The Ministry of Industry and Trade of the Russian Federation
Russian Federation, 109074, Moscow, Kitaygorodskiy proezd, 7

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Mr. Brad Botwin
Director for Industrial Studies
Office of Technology Evaluation
Bureau of Industry and Security
U.S. Department of Commerce
14th Street and Constitution Ave., N.W.
Washington, D.C. 20230

Section 232 National Security
Investigation on Aluminum

PUBLIC DOCUMENT

Re: Section 232 National Security Investigation on Aluminum; Written Comments of the Ministry of Industry and Trade of the Russian Federation

Dear Mr. Botwin,

On behalf of the Ministry of Industry and Trade of the Russian Federation we hereby submit the written comments as regard the above-referenced investigation.

The Ministry of Industry and Trade of the Russian Federation is the representative of the government of the country in which the subject merchandise is produced or manufactured therefore is an 'interested party' in this proceeding, and has a substantial interest in the subject matter of the investigation.

Please serve all submissions on the following individual:
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We appreciate Your attention to this request. Please contact if you have any questions regarding this submission or require additional information.

Encl.: 4 pages.

Respectfully submitted,

Mr. K. Kim
Deputy Director of the Department
of International Cooperation

WRITTEN COMMENTS
of the Ministry of Industry and Trade of the Russian Federation on the notification of the US Department of Commerce on the initiation of an investigation into the impact of aluminum imports on US national security

Pursuant to the investigation into the effect of aluminum imports on the US national security, initiated on April 26, 2017 by the United States Department of Commerce (hereinafter – the US Department of Commerce) under Article 232 of the Trade Expansion Act of 1962 (hereinafter – Article 232 of the Act), the Ministry of Industry and Trade of the Russian Federation hereby provides the following written comments within the framework of the aforementioned investigation.

1. First of all, it is necessary to note that since 2002 the Russian Federation has been recognized by the countries which are its major trade partners, including by the USA and the EU, as **a country with market economy**. Also since 2012 the Russian Federation is a full-fledged member of the World Trade Organization (hereinafter – the WTO). Its status of a country with market economy is confirmed by the fact that the Russian authorities do not effect state regulation of prices and tariffs, nor do they provide any industry-specific support prohibited by the WTO norms and rules.

Additionally, Russian aluminum industry companies are **transparent commercial companies with private investments**, and the state does not have shares in these companies' share capital.

Also the shares of the largest aluminum products manufacturer UC RUSAL are traded on Hong Kong Stock Exchange [1].

Moreover, primary aluminum is an open trade commodity and the global aluminum prices are determined at the London Metal Exchange (LME) based on the global demand and supply.

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[1] http://www.rusal.ru/en/investors/to_shareholders/structure/index.php

The Ministry of Industry and Trade of the Russian Federation also would like to emphasize that the Russian aluminum producers have recommended themselves as reliable and good faith suppliers with their clients including a number of large international companies.

At the same time, **supplies of Russian untreated aluminum benefit the development of the American further aluminum processing industry** that in the previous years was developing due to imported metals and now provides over 74% of the jobs in the aluminum production.

It is also worth noting that the further processing industry is a driver of the growth of both of the US aluminum industry and of the country's economy as a whole.

The US untreated aluminum production capacities do not meet the demand of the further processing industry, therefore any restriction in respect of imported aluminum will result in growth of costs through the whole production chain ultimately resulting in negative effect on the industry and also affecting the end users of aluminum products.

2. As regards the essence of the investigation conducted under Article 232 of the Act, within the framework of the previous investigations in respect of effect of imports of products on the national security of the USA, the US Department of Commerce indicated in its reports that **two interpretations of the notion "national security" are possible**. The first, the "narrow" one, is connected to the direct objectives of providing for the country's defense needs. The second, "broad" interpretation for the purposes of the national security notion takes into consideration the risks related to the country's economic well-being [2].

In this connection it should be noted that the aforementioned investigation **must not serve as the instrument for commercial protection of the national market** and is not meant for overall protection of the US industries.

In this context, the Ministry of Industry and Trade of the Russian Federation also would like to emphasize that the US defense industry consumes insignificant volumes of imported aluminum products and is fully supported by own production, and the **existing US**

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[2] U.S. Department of Commerce Bureau of Export Administration, 2001. The effect of imports of iron ore and semi-finished steel on the national security, page 5.

capacities are able to satisfy the current and prospective demand for the country's defense needs [3].

Russian aluminum products manufacturers do not effect any direct supplies for the needs of the US defense industry therefore causing no damage to the country's national security.

3. The President of the USA in his Memorandum noted that a number of American industries were suffering from the global problem of excess of production capacities caused by providing banned subsidies as well as by using unfair competition methods. In this connection it should be noted that the Russian manufacturers pursue weighted industrial policy in the sphere of controlling their capacities and capacities load. Thus, for example, in the recent years the Russian company UC RUSAL reduced its production capacities by 750 thous tons.

4. The Ministry of Industry and Trade of the Russian Federation notes that the USA are a member state of the WTO Agreement on Government Procurement (hereinafter – the GPA). There already exist the exemptions in respect of a number of commodity items and procuring authorities, therefore the GPA is not applied. At the same time, Article 3 of the GPA establishes the possibility of introducing restrictions on procurement of arms, ammunition or military materials, or on procurement needed for ensuring the country's national security.

Therefore, in case of presence of any risks of causing damage to the national security, procurement of aluminum for the defense industry may be restricted within the existing exemptions stipulated by the GPA.

5. Additionally, the Ministry of Industry and Trade of the Russian Federation takes note of the fact that introducing measures which may result in limitation of aluminum imports to the USA have the risk of violating the USA's obligations in the WTO.

Thus, Article XI of GATT 1994 prohibits the imposition or preservation of any bans or restrictions on import any goods from the territory of another contracting party or the

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[3] Bloomberg. "America Has a Secret Switch to Make Military Metal". https://www.bloomberg.com/news/articles/2017-06-07/u-s-could-easily-meet-aluminum-defense-needs-researcher-says

export or sale for export of any goods destined for the territory of the other contracting party, whether in the form of quotas, import or export licenses or other measures, except for duties, taxes or other charges.

If the measure is found to be not complying with WTO rules, Article XXI of GATT 1994 provides a number of conditions that can potentially "justify" a violation for considerations of national security. At the same time, the Panel in the "US-Export Restrictions" (Czechoslovakia) (1949) dispute found that when applying the exception for reasons of national security, "any contracting party should be careful not to take any steps that could lead to undermining General agreement"[4].

Moreover, pursuant to the Ministerial Declaration of 1982, "the contracting parties undertake, individually and jointly [...] to abstain from taking restrictive trade measures, for reasons of a non-economic character, not consistent with the General Agreement" [5].

Conclusion:

In view of the aforementioned, the Ministry of Industry and Trade of the Russian Federation believes that supplies of Russian aluminum products **do not cause any damage to the national security of the USA, and introducing restrictions is unreasonable and will entail economic damage to the national further processing industries**.

We kindly request the US Department of Commerce to take this position into account when delivering their decision within the framework of the present investigation.

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[4] Panel Report, US – Export Restrictions (Czechoslovakia) (1949), GATT/CP.3/SR.22, Corr.1.
[5] GATT document L/5424 of November 29, 1982, 29S/9, 3.