



June 23, 2017

Brad Botwin
Director, Industrial Studies
Office of Technology Evaluation
Bureau of Industry and Security
U.S. Department of Commerce
1401 Constitution Avenue, NW
Room 1093
Washington, DC 20230

Submitted by email to Aluminum232@bis.doc.gov

Re: Comments Of The Beer Institute, Brewers Association, And American Beverage Association On Section 232 National Security Investigation of Imports of Aluminum

Dear Mr. Botwin,

The Beer Institute (BI), Brewers Association (BA), and American Beverage Association (ABA) appreciate this opportunity to comment on the U.S. Department of Commerce (the Department) investigation pursuant to section 232 of the Trade Expansion Act of 1962, as amended (Section 232), to determine the effects on the national security of imports of aluminum.

While the three organizations believe that no action to adjust imports under Section 232 is warranted in this case, we urge the Department to ensure that, if it makes a recommendation to take such action, the action does not impact imports of the following HTSUS subheadings of aluminum products used in the production of beverage cans:

- Aluminum cansheet bodystock - 7606.12.3045;
- Aluminum can lid stock - 7606.12.3055;
- Other aluminum cansheet - 7606.12.3090;
- Aluminum used beverage container scrap - 7602.00.0030;
- Aluminum waste and scrap other than used beverage container scrap - 7602.00.0090;
- Aluminum slugs: 7616.99 and 7606.91; and
- Low purity (non-military) aluminum ingot - 7601.10.6000.

U.S. aluminum users, including our members, are only now emerging from a prolonged period in which Wall Street banks and other industry actors manipulated the aluminum market in order to artificially create scarcity in the physical market and to increase aluminum prices at the expense of aluminum users and consumers. New tariffs or restrictions on U.S. imports of aluminum products would exacerbate the harm caused by past market manipulation and further undermine the beverage industry, which directly supports hundreds of thousands of U.S. jobs.

I. Background On The Beer Institute, Brewers Association, And The U.S. Beer Industry

The Beer Institute (BI), based in Washington, D.C., is a national trade association for the American brewing industry, representing both large and small brewers, as well as importers and industry suppliers. The organization, founded in 1862 as the U.S. Brewers Association and reorganized as the Beer Institute in 1986, represents the beer industry before Congress, state legislatures, and public forums across the country. BI is committed to developing sound public policy, focusing on community involvement and personal responsibility.

The Brewers Association (BA), based in Boulder, Colorado, represents more than 3,800 craft brewers and 1,600 industry suppliers of packaging materials, agricultural commodities, brewing equipment, and other goods and services required by modern brewers.

The U.S. beer industry contributes more than \$350 billion in economic output, which is equal to nearly 1.9 percent of U.S. GDP. Brewers and beer importers directly employ 64,745 Americans; approximately 15,160 more people work in breweries today than in 2014. But the impact on U.S. jobs does not stop there. Each job in the brewing industry generates 33 additional full-time equivalent jobs. From agricultural products, can manufacturing, bottling, food processing, food stores and general retail, to wholesaling, construction and real estate, brewers, along with their wholesale and retail partners, directly or indirectly employ 2.23 million

Americans. The industry pays more than \$63 billion in business, personal and consumption taxes. On average, 41 percent of the price of every beer goes toward taxes paid to federal, state and local governments.

II. Background On The American Beverage Association And The U.S. Non-Alcoholic Beverage Industry

The American Beverage Association (ABA) is a national trade association representing non-alcoholic beverage producers, distributors, franchise companies, and support industries that bring to market hundreds of products, including regular and diet soft drinks, bottled water and other water beverages, 100 percent juice and juice drinks, sports drinks, energy drinks, and ready-to-drink coffees and teas. In existence for nearly 100 years, ABA advocates for its members in federal, state, and local public policy discussions.

The non-alcoholic beverage industry plays an important role in the American economy, accounting for over 230,000 direct jobs in the United States. With a direct economic impact of \$166.5 billion, America's beverage industry provides \$21.1 billion in wages, while beverage companies and their employees, and the firms and employees directly employed by the industry, provide significant tax revenues: \$13.5 billion at the state level and \$22.5 billion at the federal level.

III. Importance Of Aluminum To The Beverage Industry

BI, BA, ABA and their members share the Department's concern about the competitiveness of the U.S. aluminum industry. Over 55 percent of the beer consumed in the United States is packaged in aluminum cans or aluminum bottles, and many brewpubs and specialty beer retailers also use aluminum "crowlers," which are containers filled at retail locations for consumers who wish to purchase craft beer for home consumption.

In 2015, the non-alcoholic beverage industry used 56.2 billion cans, representing 805,000 tons of aluminum. The U.S. cansheet industry is an important source of supply. The beer industry, together with the non-alcoholic beverage industry, spends nearly \$12 billion on cans annually. And just under 10 percent of the cost of beer overall – including beer packaged in non-aluminum containers – comes from brewers’ purchases of cans.¹ Because nearly 50 percent of the cost of a can is from the cost of the aluminum inputs, approximately five percent of the cost of beer is the direct result of aluminum costs. For non-alcoholic beverages that figure is just under four percent.² The table below illustrates, from data compiled by John Dunham & Associates, that a beverage industry that spends nearly \$12 billion on cans effectively spends over \$5.5 billion on aluminum.

<u>Product</u>	<u>Cans</u>	<u>Aluminum</u>
<i>Beer</i>	\$5,378,803,175	\$2,576,438,854
<i>Non-alcoholic beverage</i>	\$6,416,139,218	\$3,073,321,301
TOTAL	\$11,794,942,393	\$5,649,760,155

Aluminum is a high-performance packaging material that protects the unique cold, fresh, crisp flavors and carbonation that beverage drinkers want. Aluminum cans and bottles are also essential in some venues (*e.g.*, sports stadiums) where glass bottles pose a risk to public safety.

¹ John Dunham & Associates.

² *Id.*

Aluminum provides freight and logistics advantages in the beverage market and is also easy to recycle, benefitting the environment as well as consumers.

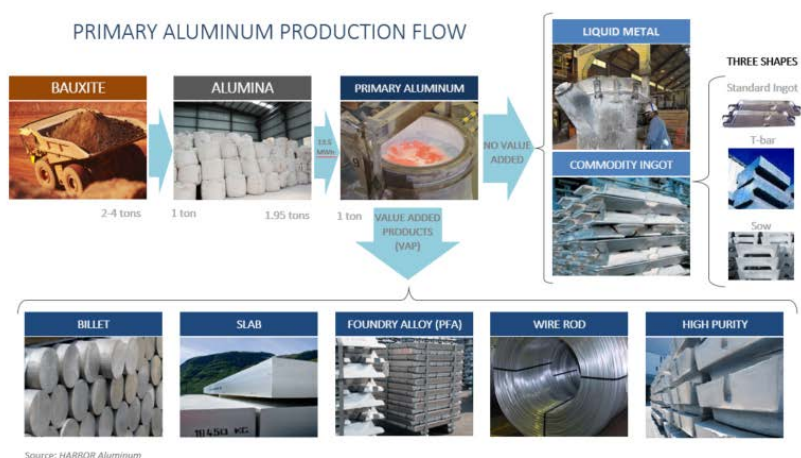
IV. Trade in Aluminum Products

There are certain, specific aspects of the U.S. aluminum industry that are of particular importance to BI, BA, ABA and their respective members. As discussed below, primary aluminum is essential for the production of flat rolled aluminum products such as cansheet, from which beer and other beverage containers are made.

A. Primary Aluminum

Primary aluminum production is the process by which new aluminum is made. Primary aluminum is new aluminum produced from alumina which, in turn, is processed from mined ore (bauxite).

Primary aluminum takes two basic forms: Value Added Products (VAP) and No Value Added Products. No Value Added Products are liquid metal and commodity ingot, generally taking three shapes; standard ingot, T-Bar, and slab. VAP products are alloyed with a variety of elements such as iron, silicon, magnesium, and copper, and then cast into billet (used to make extrusions), rolling slab (used to make flat rolled products), foundry alloy (PFA) (used to make castings and forgings), wire rod (used to make wire and cable), or high purity aluminum (which is further blended and used to produce high conductivity products, computer hard drives, aircraft components, LED lighting and such).



B. U.S. Smelting Industry

In the 1950s and 1960s, primary production made up about 80 percent of U.S. aluminum output. As recently as 1981, the United States produced 30 percent of the world's primary aluminum, but U.S. smelting has declined considerably since then. In 2014, the United States provided only 3.5 percent of world production. Total U.S. production in 2016 was only 818,000 MT.

But the decline of the U.S. smelting industry is not a new phenomenon. It has been a long-term, organic process. Indeed, the United States has been in a deficit position with respect to primary aluminum since the end of World War II.³ The decline of U.S. smelting also tracks the decline in other developed economies like Japan.

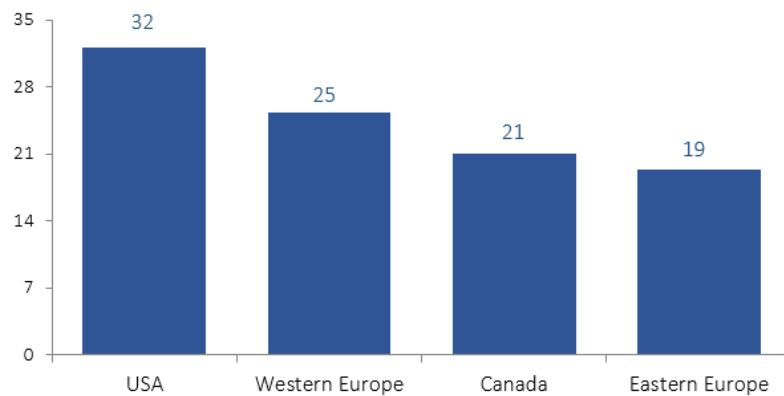
There are many reasons for the decades-long decline of primary aluminum production in the United States. The most significant include:

³ See <https://minerals.usgs.gov/minerals/pubs/historical-statistics/#aluminum>.

High Energy Costs

The production of primary aluminum is highly energy intensive. HARBOR Aluminum estimates that energy costs are nearly 30 percent of the cost of producing primary aluminum – a greater percentage than any other input including bauxite. U.S. producers are at a comparative disadvantage relative to foreign producers located in countries with lower electricity costs, such as Canada, Russia, and the Middle East.

US PRIMARY ALUMINUM INDUSTRY ELECTRICITY PRICE VS OTHER REGIONS
(Q3 2016: \$/MWh)

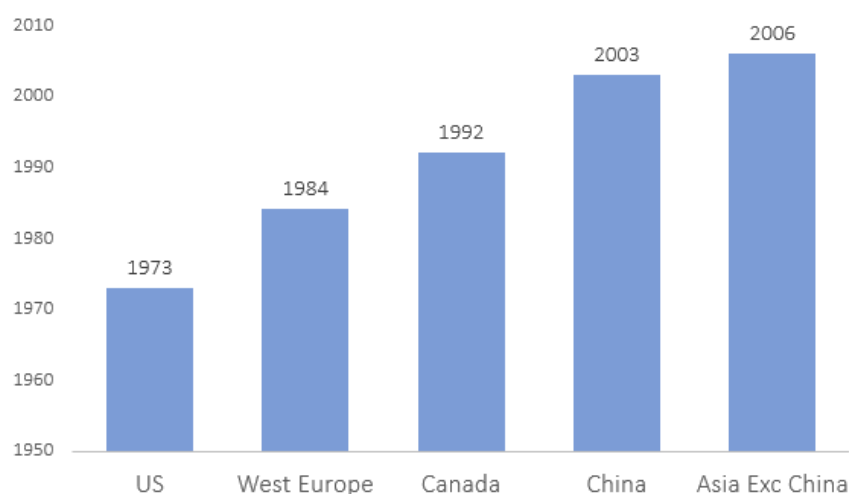


Source: HARBOR Aluminum

Lack of Investment

U.S. producers have failed to invest in their U.S.-based operations. The newest U.S. smelter was built 26 years ago, and the average U.S. smelter is 43 years old.

HOW OLD IS THE US SMELTING SYSTEM? (AVG YEAR CURRENT OPERATING SMELTERS WERE BUILT)



Source: HARBOR Aluminum

There is a clear pattern of U.S. producers closing older operations in the United States and opening new, more efficient smelting facilities in the Middle East and other countries. These actions by major U.S. producers to offshore much of their production to foreign countries have inevitably led to U.S. aluminum users looking to foreign sources for metal. And U.S. producers have moved production offshore regardless of their commercial success: even during a recent period of extraordinary profitability, the offshoring of primary aluminum production has persisted due to economic factors (primarily energy costs, newer smelters utilizing more energy efficient technology) unrelated to imports.⁴

Alcoa, Inc., one of two producers of primary aluminum in the United States, has relocated a significant percentage of its global aluminum production activities overseas because of energy savings. The table below, published in Alcoa's 2016 annual report, shows the full

⁴ HARBOR Aluminum.

extent of the company's offshoring decisions. Alcoa touts the company's access to clean, reliable sources of power, such as hydroelectric power, at these overseas facilities.⁵

Country	Facility	Owners (% Of Ownership)	Nameplate Capacity ¹ (000 MTPY)	Alcoa Corporation Consolidated Capacity ² (000 MTPY)
Australia	Portland	AofA (55%) CITIC ³ (22.5%) Marubeni ³ (22.5%)	358	197 ^{4,5}
Brazil	São Luís (Alumar)	Alumínio (60%) BHP Billiton ³ (40%)	447	268 ⁶
Canada	Baie Comeau, Québec	Alcoa Corporation (100%)	280	280
	Bécancour, Québec	Alcoa Corporation (74.95%) Rio Tinto Alcan Inc. ⁷ (25.05%)	413	310
	Deschambault, Québec	Alcoa Corporation (100%)	260	260
Iceland	Fjarðaál	Alcoa Corporation (100%)	344	344
Norway	Lista	Alcoa Corporation (100%)	94	94
	Mosjøen	Alcoa Corporation (100%)	188	188
Spain	Avilés	Alcoa Corporation (100%)	93 ⁸	93
	La Coruña	Alcoa Corporation (100%)	87 ⁸	87
	San Ciprián	Alcoa Corporation (100%)	228	228
United States	Massena West, NY	Alcoa Corporation (100%)	130	130
	Rockdale, TX	Alcoa Corporation (100%)	191 ⁹	191
	Ferndale, WA (Intalco)	Alcoa Corporation (100%)	279 ¹⁰	279
	Wenatchee, WA	Alcoa Corporation (100%)	184 ¹¹	184
TOTAL			3,576	3,133

Century Aluminum Co., the other U.S. producer, likewise relies on overseas production.

According to its 2016 annual report, its Icelandic smelter is responsible for 42 percent of its global primary aluminum production.⁶ Century Aluminum Co., like Alcoa, touts its Icelandic smelter's access to low-cost energy: "Power is currently supplied to Grundartangi from hydroelectric and geothermal sources under long-term power purchase agreements ... at prices

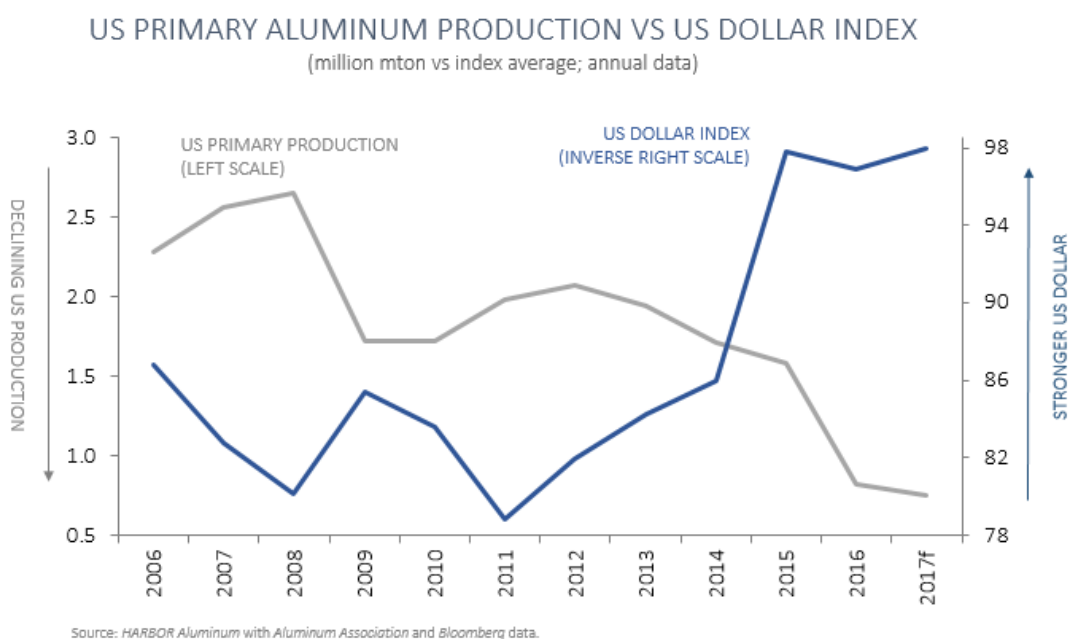
⁵ See Alcoa Inc., Annual Report (2016), p. 8 ("In aluminum smelting, our portfolio is well-positioned to benefit from improved future market conditions. Approximately 50 percent of Alcoa's smelting capacity is located at top-tier sites in Canada, Iceland, and Norway. Our capacity also includes a 25.1 percent ownership in the world's lowest-cost smelter in Saudi Arabia. Clean, sustainable, reliable energy are among the success factors for long-term competitiveness in smelting. At Alcoa, approximately 70 percent of the power used for smelting is derived from hydroelectricity, and 68 percent of the power used in smelting is secured through 2022.").

⁶ See Century Aluminum Co., Annual Report (2016), Form 10-K, p. 2.

indexed to the price of primary aluminum. Linking the price of power to the price of aluminum provides a ‘natural hedge’ of our largest production cost.”⁷

Strong U.S. Dollar

The U.S. dollar has been strong in recent years and all-in aluminum prices are lower globally, increasing the attractiveness of imports. There is a strong inverse correlation between U.S. primary aluminum production and the strength of the U.S. dollar.



Scrap

Another reason for the decline in U.S. primary aluminum production is increased use of recycled or scrap aluminum. Scrap usage is intensive in developed economies like the United States. There is simply more scrap available in a developed economy as compared to an

⁷ *Id.* at 11.

emerging economy. Compared with primary aluminum smelting, scrap usage is also far less energy intensive.

Despite the decline in U.S. primary aluminum production, the United States still requires a lot of primary aluminum. Canada is the leading source of U.S. aluminum imports, accounting for over 50 percent of total unmanufactured aluminum imports into the United States in 2016;⁸ no other nation accounts for more than 20 percent.⁹ And the United States is Canada's primary customer for primary aluminum, forming a reliable trading relationship between the two countries.

MAJOR TRADE FLOWS OF PRIMARY ALUMINUM PRODUCED IN NORTH AMERICA

(thousand mton; 2017 volumes)



C. Flat Rolled Aluminum

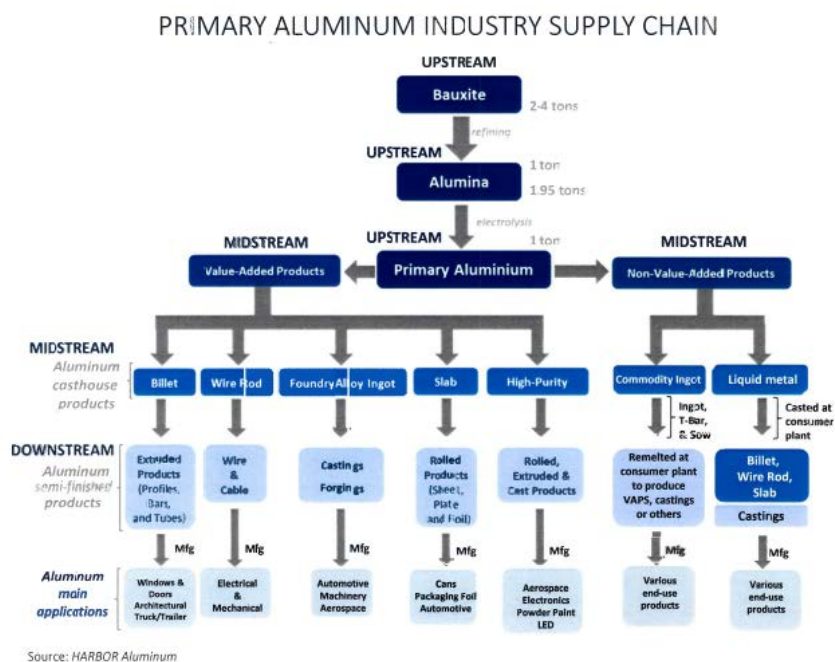
Flat rolled products (FRP), including foil, plate and sheet, are made from slab which, in turn, is made from primary aluminum. FRPs represent 30 percent of the global consumption of primary aluminum. The most important category of FRP to BI, BA, ABA and their respective

⁸ HARBOR Aluminum.

⁹ *Id.* Notably, the United States did not import any primary aluminum from China in 2016

members is cansheet. And while 98 percent of cansheet used by the U.S. beverage industry is domestically produced, imported primary aluminum is an essential input.

Cansheet is also at risk because U.S. producers have increasingly focused their existing FRP production capacity on the production of auto sheet which, among FRPs, is more profitable than cansheet.¹⁰ This trend, as well as a strong U.S. dollar and an aging smelting infrastructure in which U.S. producers have not invested, are natural economic factors that have resulted in those in need of primary aluminum for rolling purposes looking elsewhere for input material. If imports of primary aluminum are restricted, then the cost of all flat rolled products will rise. U.S. producers are likely to respond by focusing even more intently on higher-value flat rolled product, limiting the supply and increasing the cost of rolled cansheet to the detriment of the beer and other beverage industries.



¹⁰ HARBOR Aluminum.

D. Flat Rolled Product Exports

The United States exports flat rolled products to other countries, but especially to Canada and Mexico. Mexico currently has no rolling mills to produce flat rolled products such as cansheet. Tariffs or import restrictions on primary aluminum used to produce cansheet in the United States would raise the product price and could cause these trading partners to look to other countries for supply, weakening U.S. exports and potentially increasing the U.S. trade deficit.

E. Aluminum Scrap Exports

As a developed economy, the United States generates a lot of aluminum scrap. While scrap is used in U.S.-produced aluminum products, there is a surplus available for export. Most U.S. exports of scrap are to China. At current prices, it is less expensive to export scrap from the U.S. West Coast to China than it is to ship to the U.S. Midwest, where most U.S. aluminum remelt facilities are located. Tariffs or import restrictions on primary aluminum could adversely affect those exports.

V. Recent Distortions In The Global Aluminum Trade Have Contributed To The Current Situation And Demonstrate The Harmful Impact Of Limiting Supply

The debate over potential action under section 232 has largely omitted discussion of a key factor impacting aluminum prices in recent years: serious irregularities in the trading of primary aluminum contracts and in the storage of metal at warehouses approved by the London Metal Exchange (LME). These irregularities seriously distorted the aluminum market and cost aluminum users billions of dollars. If the Department is concerned about addressing increased imports of aluminum, it should evaluate the role that the manipulation of the LME system has played in creating the current situation and consider whether further scrutiny of LME manipulation is warranted.

This issue dates to 2010, when aluminum users, industry analysts, U.S. and foreign regulators and Congress first began to express concerns about the aluminum market.

As background, most industrial users of aluminum normally buy metal directly from producers on long-term contracts. If users require additional metal they will often look to the LME, which is intended as a market of last resort. Smelters use the LME system to sell excess stock when there is oversupply, and users turn to it in times of extreme shortage. The industry also uses the LME price for aluminum as a reference price in supply contracts. An aluminum user pays the LME price plus a physical market premium, which in the United States is referred to as the “Midwest Premium.”¹¹

Starting in 2010, however, the LME system took a serious turn. Owners of LME-approved warehouses began to stockpile primary aluminum. They did so by paying aluminum smelters to overproduce in an already oversupplied market. These stocks were sold through the LME instead of on the physical market. Aluminum sold through the LME would then go into storage in an LME warehouse. In other words, the warehouses started competing directly with industrial users for aluminum, effectively hoarding the metal and withholding it from the open market.

A second practice was the payment of financial incentives to warrant holders, generally financial traders, whose metal was already stored in LME warehouses. Each lot of LME-approved metal held at an LME-approved facility is assigned a warrant, issued by the LME, that evidences possession. These warrants are used as the means of delivering metal under LME

¹¹ The Midwest Premium is assessed by a global energy, metals and petrochemicals information provider called Platts. It is intended to reflect the full logistical cost of sourcing metal from the most viable supply hubs whether they be regional producers, LME warehousing hubs, or the best-located major off-shore suppliers. Logistical costs that are factored into the Midwest Premium include storage rates, FOT rates, inland transit rates, ocean freight, port handling, duties, finance costs, insurance, and LME spreads.

contracts. The purpose of the incentives was to induce the owners of particularly large quantities of metal to cancel their warrants and place their metal in the warehouse exit queues. Then, when the metal reached the head of the queues, it would be loaded out, only to be re-loaded into nearby, affiliated LME warehouses. These so-called “merry-go-round” transactions significantly lengthened the queues, blocked other owners of aluminum from obtaining their own metal from the warehouses in a timely manner, and inhibited the normal flow of metal to the market – all with the purpose of allowing warehouse owners to receive rent for storing metal for longer periods as well as inflating the overall price of aluminum to artificially increase returns to financial investors.¹²

The combined impact of these practices was to eliminate the LME system as a market of last resort for aluminum users. There was no way to buy primary aluminum through the LME without waiting up to two years to take delivery and paying rent on the metal that entire time.

As one would expect, the increased queues had a dramatic effect on the price that aluminum users paid to access aluminum supply in the physical market.

First, as more metal flowed into the LME warehouses, the amount of freely available units in the physical market decreased. Second, although production of metal was exceeding consumption by one to two million tons per year, the physical market started behaving as if there was a shortage of metal. The natural impact of such a shortage – or the appearance of such a shortage due to market manipulation – was most clearly seen in the Midwest Premium.

In the first three weeks of 2014 alone, the Midwest Premium experienced a dramatic 67 percent increase. And, in January 2015, it hit its all-time high.

¹² One of the ways in which warehouses raise income is by charging rent to owners who are storing their metal. The owners who were unable to load out their metal because of the queues were forced to continue paying rent as they waited in line, until they were finally able to exit. The excess rents helped finance the incentives paid by the warehouses to create the queues.

This had an extremely distortive effect on the aluminum market. The grossly inflated Midwest Premium became an outsized factor for every aluminum user's cost and risk.

Aluminum users, including members of the U.S. beverage industry, responded to these market distortions by pushing the LME to enact rules reforms, as the distortions were increasing aluminum prices and costing not only users, but also consumers, billions of dollars. However, those benefitting from the scheme objected to the reforms. Smelters, for example, received financial incentives to redirect their metal from the physical market to the LME warehouses, and received the increased Midwest Premium that resulted from the practice. If LME reforms led to a reduction in the queues and an increased rate of metal flowing out of the warehouses, then the return of the Midwest Premium to normal, market-driven levels would spoil the enrichment that smelters enjoyed during this period.

In November 2014, the U.S. Senate Permanent Subcommittee on Investigations issued a report on the involvement of Wall Street banks in physical commodities markets, including aluminum.¹³ The report's key findings included "troubling issues involving conflicts of interest, market distortions, and the potential to gain unfair trading advantages" by Wall Street banks, which "likely added billions of dollars in costs to a wide range of aluminum users, from beverage makers to car manufacturers to defense companies that make warships for the Navy."¹⁴

More specifically, the warehouse queues that had impacted the Midwest Premium "had created problems for aluminum users like beverage can producers and automobile manufacturers who actually use aluminum" by making it difficult to hedge price risk through the LME market. Aluminum users became "more susceptible to price changes due – not to market forces of supply

¹³ See, e.g., United States Senate, Permanent Subcommittee on Investigations, *Wall Street Bank Involvement with Physical Commodities* (PSI Report), at 222, available at: <https://www.hsgac.senate.gov/download/report-wall-street-involvement-with-physical-commodities>.

¹⁴ *Id.* at 226.

and demand – but to increased Midwest Premium prices highly correlated with longer warehouse queues.”¹⁵

The LME responded to this scandal by enacting an initial package of reforms that resulted in significant market corrections, including a reduction in the queues, an increased rate of metal flowing out of the warehouses, and, ultimately, by 2015, a 71% drop in the Midwest Premium.

However, it appears that the manipulation of the market may not have ended. Within the past nine months the Midwest Premium spiked again, in a way that appears disconnected from market fundamentals.

There are at least three reasons why the Department should account for LME manipulation in its Section 232 analysis.

First, as the Department considers whether to impose tariffs or take other actions that may limit imports, we urge the Department to keep in mind the negative impact that restrictions on supply will have on our industry and other aluminum users. We have just exited a period in which artificial restrictions in the market distorted prices and hurt the beer industry, the non-alcoholic beverage industry, and other aluminum users. Even if additional import restrictions are well-intentioned, they would likely have a similar effect. Domestic aluminum users would face higher costs that would, in turn, lead to lost sales. Lost sales would mean lost government revenue and job losses, not only in the brewing industry, but also in retail and other downstream industries.

Second, when market manipulation causes the Midwest Premium to spike, the U.S. market becomes more attractive to global aluminum suppliers, which draws additional supply

¹⁵ *Id.* at 180-81.

into the market. Therefore, if the Department is concerned about addressing increased imports of aluminum, it should evaluate the role that the manipulation of the LME system has played in creating the current situation, and consider whether there is anything the Department and other agency stakeholders should be doing to address it.

Third, while import restrictions could lead to a windfall for domestic smelters, the Department should consider whether the restrictions would materially impact the industry's long term competitiveness. During the period of LME market manipulation, the smelters did not reinvest their profits in modernizing their domestic facilities.

VI. The Statutory And Regulatory Factors Counsel Against A Recommendation For Action Impacting Flat-Rolled Aluminum

The Department has asked for comments to address the criteria listed in § 705.4 of the National Security Industrial Base Regulations (NSIBR). The NSIBR criteria support a finding by the Department that imports of aluminum do not threaten the national security and that no action is appropriate at this time. However, if the Department does act, then the NSIBR criteria would strongly support a recommendation that any action ensure an adequate supply of aluminum products for rolled cansheet used by BI, BA, and ABA members and other beverage producers.

A. The Beverage Industry And Other Aluminum Users Would Be Harmed By Import Restrictions On Aluminum

The beverage industry is currently emerging from a prolonged period of severe market distortion that increased costs, risks, and uncertainty for its companies and employees. The imposition of tariffs, quotas, or other measures restricting imports of aluminum products – especially rolled cansheet and its inputs – would undermine both the domestic and global competitiveness of the beverage industry while we are still recovering from this recent challenge. As discussed below, such action is unwarranted in this case where the demands of the U.S.

military are met by domestic supply, where the country's most important ally supplies the majority of its aluminum products, and where the product most important to our industry – rolled cansheet – is not used in the production of military equipment. We urge the Department to consider, pursuant to § 705.4(b)(2) of the NSIBR, the harmful impact on beer and beverage industry employment, government revenues caused by lost sales of our products, and other serious effects that tariffs or import restrictions on aluminum products may cause.

The harm to our industry of action impacting primary aluminum and FRP would be acute. For example, the impact of tariffs on our industry's material costs cannot be overstated. Aluminum is the largest commodity risk for the beverage industry since most of our product is sold in aluminum cans. Tariffs of 10 percent or more would increase production costs and would cost the industry overall hundreds of millions of dollars.¹⁶

These higher costs have a direct impact on sales, which means lost government tax revenues. The beer industry, for example, pays more than \$63 billion in business, personal, and consumption taxes, accounting for approximately 41 percent of the price of every beer sold in the United States. And the non-alcoholic beverage industry, as noted, provides \$13.5 billion in tax revenues at the state level and \$225. billion in tax revenues at the federal level.

Lost sales also lead to job losses, not only in the brewing industry but also in the wholesaling and retail industries. As noted above, brewers, along with their wholesale and retail partners, directly or indirectly employ 2.23 million Americans. Job losses caused by an import tariff could be enormous and far more than the number of aluminum industry jobs such a tariff would be designed to create. And, in addition to paying more for its primary material input, our industry would be harmed by the advantage that our foreign competitors would gain through

¹⁶ John Dunham & Associates.

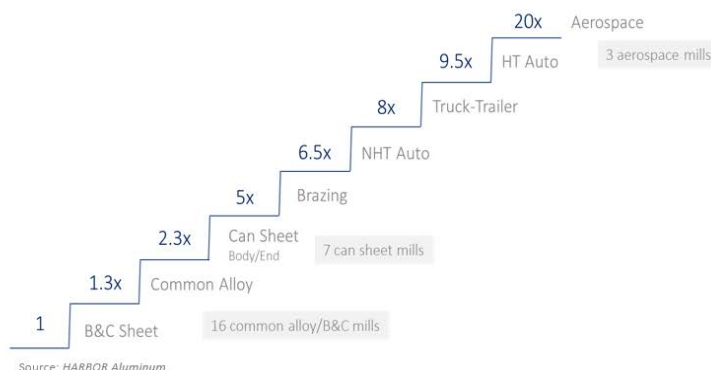
their access to relatively lower priced aluminum than would otherwise be available in the United States.

Our industry is also concerned about continuity of supply. The imposition of tariffs or quotas will limit supply while at the same time driving up prices for both imported and domestically-produced aluminum. In addition, U.S. producers generally favor production of higher-value aluminum products with higher margins than the rolled cansheet on which BI, BA, and ABA members and other beverage producers rely.



Producers Will Chase Higher-Value FRP When Faced With Limited Or More Expensive Imported Primary Aluminum

PROFITABILITY OF NORTH AMERICA ROLLED PRODUCTS BY END MARKET
(2017 baselined on B&C sheet)



Any restrictions on the availability of primary aluminum will exacerbate that commercial preference as U.S. producers will use more of the limited supply to make the highest-value product leaving relatively low-value rolled cansheet in short supply. This would have a devastating effect on U.S. beverage producers.

On behalf of the nearly 500,000 men and women working in our respective industry sectors as well as our suppliers, BI, BA, and ABA urge the Department to recommend that the President take no action that threatens our jobs and competitiveness.

B. U.S. Smelters Can Adequately Supply U.S. National Defense Needs

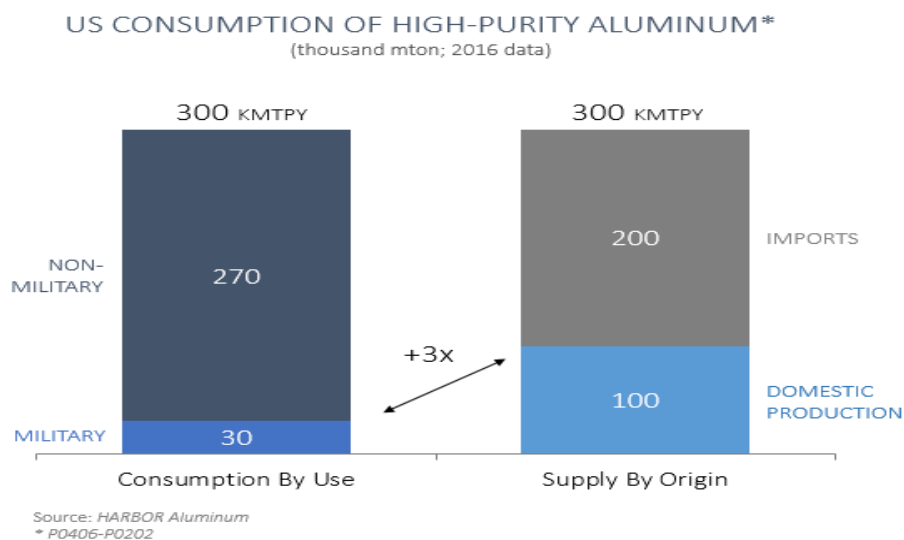
The NSIBR, §§ 705.4(a)(1) and (2), require the Department to consider the domestic production and productive capacity needed for aluminum to meet projected national defense requirements. As discussed below, while the United States is a net importer of high purity aluminum, the domestic industry can more than support the demands of the U.S. Department of Defense (DoD). In fact, we understand that the no imports of high purity aluminum are made to support DoD aircraft, armor, ships, and other military equipment. We also understand that cansheet – the aluminum product of concern to our industry – is not used whatsoever in support of the DoD.

There are currently five smelters in the United States. Alcoa Corporation owns and operates smelters in Washington and New York. Century Aluminum Co. owns and operates two smelters in Kentucky and one in South Carolina. As of December 31, 2016, Alcoa Corporation had approximately 778,000 MT of idle capacity in the United States, relative to total consolidated capacity of 3.1 million MT.

At the same time, Alcoa operates smelters in Canada, Iceland, Norway, and elsewhere, and now maintains a significant minority ownership stake in Ma'aden, the world's newest and lowest-cost smelter in Saudi Arabia that, since 2014, has operated at full capacity producing roughly the annual equivalent of Alcoa's idle U.S. capacity. Despite idle U.S. capacity and higher production costs, U.S. smelters remain cash positive.

High purity aluminum, which is graded between P0406 and P0202 by the Aluminum Association, is used in military applications and predominantly those related to military aircraft because it can be used to produce high strength alloys. Last year, U.S. smelters produced around 300,000 MT of high purity aluminum, which more than meets the national security demands of

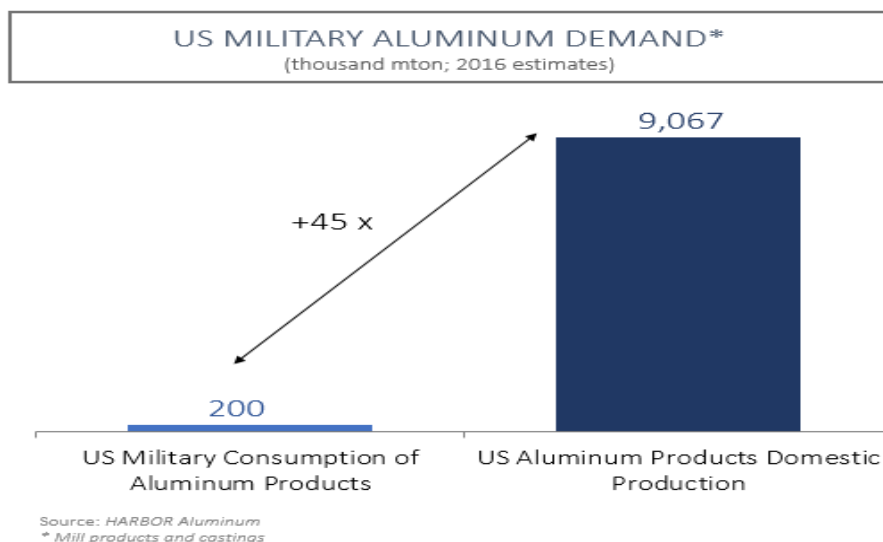
the United States: Industry analysis estimates that DoD consumption of high purity aluminum per annum is approximately 30,000 MT, which is just 10 percent of total U.S. high purity aluminum consumption and just 0.6 percent of all U.S. primary aluminum consumption.¹⁷



In terms of all U.S. aluminum consumption, experts estimate that DoD consumes just 200,000 MT of aluminum products as compared to over 9 million MT of U.S. domestic production of aluminum products.¹⁸ As such, while DoD demand is met by U.S. production, U.S. producers do not rely on DoD demand.

¹⁷ HARBOR Aluminum.

¹⁸ Jorge Vazquez and Tom Leary, "U.S. Military Aluminum Consumption & Aluminum Imports," HARBOR Aluminum, June 2017.



In addition, aluminum consumption to meet U.S. national security demands does not rely on any imported aluminum. In fact, the United States does not import high purity military-grade aluminum – we understand that it is sourced for DoD use exclusively from the Century Aluminum Co. smelter in Hawesville, Kentucky. And current production of the Hawesville smelter is more than three times DoD consumption with approximately 2.5 years supply on hand. Insofar as the Hawesville smelter is underutilized, it is the result not of imports but of the factors described above: energy costs, lack of re-investment, and a relatively strong U.S. dollar. As noted below, Century Aluminum Co. has made the commercial decision to operate a smelter in Iceland where it benefits from low energy costs that cannot currently be matched in the United States.

Furthermore, U.S. production of high purity aluminum can and will be further enhanced – to the benefit of DoD and other consumers – by readily available fractional crystallization technology. This technology processes P1020 feedstock to separate impurities (P2085 or worse),

recycled material (P1020), and high purity aluminum (P0202). There are currently four furnaces in the United States capable of employing this technology, two of which are currently operating.

Where DoD demand “can be readily satisfied by domestic production” and where it “already has established domestic preferences,” the Department has found that imports do not threaten to impair U.S. national security.¹⁹ It should reach the same finding in this investigation.

C. The Most Reliable Trade and Security Partner of the United States is also its Predominant Source of High Purity Aluminum

While the U.S. industry can more than support DoD demand for high purity aluminum, the United States does import several hundred thousand MT of high purity aluminum to satisfy demand for civil end uses. The United States imports other aluminum products as well, contributing to a trade deficit in aluminum that has become a fact of the market since World War II. But the United States is not dependent for aluminum on unreliable trading partners nor on countries that are not close military allies.²⁰ To the contrary, the overwhelming majority of U.S. imports of high purity aluminum are from Canada, with significant supply from other military allies such as Saudi Arabia and New Zealand.²¹

The ubiquity of Canadian supply, in particular, is a relevant factor under § 705.4(a)(5) of the NSIBR. Indeed, where Canada and other “safe” foreign suppliers are the largest sources of

¹⁹ See, e.g., “Report on the Effect of Imports of Iran Ore and Semi-Finished Steel on the National Security,” 67 Fed. Reg. 1958 (Dep’t Commerce Jan. 15, 2002).

²⁰ We note that the United States is a net exporter of aluminum to China (in 2016, the United States imported approximately 518,000 MT of aluminum from China but exported approximately 730,000 MT). HARBOR Aluminum.

²¹ HARBOR Aluminum.

imported product, the Department's practice in Section 232 investigations has been to recommend no action.²² Such a recommendation is appropriate here.

In addition to being a fellow member of the North Atlantic Treaty Organization (NATO), a decades-long partner in the North American Aerospace Defense Command (NORAD) framework, and a trusted security and intelligence partner across the full range of foreign policy interests, Canada also cooperates with the United States on research, development, and production of defense technologies through its inclusion in the "national technology and industrial base."²³

The close relationship between the United States and Canada on matters of national security and defense industrial support is codified by law. The Secretary of Defense must include, in an annual assessment of the capability of the national technology and industrial base to obtain certain objectives including the supplying and equipping of the armed forces, "a separate discussion and presentation regarding the extent to which the national technology and industrial base is dependent on items for which the source of supply, manufacture, or technology is outside the United States and Canada and for which there is no immediate available source in the United States and Canada."²⁴ The Department, in its Section 232 analysis, should account for Canada's special treatment under U.S. laws designed to ensure the adequacy and availability of industrial supply to DoD. Any recommendation for action concerning aluminum imports that

²² See "Report on the Effect of Imports of Iran Ore and Semi-Finished Steel on the National Security," 67 Fed. Reg. 1958 (Dep't Commerce Jan. 15, 2002) (recommending no action – in light of the fact that, among other factors, "imports of iron ore and semi-finished steel are from diverse and 'safe' foreign suppliers, with the largest suppliers of these products being U.S. allies in the Western Hemisphere (Canada, Mexico, and Brazil)"); "Summary of Secretarial Report Under Section 232 of the Trade Expansion Act of 1962, As Amended, on the Effect of Imports of Crude Oil on the National Security," 65 Fed. Reg. 46427 (Dep't Commerce July 28, 2000) (recommending no action – despite a finding that crude oil imports threatened the national security – in light of the fact that, among other factors, "[t]he majority of U.S. imports, over 50 percent, are sourced from reliable Western Hemispheric countries such as Canada, Mexico, and Venezuela.").

²³ 10 U.S.C. § 2500(1).

²⁴ *Id.* at § 2505(c).

includes Canada would be inconsistent with the recognition that Canada is so reliable a contributor to the national defense industrial base that – pursuant to statute – the DoD itself treats it as equivalent to the United States for the purposes of determining its dependence on foreign sources of supply.²⁵ Even if the Department finds that there is a high level of import reliance on Canadian aluminum, “high import reliance is not necessarily the best measure, or even a good measure of supply risk. A more important measure may be the reliability of the suppliers.”²⁶ Because the United States has no more reliable a supplier than Canada, the Department should, as it has done in past Section 232 reports, recommend no action in light of the ubiquity of the aluminum supply from Canada and other key U.S. trade and security partners.²⁷

D. Competitiveness in the Aluminum Industry is Primarily Driven by Economic Factors Unrelated to Imports

BI, BA, and ABA recognize that the domestic aluminum industry faces several global challenges. As discussed below, where such challenges are related to imports caused by unfair trade practices such as subsidization and dumping, then the existing trade remedies administered by the Department are the most appropriate tools to address such practices. But, overall, economic factors unrelated to imports primarily drive competitiveness in the aluminum industry. Those factors, most notably high energy costs and the strength of the U.S. dollar, have caused U.S. producers to relocate their smelters and their investments overseas. U.S. aluminum users, whose contribution to U.S. economic activity and job creation far exceeds that of the domestic

²⁵ Action that treats Canada differently from other sources of aluminum would likely be inconsistent with the national treatment commitments made by the United States under the General Agreement on Tariffs and Trade.

²⁶ “China’s Mineral Industry and U.S. Access to Strategic and Critical Minerals: Issues for Congress,” Marc Humphries, Congressional Research Service (Mar. 20, 2015).

²⁷ See “Report on the Effect of Imports of Iran Ore and Semi-Finished Steel on the National Security,” 67 Fed. Reg. 1958 (Dep’t Commerce Jan. 15, 2002) (recommending no action in light of the fact that, among other factors, “imports of iron ore and semi-finished steel are from diverse and ‘safe’ foreign suppliers, with the largest suppliers of these products being U.S. allies in the Western Hemisphere (Canada, Mexico, and Brazil)”).

aluminum industry itself, should not be punished because U.S. aluminum producers have chosen to locate production abroad for reasons unrelated to injurious imports.

U.S. production of primary aluminum has decreased steadily over time. But the current deficit between U.S. production and U.S. consumption is not a new phenomenon nor one that is the result of imports. The United States has been in a deficit position with respect to primary aluminum since the end of World War II, and increased imports since that time have been a result – not a cause – of decreased domestic production.²⁸

If the domestic industry lacks competitive advantages, then they are the result of factors unrelated to imports; most importantly, access to clean, sustainable, reliable energy sources, which is the primary driver of competitiveness in the aluminum industry. It is no coincidence that the United States imports from countries such as Canada, Iceland, and others with significantly lower energy costs than in the United States. Meanwhile, smelters in the United States have closed while U.S. and foreign investors turn to those countries and others in search of new, more efficient facilities.

Indeed, both Alcoa Corporation and Century Aluminum Co. are investing overseas. Alcoa owns three smelters in Canada, where it enjoys the power-price benefits from Quebec's massive hydro-electric system. It also invests in a smelter in Saudi Arabia that, critically, produces in capacities that *exceed* Alcoa's idle domestic capacity. And Century operates a smelter in Iceland, where it enjoys lower energy costs than it pays for its three operating U.S. smelters in Kentucky and South Carolina. U.S. companies have pursued these and related opportunities in the aluminum market abroad not because of injurious imports but because of inadequate domestic energy resources. The strong U.S. dollar, the relatively small scale and

²⁸ HARBOR Aluminum.

outdated technology of existing U.S. smelters, and a lack of investment by U.S. producers are also critical factors affecting competition.²⁹

U.S. producers are choosing to relocate production offshore because of these and other factors unrelated to imports, and then selling their products back into the United States. Imposing tariffs, quotas, or other measures to limit imports will not fundamentally change this dynamic. U.S. producers did not invest in the United States even during a period of extraordinary profitability resulting from LME manipulation, and should not be expected to do so, here, if protected by new import restrictions.

E. The Department Should Encourage The Use Of International Trade Agreements, Trade Remedies, And Policy Changes To Promote Domestic Production

Domestic producers have a range of domestic trade remedies available to them to combat unfair trade practices abroad, and the Department has been and should remain a champion of trade enforcement pursuant to international agreements at the World Trade Organization and elsewhere. Insofar as such agreements and other measures unrelated to the national security are inadequate to address the competitiveness of the U.S. aluminum industry, then the Department should recommend – consistent with its past practice in Section 232 investigations – specific policy action targeted to the critical factors impacting competition.³⁰

²⁹ According to the U.S. Geological Survey, the factors contributing to the shutdown of three primary smelters in the United States in 2016 were high power prices, low aluminum prices, and technical issues. *See* <https://minerals.usgs.gov/minerals/pubs/commodity/aluminum/mcs-2017-alumi.pdf>. None of these factors were related to imports; as discussed above, low aluminum prices are the result of the oversupplied market, and precipitous drop in the Midwest premium following LME rule reforms, that occurred in connection with LME manipulation practices.

³⁰ *See* “Report of Disposition of Section 232 National Security Import Investigation of Ceramic Semiconductor Packages,” 58 Fed. Reg. 48033 (Dep’t Commerce Sept. 14, 1993) (“Although current conditions in the ceramic package industry do not present an immediate threat to national security, improving the capabilities of the domestic industry was deemed desirable for both economic and national security reasons. Therefore, the Secretary of Commerce recommended a four-part Action plan to improve the competitiveness of this industry in the United States.”).

In particular, recommendations by the Department for state or federal action that would promote technological innovation and energy efficiency at U.S. smelters would be welcomed by the beverage industry, which shares the Department's interest in a competitive U.S. aluminum industry.

While such policy changes may not address competitiveness in the domestic aluminum industry in the near-term, any current economic hardship, alone, is an insufficient basis on which to base a recommendation for action under Section 232.³¹ Where U.S. defense industrial needs are met domestically or, in the alternative, by a combination of U.S. and Canadian sources, but where the domestic industry faces economic hardship or threats to its competitiveness, there are other, more appropriate, measures for the domestic industry to pursue.

For example, in *China — Subsidies to Producers of Primary Aluminium*, DS519, the United States is pursuing trade enforcement action at the World Trade Organization against the People's Republic of China alleging that Chinese subsidies to producers of primary aluminum violate China's WTO commitments. In addition, the Department itself currently maintains antidumping and countervailing duty orders against aluminum extrusions from China, A-570-967 and C-570-968, respectively (just last week, the Department issued a final scope ruling concerning certain aluminum pallets that addresses attempts to circumvent the order against Chinese aluminum extrusions), and, earlier this year, it initiated antidumping and countervailing duty investigations of imports of aluminum foil from China. These and related actions that are

³¹ See "Report on the Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security," 67 Fed. Reg. 1958 (Dep't Commerce Jan. 15, 2002) (recommending no action despite the fact that "domestic manufacturers of iron ore and semi-finished steel clearly [were] enduring substantial economic hardship"); "Report of Disposition of Section 232 National Security Import Investigation of Ceramic Semiconductor Packages," 58 Fed. Reg. 48033 (Dep't Commerce Sept. 14, 1993) (recommending no action despite "U.S. firms' production and capacity declines and their tenuous financial condition").

both targeted to specific allegations of unfair competition and consistent with U.S. commitments at the WTO are preferable to action under Section 232.³²

By contrast, WTO-inconsistent action under Section 232 would leave the beverage industry and other U.S. exporters vulnerable to retaliatory tariffs or other forms of punitive action by aluminum-producing countries.³³ Canada, in particular, is a sensitive market, as it is the largest export market for U.S. alumina (the key material input for primary aluminum).³⁴ And China, from which the United States imports a relatively minor amount of rolled cansheet, is a significant export market for U.S. scrap and remains a net importer when both feedstock and aluminum mill products are accounted for.³⁵ Overall, the United States has actually closed its trade deficit in aluminum mill products over the past decade from a 2.5 million MT deficit in 2006 to less than a 1.5 million MT deficit in 2016.³⁶ Jeopardizing U.S. export markets through the imposition of tariffs or quotas would reverse this trend and, as such, is not in the national economic or security interest.

We also urge the Department to consider the possibility of retaliatory action that would impede the ability of domestic manufacturers – even of primary aluminum – to access their material inputs. For example, North America depends *entirely* on imports for its bauxite needs

³² See “Investigation of Glass-Lined Chemical Processing Equipment,” 47 Fed. Reg. 11746 (Dep’t Commerce Mar. 18, 1982) (“A decision on whether national security considerations warrant import restrictions to protect domestic manufacturers should include analysis of our broad objectives in the area of international trade and the likely effects of any import restrictions on benefits accruing to the United States from adherence to the GATT system and from good relations with the suppliers of the equipment involved. The U.S. has long been a champion of a free international trading system, because such a system promotes the economic well being of the American people and that of our trading partners – the most important of which are also U.S. allies.”).

³³ The United States has committed at the WTO, with very few exceptions, not to impose unilateral import restrictions. While GATT Article XXI contains an “essential security” exception, we urge the Department, the Office of the U.S. Trade Representative, and other stakeholders to consider the potential systemic impact of seeking to rely on that exception, including the likelihood that it would lead U.S. trading partners to utilize the exception to justify WTO-illegal measures to the detriment of U.S. exporters.

³⁴ HARBOR Aluminum.

³⁵ Jorge Vazquez and Tom Leary, “U.S. Military Aluminum Consumption & Aluminum Imports,” HARBOR Aluminum, June 2017.

³⁶ *Id.*

and is structurally short of alumina.³⁷ Without bauxite and alumina, neither U.S. nor Canadian producers of primary aluminum could operate. Such retaliatory action is entirely foreseeable and would weaken, not strengthen, the domestic industry.

VII. If Commerce Recommends Action Then It Should Differentiate And Exclude Cansheet And Its Inputs

Considering the ability of the domestic aluminum industry to meet DoD demand, the availability of supply from Canada and other reliable U.S. trading partners, and the significant potential harm that tariffs, quotas, or other import restrictions on aluminum would cause for aluminum users, the Department should recommend no action in this case. However, if the Department does recommend that some action be taken, then we respectfully request that it exclude the following HTSUS subheadings of aluminum products used in the production of beverage cans:

- Aluminum cansheet bodystock - 7606.12.3045;
- Aluminum can lid stock - 7606.12.3055;
- Other aluminum cansheet - 7606.12.3090;
- Aluminum used beverage container scrap - 7602.00.0030;
- Aluminum waste and scrap other than used beverage container scrap - 7602.00.0090;
- Aluminum slugs: 7616.99 and 7606.91; and
- Low purity (non-military) aluminum ingot - 7601.10.6000.

FRP products are used to make foil, auto sheet, cansheet, and other products, but as noted above, the production of cansheet is not nearly as profitable to FRP producers as production of other FRP products.³⁸ While 98 percent of all cansheet used in the United States is produced in the United States – two of the largest three FRP producers in the world are U.S.-based and the United States is a net exporter of sheet and plate³⁹ – the industry may be unable to remain

³⁷ HARBOR Aluminum.

³⁸ Domestic production in 2017 is approximately 5 million MT, which complements approximately 1.3 million MT to satisfy domestic demand (*i.e.*, approximately 77 percent of North America's FRP demand is satisfied by domestic producers). HARBOR Aluminum.

³⁹ HARBOR Aluminum.

competitive and maintain high levels of employment if imported primary aluminum, essential for cansheet manufacture, is subject to tariffs or import restrictions. FRP accounts for nearly half of the primary aluminum consumed in North America.⁴⁰ Cansheet is already at risk as demand is projected to naturally weaken in the foreseeable future.⁴¹ It should not be put at greater risk to ensure protection of DoD-required high purity aluminum.

In sum, we strongly urge the Department to exclude cansheet and its inputs from any recommendation in this case. Doing so will avoid causing harm to the competitiveness of our industries, which directly or indirectly employ 3.25 million Americans – not just brewers, beverage makers, and can manufacturers but also agricultural producers, transportation workers, bottlers, retailers, and wholesalers.

⁴⁰ *Id.*

⁴¹ *Id.*