

COMMISSION IMPLEMENTING REGULATION (EU) 2019/576**of 10 April 2019****imposing a provisional anti-dumping duty on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America**

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⁾ and in particular Article 7 thereof,

After consulting the Member States,

Whereas:

1. PROCEDURE**1.1. Initiation**

- (1) On 13 August 2018, the European Commission initiated an anti-dumping investigation with regard to imports into the Union of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America 'the countries concerned' on the basis of Article 5 of Regulation (EU) 2016/1036 of the European Parliament and of the Council ('the basic Regulation'). The Notice of Initiation ('NoI') was published in the *Official Journal of the European Union* ⁽²⁾.
- (2) The Commission initiated the investigation following a complaint lodged on 29 June 2018 by Fertilizers Europe ('the complainant') on behalf of producers representing more than 50 % of the total Union production of mixtures of urea and ammonium nitrate ('UAN'). The complaint contained evidence of dumping and of resulting material injury that was sufficient to justify the initiation of the investigation.

1.2. Registration

- (3) The Commission made imports of the product concerned subject to registration under Article 14(5a) of the basic Regulation by Commission Implementing Regulation (EU) 2019/455 of 20 March 2019 ⁽³⁾ ('the registration Regulation').

1.3. Interested parties

- (4) In the Notice of Initiation, the Commission invited interested parties to contact it in order to participate in the investigation. In addition, the Commission specifically informed the complainant, known Union producers, the known exporting producers and the authorities of the Russian Federation ('Russia'), Trinidad and Tobago ('TT'), and the United States of America ('US'), known importers and associations representing the interests of users and other associations known to be concerned about the initiation of the investigation and invited them to participate.
- (5) Interested parties had an opportunity to comment on the initiation of the investigation and to request a hearing with the Commission and/or the Hearing Officer in trade proceedings.
- (6) The co-operating exporting producers in Russia and US claimed that the complainants had no standing and that there was no sufficient evidence of dumping and injury to initiate the investigation.

⁽¹⁾ OJ L 176, 30.6.2016, p. 21.

⁽²⁾ Notice of initiation of an anti-dumping proceeding concerning imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America. OJ C 284, 13.8.2018, p. 9.

⁽³⁾ OJ L 79, 21.3.2019, p. 9.

- (7) The Commission rejected both claims. The Commission cross-checked and confirmed the conclusions contained in the Note to the file on standing available for inspection by interested parties that the complaint was lodged on behalf of producers representing more than 50 % of the total Union production of UAN. Moreover, the Commission carried out an examination of the complaint in accordance with Article 5 of the basic Regulation, coming to the conclusion that the requirements for initiation of an investigation were met, namely that the adequacy and accuracy of the evidence presented by the complainant was sufficient. According to Article 5(2) of the basic Regulation, a complaint shall contain such information as is reasonably available to the complainant on the factors indicated therein. On the basis of the evidence provided, as confirmed by the Commission's own assessment, that requirement was satisfied.

1.4. Sampling

- (8) In its Notice of Initiation, the Commission stated that it might sample the interested parties in accordance with Article 17 of the basic Regulation.

1.4.1. Sampling of the Union producers

- (9) In the Notice of Initiation, the Commission stated that it had decided to limit to a reasonable number the Union producers that would be investigated by applying sampling and that it had provisionally selected a sample of Union producers. The Commission selected the provisional sample on the basis of the reported production and Union sales volume, by the Union producers, in the context of the pre-initiation standing assessment analysis. The provisional sample thus established consisted of three Union producers that accounted for around 70 % of Union production and sales according to the information available. Details of this provisional sample were made available in the file for inspection by interested parties and the Commission invited interested parties to comment.
- (10) Shortly after initiation, one of the provisionally sampled producers, Yara Sluiskil B.V., informed the Commission that it did not want to cooperate. Moreover, two Union producers sent replies in response to the pre-initiation standing assessment after the publication of the Notice of Initiation. The Commission took into account those Union producers' data on production and sales in order to establish the final sample.
- (11) Several interested parties submitted further comments with regard to the provisional sample. The Commission considered the comments and explained in the note added to the open file on 5 September 2018 why those comments did not have an impact on the final sample selection.
- (12) The Commission's approach to apply sampling, pursuant to Article 17 of the basic anti-dumping Regulation, on the basis of volume of production and sales of the like product in the Union during the investigation period, was consequently maintained.
- (13) Given that Yara Sluiskil B.V. did not wish to cooperate, the Commission decided to replace it with OCI Nitrogen. The final sample of Union producers, comprising AB Achema, Grupa Azoty Zakłady Azotowe Pulawy S.A. and OCI Nitrogen B.V., accounted for more than 50 % of the total Union production and sales volumes of the like product. The sample is representative of the Union industry.

1.4.2. Sampling of importers

- (14) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked unrelated importers to provide the information specified in the Notice of Initiation.
- (15) Several unrelated importers made themselves known as interested parties, although only three provided the requested information and agreed to be included in the sample. In view of the low number of replies received, the Commission decided that sampling was not necessary. All three importers were invited to complete a questionnaire.

1.4.3. Sampling of exporting producers in Russia, TT and US

- (16) To decide whether sampling was necessary and, if so, to select a sample, the Commission asked all known exporting producers in Russia, TT and US to provide the information specified in the Notice of Initiation. In addition, the Commission asked the Mission of the Russian Federation to the European Union, the Mission of Trinidad and Tobago to the European Union, and the Mission of the United States of America to the European Union to identify and/or contact other exporting producers, if any, that could be interested in participating in the investigation.

- (17) Two exporting producers in Russia, one exporting producer in TT, and one exporting producer in US provided the requested information and agreed to be included in the sample.
- (18) In view of the low number of responses from exporting producers, the Commission decided that sampling was not necessary.
- (19) All known exporting producers concerned, and the authorities of the countries concerned, were informed on the selection of the companies to be investigated by note of 21 August 2018. No comments were received.

1.5. Replies to the questionnaire

- (20) The Commission sent questionnaires to the three sampled Union producers, the complainant, the three unrelated importers which had made themselves known, the four exporting producers in the countries concerned and all users' associations and economic operators which made themselves known and requested a questionnaire.
- (21) In the complaint, the complainant provided sufficient evidence of raw material distortions in Russia regarding the product concerned. Therefore, as announced in the Notice of Initiation, the investigation covers these raw material distortions to determine whether to apply the provisions of Article 7(2a) and 7(2b) of the basic Regulation with regard to Russia. For this reason, the Commission sent an additional questionnaire to the Government of Russia ('GOR').
- (22) Questionnaire replies were received from the three sampled Union producers, Fertilizers Europe, three unrelated importers, the four exporting producers in the countries concerned and seventeen different economic operators, including some representing the interests of users.
- (23) A questionnaire reply was also received from the GOR. However, the GOR's reply was significantly incomplete and lacked the basic information needed by the Commission to examine the allegations of raw material distortions in Russia and to assess whether a duty lower than the margin of dumping would be sufficient to remove injury. The GOR did not reply to the Commission's request with regard to an on-spot verification of the data provided in the questionnaire reply.
- (24) The Commission informed the GOR by two notes of 22 October and 19 December 2018 of the deficiencies of the response to the questionnaire and the lack of reply to the Commission's request to verify the provided data. The Commission indicated that by not providing the necessary information, it would make its findings with regard to the existence of raw material distortions in Russia on the basis of the facts available. The GOR failed to provide the necessary information in response to those notes.

1.6. Verification visits

- (25) The Commission sought and verified all the information deemed necessary for a provisional determination of dumping, raw material distortions with regard to the product concerned in Russia, resulting injury and Union interest. Verification visits pursuant to Article 16 of the basic Regulation were carried out at the premises of the following companies:
 - (a) Union producers and their associations
 - AB Achema, Jonava, Lithuania
 - Grupa Azoty Zakłady Azotowe Pulawy S. A., Pulawy, Poland
 - OCI Nitrogen BV, Geleen, Netherlands
 - Fertilizers Europe, Brussels, Belgium
 - (b) Unrelated importers
 - UnionInvivo, Paris, France
 - Interore, Wavre, Belgium
 - (c) Exporting producers:
 - Exporting producers in Russia:
 - Acron Group:
 - PJSC Acron ('Acron'), Veliky Novgorod, Russia (producer)
 - Agronova Belgorod ('Agronova'), Moscow, Russia (domestic trader)

EuroChem Group:

- Novomoskovsky Azot, JSC, Novomoskovsk, Russia (producer)
- Nevinnomyssky Azot, JSC, Nevinnomyssk, Russia (producer)
- EuroChem Trading Russia, Moscow, Russia (domestic trader)

Exporting producer in TT:

- Methanol Holdings (Trinidad) Limited ('MTHL'), Point Lisas, TT

Exporting producer in US:

- CF Industries Holdings, Inc. ('CFI'), Deerfield, Illinois, US

(d) Related importers:

- Acron France SAS ('Acron SAS'), Paris, France (importer related to Acron Group)
- EuroChem Agro GmbH, Mannheim, Germany (importer related to EuroChem Group)
- EuroChem Agro France SAS, Paris, France (importer related to EuroChem Group)
- Helm AG ('HAG'), Hamburg, Germany (importer related to MHTL)
- Helm Engrais France ('HEF'), Paris, France (importer related to MHTL)

(e) Related exporters:

- Acron Switzerland AG ('Acron AG'), Baar, Switzerland (exporter related to Acron Group)
- EuroChem Trading GmbH, Zug, Switzerland (exporter related to EuroChem Group).

1.7. Investigation period and period considered

- (26) The investigation of dumping and injury covered the period from 1 July 2017 to 30 June 2018 ('the investigation period' or 'IP'). The examination of trends relevant for the assessment of injury covered the period from 1 January 2015 to the end of the investigation period ('the period considered').

2. PRODUCT CONCERNED AND LIKE PRODUCT

2.1. Product concerned

- (27) The product concerned is mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution originating in Russia, TT, and the US, currently falling under CN code 3102 80 00 ('the product concerned' or 'UAN').
- (28) UAN is a liquid nitrogen fertilizer.
- (29) The nitrogen content is the most significant feature of the product concerned. It can vary between 28 % and 32 % of UAN. Such variation is usually obtained by adding more or less water to the solution. Most of the imported solutions tend to have a nitrogen content of 32 %. UAN with a nitrogen content of 32 % is more concentrated than UAN with 30 % or lower, and therefore cheaper to ship. However, whatever their nitrogen content, all solutions of urea and ammonium nitrate are considered to have the same basic physical and chemical characteristics and therefore constitute a single product

2.2. Like product

- (30) UAN is a pure commodity product, and its quality and basic physical characteristics are identical whatever the country of origin. Union producers offer UAN with a nitrogen content ranging from 28 to 32 %.
- (31) The investigation showed that the following products have the same basic physical and chemical characteristics as well as the same basic uses:
- the product concerned;
 - the product produced and sold on the domestic market of the countries concerned; and
 - the product produced and sold in the Union by the Union industry.
- (32) The Commission decided at this stage that those products are therefore like products within the meaning of Article 1(4) of the basic Regulation.

2.3. Claims regarding product scope

- (33) One Union producer highlighted that adding other substances ('additives', notably ammonium sulphate but potentially also other substances) to UAN still entailed the resulting mixture to be UAN and fall under CN code 3102 80 00. The investigation showed that it is a common practice to add additives in small quantities and that the market still considers the resulting product to be UAN.
- (34) Therefore, the Commission decided at this stage to clarify that the product scope of the investigation includes mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution that may have additives unless the additives are of the kind and of the quantity to make the mixture be classified under a different CN code.

3. DUMPING

3.1. Russia

3.1.1. Exporting producers

- (35) According to the findings of the investigation, there were three groups of companies in Russia that produced UAN in the IP: Acron Group, Eurochem Group and Kuibyshev Azot. Of those, the two first groups exported UAN to the Union during the IP. Both groups cooperated in the investigation.
- (36) In the case of Acron Group, there was one producer of UAN in the group operating in Russia. The domestic sales of the like product in the IP were made directly to unrelated customers and also indirectly via one related domestic trader. Export sales to the Union in the IP were made directly to independent customers or indirectly through either a related exporter located in Switzerland or a related importer located in France.
- (37) In the case of Eurochem Group, there were two producers of UAN in the group operating in Russia. The domestic sales of the like product in the IP were all made via one of the two related domestic traders. Export sales to the Union in the IP were made solely through a related exporter located in Switzerland and subsequently via a related importer located in Germany. The German related importer was then further selling either directly to unrelated customers or via one of three related traders located in Bulgaria, France and Spain. The latter company still made some part of its sales via another related trader also located in Spain.

3.1.2. Normal value

- (38) To calculate the normal value, the Commission first examined whether the total volume of domestic sales for each cooperating exporting producer was representative, in accordance with Article 2(2) of the basic Regulation. The investigation found that Acron was producing, selling domestically and exporting to the Union only UAN with nitrogen content of 32 % in the IP. The domestic sales are considered to be representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represent at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period.
- (39) On this basis, the sales of Acron of the like product on the domestic market were found not to be representative.
- (40) As the like product was not sold in representative quantities on the domestic market, the Commission constructed the normal value for Acron in accordance with Article 2(3) and Article 2(6) of the basic Regulation.
- (41) Normal value was thus constructed by adding the following to the average cost of manufacturing of the like product of the cooperating exporting producer during the investigation period:
 - (a) the weighted average selling, general and administrative ('SG&A') expenses incurred by the cooperating sampled exporting producer on domestic sales of the like product, in the ordinary course of trade, during the IP; and
 - (b) the weighted average profit realised by the cooperating exporting producer on domestic sales of the like product, in the ordinary course of trade, during the IP.

- (42) The costs of manufacturing used for construction of the normal value were adjusted as explained in recitals (52) to (55) and (59) to (60).
- (43) In case of Eurochem, on the basis of the representativity test described in recital (38), it was found that the like product was sold in representative quantities on the domestic market. The investigation found that in the IP Eurochem was producing, selling domestically and exporting to the Union only one product type, UAN with nitrogen content of 32 %. Therefore, the Commission did not have to examine whether the quantities of domestic sales for each product type that is identical or comparable with a product type sold for export to the Union were representative.
- (44) The Commission next defined the proportion of profitable sales to independent customers on the domestic market in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (45) The normal value is based on the actual domestic price for the one product type, irrespective of whether those sales are profitable or not, if:
- (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represent more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.
- (46) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the IP.
- (47) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the IP, if:
- (a) the volume of profitable sales of this product type represents 80 % or less of the total sales volume of this type: or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (48) The analysis of domestic sales showed that less than 15 % of all domestic sales were profitable and that the weighted average sales price was lower than the cost of production. Accordingly, the normal value was calculated as a weighted average of the profitable sales only.
- (49) The costs of manufacturing, being part of the cost of production used for the ordinary course of trade test ("OCOT") described in recitals (45) to (48), were adjusted as explained in the recitals (52) to (55) and (59) to (60).
- (50) Eurochem claimed that in the calculation of the net domestic sales price an additional allowance should be applied for the SG&A cost of the domestic related trader and for a part of the SG&A costs of the two producers within the same group. It claimed that these costs resulted from a different level of trade of the domestic sales in comparison with the export sales, namely from the fact that, through its related traders, the majority of domestic sales is sold directly to farmers.
- (51) However, such an allowance would not reflect properly the net domestic sales price where normally the SG&A costs of related domestic traders and those of producers are not deducted so that it reflects properly the price paid or payable, at arm's length, in the domestic market. The claim was therefore rejected.

- (52) Natural gas is the main raw material in the manufacturing process of UAN and represents a significant proportion, more than 50 % ⁽⁴⁾, of the total cost of production. Following the claim by the complainant and the findings of previous investigations concerning fertilizers originating in Russia, the Commission examined whether the costs of natural gas associated with the production of the product concerned were reasonably reflected in the records of the Russian exporting producers, in accordance with Article 2(5) of the basic Regulation.
- (53) The investigation found that natural gas prices in Russia are regulated by the State via federal laws and are based on policy objectives. Natural gas prices in Russia do not reflect normal market conditions. Under normal market conditions, prices are mostly set by production costs and profit expectations. In contrast, in Russia prices set by the State are directly applicable to Gazprom, the Russian state-owned gas provider. Gazprom is the biggest gas provider in the country with a market share above 50 % and therefore acts as price-setter. The investigation confirmed this price-setting behaviour, where all other gas providers sell at similarly low prices. In addition, Gazprom is the owner of the pipelines through which all gas, including the one supplied by the independent producers, is transported at tariffs which are also regulated.
- (54) With regard to the gas adjustment, the GOR and the two Russian cooperating exporting producers commented that:
- (a) the prices of natural gas in Russia are not distorted as they reflect normal market conditions, where prices are principally set by production costs and profit expectations; namely the regulated price covers all Gazprom's costs;
 - (b) even if the regulated domestic natural gas price of Gazprom were found to be distorted, the gas adjustment should only be applied to the price of gas excluding transportation costs;
 - (c) no adjustment should be applied to natural gas purchased from domestic suppliers independent from Gazprom; and
 - (d) the Waidhaus price is not a proper indicator of the market-based cost of natural gas.
- (55) In response to those comments, the Commission provisionally concluded that:
- (a) the findings of the investigation did not support the claim that the regulated domestic price covers all the costs of Gazprom. Although Gazprom is a profitable company according to its audited accounts, the profits are generated by the company's export sales due to export prices being much higher than domestic prices. Furthermore, the calculation of the level of the regulated domestic price ⁽⁵⁾ takes into account as one of the factors the projected profits from the supply of gas for export. Therefore, it can be assumed that if Gazprom only had domestic sales, it would not be profitable. In that respect, the Commission observed that, due to the GOR's lack of cooperation, the Commission was unable to examine the details of the calculation of domestic regulated price for Gazprom during the IP. Thus, the Commission concluded that the GOR's intervention on the gas market affects the reliability of Gazprom's reported costs. Indeed, but for this intervention, Gazprom would operate on the basis normal commercial considerations, based on recovery of costs and profit, also with respect to its domestic sales. No evidence was brought to the Commission's attention showing that prices of natural gas were freely negotiated between the both cooperating exporting producers and their suppliers, which are directed to follow the regulated domestic price.
 - (b) according to the information received from the Russian cooperating exporting producers ⁽⁶⁾, the Russian State also regulates transportation tariffs (including those of independent companies) if the gas pipelines owned by Gazprom are used ⁽⁷⁾. The Russian State also regulates the prices of logistic support services and supply and services fees.
 - (c) as explained in the recital (53), taking into account the dominant position of Gazprom on the Russian gas market, independent suppliers of gas follow the regulated price and thus sell at similarly low levels. This is also confirmed by the audited accounts of the biggest private natural gas supplier in Russia – Novatek ⁽⁸⁾.

⁽⁴⁾ On the basis of the original cost accounts of the Russian companies before the 'gas adjustment'.

⁽⁵⁾ Article 11 and 14 of Government Resolution No 1021 of 29 December 2000

⁽⁶⁾ Submission of Acron of 22 October 2018 being the updated version of the presentation of the GOR prepared for the US Countervailing Duty Investigation concerning Cold-Rolled Steel Flat Products originating in the Russian Federation

⁽⁷⁾ In practice means these are all the gas pipelines in Russia except for certain small local connections between factory and main pipeline

⁽⁸⁾ See Audited Annual Report 2017 of Novatek (page 71) – open Exhibit C-9-2 Annex O of the Questionnaire reply by Eurochem (NAK)

- (d) The Waidhaus price was found to be a proper benchmark in previous investigations in which a gas adjustment was made ⁽⁹⁾. Furthermore, in the IP the level of the Waidhaus price was in a close range to other important price quotations in Europe (UK Heren NBP Index, Netherlands TTF DA Heren Index) ⁽¹⁰⁾. Finally, the Commission considered that the US price (US Henry Hub Index), proposed by the Russian interested parties as an alternative benchmark, would not be appropriate taking into account the different geographical region, the different type of natural gas sources (such as shale gas) and the limited possibilities of the US to export natural gas in gaseous form (compressed natural gas or CNG).
- (56) Finally, the GOR and the Russian cooperating exporting producers invoked a recent ruling of the WTO panel in the dispute between Russia and Ukraine in 'DS493 - Ukraine - Anti-Dumping Measures on Ammonium Nitrate' which rejected the gas adjustment made by Ukraine.
- (57) It should be noted that the WTO panel report in DS493 concerns a dispute between Russia and Ukraine whereby Russia challenged the determinations reached by Ukraine. The Union was not involved in that case. As noted by the Panel in that case, the question of whether the records of the exporters or producers reasonably reflect the costs associated with production and sale of the product under consideration 'is a question which needs to be assessed on a case-by-case basis, taking into account the evidence before the investigating authority, and the determination that it makes'. ⁽¹¹⁾ While this in itself already shows the irrelevance of the panel report for the current investigation, the Commission further notes that the panel report is currently under appeal. Therefore, the Commission rejects the comment relating to the panel report.
- (58) For all those reasons, the Commission rejected those claims and considered the gas adjustment warranted under Article 2(5) of the basic Regulation as confirmed by the Court of Justice ⁽¹²⁾.
- (59) Following those findings, the Commission, as in previous investigations concerning fertilizers originating in Russia, adjusted the Russian cost of natural gas by replacing the distorted Russian domestic price with an undistorted international benchmark price ('gas adjustment'). As a benchmark price, the Commission used the so-called Waidhaus price, which is the price of exported Russian gas at the German/Czech border. The price was duly adjusted to ex works-level of the Russian producers.
- (60) There are four sequential intermediate inputs in the production of UAN (i.e. ammonia, nitric acid, ammonium nitrate solution and urea). Natural gas is used to manufacture ammonia. After adjusting the cost of natural gas in the cost of manufacturing of ammonia, the Commission replaced the adjusted cost of manufacturing of ammonia in the cost of manufacturing of the second intermediate product, nitric acid, of which ammonia is a direct raw material. This 'cascade effect' went on, allowing the gas adjustment to be passed-on to the ammonium nitrate solution, then to urea and finally to UAN.
- (61) Because of the high profitability of Acron's domestic sales, the gas adjustment did not impact the normal value calculated for Acron. All of Acron's domestic transactions of the company still remained profitable after the gas adjustment. Therefore, in the construction of the normal value for Acron, as described in recital (41), the increase in the cost of manufacturing was exactly counterbalanced by a decrease in the profit made on the profitable domestic sales.

3.1.3. Export price

- (62) As explained in recitals (36) to (37), the cooperating Russian exporting producers exported to the Union either directly to independent customers or through related companies acting as importers, exporters or traders.
- (63) Where the exporting producers exported the product concerned directly to independent customers in the Union, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

⁽⁹⁾ Judgment of the General Court (Eighth Chamber) of 7 February 2013 - EuroChem Mineral and Chemical Company OAO (EuroChem MCC) v Council of the European Union, T- 84/07, ECLI:EU:T:2013:64, and Judgment of the General Court (Eighth Chamber) of 7 February 2013 - Acron OAO v Council of the European Union, T-118/10, ECLI:EU:T:2013:67.

⁽¹⁰⁾ See BP Statistical Review of World Energy 2018

⁽¹¹⁾ Panel Report, *Ukraine – Anti-dumping measures on Ammonium Nitrate*, WT/DS493/R, para. 7.85.

⁽¹²⁾ Judgment of the General Court (Eighth Chamber) of 7 February 2013 - EuroChem Mineral and Chemical Company OAO (EuroChem MCC) v Council of the European Union T118/10, ECLI:EU:T:2013:67; Judgment of the General Court (Eighth Chamber) of 7 February 2013 - Acron OAO v Council of the European Union, T- 84/07, ECLI:EU:T:2013:64.

- (64) Where the exporting producers exported the product concerned to the Union through related companies acting as an importer, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses and dilution costs; and for a reasonable profit.
- (65) With regard to dilution costs, specific for this case, the Russian exporting producers exported only UAN with a nitrogen content of 32 % during the IP. The related importers, however, sold to the independent customers UAN with a nitrogen content of either 32 % or less. Therefore, where the product concerned was diluted with water to achieve lower nitrogen content, the adjustment mentioned in recital (64) also included the additional costs of dilution incurred by the related importer.

3.1.4. Comparison

- (66) The Commission compared the normal value and the export price of the Russian cooperating exporting producers on an ex-works basis.
- (67) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for import charges and indirect taxes; discounts, rebates and differences in quantities; transport, insurance, handling, loading and ancillary costs; credit cost; SG&A costs of the related exporters including mark-up.

3.1.5. Dumping margins

- (68) For the Russian exporting producers, the Commission compared the weighted average normal value of the like product with the weighted average export price of the product concerned, in accordance with Article 2(11) and 2(12) of the basic Regulation.
- (69) On that basis, the provisional weighted average dumping margins expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows: 31,9 % for Acron and 34,0 % for Eurochem.
- (70) The CIF price used to calculate the dumping margins was constructed for each transaction (based on transfer prices in case of related importer resales) on the border where custom clearance took place, which might not be the same border where the goods physically crossed the Union border.
- (71) For all other potential exporting producers in Russia, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the Russian exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total export volume — as reported in Eurostat import statistics — from the country concerned to the Union.
- (72) The exports of the Russian cooperating exporting producers constituted 100 % of the total exports from Russia to the Union during the IP. On that basis, the Commission decided to base the residual dumping margin at the level of the cooperating company with the highest dumping margin, namely Eurochem Group.
- (73) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Acron Group	31,9 %
Eurochem Group	34,0 %
All other companies	34,0 %

3.2. Trinidad and Tobago

3.2.1. Normal value

- (74) MHTL, the cooperating exporting producer, appeared to be the only producer of the product concerned in TT during the investigation period.
- (75) The Commission first examined whether MHTL's total volume of domestic sales was representative, in accordance with Article 2(2) of the basic Regulation.
- (76) As there were no sales of a like product on the domestic market, the Commission constructed the normal value in accordance with Article 2(3) and 2(6)(b) of the basic Regulation.
- (77) The normal value was constructed by adding the following to the average cost of production of the like product of the cooperating exporting producer during the investigation period:
- (a) the actual amounts of SG&A expenses applicable to production and sales, in the ordinary course of trade, of the same general category of products incurred by MHTL in the domestic market of TT;
 - (b) the actual amount of profit applicable to production and sales, in the ordinary course of trade, of the same general category of products realised by MHTL in the domestic market of TT.
- (78) In its post-verification submission of 12 December 2018, MHTL commented that the Commission should use the SG&A applicable to the production and sales, in the ordinary course of trade, of the same general category of products it had incurred in the domestic market of TT. Since MHTL provided sufficient justification that such approach would be in line with Article 2(3) and (6) of the basic Regulation, the Commission accepted this claim.
- (79) In accordance with Article 2(3) and 2(6)(b), the Commission also used the profits made by MHTL on sales, in the ordinary course of trade, of the same product category as mentioned in recital (78).

3.2.2. Export price

- (80) MHTL exported to the Union only via related companies acting as importers in the investigation period. All sales to the Union were carried out via a related importer in Germany. This related importer sold the product concerned to independent customers in Germany or to related companies in France and Spain, which in turn sold the product concerned to independent customers on their respective national markets.
- (81) Therefore, the export price was established on the basis of the price at which the imported product was first resold to independent customers in the Union, in accordance with Article 2(9) of the basic Regulation. In this case, adjustments to the price were made for all costs incurred between importation and resale, including SG&A expenses and dilution and mixing costs; and for a reasonable profit.
- (82) With regard to the dilution and mixing costs, specific for this case, MHTL exported only UAN with a nitrogen content of 32 % during the investigation period. The related importers, however, sold to the independent customers UAN with a nitrogen content of either 32 % or less. Therefore, in case where the product concerned was diluted with water or mixed with sulphur to achieve lower nitrogen content, the adjustment mentioned in recital (81) also included the additional costs of dilution and mixing incurred by the related importer.

3.2.3. Comparison

- (83) The Commission compared MHTL's normal value and export price on an ex-works basis.
- (84) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for discounts, rebates and differences in quantities; transport, insurance, handling, loading and ancillary costs, and credit cost.

3.2.4. Dumping margin

- (85) For MHTL, the Commission compared the weighted average normal value of the like product with the weighted average export price of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.

- (86) On that basis, the provisional weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, amounts to 55,9 %.
- (87) For all other exporting producers in TT, should there be any besides MHTL, the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producer to the Union expressed as proportion of the total export volume — as reported in Eurostat import statistics — from TT to the Union.
- (88) The level of cooperation in this case is high because the exports of the cooperating exporting producer, namely MHTL, constituted 100 % of the total exports from TT to the Union during the investigation period. On that basis, the Commission decided to base the residual dumping margin at the level of MHTL.
- (89) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
Methanol Holdings (Trinidad) Limited	55,9 %
All other companies	55,9 %

3.3. United States of America

3.3.1. Normal value

- (90) In the complaint, the complainant provided information that there are at least two producers of UAN in the US. The investigation confirmed that there are more producers of the product concerned than the sole cooperating exporting producer, CFI. It was, however, also apparent that only CFI exported the product concerned to the Union during the investigation period.
- (91) The Commission first examined whether CFI's total volume of domestic sales was representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales are representative if the total domestic sales volume of the like product to independent customers on the domestic market per exporting producer represent at least 5 % of its total export sales volume of the product concerned to the Union during the investigation period. On this basis, the total sales of CFI of the like product on the domestic market were representative.
- (92) The Commission determined that CFI exported only one product type of UAN to the Union in the investigation period, namely UAN with nitrogen content of 32 %. The Commission subsequently identified the product types sold domestically by CFI that were identical or comparable with the product type sold for export to the Union.
- (93) The Commission then examined whether the domestic sales of CFI on its domestic market for the product type that is identical or comparable with the product type sold for export to the Union were representative, in accordance with Article 2(2) of the basic Regulation. The domestic sales of a product type are representative if the total volume of domestic sales of that product type to independent customers during the investigation period represents at least 5 % of the total volume of export sales of the identical or comparable product type to the Union. The Commission established that the domestic sales of the product type identical or comparable with the product type sold for export to the Union were representative during the investigation period.
- (94) The Commission next defined the proportion of profitable sales to independent customers on the domestic market for the product type in question during the investigation period in order to decide whether to use actual domestic sales for the calculation of the normal value, in accordance with Article 2(4) of the basic Regulation.
- (95) The normal value is based on the actual domestic price per product type, irrespective of whether those sales are profitable or not, if:
- (a) the sales volume of the product type, sold at a net sales price equal to or above the calculated cost of production, represents more than 80 % of the total sales volume of this product type; and
 - (b) the weighted average sales price of that product type is equal to or higher than the unit cost of production.

- (96) In this case, the normal value is the weighted average of the prices of all domestic sales of that product type during the investigation period.
- (97) The normal value is the actual domestic price per product type of only the profitable domestic sales of the product types during the investigation period, if:
- (a) the volume of profitable sales of the product type represents 80 % or less of the total sales volume of this type, or
 - (b) the weighted average price of this product type is below the unit cost of production.
- (98) The analysis of domestic sales showed that 60 to 80 % ⁽¹³⁾ of all domestic sales of the product type that is identical or comparable with the product type sold for export to the Union were profitable and that the weighted average sales price was higher than the cost of production. Accordingly, the normal value was calculated as a weighted average of the profitable sales only.

3.3.2. Export price

- (99) CFI exported to the Union directly to independent customers.
- (100) In this case, the export price was the price actually paid or payable for the product concerned when sold for export to the Union, in accordance with Article 2(8) of the basic Regulation.

3.3.3. Comparison

- (101) The Commission compared CFI's normal value and the export on an ex-works basis.
- (102) Where justified by the need to ensure a fair comparison, the Commission adjusted the normal value and/or the export price for differences affecting prices and price comparability, in accordance with Article 2(10) of the basic Regulation. Adjustments were made for import charges and indirect taxes; discounts, rebates and differences in quantities; transport, insurance, handling, loading and ancillary costs and credit cost.

3.3.4. Dumping margin

- (103) For CFI, the Commission compared the weighted average normal value of the respective type of the like product with the weighted average export price of the corresponding type of the product concerned, in accordance with Article 2(11) and (12) of the basic Regulation.
- (104) On that basis, the provisional weighted average dumping margin expressed as a percentage of the CIF Union frontier price, duty unpaid, amounts to 37,3 %.
- (105) For all other exporting producers in the US, should there be any besides the apparent only exporting producer that is cooperating with the investigation (CFI), the Commission established the dumping margin on the basis of the facts available, in accordance with Article 18 of the basic Regulation. To this end, the Commission determined the level of cooperation of the exporting producers. The level of cooperation is the volume of exports of the cooperating exporting producers to the Union expressed as proportion of the total export volume — as reported in Eurostat import statistics — from the US to the Union.
- (106) The level of cooperation in this case is high because CFI's exports constituted 100 % of the total exports from the US to the Union during the investigation period. On this basis, the Commission decided to base the residual dumping margin at the level of the cooperating exporting producer, namely CFI.
- (107) The provisional dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Provisional dumping margin
CF Industries Holdings, Inc.	37,3 %
All other companies	37,3 %

⁽¹³⁾ The exact figure is not provided as this is the company specific data.

4. INJURY

4.1. Definition of the Union industry and Union production

- (108) The like product was manufactured by 20 known producers in the Union during the investigation period. They constitute the 'Union industry' within the meaning of Article 4(1) of the basic Regulation.
- (109) The total Union production during the investigation period was established at around 3,9 million tonnes. The Commission established the figure on the basis of all the available information concerning the Union industry, namely, the Fertilizers Europe production survey and Fertecon (Fertecon being a recognized market intelligence provider on global fertilizers markets). As indicated in recital (12), three Union producers were selected in the sample representing over 50 % of the total Union production of the like product.

4.2. Union consumption

- (110) The Commission established the Union consumption on the basis of the sales volume of the Union industry on the Union market plus imports from all third countries as recorded in Eurostat.
- (111) Union consumption developed as follows:

Table 1

Union consumption (tonnes)

	2015	2016	2017	IP
Total Union consumption	4 803 732	4 658 736	4 783 671	4 571 721
<i>Index</i>	100	97	100	95

Source: Fertilizers Europe and Eurostat

- (112) During the period considered, the Union consumption fluctuated with an overall fall of 5 %. In 2016 and the investigation period a drought in key markets of UAN meant that usage by farmers fell as a consequence.

4.3. Imports from the countries concerned

4.3.1. Cumulative assessment of the effects of imports from the countries concerned

- (113) The Commission examined whether imports of UAN originating in the countries concerned should be assessed cumulatively, in accordance with Article 3(4) of the basic Regulation.
- (114) That provision stipulates that the imports from more than one country shall be cumulatively assessed only if it is determined that:
- (a) the margin of dumping established in relation to the imports from each country is more than de minimis as defined in Article 9(3) and the volume of imports from each country is not negligible; and
 - (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the like Union product.
- (115) The margins of dumping established in relation to the imports from each of the three countries concerned were above the de minimis threshold laid down in Article 9(3) of the basic Regulation. The volume of imports from each of the countries concerned was not negligible within the meaning of Article 5(7) of the basic Regulation. Indeed, the market shares in the investigation period were 13,4 % for imports from Russia, 8,1 % from TT and 16,2 % from the US.
- (116) The conditions of competition between the dumped imports from Russia, TT and the US and between the dumped imports from the countries concerned and the like Union product were similar. More specifically, the imported products competed with each other and with the UAN produced in the Union because they are sold through the same sales channels and to similar categories of customers. The product concerned is a homogenous commodity and competition took place largely based on price alone.
- (117) Therefore, all the criteria set out in Article 3(4) of the basic Regulation were met and imports from Russia, TT and the US were examined cumulatively for the purposes of the injury determination.

- (118) In a hearing MHTL claimed that imports from TT should not be cumulated on the grounds that i) prices from TT were consistently higher than prices from the US and Russia, ii) import volumes dropped during the period considered (unlike those from the US and Russia), iii) MHTL is part of a European group, iv) MHTL is a price follower and v) TT is a developing country Member of the WTO.
- (119) The Commission rejected those claims. The decision as to whether or not imports should be assessed cumulatively must be based on the criteria set out in Article 3(4) of the basic Regulation, which were met in this case as highlighted in recitals (114) to (117). None of the aspects raised by MHTL could question the appropriateness of examining imports from TT together with those from Russia and US ⁽¹⁴⁾.

4.3.2. Volume and market share of the imports from the countries concerned

- (120) The Commission established the volume of imports on the basis of Eurostat data. The market share of the imports was established by comparing the volume of imports with the Union consumption.
- (121) Imports into the Union from the countries concerned developed as follows:

Table 2

Import volume (tonnes) and market share

	2015	2016	2017	IP
Volume of imports from the countries concerned (tonnes)	1 051 602	1 581 863	1 647 295	1 723 839
<i>Index</i>	100	150	157	164
Market share	21,9 %	34,0 %	34,4 %	37,7 %
<i>Index</i>	100	155	157	172
Volume of imports from the Russian Federation (tonnes)	339 075	582 906	557 966	613 491
<i>Index</i>	100	172	165	181
Market share	7,1 %	12,5 %	11,7 %	13,4 %
<i>Index</i>	100	177	165	190
Volume of imports from Trinidad and Tobago (tonnes)	488 392	452 194	444 290	368 178
<i>Index</i>	100	93	91	75
Market share	10,2 %	9,7 %	9,3 %	8,1 %
<i>Index</i>	100	95	91	79
Volume of imports from the US (tonnes)	224 136	546 763	645 040	742 170
<i>Index</i>	100	244	288	331
Market share	4,7 %	11,7 %	13,5 %	16,2 %
<i>Index</i>	100	252	289	348

Source: Eurostat

- (122) Imports from the countries concerned increased by 64 % over the period considered. The increase in market share was even more pronounced as the market share of the imports concerned increased by 72 %, from 21,9 % in 2015 to 37,7 % in the investigation period. As consumption dropped by 5 % over the same period, the steep increase in market share by the countries concerned was clearly to the detriment of other market participants.

⁽¹⁴⁾ See also Panel Report, *EU – Footwear* (WT/DS405/R), para. 7.403.

4.3.3. Prices of the imports from the countries concerned and price undercutting

- (123) The Commission established the prices of imports on the basis of Eurostat data. It is important to clarify that the level of these statistical prices might differ from verified prices for co-operating exporting producers as such, as most of the imports from the countries concerned are made through related importers.
- (124) The weighted average price of imports into the Union from the countries concerned developed as follows:

Table 3

Import prices (EUR/tonne)

	2015	2016	2017	IP
Russian Federation	179	130	135	126
<i>Index</i>	100	73	75	70
Trinidad and Tobago	197	151	141	140
<i>Index</i>	100	77	72	71
US	188	137	126	124
<i>Index</i>	100	73	67	66
Countries Concerned	189	138	133	128
<i>Index</i>	100	73	70	68

Source: Eurostat

- (125) Import prices from the countries concerned fell on average by 32 %. In fact the prices of imports from all three of the countries concerned fell between 30 % and 34 % depending on the country. This fall was particularly evident in 2016 when raw material prices (mainly gas) fell. However, in the investigation period import prices fell by 4 %, unlike raw material prices, which went up.
- (126) The Commission determined the price undercutting during the investigation period by comparing:
- the weighted average prices per product type of the imports from the cooperating exporting producers in the countries concerned to the first independent customer on the Union market, established on a cost, insurance, freight (CIF) basis, with appropriate adjustments for customs duties and post-importation costs; and
 - the corresponding weighted average sales prices per product type of the sampled Union producers charged to unrelated customers on the Union market.
- (127) The Commission normally compares the Union border CIF price of the exporting producers to the ex-works price of the Union producers because such approach usually provides a fair comparison. However, the investigation has revealed that there are exceptional circumstances in this case in that, for around a third of the sales transactions of the sampled Union producers, using the sales price at ex-works level would result in Union industry prices which are not at a level comparable with the import prices in terms of competition.
- (128) Indeed, for those Union industry sales which incurred sea freight for delivery to ports such as Rouen (France) and Ghent (Belgium), it was found appropriate to use the prices for delivery to that port instead of calculating ex-works prices for those sales. Those sales represented around 40 % of the sales of the Union industry. Such approach was considered more accurate than using ex-works prices for the following reasons:
- (i) UAN is a corrosive liquid and transport to users and distributors involves special vehicles and storage facilities. This increases logistics costs to the extent that these costs are often more than 20 % of the sales price of UAN sold in Western Europe and can be up to 30 % of the sales price for certain delivery terms;

- (ii) the two largest producers in the sample are located in Poland and Lithuania whereas the largest markets for UAN are in Western Europe which means that logistics costs are particularly high and involve sea freight; these two producers compete in Eastern Europe on EXW and CIF basis with Russian imports and in Western Europe with delivered prices from Trinidad and Tobago, Russia and the US. In fact, it was observed that the main difference between the selling prices of these producers in Eastern and Western Europe was the amount of these logistic and transport costs;
 - (iii) many interested parties, including exporting producers, have indicated that the main point of comparison for UAN prices in Western Europe is the CIF price (plus import duty if applicable) of deliveries to the ports of Rouen (France) and Ghent (Belgium);
 - (iv) most imports from the countries concerned in the investigation period were delivered on a CIF basis in large sea freight tankers to Western Europe. This involved almost all deliveries originating in Trinidad and Tobago and the US but also a large quantity of sales from the Russian Federation;
 - (v) UAN is a homogenous commodity and therefore the majority of customers purchase the product solely on price;
 - (vi) at distributor and end-user level there can be a lack of traceability of the origin of the product concerned because the UAN delivered to Western European ports such as Rouen or Ghent is stored in the same tanks whatever its source; and
 - (vii) the competition of sales from the port of delivery was made to the same customers for both imports and Union industry sales using comparable incoterms and was often delivered to customers in the same delivery vehicles.
- (129) Therefore, the Commission concluded that, in order to examine whether there is price undercutting, it is appropriate to adjust around a third of the sales transactions of two sampled Union producers so that those sales can be compared in terms of their actual competition with the subject imports. For the two thirds of Union industry sales, which did not involve sea freight, the normal CIF vs ex-works methodology was maintained.
- (130) The price comparison was made on a type-by-type basis for transactions at the same level of trade, duly adjusted where necessary, and after deduction of rebates and discounts. The result of the comparison was expressed as a percentage of the sampled Union producers' turnover during the investigation period. It showed a weighted average undercutting margin of 3,4 % for imports from Russia, 6,2 % for imports from TT and 9,9 % for imports from the US. Bearing in mind that the product concerned is a commodity and that competition is largely based on price alone, and that its prices are very transparent (i.e. known in the market), such a margin is considered significant. A low price difference will make the buyer switch suppliers. This was also confirmed by the replies of representatives of the users.
- (131) In the investigation period, comparing the sales prices on a type-by-type basis for transactions at the same level of trade, imports from the countries concerned undercut the prices of the Union industry by 6,8 % on average.

4.4. Economic situation of the Union industry

4.4.1. General remarks

- (132) In accordance with Article 3(5) of the basic Regulation, the examination of the impact of the dumped imports on the Union industry included an evaluation of all economic indicators having a bearing on the state of the Union industry during the period considered.
- (133) As mentioned in recital (13), sampling was used for the determination of possible injury suffered by the Union industry.
- (134) For the injury determination, the Commission distinguished between macroeconomic and microeconomic injury indicators. The Commission evaluated the macroeconomic indicators on the basis of data contained in the questionnaire response of Fertilizers Europe. These data related to all Union producers. The Commission evaluated the microeconomic indicators on the basis of data contained in the questionnaire replies from the sampled Union producers. Both sets of data were found to be representative of the economic situation of the Union industry.

- (135) The macroeconomic indicators are: production, production capacity, capacity utilisation, sales volume, market share, growth, employment, productivity, and magnitude of the dumping margin.
- (136) The microeconomic indicators are: average unit prices, unit costs, labour costs, inventories, profitability, cash flow, investments, return on investments, and ability to raise capital.

4.4.2. Macroeconomic indicators

4.4.2.1. Production, production capacity and capacity utilisation

- (137) The total Union production, production capacity and capacity utilisation developed over the period considered as follows:

Table 4

Production, production capacity and capacity utilisation

	2015	2016	2017	IP
Production volume (tonne)	4 238 411	3 695 546	4 253 903	3 890 476
<i>Index</i>	100	87	100	92
Production capacity (measuring unit)	8 055 000	8 205 000	8 385 000	8 385 000
<i>Index</i>	100	102	104	104
Capacity utilisation	53 %	45 %	51 %	46 %
<i>Index</i>	100	86	96	88

Source: verified questionnaire reply of Fertilizers Europe

- (138) In the Union, UAN is normally produced at integrated chemical sites. These sites convert gas and nitrogen into nitrogen based fertilisers and other similar industrial products such as melamine. The production process involves various stages such as ammonia and nitric acid production and is therefore heavily reliant on access to sources of gas (the main ultimate raw material) via pipelines or terminals and is highly capital intensive. Producers can switch production between end products but this ability is limited and varies between producers. This depends on the configuration of the integrated site and on the producer's customer base. Each company aims to maximise the profitability of the site as a whole. Nevertheless, this investigation focuses solely on UAN.
- (139) Overall production of UAN fell by 8 % over the period considered. Production dropped strongly in 2016, when imports from the countries concerned increased by 50 % as compared to the year before and demand was affected by a drought in key markets of UAN. Although the situation improved in 2017, falling UAN prices and profitability led to some Union producers to switch production to other nitrogen based fertilizers in the investigation period. Where this switch in production was not possible on an economic basis, Union producers suffered production shut-downs.
- (140) Production capacity increased by 4 % whereas capacity utilisation fell by 12 % over the period considered. As noted in recital (138), production capacity as well as capacity utilisation for this type of production and industry can be affected by the production of other products which can be produced on the same production equipment and that is indeed reflected in these trends.

4.4.2.2. Sales volume and market share

- (141) The Union industry's sales volume and market share developed over the period considered as follows:

Table 5

Sales volume and market share

	2015	2016	2017	IP
Sales volume on the Union market (tonnes)	3 348 196	2 796 506	2 934 634	2 645 143
<i>Index</i>	100	84	88	79
Market share	69,7 %	60,0 %	61,3 %	57,9 %
<i>Index</i>	100	86	88	83

Source: verified questionnaire reply of Fertilizers Europe

- (142) The sales volume of the Union industry was calculated on a macro basis of sales to unrelated and related parties. However, a small quantity of such sales (around 3 % of the total) consisted of resales of production from imports of various sources. Such sales are excluded from the above sales volume figures as they should comprise only sales of production of Union producers. In order to avoid double-counting these resales were also excluded from the consumption figures at recital (114). On this basis the Union sales volume of the Union industry fell by 21 % over the period considered. The volume of sales lost over this period is close to the volume of increased sales by the countries concerned.
- (143) The market share of the Union industry fell by 17 % over the period considered. This development was a result of poor market conditions, especially low prices, which meant that Union sales volume was lost to imports from the countries concerned.

4.4.2.3. Growth

- (144) The above figures in respect of production, sales volume and market share demonstrate that the Union industry was not able to grow, either in absolute terms or in relation to consumption, over the period considered.

4.4.2.4. Employment and productivity

- (145) Employment and productivity developed over the period considered as follows:

Table 6

Employment and productivity

	2015	2016	2017	IP
Number of employees	2 164	2 029	2 104	2 005
<i>Index</i>	100	94	97	93
Productivity (tonne/employee)	1 959	1 821	2 022	1 940
<i>Index</i>	100	93	103	99

Source: verified questionnaire reply of Fertilizers Europe

- (146) In view of the deteriorating market circumstances, the number of employees of the Union industry fell by 7 % over the period considered. Nevertheless, as production decreased even more, productivity still fell by 1 % over the period considered.

4.4.2.5. Magnitude of the dumping margin

- (147) All dumping margins were significantly above the de minimis level. The impact of the magnitude of the actual margins of dumping on the Union industry was substantial, given the volume and prices of imports from the countries concerned.

4.4.3. Microeconomic indicators

4.4.3.1. Prices and factors affecting prices

- (148) The weighted average unit sales prices of the sampled Union producers to unrelated customers in the Union developed over the period considered as follows:

Table 7

Sales prices in the Union

	2015	2016	2017	IP
Average unit EXW sales price in the Union to unrelated customers (EUR/ tonne)	176	130	127	127
<i>Index</i>	100	74	72	72
Unit cost of production EXW (EUR/ tonne)	146	115	123	130
<i>Index</i>	100	79	84	89

Source: verified questionnaire replies of the sample of Union producers

- (149) Sales prices fell by 28 % over the period considered and the unit cost of production fell by 11 %. The largest fall in prices was in 2016, when low-priced imports from the countries concerned increased by 50 % and demand was slightly weaker. The trend of cost of production was mainly determined by fluctuations in gas prices. However, the increases in costs in 2017 and the investigation period were not matched by corresponding sales price increases for the like product which were thus further suppressed.

4.4.3.2. Labour costs

- (150) The average labour costs of the sampled Union producers developed over the period considered as follows:

Table 8

Average labour costs per employee

	2015	2016	2017	IP
Average labour costs per employee (EUR)	24 876	24 323	27 143	27 410
<i>Index</i>	100	98	109	110

Source: verified questionnaire replies of the sample of Union producers

- (151) The average labour costs per employee of the sampled Union producers increased by 10 % over the period considered. Labour costs per employee increased especially in 2017 when production and productivity increased.

4.4.3.3. Inventories

(152) Stock levels of the sampled Union producers developed over the period considered as follows:

Table 9

Inventories

	2015	2016	2017	IP
Closing stocks (tonnes)	83 826	54 411	72 814	38 961
<i>Index</i>	100	65	87	46
Closing stocks as a percentage of production	3,7 %	2,7 %	3,2 %	1,8 %
<i>Index</i>	100	71	85	49

Source: verified questionnaire replies of the sample of Union producers

(153) Closing stock and stock as a percentage of production fell over the period considered. However, as stock as a percentage of production is low throughout the period and closing stocks are subject to seasonal variations this factor is not considered to be a meaningful indicator of injury in this investigation.

4.4.3.4. Profitability, cash flow, investments, return on investments and ability to raise capital

(154) Profitability, cash flow, investments and return on investments of the sampled Union producers developed over the period considered as follows:

Table 10

Profitability, cash flow, investments and return on investments

	2015	2016	2017	IP
Profitability of sales in the Union to unrelated customers (% of sales turnover)	14,0 %	10,0 %	1,1 %	– 3,5 %
<i>Index</i>	100	71	8	– 25
Cash flow (EUR)	78 775 697	39 007 376	19 727 317	5 827 513
<i>Index</i>	100	50	25	7
Investments (EUR)	18 082 767	15 044 306	5 110 610	8 593 605
<i>Index</i>	100	83	28	48
Return on investments	57,2 %	28,3 %	7,9 %	– 8,7 %
<i>Index</i>	100	49	14	– 15

Source: Verified questionnaire replies of the sample of Union producers

(155) The Commission established the profitability of the sampled Union producers by expressing the pre-tax net profit of the sales of the like product to unrelated customers in the Union as a percentage of the turnover of those sales. Profitability fell substantially throughout the period considered because of the developments in average sales prices and costs of production described at recital (152). The rising cost of production as from 2017 and suppressed sales prices due to imports from the countries concerned caused the Union industry to make losses in the investigation period.

(156) The net cash flow is the ability of the Union producers to self-finance their activities. The trend in net cash flow developed negatively throughout the period considered.

- (157) The return on investments is the profit in percentage of the net book value of investments. It developed negatively over the period considered reflecting the trends previously described for profitability and cash flow.
- (158) The Union industry continued to invest in the period considered. The investments were made to improve the efficiency of production, reduce energy consumption and in environmental improvements. However, investments were substantially lower in 2017 and the investigation period than in 2015 and 2016. The falling investment levels were caused by a reduced ability to raise capital as demonstrated by the deteriorating cash flow situation.

4.4.4. Conclusion on injury

- (159) Over the period considered, the Union industry suffered large falls in sales prices (28 %) which together with increased costs in 2017 and the investigation period have caused a profit level of 14 % in 2015 to turn into losses in the investigation period. This trend resulted in similar falls in cash flow, return on investment and reduced investment. Significant negative effects have also been felt in volume indicators such as production, that fell by 8 %, sales volume, that fell by 21 %, and market share, that went from 69,7 % in 2015 to 57,9 % in the investigation period. These developments left the Union industry in a vulnerable situation.
- (160) Very few of the indicators examined showed a positive development. Production capacity slightly increased over the period considered but production fell as stated in the previous recital. Also, stocks have fallen but the level of stocks is low throughout the period considered.
- (161) On the basis of the above, the Commission therefore concluded at this stage that the Union industry suffered material injury within the meaning of Article 3(5) of the basic Regulation.

5. CAUSATION

- (162) In accordance with Article 3(6) of the basic Regulation, the Commission examined whether the dumped imports from the countries concerned caused material injury to the Union industry. In accordance with Article 3(7) of the basic Regulation, the Commission also examined whether other known factors could, at the same time, have injured the Union industry. The Commission ensured that any possible injury caused by factors other than the dumped imports from the countries concerned was not attributed to the dumped imports. Inter alia, these factors are: imports from third countries, a fall in consumption, developments on the (world) urea market, increases in gas prices in 2017 and the investigation period, the export performance of the Union industry, higher costs for Union producers and certain purchases and sales of UAN by Union producers.

5.1. Effects of the dumped imports

- (163) Imports from the countries concerned increased by 64 % over the period considered increasing their market share by 72 % as shown in table 2. This development took place despite a fall in consumption of 5 % over the period considered.
- (164) Import prices from the countries concerned fell on average by 32 %. In fact the prices of all three of the countries concerned fell by between 30 % and 34 % depending on the country. This fall in sales prices was particularly evident in 2016 when, at the same time, the volume of imports from the countries concerned increased by 50 % as compared to 2015. In the investigation period, comparing the sales prices on a type-by-type basis for transactions at the same level of trade, imports from the countries concerned undercut the prices of the Union industry by 6,8 % on average.
- (165) It is clear that the large increase in imports at falling prices played a substantial role in the rapid deterioration of the Union industry's economic indicators. Two product specific factors aggravated this impact. Firstly, UAN is a commodity sold to customers based almost exclusively on price. Therefore, only a small difference in price may have a significant consequence. Secondly, UAN is a liquid product requiring special tanks for storage which means that market prices have to be accepted shortly after the time of production whatever the cost of production applicable at the time.
- (166) The low sales prices from the countries concerned were most damaging in 2017 and the investigation period when costs were increasing due to higher gas prices. The depressed Union industry sales prices, which could not be risen in line with the increasing costs due to price pressure from imports, caused the Union industry's performance indicators to deteriorate resulting in losses by the investigation period. In 2017 and the investigation period, several producers thus could not avoid production breaks and the investment levels went significantly down. This in turn further aggravated the injury because continuous investment in an integrated chemical plant is essential to long-term survival.

- (167) Some parties invoked a lack of correlation between the level of imports and the Union industry's sales prices and profits in the sense that Union industry's sales prices and profits were high during periods when there were significant imports and vice-versa. However, the points made above in this section and the inability of the Union industry to take advantage of its domestic market to the same extent as producers from the countries concerned are evidence of the existence of injury caused by the dumped imports.

5.2. Effects of other factors

5.2.1. Imports from third countries

- (168) The volume of imports from other third countries developed over the period considered as follows:

Table 11

Imports from third countries

		2015	2016	2017	IP
Total of third countries except the countries concerned	Volume (tonne)	403 934	280 367	201 741	202 738
	<i>Index</i>	100	69	50	50
	Market share	8,0 %	5,7 %	3,8 %	4,1 %
	<i>Index</i>	100	72	48	51
	Average price	189	140	136	129
	<i>Index</i>	100	74	72	68

Source: Comext

- (169) Imports from third countries (mainly from Belarus, North Macedonia, Serbia and Algeria) decreased by 50 % over the period considered and in the investigation period they had a market share of only 4,1 %.
- (170) It was therefore provisionally concluded that such imports could only have a marginal impact on the situation of the Union industry.

5.2.2. Export performance of the Union industry

- (171) The volume of exports of the Union industry developed over the period considered as follows:

Table 12

Export performance of the Union industry

	2015	2016	2017	IP
Export volume (tonne)	272 077	306 840	559 840	552 979
<i>Index</i>	100	113	206	203
Average price (EUR/tonne)	171	124	122	125
<i>Index</i>	100	72	72	73

Source: Fertilizers Europe and sampled producers

- (172) Over the period considered, the Union industry increased its sales on the export markets by ca. 280 000 tonnes. The increased sales on its export market, thus, only compensated for a small part the loss of ca. 700 000 tonnes in the Union market. The prices of the Union industry's exports were similar to its prices on the Union market.
- (173) It was therefore provisionally concluded that such exports did not contribute to the injury suffered by the Union industry.

5.2.3. Consumption

- (174) During the investigation some parties referred to fluctuating consumption and/or adverse weather conditions in key markets as drivers of the injurious situation of the Union industry. Table 1 shows that the consumption on the Union market indeed fluctuated over the period considered and fell by 5 % overall. However, despite these fluctuations and the overall fall, imports from the countries concerned increased steadily during the period considered, at the expense of other imports and Union industry sales.
- (175) It was therefore provisionally concluded that the development of demand did not contribute to the injury suffered by the Union industry.

5.2.4. The (world) price of urea

- (176) Some parties claimed that Union producers' injurious situation was attributable to the world urea price since the latter drove Union UAN prices down. However, the investigation showed that there is no world price for urea which could have influenced the situation of the Union industry. There are independent actors that publish spot prices for urea at various points around the world. These prices show price variations from place to place over the period considered ⁽¹⁵⁾. In addition, whereas worldwide urea represents 56 % of all fertilisers consumed, urea is not the preferred fertiliser in the Union, where it represents some 19 % of fertilisers used.
- (177) It was therefore provisionally concluded that the (world) price of urea could not have a significant impact on the Union industry's sales prices and its injurious situation.

5.2.5. Higher costs within Union producers

- (178) Several parties pointed at increases in selling, administrative and general expenses within Union producers and/or said that some complaining Union producers are in an injurious situation because they pay a high price for their gas.
- (179) The investigation did not show any abnormal evolution of selling, administrative and general expenses within sampled Union producers. As to the level of gas prices during the period considered, its evolution does not explain the shrinking profits in this case. High gas prices could explain a continuous inability to reach adequate profitability levels, which is not the situation here since in 2015 and 2016 profitability levels were 14 % and 10 % respectively.
- (180) It is therefore considered that the gas price evolution was as an aggravating factor of the injury suffered by some Union producers. Nevertheless, neither gas nor other cost increase was the main cause of injury. It was the price pressure exerted by imports from the countries concerned that did not allow the Union industry to pass on the costs increases via sales prices.

5.2.6. Certain UAN purchased and sold by Union producers

- (181) Several parties said that the injury eventually suffered by some Union producers was self-inflicted because some Union producers purchased UAN.
- (182) The investigation showed that some Union producers or their trading arms purchased some UAN from importers or traders in the Union in order to fulfil certain orders or for logistical reasons. Given that UAN from several sources is mixed in tanks and the fact that sometimes such tanks are shared by several players in the market, it cannot be excluded that Union producers actually repurchased some of the UAN previously sold by them. In any case, UAN purchases by Union producers were negligible in volume terms compared to overall Union sales.
- (183) The claim made by one Russian exporting producer that some Union producers sell UAN in the Union at discounted prices below the market price was not substantiated with any evidence.
- (184) In light of the above it was provisionally concluded that none of the above-mentioned operations had a significant impact on the Union industry's injurious situation.

⁽¹⁵⁾ See for instance slide 8 of Yara's presentation from 11 September 2018 available via <https://www.yara.com/siteassets/investors/057-reports-and-presentations/conferencers/2018/2018-09-11-yar-handelsbanken-presentation.pdf>

5.2.7. Other factors

- (185) During the investigation some parties referred to other factors as drivers of the injurious situation of the Union industry. These other factors include i) the seasonality of UAN prices, ii) the Union producers' swing capacities, iii) irregular supplies by some Union producers and iv) a digital platform that would sell fertilizers on the web at aggressive prices.
- (186) The investigation showed, however, that i) the analysis being made on the basis of 12-months period, the effect of any seasonality of UAN prices is offset, that ii) Union producers resort to swing capacities as a protective measure, that iii) certain irregular supplies by some Union producers were due to normal maintenance operations and that iv) online UAN sales, limited, were done at similar market prices.
- (187) It was therefore provisionally concluded that none of these factor was a driver of the injurious situation of the Union industry.

5.3. Conclusion on causation

- (188) Over the period considered and against a backdrop of decreasing consumption in the Union, import volumes from the countries concerned and their market shares increased significantly whereas prices from the countries concerned fell on average by 33 %. The increase in the market share of the imports coincided with a similar decrease of market share for the Union industry. Bearing in mind that UAN is a price sensitive commodity, that the market share of imports from the countries concerned was 37,7 % in the investigation period, and that those imports were made at prices that undercut Union industry prices, such imports produced substantial harmful effects. The price pressure from imports from the countries concerned on Union producers was particularly damaging in 2017 and the investigation period when costs were increasing. Such pressure caused the Union industry's performance indicators to deteriorate and led to losses in the investigation period.
- (189) The analysis in recitals (171) to (188) above found that no other factor had a significant impact on the Union industry's injurious situation.
- (190) On the basis of the above, the Commission concluded at this stage that the material injury to the Union industry was caused by the dumped imports from the countries concerned and the other factors, considered individually or collectively, did not attenuate the causal link.
- (191) The Commission distinguished and separated the effects of all known factors on the situation of the Union industry from the injurious effects of the dumped imports. The effect of most of these factors was practically non-existent, whereas the effect of the evolution of gas prices on the Union industry's negative developments in terms of depressed profits was limited.

6. LEVEL OF MEASURES

- (192) To determine the level of the measures, the Commission examined whether a duty lower than the margin of dumping would be sufficient to remove the injury caused by dumped imports to the Union industry.
- (193) In the present case, the complainants claimed the existence of raw material distortions within the meaning of Article 7(2a) of the basic Regulation with regard to one of the countries under investigation, namely Russia. The assessment concerning Russia is in Section 6.3 below.
- (194) One of the cooperating Russian exporting producers claimed that the potential application of the provisions of Article 7(2a) of the basic Regulation with regard to Russia would be discriminatory, since raw material distortions within the meaning of this Article also applied to the natural gas markets in TT and US.
- (195) The Commission examined these claims and provisionally concluded that:
- (a) the alleged subsidization of the purchases of natural gas used by the UAN producer in TT does not fall under the raw material distortions listed in Article 7(2a) of the basic Regulation.
 - (b) although the alleged prohibition of natural gas exports without prior authorisation in the US could potentially fall under the raw material distortions listed in Article 7(2a) of the basic Regulation, the export licensing system used appears to be of an automatic nature and the negligible licence fee does not affect the export price.
- (196) Therefore, the Commission provisionally rejected the claim of discriminatory treatment in the application of Article 7(2a) of the basic Regulation with regard to Russia.

6.1. Examination of the margin adequate to remove the injury to the Union industry for Trinidad and Tobago and the United States of America

- (197) The Commission first established the amount of duty necessary to eliminate the injury suffered by the Union industry in the absence of distortions in the sense of Article 7(2a) of the basic Regulation. In this case, the injury would be eliminated if the Union industry was able to cover its costs of production, including those costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia of the basic Regulation, and to obtain a reasonable profit ('target profit').
- (198) In accordance with Article 7(2c) of the basic Regulation, for establishing the target profit, the Commission took into account the following factors: the level of profitability before the increase of imports from the country under investigation, the level of profitability needed to cover full costs and investments, research and development (R&D) and innovation, and the level of profitability to be expected under normal conditions of competition.
- (199) As shown in table 2, in 2016 imports from the countries concerned started soaring. Any profit margin for this purpose would thus need to be derived from the years before. In order to avoid that an exceptional profit year would be used it was decided to use the weighted average profit achieved by the Union industry over the period 2013-2015. The thus obtained target profit, which amounted to 10 %, was considered to represent a healthy profit under normal conditions of competition.
- (200) One sampled Union producer claimed that the Commission should add to the target profit planned investments which were not implemented during the period considered. The Commission investigated this claim under Article 7(2c) of the basic Regulation. However, the company concerned was unable to provide documentary evidence to support this claim, which was therefore provisionally rejected.
- (201) In accordance with article 7(2d) of the basic Regulation, as a final step, the Commission assessed the future costs resulting from Multilateral Environmental Agreements, and protocols thereunder, to which the Union is a party, and of ILO Conventions listed in Annex Ia of the basic Regulation, that the Union industry will incur during the period of the application of the measure pursuant to Article 11(2). Based on the evidence available, the Commission established an additional cost of 3,7 % which was added to the non-injurious price. A note to the file on how the Commission established this additional cost is available in the file for inspection by interested parties.
- (202) These costs comprised the additional future costs to ensure compliance with the EU Emissions Trading System (EU ETS). The EU ETS is a cornerstone of the EU's policy to comply with Multilateral Environmental Agreements. Such additional costs were calculated on the basis of the average estimated additional EU Allowances (EUA) which will have to be purchased during the life of the measures. The EUAs used in the calculation were net of free allowances receivable and, like all costs of production, were verified to ensure they were correctly allocated to the product concerned. The costs of the EUAs were extrapolated to account for the expected price variation during the lifespan of the measures. The source for these projected prices is a Bloomberg New Energy Finance extraction dated 8 February 2019. The average projected price for EUAs for this period is 24,14 EUR/tonne of CO₂ produced.
- (203) On this basis, the Commission calculated a non-injurious price of the like product for the Union industry.
- (204) The Commission then determined the injury elimination level on the basis of a comparison of the weighted average import price of the cooperating exporting producers in TT and US, as established for the price undercutting calculations, with the weighted average non-injurious price of the like product sold by the sampled Union producers on the Union market during the investigation period. Any difference resulting from this comparison was expressed as a percentage of the weighted average import CIF value. The result of these calculations is shown in the table below.

Country	Company	Dumping margin (%)	Underselling margin (%)
Trinidad and Tobago	Methanol Holdings (Trinidad) Limited	55,9	16,3
Trinidad and Tobago	All other companies	55,9	16,3

Country	Company	Dumping margin (%)	Underselling margin (%)
United States of America	CF Industries Holdings, Inc.	37,3	22,6
United States of America	All other companies	37,3	22,6

6.2. Examination of the margin adequate to remove the injury to the Union industry for Russia

6.2.1. Comparison between dumping margin and underselling margin

- (205) In accordance with Article 7(2) of the basic Regulation, the Commission first examined in relation to Russia whether the margin of dumping provisionally established would be higher than the margin adequate to remove the injury to the Union industry. To this effect, a comparison between the weighted average import price of the cooperating exporting producers in Russia, with the target price of the Union industry as explained in Section 6.1 above, was made. The result of these calculations is shown in the table below.

Country	Company	Dumping margin (%)	Underselling margin (%)
Russia	PJSC Acron	31,9	12,5
Russia	Novomoskovsky Azot JSC	34,0	15,8
Russia	Nevinnomyssky Azot JSC	34,0	15,8
Russia	All other companies	34,0	13,6

- (206) Since the underselling margin so calculated was lower than the margin of dumping, the Commission underwent the examination required under Article 7(2a) of the basic Regulation.

6.3. Raw material distortions

- (207) The complainant provided sufficient evidence in the complaint that there are raw material distortions within the meaning of Article 7(2a) of the basic Regulation with regard to the product concerned in Russia. According to the evidence in the complaint, natural gas, which accounts for substantially more than 17 % of the cost of production of the product concerned, is subject to dual pricing in Russia.
- (208) Therefore, as announced in the notice of initiation, in accordance with Article 7(2a) of the basic Regulation, when assessing the appropriate level of measures in relation to Russia, the Commission examined the alleged distortion and any other distortions covered by Article 7(2a) of the basic Regulation in Russia.
- (209) The Commission first identified the main raw materials used in the production of the product concerned by each of the cooperating exporting producers. As main raw materials were considered those raw materials which are likely to represent at least 17 % of the cost of production of the product concerned.
- (210) The Commission established that natural gas is the main raw material for the production of the product concerned. The investigation confirmed that it accounts for more than 17 % of the cost of production of UAN for both cooperating Russian exporting producers, as required by Article 7(2a). For both companies, on the basis of the information provided by them, the cost of gas in the total cost of production of UAN accounted for more than 50 % with the gas prices as reported by the companies. With the gas adjustment as described in recitals (52) to (55) and (59) to (60), the cost of gas in the total cost of production of UAN is in the range of 70 % to 85 %.
- (211) The Commission then examined whether natural gas used in the production of the product concerned is distorted by one of the measures listed in Article 7(2a) of the basic Regulation: dual pricing schemes, export taxes, export surtax, export quota, export prohibition, fiscal tax on exports, licensing requirements, minimum

export price, value added tax (VAT) refund reduction or withdrawal, restriction on customs clearance point for exporters, qualified exporters list, domestic market obligation, captive mining. For this purpose the Commission examined the relevant Regulations of the Russian Federation, submissions of the interested parties including by the GOR, publicly available reports and studies ⁽¹⁶⁾, audited annual accounts of the Russian gas suppliers and strategic documents of the GOR ⁽¹⁷⁾.

- (212) The Commission established that one of the measures listed as raw material distortions in the second paragraph of Article 7(2a), namely an export tax (of 30 %) ⁽¹⁸⁾, existed and affected the sales of natural gas in Russia during the IP.
- (213) In addition, an exclusive right for export of gas in gaseous state is granted to the owner of the Unified Gas Supply System ('UGSS'). It is also provided by law that the owner of the UGSS can only be an entity controlled by the State. Therefore, Gazprom enjoys the only licence to export natural gas. The situation as described could qualify as either 'licensing requirements' or 'qualified exporter list' measure.
- (214) Finally, the complainant referred to the dual pricing of natural gas as a potential raw material distortion. The investigation indeed found evidence indicating the existence of dual pricing concerning the natural gas in Russia for domestic and export sales based on the gas price formula used in determination of the regulated domestic prices.
- (215) In this respect, the domestic price in Russia is regulated for the state-owned gas supplier Gazprom and unregulated for other suppliers. Suppliers other than Gazprom, however, closely follow the price determined by GOR for Gazprom as observed in the investigated exporting producers but also from publicly available information ⁽¹⁹⁾. Depending on the year, the domestic price is set using a gas price formula or is determined by indexation. The index to be used is regularly published in a forecast of socio-economic development by the Russian Ministry of Economic Development ⁽²⁰⁾. The gas price formula calculates the appropriate level of domestic price by deducting the export tax, international and domestic transport costs and so called reduction coefficient from an international price of natural gas. The Commission considered that the effect of dual pricing can be attributed to the reduction coefficient which is independent from the effect of the export tax.
- (216) The Commission compared the price of natural gas to price in the representative international market. The investigation confirmed that the domestic price of natural gas in Russia is significantly, more than twice, lower as compared to Waidhaus price calculated as explained in recital and (59) to (60).
- (217) As explained in the recital (55) point d), the Commission considered the Waidhaus price as an appropriate benchmark for the representative international market price to assess the distortion in the domestic market price of natural gas in Russia.
- (218) One of the Russian cooperating producers claimed that natural gas is not the raw material for the production of UAN and therefore it cannot be subject to the analysis under Article 7(2a) of the basic Regulation. Furthermore, the interested party in question claimed that it was not clear from the complaint that the cost of natural gas met the 17 % threshold in the total cost of production of UAN.
- (219) As explained in recital (52), natural gas accounts for more than 50 % of the cost of production of the product concerned. The fact that it is used to manufacture ammonia, one of the first steps of production of the product concerned, as explained in recital (60), does not change its nature as a necessary raw material for production of the product concerned. Both Russian producers of UAN are fully integrated chemical plants and therefore they both take advantage of the distortions identified for natural gas for making the product concerned. The claim is therefore provisionally rejected.

⁽¹⁶⁾ BP Statistical Review of World Energy 2018;

Russian Oil and Gas Sector Regulatory Regime: Legislative Overview (King and Spalding 2017).

⁽¹⁷⁾ Forecasts of socio-economic development for years 2016 – 2036 (Ministry of Economic Development of the Russian Federation).

⁽¹⁸⁾ Decree of the Government of the Russian Federation of 30 August 2013 No. 754 on approving the rates of export customs duties on goods exported from the Russian Federation outside the states parties to the agreements on the Customs Union.

⁽¹⁹⁾ In the Annual Report 2017, Novatek (an independent producer and supplier of natural gas) identified the price regulation as a risk in its risk management considerations stating that '[a]s an independent natural gas producer, Novatek is not subject to state regulation of natural gas prices. Nevertheless, the Company's prices are strongly influenced by the prices established by a Federal body.'

⁽²⁰⁾ Available at <http://economy.gov.ru/minec/activity/sections/macro/prognoz/> (last viewed 4 March 2019).

- (220) Taking into account its assessment as explained in recitals (205) to (215), the Commission provisionally concluded that natural gas is subject to distortions within the meaning of Article 7(2a) of the basic Regulation.

6.4. Union interest under Article 7(2b) of the basic Regulation

- (221) Having concluded that there are raw material distortions as provided for by Article 7(2a) of the basic Regulation in the case of Russia, the Commission examined whether it could clearly conclude that it was in the Union interest to determine the amount of provisional duties in accordance with Article 7(2b) of the basic Regulation. The determination of the Union interest was based on an appreciation of all pertinent information to this investigation, including the spare capacities in the exporting country, competition for raw materials and the effect on supply chains for Union companies in accordance with Article 7(2b) of the basic Regulation. In order to conduct this assessment, the Commission inserted specific questions in the questionnaires to all interested parties. The complainant and some complaining producers provided a response to those questions. A few other parties provided a response to those questions but most of the responses of these few parties were incomplete.

6.4.1. Spare capacities in the exporting country

- (222) As to UAN, as noted in recitals (141) and (143), UAN is normally produced at integrated chemical sites. Thus, spare capacity is largely dependent on the configuration of these integrated sites and on the producer's customer base. Each company aims to maximise the profitability of the site as a whole and therefore it is difficult to establish the precise spare capacity.
- (223) Considering that fact, and on the basis of the information collected during the investigation, the Commission established that the spare capacity in Russia ranges between 330 000 and 750 000 tons per year, which constitutes between 7 % and 16 % of the UAN consumed in the Union. These numbers were established on the basis of verified capacity information of the two cooperating Russian exporting producers made up for most of the production in Russia (actual spare capacity, disregarding the 'swing capacity') and information provided by the complainants (potential spare capacity, considering the 'swing capacity').
- (224) The Russian UAN market ⁽²¹⁾ is relatively small as compared to the Russian UAN production capacity ⁽²²⁾. With a production that significantly outweighs domestic consumption, Russia is a net exporter of UAN.
- (225) In 2017, Russia exported over 100 000 tons of UAN to Ukraine. Following the imposition of anti-dumping measures on UAN originating in Russia by Ukraine in May 2017, these exports became available to be directed to other more interesting markets, including the Union market.
- (226) Russia's export potential is patent. Even if the 'swing capacities' of Russian producers were deemed limited, it is undeniable that since August 2018 UAN import volumes into the Union from Russia continued the upward trend shown in table 2 (see also Table 1 of the registration Regulation). It is also noted that on page 9 of its submission dated 19 September 2018 Eurochem foresaw an increase of Russian UAN exports in 2018 and 2019.

6.4.2. Competition for raw materials

- (227) As highlighted in recital (54) above, the investigation showed that gas prices in Russia were regulated by the State via federal laws and did not reflect normal market conditions, where prices are principally set by production costs and profit expectations.
- (228) Acron submitted a presentation on the competition in the gas market in Russia (namely on gas pricing, profitability of regulated and non-regulated prices and sources of supply) prepared in 2016 by the GOR outside the scope of this investigation. However, the Commission did not consider that this presentation, which is addressed in recitals (56)-(57) above, undermined the findings stated in the recital above.
- (229) The regulation of the gas market in Russia results in an unfair advantage to Russian UAN producers since they have access to artificially low gas prices in the domestic market due to the domestic regulations explained in recitals (209) to (217) above. At the same time, Union producers are negatively affected by the price discrimination caused by these regulations in Russia, which makes them pay considerably higher prices than those paid by Russian producers for the same gas.

⁽²¹⁾ Page 9 of the open version of the complaint contains a graph called 'World UAN market (2015)'. Russia's UAN market is just a fraction in the share 'others' (1 705 000 tons).

⁽²²⁾ 3 280 000 tons in 2018 according to page 94 of the open version of the complaint.

- (230) The Commission deems that this situation is unlikely to change in the near future ⁽²³⁾.

6.4.3. *Effect on supply chains for Union companies*

- (231) According to the findings of the investigation, the expected impact on supply chains is limited. In fact, most parties, including importers, stated that UAN's ultimate users, i.e. farmers, would be the only parties affected by price increases stemming from measures given that there are no intermediate parties in the supply chain that can absorb duties. Being a liquid and rather homogeneous commodity, UAN from several origins is mixed in tanks and most actors in the supply chain ignore the origin of the UAN purchased/used. Overall supply chains are thus not expected to significantly change if measures are imposed. Union producers will continue producing UAN, while imports from Russia (as well as from the other countries investigated) are expected to continue in light of the growth foreseen in UAN demand and the fact that Union producers can switch products to a limited extent.
- (232) According to the findings of the investigation, the effects on Union farmers as a whole would be small. The Commission found that UAN represents less than 1 % of overall farming costs in the Union. A price increase derived from measures, if any, should thus not have a significant impact on the farming sector in the Union as a whole.
- (233) Given that UAN as a fertilizer covers very diverse realities and its use varies a lot from crop to crop, from region to region, etc., the Commission assessed the impact on farms specialised in common wheat (main crop using UAN) in France (main wheat producing country in the Union) that use UAN as a sole source of nitrogen fertiliser separately.
- (234) In such specialised farms, in 2013 all fertilisers represented 21,94 % of their costs ⁽²⁴⁾. The Commission estimated that in the 2017/2018 campaign UAN represented up to 10 % of their total costs of production ⁽²⁵⁾. Considering the highest provisional antidumping duty imposed, this would represent a maximum of 3 % ⁽²⁶⁾ increase in the cost of production, if measures were passed on in the same proportion. Thus, the Commission concluded that measures would not have a disproportionate impact even for these farms. Moreover, many farms in the Union (including France) rely on several crops.

6.4.4. *Conclusion*

- (235) Having assessed all pertinent information to this investigation, the Commission provisionally concluded that, for Russia, it is in the Union interest to determine the amount of provisional duties in accordance with Article 7(2a) of the basic Regulation.
- (236) In particular, the Commission first established that there are distortions on raw materials with regard to the product concerned in Russia. Second, the Commission found that Russia has spare capacity which can be used to increase exports to the Union. In addition, the Commission found that Russian producers have an unfair advantage *vis-à-vis* Union producers with regard to natural gas due to the regulation in the Russian market. Finally, the Commission concluded that measures would not negatively affect the supply chain in Europe. More specifically, the Commission found that, although a limited number of farmers in the Union could potentially be affected by measures, any impact would be limited and not disproportionate overall. Finally, the Commission considered that imports of UAN would continue and, therefore, supply would not be disrupted by measures. Imports from the countries concerned, with a market share above 37 % in the investigation period, are

⁽²³⁾ For example, page 45 of Grupa Azoty Zakłady Azotowe Pulawy S. A.'s directors' report for 2018 foresees rather stable natural gas prices in the Union until 2020. This report is available in the open file (t18.010219).

⁽²⁴⁾ In light of the 'EU Cereal farms report base on 2013 FADN data', DG AGRI, p. 44, in a farm specialised in common wheat in France in 2013 fertilizers (all types) represented 286 EUR/ha. 21,94 % is the result of dividing 286 EUR by the sum of the operational costs (1 003 EUR/ha) and depreciation (298 EUR/ha).

⁽²⁵⁾ In light of the 'EU Cereal farms report base on 2013 FADN data', DG AGRI, p. 44, in a farm specialised in common wheat in France in 2013 fertilizers (all types) represented 286 EUR/ha. It was thus assumed that in such a farm UAN would have represented up to 200 EUR/ha (70 % of 286 EUR/ha, since nitrogen fertilizers account for 70 % of total fertilizer use in the EU), which is 13 % of the total costs of production in 2013. This percentage dropped after 2013. Given the drop in prices of nitrogen fertilisers in France since 2013 as published in 'Agreste Bilan conjoncturel 2017 – Décembre 2017' (see <http://agreste.agriculture.gouv.fr/conjoncture/bilans-annuels-conjoncturels/>), it can reasonably be assumed that in the 2017/2018 campaign in a farm specialised in common wheat in France using UAN as a sole source of nitrogen fertiliser UAN represented up to 10 % of total costs of production.

⁽²⁶⁾ This percentage would be 5 % if calculated with the data in footnote 24.

expected to continue in light of the growth foreseen in UAN demand and the fact that Union producers can switch products to a limited extent. In any event, Union producers, with spare capacities, can produce significant volumes of UAN.

- (237) On the basis of the above, the Commission concluded that, in the case of Russia, a duty lower than the margin of dumping would not be sufficient to remove injury to the Union industry. Union producers are not only harmed by dumping, but suffer from additional distortions of trade compared to Russia's exporting producers. Therefore, in order to adequately protect trade, the level of measures for Russia must equate the margin of dumping as provisionally established.

7. UNION INTEREST

- (238) In accordance with Article 21 of the basic Regulation, the Commission examined whether it could clearly conclude that it was not in the Union interest to adopt measures in this case in respect of imports from Russia, Trinidad and Tobago and the USA, despite the determination of injurious dumping. The determination of the Union interest was based on an appreciation of all the various interests involved, including those of the Union industry, importers, users and other relevant economic operators.

7.1. Interest of the Union industry

- (239) There are 20 known producers of UAN across the Union. Union producers covering 80 % of Union production volume cooperated with the investigation. Two companies or groups of companies representing 30 % of UAN production in the Union opposed to the case.
- (240) The absence of measures is likely to have a significant negative effect on the Union industry in terms of lower sales volumes and further price depression, thus lowering profitability and investments. Measures would allow the Union industry to exploit its potential on a Union market that is a level-playing field, recover lost market share, and improve profitability to levels considered sustainable.

7.2. Interest of unrelated importers

- (241) Three unrelated importers submitted a questionnaire reply. Only two of them agreed to further co-operate with the investigation.
- (242) UAN activities represented a minor share of the activities of one of the two co-operating importers, which is in fact a union of cooperatives acting on behalf of its members. The other importer, more reliant on UAN, adapts its selling prices depending on the evolution of the UAN market. The two co-operating importers offer a wide range of services and/or products and have several sources of supply.
- (243) Any negative consequences for importers in the Union stemming from measures cannot outweigh the positive consequences of the latter on the Union industry. Measures are intended to create a level playing field that all parties can benefit from. Moreover, importers offer in general a wide range of fertilisers and/or services and have several sources of supply. Most parties, including both co-operating importers, stated that UAN's ultimate users, i.e., farmers, would be the parties affected by price increases (if any) stemming from measures in the end.

7.3. Interest of users

- (244) Eleven parties representing the interests of users submitted questionnaire replies although with limited verifiable data.
- (245) Associations representing relevant cooperatives and/or farmers in the Union (COPA-COGECA), France (COOP de France), Ireland (Irish Farmers Association) and Finland (MTK) submitted that measures would have a negative impact on UAN users, i.e. farmers. A significant number of French cooperatives, unions/groups of cooperatives and purchase platforms buying agricultural supplies on behalf of farmers commented on the negative impact that measures could have on French farmers. Co-operating exporting producers, a series of unrelated importers and different economic operators in France and Spain expressed a similar view.
- (246) One large French intermediary active in agri-foods products and fertilisers stated that any anti-dumping measures 'will have to be light'.
- (247) Some parties claimed that there are limited/no substitutive products for farmers (and/or other economic operators) because there is not enough production of nitrogen fertilisers in the Union. However, nothing on file points at a shortage of nitrogen fertilisers in the Union; there are numerous sources of supply of nitrogen fertilisation in general, such as calcium ammonium nitrate, ammonium nitrate or urea.

- (248) Some comments concerned the importance of UAN costs in a farm (although the quantification varied significantly from party to party) and/or pinpointed that farmers have been suffering for years for various reasons (such as a bad crop in 2016, low sale prices, bad weather or high market competitiveness) and the jobs at stake. According to these parties, anti-dumping measures would force some farmers to stop producing and/or further deteriorate a sector that cannot pass on costs and needs to remain competitive in a globalised market. For some parties anti-dumping measures would be a trade-off with the Common Agricultural policy and the latter will become insufficient to guarantee farms' income and competitiveness.
- (249) The Commission dismissed these arguments. While acknowledging that the impact could vary depending on the type of farm or on the farming practice, the Commission found that UAN represents less than around 1 % of overall farming costs in the Union. A price increase derived from measures, if any, should thus not have a significant impact on the farming sector as a whole in the Union.
- (250) Given that UAN as a fertilizer covers very diverse realities and its use varies a lot from crop to crop, from region to region, etc., the Commission examined the potential impact of measures for farms specialised in common wheat (main crop using UAN) in France (main wheat producing country in the Union) that use UAN as a sole source of nitrogen fertiliser.
- (251) In such specialised farms, in 2013 UAN represented 15,4 % of their costs ⁽²⁷⁾. The Commission estimated that in the 2017/2018 campaign UAN represented up to 10 % of their total costs of production ⁽²⁸⁾. Considering the highest provisional antidumping duty imposed, this would represent approximately a 3 % ⁽²⁹⁾ increase in the cost of production, if measures were passed on in the same proportion. Thus a price increase derived from the measures imposed, if any, should not have a disproportionate high impact on farms in the 'worst case scenario', given, inter alia, the tools at the disposal of farmers in order to secure UAN at reasonable prices (e.g. pooling purchases via purchase platforms or insurances to hedge margins). Moreover, many farms in the Union rely on several crops.
- (252) As to the claim regarding the impact on jobs in farms, it is noted that for years farming in the Union is/will be becoming more technology-intensive, and has seen a reduction of workforce which is forecasted to continue ⁽³⁰⁾. The impact of the anti-dumping measures is expected to be limited as compared to these ongoing trends.
- (253) Notwithstanding the provisional findings above, the Commission encourages parties that have not yet provided their views to make representations on the interests of users. These observations and any other elements brought to the Commission attention by interested parties after provisional measures within the set deadlines will be carefully analysed at definitive stage.

7.4. Other factors

- (254) This section takes stock of other comments which were common among several interested parties. These parties are exporting producers, importers, associations representing relevant cooperatives and/or farmers in the Union, France and Ireland; French cooperatives, unions/groups of cooperatives and purchase platforms buying agricultural supplies on behalf of farmers, and different economic operators in France, Spain and other parts of the Union.

⁽²⁷⁾ In light of the 'EU Cereal farms report base on 2013 FADN data', DG AGRI, p. 44, in a farm specialised in common wheat in France in 2013 fertilizers (all types) represented 286 EUR/ha. 15,4 % is the result of dividing 286 EUR by the sum of the operational costs (1 003 EUR/ha) and depreciation (298 EUR/ha).

⁽²⁸⁾ In light of the 'EU Cereal farms report base on 2013 FADN data', DG AGRI, p. 44, in a farm specialised in common wheat in France in 2013 fertilizers (all types) represented 286 EUR/ha. It was thus assumed that in such a farm UAN would have represented up to 200 EUR/ha (70 % of 286 EUR/ha, since nitrogen fertilizers account for 70 % of total fertilizer use in the EU), which is 13 % of the total costs of production in 2013. This percentage dropped after 2013. Given the drop in prices of nitrogen fertilisers in France since 2013 as published in 'Agreste Bilan conjoncturel 2017 – Décembre 2017' (see <http://agreste.agriculture.gouv.fr/conjoncture/bilans-annuels-conjoncturels/>), it can reasonably be assumed that in the 2017/2018 campaign in a farm specialised in common wheat in France using UAN as a sole source of nitrogen fertiliser UAN represented up to 10 % of total costs of production.

⁽²⁹⁾ This percentage would be 5 % if calculated with the data in footnote 23.

⁽³⁰⁾ 'EU Agricultural Outlook for the Agricultural markets and Income 2017-2030, European Commission, 2017, p. 68, inter alia.

- (255) Some parties opposed to measures on the grounds that imports are necessary, that there is not enough UAN production in the Union and that the gap between demand and supply increases and that Union UAN producers favour other value-added products. The Commission dismissed these arguments. Overall there are enough sources of UAN supply. The fact that there is limited UAN production in the Union, the increases in UAN demand in the Union and the disappearance of some traditional UAN sources of supply in the Union (e.g. one company that was previously producing UAN in France switch fully to other fertilisers) does not justify dumping practices. The investigation showed the benefits of preserving several sources of supply in the Union ⁽³¹⁾, including local UAN producers, rather than increasing UAN dependence on third countries with unfair trade practices and/or raw material distortions and/or a higher carbon footprint ⁽³²⁾. It also showed that Union UAN producers have the capacity/possibility to increase UAN production when a level playing field is ensured.
- (256) Some parties claimed that measures will reduce the usage of UAN, a fertiliser that has less negative environmental effects than other fertilisers, which entails a trade-off with environment protection policies. The Commission dismissed this point. Even if UAN has multiple agronomic advantages, it is not neutral for the environment and causes in principle higher ammonia volatilization losses than nitrate-based fertilisers.
- (257) Some parties claimed that other economic operators will suffer, that there are less jobs in Union UAN producers than in other sectors, that food security is at stake (since measures will make farmers use less UAN, which will reduce yields and, as a consequence, output crops) and that all nitrogen fertilizers will become more expensive (so that the normal gap between the different types of fertilisers remains). The Commission dismissed these arguments. There are no reliable estimates of the number of UAN-related jobs in relevant economic operators whereas, according to verified figures, there are more than 1 000 UAN-related jobs in Union producers. Six parties representing the interests of different economic operators submitted questionnaire replies although with limited verifiable data. As to food security, the aim of the measures is to create a level playing field all parties can benefit from. Nothing on file suggests that price increase of UAN, if any, will have a significant effect on the prices of other fertilizers.

7.5. Conclusion on Union interest

- (258) On the basis of the above, the Commission provisionally concluded that there were no compelling reasons that it was not in the Union interest to impose measures on imports of UAN originating in the countries concerned at this stage of the investigation.

8. PROVISIONAL ANTI-DUMPING MEASURES

- (259) On the basis of the conclusions reached by the Commission on dumping, injury, causation and Union interest, provisional measures should be imposed to prevent further injury being caused to the Union industry by the dumped imports.
- (260) Provisional anti-dumping measures should be imposed on imports of mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution originating in Trinidad and Tobago, and the United States of America in accordance with the lesser duty rule in Article 7(2) of the basic Regulation. The Commission compared the injury margins and the dumping margins (recital (208) above). The amount of the duties was set at the level of the lower of the dumping and the injury margins.
- (261) Provisional anti-dumping measures should be imposed on imports of mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution originating in Russia in accordance with Article 7(2b) of the basic Regulation. The Commission examined whether a duty lower than the margin of dumping would be sufficient to remove injury. Having found distortions on raw materials with regard to the product concerned in the sense of Article 7(2a) of the basic Regulation, namely in the form of, among others, an export tax of 30 %, the Commission concluded that it would be in the Union interest, as provided for in Article 7(2b) of the basic Regulation, to set the amount of the duties at the level of the dumping margins as a duty lower than the margin of dumping would not be sufficient to address the injury suffered by the Union industry.

⁽³¹⁾ The Irish Farmers Association acknowledges that Irish farmers pay among the highest prices in the world for their fertilisers (t18.010593). The applicant links this fact to the disappearance years ago of the local producer of fertilisers (t18.011682).

⁽³²⁾ The carbon footprint of ammonium nitrate in the EU is 1,1 tonne CO₂ equivalent/tonne product, 2,3 in the USA and 2,6 in Russia. Source: 'Growing together', Fertilizers Europe, 2018.

- (262) On the basis of the above, the provisional anti-dumping duty rates, expressed on the CIF Union border price, customs duty unpaid, should be as follows:

Country	Company	Dumping margin (%)	Injury margin (%)	Provisional anti-dumping duty
Russia	PJSC Acron	31,9	31,9	31,9
Russia	Novomoskovsky Azot JSC	34,0	34,0	34,0
Russia	Nevinnomyssky Azot JSC	34,0	34,0	34,0
Russia	All other companies	34,0	34,0	34,0
Trinidad and Tobago	Methanol Holdings (Trinidad) Limited	55,9	16,3	16,3
Trinidad and Tobago	All other companies	55,9	16,3	16,3
United States of America	CF Industries Holdings, Inc.	37,3	22,6	22,6
United States of America	All other companies	37,3	22,6	22,6

- (263) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. Therefore, they reflected the situation found during this investigation with respect to these companies. These duty rates are exclusively applicable to imports of the product concerned originating in the countries concerned and produced by the named legal entities. Imports of the product concerned produced by any other company not specifically mentioned in the operative part of this Regulation, including entities related to those specifically mentioned, should be subject to the duty rate applicable to 'all other companies'. They should not be subject to any of the individual anti-dumping duty rates.
- (264) A company may request the application of these individual anti-dumping duty rates if it changes subsequently the name of its entity. The request must be addressed to the Commission ⁽³³⁾. The request must contain all the relevant information to demonstrate that the change does not affect the right of the company to benefit from the duty rate which applies to it. If the change of name of the company does not affect its right to benefit from the duty rate which applies to it, a notice informing about the change of name will be published in the Official Journal of the European Union.
- (265) To minimise the risks of circumvention due to the high difference in duty rates, special measures are needed to ensure the application of the individual anti-dumping duties. The companies with individual anti-dumping duties must present a valid commercial invoice to the customs authorities of the Member States. The invoice must conform to the requirements set out in Article 1(3) hereof. Imports not accompanied by that invoice should be subject to the anti-dumping duty applicable to 'all other companies'.
- (266) To ensure a proper enforcement of the anti-dumping duties, the anti-dumping duty for all other companies should apply not only to the non-cooperating exporting producers in this investigation, but to the producers which did not have exports to the Union during the investigation period.

9. REGISTRATION

- (267) As mentioned in section 1.2, the Commission made imports of mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution subject to registration. Registration took place with a view to possibly collecting duties retroactively under Article 10(4) of the basic Regulation.
- (268) In view of the findings at provisional stage, the registration of imports should cease/be discontinued.
- (269) No decision on a possible retroactive application of anti-dumping measures has been taken at this stage of the proceeding. Such a decision will be taken at definitive stage.

⁽³³⁾ European Commission, Directorate-General for Trade, Directorate H, Rue de la Loi 170, 1040 Brussels, Belgium.

10. INFORMATION AT PROVISIONAL STAGE

- (270) In accordance with Article 19a of the basic Regulation, the Commission informed interested parties about the planned imposition of provisional duties. This information was also made available to the general public via DG TRADE's website. Interested parties were given three working days to provide comments on the accuracy of the calculations specifically disclosed to them.
- (271) Comments were received from Fertilizers Europe and the four exporting producers. The Commission took the comments into account that were considered of a clerical nature and corrected the margins accordingly.

11. FINAL PROVISIONS

- (272) In the interests of sound administration, the Commission will invite the interested parties to submit written comments within 15 days and/or to request a hearing with the Commission and/or the Hearing Officer in trade proceedings within 5 days.
- (273) The findings concerning the imposition of provisional duties are provisional and may be amended at the definitive stage of the investigation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A provisional anti-dumping duty is imposed on imports of mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution, currently falling under CN code 3102 80 00 and originating in Russia, Trinidad and Tobago, and the United States of America.

2. The rates of the provisional anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, of the product described in paragraph 1 and produced by the companies listed below shall be as follows:

Country	Company	Provisional anti-dumping duty (%)	TARIC additional code
Russia	PJSC Acron	31,9	C500
Russia	Novomoskovsky Azot JSC	34,0	C501
Russia	Nevinnomyssky Azot JSC	34,0	C504
Russia	All other companies	34,0	C999
Trinidad and Tobago	Methanol Holdings (Trinidad) Limited	16,3	C502
Trinidad and Tobago	All other companies	16,3	C999
United States of America	CF Industries Holdings, Inc.	22,6	C503
United States of America	All other companies	22,6	C999

3. The application of the individual duty rates specified for the companies mentioned in paragraph 2 shall be conditional upon presentation to the Member States' customs authorities of a valid commercial invoice, on which shall appear a declaration dated and signed by an official of the entity issuing such invoice, identified by name and function, drafted as follows: 'I, the undersigned, certify that the (volume) of (product concerned) sold for export to the European Union covered by this invoice was manufactured by (company name and address) (TARIC additional code) in [country concerned]. I declare that the information provided in this invoice is complete and correct'. If no such invoice is presented, the duty applicable to all other companies shall apply.

4. The release for free circulation in the Union of the product referred to in paragraph 1 shall be subject to the provision of a security deposit equivalent to the amount of the provisional duty.

5. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

1. Interested parties shall submit their written comments on this regulation to the Commission within 15 calendar days of the date of entry into force of this Regulation.
2. Interested parties wishing to request a hearing with the Commission shall do so within 5 calendar days of the date of entry into force of this Regulation.
3. Interested parties wishing to request a hearing with the Hearing Officer in trade proceedings shall do so within 5 calendar days of the date of entry into force of this Regulation. The Hearing Officer shall examine requests submitted outside this time limit and may decide whether to accept to such requests if appropriate.

Article 3

1. Customs authorities are hereby directed to discontinue the registration of imports established in accordance with Article 1 of Commission Implementing Regulation (EU) 2019/455 of 20 March 2019 ⁽³⁴⁾ (‘the registration Regulation’).
2. Data collected regarding products which entered the Union for consumption not more than 3 weeks prior to the date of the entry into force of this regulation shall be kept until the entry into force of possible definitive measures, or the termination of this proceeding.

Article 4

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

Article 1 shall apply for a period of six months.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 10 April 2019.

For the Commission
The President
Jean-Claude JUNCKER

⁽³⁴⁾ OJ L 79, 21.3.2019, p. 9.