



**MINISTRY OF COMMERCE, INDUSTRY AND TOURISM  
SUB-DIRECTORATE OF COMMERCIAL PRACTICES**

**PRELIMINARY TECHNICAL REPORT  
PUBLIC VERSION**

**INVESTIGATION FOR SUBSIDY PRACTICE ON IMPORTS OF MILK POWDER  
CLASSIFIED BY TARIFF SUBHEADINGS 0402.10.10.00, 0402.10.90.00, 0402.21.11.00,  
0402.21.19.00, 0402.21.91.00, 0402.21.99.00, 0402.29.11.00, 0402.29.19.00, 0402.29.91.00  
AND 0402.29.99.00 ORIGINATING IN THE UNITED STATES OF AMERICA.**

**CASE: SV-249-02-2**



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Comercio,  
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## INTRODUCTION

This document contains the analyses carried out by the Sub-directorate of Commercial Practices of the Directorate of Foreign Trade of the Ministry of Commerce, Industry and Tourism for the preliminary determination of the

Administrative investigation into import subsidies

of milk powder classified under tariff subheadings 0402.10.10.00, 0402.10.90.00, 0402.21.11.00, 0402.21.19.00, 0402.21.91.00, 0402.21.99.00, 0402.29.11.00, 0402.29.19.00, 0402.29.91.00 and 0402.29.99.00 originating in the United States of America.

PUBLICO



## I. OPENING OF INVESTIGATION AND ARGUMENTS OF THE PARTIES INVOLVED

### 1. Opening of the investigation

Based on the WTO Agreement on Subsidies and Countervailing Measures (hereinafter, the SCM Agreement) and Decree 1074 of 2015, added by Decree 653 of 2022 (hereinafter, Decree 653 of 2022), the Investigative Authority issued Resolution No. 192 of 2024, by which it ordered the initiation of an ex officio investigation for alleged subsidies granted to imports of powdered milk, classified under the subheadings tariff codes 0402.10.10.00, 0402.10.90.00, 0402.21.11.00, 0402.21.19.00, 0402.21.91.00, 0402.21.99.00, 0402.29.11.00, 0402.29.19.00, 0402.29.91.00 and 0402.29.99.00, originating in the United States of America (hereinafter referred to as USA).

In summary, the opening of the investigation was based on evidence that provided sufficient evidence to support the following preliminary considerations:

- The existence of subsidies for the production of liquid milk in the United States. These subsidies were allegedly granted through 7 federal programs and 8 state programs, which together represented support of USD 1,954,283,417. On this basis, a subsidy of USD 0.018 per liter was calculated, which, when transferred to imports into Colombia, represented a subsidy of USD 0.22 per kilogram for powdered milk classified under subheadings 0402.10.90.00 and 0402.29.99.00, and a subsidy of USD 0.157 per kilogram for powdered milk classified under subheading 0402.21.19.00.
- The existence of damage to the domestic raw milk production branch. This damage would have been proven by several elements. Firstly, a significant increase in imports of powdered milk from the United States, which between 2022 and 2023 would have grown by 8.09%. Secondly, a significant undervaluation of the prices of domestic raw milk compared to powdered milk from the United States. For the period 2023, this undervaluation would have reached 7%. Finally, signs of damage to the economic variables of (i) production volume, (ii) imports investigated with respect to production volume and (iii) imports investigated with respect to Apparent National Consumption.
- A causal link between imports originating in the United States and the damage caused to the domestic industry. This element was established taking into account the correlation between the subsidies established and the situation of the domestic industry.



## 2. Notice of call

In compliance with article 2.2.3.9.6.8 of Decree 653 of 2022, through the Call Notice published in the Official Gazette 52,807 of July 4, 2024, those who demonstrated interest in the investigation were summoned to express their duly supported position and provide or request the evidence and documents they considered relevant. Likewise, to answer the questionnaires formulated.

## 3. Response to questionnaires and call by interested parties

In total, 21 participations were registered within the term of the call stage, that is, until August 29, 2024, distributed among 12 importing companies, 5 exporting companies, 3 unions and the United States Government.

United States of America:

- The importers ALPINA FOOD PRODUCTS SAS BIC., DASA DE COLOMBIA SAS, NATURAL PRODUCTS OF LA SABANA SAS BIC, INGREDIENTS AND FUNCTIONAL PRODUCTS SAS, PRONATURAL FOODS SAS, LECHECOL ZF SAS, COLOMBINA DEL CAUCA SA, COLOMBINA SA, NESTLE DE COLOMBIA SA, COMERCIAL ALLAN SAS, and GESTIÓN CARGO ZONA FRANCA SAS submitted responses to the questionnaires. The importer ROCSA COLOMBIA SA submitted a document entitled "Third party intervention".
- Exporters DAIRY FARMERS OF AMERICA INC. (DFA), INTERFOOD AMERICAS SA, LAND O'LAKES, INC. and CALIFORNIA DAIRIES, INC (DAIRYAMERICA) submitted responses to questionnaires. The US DAIRY EXPORT COUNCIL (USDEC) submitted responses to questionnaires and a written opposition.
- On behalf of the unions, the COLOMBIAN FEDERATION OF CATTLE BREEDERS (FEDEGAN) and the NATIONAL ASSOCIATION OF MILK PRODUCERS (ANALAC) submitted supporting briefs. The NATIONAL ASSOCIATION OF BUSINESSMEN OF COLOMBIA (ANDI) submitted a written opposition.
- Likewise, the GOVERNMENT OF THE UNITED STATES OF AMERICA submitted responses to questionnaires and a written opposition.

Below is a summary of the arguments put forward by the agents who presented a position in relation to the foundations of the investigation.

**A.** ROCSA COLOMBIA SA stated that the investigation must take into consideration the public interest and that there is no relationship between the national production branch and the powdered milk that is allegedly the subject of



subsidies. On the first, he argued that any compensatory measure would severely affect several industries, especially small producers who depend on imported milk powder for their operations.

In this regard, he warned about the economic implications for his clients and related industries, which could not effectively replace powdered milk with liquid milk due to the specific requirements of their processes. Regarding the second point, he argued that powdered milk does not bear any similarity to fluid milk, so that the commercialization of the former could not affect the production of the latter. On this point, he indicated that the food production process for the chocolate, bakery, confectionery and ice cream industries, among others, cannot use liquid milk for the preparation and transformation of food, so that powdered milk and liquid milk are not substitutes.

Finally, he argued that the demand of the productive sector cannot be met with the national supply of powdered milk. Therefore, given the impossibility of using a product such as liquid milk for the preparation of certain foods, the importation of powdered milk is necessary.

**B. US DAIRY EXPORT COUNCIL (USDEC)** presented the following arguments in its opposition brief:

First, he stated that the existence, nature and amount of the subsidies under the terms and conditions indicated in Resolution 192 of 2024 have not been proven.

Secondly, the Court challenged the calculation of the amount of the subsidies and the profit transfer methodology used by the Investigating Authority. It stated the following in this regard:

(i) The Authority considered programs that were no longer in force by 2023 and, in the case of the benefit derived from the Dairy Margin Coverage Program ("DMC"), it was calculated in a manner contrary to the rules of the World Trade Organization.

(ii) The benefits of the primary input (liquid milk) were transferred to a produced good (powdered milk) even though the sale of liquid milk is made at market prices.

(iii) The methodology for benefit transfer proposed by the Investigating Authority is based on a formula for converting powdered milk to liquid milk that is not correct. The reason is that it counts the benefit applied to liquid milk twice, since only 8.6% of U.S. milk production is used in the production of powdered milk.



Third, USDEC argued that there was no evidence of injury to the domestic industry, nor that the cause of such damage could be attributed to the imports under investigation. To support this claim, it asserted, first, that the similarity requirement was not met to claim that the imports under investigation are the cause of the alleged injury to the domestic liquid milk industry. Second, that not all economic indicators of the domestic industry are injured and that those that do show injury are caused by other causes such as the increase in production costs, the change in production preferring the production of beef, and changes in consumer preferences.

Similarly, in its response to questionnaires, USDEC made the following clarifications regarding some of the programs analyzed:

- The Dairy Margin Coverage (DMC) Program is a financial protection program for dairy producers when the difference between the full price of milk and the average feed cost (the margin) falls below a certain dollar amount selected by the producer. In other words, the DMC is an insurance program that protects the dairy producer in the event of a loss, which is why this program only benefits the producer if margins are negatively affected, and the benefit does not correspond to payments made as compensation.
- The Organic Dairy Marketing Assistance Program (ODMAP) is a program targeting organic dairy products only. There is no evidence that organic fluid milk is used in the production of milk powder.
- The Dairy Business Innovation Grant Program is a state program offered in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin, and is directed solely to organic dairy products. There is no evidence that organic fluid milk is used in the production of powdered milk.

**C. The COLOMBIAN FEDERATION OF CATTLE BREEDERS (FEDEGAN)** submitted the following comments regarding this investigation:

Regarding the situation facing the dairy sector in Colombia, which is caused by climatic factors and seasonality in production, as well as the application of tariff reduction programs agreed with the United States and the European Union through the free trade agreements in force, FEDEGAN expresses its satisfaction with the imposition of a compensatory measure, since more than 350 thousand peasant families derive their livelihood from production.

milk.



In this regard, they request that the compensatory measure be imposed expeditiously in order to generate immediate protection for the Colombian dairy sector. In this regard, they state that in less than two years, bilateral trade in powdered milk will be completely free of tariffs with the United States and that the investigated product will have a significant reduction in tariffs.

He mentions that, with the imposition of a compensatory measure on imports of powdered milk from the United States of America, the perverse effect of subsidies is corrected and the unfair competition that the Colombian dairy sector has to face is eliminated.

Finally, he stressed the importance of moving forward decisively, in a strategy with the Ministry of Commerce, which materializes in concrete decisions to protect the Colombian dairy sector against the permanent wave of imports of powdered milk from the United States of America.

D. The NATIONAL ASSOCIATION OF MILK PRODUCERS (ANALAC) presented the following comments regarding this research:

It highlights the importance of keeping active the scenarios and instances contemplated in the trade agreements and in the current international trade regulations to guarantee the equitable use of free trade agreements. In the case of Colombia, there is a potential for strengthening the sector that would result from a more detailed inspection, surveillance, control and traceability of dairy products that enter the country from the various exporting origins.

It carries out an analysis of the similarity between imported whole and skimmed milk powders and bovine milk produced in Colombia, taking into account their origin, their purchasing markets, the industry that supplies both milks and the complexity of competing with the low prices at which imported milk powder is sold in the country.

He mentions that although there is a lag in efficiency in the Colombian dairy chain, it has not been addressed by the Colombian State, and that it is important to analyze and understand the low prices resulting in Colombia from said imported production.

It concludes by indicating that the eventual imposition of a compensatory measure This would generate a decrease in the volume to be imported without tariffs, increases in the extra-contingent tariff and in the tariff reduction period. In view of this, the interested importers have the possibility of continuing to import products of the same origin into the country with the impacts listed above and also,





from different international sources not considered in this research. Consequently, there is also the option of buying from local producers and strengthening processes to improve the quality of national milk.

E. The NATIONAL ASSOCIATION OF BUSINESSMEN OF COLOMBIA (ANDI), through its special representative, submitted a written opposition in its public version and stated the following:

It indicates that when analyzing Resolution 192 of July 3, 2024, as well as the Technical Report of the Opening of the Authority, serious failures are noted in the accreditation of the requirements established in article 2.2.3.9.5.1 of Decree 1074 of 2015, added by Decree 653 of 2022, especially in relation to the due legitimacy of the national production branch as representative of the product similar to the product under investigation and the lack of conclusive evidence that effectively demonstrates the increase in imports of the investigated product, deterioration in its domestic prices, significant damage to the national production branch and causal link.

They mention that they found breaches of the provisions of Decree 1074 of 2015, added by Decree 653 of 2022, to order the initiation of an investigation and apply a measure of this nature, taking into account that the similarity between the product under investigation and the nationally manufactured product was not duly accredited and that there is an erroneous definition of the national production branch and its representativeness, to open an investigation of this nature.

They also state that it was proven that the evidentiary standard for determining that there is significant damage to the national production branch has not been met. Although there are serious structural problems affecting the Colombian dairy sector today, it is clear that this problem became evident in periods prior to the start of trade negotiations with the United States, so it is not possible to affirm that the substantial cause of these problems and structural failures in this sector are the recent imports of powdered milk.

F. The government of the United States of America, through the Embassy of that country in Colombia, submitted a written opposition entitled "*COMMENTS OF THE UNITED STATES ON THE INVESTIGATION OF COUNTERVAILING DUTIES ON POWDERED MILK FROM THE UNITED STATES.*"

*UNITED STATES OF AMERICA*", which states the following:

- The United States disagrees with the arguments presented by Colombia on the impact of any alleged subsidy granted by the United States Government to producers of powdered milk, by indicating



that the subsidy is too small to be significant or to affect milk prices in the United States, let alone value-added products such as milk powder.

- There is no evidence to suggest that the alleged subsidies on milk production in the United States have any impact on production costs or the final price of milk, or on derived products, such as milk powder.
  
- The programs Colombia is investigating were designed to minimize any impact on milk supply; moreover, half of them (4 of 8) were temporary and implemented in response to natural disasters and the lingering effects of the global COVID-19 pandemic on the market, or were specifically targeted at organic milk production.
  
- If there are actionable subsidies for milk producers, only a very small portion of those subsidies could be attributed to milk powder production. Because Colombia seems to assume that all alleged milk subsidies are directed solely to milk powder production, without considering liquid milk, cheese, yogurt and other dairy products derived from that milk.
  
- US milk powder exports would not cause harm to Colombia's industry for the following reasons:
  - (i) First, MINCIT's like product analysis was limited to comparing locally produced processed fluid milk with subject imports, but its definition of the like product also included raw fluid milk.<sup>5</sup> Since these are two distinct products, a detailed explanation should be provided to justify the inclusion of each in the definition of the like product, which MINCIT has not done.

Second, MINCIT did not adequately consider the factors set forth in Article 2.2.3.9.1.1.11 of Decree 1074 of 2015, as amended by Decree 653 of 2022, especially with regard to end uses, consumer preferences and distribution channels.

As for end uses, MINCIT only noted that both imported powdered milk and locally produced liquid milk are intended for human consumption, something that could apply to any food or drink. Although powdered milk and liquid milk can be used for human consumption, their end uses can be very different.



The United States requests that MINCIT review the issues related to the definition of the domestic like product discussed above in order to define the domestic industry in future phases of this investigation.

(ii) Given the erroneous definitions of domestic like product and domestic industry, the domestic industry data presented by MINCIT cannot be considered reliable for an injury analysis. MINCIT's calculation of apparent domestic consumption appears not to accurately reflect consumption in Colombia.

(iii) The data indicate that the volume of subject imports was not significant nor did it show an increase, either in absolute terms or in comparison to domestic consumption or production during the period of investigation (POI).

(iv) The comparison is made between two different products: the price data of the subject imports correspond to powdered milk, while the price data of the like product refer to raw liquid milk.

Subject imports did not cause a decrease in prices of the similar product, as these prices increased steadily during the POI, from \$1,230 per liter in 2020 to \$2,315 per liter in 2023.

(v) MINCIT identified damages to the domestic industry's production volume, the volume of subject imports relative to domestic production, and the volume of subject imports relative to domestic consumption. However, by limiting its analysis to trends for the 2022-2023 period, MINCIT did not consider the entire period of investigation (POI), leading to a biased analysis.

MINCIT also found significant damage to the milk production cost index, but did not explain how the increase in domestic industry production costs was attributed to subject imports.<sup>28</sup> Furthermore, as mentioned above, it appears that the domestic industry was able to cover increased production costs and remain profitable during the POI, as evidenced by increased prices and net sales.

MINCIT found no other indications of harm to the fluid milk industry in Colombia. Therefore, the data in the Technical Report do not suggest that the subject imports have caused adverse impacts on the fluid milk industry in Colombia.

In response to questionnaires, the United States Government made the following observations regarding the programs:



- The document on the OCLA website, cited as a source for the conversions, presents data on whole and semi-skimmed milk powder and skimmed milk powder, but does not specify the fat percentages used by MinCIT in the Technical Report.

Furthermore, the OCLA data appears to be from 2018. The table does not clarify whether this data is specific to Argentina's milk production and processing, or how it was calculated, much less how it relates to U.S. milk and milk powder production, as conversion rates can vary by country due to differences in the milk components processed into milk powder.

- Initial analysis shows that the implied non-fat solids content of skim milk used to produce skim milk powder would be much lower than the content observed in Section 6.2. Therefore, these conversion rates are not relevant to US milk powder production and should not be used in the calculation of the subsidy rate. In absolute terms, this results in an inaccurate and artificially high level of pass-through of the presumed subsidy to milk powder.
- An alternative, more accurate methodology, based on current, U.S. milk production-specific data, is proposed to determine the amount of any claimed subsidy benefiting milk production that could be allocated to milk powder production. Converting milk production into its components allows for a more accurate estimate of the value of milk components used in U.S. milk powder production. The USDA publishes annual data on the average milk fat and nonfat solids content of U.S. milk production.
- Milk production in pounds is first converted to kilograms, using the standard conversion rate of 1 kilogram equals 2.204623 pounds. U.S. milk production in kilograms is then converted to liters, using a conversion rate of 1 liter of whole milk equals 1.03 kilograms. The source for this kilograms to liters conversion is the USDA Economic Research Service (ERS) Dairy Conversion Factors and Sources. It should be noted that the value of U.S. milk production in 2023 was \$46 billion (Source: USDA/NASS). The value of U.S. milk powder production in 2023 is estimated at \$3.3 billion (Source: USDA).
- The programs were designed to minimize any impact on milk supply. In addition, four of the eight programs were temporary and implemented in response to natural disasters and the prolonged effects of the COVID-19 global pandemic, or were



destined for organic milk production, which represents a very small portion of the total milk supply in the US and is unlikely to have been used as an input in the production of powdered milk exported to Colombia.

- MinCIT employs a flawed methodology that greatly exaggerates the alleged benefit for secondary milk powder production. If MinCIT determines that there is a benefit for milk, which should not be the case, then at least the methodology should correctly allocate any benefit found to milk production, and not to milk powder.
- The Dairy Margin Coverage (DMC) Program is designed to limit the impact on U.S. milk production and prices and all dairy operations in the United States are eligible for the DMC program, regardless of whether they produce milk for powdered milk manufacturing or not. To participate, a dairy operation must produce and market milk from cows located in the United States and provide evidence of milk production at the time of enrollment. The DMC provides coverage for operating losses due to lower than expected margins between milk price and feed costs, making the following provisions:

- Milk powder is not covered by this program, and companies that produce it are not eligible for the DMC. During the Period of Investigation (POI), which runs from January 1 to December 31, 2023, payments to program participants (dairy operations) amounted to \$1.23 billion, while premiums and administrative fees paid by participants totaled \$59 million.

By 2023, the program has recorded a total of 159 billion pounds in milk production history.”

- Payments to program participants (dairy operations) amounted to \$1,230.8 million, while premiums and administrative fees paid by participants totaled \$59 million.

In 2023, the program recorded a total of 159 billion pounds of milk production history and the number of program participants who received a payment in 2023 was approximately 17,000. Net payments totaled \$1.171 billion.

- The Organic Dairy Marketing Assistance Program (ODMAP) was a temporary, one-year program established under the authority of Section 5 of the Commodity Credit Corporation Act (Schedule US-2). Its purpose was to mitigate market volatility, high input and transportation costs, and the lack of adequate supplies.



instability in food supply and prices, problems that particularly affected the organic dairy industry following the global COVID-19 pandemic, taking into account:

- The initial payment was calculated based on certified organic milk pounds projected to be marketed in 2023, multiplied by a rate of \$1.10 per hundredweight (cwt) and a factor of 75 percent.  
All organic dairy operations applying for ODMAP were required to submit their USDA certification of organic status, confirming their status as an organic dairy operation at the time of application.
- In 2023, payments made under this program reached \$20.5 million. The volume of fluid organic milk eligible for payment was approximately 1.9 billion pounds.
- The program is designed to limit any impact on U.S. milk production and prices. Specifically, the program applies to a very small portion of U.S. milk producers and production, and should be considered non-recurring.

This temporary program was in effect from September to October 2023.

- The Agricultural Loan Program is targeted to family-sized farms, especially new farmers and those in socially disadvantaged situations (SDA). The law requires that a certain percentage (more than half) of direct loans be reserved for qualified beginning farmers and ranchers. In addition, the law requires USDA to target SDA farmers for participation in the Agricultural Loan Program to cover farm operating costs or purchase farm inputs, and any subsidy benefits provided by this program must be allocated to the full value of sales of U.S. agricultural production in the applicable period.

It is important to note that none of these Agricultural Loan Programs are tied to the production of a specific crop or livestock product, including milk. Producers of powdered milk are not eligible for this program regardless of the agricultural products they produce. There are no specific interest rates for the program in general for any type of agricultural product, including milk.

- The Dairy Business Innovation Grants Program is a program that provides reimbursable grants of up to \$100,000 each, through a competitive process, to small to medium-sized dairy farmers, entrepreneurs, and processors in the 11 states of the United States.



DBIA coverage states. This region includes Illinois, Iowa, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin. Only dairy operations located in these U.S. states are eligible to apply for the program to diversify the dairy farm through dairy product development, specialization, packaging, and/or marketing strategies; or to create value-added dairy products (e.g., using milk to make cheese, yogurt, beverages, etc.). The program must be considered non-recurring, and any subsidy benefits must be spread over the applicable period.

- The Existing Dairy Processor Expansion Grant program covers the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont and offers a unique financing opportunity for existing dairy processing facilities in the Northeast region of the United States. Its goal is to expand the utilization of milk, dairy components, and/or dairy blends from the region, as well as diversify the supply chain in the Northeast.

Pursuant to Article 2.2.3.9.6.10 of Decree 653 of 2022, the following are the considerations of the Investigating Authority for adopting the Preliminary Determination on the matter that is the subject of this investigation.

## **II. TECHNICAL EVALUATION OF MERIT TO ADOPT A PRELIMINARY DETERMINATION**

### **1. Nature and requirements of the preliminary determination**

For the purposes of this act, it is important to specify the function of the preliminary determination, the standard of proof required for its adoption and the evidentiary material that can be taken into account for that purpose.

The function of the preliminary determination is provided for in Article 2.2.3.9.7.2. of Decree 653 of 2022, in accordance with paragraph 1 of Article 17 of the SCM Agreement. These rules establish that the eventual imposition of provisional countervailing duties is intended to prevent injury to the domestic industry during the period of the investigation. This decision, therefore, has a preliminary and precautionary nature that determines the conditions that must be met for its adoption.

The precautionary nature of the preliminary determination and its function determine the standard of proof applicable for its adoption. The standard of proof, as is known, establishes the set of criteria that must be met in order to be able to





to conclude that a certain factual aspect relevant to the action has been demonstrated. The relevant point here is that the adoption of the preliminary determination does not require certainty about the existence of the elements that condition the admissibility of provisional countervailing duties, but only the availability of evidence that, in a reasonable manner and consistent with the preliminary nature of the decision, suggests that such elements exist.

The conclusion set forth is based on two considerations. The first is that, as established by the applicable regulations and recognized by the World Trade Organization (WTO) Panels, an investigation of this nature is a progressive procedure in which, gradually and based on the evidence that is collected in the course of each of the stages of the action, the factual aspects required to adopt the corresponding decisions are determined with the necessary certainty for each stage of the process<sup>1</sup>. The second is that the applicable regulations expressly establish different standards for the various decisions that must be progressively adopted in the course of the action. For example, articles 2.2.3.9.6.4 and 2.2.3.9.6.16 of Decree 653 of 2022 establish that (i) the evaluation of the merit to decide to open the investigation only requires the existence of sufficient indications of the elements that configure the unfair international trade practice,

while (ii) the final decision does require a level of certainty that is typical of the standard applicable to the administrative procedure.

Finally, it is necessary to specify the evidentiary material that must serve as a basis for the adoption of the preliminary determination. Taking into account the preliminary nature of the decision and the provisions of articles 2.2.3.9.1.1. and 2.2.3.9.6.16, the Authority must base its decision on the evidentiary material that has been collected at this early stage of the administrative action. Of course, during the evidentiary stage that will be carried out in the next part of the investigation, the Authority will adopt the measures to collect the necessary information to reach the level of certainty required for the adoption of the final decision.

## **2. Conditions for imposing provisional countervailing duties**

Pursuant to the WTO SCM Agreement and Decree 653 of 2022, within the framework of an investigation of this nature, the imposition of provisional countervailing duties is only appropriate if there is sufficient evidence to preliminarily conclude on the existence of the following conditions: (i) that there is a subsidy and, if possible, its amount, in the imports under investigation; (ii) that there is significant damage to production.

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<sup>1</sup> WTO Panels. Cases WT/DS60/AB/R, DSR 1998 IX. 3797 and WT/DS 241/R 2003.





(iii) a causal link between the subsidised imports and the material injury to the domestic industry. Of course, the representativeness of the actors acting on behalf of the domestic industry and the similarity between the product under investigation and that produced by the domestic industry must also be sufficiently established.

The verification of these elements is discussed below.

### **3. Branch of production and representativeness**

Articles 2.2.3.9.5.1. and 2.2.3.9.6.3. of Decree 653 of 2022 establish that, as a general rule, in order to open an investigation, it is necessary that the procedure be supported by national producers or associations of national producers of the similar product whose joint production represents more than 50 percent of the total production of said product. In this case, this requirement is met. As indicated in the Technical Opening Report<sup>2</sup> – through arguments that were not disputed by any of the interveners – the producers linked to FEDEGAN correspond to 100% of the national liquid milk production branch.

### **4. Description of the product under investigation**

At the opening of the investigation it was indicated that the product subject to investigation corresponds to powdered milk imported from the United States, classified by tariff subheadings 0402.10.10.00, 0402.10.90.00, 0402.21.11.00, 0402.21.19.00, 0402.21.91.00, 0402.21.99.00, 0402.29.11.00, 0402.29.19.00, 0402.29.91.00 and 0402.29.99.00.

### **5. Similarity**

#### **5.1. Conditions determining the similarity between products**

Trade defense measures are aimed at protecting the national production branch from products similar to those that are the object of unfair international trade practices, in cases like this, products subsidized in the country of origin. Therefore, it is essential to specify what is meant by similar products in order to establish whether it is appropriate to impose provisional compensatory duties in this case. In this regard, section 11 of article 2.2.3.9.1.1. of Decree 653 of 2022 establishes that a similar product is one that is identical in all its aspects to the one that is the subject of investigation or one that, although not identical, has very similar characteristics. For the



Indeed, the standard highlights certain criteria that allow establishing such similarity, among which the physical and chemical characteristics of the products and their end uses must be highlighted. This approach is also consistent with international practice. Indeed, in the European Community-Asbestos case, the Panel adopted an approach that consisted of applying four general criteria to analyse "similarity". These criteria included the properties, nature and quality of the products and their end uses<sup>3</sup>.

However, based on the applicable regulations and international practice based on the SCM Agreement, it is important to highlight a fundamental aspect of the definition of similarity that is relevant to an action of this nature.

This is because there is in fact no precise and absolute definition of this concept and, consequently, the determination of similarity must take into account the specific aspects of each case. In this regard, the Appellate Body in Japan – Alcoholic Beverages II stated the following:

“(…) there can be no precise and absolute definition of what is ‘like’. The concept of ‘similarity’ is relative and evokes the image of an accordion. The accordion of ‘similarity’ expands and contracts in different places as the different provisions of the WTO Agreement are applied. The width of the accordion in any of those places must be determined by the particular provision in which the term ‘like’ is found, as well as by the context and circumstances existing in any given case to which the provision applies”<sup>4</sup>.

Thus, based on the constitutional and legal regulations applicable in Colombia, as well as the provisions of the SCM Agreement, it is clear that the determination of the content of the similarity requirement must consider the function attributed to the interpreted rule and the regulatory context in which it is framed.

Likewise, it must take into account the specific circumstances of each particular case. What this means is that the interpretation of the analyzed rule must be carried out in accordance with teleological and systematic criteria. On this basis, it is essential to consider that the SCM Agreement and Decree 653 of 2022 regulate a trade defense measure that has a specific purpose: to offer an adequate level of protection to the national production branch of products that could be affected by imports made in execution of an unfair international trade practice. Therefore, a product must be considered to be similar to the one under investigation if, due to the specific conditions that arise in the case and

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<sup>3</sup> The fourth criterion, tariff classification, was not mentioned by the Working Party on *Border Tax Adjustments*, but was included by subsequent panels (see, for example, *EEC – Animal Feed*, *supra*, note 58, para. 4.2 and *Japan – Alcoholic Beverages*, 1987, *supra*, note 58, para. 5.6).

<sup>4</sup> Appellate Body Report, *Japan – Alcoholic Beverages II* (1996), WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, p. 25.



Taking into account the similarity criteria established in the applicable regulations – the nature of the products and their end uses, for the purposes of this article – it is possible to reasonably conclude that there is a detrimental impact on the national production branch of the product analysed.

derived from the availability of the investigated product under conditions that distort the dynamics of competition.

The above allows us to conclude that the liquid milk produced by the national production branch is a product similar to powdered milk originating in the United States if the following conditions are met. First, that the products have the same properties and nature. Second, that they share the same end uses. Third, that there are elements of judgment that allow us to conclude that the availability of subsidized powdered milk from the United States could generate a detrimental impact on the performance of Colombian liquid milk production.

## **5.2. Specific similarity analysis**

**5.2.1.** The investigated product and the one manufactured by the domestic production branch are similar in their composition and nature.

There are elements of evidence that allow us to preliminarily conclude that powdered milk imported from the United States and domestically produced liquid milk are similar in their composition and nature. In particular, they share organoleptic characteristics (color, flavor and aroma), physicochemical characteristics, nutritional values and composition. The difference between both products lies in the dehydration process that is carried out on liquid milk to extend its shelf life.

useful for removing excess moisture. However, the product retains its own characteristics and is at any time susceptible to returning to its liquid state by simply adding water.

The conclusion noted is supported by three elements of judgment.

Firstly, through a technical analysis of the two products considered.

Domestically produced milk is a white liquid with the following composition: fats, minerals, vitamins, enzymes, lactose and water. It is the most consumed, produced and marketed dairy product in the country, including products such as fresh milk, skimmed milk, reconstituted milk, UHT milk and enriched milk. On the other hand, according to USDEC, powdered milks produced in the United States are defined as dairy products that can be obtained by partially extracting the moisture from liquid milk without



that it loses its main characteristics and properties<sup>5</sup>. Additionally, it indicates that powdered milk must be made from fresh milk to which no preservatives, alkaline agents, neutralizers or other chemicals are added<sup>6</sup>, so that it preserves the essential characteristics in terms of composition, physicochemical and organoleptic characteristics (color, flavor and aroma) of liquid milk, as well as its same nutritional value.

Secondly, the similarity of the analyzed products based on their same composition and nature is preliminarily accredited by the opinion issued by the National Goods Producers Registration Group of the Ministry of Commerce, Industry and Tourism on August 5, 2021 (file GRPBN-2021-000029). Also through the opinion issued by the Office of International Affairs of the Ministry of Agriculture and Rural Development. Both authorities came to the conclusion that “[t]he regulations establish the composition ratio of the final product, varying only its physical state with the aim of obtaining a product that, after reconstitution, presents a similar composition and characteristics to milk.”

Finally, in the context of this action, several participants highlighted that the products in question are of the same nature. Examples include the responses provided by ALPINA PRODUCTOS ALIMENTICIOS SAS BIC, PRODUCTOS NATURALES DE LA SABANA SAS BIC and DASA DE COLOMBIA SAS (Alquería) to point 4.2 (similarity between the imported product and the locally produced one) of the questionnaires formulated.

These companies considered that, from the perspective of the nature of the products, there is no difference between the physicochemical characteristics of whole milk powder and domestically produced milk. They also stressed that the difference between the products, already mentioned in this section, does not change the main characteristics of the milk.

**5.2.2.** The investigated product and the one manufactured by the domestic production branch are similar in their final uses.

There is evidence that allows us to preliminarily conclude that powdered milk imported from the United States and domestically produced liquid milk have the same end use. This similarity would be evident from two perspectives.

On the one hand, facing a sector of the industry that could use in its process productive of either of the two products. On the other hand, in front of consumers who would have the option of purchasing powdered milk or liquid milk to satisfy their consumption needs. To support this conclusion, we will begin with the

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<sup>5</sup> The United States Dairy Export Council (USDEC) <https://www.thinkusadairy.org/en/home/us-dairy-products/powdered-milk/powdered-milk-categories>

<sup>6</sup> United States Dairy Export Council (USDEC). Reference Manual for U.S. Microfiltered Milk Powders and Ingredients.



perspective related to the industrial use of the products. First, the argument of opposition based on the fact that powdered milk and liquid milk are not substitutes for industrial processes will be highlighted and, subsequently, the exercise carried out to prove that a certain segment of the industry could use both products alternatively will be presented. Secondly, the issue related to the consumer perspective will be addressed.

#### 5.2.2.1. Similarity in the industrial use of the products

Some intervenors, including the United States Government, USDEC and ROCSA COLOMBIA SA, asserted that industrial purchasers of powdered milk would not be able to effectively substitute liquid milk for powdered milk due to the specific requirements of their processes. On that basis, they asserted that the two products under review are not really similar because they have uses that are not compatible.

To examine this opposition argument, the Authority used the import database of the National Tax and Customs Directorate (hereinafter, DIAN) to identify the total number of importers of powdered milk originating in the United States in the period between 2020 and

2023. Then, the segmentation of this group of agents by corporate purpose was carried out. This exercise allowed them to be preliminarily classified into five categories: (i) dairy product producers, (ii) milk powder marketers, (iii) confectionery producers, (iv) food producers (which include food producers that do not correspond to dairy products and producers of mixtures intended for other industrial users) (v) a group of agents that correspond to pharmaceutical companies, airlines and importers for third parties. Below are the agents that are part of each category and the participation of each one in the total imports from the United States:

**(i) Dairy product producers:** This category accounted for 32.80% of total imports of milk powder originating in the United States. It includes the following agents:

Alpina Food Products S.A., Cooleches SAS, Cosmolac SAS, Lactalis Colombia Ltd., Nestlé de Colombia S.A., Alimentos del Valle S.A., Dasa de Colombia SAS (Alquería), Dairy Derivatives of the North SAS, Emprelac SAS, Gloria Colombia S.A., Investments and Livestock AJ SAS Zomac, Dairy Products La Esmeralda SAS, Lechecol ZF SAS, Milk Processor S.A., Food Products El Recreo SAS, Dairy Products Aura SAS and Dairy Products Colfrance CPS in C. under reorganization.

**(ii) Traders:** this category represented a 33.39% share of the imports analysed. It includes the following agents:



Brokers And Traders SAS, CI Global Market SAS, Centurion Foods SAS, Coalco 2 Agricultural Transformation Society, Comerpol SAS, Dissabana Zomac SAS, National Distributor Multiactive Cooperative, Grains and Foods of Colombia SAS, Dos Océanos Investments SAS, Joli Foods SAS, Lactoinsumos Dairy Products Marketing Company SAS, Mercantil Livestock and Dairy SAS, Precooperative Multiactive San Rafael, R & O SAS, Rincón Cash SAS, Rosmi SAS, Rocsa Colombia SA and Tradercol Ltda.

**(iii) Confectionery:** this category represented a 6.16% share of the imports analysed. It includes the following agents:

Antioqueña de Helados SAS, Colombina del Cauca SA, Colombina SA, Italo Foods SA, Ventolini Processed Food Factory SA in Reorganization, Successors of José Jesús Restrepo and CIA SA Casa Luker SA and Allan SAS Commercial

**(iv) Food producers:** this category represented 16.17% of the imports analysed. It includes the following agents:

Aromasynt SAS, Griffith Foods SAS, Factores y Mercadeo S.A., Fractolac Dairies S.A., CI Alliance S.A., Colfoods S.A., DNA Distrinal S.A., CI World Market S.A., Indulácteos de Colombia S.A., Ingredients and Functional Products S.A., Octo Ponte S.A., Neogen Colombia S.A., Prealco Colombian Food Pre-Cooperative, Natural Food Producer S.A., Natural Products of the Sabana S.A., Pulpafruit S.A., Solutions and Innovation in Food Colombia S.A., Super de Alimentos S.A., Multiingredients S.A., and Alipror Investments S.A.

**(v) Others (pharmaceuticals, airlines, third-party importers):** This category represented 11.48% of the imports analysed. It includes the following agents:

Nutrabiotics SAS, Polanco Orozco Jorge Mario, Trading Group International SAS, American Airlines INC Colombia branch, Delta Air Lines INC. Colombia branch, Interkrol Chemistry Limited, Latin America Distribution Colombia SA and Cargo Management Free Zone SAS

Based on the responses submitted by the intervenors to the questionnaires formulated in this case and the information collected up to this point, there are elements that suggest that the argument according to which the industry cannot substitute powdered milk for liquid milk is true only with respect to a segment of industrial users. Indeed, the

Information provided by stakeholders such as ROCSA COLOMBIA SA and the NATIONAL ASSOCIATION OF BUSINESSMEN OF COLOMBIA (ANDI) would show that industrial users such as food manufacturers that do not correspond to dairy products –for example, biscuit producers– have processes





industrial products where powdered milk cannot be replaced by liquid milk. However, the evidence collected would show that a segment of the industry can use both inputs alternatively in its production processes and, therefore, for this type of buyers, powdered milk and liquid milk are substitute products. An example would be found in the industry agents dedicated to the manufacture of dairy products. This conclusion is supported by the following elements of evidence.

First, the National Association of Milk Producers – ANALAC highlighted, based on public information related to the ingredients of various dairy products available on the market, that producers can effectively choose between powdered milk and liquid milk as inputs for the production of their products. In this regard, it referred to the cases of several agents that manufacture their products with liquid milk *and/or* reconstituted milk. The reconstitution of powdered milk consists of returning this input to its original liquid state by adding water in a specific proportion. Therefore, this implies that the producers referred to would use in their industrial processes simultaneously or alternatively and for the same purpose both liquid milk and milk that has been reconstituted on the basis of powdered milk. To this effect, the Investigating Authority found the following examples:

- Flor del campo (Colfrance dairy drink) ingredients: Hygienized whole milk **and/or** reconstituted skimmed milk, whey, water, non-fat dairy solids (casein, lactose), cream, vegetable fat, stabilizer (cellulose, xanthan gum), sugar, natural-identical milk flavor, stabilizer (sodium tripolyphosphate)<sup>7</sup> .
- Petit déjeuner (Colfrance Dairy Drink) – ingredients: Hygienic whole milk **and/or** reconstituted skimmed milk, sugar, cream, thickener (modified corn starch), gelling agent (gelatin), specific lactic cultures (Lactobacillus bulgaricus and Streptococcus thermophilus)<sup>8</sup> .
- Yox (Alpina dairy drink) - ingredients: Hygienic whole milk **and/or** reconstituted whole milk, reconstituted whey, sugar, apple jam, gelatin, artificial flavor, vitamin C, zinc sulfate, preservative (potassium sorbate), stabilizer<sup>9</sup> .

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7 Available at: [https://www.colfrance.com.co/web\\_productos/producto\\_bebida\\_flor\\_del\\_campo/](https://www.colfrance.com.co/web_productos/producto_bebida_flor_del_campo/). Date of consultation: 13/09/2024.

8 Available at: [https://www.colfrance.com.co/web\\_productos/producto\\_petit\\_dejeuner/](https://www.colfrance.com.co/web_productos/producto_petit_dejeuner/) Date of consultation: 09/13/2024.

9 Available at: <https://alpina.com/yox-multisabor-x8-und-botella-100-g>. Date of consultation: 13/09/2024.



Secondly, ANALAC also mentioned various cases in which agents in the dairy products manufacturing industry acquire both liquid milk and powdered milk. This is a circumstance consistent with the hypothesis that they can use both inputs in their production processes. In this regard, it referred to Indulácteos de Colombia SAS as an importer of powdered milk and a buyer of raw Colombian milk. It also referred to Nestlé, Lácteos la Esmeralda, Colombina, Dissabana ZOMAC, Cosmolac, Lactalis Colombia, Productos Lácteos Aura, Alimentos del Valle, Super de Alimentos, Productos Lácteos Colfrance and Productos Alimenticios El Recreo SAS.

Thirdly, DASA DE COLOMBIA SAS stated that it has imported powdered milk to deal with situations in which it expected there to be a shortage of liquid milk in Colombia. This is a relevant aspect for the analysis because it allows us to reasonably conclude that powdered milk is a substitute for liquid milk in the production processes for the manufacture of dairy products. Certainly, there would be no other explanation for why, given the shortage of liquid milk, the supply of powdered milk would be considered as an option to deal with the situation.

In this regard, the company stated the following:

"The above, considering that the imports made by Dasa de Colombia SAS were made in 2020 and 2021 as a result of: 1) SARS CoV2 - Covid 19 pandemic, 2) Milk shortage in Colombia, 3) Economic uncertainty, 4) Container collapse, 5) Blockades on the main roads in the country, complying with the need to increase inventories of raw materials and spare parts, in order to be able to supply Colombians at all times with the products of the basic family basket that my representative sells."

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In conclusion, although it seems that one segment of the industry could not replace powdered milk with liquid milk as an input in its production processes – which is an aspect that must be further investigated during the evidentiary stage – there are elements of evidence that suggest that another segment of the industry does have the possibility of replacing one input with another. This would show that powdered milk and liquid milk are similar in the terms of numeral 11 of article 2.2.3.9.1.1. of Decree 653 of 2022 taking into account their final uses.

#### **5.2.2.2. Similarity from the consumer perspective**

The information on imports of powdered milk provided by the DIAN shows that there is a group of importers that were classified in the

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<sup>10</sup> Document sent by Dasa de Colombia SAS on September 10, 2024, page 8.





category of marketers. The public information available on these agents shows that some of them are dedicated to the marketing of powdered milk to consumers. An example is Granos y Alimentos de Colombia SAS. Likewise, it is clear that in the marketing channels, consumers find powdered milk available to satisfy their consumption need in relation to milk. In this scenario, consumers also find liquid milk available to satisfy the same need. Therefore, there are elements that suggest that powdered milk and liquid milk have the same end use from that perspective and, consequently, they can be considered similar in the terms of numeral 11 of article 2.2.3.9.1.1. of Decree 653 of 2022 taking into account their end uses.

### **5.2.3. Similarity from the perspective of the function of the rules establishing trade defence measures**

It is now clear, based on the systematic and teleological interpretation of the regulations applicable to this action, that the function of trade defense measures is to offer an adequate level of protection to the national production branch of products that could be affected by imports made in execution of an unfair international trade practice. As will be discussed in greater detail below – specifically in the chapter dedicated to the existence of damage as a result of the investigated imports –, in this case there are elements of evidence that allow us to conclude in a preliminary manner that subsidized imports of powdered milk from the United States effectively generate a detrimental impact of a certain dimension on the production of liquid milk in Colombia. This circumstance, added to the fact that powdered milk and liquid milk are products that share characteristics and end uses, allows us to conclude that the similarity requirement is met in this case in accordance with the definition contained in numeral 11 of article 2.2.3.9.1.1. of Decree 653 of 2022.

It is important to make an additional clarification regarding this point. Some opponents, based on an exclusively literal interpretation of numeral 11 of article 2.2.3.9.1.1. of Decree 653 of 2022, argued that in this case liquid milk could not be considered the affected product.

The basis for their argument is that the rule establishes that a product similar to the one under investigation can only be considered similar if the national production does not have an identical product. With this logic, they argued that powdered milk is produced in Colombia, which is a product identical to that imported from the United States, so liquid milk could not be considered as the similar product subject to the protection sought by the trade defense measure.

In the opinion of the Authority, this is an inadequate interpretation of the analyzed norm. Firstly, because it is based exclusively on a



literal criterion. In this regard, constitutional jurisprudence has made two relevant aspects clear. On the one hand, that “when the effect of the literal interpretation of a rule (...) leads to effects contrary to the purpose sought by the provision itself, it is obvious that the rule, despite its apparent clarity, is not clear, because the decisions of the judges must be reasoned and reasonable” 11. On the other hand –and linked to this consideration– that the interpretation of legal rules must necessarily include the application of systematic and teleological criteria. As has already been made clear, the interpretation according to which it is only possible to offer protection to a product identical to the imported one even if the imports also generate an affectation to similar products openly ignores the evident function of trade defence measures and the rules that establish them. Their function is to guarantee adequate protection to the national production branch against unfair international trade practices, so that limiting it only to some affected products and not to all of them does not find support in the analysed regulations, correctly interpreted. Secondly, the interpretation proposed by the opponents ignores the obvious purpose of the provision under analysis. What is intended by the rule is simply that the trade defence measure is effectively aimed at protecting the production branch of a product that may actually be affected as a result of imports carried out in execution of unfair international trade practices, so that it does not allow the use of this instrument in relation to products that cannot perceive this affectation because they are not similar.

Based on the above, the Authority preliminarily considers that the product under investigation and the product of national production are similar.

## **6. Existence and amount of subsidies**

This chapter will preliminarily establish whether the United States government measures to support milk production could be considered as subsidies under the terms of Article 2.2.3.9.2.1 of Decree 653 of 2022 and paragraph 1 of Article 1 of the SCM Agreement. To this end, it will be analyzed whether their existence is proven, it will be determined which particular measures will be part of the analysis and, additionally, their content will be described in order to preliminarily establish whether they constitute actionable subsidies.

### **6.1. Existence of support programs that would constitute subsidies**

The Authority identified 7 federal programs and 8 state programs that offered some form of support for fluid milk production in the United States.

These programs are listed below:

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11 Constitutional Court. Judgment C – 147 of 1998.



PROGRAMS
1. Dairy Margin Hedging Program
2. Food Purchase and Distribution Program (FPDP)
3. Dairy Product Donation Program (DDP)
4. Organic Dairy Marketing Assistance Program (ODMAP)
5. Dairy Business Innovation Alliance 6. Subsidy
for the improvement and modernization of dairy farms 7. Subsidy for the
storage and handling of milk on farms
8. Dairy certification and food safety subsidy
9. Dairy Product Branding and Marketing Services Grant
10. Grant for expansion of existing dairy processor
11. Vermont COVID-19 Farm Assistance Program - VCAAP 12. Milk Loss
Program (MLP)
13. Livestock Indemnity Program (LIP)
14. Agricultural Loan Program 15. Dairy
Product Futures Price Program

At this point in the proceedings, there are elements of judgment that allow us to preliminarily conclude that these programs exist. First, the evidentiary basis of the programs and their content corresponds to the public documents originated by various public entities in the United States. Second, the existence of these programs was confirmed by the information provided to this proceeding by the United States government and USDEC. It is important to clarify, however, that these intervenors admitted the existence of the programs, but disputed that they could be considered as subsidies and that they were intended to support the production of powdered milk to some extent. These aspects, of course, will be considered in this analysis. For now, what needs to be highlighted is that there is no controversy over the existence of the programs identified at the opening of this investigation.

## 6.2. Preliminary identification of the relevant programs for this action

Based on the information provided by the intervenors, it is reasonable to preliminarily rule out some of the programs that had been initially identified. In particular, 4 federal and 6 state programs will not be taken into account. The basis for this consideration is that the contributions granted in these programs would not have had an effect on production costs and the price of milk in the United States because they would have been support for activities other than milk production –although related to the dairy sector–, they would have been concentrated on other derived products different from milk powder and, in addition, they would not have corresponded to production activities carried out during the year 2023, which is the period investigated in this action.



The excluded programs are listed below:

PROGRAMS
2. Food Purchase and Distribution Program (FPDP)
3. Dairy Product Donation Program (DDP)
6. Subsidy for the improvement and modernization of dairy farms 7. Subsidy for the storage and handling of milk on farms
8. Dairy certification and food safety subsidy
9. Dairy Product Branding and Marketing Services Grant
11. Vermont COVID-19 Farm Assistance Program - VCAAP 12. Milk Loss Program (MLP)
13. Livestock Indemnity Program (LIP)
15. Dairy Product Futures Price Schedule

For the reasons noted, the analysis presented below will not include the discarded programs.

### **6.3. Analysis of the programs: nature of the grants and their amount**

This section will preliminarily establish whether the programmes analysed constitute actionable subsidies. To this end, the elements that attribute to a programme of this nature the character of a subsidy will be set out first. Second, the content of each programme will be described and it will be determined whether it meets the elements in question. Third, the amount of the subsidies identified will be indicated. Finally, the proportion of the subsidies granted to the production of liquid milk in the United States that would have been communicated to the production of milk powder will be preliminarily determined.

#### **6.3.1. Elements that constitute an actionable subsidy**

According to Article 2.2.2.3.9.2.1. of Decree 653 of 2022 and Article 1.1. of the SCM Agreement, a production support program may be considered a subsidy if it meets two conditions: it consists of a benefit and has a specific character. Based on Article 2.2.3.9.2.6. of the aforementioned Decree and Article 2.1. of the SCM Agreement, such a subsidy will have an actionable character if, in addition, it causes harm to the domestic production branch of a similar product in the terms of Article 15 of the SCM Agreement. The content of each of these requirements is specified below as relevant to this

case.

##### **6.3.1.1. Benefit**

Taking into account the pronouncements of the WTO Appellate Body, a benefit is an advantage that, consequently, "places the recipient in a



more advantageous position than it would have had on the market”<sup>12</sup>. The rules cited in the previous section establish that a support programme would attribute a benefit to its recipient if it constitutes a financial contribution or a form of income or price support.

In relation to *financial contributions*, the regulations establish a list of four types of state measures that constitute them, which are listed below: The first measure corresponds to direct, effective or potential transfers of funds or liabilities. In relation to this point, the Dispute Settlement Body has stated that this type of transaction consists of giving “the recipient money or something that has a monetary value, normally without an obligation or expectation that something will be provided in return to the donor”<sup>13</sup>. The second measure is the forgiveness or non-collection of public revenues. This measure implies “that the government has collected less revenue than it would have collected in a different situation, that is to say 'in another case'. [T]he words 'are forgiven' suggest that the government has renounced the power to collect revenues that 'in another case' it could have collected”<sup>14</sup>. The third measure consists of the supply of goods or services and the purchase of goods that are not general infrastructure. This measure “has the potential to artificially reduce the cost of producing a product by providing a company with inputs that have economic value”<sup>15</sup>. It can also “artificially increase the income received through the sale of the product”<sup>16</sup>. The fourth measure is indirect in nature. It consists of the Government making payments to a financing mechanism or commissioning a private entity to carry out one or more of the actions already described.

On the other hand, a benefit can also be configured through a form of income or price support. The Dispute Resolution Body

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<sup>12</sup> World Trade Organization. Panel Report, “Canada – Measures affecting the export of civil aircraft”. WT/DS70/R. 14 April 1999. (Adopted on 20 August 1999). Paragraph 9.112.

<sup>13</sup> World Trade Organization. Appellate Body Report, “United States – Measures Affecting Trade in Large Civil Aircraft – Second Complaint.” WT/DS353/AB/R. 12 March 2012. (Adopted on 23 March 2012). Para. 616.

<sup>14</sup> World Trade Organization. Appellate Body Report, “United States – Tax Treatment of “Foreign Sales Corporations””. WT/DS108/AB/R. 24 February 2000. (adopted 20 March 2000) Para. 90

<sup>15</sup> World Trade Organization. Appellate Body Report, “United States – Final Countervailing Duty Determination on Certain Softwood Lumber from Canada.” WT/DS257/AB/R. 19 January 2004. (Adopted 17 February 2004.) Para. 53.

<sup>16</sup> World Trade Organization. Appellate Body Report, “United States – Final Countervailing Duty Determination on Certain Softwood Lumber from Canada”. WT/DS257/AB/R. 19 January 2004. (Adopted 17 February 2004). Para. 53.



The WTO Disputes Panel has considered that such a measure would be configured by actions such as “direct government intervention in the market that is intended to set the price of a product at a certain level; for example, by purchasing surplus production, when the price is set above the equilibrium point”<sup>17</sup> .

#### 6.3.1.2. Specific character

Pursuant to Articles 2.2.3.9.2.2. and 2.2.3.9.2.4. of Decree 653 of 2022, in accordance with Article 2.1. of the SCM Agreement, a support program has a specific character – and, therefore, constitutes a subsidy – if “it is specific to a company or branch of production or a group of companies or branches of production (...) within the jurisdiction of the granting authority.”

#### 6.3.1.3. Appealable nature

Article 2.2.3.9.2.6. of Decree 653 of 2022 and Article 5 of the SCM Agreement determine the particular characteristic that allows a subsidy to be attributed as actionable. It consists of the fact that the program in question may cause injury to the domestic production branch of the like product in accordance with Article 15 of the SCM Agreement. Regarding this particular element, in the chapter dedicated to the verification of injury in this case, the reasons that allow us to preliminarily conclude that the identified subsidies meet this condition will be presented.

#### 6.3.2. Programs that constitute actionable grants

Following the preliminary screening described in section 6.2 of this document, it was determined that there was sufficient evidence that the Federal Government and the State Governments of the United States had granted subsidies to the production of liquid milk through 5 aid programs (3 federal and 2 state), which, according to the analysis presented in this section, would qualify as actionable subsidies under the applicable regulations. The programs are the following:

PROGRAM
1. Dairy Margin Coverage Program 2021
2. Organic Dairy Marketing Assistance Program (ODMAP)

<sup>17</sup> World Trade Organization. Panel Report, “China – Countervailing and Anti-Dumping Duties on Grain-Oriented Flat-Rolled Electrical Steel from the United States.” WT/DS414/AB/R. 15 June 2012. (Adopted on 16 November 2019). Para. 7.85.





3. Dairy Business Innovation Alliance 4. Grant for the
expansion of the existing dairy processor
5. Agricultural loan program

Each programme will be described below and the reasons why it is feasible to conclude, on a preliminary basis, that they meet the conditions to be considered as subsidies will be presented.

### 6.3.2.1. Federal Programs

#### 6.3.2.1.1. Dairy Margin Coverage (DMC) Program

##### A. Program Description

The DMC is the primary risk protection tool for dairy producers enacted in the 2018 Farm Bill. The DMC is intended to help dairy producers stabilize their income when profit margins are squeezed due to falling milk prices or increases in their production costs. To do so, producers have the option to choose different levels of coverage, meaning they can insure different percentages of their expected income. They can select a coverage level between \$4 and \$9.50 per hundred pounds of milk and can cover a higher percentage of their milk production, from 5 to 95 percent. Finally, with the DMC, premium costs were slightly higher for Tier II margin coverages above the protection level of \$5.50 per 100 pounds of milk. It is important to note that the first 5,000,000 pounds will have Tier I coverage and subsequent production will have its premium calculated with respect to Tier II.

This program helps producers manage the risks associated with changes in milk prices. It uses the *All-Milk* price less the cost of a ration to produce 100 pounds of milk. The DMC guarantees a margin amount selected by the producer, providing risk management for both milk and feed prices.<sup>18</sup> It also has an annual administration fee of \$100 and insures the margin between milk price and feed costs for a premium (Tier I and Tier II), with payments made on enrolled historical milk production, providing protection for the producer's ability to produce milk at a rate that is consistent with the producer's expectations.

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<sup>18</sup> University of Wisconsin-Madison. Enrollment open for 2023 Dairy Margin Coverage (DMC) learn more in an Extension webinar on November 9 [En línea]. Disponible en: <https://farms.extension.wisc.edu/learn-about-the-2023-dairy-margin-coverage-dmc-in-an-extension-webinar-on-november-9/>



to dairy producers when the difference between the total milk price and the average feed price (the margin) falls below a certain dollar amount selected by the producer.<sup>19</sup> The following table presents the cost of the program and its coverage:

Figure 1 Dairy Margin Coverage Premium Rates

Coverage Level	Tier 1 Premium per cwt for covered production history of 5 mil lbs. or less	Tier 2 Premium per cwt, all years for covered production history over 5 mil lbs.
\$4.00	None	None
\$4.50	\$0.0025	\$0.0025
\$5.00	\$0.005	\$0.005
\$5.50	\$0.030	\$0.100
\$6.00	\$0.050	\$0.310
\$6.50	\$0.070	\$0.650
\$7.00	\$0.080	\$1.107
\$7.50	\$0.090	\$1.413
\$8.00	\$0.100	\$1.813
\$8.50	\$0.105	N/A
\$9.00	\$0.110	N/A
\$9.50	\$0.150	N/A

Fuente: Dairy Markets<sup>20</sup>

Dairy products are eligible to receive a refund for part of the premiums paid into the program. An operation may choose to receive 50% of the refund amount as a cash refund or take 75% of the amount as a credit that can be used toward program premiums.

The U.S. government, in response to questionnaires, supplemented the description of the program:

"The program is designed to limit the impact on U.S. milk production and prices and all dairy operations in the United States are eligible for the DMC program, regardless of whether they produce milk for the manufacture of milk powder or not. To participate, a dairy operation must produce and market milk from cows located in the United States and provide evidence of milk production at the time of the

registration.

(...)

<sup>19</sup> United States Department of Agriculture (USDA). Dairy Coverage Program.2023.

Margin [En Disponible] [https://d:/DESCARGAS/dairy\\_margin\\_coverage\\_program\\_2022\\_fact\\_sheet%20\(2\).pdf](https://d:/DESCARGAS/dairy_margin_coverage_program_2022_fact_sheet%20(2).pdf)

in:

<sup>20</sup> Dairy Markets & Policy. [Online]. Available at: <https://dmc.dairymarkets.org/#/>





The DMC provides coverage for operating losses due to lower than expected margins between milk price and feed costs (...)."

USDEC, also in its response to questionnaires, supplemented the description given:

"The DMC is a financial protection program for dairy producers when the difference between the total price of milk and the average cost of feed (the margin) falls below a certain dollar amount selected by the producer. In other words, the DMC is an insurance program that protects the dairy producer in the event of a loss, which is why this program only benefits the producer if margins are negatively affected."

#### **B. Reasons why it constitutes a subsidy**

In the opinion of the Investigating Authority, it is reasonable to conclude preliminarily that the programme described constitutes a subsidy. Firstly, it grants a benefit to the extent that it is a financial contribution. Indeed, its implementation involves a transfer, effective or potential. Secondly, it is a benefit that has a specific character because

It is available only and limited to dairy producers.

#### **C. Calculation of profit**

For the purposes of calculating the amount of the subsidy analyzed, the information on payments reported by the United States Department of Agriculture – USDA was taken into account. This information is found in the response that the United States government offered to the questionnaire formulated in this action. In this regard, it stated the following:

"Payments to program participants (dairy operations) totaled \$1,230.8 million, while premiums and administrative fees paid by participants totaled \$59 million.

In 2023, the program recorded a total of 159 billion pounds of milk production history and the number of program participants who received a payment in 2023 was approximately 17,000. Where net payments totaled USD 1.171 billion.

Based on the above, there would be evidence to preliminarily conclude that by 2023 the program recorded a total of 159 billion pounds in



milk production history, that 17,098 participating producers received a payment<sup>21</sup> and that net payments<sup>22</sup> would have amounted to USD 1,171,000,000.

#### 6.3.2.1.2. Organic Dairy Marketing Assistance Program (ODMAP)

##### A. Program Description

The program was created to assist certified organic dairy producers who are facing specific challenges including higher costs attributed to the pandemic and drought conditions across the country .<sup>23</sup> According to reported information, the program will total \$104 million in financial assistance for certified organic dairy producers, money that was budgeted to be used in the years 2023 through 2025.

The assistance offered is financial in nature and is targeted at a producer's projected marketing costs in 2023 based on 2022 costs. To this end, the program provides a one-time cost-share payment, based on marketing costs, on pounds of organic milk marketed in calendar year 2022. ODMAP financial assistance provides immediate support to certified organic dairy operations through 2023, maintaining organic dairy operations.

sustainable until markets return to more normal conditions<sup>24</sup> .

Similarly, program assistance will be provided through unspent Commodity Credit Corporation funds remaining from previous pandemic assistance programs. The assistance will help eligible organic dairy producers with up to 75% of their projected future marketing costs in 2023, based on national marketing cost estimates. This assistance will be provided through a streamlined application process based on a national per hundredweight payment. Payments will be limited to the first five million pounds of anticipated production.

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<sup>21</sup> The United States Department of Agriculture website, at the link <https://www.fsa.usda.gov/programs-and-services/dairy-margin-coverage-program/program-enrollment-information/index>, confirms that as of December 2023, 17,098 operations had been carried out at the DMC.

<sup>22</sup> Net payment corresponds to gross payment less premiums and fees.

<sup>23</sup> Notice of Funds Availability (NOFA) for the Organic Dairy Marketing Assistance [linea].  
2023. [In

Disponibile <https://publicinsp>

[inspection.federalregister.gov/2023-11030.pdf](https://inspection.federalregister.gov/2023-11030.pdf)

<sup>24</sup> <https://www.fsa.usda.gov/programs-and-services/farm-bill/farm-safety-net/dairy-programs/index>



The United States government, in response to questionnaires, supplemented the description of the program is as follows:

“The Organic Dairy Marketing Assistance Program (ODMAP) was a temporary, one-year program established under the authority of Section 5 of the Commodity Credit Corporation Act (Schedule US-2). Its purpose was to mitigate market volatility, high input and transportation costs, and instability in food supply and prices, issues that particularly affected the organic dairy industry in the wake of the COVID-19 global pandemic.”

#### **B. Reasons why it constitutes a subsidy**

Contributions and credit guarantees under this program are considered benefits in the form of financial contributions, since they imply an actual or potential direct transfer of funds. This is because the program is designed to minimize any impact on milk production and prices in the United States through the granting of subsidies.

The program is also specific in nature because it is available only to agricultural producers.

#### **C. Calculation of profit**

Based on responses provided by the U.S. government, payments made under the program in 2023 amounted to \$20,500,000. The volume of liquid organic milk eligible for payment was approximately 1,900,000,000 pounds, corresponding to organic milk produced by dairy cows, goats, or dairy sheep.<sup>25</sup>

### **6.3.2.1.3. Agricultural Loan Program**

#### **A. Program Description**

The Farm Service Agency offers loans to help farmers and ranchers obtain the financing they need to start, expand, or maintain a family farm. To do so, it offers maximum guaranteed loan interest rates, which cannot exceed limits set forth in the program. Lenders are not required to directly price their loans in SOFR or 5-year Treasury.

These rules simply set the maximum interest rates that secured lenders cannot exceed at closing. Loans offered under the program come in a variety of forms:

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<sup>25</sup> Farm Service Agency. Organic Dairy Marketing Assistance Program. [En línea]. Available at: [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/Farm-Bill/pdf/fsa\\_organic\\_dairy\\_marketing\\_assistance\\_program\\_2023\\_final.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/Farm-Bill/pdf/fsa_organic_dairy_marketing_assistance_program_2023_final.pdf)



### *Farm Operating Loans (Direct and Guaranteed)*

Operating loans are intended to promote, build, and maintain family farms. The Farm Service Agency (FSA) provides both direct and guaranteed loans through a guaranteed loan. To make the loan happen, a commercial lender arranges the loan and FSA guarantees it with up to 95% loss coverage. Additionally, FSA provides credit counseling and supervision to its direct borrowers by conducting a thorough evaluation of the farm operation. These direct loans are available for a maximum debt amount of \$300,000, as well as direct operating microcredits for a maximum debt amount of \$50,000. The maximum amount for guaranteed loans is \$1,399,000 (a figure that varies annually according to inflation).

### *USDA Assistance and Support for Underserved Farmers, Ranchers, and Foresters*

Section 22007 of the Inflation Reduction Act (IRA) amends Section 1006 of the American Rescue Plan to appropriate resources to USDA through 2031: \$2.2 billion 2021, 7 U.S.C. § 2279 to support a program to to farmers, ranchers, or provide financial assistance (including the cost of providing financial assistance) forestland owners previously determined to have experienced discrimination under USDA's agricultural loan programs prior to January 1, 2021. The amount of financial assistance provided may not exceed \$500,000, as determined appropriate based on the consequences experienced as a result of the discrimination. The program will be administered by one or more qualified nongovernmental entities selected by USDA in accordance with standards established by USDA.

### *Operating Loans*

Operating Loans can be used to purchase livestock, seed, and equipment. They can also cover farm operating costs and family living expenses while the farm gets up and running. With a maximum loan amount of \$400,000, all FSA Direct Operating Loans are funded and serviced by the Agency through local farm loan officers and farm loan managers.



Funding comes from Congressional appropriations as part of the USDA budget.<sup>26</sup>

### *Farm Property Loans*

Farm Property Loans can be used to purchase or expand a farm or ranch. This loan can help pay closing costs, build or improve buildings on the farm, or help conserve and protect soil and water resources.

### *Microcredits*

Microcredits are a type of farm property or operating loan.

They are designed to meet the needs of small and beginning farmers or non-traditional and specialized operations by simplifying some of the requirements and offering less paperwork. The maximum amount for a Direct Farm Operations Loan is \$400,000 and cannot exceed 7 years.

### **B. Reasons why it constitutes a subsidy**

Credit guarantees and contributions under this program are considered as benefits in the form of financial contributions. The obvious reason is that they consist of granting credits for the development of productive activities. Additionally, they have a specific character because the legislation allows credit guarantees available only to cover the operating costs of the farm or farms and for small farmers or those who are just starting out.

### **C. Calculation of profit**

No separate figures were found for agricultural loans, so it is not possible to determine the amount. In this regard, the US government stated the following:

“Any subsidy benefits provided by this program must be allocated to the full value of sales of U.S. agricultural production in the applicable period.”

### **6.3.2.2. State Programs**

#### **6.3.2.2.1. Dairy Business Innovation Alliance**

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<sup>26</sup> Farm operating (s. Loans. f.). [Online]. Available in: <https://www.fsa.usda.gov/programs-and-services/farm-loan-programs/farm-operating-loans/index>



## A. Program Description

This program is applicable in the States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, South Dakota and Wisconsin.

The objective is to encourage small and medium-sized dairy producers, entrepreneurs and processors in the Midwest to undertake projects such as dairy farm diversification, on-farm processing, creation of value-added products and efforts to market dairy products for export.<sup>27</sup> Regarding its characteristics, the United States government stated:

“The Dairy Business Innovation Grants program provides repayable grants of up to \$100,000 each, through a competitive process, to small- to mid-sized dairy farmers, entrepreneurs, and processors in the 11 DBIA coverage states. This region includes Illinois, Iowa, Indiana, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin. Only dairy operations located in these U.S. states are eligible to apply for the program.

- Diversify the dairy farm through dairy product development, specialization, packaging and/or marketing strategies;
- Create value-added dairy products (e.g. using milk to make cheese, yogurt, beverages, etc.)”

## B. Reasons why it constitutes a subsidy

Contributions under this program are considered as benefits in the form of financial contributions. This is because they imply the effective or potential transfer of resources to the beneficiaries. Additionally, they have a specific character because they are limited to a certain number of medium- and small-sized dairy producers and processors.

## C. Calculation of profit

In June 2023, the 26 dairy businesses that received more than \$2.3 million in funding in the *Dairy Business Builder Spring 2023* grant cycle were announced<sup>28</sup>. In December 2023, DBIA announced the 41 dairy businesses that received nearly \$4 million in funding.

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<sup>27</sup> IOWA DEPARTMENT OF AGRICULTURE AND LAND, Dairy Business Innovation Alliance [Online].

Available at: <https://iowaagriculture.gov/dairy-products-control-bureau/dairy-business-innovation-alliance>

<sup>28</sup> Center For Dairy Research, DBIA Grant Program

[Online]. Available at:

<https://www.cdr.wisc.edu/dbia-grant-program-1#:~:text=Applicants%20notified%20by:%20Early%20December,Builder%20Winter%202022%20grant%20cycle.>



in the *Dairy Business Builder Fall 2023* and *Dairy Industry Impact 2023* grant cycles . Therefore, the transfers made in the two 2023 payment rounds would have totaled \$6.3 million.

#### **6.3.2.2.2. Grant for expansion of existing dairy processor**

##### **A. Program Description**

This program is applicable in the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont. Its purpose is to address the significant need for investment in processing infrastructure in the Northeast. This grant will only fund existing dairy processing facilities located in the Northeast region with a focus on expanding the utilization of regionally sourced milk, dairy components, and/or dairy blends, as well as diversifying the supply chain<sup>29</sup> .

Projects funded through this grant will focus on the acquisition of specialized equipment needed to increase processing capacity through volume expansion and expansion of the existing product line. Additional activities related to training, marketing, or supply chain logistics that directly support increased production capacity may be included.

##### **B. Reasons why it constitutes a subsidy**

Contributions under this program are considered benefits in the form of financial contributions. This is because they imply the actual or potential transfer of resources to the beneficiaries. Additionally, they are specific in nature because they are limited to producers in the Northeast region of the United States who meet the requirements of: 1) processing milk of regional origin within the Northeast and 2) complying with all required state and federal standards.

##### **C. Calculation of profit**

Applicants qualify at the levels described below based on the milk used on an average production day, regardless of the number of days per week they process. Volume may differ based on the product manufactured and processors should reference the volume measure for their specific product. Volume is a measure of inputs and not

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<sup>29</sup> Northeast Dairy Business Innovation Center .Existing Dairy Processor Expansion Grant. [Online]. Available at: <https://nedairyinnovation.com/grants/existing-dairy-processor-expansion/>





of finished products. For the purposes of this grant, milk means fluid milk, dairy components and/or dairy blends.

Level	Volume of milk used in an average production day/ Pounds	Prize range/ USD	Total, available funds USD
Level 1	100,001+	\$500.000-\$1.000.000	\$ 6.000.000
Level 2	1.001-100.000	\$100.000-\$650.000	\$ 4.000.000
Level 3	1-1.000	\$25.000-\$250.000	\$ 2.000.000

Fuente: Dairy Business Innovation Center<sup>30</sup> .

The program has resources worth USD 12,000,000 in grant funds, approximately USD 6,000,000 for Tier 1, USD 4,000,000 for Tier 2, and USD 2,000,000 for Tier 3.

### 6.3.2.3. Total Federal and State subsidies

GRANT AMOUNT FOR 2023		
PROGRAM	USD	Stake
1. Dairy Margin Coverage Program 2021 2. Organic Dairy Marketing Assistance Program (ODMAP)	USD 1.171.000.000	96,8%
3. Dairy Business Innovation Alliance 4. Grant for the expansion of the existing dairy processor	USD 20.500.000	1,7%
5. Agricultural loan program	USD 6.300.000	0,5%
	USD 12.000.000	1,0%
	It is not possible to determine the amount	
<b>TOTAL BENEFITS OF RAW MILK.</b>	<b>USD 1.209.800.000</b>	<b>100%</b>

Source: SPC calculation

### 6.3.3. Proportion of subsidy reported to milk powder imported to Colombia

The above shows that the United States government has granted a subsidy for the production of liquid milk. This now needs to be determined, based on the arguments of some opponents and in compliance with articles 2.2.3.9.3.1. and 2.2.3.9.3.2. of the

<sup>30</sup> Available at: <https://nedairyinnovation.com/grants/existing-dairy-processor-expansion/>





Decree 653 of 2022, is the percentage of that subsidy on liquid milk that would have been effectively transferred to powdered milk sold in Colombia. This additional exercise is essential because, as argued by opponents and corroborated by international practice, the subsidy granted to an input cannot necessarily be considered automatically transferred to the product made based on that input.

On this matter, the WTO Appellate Body has established the following:

“The phrase 'subsidy ... granted ... indirectly' as used in paragraph 3 of Article VI implies that the financial contribution of the government to the production of inputs used in the manufacture of products that are the subject of an investigation is not, in principle, excluded from the amount of subsidies that may be offset by the imposition of countervailing duties on the processed product. However, where the producer of the input is not the same entity as the producer of the processed product, there is no presumption that the subsidy granted to the input is passed on to the processed product. In such a case, it is necessary to analyse the extent to which input subsidies may be included in the determination of the total amount of subsidies granted to the processed products. Since it is only the subsidy known to have been granted to the processed products that may be offset by the levying of countervailing duties on those products .”<sup>31</sup>

In order to determine the aspect referred to, an exercise will be developed that includes the following steps:

- First, the total production of liquid milk in the United States will be determined. Since the available information reports this figure expressed in pounds, the quantity in question will be converted to kilograms and then to liters based on generally accepted conversion factors that have not been disputed in this action. In this way, the total production of liquid milk in the United States expressed in liters will be identified.
- Secondly, the total amount of subsidies identified so far will be considered to calculate the subsidized value that the United States government recognized for each liter of milk produced during 2023.

For this purpose, the total subsidy will be divided by the total milk production.

- Thirdly, it will be identified how many subsidized liters of liquid milk from the United States arrived in Colombia in the form of powdered milk. With that

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<sup>31</sup> WTO Appellate Body. Report in the case “*United States – Final Countervailing Duty Determination with Respect to Certain Softwood Lumber from Canada.*” WT/DS257/AB/R, 19 January 2004, paragraph 140.



the conversion table prepared by the Argentine Dairy Chain Observatory – OCLA will be applied.

- Finally, the amount of the subsidy that was communicated to the powdered milk imported to Colombia will be determined. For this purpose, the price paid for the corresponding import will be identified and, consequently, the value percentage of the subsidy with reference to the import price of the product.

The exercise described is developed below:

*Step 1: Total US fluid milk production expressed in liters*

To determine the conversion factors from pounds to kilograms and from this unit of measurement to liters, those proposed by the United States Government and USDEC were used. These participants proposed a methodology in which “milk production in pounds is first converted to kilograms, using the standard conversion rate of 1 kilogram equals 2.204623 pounds.

U.S. milk production in kilograms is then converted to liters, using a conversion rate of 1 liter of whole milk equals 1.03 kilograms.”<sup>32</sup> These conversion factors are shown in the following table:

Table 1 Conversion factor from US pounds to liters of milk

Libra Americana	Kilogramos	Litros de Leche
1,000	0,45359	0,440
2,20462	1,000	0,971
2,271	1,03	1

Source: *Opposition Brief Powdered Milk - USDEC*

Now, the total production of liquid milk in the United States expressed in pounds during 2023 was identified with the information available on the USDA website. According to that source, production was 226,364,000,000 pounds<sup>33</sup>.

This value was converted to kilograms in accordance with the factor set out, for which 226,364,000,000 pounds was multiplied by 0.453592 kilograms<sup>34</sup> for a total of 102,700,486,272 kilograms. This value was then converted to liters based on the factor already established. To this end, 102,700,486,272 kilograms was multiplied by 0.971, which yielded a result of 99,722,1729,170 million liters. This exercise can be seen in the following table:

<sup>32</sup> Cover Letter USTR & Official Spanish Translation Answers Questionnaire Powdered Milk USG\_. American Government. page 8

<sup>33</sup> USDA Milk Production Report. View online: <https://www.ers.usda.gov/data-products/dairy-data/>

<sup>34</sup> [Units of Weight and Measure \(United States Customary and Metric\) Definitions and Tables of Equivalentents \(govinfo.gov\)](https://www.govinfo.gov/units-of-weight-and-measure)



Table 2 Farm milk production in the United States 2023

Year	Milk production USA (pounds)	Milk production USA (kilograms)	USA milk production (litres)
2023	226.364.000.000	102.700.486.272	99.722.172.170

Source: Data from the United States Department of Agriculture (USDA)

As a result, **total fluid milk production in the United States during 2023 was 99,722,172,170 million liters.**

### *Step 2: Value of the subsidy for each litre of milk produced in the United States Joined*

Based on the above, it is clear that the United States government has granted subsidies for the production of liquid milk during 2023 for a total value of USD 1,209,800,000. To establish the impact of the subsidy for each liter of milk produced, the total subsidy (USD 1,209,800,000) will be divided by the total milk production (99,722,172,170 million liters). This exercise allows us to preliminarily conclude that a subsidy of US 0.012 was granted per liter of milk produced in the United States. This can be seen in the following table:

Table 3 Amount of subsidy on milk production in the United States - 2023

TOTAL BENEFITS OF MILK LIQUID	USD 1.209.800.000
Quantity of milk produced (litres)	99.722.172.170,1
Amount of subsidy (USD/litre)	0,012

Source: SPC calculation

Consequently, **the identified subsidies would have amounted to USD 0.012 per liter of milk produced in the United States.**

### *Step 3: Liters of liquid milk from the United States that were imported to Colombia in the form of powdered milk*

In order to calculate the amount of the subsidy granted to the production of liquid milk in the United States that would have been transferred to the powdered milk exported to Colombia, it is necessary to establish how many liters of liquid milk that quantity of exported powdered milk would be equivalent to. To do this, the table of the Argentine Dairy Chain Observatory was used as a reference – OCLA35 .

35 Conversion Table Dairy Products to Litres Milk Equivalent. Online Chain Observatory:  
Milky Argentina OCLA.

See



Before continuing with the exercise, it is essential to present the reasons that justified the use of the conversion factor referred to. In this regard, the United States government and USDEC argued that this methodology could not be applicable to powdered milk produced in the United States because it is based on criteria applicable to production in Argentina.

Instead, they proposed a different methodology that, in their view, is based on criteria specific to US milk production. In the opinion of the Investigating Authority, there are elements that reasonably allow the application of the OCLA conversion factors. First, it is a methodology based on reasonably objective criteria designed for a purpose other than the need to raise a procedural position in the context of an investigation into the admissibility of trade defense measures. Second, several of the interveners –

Even those who oppose the application of countervailing duties in this case – stated that they use conversion factors that correspond to those proposed by the OCLA methodology. These intervenors include Tropical Fresh SA, Freskaleche SAS, Indulácteos de Colombia SAS, Cooperativa de Lácteos de Antioquia (Colanta), Indunilo SAS and Nestlé de Colombia SA. Finally, no intervenor – other than, of course, those who proposed it – supported the use of the methodology proposed by the United States and USDEC. These are reasonable considerations for which, at this early stage of the proceedings and for the purposes of adopting this preliminary decision, it is reasonable to use the methodology designed by the OCLA.

Having specified the above, it should be noted that according to the objective methodology identified for this exercise, the expression of powdered milk in liters depends on the type of milk to be converted. In the case of *skimmed* milk 1 kilogram of powdered milk equals 12.25 liters of liquid milk. For *whole* milk, 1 kilogram of powdered milk equals 8.755 liters of liquid milk.

On this basis, the total number of liters of liquid milk from the United States that were imported into Colombia in the form of powdered milk will be determined. For this purpose, DIAN import information shows that in 2023 a total of 27,849,162 kilograms of powdered milk originating in the United States were imported. Of this total, 26,097,062.80 kilograms correspond to skimmed milk and 1,752,100 kilograms correspond to whole milk. After applying the corresponding conversion factors, the result is that in 2023, 335,028,654.80 liters of liquid milk entered Colombia in the form of powdered milk. Of this total, 15,339,636 liters correspond to whole milk and 319,689,019.3 liters correspond to skimmed milk.



As a result, in 2023, 335,028,654.80 liters of subsidized milk were imported into Colombia from the United States.

*Step 4: Amount of subsidy reported for powdered milk imported to Colombia*

Based on the above, it is clear that 335,028,654.80 liters of subsidized powdered milk from the United States were imported into Colombia. This quantity of milk was imported at a total FOB price of USD 85,222,328.51. This data allows us to identify the price of each liter of imported milk being analyzed. The result is a value of USD 0.25 per liter.

Now, taking into account that it has already been established that the subsidy for each liter of liquid milk produced in the United States amounted to USD 0.012, it is possible to conclude that the amount of the subsidy for each liter of milk imported to Colombia in the form of powdered milk would have been 4.86% of its import price.

This conclusion can be seen in the following table:

**Table 4 Total benefits for imports investigated in Colombia**

Amount of subsidy (USD/litre)	0,012
FOB export price (USD/liter)	0,25
Amount of subsidy (%)	4,86%

Sources: Export price: DIAN import declaration database. Subsidy amount: Based on government programs in which the amount was established for the year 2023.

In conclusion, **the transfer of resources from subsidies for the production of liquid milk in the United States to imports of powdered milk corresponds to 4.86% of the export price.**

## **7. Analysis of the existence of damage to the national production branch**

This chapter will preliminarily establish whether imports of powdered milk from the United States cause harm to the domestic liquid milk production industry. To this end, the conditions that allow us to conclude that imports of a subsidized product cause harm to domestic producers will be briefly explained. Subsequently, the elements of proof that would preliminarily show that the conditions referred to were met in this case will be presented.

### **7.1. Conditions that allow us to conclude that there is damage to the domestic industry**

Based on Article 2.2.3.9.4.1. of Decree 653 of 2022 and Article 15 of the SCM Agreement, it is considered that imports of a product



subsidized would cause damage to the domestic production branch of the like product if the conditions referred to below are met:

First, if there is a significant increase in subsidized imports during the period under investigation. This is established in paragraph 1 of the aforementioned article 2.2.3.9.4.1. It is important to highlight that the significant nature of the volume of the investigated imports and their increase during the period analyzed can be established preliminarily if these imports represent more than 3% of the total imports of the similar product in Colombia.

Secondly, injury is considered to exist if subsidized imports generate a detrimental effect on the prices offered by the domestic industry. In particular, if there is a significant undervaluation when comparing the import price of the subsidized product and the price of the similar product in Colombia. This is provided for in paragraph 2 of article 2.2.3.9.4.1.

Finally, damage to the national production sector is considered to exist if unfavourable performance is observed in its economic and financial indicators during the period under investigation. This is provided for in section 3 of the same regulation.

## **7.2. Evidence that would preliminarily prove the existence of damage to the national production branch**

Next, after specifying the methodology used in the corresponding analysis, the evidence will be presented that would allow us to preliminarily conclude that the three elements that show the existence of damage to the national production branch would be proven in this case.

Additionally, the value chain related to the production of powdered milk will be explained in a concrete manner, as well as the additional reasons that would show that the investigated imports would be generating an effect on the production of liquid milk in Colombia.

### **7.2.1. Methodology used in the analysis**

The analysis presented below was carried out taking into account the following factors.

First, the figures for powdered milk imports were determined based on the information reported by the DIAN. For this purpose, products classified under tariff subheadings 0402.10.10.00, 0402.10.90.00, 0402.21.11.00, 0402.21.19.00, 0402.21.91.00, 0402.21.99.00, 0402.29.11.00, 0402.29.19.00, 0402.29.91.00 and 0402.29.99.00 were considered.



Secondly, for the analysis, imports made under the modality of Special Import-Export Systems (Vallejo Plan)<sup>36</sup> and those with FOB values equal to zero were excluded.

Third, the data collection period for the analysis of import value and volume figures was from 2020 to 2023.

Fourthly, based on the power attributed to the Investigating Authority by Article 2.2.3.9.4.5. of Decree 653 of 2022, the analysis of the elements that determine the existence of damage to the national production branch was carried out through a trend or sequential study of the behavior of the factors considered. This is a relevant approach for this case, taking into account that what was observed during the investigation period would correspond to a trend that has been observed since previous years.

Fifthly, the unit of measurement used for the analysis of the volume figures is liters. For this purpose, the conversion criteria contained in the table of the Argentine Dairy Chain Observatory – OCLA was used for the reasons set out in section 6.3.3. of this Technical Report.

## **7.2.2. Import behavior**

The analysis carried out would show that there was indeed a significant increase in imports from the United States during the investigation period. To explain this, the behavior of total imports will be presented first. Then, a distinction will be made between those investigated and those originating in other countries. Finally, the proportion between one and the other will be presented to show that those originating in the United States are, by far, those with the greatest share in total imports.

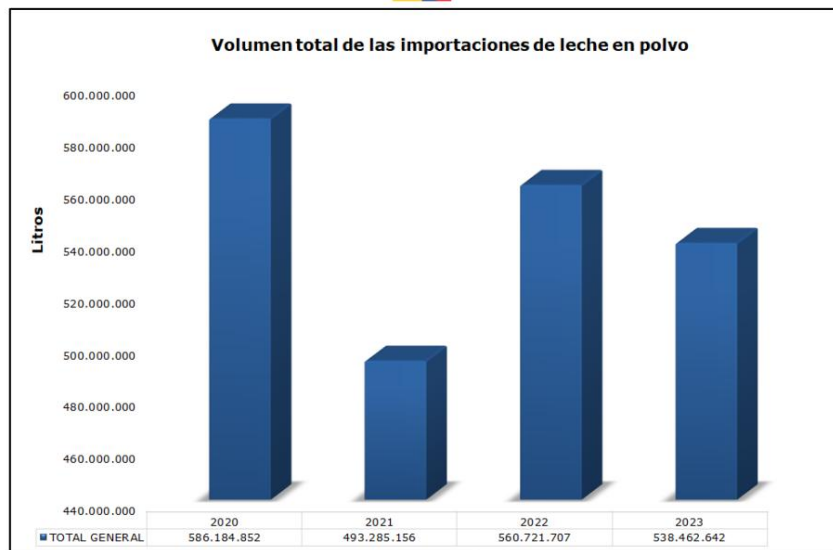
### **7.2.2.1. Behavior of the total volume of imports**

The behavior of total imports of milk powder is shown below:

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<sup>36</sup> Imports made by Plan Vallejo are not included in the analysis, taking into account the provisions established by Decrees 444 of 1967, 685 of 1985 and other legal regulations.



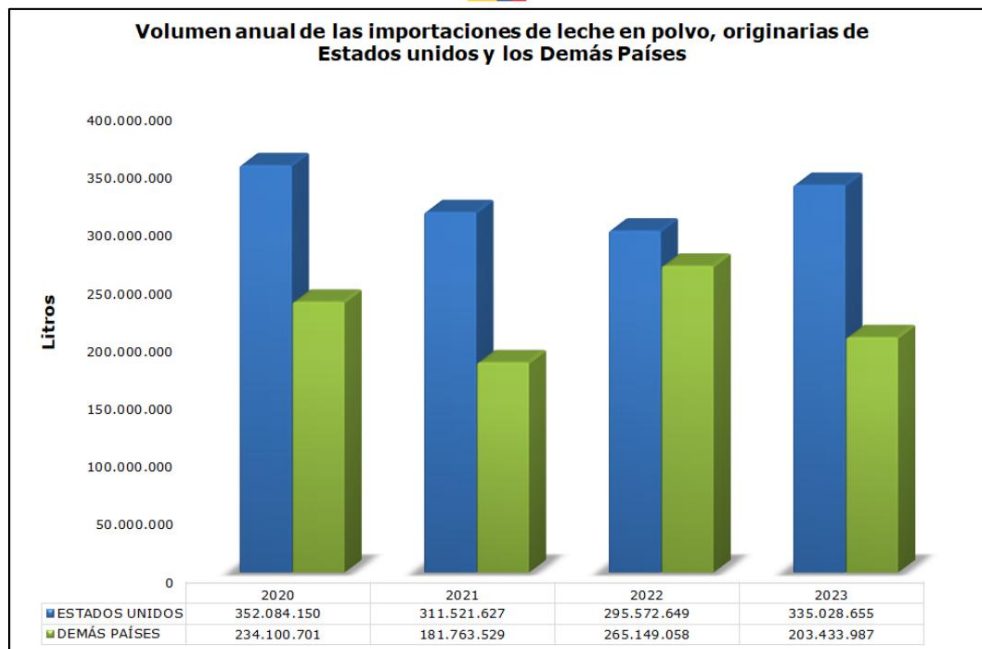


Source: DIAN. SPC calculations

According to the analysis carried out, total milk powder imports showed a fluctuating trend. For 2021, they decreased by 15.85% compared to the previous year. In 2022, the volume of imported milk increased by 13.67% compared to 2021. Finally, for the year 2023, an import of 538,462,642 liters was recorded, which represented a decrease of 3.97% compared to the volume imported in 2022.

#### 7.2.2.2. Import behavior discriminated by origin

The following table presents the behavior of imports broken down by origin. On one hand, the behavior of those originating in the United States can be seen. On the other, those originating in the other countries from which Colombia imports the product.



Source: DIAN. SPC calculations

#### A. Imports originating in the United States

Imports originating in the United States had a significant increase during 2023. The table shows that these imports showed a sustained downward trend until 2022. In 2021, there was a decrease of 11.52% compared to the previous year, going from 352,084,150 liters to 311,521,627 liters. Subsequently, in 2022, imports decreased by 5.12% compared to 2021, reaching a total of 295,572,649 liters. However, in 2023, an increase in imports was observed, reaching 335,028,655 liters. This result reflects a positive percentage variation of 13.35% compared to the previous year.

#### B. Imports originating in other countries

The other origins of powdered milk imports arriving in Colombia correspond to Germany, Argentina, Belgium, Bolivia, Chile, Ecuador, Spain, France, Ireland, Mexico, the Netherlands (Holland), Poland, Portugal, the Czech Republic and Uruguay. These imports showed variable behavior in the period analyzed. Between 2020 and 2021, they decreased by 22.36%, while between 2021 and 2022, the increase was 45.88%. Finally, in 2023, imports fell, going from 265,149,058 liters to 203,433,987 liters, with a negative percentage variation of 23.28%.

#### 7.2.2.3. Import share by origin



A relevant aspect for this case is that imports of powdered milk from the United States have the largest share of total imports of that product to Colombia. As can be seen in the following table, the United States has a share that has historically exceeded 60%, while the origins that are in second position barely exceed 13%. This circumstance, of course, is relevant to assess the impact that subsidized imports from the United States could generate in the national production branch.

<b>Porcentaje de participación % por origen</b>				
<b>ORIGEN</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
Estados Unidos	60,06%	63,15%	52,71%	62,22%
Unión Europea	13,50%	11,80%	9,75%	13,65%
Bolivia	7,95%	13,01%	12,41%	11,43%
Chile	0,07%	1,95%	17,53%	7,20%
Uruguay	3,39%	3,95%	3,15%	3,30%
Argentina	3,47%	3,25%	3,87%	2,20%
Ecuador	0,32%	0,71%	0,51%	0,00%
México	11,23%	2,17%	0,07%	0,00%
Total general	100,00%	100,00%	100,00%	100,00%

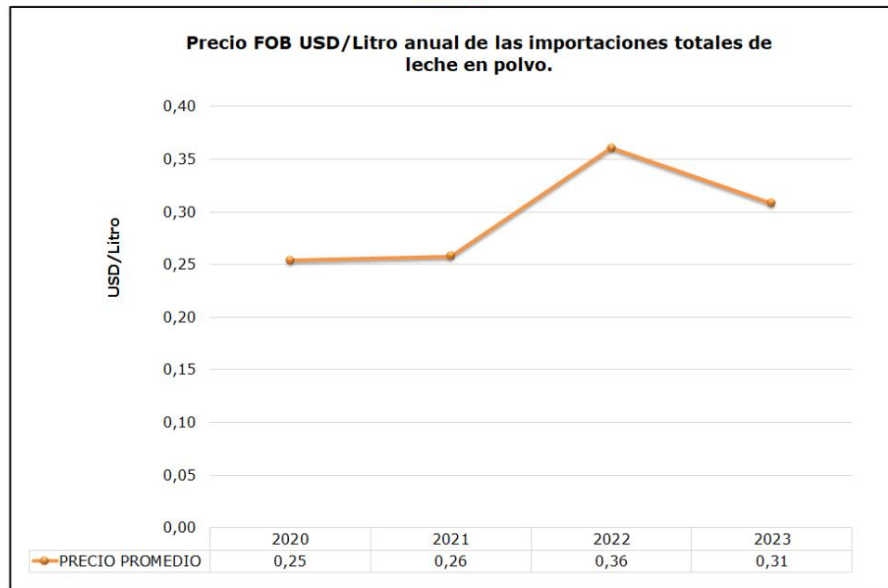
Source: DIAN. SPC calculations

The table above shows the share of origin of powdered milk imports, broken down by country. According to the data for the period analysed, the United States is the main source of these imports, with a share of 62.22% in 2023. The European Union is in second place, with a share of 13.65% in 2023, while Bolivia is in third place, with a share of 11.43% in the same year.

#### 7.2.2.4. Analysis of import prices

Up to this point, it has been shown that imports from the United States have actually increased significantly during the period under investigation. A relevant aspect for this case that is now being analyzed is that the prices of these imports have shown a reduction and, furthermore, that they are substantially lower than those offered by other origins from which Colombia imports powdered milk. To explain this aspect, the price results of all imports are presented below and then compared depending on their origin.

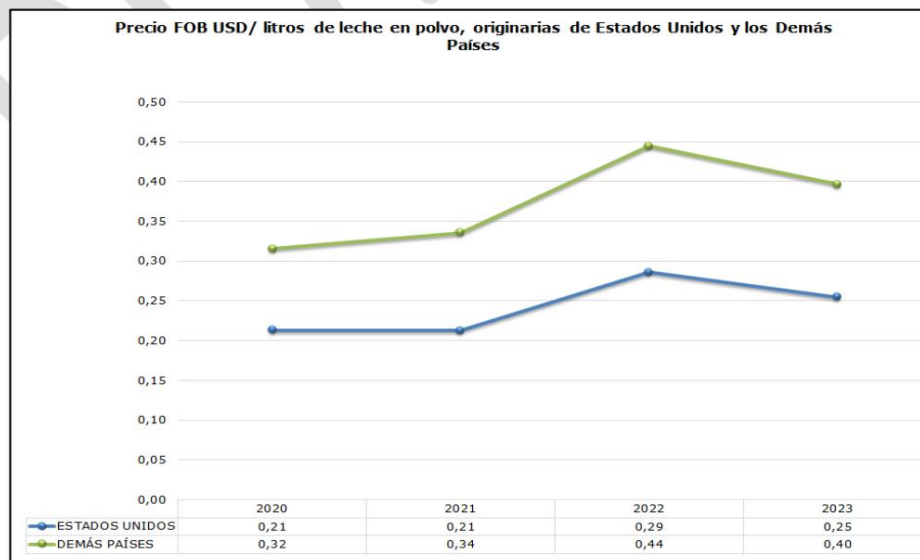
The following table shows the FOB price, expressed in dollars per liter, of total imports of powdered milk:



Source: DIAN. SPC calculations

The annual FOB price in USD/Litre of total milk powder imports fluctuated. In 2020 it was at 0.25 USD/Litre and in 2021 it increased to 0.26 USD/Litre. In 2022, there was a 40% increase, reaching 0.36 USD/Litre. However, in 2023 the price experienced a 14.65% decrease, standing at 0.31 USD/Litre.

The table below shows that the price of imports from the United States was significantly lower than that offered by other countries from which Colombia imports the product.



Source: DIAN. SPC calculations



The average FOB price USD/Liter of imports of powdered milk originating in the United States showed fluctuating behavior. In 2021 it decreased by 0.23%. In 2022 it showed a growth of 34.70%, reaching USD 0.29/liter. In 2023 it showed a decrease of 11.07%,

registering a price of USD 0.25/liter. Meanwhile, the average FOB price of the other countries showed an increasing behavior. In 2021 increased by 6.47% compared to 2020. In 2022 it continued to grow, as it increased by 32.40%, reaching USD 0.44/liter. Finally, for the year 2023 showed a decrease of 10.81%, registering a price of USD 0.40/liter.

#### **7.2.2.5. Conclusion of the analysis of imports**

In this case, evidence was found to support the demonstration of the first of the factors that determine the existence of damage to the national production branch. In fact, in relation to the volume of imports originating in the United States, it was found that they presented a significant increase during the investigation period. This factor would be more relevant because these imports represent more than 60% of the total imports of powdered milk that arrive in Colombia. Additionally, the prices of the investigated imports would have had a significant reduction during the year 2023.

#### **7.2.3. Effects of the investigated imports on the domestic industry: price undercutting**

The analysis carried out would show that there was indeed a significant undervaluation of the prices offered by the national production branch in comparison with the prices of imported powdered milk from the United States. To explain this point, a comparison of the prices of the imported product will be made with the national product at the same level of commercialization, that is, the sale price to the first independent distributor in Colombia.

To calculate the import price, the CIF price in dollars per ton of imports was taken from the DIAN database of import declarations. Subsequently, said price was converted to Colombian pesos by applying the exchange rate provided by said database.

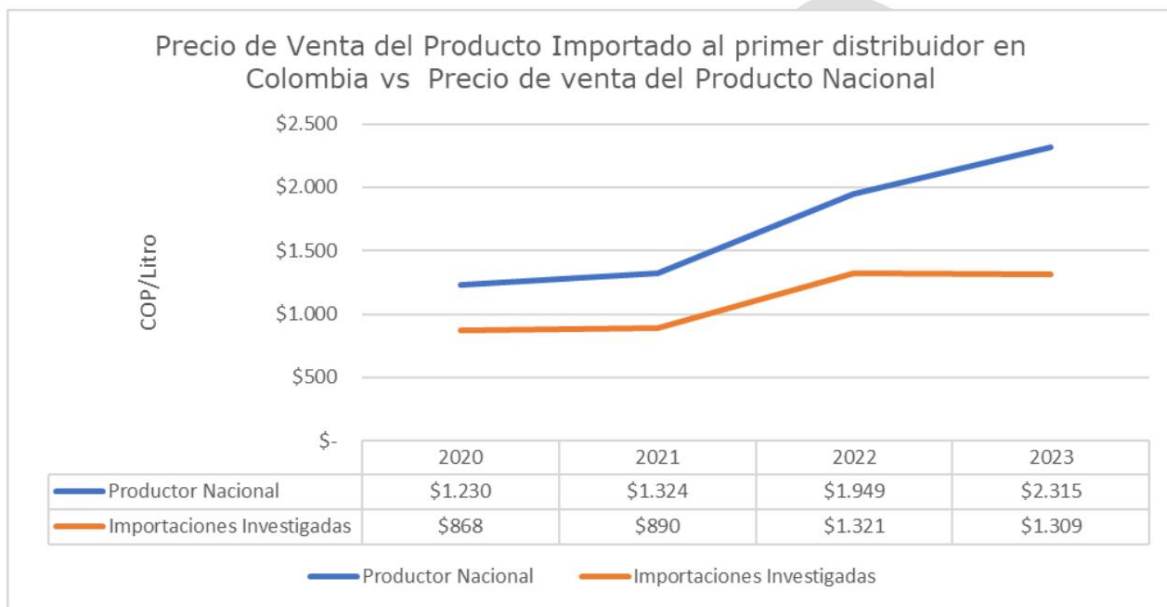
base. Finally, the tariff paid in each year of tariff reduction and the related nationalization costs were added in the response to questionnaires sent by some of the importers. Additionally, since it is powdered milk as the product subject to investigation with respect to the national production of raw milk, the transformation cost for this product was taken into account.



kilograms of milk powder reported to the USDA<sup>37</sup> in the United States. Finally, the quantities in kilograms of powdered milk were converted to liters of liquid milk to obtain the price per liter.

To calculate the national producer price, the information reported by the Milk Price Monitoring Unit of the Ministry of Agriculture and Rural Development was taken into account.

The results of the comparison can be seen in the following table:



Source: USP-MADR and DIAN.

It can be observed that throughout the analysis period the price of the investigated imports is below the price of the national producer. Both showed an upward trend until 2023, when the national price increased by 18.78%, while that of the investigated imports fell by approximately 1%.

Based on the above, it would be confirmed that there was an undervaluation when comparing the prices of the national product with the imported one. This undervaluation can be seen in the following table:

Subvaloración presentada a lo largo del periodo de investigación de las importaciones frente a la RPN				
Periodo	2020	2021	2022	2023
Subvaloración	-29,40%	-32,76%	-32,20%	-43,46%

Source: USP-MADR SPC calculations

<sup>37</sup> CME for prices of butter and nonfat dry milk in 2023; USDA for processing costs and yields.



As a result of comparing the price of powdered milk imports originating in the United States – converted to liters of liquid milk – against the price of the national product, in the analysis period it is observed that the price of the imported product is lower than the national one by 29.4% in 2020, 32.76% in 2021, 32.2% in 2022 and 43.46% for 2023.

The differential showed that the price of imports originating in the United States was below the price of the national producer during the entire investigation period by an average of 34.45%. This would show an undervaluation of prices between the imported product and the national product and, therefore, would account for the second of the factors that allow us to conclude that there is damage to the national production branch.

#### **7.2.4. Evidence of damage to the economic and financial indicators of the national production branch**

With the information reasonably available to the Investigating Authority during this preliminary stage, a comprehensive and joint analysis of the injury indicators listed in the SCM Agreement and national regulations was carried out. This exercise identified evidence that would allow a reasonable inference that the national production branch has suffered injury. Therefore, this third element that allows us to conclude about the existence of this affection would be accredited. To support this conclusion, the sources of information used will be described below and, subsequently, the results of the analyses developed will be presented.

##### **7.2.4.1. Sources of information**

For the analysis of the behavior of the main economic indicators of the national production branch, information was used from the National Agricultural Survey (ENA) with source in the National Administrative Department of Statistics (DANE), from the National Livestock Census with source in the Colombian Agricultural Institute (ICA), from the Milk Price Monitoring Unit of the Ministry of Agriculture and Rural Development, and from the figures of effective imports of milk powder with DIAN source converted to

liters.

On the other hand, to establish the behavior of the damage variables, based on article 2.2.3.9.4.5. of Decree 653 of 2022, the period to be analyzed was determined as the one between the years 2020 and 2023, whose conclusions are relevant for determining significant damage in the different economic variables.

##### **7.2.4.2. Analysis results: there are indicators with evidence of damage**





#### 7.2.4.2.1. Economic indicators

When comparing the behavior of the economic variables of milk, evidence of significant damage was found in the following indicators: (i) production volume, (ii) investigated imports with respect to production volume, (iii) sales volume (formal collection), (iv) price paid to the national producer and (iv) investigated imports with respect to Apparent National Consumption. Additionally, the information available to date does not offer sufficient data to establish the existence of damage in the following variables: (i) sales volume with respect to production volume, (ii) productivity, (iii) production volume with respect to Apparent National Consumption and (iv) sales volume with respect to Apparent National Consumption.

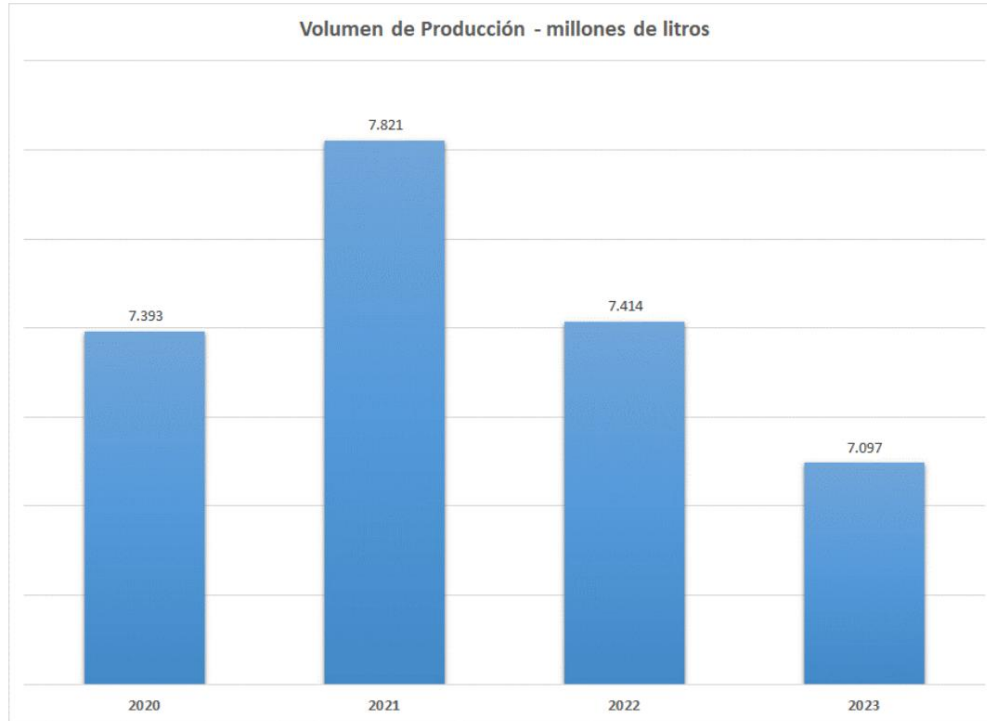
The above conclusion can be seen in the following table:

Evaluación de daño				
Variables económicas	2020	2021	2022	2023
Volumen de Producción - millones de litros	7.393	7.821	7.414	7.097
Importaciones Investigadas - (EE.UU) / Vol. Producción %	4,76%	3,98%	3,99%	4,72%
Volumen de Ventas (Acopio formal) - millones de litros	3.347	3.112	3.369	3.327
Ventas Nacionales (Acopio formal)/ Volumen de Producción %	45,27%	39,79%	45,44%	46,88%
Productividad - Litros/vaca/día	4,9	5,0	4,5	6,3
Precio constante pagado al productor nacional	1.122	1.147	1.272	1.181
Volumen de Producción / CNA %	92,65%	94,07%	92,97%	92,95%
Volumen de Ventas (acopio formal) / CNA %	41,95%	37,43%	42,25%	43,57%
Importaciones investigadas (EE.UU) / CNA %	4,41%	3,75%	3,71%	4,39%

Source: FEDEGAN; DIAN; DANE; ICA. SPC calculations

Below is the detailed analysis of the economic variables that present damage.

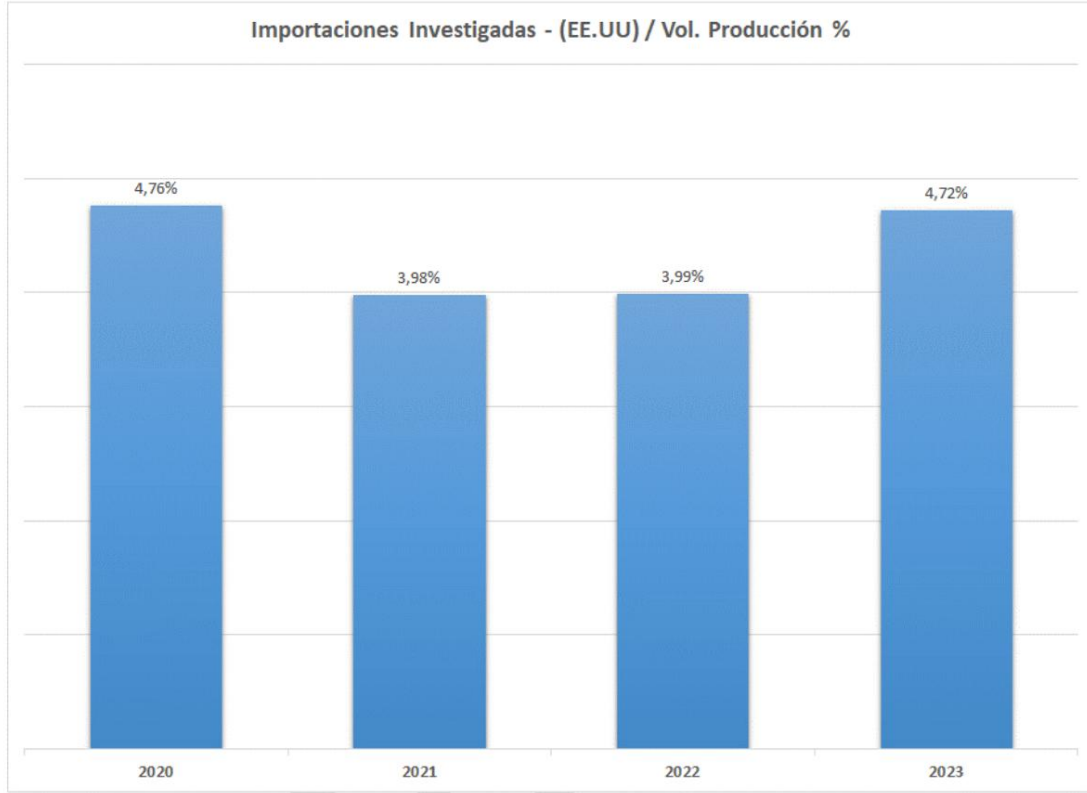
### A. National milk production volume



Source: FEDEGAN

The liquid milk production volume for the period analyzed showed a downward trend, except for 2021, which showed an increase of 5.79%, while for the other years it had a downward trend with a loss of 5.20% in 2022 compared to 2021, going from 7,821 million liters to 7,414 million liters, for 2023 the production volume continued to decrease by 4.28% with a value of 7,097 million liters.

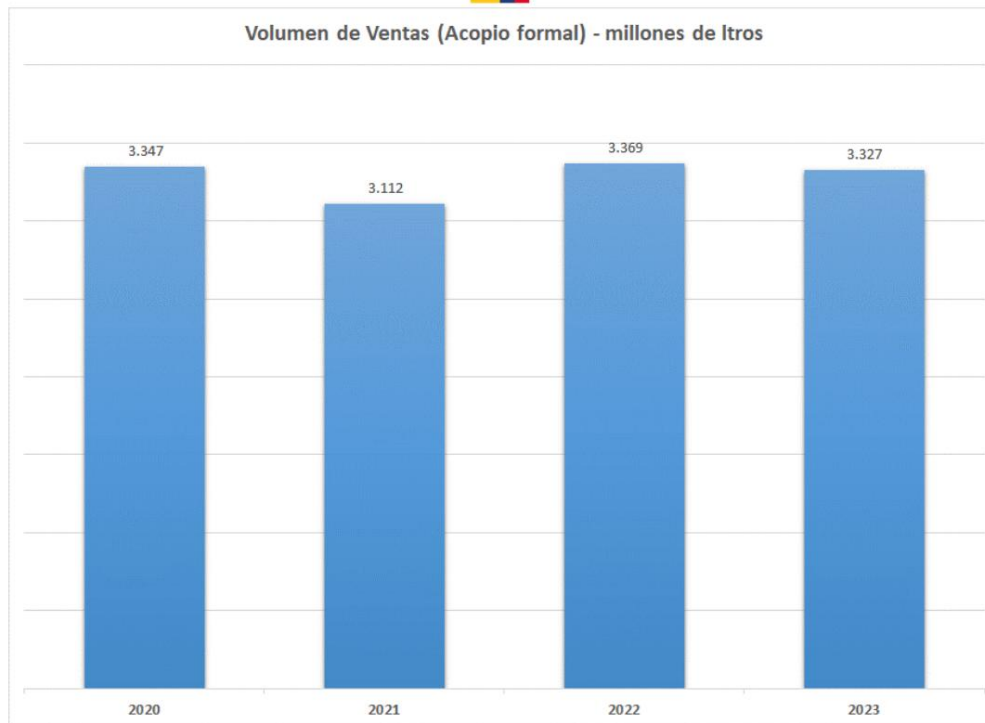
### B. Imports investigated with respect to the volume of production



Source: FEDEGAN-DIAN. SPC calculations

The penetration rate of the investigated imports on the volume of liquid milk production showed a fluctuating behavior throughout the analysis period. In 2021, they decreased by 0.78 percentage points compared to 2020, while for 2022 they increased by 0.01 percentage points and in this same trend for 2023, in which they increased by 0.73 percentage points.

### C. National sales volume (formal collection)

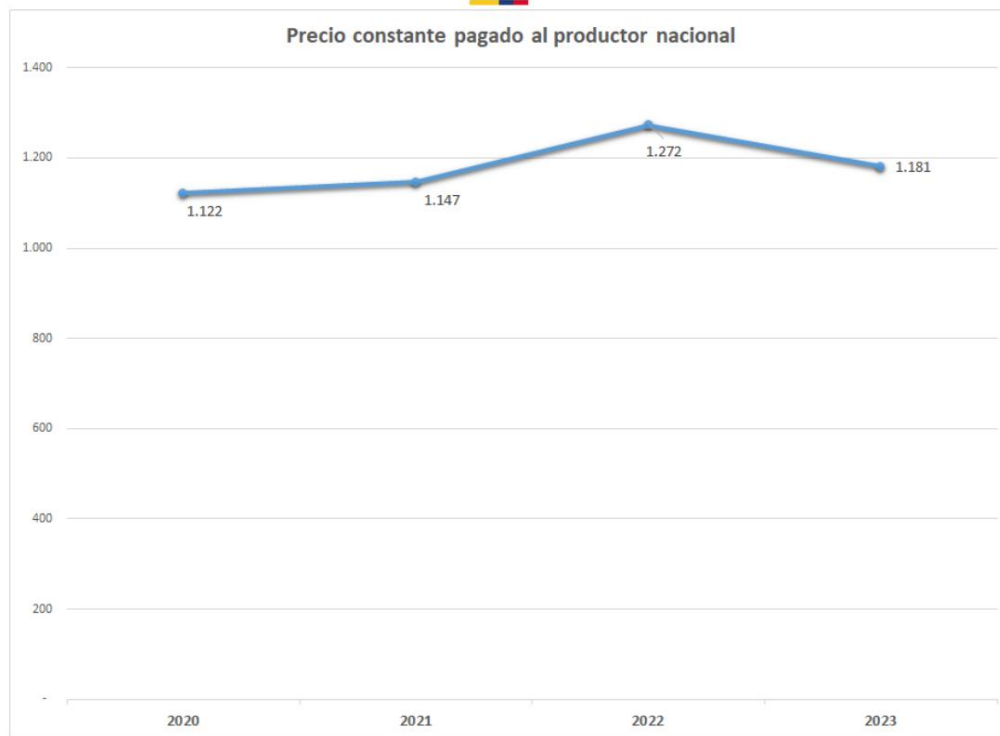


Source: USP-MADR

The collection volume refers to the quantity of litres of liquid milk that are acquired by the processing industry, that is, it can be understood as the level of sales that farmers make to the raw milk processing industry.

For the year 2021, formal collection shows a decrease of 7.02% compared to the previous year; while for 2022, formal collection had an increase of 8.26% compared to that registered in 2021, going from 3,112 million liters to 3,369 million liters. On the other hand, formal collection for 2023 showed a decrease of 1.25%, reaching 3,327 million liters.

#### D. Constant price paid to the domestic producer

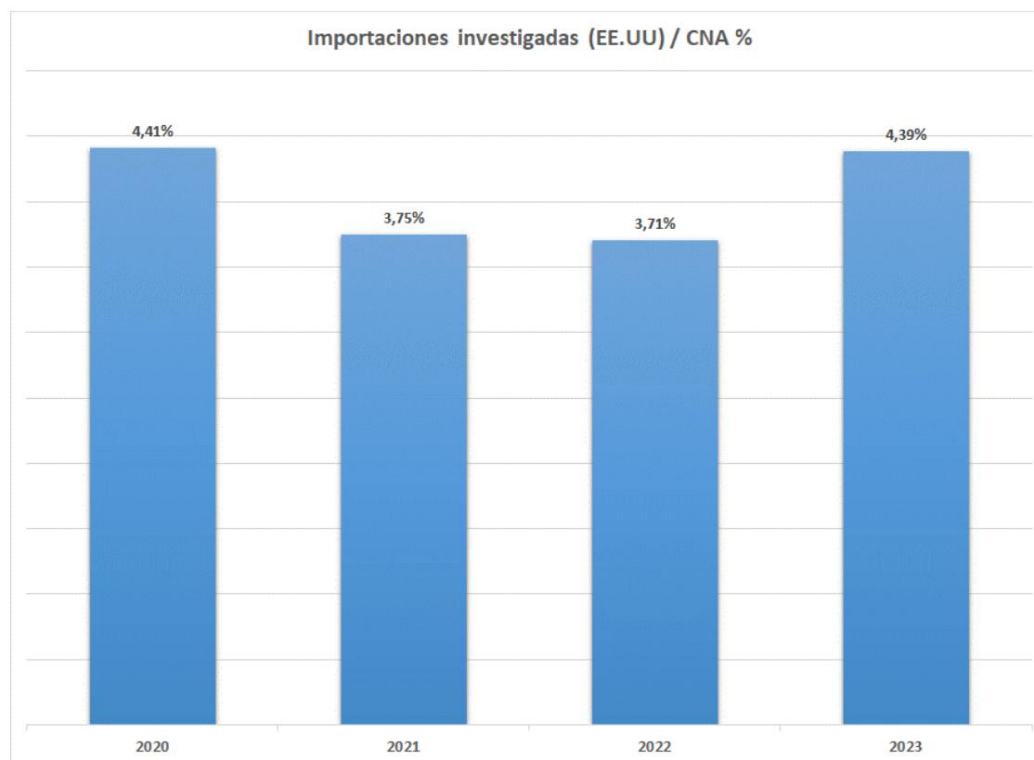


Source: USP -MADR. SPC calculations

To obtain the constant price paid to the national producer, the value provided by the Milk Price Monitoring Unit of the Ministry of Agriculture and Rural Development was taken.

The constant price paid to the national producer showed an increasing trend until 2022, increasing by 2.23% and 10.90% in 2021 and 2022 compared to the immediately preceding year. Finally, in 2023 it shows a decrease of 7.15% compared to 2022, registering a price of 1,181 pesos per liter.

### E. Imports investigated with respect to National Consumption Apparent



Source: DIAN, FEDEGAN. SPC calculations.

The share of investigated imports with respect to the Apparent National Consumption of milk showed a fluctuating behavior throughout the analysis period. In 2021 compared to 2020, it shows a decrease of 0.67 percentage points, going from 4.41% to 3.75%, for the following period it shows a decrease of 0.04 percentage points compared to the previous year. For its part, for the year 2023 it shows an increase of 0.68 percentage points, participating 4.39% of the total market.

#### 7.2.4.2.2. Financial indicators

For the analysis of the behavior of the main financial indicators, the information provided by FEDEGAN and by the Milk Price Monitoring Unit of the Ministry of Agriculture and Rural Development was taken. Based on the information collected, evidence of significant damage was found in the following financial variables: (i) sales revenue, (ii) profit and (iii) profit margin.



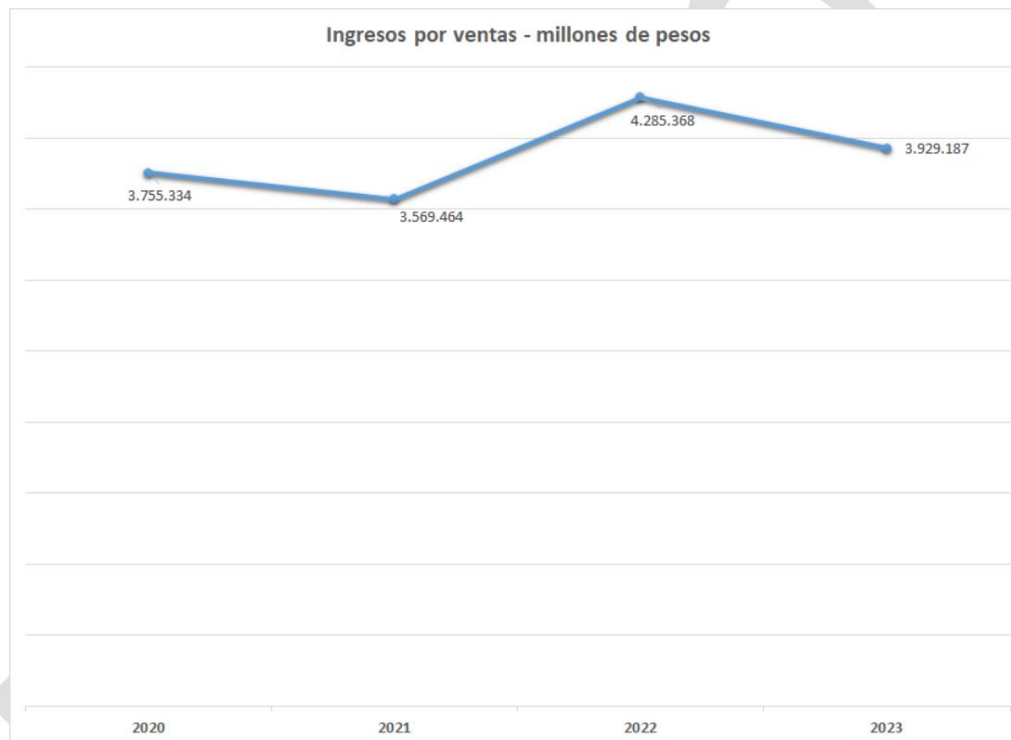
Comercio,  
Industria y Turismo

Evaluación de daño				
Variables Financieras	2020	2021	2022	2023
Ingresos por ventas - millones de pesos	3.755.334	3.569.464	4.285.368	3.929.187
Utilidad (\$ x lt)	29	- 110	- 476	- 556
Margen de utilidad %	2,6%	-9,6%	-37,4%	-47,0%

Source: FEDEGAN; USP-MADR. SPC calculations

Below is a detailed analysis for each of the financial variables that show evidence of damage:

### A. Sales income (formal collection)



Source: FEDEGAN, USP - MADR - SPC calculations.

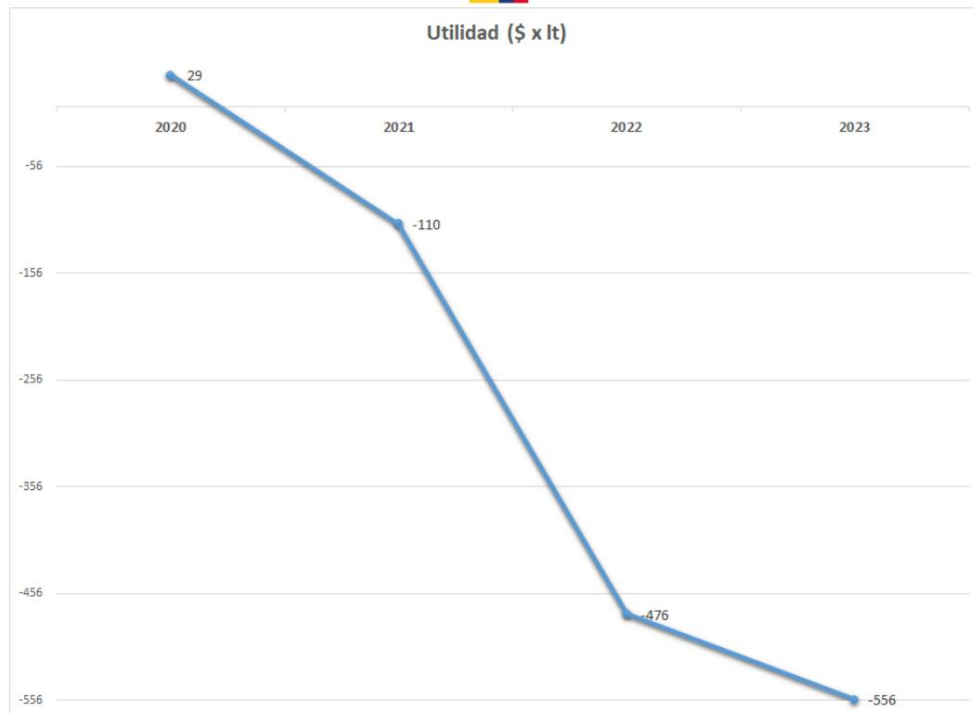
Sales revenue was calculated by multiplying the national average price paid to the national producer and the sales volume (formal collection). This indicator showed fluctuating behavior during the periods analyzed. In 2021, it decreased by 4.95% from 3,755,334 million pesos to 3,569,464 million pesos. Then, in 2022, it increased by 20.06% compared to the immediately preceding year. For 2023, it showed a reduction of 8.31% compared to 2022.

### B. Utility pesos per liter





**Comercio,  
Industria y Turismo**



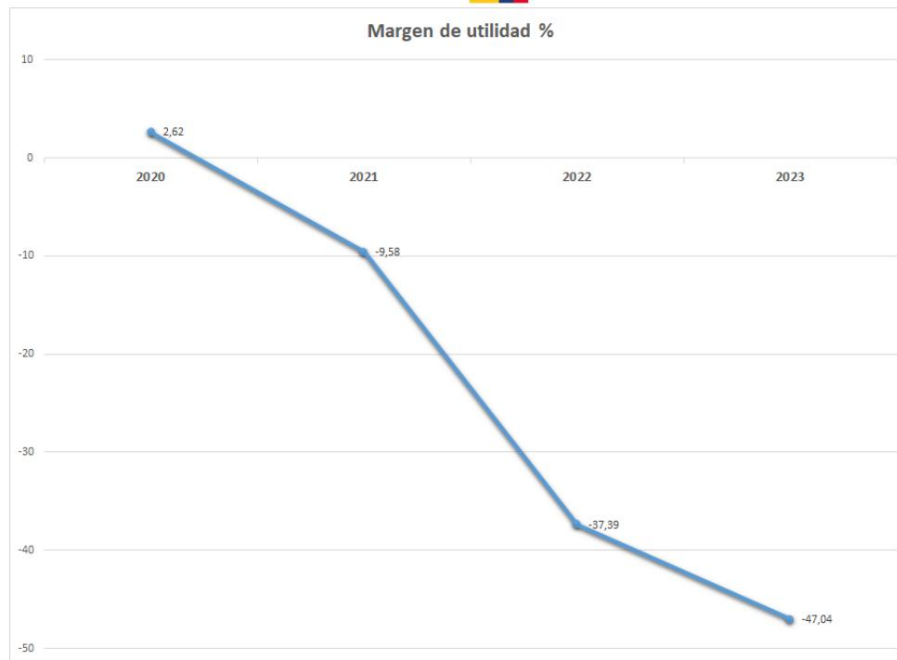
Source: FEDEGAN, USP - MADR - SPC calculations.

The profit was calculated by subtracting the national average price paid to the national producer and the cost of production of a liter of milk. This indicator showed a decreasing behavior during the periods analyzed, presenting losses from 2021 to 2023.

**C. Profit margin**



## Comercio, Industria y Turismo



Source: FEDEGAN, USP - MADR - SPC calculations.

This financial indicator showed a downward trend during the periods analyzed, presenting negative margins from 2021 to 2023.

### 7.2.5. The value chain of milk production and evidence of the impact that imports would have on the national production branch

The above is sufficient to conclude, based on the applicable regulations, that there is evidence that would prove a situation of damage in the national production branch. As has already been made clear, the three elements that allow this conclusion to be established have been preliminarily demonstrated. Without prejudice to the above, other elements that would corroborate this conclusion will be presented below. First, the value chain of milk production will be briefly described – and with an emphasis on the elements relevant to this case – in order to clearly explain the impact that the marketing of powdered milk could have on the production of raw milk. Second, the three levels at which the marketing of subsidized powdered milk could be generating an impact on the marketing of liquid milk in Colombia will be described.

#### 7.2.5.1. The value chain of milk production

The dairy chain is a system made up of all the processes and actors involved in the production, processing and marketing of milk and



its derivatives, from the moment it leaves the cow's udder until it reaches the final consumer in the form of various dairy products. This chain is made up of the following activities:

- **Primary Production.** This is the process of extracting milk from the cow's udder. Freshly milked milk is cooled rapidly to prevent bacterial growth and fermentation, then stored in cooling tanks until it is collected for transport. Finally, the milk is collected,

which consists of collecting the milk from farms and transporting it to processing plants.

In this sense, primary production depends on the collection to market its product within the Colombian industry. In turn, the collection depends on primary production to have the necessary raw material.

- **Milk processing.** Processing plants receive raw milk that has been collected at collection centers. Upon arrival at the plant, the milk undergoes rigorous quality analysis to verify its composition (fat, protein, total solids), bacterial load and presence of foreign substances.

These analyses ensure that the milk meets the quality standards required for the production of products. The industrial facilities where this activity is carried out are equipped with specialized machinery to transform liquid milk into various products.

- **Production of milk powder.** Milk powder producers can be either the processing plants themselves or companies that specialise in the production and sale of milk powder. Processing plants therefore depend on a constant supply of liquid milk in order to be able to produce milk powder. This supply comes from milk producers.

It is important to note that one of the uses of powdered milk is its reconstitution. This process allows the powdered milk to be returned to its original liquid state by adding water in a specific proportion. As already explained (section 5.2.2 of this Technical Report), there is a segment of the industry, particularly producers of liquid milk and milk-derived foods, that can use both liquid milk and powdered milk as an input. This implies that for these users, liquid milk and powdered milk are substitute products.

#### **7.2.5.2. Levels at which the import of subsidized powdered milk could have an effect on the production and marketing of liquid milk**

In this section, based on the dynamics of competition that are seen in the markets of the various presentations of dairy products, considerations will be presented that would allow us to demonstrate that the importation of subsidized milk powder from the United States is indeed



United could have an impact on the production and marketing of liquid milk in Colombia.

The announced impact could be generated at three levels. First, through the reduction of demand for domestic liquid milk by the segment of the industry that can use both liquid milk and powdered milk in its production processes. Second, through the reduction of demand by consumers who have the effective option of choosing between processed liquid milk and powdered milk to satisfy their consumption needs. This situation would affect raw milk producers because the processed liquid milk made available to consumers is made from raw milk of domestic origin. Third, the imports investigated could be creating an obstacle to the development of the spraying industry in Colombia. Each of these levels of impact is explained below.

#### **7.2.5.2.1. Reduction in demand from the industry that can use liquid milk and/or powdered milk in its production processes**

At this point in the presentation, it is already clear that there would be a segment of the industry that can use powdered milk and liquid milk alternatively in their production processes, so that for this type of buyers both inputs are substitute products. This aspect was explained in section 5.2.2 of this Technical Report. This circumstance would show that the arrival to the Colombian market of powdered milk imported from the United States at a reduced price derived from the application of subsidies could effectively generate an effect on the purchasing decision of industrial agents who can substitute the two inputs considered. The effect would be to encourage their decision to purchase towards the input that represents the lowest cost for them, which is subsidized imported powdered milk instead of national liquid milk. In this regard, it should be remembered that there would be evidence that the investigated imports have had significantly lower prices throughout the period analyzed compared to those offered by the national liquid milk production branch (section 7.2.3 of this Technical Report).

In addition to the above, an increase in imports of powdered milk from the United States would generate an increase in supply on the market, which could put downward pressure on domestic milk prices. This circumstance, in turn, could lead to a decrease in the income of local producers. Another result could be that, as a result of the low prices of the investigated imports, the domestic production branch would be under pressure to reduce its production levels. This is because it has been observed that when raw milk producers increase their production, they face reduced profit margins because this increase in production is collected by the informal sector.



#### **7.2.5.2.2. Reduction in demand from consumers who have the effective choice between processed liquid milk and powdered milk**

As indicated in section 5.2.2.1 of this Technical Report, there would be a group of importers of powdered milk originating in the United States that would use the product to market it to consumers. In that same section, it was explained that consumers, for the purposes of this analysis, would find two options to satisfy their need to consume milk: processed liquid milk that is made with raw milk from national production and powdered milk. Therefore, the increase in imports of subsidized powdered milk could translate into a reduction in the costs of powdered milk that marketers offer to consumers. This circumstance, consequently, could motivate consumers to choose this powdered milk instead of processed liquid milk that is made with raw milk from the national production branch.

This dynamic would show that the arrival of cheaper powdered milk as a result of subsidies could impact, from this perspective, the performance of the national production branch. In fact, if the processed liquid milk manufacturer sells less quantities of product because consumers buy imported powdered milk, it is clear that the liquid milk producer, in turn, will buy less of the input from the national production branch.

#### **7.2.5.2.3. Obstacles to the development of the spraying industry in Colombia**

In this section, the evidence that would allow us to prove the facts will be presented. that the imports under investigation could be impeding the development of the national milk sprayer industry. This circumstance, consequently, would reduce the demand that these agents could direct towards raw milk producers. In this way, the imports would be generating an impact on the national production branch because they would be preventing them from marketing their product to an industrial agent that would be able to increase its production and, therefore, its demand for raw milk.

The first thing to establish is that it has been preliminarily proven that there are sprayers in Colombia that produce powdered milk. This conclusion is based on the information on this matter sent by the Ministry of Agriculture and Rural Development. According to this source, the following 13 sprayers are present in Colombia:



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PULVERIZADORAS
Alpina Productos Alimenticios
Cooleches S.A.S.
Cooperativa Colanta
Corporacion de Ganaderos del Norte de Antioquia
Cosmolac S.A.S
Freskaleche S.A.S
Indulacteos De Colombia S.A.S
Indunilo
Lactalis Colombia Ltda
Lacteos Tamacara S.A
Nestle De Colombia
Procesadora De Leches S.A
Tropical Fress

Source: Ministry of Agriculture

Secondly, it should be noted that, according to the information collected up to this point, the main production of these agents is whole milk powder.

This conclusion is supported by the responses received by the Authority to the questionnaires sent to the sprayers, which were only answered by the following six companies: Indulácteos de Colombia, Indunilo SA, Tropical Fress SA, Freskaleche SAS, Colanta and Nestlé de Colombia SA. These responses show that four of the sprayers are dedicated exclusively to the production of whole milk powder: Indulácteos de Colombia, Indunilo SA, Tropical Fress SA and Freskaleche SAS. In contrast, the sprayers Colanta and Nestlé de Colombia SA report the production of whole, skimmed and semi-skimmed milk powder.

Third, it should be mentioned that almost all imports of powdered milk originating in the United States correspond to skimmed milk powder. This conclusion is supported by import information originating from the DIAN. According to that source, most of the powdered milk imported from the United States to Colombia is part of subheadings 0402.10.90.00, 0402.29.99.00, 0402.10.10.00 and 0402.29.91.00, which correspond to skimmed milk powder. This product corresponds to the highest demand that the Colombian industry has for the production of its final goods, such as cookies, confectionery and other products that do not require a high fat percentage. To dimension the highlighted aspect, it must be taken into account that in 2023 a total of 27,849,162 kilograms of powdered milk originating in the United States were imported. Of this total, 26,097,062.80 kilograms correspond to skimmed milk and 1,752,100 kilograms correspond to whole milk.

Fourthly, there is evidence to suggest that sprayers



domestic producers could produce skimmed milk powder. In this regard, the information available to this point suggests that the production process for whole milk powder is essentially the same as that required to produce skimmed milk powder. In this regard, Analac38 stated the following:

“(...) processing: Both Colombian milk and powdered milk imported from the United States are subjected to processes of sanitation, pasteurization, ultra-pasteurization, among others. In both countries, processing can add skimming and water extraction or drying to finally obtain dairy products and whole milk powder (if skimmed milk was not done) and skimmed milk.”

Therefore, companies that produce whole milk powder would also have the capacity to produce skimmed or semi-skimmed milk powder.

Fifth, it is necessary to analyze the reason why the Colombian spraying industry is mainly dedicated to the production of whole milk and is not trying to meet the demand of the industry that requires skimmed milk powder. This is a relevant question because, at least with the information reported by the spraying companies that responded to questionnaires, it seems that these agents have the installed capacity to supply the national market, since they are currently only using 37% of their capacity. The explanation for this circumstance could be that they are not able to produce skimmed milk powder under the price conditions at which the subsidized product imported from the United States can be offered.

The above would lead to a conclusion. It is that subsidized imports could be impeding the development of Colombian sprayers. Indeed, based on the above analysis, it can be inferred that spraying companies have the capacity to increase their production by up to 215% with the infrastructure and equipment currently installed. This expansion potential offers a significant opportunity to take advantage of economies of scale. However, spraying companies face a considerable challenge due to competition with subsidized imports of powdered milk from the United States. Prices of these imports are usually significantly lower, which limits the ability of local companies to offer competitive prices. As a result, despite the installed capacity to increase production and benefit from economies of scale, national companies could not fully take advantage of these advantages due to the low domestic demand for powdered milk at prices that allow at least covering production costs.

The above conclusion would reveal a relevant circumstance for this case. If Colombian sprayers cannot use their resources to a greater extent,





production capacity, then they would be purchasing less milk from the national production branch compared to what they would acquire if they could meet the demand for skimmed milk powder. This would be because the national industry could significantly increase the demand for skimmed milk powder produced in Colombia if prices were more competitive compared to the subsidized prices of imports originating in the United States. This greater demand for skimmed milk powder, in turn, would have a direct positive effect on the collection of liquid milk in formal collection centers.

If domestic skimmed milk powder prices were adjusted to be more competitive, domestic processing industries would prefer to purchase this milk rather than import cheaper products. This change in purchasing dynamics would increase the demand for liquid milk in formal collection centers, which are authorized and regulated facilities where producers sell their milk.

The above considerations find additional support when analyzing the behavior of the national demand for powdered milk. Below is an analysis of the national consumption of powdered milk and the capacity of these sprayers to supply the national market for powdered milk.

	<b>Consumo Nacional Aparente de leche</b>			
<b>TONELADAS</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>Ventas nacionales</b>	38.989	42.513	24.112	20.404
<b>Importaciones investigadas</b>	29.680	26.168	24.619	27.849
<b>Demas importaciones</b>	24.150	18.533	27.768	21.928
<b>Consumo Nacional Aparente</b>	92.818	87.214	76.499	70.181

Source: Milk Price Monitoring Unit – USP and DIAN.

The apparent national consumption of milk powder shows a downward trend during the period analyzed, contracting 6%, 12% and 8%, for the years 2021, 2022 and 2023, respectively.

<b>Participación de mercado %</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>Ventas nacionales / CNA</b>	42%	49%	32%	29%
<b>Importaciones investigadas / CNA</b>	32%	30%	32%	40%
<b>Demas importaciones / CNA</b>	26%	21%	36%	31%

Source: Milk Price Monitoring Unit – USP and DIAN

The investigated imports represent between 30% and 40% of the total market, increasing 8 percentage points in 2023, compared to 2022. Meanwhile, domestic sales of powdered milk, available at the Milk Price Monitoring Unit of the Ministry of Agriculture and Rural Development, lose share. They participated between 49% and 29% during the year.



the entire period analyzed, decreasing 3 percentage points in 2023 compared to 2022. The above would demonstrate that the investigated imports have displaced sales of national powdered milk, which would translate into a reduction in sales (formal collection) of raw milk from the national production branch.

## **8. Analysis of the causal relationship between the injury and the imports investigated**

This section will present the considerations and evidence that would allow proving that, in accordance with Article 2.2.3.9.4.1 of Decree 653 of 2022 and Article 15 of the SCM Agreement, the subsidized imports would have effectively contributed to the creation of circumstances that would constitute injury to the domestic industry.

In order to support this conclusion, first of all, some details will be presented regarding the conditions that must be met to prove the existence of a causal link. In particular, it will be highlighted that the applicable regulations do not require that imports be the sole or the main cause of the injury situation, but that it is sufficient that they provide a relevant causal contribution. Secondly, another series of factors that would be contributing to the causation of the injury of interest in this case will be presented, which –of course– could not be attributed to the imports under investigation. Finally, the considerations that show the causal contribution that these imports could generate for the generation of injury to the branch of national production will be presented.

### **8.1. Elements determining the configuration of the causal relationship: it is not necessary for imports to be the sole or main cause of the damage**

Based on Article 2.2.3.9.4.1. of Decree 653 of 2022 and Article 15 of the SCM Agreement, the admissibility of a trade defense measure requires sufficient evidence that the investigated imports contributed from a causal perspective to the generation of injury to the domestic industry. However, it is of paramount importance to highlight that it is not essential that the investigated imports be the sole or the main cause of the injury. It is sufficient, then, that they have a relevant causal contribution to that result.

The conclusion that the applicable regulations do not require that imports be the sole cause of injury as a condition for the admissibility of the trade defense measure is based on two considerations. First, because Decree 653 of 2022 and the SCM Agreement do not include that requirement. Second, because that conclusion is consistent with international practice.



In this regard, the WTO Dispute Settlement Body has explained the following:

“5.169. Article 15.5 recognizes that factors other than subsidized imports may be injuring the domestic industry ‘at the same time’. Thus, for a ‘genuine and substantial’ causal link to exist between subsidized imports and injury to the domestic industry, it **is not necessary that subsidized imports be the sole cause of such injury.** <sup>39</sup> Rather, the existence of a ‘genuine and substantial’ causal link depends on both: (i) the existence and extent of the relationship between subsidized imports and the injury suffered by the domestic industry; as well as (ii) the comparative importance of that relationship with respect to the contributions to that injury of other known factors (...) Thus, paragraph 5 of Article 15 requires the investigating authority to determine whether, in light of the injurious effects of the other known factors, the subsidized imports can be considered a ‘genuine and substantial’ cause of the injury suffered by the domestic industry” (emphasis added)<sup>40</sup> .

On the other hand, it is also clear that the applicable regulations do not require that subsidized imports be the main cause of the damage as a condition for the admissibility of the trade defense measure. This conclusion is based, again, on the fact that the relevant regulations do not pose such a requirement. Additionally, it is corroborated by international practice in this matter. In this regard, it should be noted that the regulations

The supranational body expressly eliminated the requirement that the imports under investigation constitute the principal cause of the injury under consideration. Indeed, as a result of the Tokyo Round of 1979, the requirement that this was included in the Antidumping Code of 1967 (Kennedy Antidumping Code) was eliminated.

Therefore, as of this amendment, the only requirement is that the imports contribute in a relevant way to causing the injury. In relation to this point, it is necessary to make an additional clarification. The rule

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<sup>39</sup> With respect to the causation test under Article 4.2(b) of the Agreement on Safeguards, the Appellate Body has held that this provision does not require that increased imports be the *sole* cause of serious injury.

(Appellate Body Report, *US – Wheat Gluten*, para. 67).

Furthermore, with respect to the causation analysis under Articles 5 and 6 of the SCM Agreement, the Appellate Body has held that, for there to be a “genuine and substantial relationship of cause and effect”, the causal agent need not be the *sole* cause of its alleged consequence, or even the *sole* substantial cause of that consequence. (Appellate Body Report, *US – Large Civil Aircraft (2nd Complaint)*, para. 914).

<sup>40</sup> Appellate Body Report, *European Union – Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan*, WT/DS486/AB/R, 16 May 2018, para. 5169.



The amended version corresponds to the rules applicable to anti-dumping duties, not to countervailing duties for subsidies. However, as has been recognized in international practice, these rules share a common purpose and, therefore, must be applied in a harmonious manner. On this matter, the WTO Panel has considered the following:

“(...) since the relevant provisions of both Agreements are identical and given the 'need to ensure consistency in the resolution of disputes arising from antidumping and countervailing duty measures' (...), it is clear (...) that the requirement is the same in antidumping and countervailing duty investigations”<sup>41</sup> .

In conclusion, what must be analyzed in this case is whether there are elements of evidence that, in a preliminary manner, prove that imports of powdered milk from the United States could have had a causal contribution to the aspects that would constitute damage to the national production branch.

## **8.2. Other factors that would be contributing to the causation of damage to the national production branch**

In accordance with the provisions of article 2.2.3.9.4.1. of Decree 653 of 2022 and Article 15.5 of the SCM Agreement, it is necessary to analyze the existence of other factors that could be contributing to the generation of injury to the domestic industry. The Authority carried out the corresponding exercise and concluded preliminarily that in this case there is evidence, including from interveners who participated in support of this administrative action, which would prove that the situation of the domestic industry would be generated by various factors additional to subsidized imports originating in the United States. Below are some of the factors that have been identified up to this point.

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<sup>41</sup> WORLD TRADE ORGANIZATION. Panel Report, EC – Countervailing Measures on Dynamic Random Access Memory Chips from Korea, WT/DS299/R, 17 June 2005, para. 7.405. 28 Ibid., para. 7.351.



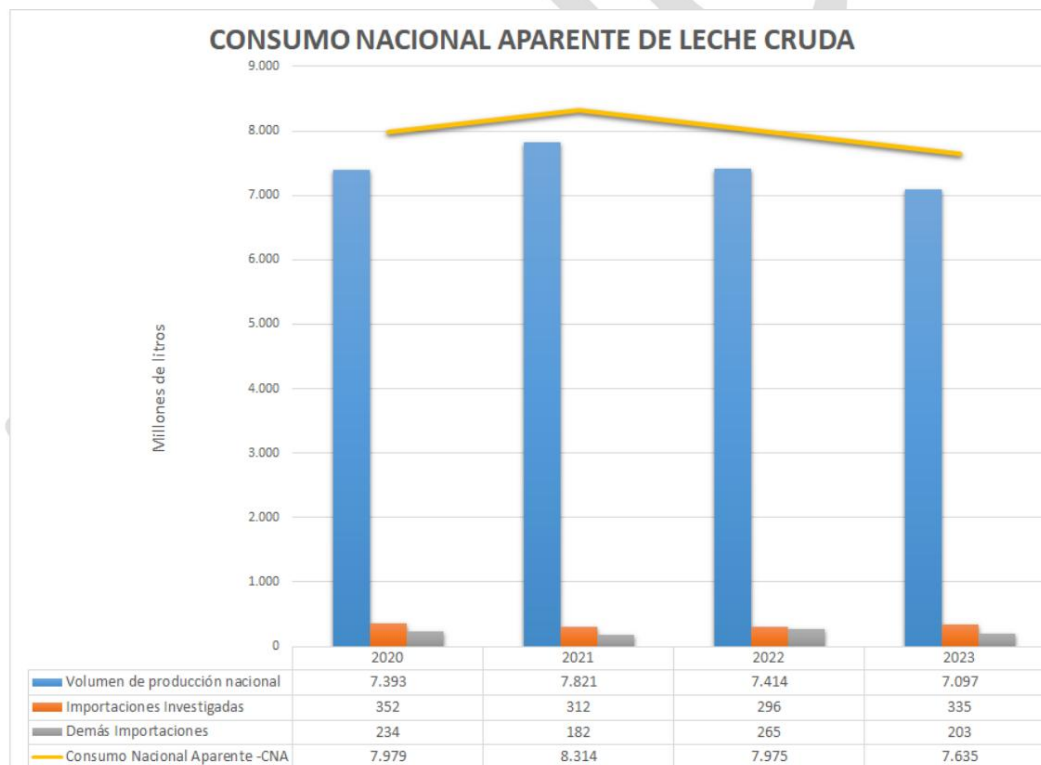
### 8.2.1. Lack of access to markets (informality)

Domestic raw milk producers often have difficulty accessing formal markets and negotiating fair prices for their product, making them more vulnerable to intermediation and the low prices offered in the informal segment.

### 8.2.2. Changes in consumption habits and increase in the price of milk to the final consumer

The evidence provided suggests that consumers have reduced their demand for liquid milk due to factors associated with their preferences and the sustained increase in the prices of the product for the final consumer. This circumstance would cause liquid milk producers to be acquiring a smaller volume of raw milk from the national production branch.

These considerations are consistent with the results of the analysis of apparent national consumption (CNA), which can be seen in the following table:



Source: FEDEGAN, DIAN. SPC calculations.

Apparent National Consumption is made up of the volume of national production, imports originating in the United States and other imports of powdered milk converted to liters of liquid milk. As can be seen, for the period corresponding to the year 2021 compared to 2020,



an increase of 4.20% was recorded. In contrast, for the period 2022 compared to 2021, it decreased by 4.08%. Finally, for the period investigated, a decrease in demand for the product of 4.25% is observed.

### **8.2.3. Fluctuations in international prices**

International dairy product prices are volatile and can affect the income of domestic producers, especially when there is an oversupply on the world market. In this regard, there is evidence to suggest that these prices have tended to fall, which creates incentives for the domestic industry to prefer purchasing powdered milk instead of raw milk through formal channels. This is because formal channels are developed on the basis of a regulated price that tends to rise.

### **8.2.4. Volume and prices of non-investigated imports**

Imports from other countries showed variable behavior during the period analyzed. In 2021, they decreased by 23.26%, while in 2022 the increase was 49.83%.

Finally, in 2023, imports fell, from 340,156,706 liters to 268,619,218 liters, with a negative percentage variation of 21.03%.

The average FOB price of imports from other countries showed an increasing trend. In 2021, it increased by 7.72% compared to 2020. In 2022, it continued to grow, increasing by 28.91%. Finally, in 2023, it showed a decrease of 13.35%, registering a price of USD 0.30/liter.

At this initial stage of the investigation, there is no evidence that would allow us to establish conclusively whether these imports have a causal contribution to the situation of damage that is occurring in the national production branch. This will be an aspect on which evidentiary activities will have to be carried out in the following stages of the action.

### **8.3. Causal contribution of the investigated imports**

The information presented in this Technical Report would show that during the period investigated there was a significant increase in the volume of subsidized imports of powdered milk from the United States and that, likewise, the price of these products had a downward trend. In addition, there would have always been an undervaluation in relation to the national product.

At the same time, it would have been proven that precisely in the period in which these factors were present there would also have been elements that would constitute damage to the national production branch. It is true that, according to the material collected up to this point that has been preliminarily assessed, there are other factors that contribute to the problems in the performance of the national producers. However, the concurrence between





The increase in subsidized imports and the results of the national production branch constitute an element that, in a reasonable manner and consistent with the preliminary nature of this stage of the action, would allow us to conclude that there is a causal contribution from the investigated imports to the damage that would be occurring in the national production branch.

Therefore, the imports under investigation would not be the sole or the main cause of the injury situation preliminarily identified. However, they would have a causal contribution to that result. This is, as explained, a sufficient element to conclude that there would be a causal link in the terms of the applicable regulations.

### **9. Countervailing duty**

Based on the elements mentioned above, preliminary evidence was found of: i) the existence of subsidies on imports of the investigated product, ii) damage to the domestic raw milk production industry, and iii) the causal relationship between these imports originating in the United States and the damage experienced by the domestic production industry.

Therefore, in accordance with the provisions of Article 2.2.3.9.7.2. of Decree 653 of 2022, in order to prevent damage from being caused during the investigation period, and as a result of the analyses carried out, a provisional measure was calculated, based on the margin of the amount of the subsidy, which provisionally would correspond to 4.86%.