

Law Proposal No. 952/2019 and dairy sector¹

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Abstract – This article is exploratory research that aims to analyze the Brazilian Law Proposal Nr. 952/2019 under the scope of the New Institutional Economics (NIE). In the vision of the NIE, the institutions are the rules of the game and organizations are the players, the interaction between them is that gives shape to institutional change. Brazil has gone through several institutional changes from the decade of 1990 which led to the integration of the internal market for dairy products in the international market, the national productive sector was not prepared for such changes. The state is an organization and may propose institutional changes, as Law Proposal No. 952/2019, which if implemented, will change the institutional matrix of the milk market in Brazil. This Law Proposal restricts the import of milk powder by Brazil for products with at least 70% of the period of validity (shelf-life). This brings more transparency and food safety to the Brazilian consumer, and can also increase the demand for national milk, which must have its high price. Currently, the Law Proposal 952/2019 is at the stage of voting in the Chamber of Deputies.

Keywords: import, Mercosur, NIE.

Projeto de Lei nº 952/2019 e o setor lácteo

Resumo – Esta é uma pesquisa exploratória cujo objetivo é analisar o Projeto de Lei nº 952/2019 sob a visão da Nova Economia Institucional (NEI). Para a NEI, as instituições são as regras do jogo, as organizações são os jogadores, e a interação entre elas é que dá forma à mudança institucional. A partir da década de 1990, o Brasil passou por várias mudanças institucionais que permitiram a integração do mercado interno de lácteos ao mercado internacional, mas o setor produtivo nacional não estava preparado para tais mudanças. Mas o Estado é uma organização que pode propor mudanças institucionais, como o PL nº 952/2019, que, se implantado, mudará a matriz institucional do mercado de lácteos no País. O projeto restringe a importação de leite em pó pelo Brasil para produtos com, no mínimo, 70% do prazo de validade (*shelf-life*). Isso traz mais transparência e segurança alimentar ao consumidor brasileiro e pode aumentar a demanda por leite nacional, cujo preço, por isso, deve subir. O PL está em votação na Câmara dos Deputados.

Palavras-chave: importação, Mercosul, NEI.

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Introduction

For the New Institutional Economics (NIE), institutions are the rules of the game and organizations are as players, the interaction between them is that gives shape to the institutional changes. According to this theory, the state has an important institutional role in the economy.

In Brazil, an institutional change proposed by the Chamber of Deputies, the Law Proposal (LP) No. 952/2019 (Brasil, 2019b), which, if approved, could change the dynamics of the Brazilian market for dairy products.

This LP presented on February 20, 2019, to the Bureau Director of the Chamber of Deputies has as menu: "Determine the ruling regarding the limitations imposed to the Brazilian importer of milk powder over a minimum period of validity of the product" (Brasil, 2019b). The text of the law proposal aims to curb the unfair practice of imports of powdered milk, to the extent that quality controls and possible predatory fluctuations in price for the domestic market, as well as brings to the Brazilian consumer greater food security.

Currently, the milk imported into Brazil has no restriction as to minimum shelf-life or about the restriction of the interval between the date of manufacture and date of minimum validity. It is imported indiscriminately and can enter the country through opportunistic agents, with the period of validity close to its end. Thus, this milk when it arrives at the country is fractioned and used in the raw material of other products, which may cause harm to the Brazilian consumer.

Another consequence of this practice, it is their effect on the domestic market, because it assumes that the increase in demand for imported milk press the national prices down. After all, since the beginning of the decade of 1990, the national milk market is integrated into the international market. This fact is due, mainly, to the process of institutional change, which allowed the economic opening of the country and the creation of Mercosur.

From this period, Brazilian companies started to compete with large businesses and began to face price sometimes distorted the rest of the world (Santos & Barros, 2006). The agri-food chain of milk in Brazil was not prepared for these changes, because the majority of milk producers were and still are small and without conditions to deploy more efficient production systems, to maximize their profits and have a standard product with its resources (Assis et al., 2016).

In this context about the milk market in Brazil, the present study is justified by the assumption that the potential approval of the LP No. 952/2019 (Brasil, 2019b) can generate real change in the current Brazilian model of imports of milk powder, as raising transaction costs and impede or reduce imports of milk powder by the country. Thus, the overall objective of this research is to analyze, under the perspective of the NIE, the effects of a possible deployment of LP No. 952/2019 in the national dairy market.

Theoretical background

New Institutional Economics

The new institutionalism is a reaction to the neoclassical economics as regards the lack of empirics of the concept of institutions. Coase, North, and Williamson broadened this concept concerning the orthodox economic theory. The idea that every transaction has a cost was presented in the seminal article of Coase titled "*The Nature of the Firm*", in 1937 (Coase, 1937). The proposition of the concept of transaction costs proposed by Coase would have launched the basis for the NIE (Cavalcante, 2014).

In the mid-20th century, to understand the firm, it was necessary to consider the understanding of the economy, according to the economists of his time. For them, the economic system worked alone, without the need for central control and the necessity of research. The entire range of human activity and their needs were based on supply and demand, by an

automatic process, elastic and responsive. The Economists thought that the economic system was coordinated by the price mechanism and the society would not be an organization and, yes, a body, this theory goes against the economic planning (Coase, 1937).

North (1993) defines the institutions as the rules of the game and organizations like the players. The institutions are the rules that the human being imposes on human interaction, they consist of formal rules (Constitution, statutes, laws, regulations) and informal (conventions, standards, codes of conduct). Organizations are defined as individual groups that come together for a common goal. Firms, trade unions, and cooperatives are examples of economic organizations; political parties, Senate and regulatory agencies are examples of political organizations. The interactions between organizations and institutions is that shape the institutional changes.

This interaction creates competition in the economic sector and force organizations to invest in knowledge and skills to survive. The type of knowledge and individual skills and the type of organization that will shape the perceptions about the opportunities and, consequently, change or increase the institutions. The structure of the institutions determines the incentives that will dictate the type of knowledge and skills necessary for the maximum *pay-off*, while the perceptions come from the mental training of players. The economic scope and external relations of the institutional fabric are an overwhelming change in institutions (North, 1993).

The behavioral assumption of limited rationality does not imply that individuals are irrational, just suggest that they have computational limitations, not reaching the optimal results, since these individuals are not able to perform all necessary calculations to a great choice (Simon, 1979, cited by Cavalcante, 2014).

Cavalcante (2014) also mentions North (1991): the explanation that does not capture the economic system in its completeness, the decisions of individuals require existing rules out of their minds, relying on institutions. These rules are created by individuals to serve as a restriction on the action itself, allowing the social interaction and respect the rules because there are sanctions involved in its fulfillment. This is the vision that describes the economic agent as individual opportunistic, which can only have their act purely self-interested braked by the sanctions imposed in its greater part by the state.

Fiani (2003) analyzes the work of North (1990), for which he cites the institutional role of the state in the economy is beyond the simple relationship between the ruler in search of tax revenue and the society that demand the definition of rights and provision of public goods, including more representative bodies such as parliaments, general states, and courts, which result from the need of the ruler to negotiate the increase of its tax revenue, which required offer a counterpart, in-services, to social groups. This process leads to the emergence of a more complex structure composed by legislators who interact among themselves and with their representatives.

Thus, the state, through formal political institutions, in search of a better performance of the economic system, not only through security, more especially, defines the rights of organizations.

The market for imports of milk

The agri-food chain of milk is of great economic importance for Brazil, in 2017, the productive sector in Brazil had 1,176,295 farms with cows 11,506,788 lactating cows milked daily and produced 30,156,279 thousand liters of milk in the year (IBGE, 2017). These data show that Brazil has a low milk production per farm and a low yield per cow.

Even having one of the worst yields in the world, Brazil is the 4th largest producer

of milk in the world. The quantity of exported milk products is very small and the country is a large importer of dairy products, since the great internal consumption. In the year 2018, Brazil imported the value of US\$ 485,748 thousand while exported US\$ 58,309 thousand closing the trade balance in the sector amounting to US\$ -427,439 thousand (Indicadores..., 2019).

As can be seen in Figure 1, in the last four years, from 2016 to 2019, there was an increase of 30.94% in Brazilian imports of milk when compared with the period from 2012 to 2015. Already exports had the opposite direction, decreased by 40.74%, this behavior has accentuated the balance of trade deficit of dairy in 71.35% over the same period. Only in 2019, the Brazilian trade balance was -972 million liters (milk equivalent) (MilkPoint, 2019a). The increase in trade deficit brings a concern to the state, given that Brazil has the potential to meet its internal demand and even export the product.

From 1993 to 2001, Brazilian imports of milk has already proved to be influenced by international and domestic prices, while the internal market for dairy products as well integrated into the external, with quick

adjustments in the short term. The Brazilian imports show influenced both by international price and the domestic price since the prices of imports provide a ceiling for the domestic price. When we analyzed the supply of imported milk, he had a negative influence on the price paid by Brazil (Santos & Barros, 2006).

The Mercosur block is responsible for most dairy exports to Brazil. Study of the interaction of the block with Brazil in the period from 2000 to 2016. Lima Filho (2017) found price (external) and demand (imports of milk powder) relation elasticity of -2.4044. Lima Filho (2017) cites, in his work, other authors who have confirmed this relationship in previous periods: -0.57 Oliveira (2006); -1.56 Santos (2004); -0.10 Diniz (1976); and -0.60 Martins (1976). The price of milk powder in the country of origin (Uruguay and Argentina) is the main factor of interference in Brazilian imports of the product. The greater integration gave himself with Uruguay, a country without import quota. The domestic price also had a directly proportional relationship to the increase in imports, the price-elasticity found by Lima Filho (2017) was 1.49.

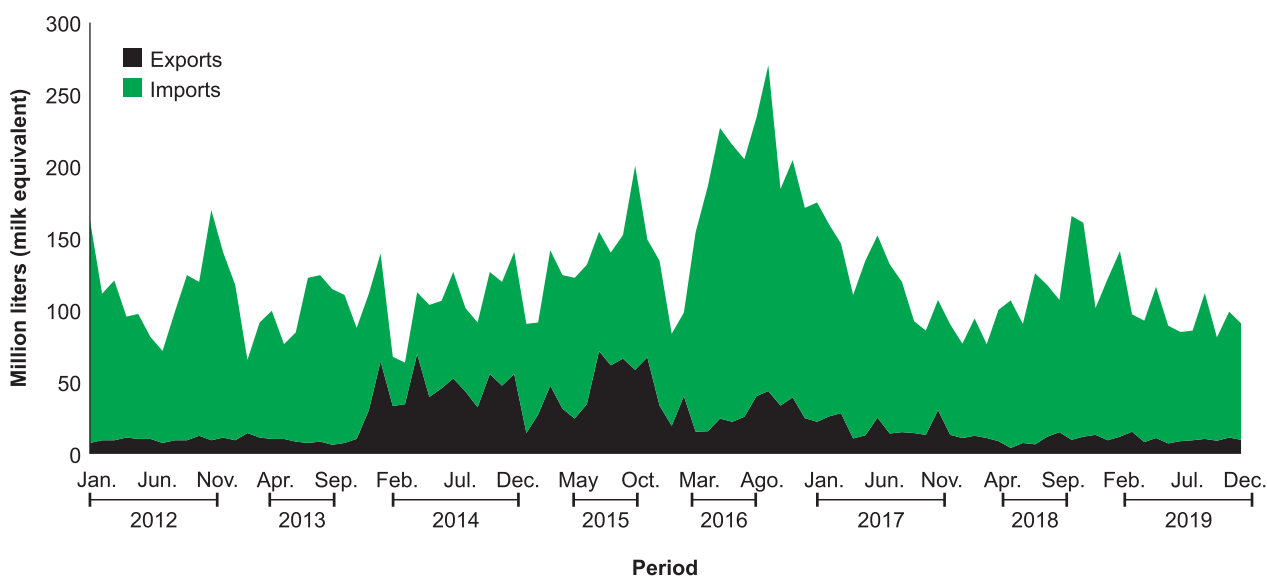


Figure 1. Graphic exports and imports of Brazilian milk.

Source: elaborated with data of MilkPoint (2019a).

In addition to the increase of competition, Martins (2004) cites distortions in the international market of milk, the marketing of half of the milk traded in the world has a high degree of subsidies. He is the most subsidized product in the world followed in bovine meat and rice. The same author affirms that the protectionism depresses the international prices and the scenario of Brazilian exports of dairy products. Which highlights the need for substantial reform of this market.

Another distortion in the international market for dairy products is dumping practice, this unfair practice causes among other factors:

- (a) reducing the price paid to the producer;
- b) artificial staking of prices in the domestic market;
- (c) instability of prices to producers and consumers, making the planning of the activity;
- (d) inhibition of increased domestic supply aimed at answering the formal market and institutional;
- e) disincentive to development, specialization and self-sustained growth of dairy cattle;
- f) increase in the level of unemployment in the livestock of milk;
- g) unequal competition, generating bankruptcies and serious difficulties for cooperatives and companies of dairy products;
- h) negative effects on the Brazilian trade balance (Martins, 2004, p.42, our translate).

This mechanism consists basically when an exporter down international prices lower than those prevailing in the internal market exporter.

An emblematic case of this practice could be observed in January 2001, when the Secretariat of the Chamber of Commerce (Camex) of the Brazilian Ministry of Economy found that there was dumping on exports to Brazil of milk powder not fractioned originating in New Zealand, the European Union and the United States, in the period from 1998 to 1999 and that there was evidence of damage to domestic raw milk producers. Comparing the prices paid to Brazilian producers of raw milk, in the period of research with the previous period, there was a decrease of 21.1% in US dollars (USD) and 1.4% in Brazilian reais (BRL), while

the billing of national dairy cattle sector fell 19% (Brasil, 2001). With this proven, there fixing of antidumping duty of 16.9%, 14.8%, and 3.9%, for 5 years on imports from Uruguay, the European Union (except the company Arla Foods) and New Zealand, respectively. These measures have had effects on the fall of imports of milk powder by Brazil, already in 2002, there was a reduction of 35% on imports of the product from New Zealand and European Union (Siqueira & Almeida, 2011).

In 2001, Uruguay signed a commitment to the Camex Resolution No. 10 of 3 April 2001 suspending anti-dumping duty imposed by resolution of 2001, for imports of milk from Uruguay and grant price undertaking with companies in this country of Uruguay (Brasil, 2013). Already the relationship with New Zealand and European Union was different, in 2006 the measures were reviewed at the request of the Confederation of Agriculture and Livestock (CNA), an entity that represents the Brazilian farmers, and the Department of Trade Defense (Decom) concluded that the investigated were still practicing dumping. After the revision, in 2007, New Zealand and 2008, the European Union stopped exporting milk powder to Brazil (Siqueira & Almeida, 2011).

In 2013, the Camex publishes a resolution extending the definitive anti-dumping duty, for a period of up to 5 (five) years, applied to imports of powdered milk, whole or skimmed milk, not dispensed, originating in New Zealand and the European Union because they concluded that the revocation of antidumping duties applied would very probably, the continuation/resumption of dumping (Brasil, 2013). The main Brazilian milk-producing states are vulnerable and very sensitive to variations in the price of imported milk powder. In consequence, they end up being penalized by public policies and market failures, which reduces the earnings of agents of the chain. Even being sensitive to the external market and even assuming international prices are subsidized, these states are competitive

and efficient in the production of milk powder (Martins & Araújo, 2004).

Faced with these difficulties and of tariff and non-tariff barriers that importers impose for their markets and, besides the fact that the major world exporters of milk products have their production subsidized by their governments, Brazil cannot be a major exporter of milk. Although, have structure and can become. However, it is necessary, first, that it meets its domestic demand. To ensure that this demand is supplied the government must adopt as subsidies: lines of credit, reduction of taxes and other actions to stimulate the productive chain. It is also necessary to create and invest in research and studies, as well, have products with added value (Assis et al., 2016).

Law Proposal No. 952/2019

According to Krugman & Obstfeld (2001) cited by Assis et al. (2016), strategic business policies are policies that stimulate exports and discourage imports. These strategies can be tariff and non-tariff measures.

On the other hand, non-tariff barriers have a much greater scope of options, and given the Institute of Studies on Trade and International Negotiations, these barriers can be defined as 'restrictions on the entry of imported goods which have as a foundation technical requirements, health, environmental, labor, quantitative restrictions (import quotas and contingency), as well as policies of customs valuation, minimum prices and price bands' (Leite, 2018, p.8, our translate).

These non-trade barriers can be divided into 4 groups: the first is composed by import quotas and administrative methods; the second covers the function of fees or taxes that may be the application of previous deposits on imports, anti-dumping measures, countervailing, export subsidies, among others; the third, related to the

macroeconomy, involves the government sector, as the permission from the existence of monopolies, international policies related to exchange rate and interest rate, immigration policies, national taxes and among others; the fourth, and most important, also known as TBTs (Technical Barriers to Trade), these are concerning the procedures of products. This area is related to inspections and costs with documents and press releases. On the other hand, these measures are related to the settings of the environment, the health measures in production and manufacturing, quality and safety standards, packaging, among others. These barriers have increased due to the need for preserving metrics such as public health, environmental protection and national security (Leite, 2018).

Brazil is included in a protectionist perspective. The country has, in recent years, liberal gains in respect of the tariff barriers. However, non-tariff barriers remained growing. The implementation of these measures should be thoroughly evaluated, because they may have positive or negative results for a state, since it can generate the narrowing of competition, leading to an increase in prices, a negative externality (Leite, 2018).

The LP No. 952/2019 (Brasil, 2019b) is an institutional change proposed by the Brazilian Congress after interaction between various actors of the chain. The regulation and supervision of this law is also the state (executive), as can be seen in its text:

Article 1st. Is conditional upon the requirement of a minimum period of validity stipulated in 70% of the time of shelf (shelf life or interval between the date of manufacture and date of validity) for milk products milk powder, classified in the NCM⁶ 0402.10.10, 0402.10.90, 0402.21.10, 0402.21.20, 0402.29.10 and 0402.29.20 to be internalized by importers in Brazil.

⁶ The Mercosur Common Nomenclature (NCM) is a commodity categorization convention adopted since 1995 by Uruguay, Paraguay, Brazil and Argentina and based on the Harmonized System.

Sole Paragraph: The Executive Power of the Union shall establish specific regulations with customs rules for supervision and inspection of the products mentioned to ensure the implementation of this law obeying the deadlines and the procedures of the Brazilian customs system.

Article 2nd. The Law will enter into force, if approved, on the date of its publication (Brasil, 2019b, our translate).

The law brings justifications, which underlie the deployment of the shelf life of 70% which is justified in Brazilian Law No. 8,078 of 11 September 1990, the Brazilian Code of Consumer Protection. Currently, the validity period of the average milk powder is approximately 3 years and the whole milk from 12 to 18 months. It can be imported by any importer agents in Brazil at any date before its validity end. This legislation allows a breach to the opportunistic behavior of some importing agents (Brasil, 2019b).

According to the draft law, similar restrictions are already found in the legislation of some countries. India restricts the importation of foods with less than 60% of shelf life. Colombia restricts the entry of powdered milk with less than 6 months of validity. Important importer countries of milk: Pakistan, Indonesia, Poland, the Czech Republic, and the United Arab Emirates regulate its internal market based on the validity of food products imported (Brasil, 2019b).

In the year 2005, 29.64% of milk exported by Brazil suffered some type of non-tariff barrier. For countries that have imposed many non-tariff barriers such as Japan, Colombia, Mexico, Peru, the European Union, and Canada, Brazilian exports were negligible. Most of the restrictions were related to characteristics in the protection of human and animal health (Viegas, 2006).

Methodology

This was exploratory research of basic nature which according to Gerhardt & Silveira (2009) aimed to generate new and useful knowledge, but without practical application provided. The choice of exploratory research was strategic, because, well, it might generate inputs for the analysis of the effects of the adoption of a law proposal.

Regarding the procedure, a literature review was done from the search of documents and references published on imports of milk powder and New Institutional Economics.

According to Gerhardt & Silveira (2009), there are scientific studies that rely solely on this method, seeking theoretical references published to gather information or prior knowledge about the issue in respect of which it seeks to answer. Therefore, it has been a survey of theoretical references already analyzed and published by written and electronic media, such as books, scientific articles, pages of web sites.

In this study, the search for references occurred in scientific articles in the Scielo (2020) electronic platforms and Google Scholar (2020). The words searched were combinations that refer to the central topic, with the use of filters for domestic production and in the Portuguese language, except for the texts related to NIE, which were obtained during lectures at the Postgraduate Program in Agribusiness, at Federal University of Goiás (UFG) (verbal communication)⁷. Also, bibliographic references obtained in citations read in articles of this initial survey were used.

Websites of Camex (Brasil, 2020) and the Brazilian Chamber of Deputies (Brasil, 2019a) have contributed to the research through the provision of documents. Socioeconomic data and market were raised through the online platforms MilkPoint Market (MilkPoint, 2019a, 2019b) and Brazilian Institute of Geography and Statistics (IBGE, 2017).

⁷ Information provided by Cunha & Wander in lectures given at a Course at Postgraduate Program in Agribusiness, Federal University of Goiás, in 2019.

Results and discussion

The agri-food chain of milk is of great economic and social importance for Brazil, but the country is inefficient in milk production (IBGE, 2017). From a policy of economic openness, important changes have happened from the 1990s in the milk market (Santos & Barros, 2006) and the chain was not prepared for this change (Assis et al., 2016).

It is known that milk is a product widely subsidized by the world (Martins, 2004), the international price may be artificially low, this distortion increases the quantity of milk imported by Brazil depressing prices and hurting domestic producers.

The concern is currently in the country, in the period from January 2016 to November 2019 the country imported 1.31 billion liters (milk equivalent) more than in the period from January 2012 to November 2015. During this same period, the balance of trade surplus of dairy had negative growth of 72.97% when compared with the previous period (MilkPoint, 2019a).

The Mercosur block is responsible for most of such imports, mainly to Argentina and Uruguay and studies show a growing integration over time. The price of milk powder in the country of origin, the main factor of import, but the domestic price also in the quantity imported (Lima Filho, 2017).

Currently, without any requirement as to the minimum shelf life, opens a situation in which national importers are worth it if of opportunism to import the product of international companies below market price to give vent to the volume of the product with a term of validity close to its expiration date (Brasil, 2019b). This practice can cause damage to the Brazilian consumer, see that the milk, when it comes to the country is fractioned and repackaged for sale or used in the composition of other products with the expiration date set for the new product.

The approval of the LP No. 952/2019 eliminates the opportunism of those agents and

brings to the Brazilian consumer, greater food security regarding the consumption and greater transparency in trade of powdered milk and its derivatives. In this way, this institutional change, as proposed by the state seeks to protect its society.

The state uses the institutions for the benefit of national organizations compared to international ones. With its institutions, the country benefits national organizations for economic growth and, consequently, increase their gains in tax revenue.

This institutional change will also increase the costs of milk powder imported into Brazil since the share of imported milk with expiry date next to the salary will no longer be marketed. Thus, the importation of milk should decrease, bringing an increase in demand for national milk, which is expected to have its price adjusted upwards.

The impact of this adjustment cannot be verified in this study since the data on the quantity of the imported product in this range of validity (below 70% of the validity time) could not be obtained yet.

Consistent with the theory of North (1993), the creation and regulation of the draft law by the state, is an example of that interaction between organizations and institutions is that creates form and institutional changes. This finding is contrary to the theory of neoclassical economists, whose vision of the economic system was that he worked alone. Thus, this study shows, under the New Institutional Economics, how the research and the institutional control are imperative to the proper functioning of the economy.

Final considerations

The fact that Brazil, after the year 1990, has passed by major institutional changes, which allowed integration of the market of skimmed milk powder and the fact that the domestic producers of milk were not prepared for this change, made with the national organizations in interaction

with the existing institutions, proposed a new institutional change, through the state, the LP 952/2019 (Brasil, 2019b).

To be implemented, the LP must be approved by the Brazilian National Congress and sanctioned by the Brazilian President, and also, therefore, having to the regulation of executive power.

The approval of LP must restrict the importation of milk powder by Brazil with the shelf life below 70% because this measure addresses the opportunistic behavior of some importers and brings greater transparency and food safety to the Brazilian consumer.

The measure also reduces the import of the product and benefit the national productive sector, which must have their increased demand, consequently, the high price. However, in this study, the lack of data on the quantity of milk imported with these characteristics (below 70% of shelf-life), it could not predict what will be the impact of this measure. It is recommended that further study to try to quantify this impact.

Measures such as those relating to the export of milk and other products are recurrent in Brazil. Even so, it is recommendable to verify if the measure is following the guide, for recognition of conformity assessment procedures of Mercosur. A global analysis should also be considered so that the measure does not affect international trade.

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