppm by French and Dutch buyers for cocoa beans.⁸

8. As previously stated, 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 powder.⁹

⁴ 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.

⁵ Information based on data from the International Trade Centre (ITC) Trade Map.

⁶ JECFA/91/SC.

⁷ Recital 3 of Regulation No. 488/2014:

"(3) In the scientific opinion on cadmium in food, the CONTAM Panel concluded that the mean dietary exposures to cadmium in European countries are close to or slightly exceeding the TWI of 2,5 µg/kg body weight. Certain subgroups of the population may exceed the TWI by about 2 fold. The CONTAM Panel further concluded that, although adverse effects on kidney function are unlikely to occur for an individual exposed at this level, exposure to cadmium at the population level should be reduced."

⁸ [G/SPS/GEN/1906](https://www.wto.org/gatt/Gen/1906).

⁹ European Union fact sheet: https://ec.europa.eu/food/system/files/2019-03/cs_contaminants_catalogue_cadmium_chocolate_en.pdf.

9. Maximum cadmium levels in different types of chocolate, as defined by Commission Regulation (EU) No. 488/2014, do not contribute significantly to addressing the public health concern that may arise from cadmium in food. Nor do maximum cadmium levels established by the European Union create fair trading conditions, as they are harmful to cocoa producers primarily in only one region of the world. Such a measure is creating cost overruns for producers and their families in Peru, and in other Latin American countries, which together account for approximately 18% of world production.

10. 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.
