COMMISSION IMPLEMENTING REGULATION (EU) 2019/1688

of 8 October 2019

imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America

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 9(4) thereof,

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) During the pre-disclosure period, and pursuant to Article 14(5a) of the basic Regulation, the Commission made imports of the product concerned subject to registration by Commission Implementing Regulation (EU) 2019/455 [3]. The registration of imports ceased with the entry into force of the provisional measures referred to in the next recital.

---

[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] Commission Implementing Regulation (EU) 2019/455 of 20 March 2019 making imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America subject to registration (OJ L 79, 21.3.2019, p. 9).

1.3. **Provisional measures**

(4) On 12 April 2019, the Commission imposed a provisional anti-dumping duty on imports into the Union of UAN originating in Russia, Trinidad and Tobago ('TT'), and the United States of America ('US') by Commission Implementing Regulation (EU) 2019/576 ([4]) ('the provisional Regulation').

(5) As stated in recital (26) of the provisional Regulation, the investigation of dumping and injury covered the period from 1 July 2017 to 30 June 2018 ('the investigation period' or 'IP') and 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').

1.4. **Subsequent procedure**

(6) Following the disclosure of the essential facts and considerations on the basis of which a provisional anti-dumping duty was imposed ('provisional disclosure'), the complainants, the Union producer OCI Nitrogen B.V. ('OCI Nitrogen'), several associations representing the interests of users and other economic operators, the four cooperating exporting producers and the Government of the Russian Federation ('GOR') made written submissions making their views known on the provisional findings.

(7) The parties who so requested were granted an opportunity to be heard. Hearings took place with the complainant accompanied by the sampled Union producers AB Achema and Grupa Azoty Zaklady Azotowe Pulawy SA, the sampled Union producer OCI Nitrogen, several associations representing the interests of users and other economic operators and some of their members, and the four cooperating exporting producers. Additionally, further to the request of one of the Russian exporting producers Eurochem, a hearing with the Hearing Officer in trade proceedings was held. The recommendations of the Hearing Officer made during that hearing are reflected in this Regulation. On 27 May 2019, the Commission sent to the Russian exporting producers an additional disclosure containing their respective undercutting and underselling calculations.

(8) The Commission continued seeking and verifying all information it deemed necessary for its final findings. In case of some exporting producers, where certain claims for adjustments to the calculations of the dumping margin were accepted or additional company specific clarifications were needed, additional individual disclosures were provided in writing to the parties concerned. The Commission considered the comments submitted by interested parties and addressed them, where appropriate, in the company specific disclosures.

(9) Article 2(1) of the provisional Regulation stipulated that written comments on the provisional Regulation had to be submitted within 15 calendar days of the entry into force of that Regulation. On 24 June 2019, Eurochem sent additional written comments with regard to the following points: (i) the calculation of the selling, general and administrative ('SGA') costs of one of the producers companies, (ii) the legal basis and calculations of the gas adjustment, (iii) the application of Article 7(2a) of the basic Regulation and (iv) the additional disclosure referred to in recital (7). On 21 June 2019 and 28 June 2019 Acron sent additional written comments with regard to the additional disclosure of 27 May 2019 and the accuracy of calculations of the provisional anti-dumping margin. The comments contained in those submissions were only analysed for the definitive disclosure insofar as they related to the additional disclosure provided to the companies on 27 May 2019 in line with Point 7, second indent of the Notice initiating the current investigation. On 8 July 2019, the Government of the United States of America submitted written comments on the provisional disclosure. Together with the definitive disclosure, the Commission invited all interested parties to re-submit any of the comments made outside the time-periods provided by the provisional regulation, the Notice of initiation or any further exchange with the Commission on this matter, if interested parties deem it appropriate pursuant to the final disclosure. The Commission looked into all the submissions made by interested parties timely submitted as comments on the definitive disclosure, including comments that followed the additional definitive disclosure to the Russian exporting producers on 6 August 2019.

([4]) 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, OJ L 100, 11.4.2019, p. 7.

(10) The Commission informed all interested parties of the essential facts and considerations on the basis of which it intended to impose a definitive anti-dumping duty on imports into the Union of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America ('final disclosure'). All parties were granted a period within which they could make comments on the final disclosure. Comments were received from all cooperating exporting producers, Fertilizers Europe, Grupa Azoty Zaklady Azotowe Pulawy S. A. ('Grupa Azoty'), the users associations AGPB together with IFA, the Government of the United States of America and the GOR. Eurochem, Acron, and the GOR were afforded a hearing with the Commission services and in addition Eurochem and MHTL requested the intervention of the Hearing Officer in trade proceedings. On 23 July 2019, both parties had a hearing in the presence of the Hearing Officer.

(11) The comments submitted by the interested parties, including the late submissions to the provisional disclosure as set out in recital (9), were considered and taken into account where appropriate in this regulation.

1.5. **Sampling**

(12) Following provisional disclosure, several parties made comments linked to the sample of Union producers. These comments did not result in a change of the sample. Given the nature of these comments, they are dealt with in sections 4 and 5 below.

(13) In the absence of other comments concerning sampling, recitals (9) to (19) of the provisional Regulation were confirmed.

1.6. **Investigation period and period considered**

(14) In the absence of comments concerning the investigation period and period considered, recital (26) of the provisional Regulation was confirmed.

2. **PRODUCT CONCERNED AND LIKE PRODUCT**

2.1. **Claims regarding the product scope**

(15) Following the request made by the Union producers Grupa Azoty and Agropolychim, the Commission clarified that the claim referred to in recital (33) of the provisional Regulation was made by both of them. The Commission also confirmed that the product scope of the investigation includes mixtures of urea and ammonium nitrate in aqueous or ammoniacal solution that may have additives, currently falling under CN code 3102 80 00.

(16) After final disclosure, Fertilizers Europe, Grupa Azoty and Agropolychim expressed to be concerned that by mentioning CN code 3102 80 00, the Commission might inadvertedly cause imports of the product concerned to be imported under CN codes 3102 90 and 3105 51 in order to avoid the duties. The Commission notes that the product definition, as provided by the complainants, mirrors exactly the description of goods of CN code 3102 80 00, and that therefore imports of the product concerned can only be classified under that CN for customs purposes. Declaration under any other CN code would constitute fraud.

2.2. **Conclusion**

(17) In the absence of any other comments with respect to the product scope, the Commission confirmed the conclusions set out in recitals (27) to (34) of the provisional Regulation, as clarified in recital (15) above.

3. **DUMPING**

3.1. **Russia**

3.1.1. *Exporting producers*

(18) In the absence of comments concerning the description of the Russian exporting producers and their distribution channels, the Commission confirmed its conclusions set out in recitals (35) to (37) of the provisional Regulation.

3.1.2. *Normal value*

(19) The details for the calculation of the normal value were set out in recitals (38) to (61) of the provisional Regulation.

(20) Comments with regard to normal value calculation were received from the GOR and both Russian exporting producers. For better clarity claims regarding the methodology of normal value calculation as set out in recitals (38) to (41), (43) to (48) and (50) to (51) of the provisional Regulation and the issue of natural gas cost adjustment as set out in the recitals (52) to (60) of the provisional Regulation are treated separately.

(21) With regard to the methodology of the normal value calculation, both Russian producers claimed additional adjustments for the sales channelled through domestic related traders in the construction of the domestic ex-works price. Eurochem reiterated its claim that the SGA costs of the domestic trader should have been deducted. It additionally claimed after provisional disclosure that also the profit of domestic trader should have been deducted. Acron claimed a deduction of transport and handling costs for the channel of distribution where the goods are physically moved to the warehouse of the related domestic trader.

(22) For the purpose of the ex-works domestic price calculation, and in line with Article 2(1) of the basic Regulation, the Commission considered domestic producers and domestic traders as single economic entities. Therefore, the price is not adjusted for SGA costs and profit of the trader. It is also not adjusted for the expenses which took place between the production site and the warehouse of the company, even if it is a warehouse of a related trader – as it is a company decision whether goods are shipped directly to the clients or first to the warehouse of the related trader. Therefore, the claims for the above adjustments to the domestic prices were rejected.

(23) Following the definitive disclosure, Acron reiterated its claim with regard to the deduction of transport and handling costs related with the movement of goods between the production site and the warehouse of the related domestic trader. The company added an additional claim on the deduction of SGA and profit of the related domestic trader. However, no new evidence or arguments were provided which would change the Commission's conclusion of recital (22) for single economic entities on the domestic market.

(24) Nevertheless, with regard to the expenses related to the movement of goods between the production site and the warehouse of the related domestic trader, Acron additionally pointed out that, since these expenses were not deducted from the domestic price, they should have also not been deducted from the SGA used for the calculation of the normal value.

(25) This claim of the company was accepted. The Commission recalculated the normal value for Acron, increasing the SGA costs of the company as requested. However, despite the increase of SGA costs, all the domestic transactions of Acron remained profitable and therefore the dumping margin did not change. The correction of the calculation in question was disclosed to Acron as a part of the additional definitive disclosure.

(26) Additionally, both Russian exporting producers claimed that the comparison of the normal value and the export price was not made at the same level of trade since the domestic related traders are treated as single economic entities, thus their SGA and profit are not deducted from the domestic price, while related traders in third countries or in the EU are not treated as the single economic entities and thus the price adjustments in question are made.

(27) This claim is rejected. The Commission first notes that the claim does not relate to a level of trade adjustment. Rather, both companies are challenging the determination of normal value and export price. The Commission notes that, to reflect properly the price paid or payable in the home market for establishing the normal value, the SG&A costs and profits of related domestic traders are not deducted. In the same vein, to establish a reliable export price at Union frontier level where there are intermediate traders related to the exporting producers, it must construct the export price on the basis of the price at which the imported products are first resold to an independent buyer in accordance with article 2(9) of the basic Regulation, that also says that adjustments for all costs incurred between importation and resale, including SG&A and profit of the related traders, must be deducted.

(28) Eurochem made an additional claim as to the level of the SGA costs of one of its producers that was used in the normal value calculation.

(29) With respect to this producer, the Commission used in its provisional calculation the original level of domestic SGA costs as provided by the producer in its questionnaire reply. During the on-spot verification, a different allocation of certain general costs was considered and an alternative version of the SGA cost allocation was collected for further consideration. However, the Commission provisionally decided that the original reply of the company and allocation of SGA costs between domestic and export sales was more accurately reflecting the distribution of costs.

(30) In its comments to provisional and final disclosure, Eurochem provided further evidence that the SGA costs should be allocated to not only domestic sales, but also to export sales. As this evidence showed that these costs were indeed not only related to domestic sales, the Commission accepted this claim and adjusted the dumping margin accordingly. The correction of the calculation in question was disclosed to Eurochem as a part of the additional definitive disclosure.

(31) Following the definitive disclosure, Acron raised an additional claim with regard to calculation of the normal value. The company claimed that in its case the domestic prices should not be used in the calculation of the normal value as they were not made in the ordinary course of trade.

(32) First of all, the premise of Acron's claim appears to rely on a misunderstanding of what the Commission did. The Commission did not base the calculation of the normal value on the domestic sales of the company in question but constructed normal value pursuant to Article 2(3) of the basic Regulation, as domestic sales were not representative in terms of volume. However, following the ruling of the WTO panel ([5]) in this regard, SGA expenses and profit of domestic transactions made in the ordinary course of trade were used in the construction of the normal value. Domestic sales, contrary to the statement of the company, were considered to be made in the ordinary course of trade as they were profitable. Therefore, the Commission rejected this claim.

(33) With regard to the natural gas cost adjustment the GOR and the two Russian exporting producers reiterated their earlier comments and claims concerning:

(a) the WTO incompatibility of the cost adjustment made;

(b) no existence of distortions on the price of natural gas in Russia. According to the interested parties the natural gas price in Russia reflects normal market conditions;

(c) a wrong methodology in the adjustment, as in the view of the interested parties the adjustment, if any, should be applied only to the gas price without its related transportation costs and with a different calculation of the mark-up for additional charges;

(d) the application of the adjustment also to purchases from domestic suppliers independent from Gazprom;

(e) the appropriateness of the Waidhaus price as the benchmark used for the adjustment.

(34) In response to the first claim, the Commission noted that the WTO panel in the dispute between Russia and Ukraine ([6]), invoked by the interested parties, rejected the gas adjustment made by Ukraine. The panel found that the Ukrainian authorities did not provide an adequate basis to justify the decision to reject the domestic price of gas in Russia and did not make sufficient adjustments to ensure that the surrogate gas price reflected costs in Russia. Thus, the main violation the panel found is not substantive, but rather procedural. In other words, the panel did not reject the possibility to apply an adjustment to the cost of gas, but considered that this rejection had not been sufficiently justified by Ukraine in the case at hand. Thus, the allegations relating to the WTO case appear to be irrelevant for the present investigation.

(35) Interested parties also referred to the ruling of the Appellate Body in *European Union – Anti-Dumping Measures on Biodiesel from Argentina (DS473)*. This reference is misplaced. First, the Commission noted that the factual circumstances that led to the dispute in DS473 are different from the factual circumstances at hand. Indeed, in Biodiesel from Argentina, the Commission adjusted the costs of the domestic raw materials on the grounds of differential export taxes applicable to the raw materials and biodiesel. In the case at hand, the Commission concluded that the cost of gas was distorted by the State for the reasons recalled in recital (36) below (in essence, the State's involvement in setting the price for gas in Russia is not limited to the existence of an export tax, but more predominant). The Commission noted that the General Court also found that the adjustment performed by the Commission in the Biodiesel case was unlawful and contrasted the Biodiesel circumstances from the ones prevailing in Russia for the gas market for which it had found that an adjustment to the price of gas was warranted. Thus, in T-

([5]) DS337 European Communities – Anti-Dumping Measure on Farmed Salmon from Norway.
([6]) DS493 - Ukraine - Anti-Dumping Measures on Ammonium Nitrate.

111/14, Unitec Bio v Council, the General Court noted in paragraphs 49 and 50 that: *"(49) In that regard, it is necessary to recall that, in paragraph 44 of the judgment of 7 February 2013, Acron and Dorogobuzh v Council (T-235/08, not published, EU:T:2013:65), the Court held that, given that natural gas was necessarily supplied at a very low price to the exporting producers concerned by virtue of Russian law, the production price of the product concerned in the case giving rise to that judgment was affected by a distortion of the domestic Russian market regarding the price of gas, as that price was not the result of market forces. The Court therefore considered that the institutions were fully entitled to conclude that one of the items in the records of the applicants in that case could not be regarded as reasonable and that, consequently, that item had to be adjusted by having recourse to other sources from markets which the institutions regarded as more representative. (50) However, as the applicant correctly claims, unlike the situation at issue in the case which gave rise to the judgment of 7 February 2013, Acron and Dorogobuzh v Council (T-235/08, not published, EU:T:2013:65), it is not apparent from the file that the prices of the main raw materials were directly regulated in Argentina. The DET system referred to by the institutions merely provided for export taxes with different rates on the main raw materials and biodiesel."*

(36) Regardless of additional arguments provided by the interested parties, there are certain undisputable facts that are the basis for the Commission to conclude that the natural gas market in Russia is distorted (see recital (53) of the provisional Regulation). These are mainly (i) the fact that the maximum domestic price of the natural gas is regulated by the Russian State for Gazprom, which is still by far the biggest producer and seller of natural gas in Russia and owner of the gas pipes, (ii) the existence of an export tax of 30 % on gas, (iii) the fact that the Russian government regulates transportation tariffs and prices of logistic support services and supply and services fees and (iv) the fact that natural gas prices in Russia are regulated by the State not only via federal laws but are also based on policy objectives.

(37) With regard to the point (iv) above, as explained in recital (215) of the provisional Regulation, the domestic price is set using a gas price formula or is determined by indexation with the index to be used being regularly published in a forecast of socio-economic development by the Russian Ministry of Economic Development. The same document states ([7]) that in order to limit the growth of gas price it is proposed to optimise the investment program of Gazprom, while in order to stimulate the growth of gas consumption in Russia, a mechanism will be developed and implemented for compulsory expansion of the capacity of UGSS, obliging Gazprom to provide appropriate investments as a matter of priority. The forecast mentions also the need of implementation of different method of allocation of the transport cost between domestic and export sales in the determination of transport tariffs.

(38) Furthermore, the claim that the domestic price regulated by the Russian State covers the costs of Gazprom could not be verified due to the lack of cooperation of the GOR in this procedure. The arguments provided by the Russian exporting producers (in the so-called "Brattle Report") are based on estimates of Gazprom's all-in-costs, not on actual figures. They further claimed that another Russian producer with domestic sales only and a similar level of domestic prices as Gazprom is profitable, which ignores the fact that the companies might have a completely different level and structure of costs.

(39) In response to the third claim, it should be noted that only the cost of the raw material is replaced with the benchmark. In the current methodology, the Commission based the transport costs from the Union border back to the Russian gas supplier upon estimates. However, the transport costs in Russia from the gas supplier to the exporting producers and any other additional charges are based, where possible, upon the actual figures as provided by the exporting producers. As stated in recital (36), the Russian government regulated these costs; however, unlike in the case of gas prices, there was not sufficient evidence to support a finding that those costs were also distorted because of government regulation. The Commission verified that the figures provided by the exporting producers had the same source as the figures used in the complaint (Federal Tariff Service rates). Since the figures provided by the exporting producers were considered to be the most recent provided by any of the interested parties, the Commission accepted them.

(40) In response to the fourth claim, as already explained under point (c) in recital (55) of the provisional Regulation, the gas adjustment is applied to all the purchases of domestic Russian gas, regardless of whether Gazprom is the supplier. The Commission's conclusion that Gazprom is a price setter on the Russian market is not only supported by the dominant position of this company but also clearly confirmed by the audited accounts of the main (in terms of market share) private competitor of Gazprom on domestic market – Novatek ([8]). Therefore, the distorted priced

([7]) Section 3.2 thereof.
([8]) See footnote 8 of the provisional Regulation.

natural gas sales of Gazprom affect the level of prices of other natural gas suppliers in Russia, who are selling at times even slightly below the prices of Gazprom.

(41) Finally, with regard to the benchmark used for the gas adjustment, the comments on provisional disclosure did not change the view of the Commission to still consider the so-called "Waidhaus price" as a proper benchmark. As explained in recitals (55) (d) and (58) of the provisional Regulation, this price was in a close range to other important price quotations in Europe and its use as a benchmark was confirmed by the respective judgements of Court of Justice ([9]). The fact that the natural gas exported to Waidhaus and the natural gas consumed in Russia have a different calorific value do not make them different products and was addressed through a separate adjustment.

(42) Taking into account recitals (34) to (41), the Commission concluded that the cost adjustment for natural gas applied at provisional stage as well as the methodology used are also compliant with WTO rules given the specific situation of the Russian gas market.

(43) Following definitive disclosure, both Russian exporting producers reiterated some of their statements with regard to the WTO compatibility of the adjustment in question and the dominant position of Gazprom on the Russian domestic natural gas market. However, no additional evidence or arguments were presented which changed the Commission's conclusion of recital (42).

(44) The interested parties further claimed that the conversion rate between units of measurement, the adjustments for transport costs and a mark-up of distributors, and the 30 % export tax included in the adjusted gas were not correct.

(45) Following definitive disclosure, Eurochem additionally claimed that a wrong exchange rate was used in the calculation of the transport cost adjustment. Furthermore, the company claimed that an additional adjustment should be made for German network charges.

(46) In reply to the above remarks the following corrections were made:

(a) the unit of measurement of the volume of natural gas used in Waidhaus pricing is million British Thermal Units (mmBtu). After comments on the provisional disclosure the conversion rate was changed to 1 mmBtu = 31,899 cubic metres;

(b) the transport cost adjustment was changed, taking into account actual transport costs paid by the Russian producers in Russia. However, for the adjustment of the costs of transport from Waidhaus ([10]) back to the Russian border, the Commission used the figures provided in the complaint; the figures in the Brattle Report were not considered to be more accurate because they referred to sources using data collected before the investigation period. The transport costs from the Russian border to the respective Russian gas fields where the exporting producers sourced their natural gas is based upon the regulated tariff ([11]);

(c) the 15 % distribution mark-up used in the provisional calculations was revised downwards, ranging between 1 to 5 %. All costs other than the cost of gas and transport costs (including transmission) were considered for the calculation of the mark-up. The actual additional charges of the gas purchases during the investigation period were used as much as possible and, where data was missing, a reasonable estimate was used, as explained in the company specific disclosures. The Commission rejected the claim of Eurochem that no domestic mark-up should apply as no mark-up is taken into consideration on the Russian export price of gas, because the calculation of the regulated export price does not account for such costs ([12]) and no further evidence for the existence of such mark-up is provided;

([9]) Judgment of the General Court (Eighth Chamber) of 7 February 2013 - EuroChem Mineral and Chemica 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]) Waidhaus is the Russian-German gas price reference, an assembly of different pipelines from Russia to Germany, reflecting the CIF German frontier price.

([11]) ФЕДЕРАЛЬНАЯ СЛУЖБА ПО ТАРИФАМ ПРИКАЗ, от 8 июня 2015 года N 216-э/1, Об утверждении тарифов на услуги по транспортировке газа по магистральным газопроводам ОАО "Газпром", входящим в Единую систему газоснабжения, для независимых организаций (с изменениями на 14 февраля 2018 года), (Federal Tariff Service Order of 8 June 2015 No 216-e/1 On approval of tariffs for gas transportation services through gas pipelines of PJSC Gazprom included in the Unified Gas Supply System, for independent organizations (with amendments of 14 February 2018).
http://docs.cntd.ru/document/420282257.

([12]) ФЕДЕРАЛЬНАЯ СЛУЖБА ПО ТАРИФАМ ПРИКАЗ от 9 июля 2014 г. N 1142-э ОБ УТВЕРЖДЕНИИ ПОЛОЖЕНИЯ ОБ ОПРЕДЕЛЕНИИ ФОРМУЛЫ ЦЕНЫ ГАЗА, (Federal Tariff Service Order of 9 July 2014 No 1142-e ON THE APPROVAL OF THE PROVISION FOR THE DETERMINATION OF THE GAS PRICE FORMULA)
available at http://www.gazprom.com/f/posts/98/377922/prikaz_1142-e.pdf (last viewed 31 July 2019).

(d) the request for deduction of the 30 % export tax from the benchmark price was rejected – this tax is one of the measures that has created a distortion of the natural gas market in Russia, so it is reasonable to assume that the domestic price of gas would be at least 30 % higher but for the export tax. As it is part of the cost of the gas of Russian origin on the Union market, it is as such a part of the basic benchmark price;

(e) the claim concerning the exchange rate used in the calculation of transport adjustment was accepted and calculations were amended accordingly;

(f) the request to adjust for German network charges is found not to be relevant as the Waidhaus price is at the level of CIF at the border of Germany (and thus such price does not take into account any German network charges).

(47) The revised calculation of the gas adjustment was provided to the Russian exporting producers in a specific disclosure both at the definitive disclosure stage and after revisions made subsequent to comments described in recital (45) and (46) points (b), (c) and (e) via an additional definitive disclosure. The adjustment did not affect the normal value of Acron because, as explained in recital (61) of the provisional Regulation, only an increase of the adjusted cost of manufacturing to a level that would make some of the domestic transactions of Acron in the IP unprofitable would result in a changed dumping margin. After the corrections made to the normal value of Eurochem following the comments on the definitive disclosure, the revised gas adjustment did not change the normal value of Eurochem and therefore did not have an impact on the dumping margin calculation.

(48) In the absence of any other comments with respect to the normal value, the Commission confirmed the conclusions set out in recitals (38) to (61) of the provisional Regulation, as clarified in recitals (17) to (38) above.

3.1.3. *Export price*

(49) The details for the calculation of the export price were set out in recitals (62) to (65) of the provisional Regulation.

(50) It should be first noted that the Commission agreed with the claim of Eurochem to calculate separate dumping margins for the two exporting producers in the group, as the company provided data allowed for a breakdown of the sales by producer. Such breakdown could be made despite the fact that several trading companies were involved and the costs of the two producers differed, including the sales costs for exports to the Union. Separate dumping margins were thereafter combined into a weighted average margin for the Eurochem group based upon the sales volume to the Union. Eurochem received a specific disclosure with the new calculation of the dumping margin per producer. In the new calculation, the Commission took into account the technical calculation remarks of the company where applicable.

(51) The second Russian exporting producer claimed that, in the adjustment of its export price, the actual profit of its related exporter in Switzerland and related importer in France should be deducted rather than an estimated reasonable profit. However, it should be noted that the actual profit of the companies in question is based on transfer prices. Therefore, the Commission rejected the claim.

(52) The company claimed further that the Commission incorrectly calculated the dilution costs, as the conversion applied to the transaction volumes to construct the export price for the diluted product should also be applied to the transaction values of the diluted product. However, it should be noted that the difference in prices between the exported product and the diluted product is already reflected in the conversion of the transactions volumes, because this conversion increases the unit price for the diluted product as if it was not diluted. Therefore, this claim was rejected.

(53) Following definitive disclosure, Acron claimed that the Commission double-counted dilution costs of their related importer in France as these expenses were allegedly deducted from the sale price and at the same time not deducted from the SG&A costs of the company. However, contrary to what the company claimed, the dilution costs were deducted from the SG&A expenses ([13]).

([13]) Exhibits 2 and 13 from the on spot verification in France.

(54) Furthermore, the company claimed that its French related importer was established just before the IP and started sales only in the last quarter of the IP. Therefore, according to the company the Commission should adjust the export price only for one-fourth of the SG&A expenses.

(55) The company had general and administrative expenses throughout the IP. Even if these expenses were prior to the first sales, since the company was involved only in purchasing, dilution and resales of UAN, SG&A expenses were linked to the product concerned. The claim is therefore rejected.

(56) Furthermore, after the additional definitive disclosure one Russian exporting producer claimed that the Commission should not deduct the profit margin of an unrelated importer of 4 % from the sale prices of its related German trader to unrelated customers in the EU. The producer claimed that the German entity did not act as an unrelated importer for sales to unrelated customers in the EU as it did not perform the formalities related to the importation of the product concerned into the EU market.

(57) The Commission noted that the related German trader was considered a related importer as it performed all the functions of an importer. Thus, the resale price should normally cover SG&A costs of the importer and a profit, which is precisely the adjustment in question. In doing this adjustment, the Commission did not perform a detailed transaction-per-transaction or customer-per-customer analysis of which actions were performed by the company with regard to specific import and resale transactions. The claim is therefore rejected.

(58) In the absence of any additional comments concerning export price other than those already covered by recitals (41) to (44) above, recitals (62) to (65) of the provisional Regulation were confirmed.

3.1.4. *Comparison*

(59) In the absence of any additional comments concerning comparison of normal value to export price other than those already covered by points 3.1.2 and 3.1.3 above, recitals (66) to (67) of the provisional Regulation were confirmed.

3.1.5. *Dumping margins*

(60) As detailed in recitals (17) to (47), the Commission took into account interested parties' comments and recalculated the dumping margins for Russia.

(61) The definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Acron Group	31,9 %
Eurochem Group	20,0 %
All other companies	31,9 %

(62) The calculations of individual dumping margins after corrections and adjustments made following the comments of the Russian exporting producers after definitive disclosure were re-disclosed to the companies in question.

3.2. **Trinidad and Tobago**

3.2.1. *Normal value*

(63) The details for the calculation of the normal value are set out in recitals (74) to (79) of the provisional Regulation.

(64) In its comments on the provisional disclosure, Methanol Holdings (Trinidad) Limited ('MHTL') reiterated several technical, company-specific claims concerning the construction of the normal value, in particular on the costs of production, SGA and profit to be used in the calculation.

(65) The Commission examined those claims. One of the claims related to the issue addressed in recital (78) of the provisional Regulation (namely, a claim that the Commission accepted). Since MHTL's new arguments contradicted its original claim without substantiating that change, the claim was rejected. Furthermore, the Commission found one of the other claims justified. Consequently, the Commission adapted the calculation of the normal value accordingly. Since the comments concerned company-specific data used for calculations and were treated as confidential since they relate to the costs of production and SGA, the reasons for their rejection or acceptance were explained to the interested party in the specific disclosure.

3.2.2. *Export price*

(66) The details for the calculation of the export price are set out in recitals (80) to (82) of the provisional Regulation.

(67) In its comments on the provisional disclosure, MHTL submitted several technical, company-specific claims concerning the calculation of the export price, in particular with regard to the data for the determination of the export price and adjustments to the price made for costs incurred between importation and resale.

(68) The Commission examined those claims and found some of them justified. Consequently, the Commission adapted the calculation of the export price. Since the comments concerned company-specific data used for calculations and were treated as confidential since they relate to transfer prices and other costs, the reasons for their rejection or acceptance were explained to the interested party in the specific disclosure.

3.2.3. *Comparison*

(69) In absence of any comments regarding the comparison, recitals (83) and (84) of the provisional Regulation were confirmed.

3.2.4. *Dumping margins*

(70) As detailed in recitals (50) to (57) above, the Commission took into account the comments from MHTL and recalculated the dumping margins for TT.

(71) The definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

Company	Definitive dumping margin
Methanol Holdings (Trinidad) Limited	55,8 %
All other companies	55,8 %

(72) No comments with regard to the dumping calculations of MHTL were received after the definitive disclosure.

3.3. **United States of America**

3.3.1. *Normal value*

(73) The details for the calculation of the normal value are set out in recitals (90) to (98) of the provisional Regulation.

(74) In its comments on the provisional disclosure, CF Industries Holdings ('CFI') claimed that the Commission incorrectly provisionally dismissed its request to establish the profitability of domestic sales based on the costs of production of each production plant separately when it concluded that the determination of profitability under the ordinary course of trade test is carried out at the level of a legal entity.

(75) In this respect, CFI submitted that such reasoning lacked legal justification as the Court of Justice in *Alumina* ([14]) held that Article 2 of the basic AD Regulation does not provide an exhaustive list of the methods making it possible to determine whether the prices were charged in the ordinary course of trade, and that in the ordinary course of trade test the Commission should examine the profitability of the product sold on the production cost of that particular product.

(76) Furthermore, CFI referred to the Commission's approach in past investigations ([15]) where the Commission had routinely been using plant-specific production costs to determine the profitability of domestic sales.

(77) Finally, CFI argued that it provided data that make it possible to trace the sales transactions back to the plant where they were produced.

(78) The Commission examined the claims set out in recitals (74) to (77) and found that the Court of Justice in *Alumina* merely stated the fact that Article 2 of the basic AD Regulation does not provide an exhaustive list of the methods to determine whether the domestic sales were made in the ordinary course of trade. The Court of Justice, however, did not oblige the Commission to carry out the examination for parts of a company that do not constitute a separate legal entity.

(79) Moreover, in the investigations referred to by CFI, the Commission examined individual production plants since those companies, although members of the same group, were separate legal entities.

(80) Following the Commission's findings as explained in recitals (78) and (79), it was not necessary to examine whether the data provided by CFI would make it possible to establish a clear link between the individual domestic sales transactions and the production plants. Consequently, the Commission rejected this claim.

(81) In its comments on the definitive disclosure, CFI reiterated its claim concerning the profitability of domestic sales. The company submitted that the Commission should have considered not only whether the production plants are separate legal entities but also whether the structure of the group allowed the identification of the producer within the group in respect to sales and production, repeatedly referring to the Commission's findings in the Seamless pipes investigation (see recital (76)).

(82) In respect of the above claim, the Commission recalled that the investigation referred to by CFI had its own particular features. The Commission's conclusion in Seamless pipes that individual dumping margins could be calculated as it was possible to identify the producer in respect to sales and production, was only relevant after the first basic condition was fulfilled – that is, that the companies concerned in this investigation were separate legal entities, which is not the case for CFI.

(83) Furthermore, even if the Commission considered assessing the profitability of the domestic sales by plant, it would not always be possible to identify the producer. The company sells on its domestic market either directly from a production plant or via a substantial number of distribution tanks. The Commission found that the production plants supplied more than one distribution tank and most distribution tanks were supplied by more than one production plant. This makes it impossible to make a clear link between a sales transaction and the plant where that particular product was produced.

(84) Consequently, the Commission rejected this claim.

3.3.2. *Export price*

(85) In the absence of any comments regarding the export price, recitals (99) to (100) of the provisional Regulation were confirmed.

([14]) Case C-393/13 P, Council v. Alumina d.o.o., EU:C:2014:2245, para. 25.

([15]) For example *Seamless pipes*, Council Implementing Regulation (EU) 585/2012 of 26 June 2012 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EC) No 1225/2009, and terminating the expiry review proceeding concerning imports of certain seamless pipes and tubes, of iron or steel, originating in Croatia, OJ L 174, 4.7.2012, p. 5, recital (60); Commission Implementing Regulation (EU) 2018/1469 of 1 October 2018 imposing a definitive anti-dumping duty on imports of certain seamless pipes and tubes, of iron or steel, originating in Russia and Ukraine, following an expiry review pursuant to Article 11(2) of Regulation (EU) 2016/1036 of the European Parliament and of the Council (OJ L 246, 2.10.2018, p. 20, recital (81)).

3.3.3. *Comparison*

(86) Recitals (101) and (102) of the provisional Regulation explain how the comparison between the normal value and the export price was made.

(87) In its comments on provisional disclosure, CFI claimed that to allow for a fair comparison, the Commission should have applied two adjustments pursuant to Article 2(10)(k) of the basic AD Regulation: a quantity adjustment and a cost adjustment.

(88) With regard to the quantity adjustment, CFI claimed that an adjustment to the price of domestic sales transactions should be made for the impact on the sales price of different quantities supplied on the domestic market as compared to the Union market since the quantity of individual transactions is usually small on the domestic market but large when exported to the Union.

(89) In this respect, CFI also provided a calculation that showed a difference in the weighted average domestic sales price for different sales quantities. While the Commission acknowledged the existence of a price difference, it could not exclude that this price difference was caused by other factors, such as the seasonal character of the product concerned, the moment the underlying contract was signed, and the volume of the underlying contract (rather than the individual shipment).

(90) Moreover, the company did not provide any evidence that it took into account the sales quantity when negotiating the sales price (pricing policy, email exchanges etc.). Finally, the Commission found that any additional costs associated with handling and transport of small quantities in comparison to large quantities were taken into account as allowances. Therefore, the Commission rejected this claim.

(91) With regard to the cost adjustment, CFI claimed that the Commission should have adjusted the domestic sales price for the difference in costs of production of the individual production plants. CFI provided a number of company-specific arguments supporting this claim.

(92) The Commission examined those arguments, found the claim not justified and subsequently rejected it. Since the arguments were treated as confidential, the reasons for their rejection were explained to the interested party in the specific disclosure.

(93) In its comments on definitive disclosure, CFI reiterated its claim concerning the cost adjustment. The company, however, did not provide any new evidence supporting the claim. Therefore, the Commission confirmed that the claim was rejected.

(94) Furthermore, CFI also repeatedly submitted that the Commission should have applied an adjustment for the difference in quantities typically sold on the domestic market and exported to the Union. CFI argued that the differences in prices were not captured by the allowance claimed on transport costs because the pricing comparison exercise used to evaluate the quantity adjustment was made net of the transport costs. CFI further claimed that there are significant economies of scale (notably in administration, marketing and selling costs but also in production planning, etc.) that allow the company to charge lower ex-factory prices.

(95) The Commission found that, although the price level comparison was done for prices net of all allowances, any economies of scale concerning transport and handling of large shipments as compared to small shipments were already taken into account within those allowances. With regard to the economies of scale concerning administration, marketing and selling costs, CFI did not provide any evidence supporting this claim. In addition, the actually incurred SGA were reflected in the domestic sales price of the profitable transactions used for the calculation of the normal value. Therefore, the Commission confirmed that this claim is rejected.

(96) Since both CFI's claims were rejected, the Commission confirmed recitals (101) and (102) of the provisional Regulation.

3.3.4. *Dumping margins*

(97) As detailed in recitals (60) to (77) above, the Commission rejected all claims with regard to the dumping calculation of CFI and thus confirmed the provisional dumping margins for US.

(98) The definitive dumping margins, expressed as a percentage of the CIF Union frontier price, duty unpaid, are as follows:

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

4. **INJURY**

4.1. **Definition of the Union industry and Union production**

(99) The exporting producers Acron and CFI commented that two Union producers, accounting for roughly 30 % of Union production, opposed the complaint. CFI also noted that several other producers had not come forward, would not be affected by the imports under investigation and questioned the reliability of the injury indicators.

(100) The Commission recalled that the sample contains three of the four largest Union producers that altogether represent more than 50 % of Union production and sales. Therefore, the sample is clearly representative for the Union industry. Furthermore, as explained at recital (134) of the provisional Regulation, many indicators of injury were established on a macro level and were therefore based on all Union producers.

(101) Furthermore, producers representing more than 50 % of Union production supported the initiation of the investigation and, therefore, the legal requirements relating to standing have been met.

(102) In the absence of any further comments with respect to this section, the Commission confirmed its conclusions set out in recitals (108) to (109) of the provisional Regulation.

4.2. **Union consumption**

(103) In the absence of any comments with respect to the Union consumption, the Commission confirmed its conclusions set out in recitals (110) to (112) of the provisional Regulation.

4.3. **Imports from the countries concerned**

(104) The exporting producer Acron submitted that imports from the cumulated countries did not rise after 2016 and that any later rise was due to the decrease in imports from third countries. The company stated that a significant rise in imports of a liquid fertilizer such as UAN was not possible because logistics and stocks capacities restrict such rise. In the same vein, the exporting producer CFI and users association AGPB claimed that, in assessing the volume increase of imports from the countries concerned over the period considered, the Commission had not taken into account that a part of this volume increase had been to replace either imports from Egypt, which had decreased sharply, or volumes that had previously been supplied by a Union producer, that in the meantime had stopped producing UAN. Therefore, the additional volume of imports from the countries concerned during the period considered that could have affected the Union industry would amount to less than half of the 672 000 tonnes reported in Table 2 of the provisional Regulation. In this respect, the Commission observed, however, that as can be seen from Table 2 in the provisional Regulation, imports from the countries concerned rose from 2016 to the investigation period in each of the years in both absolute terms and in relation to the size of the market. These claims were therefore rejected.

(105) The users associations AGPB and IFA claimed that the Union industry's market share had improved after the investigation period. On this issue, firstly, the Commission normally examines trends relevant for the assessment of injury, including imports, based on a given multi-annual reference period which is the same for all relevant data and which ends immediately before the initiation of an investigation. Events that allegedly happened afterwards should in principle not be taken into account as they fall outside this reference period. Secondly, it is likely that the development of the market share of the Union industry since the investigation period was influenced and distorted by the initiation of the investigation itself. Thirdly, for the calculation of a post-investigation period market share it would have been indispensable for the Commission to have obtained and verified more recent data with regard to

Union industry sales on the Union market, which was not the case. For all those reasons, this claim was therefore rejected.

(106) The exporting producers Acron, CFI and Eurochem contested the undercutting calculations made by the Commission. Firstly, they disagreed with the fact that the Commission had, for a part of the Union industry sales prices, used the price delivered to ports such as Rouen (France) and Ghent (Belgium), as duly explained in recitals (128) and (129) of the provisional Regulation. Also on this issue, Eurochem submitted that the provisional Regulation did not make clear for how much of these sales this had been the case.

(107) The Commission clarified that, for the purpose of the undercutting calculations, it had established one Union industry sales price of the sole product type exported from the countries concerned (UAN of 32 % nitrogen). This price was the verified sales price of that product type of the sampled Union producers. Around 40 % of these sales were to ports such as Rouen or Ghent and those sales prices have been adjusted for the reasons laid down in recital (128) of the provisional Regulation. For the remaining 60 % of Union sales made by the sampled parties, the ex-works sales price was used, as those sales did not need sea-freight to take the product to the main point of comparison (typically Rouen or Ghent). The weighted average Union industry sales price thus arrived at was used for the undercutting calculations. Thus, the suggestion in recital (130) of the provisional Regulation that different product types were used for the comparison was erroneous, as all imports from the countries concerned were of the same product type, that is UAN of 32 % nitrogen – and only that product type has been used on the Union industry side as well. Also the references in recital (127) and (129) of the provisional Regulation to "a third" referring to Union industry sales incurring sea freight for delivery to western European ports and "two thirds" referring to the other Union industry sales were not fully accurate and should have read instead as "40 %" and "60 %" respectively.

(108) The Union producer OCI Nitrogen claimed that none of the reasons invoked in recital (128) of the provisional Regulation by the Commission would justify a deviation from its normal practice to compare the Union border CIF price of the exporting producers to the ex-works price of the Union producers. It claimed that the reasons invoked were either very common in many anti-dumping investigations, or unfairly aim to compensate competitive disadvantages suffered by producers due to their location, or would be equally applicable to exporting producers. After final disclosure, Eurochem made similar comments. The Commission rejected that allegation, as it considered that, from the text in the said recital, it was clear that the situation in this particular case was so exceptional that it indeed called for the approach chosen. The parties concerned failed to show objective reasons against the Commission's approach. They also doubted that this approach had been applied earlier by the Commission in similar exceptional circumstances. Although whether or not the Commission has done so before is as such irrelevant, the Commission has indeed occasionally needed to resort to this methodology in previous investigations when similar complex situations occurred, like in the recent high fatigue performance steel concrete reinforcement bars investigation ([16]). Even if the reasons for not departing from an ex-works price might have been different in that investigation, as claimed by Eurochem, it demonstrates that the Commission considers it appropriate to deviate from its standard approach if the circumstances so require.

(109) In respect of the export price of the co-operating exporting producers the vast majority of sales were delivered to ports in western Europe such as Rouen or Ghent. The export price used in the undercutting calculations contained transport for delivery to the CIF port in those locations. For the small quantity of sales declared elsewhere in the Union the export price also contained transport up to CIF Union border level. Therefore, the undercutting calculation provided symmetry between the Union and export sides.

(110) The Commission thus maintained its view that adjusting certain Union industry sales to CIF level in this investigation was appropriate for the reasons given at recitals (126) to (131) of the provisional Regulation. Clearly, the combined facts of this market as described in the Provisional regulation create an exceptional situation. This claim was therefore rejected.

([16]) Commission Implementing Regulation (EU) 2016/1246 of 28 July 2016 imposing a definitive anti-dumping duty on imports of high fatigue performance steel concrete reinforcement bars originating in the People's Republic of China (OJ L 204, 29.7.2016, p. 70).

(111) After final disclosure, Eurochem contested the symmetry between the Union industry side and the export side, claiming, on the basis of a Eurostat extraction, that 35 % of imports from Russia would not be to France and Belgium and, therefore, not through ports such as Rouen or Ghent. The company claimed that for these 35 % of Russian sales to the Union, the Union industry price would contain an adjustment for transport to Rouen or Ghent whereas the Russian imports were not at that level. The claim was rejected, as for the Union industry sales used in the comparison the CIF prices instead of the ex-works prices have only been used where appropriate in case of sales (typically for sales made via Rouen or Ghent), and not for all other sales.

(112) Several interested parties argued that the methodology applied for calculating undercutting was erroneous and incompatible with the judgement of the General Court of 10 April 2019, i.e. one day before provisional measures were imposed, in case T-301/16 Jindal Saw Ltd and Jindal Saw Italia SpA v European Commission ('Jindal Saw') ([17]). In particular, it was submitted that the Union industry price used for these calculations and the export prices were not at the same level of trade. They stated that prices of the Union industry were adjusted to reflect prices at the place of delivery to the end-user, whereas prices of exporting producers were taken at CIF Union border value, regardless of where they were delivered to the end-user. Along the same lines it was argued that *Jindal Saw* would require the Commission to compare the Union sales prices to the first independent buyers with exporting producers' related companies sales prices to the first independent buyers. The Commission had not done so, as for the exporting producers it had reduced the prices of its Union sales by the amount of SG&A and profit of its related trading companies in the Union, whereas no such deduction had been made by the Commission for Union industry sales through related traders. One party also claimed that the Commission's methodology would not account for the fact that not all of its sales were eventually destined for the Belgian and French markets and the prices used would not contain SG&A and profit incurred by its related traders for delivery to its customers.

(113) With regard to *Jindal Saw*, the General Court found an error in that the Commission deducted the selling expenses of Jindal's related importers in the Union from the sales to the first independent buyer, while the selling expenses of the Union industry related selling entities were not deducted from the Union industry sales prices to the first independent customer. The Court therefore considered that the two prices were not compared symmetrically at the same level of trade.

(114) The Commission decided to supplement the undercutting calculations performed at provisional stage in light of this recent Court judgement and the comments received thereon from interested parties. The Commission noted that *Jindal Saw* essentially deals with issues of fair comparison between import and Union industry prices and level of trade. Insofar as establishing the Union industry's average sales price, sales transactions through related parties were only around 40 % of the Union industry sample's sales used for the comparison. The SG&A and profit incurred by the related traders were low and, as most Union industry sales were not through related traders, the finding of undercutting for the cumulated imports would not be undermined even if the calculations would be adjusted for such items. Indeed, the sales of the Union industry to their related parties were made at market prices and there was no relevant difference between the prices of sales to related parties and those to unrelated customers. Deducting SG&A and profit of the Union's related selling entities would still show undercutting for all exporting producers (but for one), and in any event there would be undercutting for each of the countries concerned. Therefore, the Commission maintained that the methodology for establishing undercutting at the provisional stage was not manifestly inappropriate, as alleged by several interested parties.

(115) In any event, the appropriateness of the provisional undercutting calculation was further corroborated by an additional calculation which excluded the Union industry sales through related parties. The portion of sales used in this calculation still accounted for a large and representative volume of Union industry sales, that is around 60 % of UAN of 32 % nitrogen sold in the Union by the sampled parties. That volume was similar to the volume of imports from Russia and the US and clearly higher than the imports from TT. A very small proportion of sales to end-users was also excluded from this additional calculation. The Union sales were therefore at the same level of trade as the figures for all imports. This second calculation showed undercutting at slightly higher levels than when applying the

([17]) http://curia.europa.eu/juris/document/document_print.jsf?docid=212842&text=&dir=&doclang=EN&part=1&occ=first&mode=lst&pageIndex=0&cid=593705

methodology as provisionally established. The margins of that calculation were within a range of 3,7 % to 11,2 %. After final disclosure, Eurochem claimed that this calculation would not result in a fair comparison, as it compared only sales to unrelated customers of the Union industry, on the one hand, with the company's sales to related parties, on the other hand. However, that observation is erroneous, as the Eurochem sales used in the comparison are its sales to unrelated customers, properly adjusted to CIF level. Eurochem also suggested using a selection of transport rates (provided in a Table within its comments on definitive disclosure) in order to calculate the CIF price of the Union producers. However, it appears that these rates are Eurochem rates and relate to departure points not used by the Union industry. Thus, this claim was rejected as it would make the calculation less accurate.

(116) The Commission noted that these additional calculations made it more clear that the dumped imports undercut Union industry's prices regardless of the methodology used. The claims made by the parties on this aspect were therefore rejected.

(117) In addition to the established price undercutting, the investigation also showed that, in any event, the effect of the dumped imports was to cause price suppression on the Union market during the investigation period. The provisional Regulation already focused on the existence of price suppression notably at recitals (149), (166) and (167). This is further corroborated by the data in response to the argument of one interested party below at recital (131). Indeed, as further elaborated in recitals (125) and (131), in the provisional Regulation the price suppression on the Union market was clearly highlighted, as sales prices could not be raised to cover substantial increases in costs as best demonstrated by Table 7. The inability of the Union industry to increase sales prices was caused by the impact the dumped imports at increasing volumes had on the Union market. All these data showed that in addition to the eventual price undercutting, the dumped imports caused significant price suppression within the meaning of Article 3(3) of the basic AD Regulation.

(118) The exporting producer MHTL also argued that the undercutting calculation did not comply with the judgement of the General Court of 30 November 2011 in case T-107/08 Transnational Company 'Kazchrome AO and ENRC Marketing AG v Council of the European Union and European Commission ('Kazchrome') ([18]). That judgment would command that the end price to the customer should be used for undercutting (and underselling) calculations, and not a "theoretical price constructed by the Commission". However, this judgment requires the point of comparison to be the actual physical point where prices are compared by customers on the Union market. Bearing in mind that the main point of comparison for prices on the Union market was the CIF duty paid price and that the CIF prices at the border were taken into account including when the imports were cleared in Western Europe at Rouen and Ghent, the Commission was satisfied that the calculation complies fully with *Kazchrome*.

(119) Furthermore, the Commission noted that the *Kazchrome* case related to a special situation involving goods which entered the Union market first through Lithuania (in transit) and then to Rotterdam where they were customs cleared. In that case, the Commission had decided to calculate undercutting and underselling on the basis of the price at the point of transit, as opposed to the price after customs clearance. This was not the case in the current investigation where it was not disputed that the price used for underselling and the undercutting calculations were based on CIF price after customs clearance.

(120) The Commission was satisfied that export prices as established by the Commission and the ex-works Union industry prices, adjusted to CIF level if appropriate, provided the basis of a fair and reasonable comparison. It should be remembered that a perfect comparison would mean that only bids for the same contract should be taken into account because only then would the conditions of sale be identical. As a perfect comparison is not possible, the Commission was satisfied that a methodology which uses average prices collected for similar products over the period of a one year investigation period is fair. That methodology had been clearly communicated at disclosure.

(121) Furthermore, the Commission considered that the undercutting method advocated by interested parties would lead to unequal treatment in the calculation of their margins and those of other sampled exporting producers selling to independent importers. The methodology employed for other exporting producers was based on an export price at

([18]) Case T-107/08, *Transnational Company 'Kazchrome' AO and ENRC Marketing AG v. Council of the European Union and European Commission*, ECLI:EU:T:2011:704.

CIF level which of course excludes Union SGA and profit for resale in the Union after customs clearance. The methodology followed by the Commission ensured that both circumstances (namely, when the exports were made to related or independent operators in the Union) received equal treatment. This claim was therefore rejected.

(122) The exporting producer Acron submitted that the undercutting calculation should have distinguished between UAN of 32 % nitrogen and UAN of 30 % nitrogen due to the large volumes it had sold on the Union market. This claim was reiterated after final disclosure. However, in line with the methodology used for the dumping calculations of this exporting producer, resales of diluted products were converted to UAN of 32 % nitrogen as that product had been imported by the related party. The claim was therefore rejected.

(123) The exporting producer CFI submitted that the sample of Union producers was not representative as producers located in the eastern part of the Union would be over-represented as compared to producers in the other parts. If the Commission had changed the sample following the comments it had submitted in the early part of the investigation (see also recital (12) above), the sales from eastern Europe with high transport costs would have been much less present in the sample's figures. Consequently, the Union industry's sales price used for undercutting and the undercutting rate would have been much lower, it argued. Moreover, the exporting producer assumed that the sales of the sampled producer OCI Nitrogen were not used in the undercutting (and underselling) calculations, as that company would not sell the product type exported to the Union by that exporting producer.

(124) The Commission has already confirmed the representativity of the sample of Union producers at recital (13) of the provisional Regulation. The sample comprised over 50 % of total Union production and sales volumes and it is based on the largest quantity of production and sales of co-operating producers, including the three largest co-operating producers. As regards the alleged over-representation of eastern European producers it was not considered appropriate to exclude the largest two producers. Therefore, the sample had been established in accordance with Article 17(1) of the basic Regulation and it was established in an objective manner. After final disclosure, the users associations AGPB and IFA also questioned the representativity of the sample and in particular referred to a press report issued by Yara in order to show that the Union producers in general were not suffering injury. However, the Commission recalled that Yara Sluiskil B.V. was initially selected to be part of the sample but that it refused to cooperate. Also a press report covering a single Union producer does not call into question the representativity of the sample selected. After final disclosure, the Government of the USA claimed that the Commission should not have applied sampling but investigated all Union producers. Already before initiation, in view of the large number of Union producers concerned and in order to complete the investigation within the statutory time-limits, the Commission has decided to limit to a reasonable number the Union producers that will be investigated by selecting a sample. This is fully in accordance with Article 17 of the basic Regulation. The same party also criticized the sample as it considered that it was a biased selection of complaining producers and disregarded non-complaining producers. It is recalled that the sample has been selected on the basis of production and sales volumes of all known producers, not only the complaining companies, in line with Article 17(1) of the basic Regulation. In fact, initially an opposing Union producer was selected, but that party refused to cooperate. It was replaced by another opposing producer. The Government of the USA finally questioned whether the sampled parties accounted for a major proportion of Union production of UAN as required by Article 4.1 of the WTO ADA. First, Article 4.1 of the WTO ADA refers to the definition of the domestic industry and not to sampling (and therefore there is no requirement that the sample chosen amounts to a major proportion of the Union production). Article 6 of the WTO ADA and Article 17 of the basic Regulation refer to sampling and, as stated above, the sample chosen was fully in accordance with those provisions. These comments were therefore rejected.

(125) With regard to its sales data used for the undercutting the Commission underlined that the investigation had shown (recitals (149) and (165) of the provisional Regulation) that the Union industry's prices in the investigation period had been seriously suppressed by dumped imports and that this was particularly true for the high quantity of sales made in key importing locations such as Rouen and Ghent. Table 10 in the provisional Regulation shows that the impact of this development was that the Union industry suffered losses in the investigation period. It would therefore be incorrect to assume that the Union industry has been able to recover its full costs (including transport costs). The Commission maintained therefore that prices on the Union market had been suppressed from 2016 to the investigation period. There is no information on the file that the prices of non-sampled Union producers would be substantially different from the prices of the sampled producers. The selection of different Union producers in the sample would thus not be likely to impact on the undercutting and price suppression identified. This claim was

therefore rejected. As regards the Union industry sales used for the undercutting calculations performed the Commission confirmed that imports of 32 % UAN were compared solely to Union industry sales of the same type.

(126) Apart from the mentioned case-law of the European Courts, the exporting producer MHTL also invoked other grounds to conclude that the Commission's methodology to establish undercutting was unlawful. The party claimed that the application of Article 2(9) of the basic Regulation, which caters for the construction of the export price in case of sales via a related party in the Union, by analogy for the undercutting and underselling calculations is in violation with Article 3(1) of the basic Regulation, as that provision would apply only to the dumping calculation and could not be used in the context of the injury analysis. Finally, the methodology applied would also violate WTO law as it would not represent a fair comparison.

(127) The Commission recalled that, as far as the determination of the undercutting margin is concerned, and also as far as establishing the existence of undercutting for the country concerned, the basic Regulation does not prescribe a specific methodology. The Commission therefore enjoys a wide margin of discretion in assessing that factor. That discretion is limited by the need to base conclusions on positive evidence and to make an objective examination, as required by Article 3(2) of the basic Regulation. The Commission also recalled that Article 3(3) of the basic Regulation specifically provides that the existence of significant price undercutting has to be examined at the level of the dumped imports, and not at the level of any subsequent resales price on the Union market.

(128) On that basis, when it comes to the elements taken into account for calculation of undercutting (in particular the export price), the Commission has to identify the first point at which competition takes (or may take) place with Union producers in the Union market. That point is in fact the purchasing price of the first unrelated importer because that company has in principle the choice to source either from the Union industry or from overseas suppliers. That assessment should be based on the export price at the Union frontier level which is considered to be a level comparable to the Union industry ex-works price. In the case of export sales via related importers, the point of comparison should be right after the good crosses the Union border, and not at a later stage in the distribution chain, e.g. when selling to the final user of the good. Thus, by analogy with the approach followed for the dumping margin calculations, the export price is constructed on the basis of the resale price to the first independent customer duly adjusted pursuant to Article 2(9) of the basic Regulation. As that Article is the only provision in the basic Regulation which gives guidance on the construction of the export price, the application thereof by analogy is justified. With regard to the underselling calculations, the Commission noted that the use of Article 2(9) of the basic Regulation did not lead to any asymmetrical comparison (unlike the *Jindal* case) because for the underselling comparison the Union industry's target price was constructed including manufacturing costs, SG&A and target profit of the producing entity only, and thus, it is comparable to the constructed export price. In other words, the costs of related selling entities of the Union producers were not taken into account when comparing the Union industry's target price with the constructed export price.

(129) The exporting producer Eurochem also claimed that the Commission had made a number of clerical errors in the undercutting calculation in particular with regard to the calculation of the export price at CIF level and after having corrected these errors, it came to the conclusion that its imports in the Union did not undercut the Union industry prices. The Commission analysed these claims and recalculated, where appropriate, the export price accordingly. The Commission still concluded that the imports of this exporting producer undercut the Union industry prices.

(130) The same exporting producer claimed that the Commission should provide a breakdown in the undercutting calculations by delivery terms of the Union industry. The Commission considered the provision of such breakdown unnecessary in view of the detailed explanations provided with regard to the Union industry sales on the Union market. The claim was therefore rejected.

(131) Fertilizers Europe made the point that price depression and suppression were clear in the investigation period and that these can be even more injurious than undercutting. In this respect, the Commission recalled that in recitals (166) and (167) of the provisional Regulation it had already concluded that indeed Union market prices were depressed in 2017 and that, in the investigation period, Union market prices were suppressed since further increases in gas costs did not result in increases in sales prices because of the impact of the dumped imports at increasing volumes. This was clearly possible because of the concentration of imports at ports such as Ghent and Rouen, because of the transparency of the market and because UAN is a very homogenous product, which is purchased almost solely based on price. Therefore, the Union industry was forced to sell at rapidly decreasing margins, culminating in a loss of 3,5 % in the investigation period.

(132) In order to further investigate the claim of some interested parties that the undercutting calculations were not performed at the same level of trade, the Commission examined the types of customers involved. Imports from the countries concerned were made to importers and distributors in large volumes. The sampled Union producers sold to traders, distributors, retailers of agricultural products and large co-operatives. All of these customers purchased in bulk and delivered large quantities to their customers. Only a very small proportion of the sampled Union industry sales were made to end-users and they were not used in the calculation mentioned in recital (115). Therefore, it was concluded that the undercutting calculations were made at the same level of trade.

(133) The exporting producer CFI claimed that the Commission should have accounted for the seasonality of prices when performing its undercutting calculations. As UAN is not applied equally throughout the year, prices vary significantly depending on the timing of purchase. Moreover, a purchase off-season, at a thus much lower price, would also entail a much higher storage cost than what the Commission had used as amount for adjusting import prices for storage in the undercutting (and underselling) calculations.

(134) The Commission examined the information provided by the sampled exporting producers by invoice date to see whether prices in the investigation period fluctuated showing a seasonal variation and to establish which parties were selling in the high/low season. The Commission found that, during the investigation period, prices were at their highest in the period of January-March 2018. The analysis also established that the Union industry sold relatively even quantities throughout the year. In addition, imports from the countries concerned were also relatively well spread throughout the year. Therefore, from the data available there was no evidence of any important and consistent seasonal impact on the calculation. The claim was therefore rejected.

(135) The two Russian exporting producers Acron and Eurochem claimed that the Commission had made several clerical errors in its undercutting calculation. In particular, one of them contested the calculation of CIF values regarding the conversion of the diluted product to the exported product after applying a conversion to the quantities. As set out in recital (52), this claim was rejected.

(136) After final disclosure, the Government of the USA submitted that the Commission had failed to perform its price effects analysis, including undercutting, on data covering the entire period considered, and not only on the basis of prices during the investigation period. This claim is rejected. The findings in recitals (164) to (166) of the provisional Regulation on the price effects are based on an analysis encompassing the whole period considered. Indeed, import prices from the countries concerned fell by between 30 % and 34 % depending on the country over the period considered. This fall in sales prices was particularly evident in 2016 (a 23 % to 27 % drop, depending on the country, as compared to 2015), which was also the year registering the biggest year-on-year increase, namely 50 %, in the volume of imports from the countries concerned. 2016 was also the year in which Union industry sales prices registered their biggest fall (a drop by 26 %) and when the profitability of the Union industry began to fall. The price trends of both imports and the Union industry prices show the price depression/suppression caused by the imports concerned over the period considered. Moreover, as explained in recital (152) below, undercutting is but one factor in a much broader price effect analysis in which price depression/suppression is a key causation argument.

(137) In the absence of other comments with regard to imports from the countries concerned, the Commission confirmed all other conclusions set out in recitals (113) to (131) of the provisional Regulation.

4.4. **Economic situation of the Union industry**

4.4.1. *General remarks*

(138) In the absence of any comments, the Commission confirmed its conclusions set out in recitals (132) to (136) of the provisional Regulation.

4.4.2. *Macroeconomic indicators*

(139) Certain interested parties requested clarification on the methodology and source of the macroeconomic indicators provided in the provisional Regulation. The Commission confirms, as mentioned in recital (134) and the relevant tables in the provisional Regulation, that the source of the data for the macroeconomic indicators was Fertilizers Europe. However, the figures provided by Fertilizers Europe were not always accepted as reported. Indeed, for certain indicators, in particular production, production capacity, capacity utilisation and total sales volume, the Commission replaced certain company specific data provided by Fertilizers Europe if it was different from the verified data of one of the sampled companies. Furthermore, in order to obtain a reliable breakdown of the sales data between related and unrelated parties and Union sales and exports, verified sampled data were used as an allocation key. Finally, the Fertilizers Europe data for closing stock and employment were considered but it was decided that using an extrapolation based on the verified sample data should be used as it was considered more reliable. Interested parties received these clarifications during hearings following the provisional disclosure.

(140) Following final disclosure, the exporting producer Acron concluded that the above explanation demonstrates that the Commission's analysis of macro-economic indicators was thus based on unverified data and inaccurate. This claim was rejected. The above process describes exactly the contrary of what Acron claimed, namely a detailed and thorough verification of the data submitted by the industry and the considerations as to how these data should best be used.

(141) In its written submission following a hearing and also after final disclosure, the exporting producer Acron claimed that capacity utilisation figures reported in the provisional Regulation were overstated due to "switch factories" from production of UAN to production of other higher value added fertilisers. The exporting producer CFI made comments on the production capacity and capacity utilisation figures reported in the provisional Regulation. It claimed that capacity figures were probably too high because they would include idle capacity.

(142) First, it is correct that the figures shown in the provisional Regulation included an element of idle capacity. If idle capacity was excluded then the total production capacity in the investigation period would be around 7 000 000 tonnes (instead of 8 385 000 tonnes) and capacity utilisation would be at 56 % (instead of 46 %). Even excluding the idle capacity, the trend over the analysis period would still be falling and very similar to the data used in the provisional Regulation.

(143) Second, when dealing with production capacity and capacity utilisation, as stated in the provisional Regulation, the Commission considered in its analysis that producers are able (to some extent) to switch production between different nitrogen based products. Accordingly, the Commission did not consider capacity and capacity utilisation as factors which had an important bearing on the injury picture in this particular investigation.

(144) The exporting producer Acron claimed that the Union industry's capacity utilisation rate was 100 % and that all reported unutilized capacity was used for the production of other fertilisers instead. However, it did not provide any evidence to support this claim and the capacity and capacity utilisation rate figures in the provisional Regulation have been duly verified. The claim was therefore rejected.

(145) In the absence of any other comments with respect to the macroeconomic indicators, the Commission confirmed its conclusions set out in recitals (137) to (147) of the provisional Regulation.

4.4.3. *Microeconomic indicators*

(146) The exporting producer Eurochem claimed that, in view of several references in the provisional Regulation to the fluctuation of gas prices, the Union producers should have provided a non-confidential summary showing the trend in its gas purchase prices. However, the gas purchase prices by the sampled producers were not as such requested in the questionnaire and, therefore, they were not supplied in the reply thereto. These prices were obtained and verified during the verification visits and the annexes taken during the on spot verification were treated as confidential because they reveal the internal costs of the Union producers. In an aggregated and non-confidential format they developed as follows:

Gas purchase prices by sampled producers (indexed)

2015	2016	2017	IP
100	*72*	*83*	*89*

(147) The exporting producer CFI commented on recital (158) of the provisional Regulation concerning the ability to raise capital. The party submitted that, in general, a company's ability to raise capital is not directly linked to cash flow but rather the company's overall financial health. However, in this investigation a Union producer demonstrated that it normally finances investments from cash flow surpluses. Furthermore, the investigation found that the overall financial situation for the Union industry has clearly worsened over the period considered. The point raised did not therefore overturn the findings in recital (158) of the provisional Regulation.

(148) CFI also claimed that the injury suffered by the Union industry would be different if analysed separately for each Union producer. This was because of issues such as their sourcing costs of gas or their geographic location.

(149) The injury analysis was done on the basis of the whole Union industry and not per individual producer. Therefore, the situation of individual companies/groups is not relevant to the overall assessment. In any event, in this particular case, the investigation showed that the trends for all three sampled Union producers (considered representative of the situation of the Union industry) were similar and negative. This claim was therefore rejected.

(150) The exporting producer Acron and the GOR challenged the conclusion on injury by commenting on certain injury factors which it claimed showed a positive development at some stage in the analysis period or even before. However, any meaningful assessment must take into account all factors listed in Article 3 of the basic Regulation, like the Commission did in this case. On that basis, the Commission rejected those claims.

(151) In the absence of any other comments with respect to the microeconomic indicators, the Commission confirmed its conclusions set out in recitals (148) to (158) of the provisional Regulation.

4.4.4. *Conclusion on injury*

(152) In the absence of any other comments with respect to the conclusion on injury, the Commission confirmed its conclusions set out in recitals (159) to (161) of the provisional Regulation.

5. **CAUSATION**

5.1. **Effects of the dumped imports**

(153) The exporting producer MHTL claimed that the causation assessment was based on the existence of undercutting. As it considered the methodology for establishing undercutting flawed, the whole causation analysis would also be flawed and in violation of Article 3(2), 3(3), 3(5), 3(6), 3(7) and 3(8) of the basic Regulation.

(154) Further to the analysis of the comments received after provisional disclosure, the Commission confirmed that imports from the countries concerned undercut the sales prices from the Union producers. In any event, the causation analysis took into consideration many other factors besides the finding of undercutting. Indeed, in recitals (166) and (167) of the provisional Regulation, price depression as well as price suppression during the investigation

period caused by the imports concerned is a key causation argument. Table 7 in that Regulation also demonstrates that over the period considered the Union industry sales prices decreased much stronger than its costs. In the same vein, from 2016 to the investigation period sales prices decreased whereas its unit cost of production had increased substantially. Both trends demonstrated the price suppression caused by the imports concerned. That finding was confirmed in the final analysis and the claim of the exporting producer was therefore dismissed.

(155) In the absence of any other comments with respect to attribution of the injury found to the subject imports, the Commission confirmed its conclusions set out in recitals (163) to (167) of the provisional Regulation.

5.2. **Effects of other factors**

(156) Several interested parties disagreed with the role the Commission attributed to the dumped imports in recitals (163) to (167) of the provisional Regulation, as they held other factors responsible for causing injury. These claims are addressed below.

5.2.1. *The (world) price of urea*

(157) Several interested parties reiterated the claim that the development of prices of UAN correlate in most markets with the development of prices of urea. They disagreed with the Commission analysis of this claim in recitals (176) and (177) of the provisional Regulation, as it would not accurately describe the argument that the development of urea prices, and not the imports from the countries concerned, would be responsible for the injury suffered by the Union industry.

(158) The exporting producer CFI also commented that the Commission's observation in recital (149) of the provisional Regulation that Union industry sales prices fell in 2016 due to a rise in imports and that those prices subsequently remained depressed was not supported by the facts. The development of Union industry sales prices would be fully attributable to the evolution of urea prices. The same claim was reiterated after final disclosure and also made by Eurochem.

(159) The Commission agreed that the price trends of urea and UAN correlate in general. Indeed, on the basis of information from various statistical sources, there is some correlation between the development of prices of both fertilizers. Sometimes the correlation is strong and sometimes, like in the period considered, in the Union UAN's and urea's trend evolve differently. For instance in its submission of 26 April 2019 the complainant took stock of the significant price differences reported in trade publications between urea and UAN prices per nitrogen unit in the Union in different moments of the period considered.

(160) The Union producer OCI Nitrogen submitted that an increase in imports of UAN should cause a larger difference between the UAN and urea price "net of nitrogen" in order to justify the finding of causation with regard to the dumped imports. Its analysis would not point at a significant difference increase in months where import volumes increased and the party therefore concluded that there was no causal link between the imports concerned and the injury suffered by the Union producers.

(161) However, even if there could be a correlation, that would not mean that the dumped imports cannot be held responsible for the injury suffered by the Union industry. With regard to the impact of the imports in question on the situation of the Union industry, the Commission recalled that, as compared to the preceding year, the strongest drop in import prices (– 30 %) and most pronounced increase in import volumes (+ 50 %) was in 2016. Over that same year, the Union industry lost market share (– 14 %), its sales prices dropped (– 26 %) and its profitability started its dramatic fall into, eventually, significant losses in the investigation period. On those facts, it cannot be disputed that there is a clear causal link between the dumped imports and the injury.

(162) The analysis done by the Union producer concerned failed to see this link on the basis of a month-by-month analysis of import volume and price difference of such monthly imports "net of urea". The Commission disagreed with such analysis. First, both urea and UAN contain nitrogen and are applied by the same user industry (i.e. farmers). Therefore, some kind of correlation is not surprising. Second, to compare the "adjusted" price difference with

import volumes on a month-by-month basis ignores the fact that prices are often agreed months before they actually enter the Union and that they vary according to the season during which they are set. Consequently, the Commission considered that there is no basis (i) to "adjust" the prices, as done by the party concerned in its claim, and (ii) to attach much value to its subsequent month-by-month analysis. On that basis, any correlation between urea and UAN prices cannot attenuate the causal link between the dumped imports and the injury.

(163) The exporting producer CFI disagreed with the Commission's conclusion that spot prices for urea at various points around the world show price variations, depending on the market, over the period considered. It submitted that the information referred to by the Commission in fact showed that global urea prices are correlated. Moreover, it criticized the four markets mentioned in the material referred to in footnote 15 of the provisional Regulation, as two of them were in China, which the Commission considers distorted with regard to urea, and claimed that US Gulf FOB barge or Middle East granular FOB benchmark market prices, allegedly much more important, were missing. In this respect, the Commission noted that, as to the quality of the material, since no interested party timely submitted copyright-free graphs on fertilizer prices, the Commission used some available copyright-free information that shows in any case that in the recent past urea pricing followed different patterns in different parts of the world.

(164) After final disclosure, Eurochem took also issue with the fact that provisionally Chinese prices were used by the Commission to demonstrate the absence of correlation and that it had not used belatedly submitted representations. However, the Commission examined all the available evidence in this respect and came to the conclusion that the world urea price did not significantly impact the Union industry. This view was further confirmed for the reasons in the next recital.

(165) Subsequent to the final disclosure, Fertilizers Europe provided further evidence that the correlation between urea and UAN prices was broken during the investigation period and even more so subsequently. The information basically confirmed the Commission's conclusion that the correlation is not structurally strong, as opposed to claims by several parties.

(166) OCI Nitrogen also took issue with the fact that the Commission, in recital (176) of the provisional Regulation, had made use of information which was publically available on the internet, whereas that information was not included in the open case-file. According to the party, Article 2(6a)(c) and 2(6a)(e) of the basic Regulation would oblige the Commission to only use information which is on the investigation file and which can be duly verified by the Commission, the latter being impossible in this case as the party from which the information originated declined to cooperate with the investigation.

(167) The Commission rejected this allegation and noted that Article 2(6a)(c) and 2(6a)(e) of the basic Regulation are irrelevant in this case since they relate to dumping calculations in the event of significant distortions in an exporting country. In addition, in acting diligently, the Commission is supposed to crosscheck the information on which interested parties base their claims against other relevant sources of information. Thus, the Commission crosschecked certain data on urea prices provided by OCI Nitrogen against a 2018 presentation made available by another Union producer in the proceeding on its website. The presentation in question contains a graph on urea prices since January 2015 in different parts of the world as quoted by market intelligence providers.

(168) Therefore, as stated in recital (177) of the provisional Regulation, the Commission concluded that the (world) price of urea could not have a significant impact on the Union industry's sales prices and its injurious situation

5.2.2. *Other factors*

(169) The exporting producer Eurochem disagreed with the Commission's observation in recital (155) of the provisional Regulation that the imports were responsible for the suppression of the Union industry sales prices, noting that Union industry prices were squeezed by the increase in costs of natural gas as from 2017. After final disclosure this claim was reiterated. The GOR also claimed that the increase in the costs of natural gas affected the profitability of the Union industry. This issue was already addressed in recitals (178) to (180) of the provisional Regulation. Whereas the gas price evolution could have been a cause for the cost increase, neither the gas nor other cost increases were the cause for the Union industry's inability to increase its prices (suppressed by the subject imports) in order to avoid the losses found during the investigation period. One of the parties claimed that the profitability Union industry incurred a sharp and strong fall in 2017 and the investigation period as they had decided "to act

against the market" and maintain the prices at the relatively low 2016 level, in spite of a significant increase in natural gas prices and, thus, costs. The party suggested that the Union industry had other choices, which is not supported by the facts on the file, which show that even with these prices the Union industry lost 3,5 % market share in the Union between 2016 and the investigation period (Table 5 of the provisional Regulation). The 2,1 percentage points of Union market share lost by the Union industry since 2016 contrast with the market share increase by 3,7 percentage points of the imports concerned over the same period (Table 2 of the provisional Regulation). In the same period, from 2016 to the investigation period, average import prices from the countries concerned decreased further by more than 7 % (Table 3 of the provisional Regulation). The Union industry could not increase its sales prices in line with increase in costs in order to limit the loss of market share, resulting in a severe price suppression and dramatic fall in profitability. In other words, it was the price suppression caused by increasing volumes of dumped imports that led to the fall in profitability as, in such scenario, the Union industry could not increase its sales prices to reflect this cost increase. In this sense, the gas price evolution does not explain the shrinking profits in this case and cannot be deemed as a factor contributing to the injurious situation of the Union industry.

(170) Several interested parties submitted that the causation analysis was tainted by the choice of the sample, which they considered not representative for the Union industry, as AB Achema and Grupa Azoty would have company-specific difficult issues which all other Union producers would not have. In particular, they reiterated that AB Achema and Grupa Azoty were subject to regulated and high gas prices and that they were subject to excessively high transport costs for their sales to Western Europe, where the majority of UAN would be sold. These claims were reiterated after final disclosure.

(171) On this claim it should first be noted that the macro-economic indicators in the injury assessment are taken from all Union producers, as explained in recitals (134) to (136) of the provisional Regulation. Only the micro-economic indicators are assessed at the level of the sampled producers. Therefore, the negative trend of most macro-economic indicators, in particular as regards production volumes, sales volumes and market share, is not affected by the composition of the sample. Secondly, as already mentioned in recital (124) above, the sample was established on the basis of volume of production and sales of the like product during the investigation period and accounts for more than 50 % of the Union production and sales volumes. Therefore, it is considered representative and fully compliant with the provisions of Article 17 of the basic Regulation.

(172) On the issue of gas prices as incurred by AB Achema and Grupa Azoty, the Commission examined, at all three sampled Union producers, how and at what cost gas was sourced. Although gas prices and other gas sourcing costs clearly vary from one Member State to another it was clear that the gas price trend was similar for all three producers. Gas costs fell in 2016 and rose in 2017 and the investigation period (see also the table under recital (146) above). All three producers saw a steady fall in profitability over the analysis period as higher costs (the largest and most heavily fluctuating cost being gas) were not matched by higher selling prices in 2017 and the investigation period. In other words, even if the absolute figures for some of these indicators might have varied from one producer to the other (as claimed by Eurochem after final disclosure), injury was apparent in all three producers and there is no indication or evidence on the file that a different sample would have changed the injury findings.

(173) With regard to the issue that the geographic location of the sampled Union producers caused injury because of the transport costs involved in bringing the product concerned to market, there were 20 known producers of the product concerned in the investigation period with production facilities in all parts of the Union. Furthermore, within the sample, although some of the sales volume was transported by sea freight to other parts of the Union, most sales were sold more locally ([19]). Thirdly, it is not unusual that producers have customers at such a distance that transport costs are significant. What is however important for the Commission's investigation is that the prices

([19]) After final disclosure, the exporting producer CFI argued that this was not reflected in the undercutting and underselling calculation. However, this is incorrect. The fact that most sales of the Union industry were sold more locally entailed that for around 60 % of the Union industry sales prices used in the undercutting calculations ex-works prices have been used and the transport adjustment made to the target price in the underselling calculations is also based on that ratio.

at such markets are supressed because of the impact of the unfairly priced imports. Also it should be pointed out that the Union industry was able to make reasonable profits in the first two years of the analysis period despite its geographical location.

(174) For the sales to Rouen or Ghent, as referred to in recital (107) above, transport costs to the CIF point were around 15 to 20 % of the CIF price. However, such costs had to be borne year on year and in 2015 and 2016 the industry as a whole, including producers with such CIF costs, were all profitable. As stated above, the trends in this case show that injury was apparent for all three sampled producers and not just those located in Poland and Lithuania. It was therefore concluded that, the transport costs associated with taking the product to market do not attenuate the causal link between the dumped imports and the injury suffered by the Union industry.

(175) OCI Nitrogen commented that the Commission had disregarded the argument that integration is key in the fertilizer industry. It argued that the lack of integration of the UAN production line with production lines of other fertilizers makes a producer vulnerable to market fluctuations and is an example of self-inflicted injury. However, all three sampled companies produced UAN and other fertilizer products on integrated sites. The fact that some producers relied on UAN to a greater extent than other producers does not mean that injury was self-inflicted. This claim was therefore rejected.

(176) The exporting producer CFI submitted that productivity fell by 1 % whereas labour costs increased by 10 %, and that such extra cost being unrelated to imports, it should have been taken into account in the Commission's analysis on causation.

(177) The Commission rejected this claim as the increase in average labour costs per employee was not reflected in a similar change in unit cost of production which, on the contrary and as Table 7 of the provisional Regulation demonstrates, decreased by 11 % over the period considered. Moreover, the decrease in productivity can be attributed to the overall decrease of UAN production by Union producers during the period considered, which is also linked to the pressure of imports on the UAN Union market.

(178) The Union producer OCI Nitrogen and exporting producers CFI and Acron also claimed that the Commission was wrong in rejecting the impact of seasonality in prices in recital (186) of the provisional Regulation. In particular, they claimed that the Commission cannot maintain that annual averaging would offset the importance of the seasonality of price. They submitted that AB Achema had reported that it had reduced operations and output by 50 % between June and October 2016 and that it habitually suspends a part of its production every year, usually in summer when the markets offer lowest prices of fertilizers in view of the weak demand. As to AB Achema's suspension of production, the investigation showed that not only AB Achema but also other UAN producers reduce or stop temporarily production due to maintenance or repairs. It is logical that such operations, when possible, are scheduled during a lower season. Moreover, recital (166) of the provisional Regulation links some production breaks in the Union to the depressed market context. In any event, as already concluded following the analysis on the spread and prices of sales in recital (133) to (134) above, there is no evidence of any important and consistent seasonal impact on the prices' analysis. The Commission deems the annual averaging of prices fair since it is common practice in the UAN business to secure some volumes and prices in the second half of the year for deliveries in the first half of the following year. The Commission thus confirms that this claim should be rejected.

(179) The exporting producers CFI and Eurochem claimed that the Union industry had boosted its exports sales at the expense of Union sales, and this, as opposed to the increase of imports from the countries concerned, is what resulted in the decrease of market share of the Union industry. Eurochem also claimed that the Union industry had decided to focus on more profitable nitrogen-based products like ammonium nitrate, at the expense of the UAN market in the Union, a claim which was reiterated after final disclosure. After final disclosure it was also reiterated that imports would have been necessary to fill the gap as the Union industry would have lost interest in producing UAN for its customers in the Union. As already explained in point 5.2.2 of the provisional Regulation, the increased sales of the Union industry on its export markets (by ca. 280 000 tonnes) only compensated for a small part the loss of ca. 700 000 tonnes in the Union market. Even if one takes account of the decrease in consumption over the same period, it cannot be held that these increased export sales have disabled the Union industry to serve its customer base in the Union. The Commission deems the switch of production by certain Union producers (as acknowledged in

recital (139) of the provisional Regulation) as a logical measure put in place by Union producers faced with falling profitability and falling UAN prices in the Union due to imports from the countries concerned. Also, in the circumstances of the case, an increased focus on export markets cannot have contributed to the injury of the Union industry, but it may on the contrary have alleviated the injury caused by the dumped imports to a limited extent. It is recalled that the capacity utilisation rate of the Union industry decreased over the period considered by 7 percentage points to 46 %. Therefore, the increase in export sales did not negatively affect the Union industry's capacity to serve the Union market. These claims are thus rejected.

(180) The GOR claimed that the fact that page 57 of the complaint referred to an increase of capacity utilisation by Union producers by 21 % in 2013-2017 called for the absence of link between alleged dumping from Russia and material injury of the Union industry. This claim is rejected. Table 4 of the provisional Regulation shows a drop in capacity utilisation during the period considered.

(181) After final disclosure Eurochem claimed that market dynamics had caused the injury suffered by the Union industry rather than imports from the countries concerned. The market dynamics referred to were a fall in urea prices and the development of gas costs. However, this claim appeared to be a rewording of its previous claims and claims made by other parties which had previously been considered and rejected. Nevertheless, to summarise the Commission's findings, the Union industry demonstrated that in 2015 and 2016 it was capable of making a profit whether gas prices were high or low. However, it was the fact that increasing volumes of dumped imports at low prices which depressed prices in 2017 and the investigation period prevented the Union industry from raising prices to cover its costs. The claim that market dynamics rather than dumped imports caused the injury suffered was therefore rejected.

(182) After final disclosure, CFI and IFA claimed that additional taxes that the sampled Union producer AB Achema had to pay during the investigation period had an impact on the profitability of the company and of the sampled parties. Therefore, the Commission should have considered it as a factor that may have caused injury. However it should be noted that the gas purchase costs (including fees, taxes and transport) fell over the analysis period for all three producers. In fact the purchase costs of gas of all three producers followed a similar trend. There was no evidence that additional taxes of a single Union producer had any significant impact on the profitability of the sampled industry. On the contrary the shrink in profitability of the Union industry was due to the inability of the Union industry to increase their prices in line with overall cost increases. This claim was therefore rejected.

5.2.3. *Conclusion*

(183) On the basis of the above and in the absence of any other comments, the Commission concluded that none of the other factors examined at provisional stage as well as at definitive stage was capable of having any relevant impact on the injurious situation of the Union industry. Thus, none of the factors, analysed either individually or collectively, attenuated the causal link between the dumped imports and the injury suffered by the Union industry to the effect that such link would no longer be genuine and substantial, confirming the conclusion in recital (190) of the provisional Regulation.

6. **LEVEL OF MEASURES**

(184) The Russian exporting producers argued that not applying the lesser duty rule under Article 7(2a) of the basic Regulation in respect of Russian imports only would result in the collection of anti-dumping duties in a discriminatory way contrary to Article 9.2 of the WTO Anti-Dumping Agreement.

(185) The Commission notes at the outset that the application of the lesser duty rule is not a mandatory rule under the WTO Anti-Dumping Agreement, as Article 9.1 states that its application "is desirable." There are no additional provisions explaining the substantive modalities of its application when WTO member countries decide to apply this rule. Therefore, the EU enjoys a wide margin of discretion as concerns the modalities of application of the lesser duty rule.

(186) The Commission further notes that, contrary to the understanding of these exporting producers, the lesser duty rule is still applicable under the basic AD Regulation as last amended on 30 May 2018. What changed after this amendment are the modalities of its application, as in cases where there are raw material distortions under Article 7 (2a) the dumping margin is considered to reflect the injury suffered by the Union industry, as also explained at recitals (221) to (237) of the provisional Regulation.

(187) A situation of discrimination can only arise where two situations that are similar are treated differently, or two situations that are different are treated alike. This is also the logic underlying the non-discrimination provision under Article 9.2 of the WTO Anti-Dumping Agreement, regardless of whether it also applies to the modalities of the application of the lesser duty rule, which is not mandatory under the Agreement.

(188) In this specific case, the Commission found the existence of raw material distortions under Article 7(2a) of the basic Regulation only with regard to Russia and not with regard to the other exporting countries subject to the investigation, as further explained in recital (217). Therefore, the situation of the exporting producers in Russia, where there are raw material distortions, is not comparable with that of exporting producers in Trinidad and Tobago and in the United States of America, where there are no such distortions. This claim was therefore rejected.

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**

(189) Several parties claimed that *Jindal Saw* would also affect the calculation of the underselling margins. It should be clarified that the underselling margin used in this investigation as the injury elimination level was set using the cost of production of the Union producers. No costs were added to the factory costs to cover the costs of the related sales companies, if any, of the Union industry. Thus, the asymmetry found by the General Court affecting the underselling calculations in *Jindal* is not present in this case and this claim is therefore rejected.

(190) It is recalled that at provisional stage the underselling margin was calculated by using a constructed target price at CIF level for around 40 % of the Union industry's sales. The costs from EXW to CIF represented from 15 to 20 % of the CIF price. These costs were slightly revised upwards at the definitive stage to correct a minor calculation error with regard to some CIF prices of one of the sampled Union producers, as a result of which these prices had been slightly understated. The actual figures involved are confidential and were disclosed to the party concerned.

(191) The exporting producer CFI claimed that the Commission should not have calculated a target profit on the basis of the profit achieved in 2013-2015, as the period 2006 to 2015 would have represented extraordinary returns for the Union industry due to exceptionally high global urea prices. In the same vein, the exporting producer MHTL claimed that the target profit used for the calculation of the Union industry target price was set at an unreasonable high level. It argued that this 10 % target profit was out of line with the 8 % target profit and 5 % target profit established in a number of other fertilizer investigations in the years 2000 and 2001. The Commission would not have provided elements pointing to a change of circumstances leading to such a higher target profit. Therefore, it should be set at 6 %, the minimum level in accordance with Article 7(2c) of the basic Regulation.

(192) It should be pointed out in this respect that in choosing the methodology for setting the target profit in this investigation and in identifying the appropriate period the Commission has taken into account that profits rates can fluctuate. As reported at recital (154) of the provisional Regulation, a profit rate of 14 % was achieved in 2015, where import penetration was still low. The Commission therefore rejected the claim that the 10 % it used was unreasonably high or exceptional.

(193) The exporting producer CFI claimed that since other causes than imports were also a source of injury to the Union industry or at least constituted an aggravating factor, a downward adjustment of the target profit would be appropriate to reflect the impact of these other causes. This claim is rejected.

(194) As found in recital (183) the Commission concluded that other factors did not contribute to the injurious situation of the Union industry. Moreover, as explained in recitals (198) and (199) of the provisional Regulation, the target profit was set in accordance with the new rules set out in Article 7(2c) of the basic Regulation. Article 7(2c) refers

to a variety of factors without specifying any hierarchy among them. The Commission took into account the level of profitability before the increase of imports from the countries 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. Following Article 7(2c) of the basic Regulation, the Commission decided to use the weighted average profit achieved by the Union industry over the period 2013-2015, that is, right before the increase in imports and parallel decrease in profitability on the side of the Union industry. This ensures that the target profit reflects normal conditions of competition on the market as the market share of dumped imports was still low. The increase in imports and the decrease in profitability beginning in 2016 is clear and no other factors, considered individually or collectively, did attenuate the causal link, as explained in recital (190) of the provisional Regulation.

(195) Following the imposition of provisional measures, the Commission slightly revised its calculation of future compliance costs pursuant to Article 7(2d). It updated the expected costs of EUA's (see recital (202) of the provisional Regulation), now using the projected prices as reported in Bloomberg New Energy Finance dated 30 May 2019. That average price for EUA's is definitively established at 25,81 EUR/tonne of CO_2 produced, as compared to 24,14 EUR/tonne of CO_2 produced at the provisional stage. Also other elements of the calculation were slightly revised if found appropriate. On that basis, an additional cost of 3,8 % was established (instead of 3,7 % at the provisional stage) and that cost was added to the non-injurious price. An additional note to the file for inspection by interested parties explains the details of these revisions. No comments, other than the ones addressed in recital (197), were made by interested parties.

(196) CFI and Acron claimed that no adjustment for future compliance costs pursuant to Article 7(2d) should have been made by the Commission as the Commission's finding would not confirm that there is positive evidence and a sufficient degree of certainty that future costs will be incurred by the Union industry. It also observed that it is inconsistent and inaccurate to calculate a target price based on past production costs and past profits while reflecting at the same time future cost elements. This claim was rejected as the provisional Regulation fully explains the legal basis for the future compliance costs adjustment and the method used to calculate such costs are based on positive evidence which represents the best available data.

(197) After final disclosure, Fertilizers Europe claimed that in the meantime the average price for EUA's would have further increased, providing data from a source different than the one used at the provisional and definitive stage (i.e. Bloomberg New Energy Finance). Fertilizers Europe therefore claimed that the Commission should re-evaluate this issue. However, the Commission considered it of utmost importance that there is clarity about the source and timing (both for the provisional as well as for the definitive determination) of the benchmark used for establishing the expected costs of EUA's. Therefore, the numbers mentioned in recital (195) are confirmed.

(198) The exporting producer MHTL claimed that the Commission had mistakenly calculated the underselling margin on the basis of a constructed CIF export price for the reasons also mentioned in recital (126) above. The Commission maintained that, as explained in recitals (108) - (110) it is appropriate for certain sales to establish the cost of production at a CIF level in order to set the injury margin at an accurate and meaningful level in order to make a fair comparison.

(199) The same exporting producer also claimed that the Commission should have used a different CIF price as denominator for its injury calculations to reflect the contract specificities of sales to the Union market. However, it is the Commission's established practice to use the actual price declared to Union customs in order to establish the denominator for the dumping and injury calculations. This method is a fair means of establishing margins and ensures that both dumping and underselling margins are established as a percentage of the same price. This claim was therefore rejected.

(200) The result of the definitive calculations is shown in the table below.

Country	Company	Dumping margin (%)	Underselling margin (%)
Trinidad and Tobago	Methanol Holdings (Trinidad) Limited	55,8	16,2
Trinidad and Tobago	All other companies	55,8	16,2
United States of America	CF Industries Holdings, Inc.	37,3	23,9
United States of America	All other companies	37,3	23,9

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

(201) The comparison between the definitive weighted average import price of the cooperating exporting producers in Russia with the definitive target price of the Union industry, to assess 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, gave the following result:

Country	Company	Dumping margin (%)	Underselling margin (%)
Russia	PJSC Acron	31,9	13,7
Russia	Joint Stock Company "Azot"	20,0	16,3
Russia	Joint Stock Company "Nevinnomyssky Azot"	20,0	16,3
Russia	All other companies	31,9	16,3

(202) It was thus confirmed that the underselling margin was lower than the margin of dumping and that the Commission should perform the examination required under Article 7(2a) of the basic Regulation.

(203) After final disclosure Eurochem claimed that the Union industry's sales price used for underselling should be decreased by 7 EUR/tonne, in order to account for the difference in cost of production per tonne of UAN between 2017 and the investigation period as this cost increase would have been caused by the cost increase of gas and that it should thus not be associated to the imports concerned. The same party claimed that the Union industry sales price should be further decreased by 15-20 % on account of their remote location as another cause of injury.

(204) For the reasons explained in recitals (169), (173) and (174) above, neither the gas price evolution nor the transport costs or the location of the sampled producers can be deemed as factors contributing to the injurious situation of the Union industry. Further, as confirmed in recital (124) above, the sample of Union producers is representative for the Union industry as a whole and not distorting the figures due to the location of the parties concerned.

(205) With regard to the target profit used for calculating the Union industry's target price (see recitals (198)-(200) of the provisional Regulation and recitals (191)-(194) above), after final disclosure Acron claimed that the Commission should either disclose the Union industry's weighted average profit achieved in 2013 and 2014 used, together with the 2015 profit, for calculating the 2013-2015 weighted average target profit used, or apply the 8 % target profit used in a recently concluded ammonia nitrate review investigation. The Commission disagreed with the reasoning underlying the claim. However, with regard to the Union industry's profitability in 2013 and 2014, as the 2015 profit of the sampled parties was 14 % and the weighted average profit margin arrived at was 10 %, it is clear that the profits achieved by the Union industry were substantially lower in 2013 and 2014 as compared to 2015. The exact weighted average profit rates of the sampled producers for 2013 and 2014 used in the calculation cannot be provided, as one of the sampled producers, OCI Nitrogen, could not provide the Commission with its profitability

over the years prior to 2015 and therefore the calculation for those years was based on the profitability of two producers only. To disclose those figures was therefore not possible in view of the confidential nature of profitability data. However, the weighted average profitability of the Union industry for each of those years used in the 10 % calculation ranged between 5 % and 9 %.

(206) Acron also claimed that an adjustment for future compliance costs pursuant to Article 7(2d) is not warranted, absent a definitive proof that such costs will be incurred by the Union industry. This claim is addressed under recital (196) above. The Commission maintained its view that such increased future compliance costs have been accurately calculated in accordance with the positive information on file. This claim was therefore rejected.

6.3. **Raw material distortions**

(207) The examination of raw materials distortions and reasons to apply Article 7(2a) with regard to Russia were set out in recitals (207) to (220) of the provisional Regulation.

(208) Both Russian exporting producers claimed that the Commission had neglected the fact that the complaint did not contain sufficient evidence justifying the initiation of an investigation under Article 7(2a) of the basic Regulation.

(209) In recital (207) of the provisional Regulation, the Commission found that the complainant had provided sufficient evidence in that regard and it made specifically reference to the dual pricing in Russia with regard to natural gas. In particular, the complaint contained an example of a Russian plant operation, including the cost of production, clearly showing that the cost of gas represents far more than 17 % of the cost of production. In addition, the complaint contained a comparison of domestic prices of Russian gas with export prices to the Union showing the latter to be significantly higher. Finally, both the complaint and the executive summary contained explicit references to the application of Article 7(2a) of the basic Regulation, in view of the artificially low state fixed domestic gas prices which allegedly constitute a structural distortion. The claim is therefore rejected.

(210) Furthermore, one of the Russian exporting producers contested the findings of the investigation with regard to the conditions of application of Article 7(2a) of the basic Regulation. While it did not challenge the existence of an export tax of 30 %, the monopoly of one company for the export of gas, and a dual pricing system as described in recitals (212) to (215) of the provisional Regulation, the interested party contested two conditions of Article 7(2a) of the basic Regulation:

(a) the fact that as a result of these distortive measures the price of gas on the Russian market is significantly lower as compared to prices in the representative international markets,

(b) the fact that the cost of natural gas represented more than 17 % of the cost of production of the product concerned.

(211) With regard to the first point, the company reiterated its arguments that the Waidhaus price and the Union market as a whole cannot be considered a "representative international market", contrary to the US market.

(212) As explained under point (d) of recital (55) of the provisional Regulation the Commission found the Waidhaus price an appropriate benchmark for the representative international market price. Nevertheless, it should be mentioned that even if the Commission considered the US market as a representative international market, the regulated price in the Russian market would still be 20 % lower.

(213) With regard to the company's claim that the cost of natural gas, excluding transport costs, represented less than 17 % of the cost of production of UAN, it should be reiterated that according to the data submitted in the questionnaire replies of both producers, natural gas accounted for more than 17 % of the cost of production of the product concerned. This finding was confirmed in a calculation taking into account undistorted natural gas prices, that is, Waidhaus, which was the one found appropriate in this case, with or without considering the transport cost. This claim is therefore rejected.

(214) Furthermore, both Russian exporting producers claimed that the countrywide determination with regard to the existence of the raw material distortion and the subsequent decision to set measures at the level of the dumping margin cannot be applied to the individual companies without assessment of their individual situation. The Russian exporters claimed that they should not be punished for the lack of cooperation of the GOR, which has resulted in the fact that the findings with regard to the existence of a distortion on raw materials were partially based on Article 18 of the basic Regulation.

(215) In this regard, it should be noted that the determination in question was done on the basis of the data submitted by the exporting producers. Indeed, the analysis of the costs of production of the product concerned, the comparison of the companies' purchase price of natural gas with the undistorted benchmark (corrected to the price level at the Russian plants) and the share of the cost of natural gas in their cost of production, as well as the sources of supply of this gas were all based on the companies' individual data. Due to the nature of some of the distortions found on the Russian gas market, the individual behaviour of the exporting producers was irrelevant. For example, they benefited from the distorted natural gas price resulting from export restrictions and export tax regardless of their individual source of supply of natural gas (provided it was natural gas of Russian origin). Finally, no party provided any evidence proving that the measures mentioned in recitals (211) to (214) of the provisional regulation were not in place.

(216) Finally, both the GOR and the two Russian exporting producers claimed that the application of Article 7(2a) would be in violation of the WTO rules, as it would be imposed on a discriminatory basis on the Russian exporting producers in comparison with the exporting producers from the other two countries subject to the investigation.

(217) The claim of discriminatory treatment of the Russian exporting producers was not substantiated. Following initial comments of Russian interested parties, the Commission examined in the course of investigation the potential application of Article 7(2a) with regard to the exporting producers from TT and the US. The Commission investigated the allegations of interested parties but concluded that the application of Article 7(2a) would not be justified, as explained in recital (195) of the provisional Regulation:

(1) either the measures identified were not the type of distortions listed in Article 7(2a);

(2) or they were not of a nature that would affect the price of the raw material.

(218) The Commission therefore rejected this claim.

(219) Following definitive disclosure, both Russian exporting producers reiterated their claims with regard to the discriminatory treatment of Russia in this procedure especially against the background of the organisation of the gas market in TT.

(220) With regard to this claim, the Commission recalled that none of the alleged distortions of gas market in TT is listed as export restriction in Article 7(2a) of the basic Regulation.

(221) Furthermore, Eurochem reiterated its claim that the cost of natural gas did not represent 17 % in the cost of production. However, no new evidence or arguments were presented which would change the Commission conclusion in this regard as indicated in recital (213) above.

(222) Finally, Eurochem challenged the Commission's findings with regard to a countrywide determination of a distortion of the natural gas market in Russia. The company specifically pointed out that a 30 % export tax applies only to Gazprom and it is not applicable to the export sales of the private gas producers who were the main suppliers of natural gas to Eurochem.

(223) In response to this claim it should be stressed that private producers of gas in Russia are not allowed to export at all. Moreover, the export of liquefied natural gas (with or without restriction), which is the base of Eurochem's claim, is not relevant in this case as liquefied natural gas was not found to be a raw material used in the production of UAN by the Russian exporting producers and thus was not a subject of analysis under Article 7(2a) of the basic Regulation in this investigation.

(224) In the absence of other comments with respect to the raw material distortions on the Russian domestic market, the Commission confirmed the conclusions set out in recitals (207) to (220) of the provisional Regulation, as clarified in recitals (207) to (222) above.

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

(225) One of the Russian exporting producers claimed that the application of Article 7(2a) would not be in the Union interest under Article 7(2b) of the basic Regulation. The arguments in support of that claim are addressed below. Several other interested parties also commented on some aspects of the analysis and these comments are also addressed.

6.4.1. *Spare capacities in the exporting country*

(226) Both Russian exporting producers contested the provisional findings on spare capacities. Acron claimed to be working at full capacity while Eurochem forecasted a decline of Russian UAN exports as of 2020.

(227) These claims do not undermine the overall findings of the Commission as regards spare capacities in Russia overall and Russia's export potential, at least in the near future. The Commission rejected the claims and confirmed the conclusions set out in section 6.4.1 of the provisional Regulation.

6.4.2. *Competition for raw materials*

(228) The Russian producers claim not to have an unfair advantage with regard to natural gas due to the regulation of gas prices in Russia. The companies pointed at the growing competition on the domestic Russian market and growing importance of non-Gazprom suppliers.

(229) Taking into account the dominant position of Gazprom with its State-regulated maximum price and its monopoly on exports of natural gas, other smaller providers have to offer prices below this regulated price in order to be able to compete. This connotes that, contrary to the Russian producers' submission, competition in Russia is still limited. Furthermore, Russian companies enjoy the unfair advantage posed by the 30 % export tax imposed on natural gas sales.

(230) One of the Russian producers claimed that the Union industry imported significant quantities of ammonia from Russia and that, therefore, they indirectly also benefitted from low gas prices in Russia as ammonia is a semi-product for the production of fertilizers. The evidence showed that the Union industry produced ammonia from gas from various sources and did not import significant quantities of ammonia from Russia. The claim was thus rejected.

6.4.3. *Effect on supply chains for Union companies*

(231) One Russian exporting producer pointed that supply chains would be negatively affected by the imposition of measures at the level of the dumping margin as evidenced by the strong participation of users. The Commission is however of the view that users' reaction is a response to recital (253) of the provisional Regulation, which encouraged interested parties to provide their views on the interests of users. These views have been analysed and are addressed in section 7.3 below.

(232) Another interested party commented that the demand, at least in the short and medium term, was highly inelastic since UAN is the only liquid fertilizer and requires significant investments into tanks and spraying equipment. Several parties insisted on the insufficient production of UAN in the Union, unable to meet Union consumption, due to switching capacities or complete shutdowns of the Union producers over the last few years.

(233) Concerning the inelasticity of demand, the Commission agreed that applying liquid fertilizers needs different user equipment than applying solid fertilizers. However, anti-dumping measures do not aim at farms having to substitute UAN by other fertilizers (such substitution being deemed in any case possible by some economic operators), but at creating a level playing field. As to the fact that Union UAN production is lower than UAN consumption in the Union, the investigation did not find that there would be a risk in terms of supply to the Union market. Countries such as Algeria and Belarus are alternative sources to the concerned countries. In any event, anti-dumping duties on imports from the countries concerned would only bring prices of these imports to a fair competition level. Finally, as stated in recital (255) of the provisional Regulation, Union UAN producers have the capacity/possibility to increase UAN production when operating in a level playing field. The parties' claims on swing capacities and shutdowns were addressed in recital ((178)) above.

6.4.4. *Conclusion*

(234) On the basis of the above and in the absence of any other comments, the conclusions set out in recitals (222) to (237) of the provisional Regulation were confirmed.

7. **UNION INTEREST**

7.1. **Interest of the Union industry**

(235) The users associations AGPB and IFA questioned the need of anti-dumping duties since fertilizer prices in the Union are consistently above world prices and the nitrogen market in the Union is already protected by import tariffs and/or anti-dumping duties (e.g. on AN imports). The Commission rejected the suggestion that Union producers would not suffer injury, as Sections 4 of the provisional Regulation and this Regulation clearly concluded on the injurious situation of the Union UAN manufacturers.

(236) The exporting producer Acron questioned whether anti-dumping duties would be in the interest of Union producers as major Union producers did not support the complaint. The exporting producer CFI and users association AGPB questioned whether anti-dumping duties would be in the interest of Union producers, as according to its estimations Union manufacturers of ca. 50 % of the Union production would not seek protection by anti-dumping duties.

(237) It should firstly be clarified that the mentioned figure is not right, as the volume of UAN produced by the complainants represents 55-70 % of the total Union production. Secondly, the volume of UAN produced by the two producers that have indicated to oppose the investigation represents 25-35 % of total Union production. Thus, the remaining production volumes, i.e. volumes of UAN manufactured by producers that did not take any position regarding the investigation, is limited.

(238) It should also be noted that, even if a Union producer opposes the initiation of an anti-dumping investigation or the imposition of anti-dumping measures, that does not necessarily mean that such producer would not benefit from the measures which may be imposed. On that basis, the conclusion that the absence of measures is likely to have a negative effect on the Union industry whereas the imposition of measures would improve its situation stands firm and the claim was rejected.

(239) In the absence of any other comments regarding the interest of the Union industry, the conclusions set out in recitals (239) and (240) of the provisional Regulation were confirmed.

7.2. **Interest of unrelated importers**

(240) In the absence of any comments regarding the interest of unrelated importers, the conclusions set out in recitals (241) to (243) of the provisional Regulation were confirmed.

7.3. **Interest of users**

(241) In recital (253) of the provisional Regulation, interested parties were encouraged to provide their views on the interests of users so that the Commission could further analyse and complete its assessment with regard to users, in particular on farmers. Several parties claimed that the imposition of anti-dumping duties was against the Union interest. The comments and information received following provisional disclosure and relevant to this analysis are addressed hereunder, as well as the limited comments on this section following final disclosure.

(242) As a preliminary remark it is recalled that, as to the type of analysis carried out, the Commission, following its established practice as regards Union interest, focused on the analysis of the impact of an increase in costs and the effect of anti-dumping duties for importers, users and other economic operators. The analysis is normally based largely on the input received by the interested parties. Depending on the level of co-operation of users (i.e. whether detailed questionnaire replies are duly filled in), an analysis of their profitability may also be made. In the current investigation, however, in light of the numerous and diverse farms and other economic operators possibly concerned, the Commission deemed it unfeasible to make enough "field analyses". Instead, the Commission deemed it more appropriate to resort to already available statistics and data, namely those from the relevant specialised services within the Commission.

(243) Following provisional disclosure, the users association AGPB agreed with the Commission's calculation that UAN represents less than 1 % of overall farming costs in the Union ([20]) although it disagreed with the Commission's appreciation of that. The percentage was however criticised by the users association IFA on the grounds that it disregards that the Union farming sector covers a myriad of realities. The exporting producer CFI claimed that this part of the analysis of the Commission was inconsistent with the remaining parts of the investigation, as the impact on farmers would have been calculated on the farming sector as a whole whilst in the other parts of the investigation the Commission would have focussed on UAN.

(244) First, with regard to the claim that the impact on the farming sector as a whole is irrelevant, the Commission did not obtain – neither at the provisional stage, nor at the definitive stage – verifiable figures on the impact that measures could have on the Union UAN users as an isolated user group. The Commission has thus first calculated, using the best available and reliable statistical sources and in line with its established practice as described above, the impact that measures would have on the farming sector as a whole, bearing in mind that UAN is one but not the most common (nitrogen) fertilizer in the Union ([21]). The party that claimed that this part of the analysis was inconsistent with other parts itself also provided non-UAN figures ([22]) when it had no UAN specific data at its disposal.

(245) In addition, as explained in recital (251) of the provisional Regulation, the Commission also calculated the impact in the worst case scenario, which is the impact of the highest provisional duty on a specialized farm which is only using UAN as nitrogen fertilizer. This is a very extreme, theoretical scenario. In making that analysis, the Commission relied on statistical data with regard to specific user groups of farmers that used UAN most. The Commission provided interested parties also with the result of that analysis.

(246) The same exporting producer acknowledged that the Commission had provided a worst scenario calculation, but it criticized the adjustment done, in order to bring a 2013 figure to the 2017 level, to the contribution of nitrogen fertilizers to the COP for a farm in northern France specialising in wheat. Again, this adjustment was done on the basis of solid statistical sources, as explained in footnote (28) in the provisional Regulation. Also, the latest Economic Accounts for Agriculture values for France call for the downward adjustment made by the Commission ([23]). The party also contested that during the investigation period UAN represented some 10 % of the costs of production of farms specialized in common wheat in France that use UAN as a sole source of nitrogen fertilizer, as found by the Commission. The party brought however no evidence to substantiate that claim. These claims are thus dismissed.

(247) The users association AGPB agreed that during the investigation period UAN represented up to 10 % of the costs of production of farms specialized in common wheat in France, as put forward by the Commission ([24]), whereas the complainant provided calculations highlighting that the share of fertilizers costs within farmers' costs inputs is modest ([25]). The users associations AGPB and IFA proposed an alternative to the Commission's methodology that entailed a finding on overall farming costs in the Union followed by the "worst case scenario" described in recitals (250) and (251) of the provisional Regulation. The parties' findings concern a group of French users ([26]) wider than the one in the "worst case" scenario used by the Commission. To the extent the parties' alternative methodology reached a conclusion different but not that far from the one of the Commission, the Commission deemed that published data on FADN's COP users in France not undermine its conclusions on Union interest as regards farmers.

([20]) t19.001843.
([21]) http://www.fertilizerseurope.com/fileadmin/user_upload/publications/statistics_publications/Stat_website.pdf
([22]) In point 4.3.3 of its submission dated 29 April 2019 the exporting producer (CFI) gives no UAN-specific jobs figures but states that "…9 million people were employed in the farming industry in 2017".
([23]) See page 7 of https://ec.europa.eu/agriculture/sites/agriculture/files/statistics/factsheets/pdf/fr_en.pdf
([24]) In t19.001843, AGPB states "From our data from the Observatoire Arvalis/Unigrains/CerFrance, October 2018 … nitrogen fertilization represented … 10 % of the total cost of production of winter wheat in France in 2017/2018".
([25]) See t19.002111, where the complainant calculates that for France fertilizers were 8,6 % of total intermediate costs over the period 2015 to 2017, and the evolution of agricultural input components in the Union as presented on page 10 of https://ec.europa.eu/agriculture/sites/agriculture/files/statistics/factsheets/pdf/eu_en.pdf (updated: May 2018).
([26]) In t19.002212 the parties in question present calculations according to which in 2017/2018 UAN costs represented 9 to 16 % for selected French users. These selected French users are farms specialised in cereals, oilseeds and protein crops (type 15 or "COP" in DG AGRI's FADN database). See also t19.001992 for reference documents used the parties (such as https://ec.europa.eu/agriculture/sites/agriculture/files/fadn/sector-fiches/tf15_fr.pdf).

(248) IFA also submitted that the Commission had underestimated the share of UAN in the farmers total cost of production in view of the price increase in UAN that could be observed since September 2018. The Commission noted that the investigation period selected for this investigation is 1 July 2017 to 30 June 2018 and that therefore it has been right and compliant with the basic Regulation by not using data pertaining to the second half of 2018 for the above mentioned analysis. However, post investigation period developments have been analysed and taken into account when setting the form of the measures as explained in section 10.1.

(249) The same association disagreed with the fact that the Commission, when calculating the impact of a duty on the costs of production of farms specialized in common wheat in France that use UAN as a sole source of nitrogen fertilizer, had considered that only 70 % of these farms fertilizers costs corresponded to UAN since nitrogen fertilizers account for 70 % of total fertilizer use in the Union. It however failed to substantiate its claim, which seems to be unjustified in light of the agronomical efficiencies put forward by the complainant in t19.002185. The party's claim is thus rejected.

(250) The users association Copa-Cogeca reiterated that duties entail additional expenses that farmers cannot pass on downstream in the agricultural food chain, undermining farmers' income and their competitiveness. The users associations AGPB and IFA pinpointed that Union farmers competitiveness is already hindered by import tariffs and/or anti-dumping duties (e.g. on AN imports) that protect nitrogen producers in the Union, which would cost Union farmers 1 billion EUR per year. Even if the Commission concedes that, depending on the crop and its market, farmers will find it difficult to pass on certain increases in costs, the recital (254) below takes stock of the prediction of a stable agricultural income in the Union in the near future. The Commission recalls as well that in recital (249) of the provisional Regulation the Commission found that UAN represents less than around 1 % of overall farming costs in the Union, and 10 % for overall costs for specialized farms (recital 251). 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. The claim is thus rejected.

(251) In a joint hearing subsequent to provisional disclosure, several users claimed that the impact of measures on farmers would be much more severe than calculated by the Commission. They claimed that the cost of production of certain of the most affected farmers would increase by 5 % to even 12 %, instead of by 3 % to 5 %, as the Commission had calculated. These claims were based on a combination of testimonials or presented data of selected farmers, which were impossible to verify, and statistical data. After final disclosure, in view of the revised duty levels and the revised form of the measures, as explained in Section 8.1 below, the parties lowered their projections from 6 % to 9 % at most, depending on whether UAN would represent 70 % of these farms fertilizers costs, which as mentioned in recital (248) above the Commission considered the most realistic in this "extreme" scenario, or 100 % of such costs. However, these projected cost increases were also based on UAN prices in February 2019, which not only falls outside the investigation period but which is also a month when prices were exceptionally high (they sharply dropped afterwards). Moreover, it was based on the assumption that the overall cost increase due to the definitive duties would be at the level of the relatively high specific duty calculated for one of the Russian exporting producers, which is an exaggeration in view of the market share of that one producer. These claims are therefore rejected.

(252) After provisional measures Copa-Cogeca calculated that the extra charge due to the provisional anti-dumping duty for farmers in the Union would amount to 559 million Euros per year, whereas the users association IFA calculated 312 million Euros. According to the users association AGPB such extra charge would amount to 502 million Euros per year. The Commission notes that in arriving at these figures parties appeared to have taken account of reference data different from the one used by the Commission, namely the highest provisional duties and UAN prices in periods when UAN was at (exceptionally) high prices. After final disclosure, Fertilizers Europe submitted that the overall cost of the duty to be imposed for the farmers would amount to 32,8 million Euros per year. In its calculation, however, it disregarded any potential impact of the duty on the Union industry prices. The Commission considers that for farmers in the Union, assuming that importers will pass on 100 % of the duty cost to them, anti-dumping measures at the level established in this Regulation would entail an extra charge of at most 90 million Euros per year. This figure is based on the specific duties to be imposed for the origins concerned, UAN consumption and market shares as during the investigation period and it also anticipates an increase of the Union industry sales prices.

(253) The exporting producer CFI criticized the fact that, under Chapter 7.3 of the provisional Regulation, no assessment had been made on the impact of an anti-dumping duty on the profitability of the farmers whereas according to the report issued by the Commission's DG AGRI, quoted in footnote (24) of the provisional Regulation, a wheat farm in Northern France in 2013 incurred losses as high as 10 %. In the same vein, the two users associations AGPB and IFA submitted that the effect of the anti-dumping duty on the farmers' profit should be measured, rather than the impact on the cost of production. Such analysis would allegedly show that the current profit margins of farmers are very tight and that the increase in costs due to the anti-dumping duties could have a detrimental effect on the viability of many farms in the Union. The parties disagreed with the Commission's conclusion that a duty at the level as provisionally imposed would not have a disproportionately high impact on farms specialized in common wheat in France. According to one of them, for French grain growers specialized in cereals, oilseeds and protein crops, any additional cost due to measures would take away most of the meagre profits they are currently making. The Russian exporting producer Acron pinpointed that farmers' morale was at its lowest because of, allegedly, catastrophic harvests, pandemics on farms, climate and market uncertainties and sales prices below production costs. For the other Russian exporting producer, the severity of price increases in the absence of affordable alternative products would jeopardise a sector where farm incomes are already precarious.

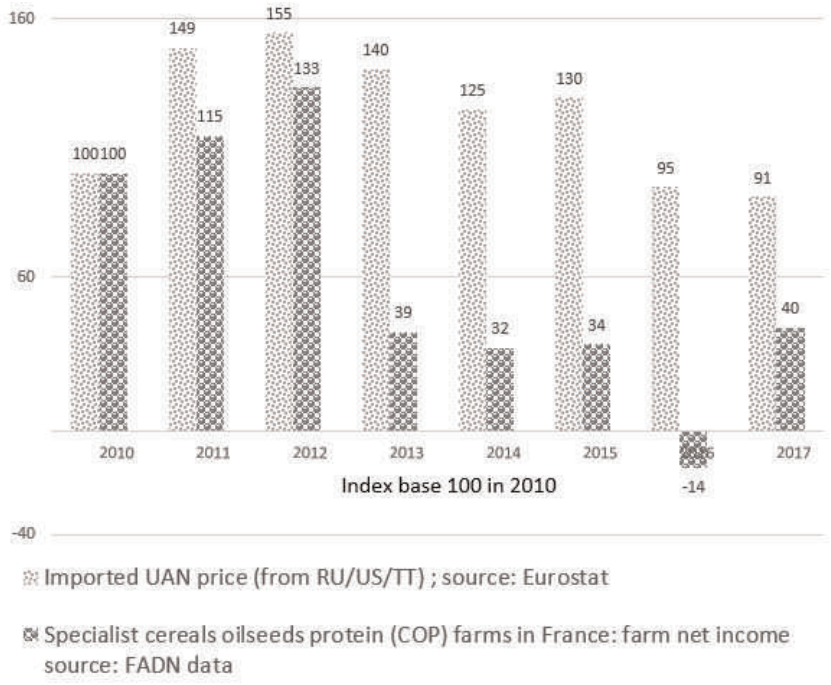
(254) The above claims regarding the profitability of farmers are dismissed.

(255) Firstly, as mentioned in recital (241) above, the Commission's analysis is based on the input received by the interested parties and reliable available statistics and data. Secondly, the Commission notes that publicly available research casts doubts about a significant negative impact of anti-dumping duties on the viability of Union farms. France, which is expected to remain a significant net exporter of cereals at Union level ([27]), has indeed experienced better wheat prices and yields in the last two seasons as compared to the 2015/2016 one ([28]) whereas in 2017 and 2018 farmers in countries such as the United Kingdom, Ireland and France performed rather well economically ([29]). Even if the profitability of a specialised wheat farm in France in 2013 was negative ([30]), page 79 of the "EU Agricultural outlook for markets and income 2018-2030" ([31]) refers to a stabilisation of the agricultural income per annual working unit throughout the outlook period. The same document reads that the agricultural income in nominal terms will remain stable in the outlook period, remaining around the level of 2016-2018 and that the current situation on subsidies applies throughout the outlook period. According to the same document, cereal production in the Union is predicted to continue growing, and reach 325 million tons by 2030 (compared to 284 million tons for 2018) while prices are expected to remain fairly stable, with for example common wheat being at around €180 per ton.

(256) Further to the above, the Commission notes that the two users associations referred to in recital (252) above agreed with the Commission's statement that most Union farmers rely on several crops. This fact can be an agricultural need but it is in any case deemed to be a safety net for farmers as price trends and income vary from crop to crop. Indeed, some 50 % of the output of French farmers specialised in common wheat (i.e. the group considered to be in the "worst case scenario") is diversified into other crops.

(257) Even if the Commission cannot exclude that the definitive anti-dumping duties at the level established may have a negative impact on some operations of certain farms, the impact in terms of lost profit in farms in the future is unquantifiable in light of the cyclicality and uncertainties inherent to farming. In any case the investigation showed that there is no relation between the price of UAN and the net margin of either the common wheat operations of French farms in the "worst case scenario" or French farms specialised in cereals, oilseeds and protein crops. Indeed, there is no indication on the file that historically an increase in farmers' income can be linked to a decrease in UAN prices or that a decrease of farmers' income can be linked to an increase in UAN prices, as the below table shows:

([27]) For the projection, see page 35 of DG AGRI's "EU Agricultural outlook for markets and income 2018-2030", December 2018.
([28]) Prices and yields can be consulted on page 4 of the complainant's Union interest submission in t19.002111.
([29]) See the complainant's submission in t19.002185, namely the surveys on agriculture accounts in the annexes.
([30]) According to the 'EU Cereal farms report base on 2013 FADN data', DG AGRI, p. 44, in farm specialised in common wheat in France in 2013 the gross margin was +49 EUR/ton, whereas the net margin (before own factors) was -19 EUR/ton.
([31]) https://ec.europa.eu/info/sites/info/files/food-farming-fisheries/farming/documents/medium-term-outlook-2018-report_en.pdf



(258) After final disclosure, the users associations AGPB and IFA emphasized that the farmer group most affected by the measures had seen a fall in income over a long period and therefore, even if their income would stabilize, that would be at low levels and therefore measures would seriously affect them. However the absence of relation between the price of UAN and the margin shown in the table above does not allow predicting that the effect that the measures will have on the farmers' profits will be serious. Indeed the extent of the real effect will be dependent on too many factors.

(259) The users association IFA asked the Commission not to support an inefficient manufacturing sector that has limited impact on the fabric of the Union's rural economies unlike agriculture. This claim is unwarranted and thus dismissed. The Union industry is viable and efficient when granted a level playing field.

(260) The users associations AGPB and IFA questioned, contrary to the Commission's finding, the existence of insurances to hedge margins at the disposal of Union farmers. The Commission noted that parties' views on the matter differ: the exporting producer CFI's submission ([32]) of 29 April 2019 suggested that the tools mentioned in recital (251) of the provisional Regulation are being used. After final disclosure, AGPB and IFA submitted that "margin insurances are not significantly used for the time being in EU agriculture" and that there were no price hedging tools widely available for farm inputs. This claim was however unsubstantiated.

(261) The exporting producer concerned questioned the value of the Commission findings in recital (251) of the provisional Regulation, namely (i) that many farms in the Union rely on several crops and (ii) that farmers have several tools at their disposal to secure UAN at reasonable prices. Concerning (i), it held that farms specialized in wheat, including the one referred to by the Commission by ways of example, already are relatively diversified but that the impact of an anti-dumping duty on crops other than wheat would also be severe as demonstrated by farmers associations. Concerning (ii), it noted that these tools are already used by farmers in the current situation therefore that fact would not mitigate the impact of any duty. The Commission disagreed with the party because since overall both (i) and (ii) are beneficial for farmers, there is no reason that they will not be so in the context of any increased costs due to anti-dumping measures.

([32]) t19.002016.

(262) The exporting producer Acron stated that the fact that the Commission could not estimate UAN-related jobs in farms does not mean that there are no UAN-related jobs in farms at stake. The exporting producer CFI disagreed that the Commission considered that the impact of the anti-dumping measures on employment would be limited in view of the foreseen sizeable reduction of workforce in the sector due to productivity improvements. The party also pointed at the expected rise of (certain) farmers' costs between 2017 and 2030.

(263) The Commission clarified that recital (252) of the provisional Regulation should be understood in the sense that anti-dumping duties are not expected to accelerate the reduction of workforce already (and previously) forecasted to continue in farms in the Union. As to the forecasted increase in costs, recital (254) above refers in any case to a stabilisation of the agricultural income.

(264) In the absence of any other comments regarding the interest of users, the conclusions set out in recitals (241) to (252) of the provisional Regulation were confirmed.

7.4. **Other factors**

(265) The exporting producer CFI claimed that the Commission was wrong in concluding that nothing on the file suggests that a price increase of UAN, if any, will have a significant impact on the price of other fertilizers, as according to the party the prices of UAN and AN move in tandem. This claim was however contradicted by hearing materials submitted by users ([33]), according to which AN prices in the Union were out of sync with world prices. A claim made by the users association Copa-Cogeca that duties would increase prices of other nitrogen fertilizers was also dismissed on the same grounds.

(266) The exporting producer CFI criticised the Commission's findings on UAN-related jobs in recital (257) of the provisional Regulation. The party provided no alternative calculation or a calculation for UAN-related jobs in farms in the Union. Its comments were thus rejected.

(267) The Russian exporting producer Acron questioned footnote 32 of the provisional Regulation ("carbon footprint of ammonium nitrate in the EU is 1,1 tonne CO_2 equivalent/tonne of product, 2,3 in the US and 2,6 in Russia") by stating that its own carbon footprint of UAN production is 0,7 tonne CO_2 equivalent/tonne of product ([34]) and 0,6-0,8 for Russia. The Commission has no UAN carbon footprint benchmarking data on its own. Thus, as clearly stated in the footnote in question, data took stock of ammonium nitrate values from a third party footprint calculator. The European bodies publish data showing the reduction of carbon footprint by Union companies ([35]).

(268) The Central Union of Agricultural Producers and Forest Owners in Finland, MTK, insisted that measures would hinder the use of UAN, allegedly a very environmentally friendly method of fertilisation. The exporting producer Acron claimed that alternatives to UAN are not only more expensive and costly in the application but also more polluting. The party referred to a study on agriculture as a major source of nitrogen oxide pollution in California and claimed that, due to environmental hazards of using alternatives to UAN, the Commission should not prevent affordable UAN in the Union by imposing anti-dumping duties. Nevertheless, recital (256) of the provisional Regulation recalled that, even if UAN has multiple agronomic advantages, it is not neutral for the environment. The parties having failed to produce enough relevant supporting evidence on the matter, the claims were dismissed.

(269) Acron also claimed that duties will negatively affect European distributors and supply chains. The party having failed to produce any supporting evidence on the matter, the claim was dismissed.

([33]) Slide 10 of the parties' hearing materials, t19.002212.
([34]) The calculation of Acron is available in t19.002053.
([35]) https://www.eea.europa.eu/themes/industry/industrial-pollution/industrial-pollution-country-profiles-2018/2018-industrial-pollution-country-profiles

(270) The association MTK questioned who would benefit from the anti-dumping duties by highlighting that most of the big fertilizer companies in the Union market are not Union based. In this respect the Commission recalled its legal obligation to impose anti-dumping duties when the legal requirements are met, independently of tax contributions or other considerations.

(271) The exporting producer Acron claimed that Union producers were trying to manipulate UAN prices. The cooperating users associations pointed at an increased concentration within Union producers and possible anti-competitive practices by Union fertilizers producers. In the absence of any relevant authorities having established that UAN Union producers entered into anti-competitive practices, these comments were dismissed.

7.5. **Conclusion on Union interest**

(272) On the basis of the above and in the absence of any other comments, the conclusions set out in recitals (239) to (258) of the provisional Regulation were confirmed.

8. **DEFINITIVE ANTI-DUMPING MEASURES**

(273) In view of the conclusions reached with regard to dumping, injury, causation and Union interest, definitive anti-dumping measures should be imposed in order to prevent further injury being caused to the Union industry by the dumped imports of the product concerned.

8.1. **Form of the measures**

(274) The exporting producer CFI claimed that *ad valorem* duties would not be appropriate in the current context of rising prices, as they would result in too high a level of protection, not incentivise Union producers to reduce costs, unduly inflate prices in the Union and encourage Gazprom to continue selling gas on the Union market at excessive prices. Therefore, it claimed that any duty should be in the form of a minimum CIF duty unpaid benchmark price, as that would offer an adequate level of protection for the Union industry while not unduly penalizing the farming industry. The users associations AGPB and IFA stated that a minimum import price would be consistent with the Commission's practice ([36]) in the event of price increases after the investigation period and provide a safety net to the Union fertilizer industry while limiting both the cost burden increase on Union farmers and the damage to the Union export competitiveness in the agricultural sector.

(275) However, given the findings of the investigation in relation to the impact on users, the Commission concluded that measures in the form of a minimum import price would not be justified in the present case. The claims for a minimum import price were therefore rejected.

(276) The exporting producer MHTL called for a specific duty (i) in view of the increasing UAN prices after the investigation period; (ii) to limit any possible serious impact on the users; and (iii) because a specific duty per ton is more appropriate for the claimant as imports from the party concerned take place only through a related sales company.

(277) The Commission analysed the average import prices of UAN during the period considered, the investigation period and post-investigation period. The price variations were significant, mainly due to the strong fluctuation of the price of gas, the main raw material of UAN. In view of this volatility of UAN import prices, there is a genuine risk that an *ad valorem* duty might either be insufficient to eliminate injury when prices are low or unduly hurt the user industry when prices are peaking. Therefore, the Commission concluded that a specific duty was more appropriate than an *ad valorem duty*, given the specific circumstances in this case.

([36]) The parties quoted Commission Implementing Regulation (EU) 2015/1953 of 29 October 2015 imposing a definitive anti-dumping duty on imports of certain grain-oriented flat-rolled products of silicon-electrical steel originating in the People's Republic of China, Japan, the Republic of Korea, the Russian Federation and the United States of America, OJ L 284, 30.10.2015, p. 109; Council Regulation (EC) No 901/2001 of 7 May 2001 imposing a definitive anti-dumping duty on imports of urea originating in Russia, OJ L 127, 9.5.2001, p. 11; and Council Implementing Regulation (EU) 457/2011 of 10 May 2011 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of melamine originating in the People's Republic of China, OJ L 124, 13.5.2011, p. 2, recitals 62 – 65 and 76.

(278) Following final disclosure, the complainant, Grupa Azoty and Agropolychim opposed to measures in the form of a specific duty. In view of the fact that Union producers have not yet received full relief, taking account of the volatility of gas and UAN prices and in view of the depressed UAN prices during the investigation period, they considered an *ad valorem* duty more appropriate. As explained in recital (276) above, the high volatility of prices is precisely one of the key reasons for setting a specific duty. On that basis, the claim was rejected.

(279) After the final disclosure, AGPB and IFA reiterated that the Commission, if it were to impose definitive duties, should do that in the form of a minimum import price. The parties considered the relevant findings in the current investigation the same as those justifying such approach in an investigation concluded by the Commission in 2011 ([37]). With regard to that claim, even if the circumstances would have similarities, it is the Commission's consistent approach to assess each case on its own merits. In this case, as explained in recital (274), the findings with regard to the interests of users do not call for a minimum import price. It is recalled that the prices during the investigation period were relatively low and if a minimum import price would be established on that basis, there is a genuine risk that the measures would not adequately protect the Union industry against the established injurious dumping. The claim was therefore rejected.

8.2. **Definitive measures**

(280) On the basis of the above, the amount of the duty shall be equal to the fixed amount per tonne of UAN as shown below:

Country	Company	Dumping margin (%)	Injury margin (%)	Definitive duty rate (%)	Definitive fixed duty rate — EUR per tonne
Russia	PJSC Acron	31,9	31,9	31,9	42,47
Russia	Joint Stock Company "Azot"	20,0	20,0	20,0	27,77
Russia	Joint Stock Company "Nevinnomyssky Azot"	20,0	20,0	20,0	27,77
Russia	All other companies	31,9	31,9	31,9	42,47
Trinidad and Tobago	Methanol Holdings (Trinidad) Limited	55,8	16,2	16,2	22,24
Trinidad and Tobago	All other companies	55,8	16,2	16,2	22,24
United States of America	CF Industries Holdings, Inc.	37,3	23,9	23,9	29,48
United States of America	All other companies	37,3	23,9	23,9	29,48

(281) The individual company anti-dumping duty rates specified in this Regulation were established on the basis of the findings of this investigation. As also explained in recitals (35), (74) and (90) of the provisional Regulation, the level of cooperation in this case was high, as the imports of the cooperating exporting producers in the countries concerned constituted the total exports to the Union during the investigation period. Therefore, the residual anti-dumping duties were set at the level of the cooperating companies.

([37]) Council Implementing Regulation (EU) No 457/2011 of 10 May 2011 imposing a definitive anti-dumping duty on imports of melamine originating in the PRC, OJ L 124 of 13.5.2011, p. 2.

(282) A company may request the application of its individual anti-dumping duty rate if it changes subsequently the name of its entity. The request must be addressed to the Commission ([38]). 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*.

8.3. **Definitive collection of the provisional duties**

(283) In view of the dumping margins found and given the level of the injury caused to the Union industry, the amounts secured by way of the provisional anti-dumping duty, imposed by the provisional Regulation, should be definitively collected.

(284) With regard to the imports from Russia and Trinidad and Tobago, the definitive duty rates are lower than the provisional duty rates. Thus, the amounts secured in excess of the definitive anti-dumping duty rate on those imports should be released.

8.4. **Retroactivity**

(285) 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 during the pre-disclosure period, pursuant to Article 14(5a) of the basic regulation.

(286) During the definitive stage of the investigation, the data collected in the context of the registration was assessed. The Commission analysed whether the criteria under Article 10(4) of the basic Regulation were met for the retroactive collection of definitive duties.

(287) The Commission's analysis showed no substantial rise in imports during the three weeks pre-disclosure period as compared to the level of imports during the investigation period. On a monthly average basis, the imports of the three countries concerned went down from 144 020 tonnes to 66 080 tonnes, thus a decline by 54 % (source: Eurostat adjusted including *prorata temporis*). Therefore, that condition under Article 10(4)(d) of the basic Regulation is not met.

(288) The Commission therefore concluded that the retroactive collection of the definitive duties for the three weeks period during which imports were registered was not justified in this case.

9. **UNDERTAKING OFFER**

(289) One Russian exporting producer ('the applicant') submitted a voluntary price undertaking offer in accordance with Article 8 of the basic Regulation. The Commission observed that this offer had been received well after the deadline set by Article 8 of the basic Regulation read in conjunction with Article 20 of the basic Regulation, which refers to the final disclosure.

(290) Article 8 of the basic Regulation foresees the possibility to offer (and accept) a price undertaking in exceptional circumstances after that deadline. However, the Commission analysed the undertaking offer and considered that its acceptance would be impractical for the following reasons.

(291) The proposed minimum import price ('MIP') was inadequate to remove the injurious effects of dumping. The offer did not comply with Article 8 of the basic Regulation. According to Article 8(1) third paragraph of the basic Regulation, the MIP within the price undertaking offer should be at the level necessary to remove injury to the Union industry. The next paragraph of the same Article states that in examining this level Articles 7(2a) to (2d) should apply.

(292) Furthermore, the applicant is selling the product concerned via related companies within the Union and some of the imported product is further processed within the Union before it is sold to unrelated parties. In addition, according to the information available to the Commission, one of these related companies sells the product under investigation and also other products (i.e. fertilisers) on the Union market, and it is likely that these other products are sold to the same customers.

(293) If the related party in the Union and the applicant sell the product concerned and other products to the same customers in the Union, the prices for such transactions could be set in a way to compensate for the MIP subject to the undertaking. Such compensation would however not be identifiable by monitoring activities since the price structure for the majority of products produced and sold by the related company in the Union is not subject to any

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

publicly available source. Thus it cannot be assessed whether the prices paid by the customers respond to the value of the products or take into account a potential rebate in order to compensate transactions subject to the undertaking for which a MIP has to be respected. Accordingly, a high risk of cross-compensation exists with sales of UAN and other products to the same customers.

(294) Therefore, the monitoring of such undertaking would be impracticable and unworkable.

(295) The Commission sent the applicant a letter, setting out the reasons to reject the undertaking offer and giving the applicant the opportunity to comment on this decision. The Commission received comments from the applicant with regard to the fact that the offer was submitted too late in the procedure, the level of the MIP, and the practicability of the undertaking.

(296) The applicant claimed that the offer was submitted within the deadline for comments to the additional definitive disclosure, referring to Article 20(5) of the basic Regulation. However, the offer should have been sent within the deadline for comments to the definitive disclosure, not to the deadline set for additional definitive disclosure. Therefore, the Commission rejected this claim.

(297) In its comments, the applicant did not agree with the Commission's conclusion that the MIP is too low and proposed a quantitative ceiling in combination with the MIP. As stated in recital (290), Articles 7(2a) to 7(2d) should apply in examining whether the MIP would be sufficient to remove the injurious dumping and the claim should therefore be rejected.

(298) The applicant offered minimum price levels for the other products it sells on the Union market. However, this would result in a heavy monitoring burden and hence the Commission remained of the opinion that the monitoring of the proposed undertaking would be impracticable.

(299) The applicant sent a revised version of the undertaking offer at a very late stage of the proceeding. Although the applicant offered a MIP at a level necessary to remove injury to the Union industry, the Commission still considered the monitoring of such undertaking impracticable and unworkable for the reasons set out in recitals (291), (292) and (297) above and therefore rejected the final offer.

10. **FINAL PROVISION**

(300) In view of Article 109 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council ([39]), when an amount is to be reimbursed following a judgment of the Court of Justice of the European Union, the interest to be paid should be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union* on the first calendar day of each month.

(301) The measures provided for in this Regulation are in accordance with the opinion of the Committee established by Article 15(1) of the basic Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

1. A definitive 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.

([39]) Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ L 193, 30.7.2018, p. 1).

2. The anti-dumping duty shall be a fixed amount per tonne applicable to imports of the product described in paragraph 1 and produced by the companies listed below, as follows:

Country	Company	Fixed amount of duty (EUR per tonne)	TARIC additional code
Russia	PJSC Acron	42,47	C500
Russia	Joint Stock Company "Azot"	27,77	C501
Russia	Joint Stock Company "Nevinnomyssky Azot"	27,77	C504
Russia	All other companies	42,47	C999
Trinidad and Tobago	Methanol Holdings (Trinidad) Limited	22,24	C502
Trinidad and Tobago	All other companies	22,24	C999
United States of America	CF Industries Holdings, Inc.	29,48	C503
United States of America	All other companies	29,48	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. Unless otherwise specified, the provisions in force concerning customs duties shall apply.

Article 2

The amounts secured by way of the provisional anti-dumping duty under Implementing Regulation (EU) 2019/576 shall be definitively collected. The amounts secured in excess of the definitive rates of the anti-dumping duty shall be released.

Article 3

No definitive anti-dumping duty will be levied retroactively for registered imports. Data collected in accordance with Article 1 of Implementing Regulation (EU) 2019/455 shall no longer be kept.

Article 4

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

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

Done at Brussels, 8 October 2019.

For the Commission
The President
Jean-Claude JUNCKER