



Re: *Inv. Nos. 701-TA-668-669 and 731-TA-1565-1566 (Final), Urea Ammonium Nitrate (UAN) Solutions from Russia and Trinidad and Tobago.*

On behalf of the American Soybean Association (ASA), the National Association of Wheat Growers (NAWG), and the Agricultural Retailers Association (ARA), we thank you for taking time to consider our comments regarding the workings of the fertilizer market and impacts of the above-captioned investigation on U.S. farmers.

The American Soybean Association, founded in 1920, represents all U.S. soybean farmers on domestic and international policy issues important to the soybean industry. ASA has 26 affiliated state associations representing the 30 primary soybean-producing states.

Since 1950, NAWG has been the primary representative in Washington, D.C., for wheat growers, working to ensure a better future for America's growers, the industry and the general public. Today, NAWG works with a team of 20 state wheat grower organizations to benefit the wheat industry at state and national levels.

ARA is a trade association that represents America's agricultural retailers and distributors. ARA members provide to farmers and ranchers goods and services that include fertilizer, crop protection chemicals, seed, crop scouting, soil testing, custom application of pesticides and fertilizers, and development of comprehensive nutrient management plans. Member facilities are scattered throughout all 50 states and range in size from small family-held businesses or farmer cooperatives to large companies with multiple outlets.

Agricultural inputs, such as biotechnology seed varieties, fertilizers, and pesticides, are vital tools for growing crops productively and sustainably. These tools help growers maximize yields and protect crops on existing agricultural land so that it is unnecessary to convert land or enter acres into production to meet food supply needs. Farmers across the U.S. have seen the costs of fertilizer rise dramatically over the past several years. Price pressure, along with timely access to the UAN volumes farmers need during specific application periods, weigh against making a determination that is likely to result in further concentrating market share in an already-concentrated UAN market.

Few inputs have exhibited more price inflation than UAN. As you heard during the public hearing, the rate of price increase for UAN was already jarringly steep before the petition was filed. This is before the conflict between the Russian Federation and Ukraine roiled markets in late February, 2022. Since this conflict began, commodity markets and commodity input prices have remained high and volatile. This is due in no small part to the two countries' importance as crop and energy producers, as well as producers of fertilizers and fertilizer input products (such as natural gas for UAN).¹ As CF Industries states on its website, prices have been significantly

¹ CF Industries' description of its Haber-Bosch Production Process indicates that all of its facilities use natural gas as feedstock. See: <https://www.cfindustries.com/newsroom/2022/fertilizerpricefaq>

impacted by the resulting economic and financial sanctions against Russia, as well as the conflict's practical impacts on shipping logistics in the region.²

We believe it is important for the Commission to consider that price pressure experienced by commodity farmers has cascading effects that reverberate through the economy. The agricultural products experiencing these pricing pressures are central to the global economy: food staples, clothing and construction fibers, biofuels, and livestock feed grains. With the general inflation rate already at a 40-year high, adding further costs in the form of duties that will, in turn, have to be passed forward in the supply chain toward consumers would further compound an already-difficult situation. It is with this in mind that we urge the Commission to take the full context of the data being examined in this trade case into consideration in making its important injury determination.

As we outline below, our associations realize many factors are causing higher prices. Our concern is the continuing decline of competition in the domestic market and the opportunity for monopoly or oligopoly rents this lack of competition presents. The high fixed costs of fertilizer production can naturally result in larger firms due to economies of size. Large firms may face lower marginal costs of production, which allows them the opportunity to provide lower prices to consumers. However, if there is a lack of competition or regulatory oversight, the concentration will allow for monopoly or oligopoly rent-seeking behavior, and we are concerned that fertilizer markets are already reaching this point. In the nitrogen product space, CF Industries has a 38.8% share of domestic capacity in anhydrous ammonia, 50.2% share in UAN, and 45.5% share in urea in 2021, according to Green Market data. That means the domestic industry for UAN as a whole scores 3,100 on the Herfindahl-Hirschman Index, or HHI, used by the Justice Department to rate market concentration. It is notable that the Justice Department considers any industry scoring above 2,500 to be highly concentrated, warranting close scrutiny for further concentration.³

Domestic concentration is not necessarily problematic if adequate measures exist to deter rent-seeking behavior. However, that balance has been tipping as the largest domestic providers have sought to effectively shut out the largest exporters from the most concentrated parts of the domestic industry. According to Green Markets data, 29% of U.S. Monoammonium Phosphate (MAP) and Diammonium Phosphate (DAP) supply in 2019 was met through imports. Of this, Morocco and Russia had an 85% share.⁴ Together with China, the world's third-largest phosphate producer, the three countries accounted for 91% of international exports.⁵ However, there are several domestic trade barriers that have gone up against imports from those countries. Although not a traditional supplier to the U.S., Chinese phosphate imports are subject to Section 301 tariffs. Mosaic's successful petition to impose import duties on Moroccan and Russian phosphate imports makes most of the world trade unavailable to the U.S. market.

CF Industries' pursuit of AD/CVD duties on UAN imports from Russia and Trinidad and Tobago, if successful, will further cut off access to a flexible input supply chain for U.S. farmers. These two countries accounted for 82% of UAN imports in 2020. CF Industries has already stated, "that through this [ITC] case ... the United States will be fully supplied by North American

² Id.

³ <https://www.justice.gov/atr/herfindahl-hirschman-index>

⁴ Author calculations using USDA FAS data.

⁵ Author calculations using Trade Data Monitor data.

production.”⁶ CF Industries had 49% of the North American UAN capacity in 2020⁷ and is already a commanding presence in the domestic market.

In the cases mentioned, the largest domestic producers of the most concentrated fertilizer products are seeking to insulate domestic demand from world markets. Without imports, there is no longer a strong barrier to rent-seeking behavior. We do not believe that such a result is the purpose of the U.S. trade laws and encourage the Commission to strongly consider the likely impact on U.S. farmers and consumers while weighing the many factors that go into its Final Determination.

As we have acknowledged, actions taken on the global stage are further impacting prices. High natural gas prices are pushing up production costs for nitrogen, particularly in Europe, which has caused some ammonia plants to suspend operations. Sanctions imposed on Belarus due to human rights violations committed by the Lukashenko regime have cut off that country’s large potash shipments to the world, and financial sanctions on Russia have complicated shipments from that country. India’s fertilizer subsidies help shield its producers from price increases, which compounds the effect on the rest of the world. The duties placed on phosphates from Russia and Morocco and the preliminary duties on UAN from Russia and Trinidad and Tobago are further driving up the price of fertilizer for U.S. farmers. While this list of fertilizer issues is not exhaustive, it clearly demonstrates that demand has increased while access to global supply for U.S. farmers has faced very strong headwinds. With this in mind, we urge the Commission to take this broader context into consideration when evaluating whether duties on UAN from Russia and Trinidad and Tobago are warranted. At the very least, this context weighs heavily in favor of the Commission exercising its authority to decumulate imports from the countries in question in its injury calculus.

The June 16 public hearing yielded several moments worth noting:

- In response to Commissioner Karpel’s questions attempting to understand its “inventory overhang” argument, Petitioner states that there is effectively 15 million tons of UAN in storage that is not accounted for on the record. They go on to insist that this (apparently phantom) data must be included in the Commission’s analysis, though are unable, or unwilling, to point to hard evidence on the record to prove the claim.
- Similarly, in response to Commissioner Schmidlein’s questions attempting to make sense of the allegation that imports undersold domestic suppliers, when the evidence on the record clearly states otherwise, Petitioner responds that the Commission left a blind spot in the data. That is, data indicating underselling by imports exists, but no one has put it on the record—but it should still be considered.
- In response to several questions from the Commissioners regarding how pricing works in the UAN market, Petitioner offers only tortured narratives, but no real explanation. At one point, replying directly to Commissioner Schmidlein, one CF Industries official simply states that, “it’s an inexact art.”

⁶ <https://seekingalpha.com/article/4487478-cf-industries-holdings-inc-cf-ceo-tony-will-on-q4-2021-resultsearnings-call-transcript>

⁷ Author calculations based on Green Markets data.

- Consistent with this muddled explanation of pricing, Petitioner goes on to claim that natural gas prices—that is, the only UAN raw material input other than water and air—have no causal impact on UAN prices in response to questions from Commissioners Johanson and Karpel. Unfortunately, this is in direct contradiction of statements CF Industries makes on its own website⁸ and during an interview clip of CF Industries that CEO Will played for Commissioners during the public hearing.
- Petitioner attempts to further suggest that events in Russia and Ukraine are irrelevant to the case because there are no direct OFAC sanctions against Russian UAN producers. However, this, like so many other statements, is in direct contradiction of the aforementioned discussion of price and availability CF Industries made via its website and in video interviews.
- Finally, while cautioning Commissioner Karpel that correlation in AUV data for input products and finished products is somehow unique in the UAN market, Petitioner offered no explanation as to why the Commission’s usual tools for examining a market are somehow blunted or not useful here. Worse yet, they offered little clear guidance as to what could be used in their place.

With the above statements alone, Petitioners have admitted that they have failed to prove their case using facts and evidence. As we have repeatedly explained, we support the Commission’s mission of safeguarding the U.S. market from unfair competition. However, we also feel strongly that mere allegations, fallacious argumentation, and obfuscation should not be sufficient to prove a case in place of hard-record evidence. We urge the Commission to disregard Petitioner’s invitation to discard the data it has examined, along with well-tested analytical methodologies and simple economic truths in favor of unsupported and unexplained market theories. Indeed, if the Commission should feel motivated by any data at all from outside its usual practice, it should be *current* data, *not* data from four years ago.

In conclusion, the American Soybean Association, the National Association of Wheat Growers, and the Agricultural Retailers Association appreciate the Commission’s efforts to address supply issues in the fertilizer industry. The topic is of utmost importance to our growers.

While many problems are pushing up UAN prices and impacting supply and distribution, we remain concerned with the consolidated industry’s efforts to insulate the domestic market from global supply. We fully support domestic fertilizer production but want it to compete on equal terms. Furthermore, we do not believe that trade laws intended to protect the domestic market should be used to garner windfall rents at the expense of U.S. farmers and consumers.

Again, we greatly appreciate the Commission’s work to ensure fair competition in the UAN market. We hope we have provided important context to help the Commission arrive at a decision that curtails rent-seeking behavior while encouraging robust competition in fertilizer markets. We encourage Commissioners to keep these details in mind when weighing whether to further curtail

⁸ <https://www.cfindustries.com/newsroom/2022/fertilizerpricefaq>

imports from Trinidad and Tobago under the conditions that exist today and for the foreseeable future.

We stand ready to partner on these challenges however we can and look forward to future engagement.

Sincerely,

Agricultural Retailers Association
American Soybean Association
National Association of Wheat Growers