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Committee on Sanitary and Phytosanitary Measures

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

COMMUNICATION FROM PERU

The following communication, received on 26 April 2023, is being circulated at the request of the delegation of [Peru](#).

1. Peru would like once again to present to 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 foodstuff.
2. In this regard, the European Regulation establishes maximum levels of cadmium in chocolate and other cocoa products that, we reiterate, have a negative impact on trade in cocoa beans and cocoa powder.
3. Peru considers that Commission Regulation (EU) No. 488/2014 violates Article 2 of the SPS Agreement because sanitary measures should be applied only to the extent necessary to protect, *inter alia*, human health and life. However, the European Union has not taken into account the following:
 - a. The opinion of the Joint FAO/WHO Expert Committee on Food Additives, at its 77th meeting in 2013, which did not consider cadmium in cocoa to pose a risk to public health;
 - b. The statements made by FAO on behalf of the Secretariat of the Joint FAO/WHO Expert Committee on Food Additives at the 42nd Session of the Codex Alimentarius Commission in July 2019, according to which dietary exposure to cadmium from cocoa is insignificant compared to other sources of dietary exposure and does not amount to a public health concern;
 - c. Document JECFA/91/SC of 5 March 2021, which indicates that the cadmium contribution of cocoa products continues to be minor, even in countries where the consumption of such products is high;
 - d. The document approved by the Committee on Contaminants in Foods (CCCF15) in May 2022 through which the maximum levels proposed by the Electronic Working Group for cadmium in cocoa products and cocoa powder were established for submission to the 45th Session of the Codex Alimentarius Commission. These levels were approved by the Commission at the Session, thus finalizing an international standard after many years of work.
4. Against this backdrop, Peru wishes to stress that, pursuant to Article 3 of the WTO SPS Agreement, Members must base their measures on international reference standards. Developments in the framework of the Codex Alimentarius show that European Union levels are more restrictive than is necessary to protect public health.

5. In light of the above, Peru calls upon the European Union to:

- i. review Regulation (EU) No. 488/2014 taking into consideration the points raised in this communication and in the statement made bilaterally in October 2022;
 - ii. apply international standards and the conclusions of the Joint FAO/WHO Expert Committee on Food Additives (JECFA);
 - iii. consider removing chocolate and other cocoa products from the Regulation's scope of application, given the negative effects already produced by the Regulation;
 - iv. continue to provide scientific, technological and financial support to Peru to mitigate the presence of cadmium in cocoa production.
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