



**COMMISSION REGULATION (EU) NO. 488/2014 OF 12 MAY 2014  
AMENDING REGULATION (EC) NO. 1881/2006 AS REGARDS  
MAXIMUM LEVELS OF CADMIUM IN FOODSTUFFS**

COMMUNICATION FROM PERU

The following communication, dated 8 February 2018, is being circulated at the request of the delegation of Peru.

1. Peru would like once again<sup>1</sup> to raise before 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. Specifically, this European regulation has established maximum levels for cadmium in chocolate and other cocoa products which could have a significant negative impact on trade in cocoa beans from Peru to the European Union and other worldwide destinations. While it is true that Regulation (EU) No. 488/2014 does not establish limits for cadmium in cocoa beans, importers apply the limits for chocolate to cocoa beans.
2. This Regulation would constitute an unwarranted barrier to trade, since in 2009, and again in 2011, the Scientific Panel on Contaminants in the Food Chain (CONTAM Panel) of the European Food Safety Authority (EFSA) found that it was unlikely that dietary cadmium exposure in Europe would produce adverse effects on an individual. In spite of this, the European Regulation has included maximum levels for chocolate and cocoa products which only contribute 4.3% of dietary cadmium exposure.<sup>2</sup>
3. Moreover, 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 – which contribute only 4.3% to dietary cadmium exposure – in Commission Regulation (EU) No. 488/2014.
4. At the same time, a Codex Standard is being developed for maximum cadmium levels in chocolate and cocoa products, which could serve as a reference in order to avoid adverse trade effects when Regulation (EU) No. 488/2014 enters in force in 2019.
5. Similarly, at the International Symposium on Cocoa Research (ISCR) held in Lima from 13 to 17 November 2017, experts recommended that the stipulated deadline for the cadmium levels established by the European Union be extended.
6. The economic impact of this Regulation on Peru's trade would be considerable owing both to the importance of cocoa in the different regions of the country, most of which produce the highest quality fine and flavour cocoa, and to its use as an alternative to coca leaf production. In other words, not only would the Regulation damage trade, but it would also undermine the alternative development initiatives which involve enormous national efforts and rely on the valuable support of international cooperation, including the European Union. This, in its turn, would pose a number

<sup>1</sup> See document G/SPS/GEN/1587 on the same subject, circulated on 30 October 2017.

<sup>2</sup> Source: Machu Picchu Foods.

of serious challenges in the fight against illicit drug trafficking, undermining the social and economic development efforts of the most vulnerable communities.

7. Cocoa activities in Peru involve 16 cocoa producing regions<sup>3</sup> and generate employment for some 90,000 cocoa families. One hundred and thirty-six thousand hectares are harvested, bringing Peruvian exports of cocoa and cocoa products to approximately US\$216 million, with more than 60 export markets as of November 2017.<sup>4</sup> While approximately 80% of Peruvian cocoa is exported to the European market, third markets could also be affected by the uncertainty surrounding the possible unproven effects on human health.

8. Peru considers the European Regulation to be contrary to the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Commission Regulation (EU) No. 488/2014 retains the reference to the identification of the danger of the maximum cadmium level in chocolate and other cocoa products, and not of the risk that it could represent for human health. This would constitute a violation of the SPS Agreement in that it would be an unjustified trade barrier. Under Article 2 of the SPS Agreement, the European Union's measure should have opted for a less trade restrictive approach.

9. For the above reasons, and considering that the dietary cadmium exposure produced by chocolate and cocoa products is not classified as a risk under the JEFCA guidelines, Peru asks the European Union to exclude chocolate and cocoa products from the scope of Commission Regulation (EU) No. 488/2014 until the Codex Committee on Contaminants in Foods (CCCF) has been able to issue an international reference standard, currently under preparation, and until proper scientific evidence has been provided, thus avoiding unnecessary trade restrictions.

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

<sup>4</sup> Source: Peru Export and Tourism Promotion Board (PROMPERU).