



RESOLUTION NUMBER 271 OF SEP 16, 2024

"Whereby a preliminary determination is adopted within the investigation initiated by Resolution 192 of July 3, 2024."

**THE DIRECTOR OF FOREIGN TRADE**

In exercise of his legal powers, particularly those conferred by paragraphs 1, 5, and 7 of Article 18 of Decree 210 of 2003, as amended by Article 3 of Decree 1289 of 2015, and by Decree 653 of 2022, which added Chapter 9 to Title 3 of Part 2 of Book 2 of Decree 1074 of 2015, in accordance with the provisions of Law 170 of 1994, and

**WHEREAS**

Through Resolution 192 of July 3, 2024, published in Official Gazette 52.807 on July 4, 2024, the Directorate of Foreign Trade of the Ministry of Commerce, Industry and Tourism (the Authority) ordered the initiation of an investigation to determine the existence, amount, and effects of alleged subsidies on powdered milk imports originating from the United States of America, 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.

In compliance with Article 2.2.3.9.6.8 of Decree 1074 of 2015, as added by Decree 653 of 2022 (Decree 653), the corresponding Call for Submissions was published in Official Gazette 52.807 on July 4, 2024, and the questionnaires referenced in that regulation were formulated.

The documents and evidence considered for the opening and preliminary determination stages of the administrative investigation are included in file SV-249-02-2.

In accordance with Article 2.2.3.9.6.10 of Decree 653, the Authority will adopt the preliminary determination based on the considerations presented below. These considerations particularly include a summary of the procedures and analyses conducted. A more detailed explanation of the basis for the decision can be found in the Preliminary Technical Report.

The preliminary decision is based on the following **considerations**:

**I. OPENING OF THE INVESTIGATION AND ARGUMENTS OF THE INTERVENING PARTIES**

**1. Opening of the Investigation**

In summary, the opening of the investigation was supported by evidence that provided sufficient indications to establish (i) the existence of subsidies for the production of liquid milk in the United States, (ii) the existence of damage to the domestic raw milk production sector resulting from a significant increase in subsidized imports and a relevant undervaluation of domestic raw milk prices, and (iii) a causal link between these two elements.

**2. Responses to Questionnaires and Arguments from the Intervening Parties**

A total of 21 submissions were recorded during the call for submissions.

Importers **ALPINA PRODUCTOS ALIMENTICIOS S.A.S. BIC., DASA DE COLOMBIA S.A.S., PRODUCTOS NATURALES DE LA SABANA S.A.S BIC, INGREDIENTES Y PRODUCTOS FUNCIONALES S.A.S., PRONATURAL FOODS S.A.S., LECHECOL ZF S.A.S., COLOMBINA DEL CAUCA S.A., COLOMBINA S.A., NESTLÉ DE COLOMBIA S.A., COMERCIAL ALLAN S.A.S.,** and **GESTIÓN CARGO**



**ZONA FRANCA S.A.S.** submitted responses to the questionnaires. Importer **ROCSA COLOMBIA S.A.** provided a letter of opposition.

Exporters **DAIRY FARMERS OF AMERICA INC., INTERFOOD AMERICAS S.A., LAND O'LAKES, INC.,** and **CALIFORNIA DAIRIES, INC.** also submitted responses to the questionnaires. Meanwhile, the **U.S. DAIRY EXPORT COUNCIL (USDEC)** presented a letter of opposition.

Industry associations, including the **COLOMBIAN FEDERATION OF CATTLE RANCHERS (FEDEGAN)** and the **NATIONAL DAIRY FARMERS ASSOCIATION (ANALAC)**, expressed their support for the investigation. The **NATIONAL BUSINESS ASSOCIATION OF COLOMBIA (ANDI)** submitted a letter of opposition.

Finally, the **GOVERNMENT OF THE UNITED STATES** provided responses to the questionnaires and a letter of opposition.

A detailed summary of the arguments presented by the intervening parties can be found in the Preliminary Technical Report. In summary, the opponents raised arguments to contest the following points:

- The representativeness of milk producers organized in **FEDEGAN**.
- The similarity between powdered milk from the United States and raw milk produced by the domestic sector.
- The subsidized nature of support programs offered by the U.S. Government and the amounts provided to beneficiaries during 2023.
- The existence of damage to the domestic production sector.
- The existence of a causal link between the subsidies and the alleged damage, asserting that the challenges facing the Colombian dairy sector stem from different causes.

## II. TECHNICAL EVALUATION OF THE MERIT FOR ADOPTING A PRELIMINARY DETERMINATION

### 1. Nature and Requirements for the Preliminary Determination

Three key aspects need to be highlighted for the purposes of this action:

First, this decision is of a preliminary and precautionary nature based on Article 2.2.3.9.7.2 of Decree 653 and paragraph 1 of Article 17 of the World Trade Organization Agreement on Subsidies and Countervailing Measures (the SCM Agreement). Its sole purpose is to prevent harm to the domestic production sector during the investigation period.

Second, the required standard of proof is consistent with the preliminary nature of the decision. Thus, the imposition of provisional countervailing duties only requires the availability of evidence that reasonably and consistently suggests the existence of the elements necessary for this trade defense measure. This conclusion is supported by applicable regulations (Articles 2.2.3.9.6.4 and 2.2.3.9.6.16 of Decree 653) and the nature of the administrative process, which is progressive, allowing for factual aspects to be determined with necessary certainty at each stage based on the evidence collected.

Third, the decision must be based on the best available information (Articles 2.2.3.9.1.1 and 2.2.3.9.6.16 of Decree 653).

### 2. Conditions for Imposing Provisional Countervailing Duties

The imposition of a trade defense measure requires establishing the

<sup>1</sup> WTO Panels. Cases WT/DS60/AB/R, DSR 1998 IX. 3797 and WT/DS241/R 2003.



representativeness of the agents considered as the national production sector and the similarity between the product produced and the imported product. Additionally, evidence must suggest the existence of the following elements: (i) the subsidy and its amount; (ii) significant damage to national production; and (iii) a causal relationship between these two elements.

### 3. Production Sector and Representativeness

As noted in the Opening Technical Report, producers affiliated with **FEDEGAN** account for 100% of the national liquid milk production sector.

### 4. Description of the Product Under Investigation

This investigation concerns powdered milk imported from the United States, classified under the tariff subheadings indicated in the first section of this act.

### 5. Similarity

#### 5.1. Conditions Determining Similarity Between Products

According to paragraph 11 of Article 2.2.3.9.1.1 of Decree 653, consistent with international practice<sup>2</sup>, a product is considered similar to another if it shares, among other factors, (i) properties, nature, and quality, and (ii) end uses<sup>3</sup>. It is important to note that there is no precise and absolute definition of similarity; thus, its determination must consider the specific circumstances of each case. Consequently, based on the purpose of the regulations governing the analyzed trade defense measures, a product should be deemed similar to the one under investigation if, due to the specific conditions present in the case and considering the mentioned criteria of similarity, it is reasonable to conclude that there is a detrimental impact on the national production sector of the analyzed product resulting from the availability of the investigated product under conditions that distort competitive dynamics.

#### 5.2. Specific Analysis of Similarity

The Authority preliminarily concludes that liquid milk produced by the national production sector is a like product to powdered milk imported from the United States, as two key conditions are met. First, both products are similar in composition and nature, sharing organoleptic characteristics (such as color, flavor, and aroma), physicochemical properties, nutritional values, and overall composition. This is substantiated by the opinion issued by the Goods Registration Group of the Ministry of Commerce, Industry, and Tourism on August 5, 2021 (file number GRPBN-2021-000029), as well as the assessment provided by the Office of International Affairs of the Ministry of Agriculture and Rural Development.

The second established condition is that the analyzed products have the same end use for a segment of the industry and consumers. To support this point, the Authority identified all importers of the investigated product and preliminarily classified them into five categories: (i) dairy product producers, (ii) powdered milk marketers, (iii) confectionery producers, (iv) food producers, and (v) a group of agents that includes pharmaceutical companies, airlines, and third-party importers. Based on the evidence collected, it was shown that a segment of the industry, particularly dairy product manufacturers, can alternatively use both powdered milk and liquid milk in their processes. Thus, for this type of buyer, both inputs are considered substitute products. The same is true for consumers interested in purchasing milk, as they can

<sup>2</sup> WTO Panel. Case European Communities – Asbestos.

<sup>3</sup> The fourth criterion, tariff classification, was not addressed by the Working Group on *Border Tax Adjustments*; instead, it was included by later panels (see, for example, *EC – Animal Feed*, *supra*, note 58, paragraph 4.2, and *Japan – Alcoholic Beverages*, 1987, *supra*, note 58, paragraph 5.6).



choose between powdered milk and processed liquid milk, the latter being made from raw milk sourced from the domestic production sector.

## 6. Existence and Amount of Subsidies

### 6.1. Analyzed Programs

Initially, the Authority identified 15 support programs for liquid milk production in the United States, which it classified as subsidies. However, based on information provided by the participants, 10 of these programs were excluded from further consideration. The reasons for this exclusion included their lack of impact on production costs and milk prices in the U.S., their focus on other products, and their irrelevance to production activities conducted in 2023. As a result, the analysis focused on the remaining 5 programs.

### 6.2. Description of Analyzed Programs

The Authority considered the following programs:

**6.2.1. Dairy Margin Coverage Program (DMC):** This program aims to stabilize the incomes of agricultural producers when profit margins decline due to falling milk prices or rising production costs.

**6.2.2. Organic Dairy Marketing Assistance Program (ODMAP):** This program supports organic producers facing challenges such as increased costs due to the pandemic and drought conditions in the U.S. The assistance provided is financial in nature and targeted at projected marketing costs.

**6.2.3. Dairy Business Innovation Alliance:** This initiative encourages small and medium-sized dairy producers, entrepreneurs, and processors in the Midwest to undertake projects focused on farm diversification, on-farm processing, creation of value-added products, and export.

**6.2.4. Existing Dairy Processor Expansion Grant:** This program funds existing dairy processing facilities in the Northeast region, aimed at increasing the use of milk, dairy components, and/or regional dairy blends, as well as diversifying the supply chain.

**6.2.5. Farm Loan Program:** These loans are designed to assist farmers and ranchers in obtaining the necessary financing to start, expand, or maintain a family farm.

### 6.3. Identified Programs as Actionable Subsidies

A production support program may be considered a subsidy if it provides a benefit and is specific in nature (as defined in Article 2.2.2.3.9.2.1. of Decree 653 and Article 1.1. of the SCM Agreement). A subsidy is actionable if, in addition, it causes damage to the domestic production sector of a like product (as stated in Article 2.2.3.9.2.6. of the Decree and Article 2.1. of the SCM Agreement). In this case, it is reasonable to preliminarily conclude that the aforementioned programs constitute subsidies because they provide benefits in the form of financial contributions. Indeed, their implementation implies an effective or potential transfer of funds. Additionally, these programs are specific as they are only available to milk producers. Finally, these programs will prove to have caused damage to the liquid milk production sector.

### 6.4. Total Subsidy Amounts

The preliminary analysis indicates that the total amount of subsidies for raw milk in 2023 is estimated to have reached USD 1,209,800,000.



## 7. Analysis of the Existence of Damage to the Domestic Production Sector

### 7.1. Conditions Supporting the Conclusion of Damage

According to Article 2.2.3.9.4.1 of Decree 653 and Article 15 of the SCM Agreement, imports of a subsidized product are deemed to cause damage to the domestic production sector of a like product if:

- There is a significant increase in subsidized imports during the period (paragraph 1 of Article 2.2.3.9.4.1).
- There is significant undervaluation when comparing the import price of the subsidized product with the price of the like product in Colombia (paragraph 2 of Article 2.2.3.9.4.1).
- There is unfavorable performance of the economic and financial indicators of the domestic production sector.

### 7.2. Evidence That Would Preliminarily Support the Existence of Damage to the Domestic Production Sector

The gathered evidence would preliminarily indicate the following:

**7.2.1.** Imports from the United States showed a significant increase of 13.35% in 2023 compared to the previous year. Notably, U.S. imports hold the largest share of total imports, historically exceeding 60%, while the second-ranking origins barely surpass 13%.

**7.2.2.** There has been significant undervaluation of prices offered by the domestic production sector compared to the import prices of powdered milk from the United States. In the analyzed period, the price of the imported product was 29.4% lower than the national price in 2020, 32.76% lower in 2021, 32.2% lower in 2022, and 43.46% lower in 2023.

**7.2.3.** Evidence of damage is apparent in the following economic indicators of the domestic production sector: (i) production volume, (ii) imports under investigation relative to production volume, (iii) sales volume (formal collection), (iv) price paid to the national producer, and (v) imports under investigation relative to Apparent National Consumption. Additionally, there is evidence of damage in the following financial indicators: (i) sales revenue, (ii) profit, and (iii) profit margin.

The conclusion is further illustrated in the following table:

Damage Assessment				
Economic variables	2020	2021	2022	2023
Production Volume - million liters	7.393	7.821	7.414	7.097
Imports under Investigation - (U.S.) / Production Vol. %	4,76%	3,98%	3,99%	4,72%
Sales Volume (Formal Stocking) - million liters	3.347	3.112	3.369	3.327
Domestic Sales (Formal Stockpiling) / Production Vol. %	45,27%	39,79%	45,44%	46,88%
Productivity - Liters/cow/day	4,9	5,0	4,5	6,3
Constant price paid to domestic producers	1.122	1.147	1.272	1.181
Production Volume / CNA % (Apparent National Consumption)	92,65%	94,07%	92,97%	92,95%
Sales Volume (formal stockpiling) / CNA %	41,95%	37,43%	42,25%	43,57%
Imports under Investigation (U.S.) / CNA %	4,41%	3,75%	3,71%	4,39%

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

**7.2.4.** Additionally, the Authority analyzed the value chain of milk production and identified three levels at which the marketing of subsidized powdered milk could be impacting the marketing of liquid milk in Colombia.



**A.** The industry segment that can utilize both liquid milk and powdered milk may decrease its demand for domestic liquid milk. Specifically, the influx of imported powdered milk from the United States at reduced prices due to subsidies could influence the purchasing decisions of industrial agents. This situation may lead them to favor the lower-cost option, which is the subsidized imported powdered milk, over domestic liquid milk. Consequently, this shift would negatively affect the demand for raw milk from industrial agents.

**B.** Consumers with the effective option to choose between processed liquid milk and powdered milk may also reduce their demand for liquid milk to satisfy their consumption needs. An increase in imports of subsidized powdered milk could lower the costs that marketers offer to consumers. This price reduction might encourage consumers to opt for powdered milk instead of processed liquid milk made from raw milk sourced from the domestic production sector. Therefore, the arrival of lower-priced powdered milk as a result of subsidies could adversely affect the performance of the domestic production sector.

**C.** The imports under investigation could pose challenges for the growth of the powdered milk industry in Colombia. Imports from the United States primarily consist of skimmed powdered milk. Meanwhile, there are local producers who focus almost exclusively on manufacturing whole powdered milk. Although there is evidence suggesting that national processors have the capacity to produce skimmed powdered milk to meet domestic demand, they are not doing so. A plausible explanation for this is that they cannot match the prices offered by imports from the United States, which benefit from subsidies. As a result, these imports create barriers for the development of the national powdered milk industry. This limitation also restricts the demand for raw milk from the domestic production sector, which could be utilized by the powdered milk industry. From this perspective, the behavior analyzed in this case would significantly impact the performance of the domestic liquid milk production sector.

## **18. Analysis of the Causal Relationship Between Damage and the Imports under Investigation**

### **18.1. Elements Determining the Causal Relationship: Imports do not Need to be the Sole or Primary Cause of Damage**

The admissibility of a trade defense measure requires sufficient evidence that the imports under investigation contributed causally to the damage experienced by the domestic production sector (Article 2.2.3.9.4.1 of Decree 653 and Article 15 of the SCM Agreement). However, it is not essential for the imports under investigation to be the sole or primary cause of the damage; it is enough that they have a relevant causal contribution to that outcome. This conclusion is supported by applicable regulations, which do not mandate that the imports under investigation be the sole or primary cause of the identified damage. Furthermore, this conclusion aligns with international practice.

Regarding the notion that the imports under investigation do not need to be the sole cause of the damage, the WTO Dispute Settlement Body has explained as follows:

"5.169. Paragraph 5 of Article 15 acknowledges that there may be factors,



apart from subsidized imports, that 'simultaneously' harm the domestic production sector. Therefore, for a 'genuine and substantial' causal relationship to exist between the subsidized imports and the damage to the domestic production sector, **these imports do not need to be the sole cause of that damage.** Instead, the determination of a 'genuine and substantial' causal relationship depends on two main criteria: i) the existence and extent of the relationship between the subsidized imports and the damage suffered by the domestic production sector; and ii) the comparative significance of that relationship in relation to contributions to the damage from other known factors (...) Consequently, paragraph 5 of Article 15 requires the Investigating Authority to assess whether, in light of the harmful effects of other known factors, the subsidized imports can be regarded as a 'genuine and substantial' cause of the damage sustained by the domestic production sector" (emphasis added)<sup>4</sup>.

In a similar vein, current regulations do not mandate that the imports under investigation be the primary cause of the damage. Notably, as a result of the Tokyo Round in 1979, the requirement previously outlined in the 1967 Antidumping Code (*Kennedy Antidumping Code*) was eliminated. Following this amendment, the only criterion is that imports must contribute significantly to the causation of the damage. Although this regulation is specifically intended for dumping cases, it is applicable here as the requirement for establishing a causal relationship remains consistent in both antidumping investigations and countervailing duty matters.

## 8.2. Other Factors Contributing to the Damage to the Domestic Production Sector

The Authority examined additional factors that may contribute to the preliminarily identified damage (Article 2.2.3.9.4.1 of Decree 653 and Article 15.5 of the SCM Agreement). Based on evidence provided by participants who support the imposition of trade defense measures in this case, the Authority preliminarily identified the following factors that could be contributing to the damage to the domestic production sector:

**8.2.1.** Lack of market access (informal collection).

**8.2.2.** Changes in consumer habits and increases in the price of milk for end consumers.

**8.2.3.** Fluctuations in international prices that enhance the attractiveness of imported products.

**8.2.4.** Volume and prices of non-investigated imports. In this regard, the Authority identified relevant trends but lacks sufficient evidence to draw conclusions about the causal impact of this factor.

## 8.3. Causal Contribution of the Imports under investigation

The analysis conducted to date indicates that there was a significant increase in the volume of subsidized powdered milk imports from the United States during the period of investigation, coupled with a downward trend in the prices of these products. Additionally, a consistent undervaluation compared to the national product has been observed. Simultaneously, it has been established that during this period, various elements indicative of damage to the domestic production sector also emerged. It is important to note that, according to the collected evidence thus far, other factors

<sup>4</sup> Appellate Body Report: European Union – Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan, WT/DS486/AB/R, May 16, 2018, para. 5169.

<sup>5</sup> World Trade Organization: Panel Report, EC – Countervailing Measures on Dynamic Random-Access Memory Chips from Korea, WT/DS299/R, June 17, 2005, para. 7.405. Ibid., para. 7.351.





also contribute to the existing performance issues of national producers. However, the concurrent increase in subsidized imports and the results within the national production sector represent a factor that, reasonably and consistently with the preliminary nature of this stage of the proceedings, allows for the conclusion that the imports under investigation have a causal contribution to the damage observed in the national production sector.

Thus, the imports under investigation would not be the sole or primary cause of the preliminarily identified damage; nonetheless, they would contribute causally to this outcome. This, as previously explained, is a sufficient basis to conclude that a causal link exists under the applicable regulations.

### 9. Provisional Countervailing Duties Applicable in This Case

Based on the aforementioned elements, preliminary evidence was found indicating (i) the existence of subsidies on the imports of the product under investigation, (ii) damage to the national raw milk production sector, and (iii) a causal relationship among these elements.

Consequently, in accordance with Article 2.2.3.9.7.2 of Decree 653 of 2022, and to prevent damage during the investigation period, a provisional measure has been calculated based on the subsidy margin, which would provisionally amount to 4.86%. Therefore, the provisional countervailing duties will take the form of an additional *ad valorem* tax of 4.86% on the applicable tariff for the aforementioned subheadings, as specified in the Trade Promotion Agreement between Colombia and the United States of America. This tax will be levied on the FOB value declared by the importer and will remain in effect for a period of 4 months.

In light of the above, the Directorate of Foreign Trade

#### RESOLVES:

**Article 1.** To continue the investigation initiated by Resolution 192 on July 3, 2024, regarding powdered milk imports originating from the United States of America, 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.

**Article 2.** To impose provisional countervailing duties on powdered milk imports originating from the United States of America, 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.

The provisional countervailing duties will consist of an additional *ad valorem* tax of 4.86% on the applicable tariff for the aforementioned subheadings, according to the Trade Promotion Agreement signed between Colombia and the United States of America. This tax will be levied on the FOB value declared by the importer.

**Paragraph.** The provisional countervailing duties imposed in this article shall not apply to imports that, as of the effective date of this resolution, are already shipped to Colombia based on the date of the transport document. They shall also not apply to imports in the primary customs zone or in a free trade zone, provided they are subjected to the ordinary importation modality within a period not exceeding twenty (20) days from the effective date of this resolution.

**Article 3.** The provisional countervailing duties imposed in Article 2 of this resolution will be applicable for a term of four (4) months, counted from the effective date of this resolution.





**Article 4.** To communicate the content of this resolution to the Embassy of the United States of America in Colombia, as well as to exporters, importers, national and foreign producers, and other known interested parties, in accordance with Decree 1074 of 2015, as amended by Decree 653 of 2022.

**Article 5.** This resolution is not subject to appeal, as it constitutes an administrative act of a general procedural nature, in accordance with Article 2.2.3.9.1.4. of Decree 1074 of 2015, amended by Decree 653 of 2022, and consistent with Article 75 of Law 1437 of 2011.

**Article 6.** This resolution shall come into effect upon its publication in the Official Gazette.

Issued in Bogotá, D.C., on September 16, 2024.

**KINDLY PUBLISH, COMMUNICATE, AND COMPLY.**



**FRANCISCO MELO RODRÍGUEZ**

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