

June 23, 2017

VIA E-MAIL AND HAND DELIVERY

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

Re: *Section 232 National Security Investigation of Imports of Aluminum:
Response to Request for Comments*

Dear Mr. Botwin:

On behalf of Magnitude 7 Metals, we hereby submit the following submission in response to the Department of Commerce's ("Commerce") request for comments in its *Section 232 National Security Investigation of Aluminum*.¹

I. INTRODUCTION

Magnitude 7 Metals recently purchased an idled smelter located in New Madrid, Missouri, which had previously been operated by Noranda Aluminum ("Noranda") prior to its declaration of bankruptcy in 2016. As detailed below, this Section 232 investigation comes at a pivotal time for the domestic aluminum industry. Over the past five years, the domestic primary aluminum industry has become a shell of its former self. As Chinese overcapacity and production have grown, global prices have fallen and imports have surged into the U.S. market. We have also seen

¹ *Section 232 National Security Investigation of Imports of Aluminum*, 82 Fed. Reg. 21,509 (Dep't Commerce May 9, 2017) (notice of request for public comments and public hearing). These comments are timely filed in accordance with *Section 232 National Security Investigation of Imports of Aluminum*, 82 Fed. Reg. 25,597 (Dep't Commerce June 2, 2017) (notice of change in comment period for previously published notice of request for public comments and public hearing).

a dramatic increase in U.S. imports of semi-finished aluminum products from China. The domestic industry and its workers have suffered because of this. Therefore, the Secretary of Commerce (the “Secretary”) should conclude that imports of aluminum threaten to impair U.S. national security, and recommend broad trade relief to effectively address this threat.

II. CONFIDENTIAL TREATMENT REQUESTED

Magnitude 7 Metals respectfully requests that the information contained in single brackets (“[]”) throughout this letter be treated as business confidential information and withheld from public disclosure pursuant to 15 C.F.R. § 705.6(a). The information contained in brackets constitutes company proprietary information, including trade secrets and commercial and financial information, the release of which to the public would cause substantial harm to the competitive position of the submitters. This company proprietary information is exempted from public disclosure by the Freedom of Information Act, 5 U.S.C. § 552(b)(4). This information is exempted from public disclosure in trade remedy cases, pursuant to 19 U.S.C. § 1677f(b). A non-confidential version of this letter with business confidential information redacted is being submitted concurrently with this business confidential version.

III. IMPORTS OF ALUMINUM THREATEN TO IMPAIR U.S. NATIONAL SECURITY

A. The Aluminum Industry Produces Products for U.S. National Security

Section 232 of the Trade Expansion Act of 1962 directs the Secretary to determine whether “an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.”² In prior investigations, Commerce has defined “national security” broadly to include not only issues directly related to national defense, but also

² 19 U.S.C. § 1862(b)(3)(A).

to “the general security and welfare of certain industries...that are critical to the minimum operations of the economy and government.”³ Commerce has made clear that “national security” should encompass certain domestic economic concerns, in addition to national defense concerns.”⁴ These economic concerns include the demand requirements of 28 “critical industries,” which include energy, transportation, and construction.⁵

As Commerce has recognized,⁶ a broad interpretation of U.S. national security has support in both the statute and legislative history of Section 232. For instance, Section 232 directs the Secretary to “recognize the close relation of the economic welfare of the Nation to our national security.”⁷ Moreover, the legislative history of Section 232, including the legislative history of predecessor provisions, indicates that some members of Congress intended that “national security” should encompass certain domestic economic concerns, in addition to national defense concerns.⁸ As a result, consistent with Commerce’s practice in prior investigations, and the statute and its legislative history, the agency should continue to adopt a broad definition of U.S. national security in this proceeding.

The domestic aluminum industry produces a variety of products for U.S. national security, as defined above. For example, with respect to the U.S. military, high purity aluminum is used in military aircraft, navy war vessels, armor plating, and other applications. Standard primary aluminum is also used to produce semi-finished products (*e.g.*, extrusions, sheet, plate, and foil) for U.S. national security. Moreover, in terms of critical infrastructure, aluminum is used in

³ U.S. Department of Commerce, Bureau of Export Administration, *The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security* (Oct. 2001) (“Iron Ore and Semi-Finished Steel Report”) at 5.

⁴ *Id.*

⁵ *Id.* at 16.

⁶ *Id.* at 5.

⁷ See 19 U.S.C. § 1862(d).

⁸ See *e.g.* S. Rep. No. 85-1838, at 12 (1958).

transportation (e.g., highways and bridges), urban centers, and energy supply, and other applications.

B. Imports of Primary Aluminum and Semi-Finished Aluminum are Significant

The global aluminum industry is experiencing an overcapacity crisis, which has largely, but not exclusively, resulted from rapid and unnecessary capacity expansions by the Chinese aluminum industry and massive government subsidization, in accordance with Chinese government policy. Chinese aluminum capacity skyrocketed in the past 15 years, and China is now responsible for, by far, the largest share of global aluminum production. This growth is unprecedented, particularly given that it occurred in a country with no natural competitive advantage. Chinese aluminum producers are among the highest-cost producers in the world, due to their reliance on coal-generated electricity. Without government intervention, including through the provision of substantial debt to keep its aluminum producers operating and expanding, the enormous growth of Chinese aluminum would not have been possible.

The result of the global excess capacity crisis in aluminum has been a complete collapse in aluminum pricing and a surge in imports. Aluminum is a globally traded commodity. Between 2011 and 2016, the LME market price for aluminum fell almost [] percent, sending aluminum prices crashing globally.⁹ During this same period, import prices under 7601.10, the HTS category that most closely reflects the standard unwrought P1020 ingots sold in the LME, also declined by nearly [] percent. Significantly, these price drops do not reflect any decline in cost or demand. Rather, they are the result of an enormous increase in Chinese primary aluminum capacity and production, which are entirely divorced from market forces.

⁹ []

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The volume effects of Chinese excess capacity and production, and its price depressing impact on the global market, have also been significant. U.S. imports of primary aluminum grew by almost 50 percent between 2011 and 2016.¹⁰ Much of this increase, however, is from non-Northern American supply. Specifically, import sources other than from Canada increased by over 95 percent over this same period.¹¹

Primary aluminum demand is driven by the production and consumption of semi-finished aluminum products, including sheet, plate, extrusions, rods, bars, and wheels. While Chinese producers are not exporting primary aluminum to the U.S. market, largely due to a 15 percent export tax on the product, they do export semi-finished aluminum products to the United States. These exports have increased dramatically in recent years. Indeed, with government supported supply far exceeding demand, Chinese exports of semi-finished aluminum products to the U.S. market increased by approximately 202 percent from 2012 to 2016.¹²

Significantly, each ton of downstream aluminum exported by China to the United States equals a ton of downstream aluminum that will not be produced in the United States – and thus primary aluminum that will not be purchased for that production in the United States. This means that Chinese primary aluminum production has expanded and semi-finished aluminum exports from China have grown, primary aluminum producers in the United States and the rest of the world that service those downstream industries have seen their production and shipments decline. For these reasons, aluminum production and overcapacity in China has a substantial and direct negative impact on volumes and prices in the U.S. market.

¹⁰ USITC Dataweb, HTS 7601.10: Aluminum, Not Alloyed, Unwrought and HTS 7610.20: Primary Aluminum Alloys, Unwrought (excluding 7601.20.9060 and 7601.20.9075).

¹¹ USITC Dataweb, HTS 7601.10: Aluminum, Not Alloyed, Unwrought and HTS 7610.20: Primary Aluminum Alloys, Unwrought (excluding 7601.20.9060 and 7601.20.9075).

¹² Global Trade Atlas statistics.

C. Imports Threaten the Economic Viability of the Domestic Aluminum Industry

The collapse in U.S. aluminum pricing has resulted in dramatic declines in U.S. production, capacity, and revenue. Smelters have shut down and jobs have been lost. For instance, between 2011 and 2016, the industry went from having 14 smelters to just five; today, only two of these are operational. During this period, imports increased by 95 percent from non-Canadian sources, while U.S. production declined by [] percent.¹³ The industry has shed more than [] jobs,¹⁴ and investments are at a bare minimum. Put simply, U.S. primary aluminum producers are in survival mode.

Noranda is one of many smelters that have shut its doors in recent years due to the collapse in global prices, and resulting import surge. In October 2016, Magnitude 7 Metals purchased Noranda's distressed smelting assets out of bankruptcy. Noranda produced primary aluminum for semi-finished aluminum products used in both U.S. military and critical infrastructure applications that are vital to U.S. national security. However, Noranda's New Madrid smelter was forced to shut down after 45 years in operation largely due to rising Chinese excess capacity and production, its adverse impact on pricing, and resulting surge in imports from non-Canadian imports. As is the case with other U.S. aluminum smelters, declining prices caused by China's market distorting practices battered Noranda. Noranda tried to hold on, but its primary assets were being killed and it was only a matter of time before it was forced to shut its doors.

Roughly 900 high paying, high skilled jobs were lost when Noranda closed. Many workers are still out of work to this day.¹⁵ When the smelter was operational, the company and its

¹³ [] .

¹⁴ [] .

¹⁵ See Jacob Barker, *Noranda Aluminum closure marks the end of an era in the Missouri Bootheel*, St. Louis Post-Dispatch (Feb. 21, 2016).

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employees spread roughly \$45 million dollars throughout Southeast Missouri. With this money gone, everyone – from local restaurants and business to the local school district – felt the pain. New Madrid County, where the smelter is located, also took a big hit, losing millions of dollars of tax revenue annually. Thus, the local government was forced to delay projects, institute hiring freezes, slash infrastructure spending, and postpone wage increases. Community programs were negatively impacted, as well as the local police and ambulance services. Because the revenue from Noranda comprised nearly 17 percent of the entire budget for the New Madrid School District, a budget deficit resulted, leading to layoffs, staff reductions, and program cuts. Six months after Noranda's closure, the unemployment rate in New Madrid County more than doubled.

As previously indicated, Noranda is not alone. Since 2000, the domestic industry has seen 18 out of 23 smelters shut down completely. Unless broad and effective Section 232 relief is granted, more closures are likely. While Magnitude 7 Metals recently purchased Noranda's smelting assets out of bankruptcy, the facility is not yet operational. Magnitude 7 Metals is currently negotiating a new power contract and hopes to restart operations soon. However, without comprehensive Section 232 relief, the company's ability to fully restart operations is far from certain.

Relief is nothing short of critical to get Magnitude 7 Metals up and running, and bring Southeast Missouri back to life. The same is true for shuttered smelters and affected communities throughout the United States. As further detailed below, it is imperative that relief is broad and comprehensive to allow U.S. production to come back online. Specifically, should the President provide relief, it should be provided to the entire value chain and cover all import sources other

than Canada. To this end, the combined secure and reliable capacities of Canadian and U.S. aluminum producers can service virtually all North American primary aluminum demand. Thus, excluding import sources besides Canada from coverage will undermine any relief granted.

D. The Domestic Aluminum Industry is Becoming Increasingly Reliant on Unreliable and Unsafe Supply Due to Imports

As detailed below, the erosion of a healthy aluminum industry – from smelting to semi-finished aluminum products – threatens the ability of domestic aluminum producers to produce both new and existing products for U.S. national security applications, warranting an affirmative finding of threat in this investigation.

In prior investigations, Commerce has made clear that imports can threaten to impair U.S. national security in one of two ways. First, imports can threaten to impair U.S. national security “by fundamentally threatening the ability of U.S. domestic industries to satisfy national security needs.” Second, they can threaten to impair U.S. national security by “fostering U.S. dependence on unreliable or unsafe imports.” Both conditions are met here.

The domestic aluminum industry is gradually losing its ability to produce aluminum to equip the U.S. military, respond to disasters, and modernize increasingly aging infrastructure. As previously indicated, the domestic aluminum industry produces products for several different U.S. national security applications, some of which require high-purity aluminum. The domestic industry cannot keep producing these products if imports continue to enter the U.S. market and cripple domestic production any further. Domestic primary aluminum production in the United States is already on the brink of complete collapse, and will only continue to decline absent relief. Moreover, the surge of semi-finished imports, principally driven by China’s massive excess

production, has further displaced domestic primary aluminum production that would have been consumed by downstream U.S. producers.

The industry's ability to develop new aluminum products to meet evolving national security needs is also in jeopardy. The domestic industry has made significant investments in recent years to produce the highest performance aluminum for the most demanding U.S. military and critical infrastructure applications. However, the industry cannot keep making these types of investments if imports continue to enter the U.S. market unabated.

With the loss of U.S. production, capacity, and aluminum smelting capabilities comes a dangerous dependence on foreign aluminum to supply U.S. national security needs. For example, with respect to high-purity aluminum, the only current source of supply is the United Arab Emirates. Per Century's testimony, high purity imports from Dubai have forced all U.S. high purity production to cease. This means that the United States is now entirely dependent on unstable import sources for its critical input. The region is politically unstable, and supply chain disruptions, including aluminum supply chain disruptions, are not uncommon.¹⁶ The only other source of significant quantities of high-purity aluminum is New Zealand. However, the sheer distance between New Zealand and the United States means that source of supply is necessarily unreliable in a war, conflict, or other national emergency. As such, the United States' now total reliance on these and other foreign countries for aluminum is a threat to U.S. national security.

Because so many U.S. smelters have been forced to shut down in recent years, imports are now needed to satisfy a significant percentage of demand. Canada is the most significant source of imports into the United States. As a country with which the United States has a good

¹⁶ [

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economic, political and defense relationship, and its location in North America, Canada is both a safe and reliable source of supply. This fact, however, does nothing to undermine the need for Section 232 relief. Canada also suffers from the very same market distortions that are crippling the domestic industry. Moreover, Canada does not produce high-purity aluminum. With no other safe or reliable sources of supply, the United States must maintain its existing high-purity smelters and, to do so, U.S. primary aluminum production also must be viable. The United States, together with Canada, could supply all of U.S. demand if given the chance.

Given that imports threaten to impair the capability of the U.S. industry to satisfy national security needs, and the United States is becoming increasingly dependent upon unreliable sources of supply, the Secretary should conclude that imports of aluminum threaten U.S. national security.

IV. THE PRESIDENT SHOULD IMPLEMENT BROAD RELIEF TO ADDRESS THE THREAT POSED BY ALUMINUM IMPORTS

As discussed above, the U.S. national security implications of the domestic aluminum industry's current state are significant. To effectively address this threat and allow U.S. production to come back online, broad Section 232 relief is imperative.

First, the U.S. industry must remain healthy throughout the production chain by incentivizing production – from smelting to the finished and fabricated product – in the United States. As an initial matter, relief on high-purity alone is insufficient to bring U.S. aluminum production back online. In 2013, at the peak of its production, Noranda produced approximately [] metric tons of high purity aluminum,¹⁷ which is only a [] of the [] metric tons of total aluminum that Noranda produced that year. However, as is the case with other U.S. smelters, Magnitude 7 Metals' entire primary aluminum production operations must be viable

¹⁷ Specifically, Noranda produced the following high purity grades: []

for the company to justify restarting any high-purity production. Moreover, the United States must maintain its domestic smelting capabilities because primary aluminum is used to produce a variety of semi-finished products for U.S. national security applications. It is also for this reason, and the fact that imports of semi-finished aluminum continue to overwhelm the U.S. market, that downstream relief is needed.

Second, should the United States choose to exclude Canada from relief, other import sources must be adjusted accordingly if Section 232 relief is to have any meaningful impact on the domestic aluminum industry. Pursuant to market reports, Canada possesses approximately [

] tons of primary aluminum capacity. The amount of U.S. primary aluminum capacity that could be ramped up is [] tons.¹⁸ This means that, together, Canadian and U.S. producers would have nearly enough capacity to service the entire North American market. Therefore, Commerce should decline to exclude import sources other than Canada from Section 232 relief, and impose a 20 percent tariff on all non-Canadian primary and downstream semi-finished aluminum products under HTS Chapter 76. Pursuing this course of relief would provide the necessary market adjustment to allow U.S. production and capacity to restart.

V. CONCLUSION

For the reasons discussed above, the Secretary should conclude that aluminum imports threaten to impair the national security of the United States, and grant much needed trade relief to the domestic industry. A failure to grant broad relief to the aluminum industry will result in further harm to U.S. producers and workers, and continue to place U.S. national security at risk.

¹⁸ [] .

Should you have any questions regarding this submission, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bob Prusak', written over a horizontal line.

Bob Prusak
Magnitude 7 Metals