

COMMISSION IMPLEMENTING DECISION (EU) 2022/2070**of 26 October 2022****to not suspend the definitive anti-dumping duties on imports of mixture of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America imposed by Implementing Regulation (EU) 2019/1688**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union ⁽¹⁾ ('the basic Regulation'), and in particular Article 14(4) thereof,

After consulting the Committee established by Article 15(2) thereof,

Whereas:

1. PROCEDURE

- (1) On 8 October 2019, the Commission, by Implementing Regulation (EU) 2019/1688 ⁽²⁾ ('the original Regulation'), imposed definitive anti-dumping duties on imports of mixtures of urea and ammonium nitrate ('UAN' or 'product concerned') originating in Russia, Trinidad and Tobago and the United States of America ('countries concerned').
- (2) In May 2021, Copa-Cogeca ('the applicant'), an association of users of the product concerned, submitted information relating to an alleged temporary change of market conditions which occurred after the imposition of the definitive measures. The original investigation period ('the original IP') was from 1 July 2017 to 30 June 2018. The applicant alleged that such a temporary change would justify the suspension of the anti-dumping duties currently in force, in accordance with Article 14(4) of the Regulation (EU) 2016/1036. Other associations, i.e. AGBP (Association Générale des Producteurs de Blé) and Interore (International Ore & Fertilizer Belgium SA) also provided evidence in support of suspending the anti-dumping duties. These submissions did not contain all the necessary elements and evidence relevant for the Commission to proceed further with the analysis. The Commission engaged with the applicant to gather additional evidence supporting its claim of a temporary change of market conditions.
- (3) On 16 November 2021, and in view of the evidence available, the Commission decided to request AGBP, Copa-Cogeca and Fertilizers Europe to provide additional information pertaining to a period after the original investigation period and, more specifically, information about prices, Union demand and performance of the Union industry during the third quarter of 2021 in order to examine and assess the impact, if any, of the alleged changed circumstances on the Union market and whether injury would be unlikely to resume as a result of the suspension.
- (4) Following these submissions, Copa-Cogeca (incorporating some of the arguments raised by AGBP) and the Union industry were given the possibility to provide comments.
- (5) Based on the above information, the Commission examined whether such suspension was justified. The elements considered are summarised here below.
- (6) On 20 July 2022, the Commission disclosed its findings to AGBP, Interore, Copa-Cogeca and Fertilizers Europe. All parties were granted a period within which they could make comments subsequent to this disclosure. Comments were received from Interore, Copa-Cogeca, and Fertilizers Europe.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Commission Implementing Regulation (EU) 2019/1688 of 8 October 2019 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America (OJ L 258, 9.10.2019, p. 21).

2. EXAMINATION OF CHANGED MARKET CIRCUMSTANCES

- (7) Article 14(4) of the basic Regulation provides that, in the Union interest, anti-dumping measures may be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of such suspension. The Commission will examine those elements below.

2.1. Analysis of changes in market conditions

- (8) The alleged temporary changes of market conditions consisted of a scarcity of supply on the Union market since the volume of imports decreased and the Union industry reduced its production. The temporary imbalance between supply and demand led to a sharp increase in prices. The analysis covered two parts, i.e. first a comparison between the market conditions in the original IP and in 2021 and, second, an update on the most recent developments in 2022 for which data were available.
- (9) Since the imposition of the measures, Eurostat statistics covering up to the end of 2021 indicated that UAN imports sharply decreased. Imports from the countries concerned decreased by 69 % compared to the original IP and were only partially replaced by imports from other countries. This led to a decline of imports from all origins by almost 60 % in comparison to the volume imported in the original IP. The market share of imports also decreased from 43 % to 19 %, based on the assumption that demand in the Union remained stable, as provided by Copa-Cogeca. This created a gap in supply of 1,14 million tonnes, when comparing original IP and 2021.
- (10) In their comments on the disclosure, Copa-Cogeca pointed out that imports increased in the first half of 2022 by over 250 % when compared to the first half of 2021. The party noted that this increase coincided with a dramatic decrease in the Union production due to the factors discussed below. As far as imports are concerned, the data available to the Commission confirms this increase.

Table 1

Import volumes

(in '000 tonnes)

	IP (1 July 2017 to 30 June 2018)	2018	2019	2020	2021 H1	2021 H2	2022 H1
All imports	1 927	1 998	1 322	1 027	294	499	753
Imports from Trinidad and Tobago	368	361	401	418	172	217	332
Imports from Russia	613	688	314	90	15	130	320
Imports from the United States	742	890	222	-	-	-	37
Other Imports	204	59	385	519	107	152	64

Source: the original Regulation, Eurostat.

- (11) With respect to the possible future developments in imports, the Commission observed that the United States of America ('US') seems to have concentrated its UAN sales on the domestic market since 2020. Imports from Trinidad and Tobago do not seem to be affected by the imposition in October 2019 of the definitive anti-dumping measures. They continued to enter the Union in significant quantities. In 2021, these imports represented 50 % (389 000 tonnes) of all imports to the Union. In the first four months of 2022, Trinidad and Tobago exported to the Union more than 234 000 tonnes, which is 54 % more than in the same period of last year (ca. 152 000 tonnes). Thus, it appears that UAN from Trinidad and Tobago is indeed still entering the Union in significant quantities.

- (12) As regards imports from Russia, announcements and sanctions gave us reasons to believe that any increase in Russian UAN imports was highly unlikely. Indeed, on 4 March 2022, Russia's Trade and Industry Ministry announced that it 'recommend[ed to] Russian producers to temporarily suspend export shipments of Russian fertilisers until carriers resume (regular) work and provide guarantees that Russian fertiliser exports will be completed in full.' ⁽³⁾
- (13) Furthermore, the main shareholders of major Russian UAN producers such as EuroChem's Mr Melnichenko, and its CEO, Vladimir Rashevsky; Uralchem's Mr Mazepin; and ACRON's Mr Moshe Kantor, are on the EU's sanctions list. While the individual sanctions have not directly affected these Russian companies, it may have a potential impact on imports coming from Russia. It is worth noting, however, that imports from Russia continued at very significant levels (practically without decline) in 2022. Indeed, the first half of 2022 saw imports increase to import levels of 2019. In June 2022 alone, the volume of imports from Russia was greater than throughout the entire first half of 2021.
- (14) Belarus has been another source of Union imports, but this was also discontinued due to the fact that the main Belarussian producer, Grodno Azot, figures on the EU's sanctions list since 2 December 2021.
- (15) On 12 March 2022, the Ukrainian Agrarian Policy Minister Roman Leschenko also announced a ban on exports of fertilisers – including UAN.
- (16) Based on the above, the Commission concluded that it could reasonably be expected that Trinidad and Tobago will remain the main source of imports of UAN in the Union.
- (17) When looking at the data for 2021, given the reduction of imports and the stable demand estimated in recital (9), the Union industry should have increased its sales by around 31 % in comparison to their sales in the original IP, which would correspond to additional 821 000 tonnes. However, according to the information gathered on the Union industry's supply, whilst production increased substantially following the imposition of measures, such an increase was not sufficient to compensate fully for the drop in imports. Union market sales of the Union industry increased on average by around 17 %, which corresponds to around 450 000 tonnes. Given that, as mentioned in recital (9), the demand of UAN in the Union remained relatively stable since the original IP, the gap in supply created by the lower volume of imports is not being completely filled by the increase of Union industry's sales, leading to an estimated imbalance between supply and demand of around 371 000 tonnes in 2021.
- (18) As to the data for 2022, as provided by Copa-Cogeca in their comments on disclosure, the Union industry appears to have dramatically cut their production. The supply gap this has created was too large for the increase in imports in the first half of 2022, discussed in recital (10) above, to compensate for.
- (19) It can therefore be concluded that, after the original investigation, there has been a temporary imbalance between supply and demand on the Union market.
- (20) Union UAN market price ('UAN price') was established using the average price of UAN 30 ex-tank Rouen, which is the most widely recognised representative market price in Europe, and France is the largest UAN consuming country in the European Union. UAN price in the Union increased sharply in the second half of 2021. Prices have more than doubled in these six months and were in December 2021 almost four times higher than during the original IP. The average UAN price that was 154 EUR/tonne during the original IP, reached 598 EUR/tonne in December 2021.
- (21) The main reason for this price increase seems to be the rise in natural gas prices that represented, according to the information collected among Union producers, a substantial proportion of UAN's costs of production. Since the original IP, the average natural gas prices in the Union increased by almost 400 % from 6,53 USD/MMBtu ⁽⁴⁾ to 32,23 USD/MMBtu in the last quarter of 2021.

⁽³⁾ <https://www.reuters.com/article/ukraine-crisis-russia-fertilizers-idINL2N2V71JG>

⁽⁴⁾ MMBtu: Metric Million British Thermal Unit.

- (22) Imports prices of UAN showed an increase too, but to a smaller extent than the Union industry's prices. During 2021, prices from Trinidad and Tobago and Russia have consistently been lower than the published UAN market prices. In the first two quarters of 2022, this is still the case except for Trinidad and Tobago that came just slightly above published UAN market prices in the second quarter 2022.

Table 2

Import and Rouen UAN 30 ex-tank published prices

(in EUR)

	IP (1 July 2017 to 30 June 2018)	2021 Q1	2021 Q2	2021 Q3	2021 Q4	2022 Q1	2022 Q2
Imports from Trinidad and Tobago	140	166	229	222	323	569	700
Imports from Russia	126	147	N/A	269	302	483	451
Imports from the United States	124	N/A	N/A	N/A	N/A	N/A	653
Other imports	129	164	220	253	303	577	547
Rouen (France) UAN 30 ex-tank	154	255	237	318	591	695	689

Source: the original Regulation, Eurostat, and Fertecon.

- (23) As noted in recitals (17) and (18), the supply on the EU market has not been able to cope with the demand that is estimated to be relatively stable. This, together with a large increase in the raw material costs, has likely caused prices to increase.
- (24) This increase in UAN price is putting a financial burden on users since UAN cannot be easily replaced with other nitrogen fertilisers. UAN is liquid and farmers buying UAN are subject to a lock-in effect because of the necessary equipment used for distributing this liquid. Farmers using other nitrogen fertilisers need different equipment. Moreover, the quantity of UAN needed by farmers is also inelastic. During the plant cycle, farmers have a certain flexibility about the time of using UAN, but they cannot reduce the overall UAN quantity too much without risking that harvest and quality decrease.
- (25) Based on the reasons set out above, the Commission concluded that there is a temporary change in market conditions since the original IP in the sense of supply not meeting the demand and higher prices.
- (26) Following disclosure, Interore and Copa-Cogeca repeated their claim that because of the high gas prices in the Union, the Union industry did not increase its production to replace the imports and therefore the users of UAN needed the imports from the US and Trinidad and Tobago. Furthermore, Copa-Cogeca claimed that there is a lack of competition on the Union market.
- (27) As set out in recital (25), the Commission acknowledged that the supply could not meet the demand and prices of UAN had increased. As Copa-Cogeca did not bring any evidence supporting the lack of competition, this claim was rejected.

3. LIKELIHOOD OF RESUMPTION OF INJURY

- (28) The analysis of the additional information requested by the Commission to Fertilizers Europe, which was the complainant in the original investigation, to examine if injury would be unlikely to resume as a result of the suspension, pursuant to Article 14(4) of the basic Regulation, showed that the Union industry is currently still in an injurious situation.

- (29) Despite the spike in UAN prices, the parallel increase in natural gas prices had a major negative impact on the profitability of the Union industry. Fertilizers Europe provided data for the first three quarters of 2021 on costs of UAN sold, the ex-work prices as well as profitability figures for Union producers representing 65% of the Union industry. This data showed a clear downward trend in profitability, resulting in a lossmaking situation of - 9% on average in the third quarter of 2021.
- (30) In order to update its findings, the Commission has also made simulations on the development of profitability of the Union industry, should the current measures be suspended. This update was done by using trends in natural gas prices (by far the biggest cost driver) and UAN price between the first quarter of 2021 and the second quarter of 2022. These trends were used to update the actual costs of production and the corresponding turnover of the Union Industry to reflect their situation up to the second quarter of 2022. This update showed that the lossmaking situation of the Union industry in the third quarter of 2021 has continued in the first half of 2022.
- (31) Moreover, based on the comments on the disclosure, it is clear that the actual situation of the Union industry is worse than predicted based on the simulation. Whilst the simulation presupposed steady production and sales of the Union industry, a collapse of the production and sales of the Union industry in 2022, as presented by Copa-Cogeca, would only aggravate the situation of the Union industry. The reason for this is the development of natural gas prices and UAN prices. UAN price developed positively for a while and reached their peak in March 2022 (875 EUR/tonne). UAN price then started to fall to reach 595 EUR/tonne in June 2022. The Commission does not have any indication that UAN prices will increase in the coming months. By contrast, natural gas prices have remained at a high level in the last quarter of 2021 and the first two quarters of 2022 (on average 32,34 USD/MMBtu). While there was a dip in natural gas prices in May (29,8 USD/MMBtu), they were on the rise thereafter. In June, they were again at 34,4 USD/MMBtu and the outlook is a further even more substantial increase at prices above 50 USD/MMBtu ^(*).
- (32) Under these circumstances, the Union producers were not only unable to increase production to fully compensate for the imports lost in 2021, but they had to further limit the production, as evidenced with a number of partial closures of production lines. In their comments on disclosure Copa-Cogeca itself noted that the prices of UAN in September 2022 were unable to cover the cost of gas that is required to produce UAN. With only part of variable costs already above the sales prices of UAN on the Union market and fixed costs per unit of production significantly increased due to the drop in production, it is undisputed that the Union industry was still suffering material injury.
- (33) Following disclosure, Fertilizers Europe repeated that the gas price in the Union was expected to remain high in the fourth quarter of 2022 and that the Union industry expected to suffer injury from imports.
- (34) Following disclosure, during a hearing, Copa-Cogeca commented that, for its assessment of likelihood of resumption of injury, the Commission should analyse the sales and profitability of the Union industry after the initial submission of Copa-Cogeca, i.e. from July 2021 onwards.
- (35) In this respect, the Commission noted that a decision to suspend anti-dumping measures cannot be a static exercise. The Union market of UAN has shown to be very volatile in the period after the initial submission of Copa-Cogeca, affecting the assessment of the changed market conditions and the likelihood of resumption of injury. The information initially provided by Copa-Cogeca was therefore considered to be outdated and additional information was deemed to be necessary. The additional information obtained from the Union industry showed that Union producers were suffering financial losses. Indeed, Copa-Cogeca acknowledged that the Union industry is suffering injury in 2022. In their comments on disclosure Copa-Cogeca itself notes that '[a]s far as the Union industry is concerned [...] its sales should have dropped dramatically in 2022' and that '[u]nder current market conditions, it is therefore not profitable to process natural gas into UAN. It is thus logical that almost all EU UAN facilities have been idled.'

(*) Based upon the price of Dutch TTF Gas futures, which is the delivery price at the Title Transfer Facility in the Netherlands. Dutch TTF is also the market index is used by the World Bank to calculate historical gas price.

- (36) In addition, during a hearing, Copa-Cogeca claimed a lack of transparency and representativeness of the profitability data provided by the Union industry. As stated in recital (29), the Commission did obtain data showing a loss-making situation of the cooperating Union producers, representing the majority of Union production. This profitability figure was based on the turnover and costs of UAN of the Union producers. Since this information was confidential, only an aggregated figure for all cooperating Union producers could be disclosed. Moreover, as noted in recitals (32) and (35) above, Copa-Cogeca itself does not seem to contest that the Union industry is suffering material injury.
- (37) Following disclosure, Copa-Cogeca claimed that the continuation of measures would be against the Union interest and would have a negative effect on the food production in the Union. The Commission recalled that under Article 14(4) of the basic Regulation measures may be suspended in the Union interest only if injury would be unlikely to resume as a result of the suspension. Given the situation of the Union industry in September of 2022, as acknowledged by Copa-Cogeca in their comments on disclosure summarised in recitals (32) and (35) above, the Union industry continued incurring financial losses and thus injury would be likely to aggravate in case measures would be suspended, the conditions for suspension were not met, and the Commission did not consider it necessary to evaluate the Union interest under Article 14(4) of the basic Regulation.
- (38) Copa-Cogeca alleged that protective measures are unnecessary given that the Union industry is not in the position to produce any UAN currently as the gas price is much higher than the UAN price and consequently the UAN output in the Union has dropped considerably.
- (39) However, the Commission noted that Copa-Cogeca provided data showing that there is still production of UAN in the Union and that the Union industry is suffering material injury. Therefore, this claim was rejected.

4. CONCLUSION

- (40) Market conditions have temporarily changed in the sense that there is insufficient supply of UAN currently on the Union market at affordable prices to meet the steady demand. This is mainly because imports of UAN have decreased significantly and the Union producers cannot fully compensate for the lost import volumes, because of a large increase in the cost of production.
- (41) Indeed, the driver behind the high current UAN record prices are the current record high natural gas prices. Gas is the main raw material for the production of UAN. These extreme gas prices plunged the Union industry into losses in the third quarter of 2021. This increase in costs could not be passed on to customers for two reasons. First, due to the flexibility noted in recital (24), farmers decided to postpone their purchase of UAN to the fertilising (spring) season. Second, because of the continuing price pressure from imports, as shown in Table 2 above. Furthermore, as acknowledged by the parties, under current market conditions, the Union industry is unable to produce and sell UAN at a profit and thus a significant part of its production capacity is idle. There are also indications that suspension would aggravate further the situation of the Union industry. Dumped imports at low prices from the countries concerned, notably Trinidad and Tobago, would lead to further pressure on the Union industry's prices and the ensuing risk of a price erosion on the Union market.
- (42) Given that the examination of post-IP developments showed that the Union industry still suffered from an injurious situation, the Commission could not conclude that market conditions had temporarily changed to an extent that injury would be unlikely to resume as a result of a suspension pursuant to Article 14(4) of the basic Regulation. This decision is without prejudice to the Commission's right to take a decision pursuant to Article 14(4) of the basic Regulation, should the situation change in the future.
- (43) Therefore, the Commission decided not to suspend the anti-dumping duties on imports of mixture of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America imposed by Implementing Regulation (EU) 2019/1688,

HAS ADOPTED THIS DECISION:

Article 1

The conditions to suspend the definitive anti-dumping duty imposed by Article 1 of Implementing Regulation (EU) 2019/1688 on imports of mixture of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America in accordance with Article 14(4) of the Regulation (EU) 2016/1036 are not met.

Article 2

This Decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 26 October 2022.

For the Commission
The President
Ursula VON DER LEYEN
