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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 REGULATION (EU) NO. 488/2014 OF 12 MAY 2014
AMENDING COMMISSION REGULATION (EC) NO. 1881/2006 AS REGARDS
MAXIMUM LEVELS OF CADMIUM IN FOODSTUFFS (PCE NO. [503](#))**

COMMUNICATION FROM PERU

The following communication, received on 8 November 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. 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.¹ 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.

3. 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 2016-2020.²

4. 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.³ 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.

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 intake (TWI) of 2,5 µg/kg body weight per week⁴, 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 due 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. In practice, however, it is not possible for importing companies to make separate purchases, i.e. to import "cocoa powder for final consumption" and "cocoa powder as an input" separately.

9. In this context, chocolate companies impose a limit of 0.6 ppm for the import of cocoa powder regardless of the end use. Considering that cocoa powder is primarily used as an input for chocolate confectionery, the 0.6 ppm limit has no technical basis since, by mixing this product with other components, the level of cadmium in the final product is insignificant and even lower than the European standard.

10. 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 279 million in 2020. Although exports are down 5% from 2019, an export potential of more than USD 165 million is estimated.

11. 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.

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.