

# Canadian Coalition of Unitized Wall Module Producers

June 21, 2017

Mr. 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

Dear Mr. Botwin:

**Re: Request for Comment: “Section 232 National Security Investigation of Imports of Aluminum”**

This submission is filed by:

BVGLAZING Systems

Contract Glaziers Corp.

Ferguson Neudorf

Flynn Canada Ltd.

Inland Glass & Aluminum Ltd./ Aluminum Curtainwall Systems Inc.

Lessard Group Inc.

Oldcastle Building Envelope

Quest Window Systems Inc.

Sotawall Limited

Starline Windows Ltd.

Toro Aluminum/Toro Glasswall Inc.

(the “**Canadian UWM Producers**”).s

## Canadian Coalition of Unitized Wall Module Producers

The Canadian UWM Producers operate production facilities in Canada that produce unitized curtain wall modules or unitized window wall modules (collectively “**Unitized Wall Modules**” or “**UWM**”).

The Canadian UWM Producers welcome the opportunity to file this submission in response to the United States (“US”) Department of Commerce’s request for public comments on the “Section 232 Investigation on The Effect of Imports of Aluminum on U.S. National Security”. The Canadian UWM Producers submit that the economies and national security of the US and Canada are deeply and intrinsically linked and that the US and Canada have a mutual interest in a healthy North American aluminum industry. The Canadian UWM Producers believe that the integrated US-Canada aluminum market, in addition to industries that manufacture goods from aluminum, support US national security and US economic interest and therefore a 232 Measure against aluminum should not extend to Canada. Further, the Canadian UWM Producers believe that if a 232 Measure were to extend to Canadian aluminum, it should not extend to aluminum extrusions components integrated into manufactured products from Canada, such as UWMs, as such a measure would have unintended consequences and detrimental impacts on the US economy.

### **I. Canadian aluminum is not a threat to US national security.**

The Canadian UWM Producers respectfully submit that Canadian aluminum products are not a threat to US national security. Rather, for more than 60 years, the US has considered the supply of goods from Canada as key to US national security. In the case of aluminum, this was the case as far back as at least 1953. In that year the US National Security Council was asked to report to the Defence Mobilization board on the national security implications of the US relying upon aluminum imports from Kitimat, British Columbia, Canada in a time of war. The Executive Secretary of the National Security Council stated:

[...] the NSC Planning Board recommends that the National Security Council advise the Defense Mobilization Board through the Director of the Office of Defense Mobilization that considerations of national security do not warrant elimination of the Kitimat (British Columbia) aluminum supply from calculation of the full mobilization base available to the United States. On balance, security factors alone indicate no necessity for discrimination against Kitimat production. In fact, reliance on Kitimat as a source [Page 1021] of aluminum is in consonance with the long standing plan of the United States and Canada to share their resources in time of war on a continental rather than on a national basis.<sup>1</sup>

Congress has since legislated that the supply of goods and technology from Canada to the US are part of the US’s national defense procurement strategy. US Code Title 10, Chapter 148,

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<sup>1</sup> “Memorandum by the Executive Secretary of the National Security Council (Lay) to the National Security Council” (October 16, 1953) available at: <https://history.state.gov/historicaldocuments/frus1952-54v01p2/d54>

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“National defense technology and industrial base, defense reinvestment, and defense conversion” provides that as part of the US’s defence procurement the Secretary of Defense is to develop a national security strategy for the “national technology and industrial base” (“**NTIB**”). The NTIB is defined by Congress to include the supply of goods and technology from Canada.<sup>2</sup> The chapter states that the US’s strategy is to be based on assessing the risks and challenges for defence supply and ensuring the NTIB is capable of achieving specific national security objectives related to the development, production and supply of goods and technology.<sup>3</sup> The chapter also provides that each year, the Secretary of Defense, in consultation with the Secretaries of Commerce and Energy, is to assess the NTIB’s capability to obtain the national security objectives set out in the chapter, which includes assessing the extent to which the NTIB is “dependent on items for which the source of supply, manufacture, or technology *is outside of the United States and Canada* and for which there is no immediately available source in the *United States or Canada*” (Emphasis added).<sup>4</sup>

It is clear that the US Congress considers Canada part of the US’s domestic supply base for the purpose of national security and defense procurement. This view is consistent with previous 232 Investigations. In the 232 Investigation into iron ore imports (2001), the US Department of Commerce concluded that iron ore and semi-finished steel imports from Canada did not threaten US national security interests because Canada was a “safe” source of supply.<sup>5</sup> The same is true with respect to aluminum today.

The Canadian UWM Producers submit that imposing a 232 Measure against Canadian aluminum would interfere with the Secretary of Defense’s defense procurement strategies and Congress’s clear intention that Canadian goods are part of the US’s “national technology and industrial base”. A determination that aluminum imports from Canada should be subject to a 232 Measure on the basis that such imports threaten US national security would be inconsistent with the US Congress’s national security objectives and impede the Secretary of Defense’s procurement strategy.

## II. Unitized Wall Modules and a 232 Measure

The Canadian UWM Producers submit that aluminum extrusions from Canada specifically do not threaten US national security and that if a 232 Measure is imposed against Canada or other countries it should not extend to aluminum extrusions that are incorporated into finished goods, parts or subassemblies produced in Canada.

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<sup>2</sup> USC Code Title 10, Chapter 148, “National defense technology and industrial base, defense reinvestment, and defense conversion”, s. 2500.

<sup>3</sup> USC Code Title 10, Chapter 148, “National defense technology and industrial base, defense reinvestment, and defense conversion”, s. 2501.

<sup>4</sup> USC Code Title 10, Chapter 148, “National defense technology and industrial base, defense reinvestment, and defense conversion”, s. 2505(c).

<sup>5</sup> *Ibid.*, p. 2.

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### A. Unitized Wall Modules, Aluminum Extrusions and existing US Trade remedies

Unitized Wall Modules are an engineered product produced in manufacturing facilities. The modules are commonly referred to as “curtain wall” modules or “window wall” modules. The modules are a building product system that, when installed, form a finished exterior envelope of a building or structure. Unitized Wall Modules are custom designed, engineered, and produced for each specific structure to which they installed. Each module begins as a frame produced from aluminum extrusions. “Infill” is then attached and assembled to the frame. Infill includes glass, doors, insulation, architectural panelling, rain screens, silicon, connecting hardware, and architectural or ornamental pieces and features. The finished modules are transported with infill to the construction site and installed to the exterior of the structure. Installation involves attaching the modules to the structure and connecting each module to adjacent modules. Once all modules are installed the building exterior is complete. Aluminum extrusions represent a significant portion of the production cost of Unitized Wall Modules.

Canada has a trade remedy against dumped and subsidized UWMs from China. It also has a separate trade remedy against aluminum extrusions from China. The US’s trade remedy against dumped and subsidized aluminum extrusions from China extends to “parts” and extrusions assembled or manufactured into “subassemblies”, which specifically include unitized curtain wall modules. The US “Scope of the Investigation” for aluminum extrusions reads, in part:

*Subject aluminum extrusions may be described at the time of importation as parts for final finished products that are assembled after importation, including, but not limited to, window frames, door frames, solar panels, curtain walls, or furniture. Such parts that otherwise meet the definition of aluminum extrusions are included in the scope. The scope includes the aluminum extrusion components that are attached (e.g., by welding or fasteners) to form subassemblies, i.e., partially assembled merchandise unless imported as part of the finished goods ‘kit’ defined further below. The scope does not include the non-aluminum extrusion components of subassemblies or subject kits.*<sup>6</sup> (Emphasis Added).

US Courts and the US Department of Commerce have interpreted the scope of the US Aluminum Extrusion trade remedy to include extrusions within manufactured unitized wall modules, rather than just curtain wall frames (i.e. excluding infill). The reasoning is that while a module may be a manufactured good, it is a “subassembly” and/or a part of a curtain wall system, and therefore falls within the “scope” of the trade remedy. Consequently, notwithstanding that aluminum extrusions have been transformed into UWMs through a manufacturing process, no longer maintain distinct physical characteristics of an extrusion, and are no longer useable as an

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<sup>6</sup> US Department of Commerce, International Trade Administration, “Aluminum Extrusions from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value” 76 FR 18524 (April 4, 2011) at 18525.

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extrusion for any other purpose, they remain “aluminum extrusions” for the purpose of the US trade remedy against China.

### **B. A 232 Measure should not extend to extrusions included within manufactured goods**

The Canadian UWM Producers are concerned that a 232 Measure to protect US national security interests may similarly extend to aluminum extrusions included within “parts” and “subassemblies”, such as Unitized Wall Modules, that originate from Canada. A measure against such goods could have significant negative implications for the US economy and US security.

Canada and the US have an integrated aluminum market, including for extrusions. The pricing of extrusions is a North American price. Manufacturers in both countries have similar, if not identical, labor standards, production costs, environmental standards and business practices. Producers in both countries have taken action to protect their markets from dumped and subsidized imports. The result is that manufacturers on both sides of the border operate their business and supply chains on the basis of a single, integrated extrusions market. In this manner, Canadian aluminum contributes to US national security by providing the US with a stable supply of fairly traded goods.

Aluminum Extrusions are incorporated into all kinds of “parts” and “subassemblies” that are traded across borders. In addition to UWMs, aluminum extrusions are used in all kinds of car parts—from drivetrains, to bodies, to safety systems, to structural components and beyond. These parts are moved daily across the US-Canada border as they are manufactured, fabricated and assembled into larger parts and then the final automotive product. Aircrafts, ships, trains and other transportation vehicles similarly incorporate parts and assemblies that are manufactured from or contain aluminum extrusions. Other examples include building products—roofing materials, paneling, architectural components, windows, doors, eaves troughs—appliances and electronics. The manufacturing of these goods may involve “parts” and “assemblies” containing extrusions crossing the US-Canada border several times.

Most extrusions incorporated into Canadian produced parts and sub-assemblies are from either the US or Canada. Between 2014 and 2017 (April), 62% of all extrusion imports into Canada were from the US.<sup>7</sup> In the case of goods produced by the Canadian UWM Producers, 92% of all extrusions used in 2016 were from the US or Canada. As discussed above, Canadian extruders have taken trade remedy action to ensure that unfairly traded extrusions are excluded from the Canadian market.

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<sup>7</sup> Statistics Canada, Canadian International Merchandise Trade Database, “760421 - Profiles, hollow, aluminium, alloyed”; “760429 - Bars, rods and other profiles, aluminium alloyed”; “761090 -Structures and parts, alum, e.g. plate, rods, etc. for structures, other than prefabricated buildings”; “760820 - Tubes and pipes, aluminium alloys”.

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Imposing a 232 Measure against aluminum extrusion components of imported “parts” and “subassemblies” from Canada could have significant implications on US manufacturers and US end-users, including defense end-users. Imposing a 232 Measure on extrusion inputs into “parts” and “subassemblies” would impede trade between US and Canada. It would interfere with established supply chains and impose a significant burden on US manufacturers that rely on a stable supply of Canadian extrusions, and parts and subassemblies containing extrusions. In the first four months of 2017, trade in goods between the US and Canada was valued at US\$1.54 billion per day.<sup>8</sup> If a 232 Measure were to extend to extrusions within parts and subassemblies, then each time a car part, unitized wall module, or other partially assembled or manufactured good crossed the border the importer would need to assess the origin and value of the incorporated extrusions, information which may not be readily available or discernable. The enormous cost of having to complete such inquires would disrupt supply chains and create market uncertainty. Further, enforcement would require very significant government resources.

Consequently, the Canadian UWM Producers submit that Canada should be excluded entirely from a 232 Measure against aluminum and that the measure should not extend to extrusions included within Canadian “parts” and “subassemblies” as these extrusions are fairly traded and the cost of compliance and enforcement with such a Measure would severely interfere with Canada-US trade and manufacturing supply chains.

### III. Summary

Canadian aluminum contributes to, rather than detracts from, US national security. Canada is a safe, dependable, and fairly traded source of aluminum to the US. The Canada-US aluminum extrusion market is a single, integrated market, and US manufacturers’ supply chains depend on the free flow of aluminum—whether in primary form or incorporated into parts and subassemblies—across the US-Canada border. In light of the integrated US-Canada market for aluminum and other goods, the US congress has legislated Canada as part of the US’s national defence procurement base. Consequently, the Canadian UWM Producers respectfully submit that if a 232 Measure is imposed against aluminum, it should not apply to Canadian aluminum extrusions or extrusions incorporated manufactured products, such as Unitized Wall Modules.

Thank you for the opportunity to provide our perspective on this very important topic.

Yours truly,

Canadian Coalition of Unitized Wall Module Producers

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<sup>8</sup> US Census Bureau, UIs International Trade Data.