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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 (PCE NO. 503)**

COMMUNICATION FROM PERU

The following communication, received on 4 April 2022, 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 of cadmium in chocolate and other cocoa products that, in practice, have a negative impact on trade in cocoa beans and cocoa powder.

2. Peru considers that Commission Regulation (EU) No. 488/2014 violates Article 2 of the SPS 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.¹ While document JECFA/91/SC refers to a hypothetical public health concern that could not be ruled out involving European children who consume only 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 accounted for an average of only 9.17% of total European market imports in the period 2017-2021.²

3. 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 seafood³; however, it is questionable to apply maximum cadmium levels to cocoa and cocoa products but not to other products that also contain high levels of cadmium, such as potato and wheat. 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.

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.

¹ 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.

² Information based on data from the International Trade Centre (ITC) Trade Map.

³ JECFA/91/SC.

5. The European Union has established maximum cadmium levels in different types of chocolate based on a possible maximum tolerable weekly intake (TWI) of 2.5 µg/kg body weight⁴, 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.

6. 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 owing to maximum levels ranging from 0.3 to 1.0 ppm for cocoa beans, cocoa cakes, cocoa husks, cocoa paste, etc.

7. Moreover, 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.⁵

8. Peru has already indicated that almost all cocoa powder imported by the chocolate industry, including the European industry, is used as an input for chocolate confectionery (confectionery with minimum cocoa content), and a smaller percentage is destined for final consumption in the form of 100% cocoa powder. However, in practice, making purchases on a differentiated basis - in other words, importing "cocoa powder for the final consumer" and "cocoa powder as an ingredient" separately - is not possible for importing companies.

9. It should be noted that Peru is the eighth largest producer of cocoa beans in the world. Cocoa farming has a decentralizing and inclusive impact in Peru. It represents 16 producing regions, 90,000 cocoa-producing families, 136,000 hectares of harvested area and 108,000 tonnes of production. Moreover, women play a significant role in the agricultural production of cocoa, accounting for 21.3% of the total number of producers. Exports in this chain exceeded USD 306 million in 2021. Exports are up 9% from 2020, and an export potential of more than USD 165 million is estimated.⁶

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. In addition, Peru encourages the European Union to review its Regulation in light of the progress made this year by the Codex Committee on Contaminants in Foods.

⁴ 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."

⁵ European Union fact sheet:

https://ec.europa.eu/food/system/files/2019-03/cs_contaminants_catalogue_cadmium_chocolate_en.pdf.

⁶ Information based on data from the ITC.