ITC Inv. No. TA-201-__
Total Pages: 1,052
Investigation

PUBLIC DOCUMENT

BEFORE THE
UNITED STATES INTERNATIONAL TRADE COMMISSION

In the Matter of:

Primary Unwrought Aluminum

PETITION FOR RELIEF PURSUANT TO SECTION 201 OF THE TRADE ACT OF 1974, ON BEHALF OF THE UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC

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April 18, 2016

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I. INTRODUCTION

This is a petition under sections 201-202 of the Trade Act of 1974 and Subpart B of part 206 of the rules of practice and procedure of the United States International Trade Commission.[1]

The United States primary aluminum industry is collapsing. The industry is unable to survive in a market where primary aluminum prices have plummeted far below full costs of production and imports have grown rapidly. Domestic producers have been forced to close or idle nine of fourteen smelter facilities since 2011, with a tenth to be idled at the end of June 2016, and with two of the other remaining operating smelter facilities utilizing only 50 percent or less of their capacity.

While domestic demand has been increasing over the last five years and U.S. smelters are generally competitive, the global imbalance in supply and demand has resulted in distressed global prices for primary aluminum and rising imports into the United States. Without temporary relief, there will likely be no domestic primary aluminum industry standing within a short period of time. Indeed, without provisional relief, a number of the idled facilities will almost certainly be permanently closed before relief can be provided at the end of this escape clause proceeding.

The domestic industry's capacity that will be operational by the end of June 2016 is less than 25 percent of the primary aluminum capacity that was operational in 2011. If currently idled capacity and that which will be idled at the end of June is permanently closed (a very real possibility without relief), domestic capacity will be reduced to less than 18.5 percent of the capacity that existed in 2011.

[1] This statement complies with the requirements of 19 C.F.R. § 206.2.

Effective temporary relief, including provisional relief, can save the two thirds of the existing capacity in the United States that is presently idled and keep the facility that is scheduled to be idled at the end of June operating.

The USW's members have suffered devastating losses since 2011. The union represents workers at smelters accounting for 75 to 83 percent of domestic capacity since 2011. There has never been an industry whose collapse has occurred so rapidly and where temporary relief has been so urgently needed. More than 6,500 workers have already lost their jobs or will lose their jobs by the end of June.

It is to save this important industry from elimination that the USW files this petition. The USW seeks a finding of critical circumstances and a recommendation to the President of provisional relief of an additional duty of 50 percentage points to be applied during the pendency of the remainder of the investigation and Presidential review. The petitioner similarly seeks a determination by the Commission of serious injury where imports are a substantial cause of that injury and a recommendation to the President of four years of relief with duty rates of 50 percent, 45 percent, 40 percent, and 35 percent.

In the case of both provisional and final phase relief, the USW proposes that duty liability be capped at a final price (import value plus duty) that would permit imports to enter at prices that allow domestic producers to obtain an adequate return on their sales. Those prices should be set based on product grade and on data regarding market pricing that permits sustainable domestic operations. If the information needed for a grade-by-grade cap is not available to the Commission by the time of its critical circumstances determination (from questionnaire responses if questionnaires are sent to domestic producers or from factual submissions from one or more of the three remaining domestic producers), then the USW requests for purposes of the

remedy to be proposed for the critical circumstances phase that the cap be set at the average customs value for all subject imports for the year 2011 by HTS category (2011 being the last year when domestic producers were activating idled capacity and hence a rough proxy for a viable domestic price). Should the Commission determine from information received from the U.S. Customs and Border Protection that use of a cap is not practical for the administration of the safeguard measure, then the USW seeks a simple tariff both for the critical circumstances phase and for relief following an affirmative serious injury determination by the Commission.

The USW also seeks a recommendation from the Commission to the President that the United States negotiate with trading partners to address the global supply imbalance in primary aluminum. The massive excess capacity overhang that characterizes the world primary aluminum sector today prevents a proper functioning of markets and results in imports entering at extremely depressed prices. Indeed, the purpose of the tariff relief is to allow the domestic industry to survive long enough that it can benefit from Administration actions and actions of foreign governments and producers to address the massive excess global capacity that has depressed global aluminum prices to unsustainable levels. None of this supply imbalance is due to actions by U.S. producers. Indeed, U.S. producers have already permanently closed more than 40 percent of the industry's capacity that existed in 2011. Temporary relief is necessary to prevent the permanent loss of a competitive domestic industry while the global imbalance is addressed.

The crisis facing the primary aluminum industry and the USW's members is acute. The time remaining to save the industry is very short. Section 201 relief is the only remedy available to prevent the final and permanent elimination of this domestic industry.[2]

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[2] The Commission has recently instituted a Section 332 investigation on aluminum. The Commission expects to deliver the report resulting from this investigation in June of 2017. *See Aluminum:*

II. PRODUCT DESCRIPTION AND LIKE DOMESTIC ARTICLE[3]

The name of the imported article against which this petition is filed is primary unwrought aluminum. Primary unwrought aluminum is aluminum metal that has been produced by smelting alumina into unwrought aluminum.[4] This petition covers primary unwrought aluminum whether alloyed or unalloyed, regardless of alloying element, regardless of alloy source, and regardless of shape.

Primary unwrought aluminum is aluminum metal that is in liquid form or has been obtained by casting and has not yet been processed into finished customer-specific shapes, such as sheet or foil (*i.e.*, wrought aluminum).[5] Wrought aluminum may be produced through a variety of mill processes, including rolling, extruding, and forging.[6] Aluminum may also be further worked through subsequent re-casting into final machined form, which is distinct from the initial casting into unwrought form.[7] Additional U.S. Note 1 to Section XV of the HTSUS defines "unwrought" to refer to metal in a wide variety of manufactured primary forms, but states that the term "does not cover rolled, forged, drawn or extruded products, tubular products or cast or sintered forms which have been machined or processed otherwise than by simple trimming, scalping or descaling."[8] Customs has ruled that unwrought aluminum includes any

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Competitive Conditions Affecting the U.S. Industry Institution of Investigation and Scheduling of Hearing, 81 Fed. Reg. 21,591 (USITC April 12, 2016).

[3] This section satisfies the requirements of 19 C.F.R. § 206.14(a).

[4] *See* U.S. International Trade Commission, *Unwrought Aluminum: Industry and Trade Summary*, Office of Industries, Pub. ITS-06 (Mar. 2010) (hereinafter "*Unwrought Aluminum ITS*") at 4.

[5] *See id.*

[6] *See id.*

[7] *See* **Exhibit 1, Tab 1**.

[8] Relevant excerpts from the current edition of the U.S. Harmonized Tariff Schedule are attached at **Exhibit 2**. Customs has found that hollow billets in a tubular shape were properly classified as unwrought because they were manufactured by casting and not further machined or processed beyond trimming and cutting to length. *See* Customs Ruling HQ H021135 (April 16, 2009), attached at **Exhibit 3**.

aluminum that "has not been worked into a finished condition and which may be for use in a manufacturing process."[9] Primary unwrought aluminum may be available in a wide variety of shapes, including, but not limited to, billets, hollow billets, ingots, sows, and tees.[10] Descriptions of the casting of unwrought aluminum and further working of wrought aluminum and examples of primary unwrought aluminum products are attached at **Exhibit 1, Tabs 1 & 2.**[11] Additional information on grades of primary unwrought aluminum is attached at **Exhibit 4.**

There are two forms of unwrought aluminum: (1) primary unwrought aluminum, obtained by smelting alumina; and (2) secondary or recycled unwrought aluminum, obtained by melting scrap.[12] This petition does not cover imports of secondary or recycled unwrought aluminum, though it does cover imports of primary unwrought aluminum that may have had some amount of scrap added in the liquid state to create an alloy.

Once molten aluminum is produced through the smelting of alumina, it may be blended with alloying elements in holding furnaces.[13] Individual alloying elements may be added to the blend, and, in some cases, some amount of melted aluminum scrap may be added to achieve the desired alloy content.[14] The resulting molten blend is then cast at the smelter's on-site casting house or transported a short distance to be cast at neighboring casting houses. All unwrought product produced from primary smelted aluminum is covered by this petition, regardless of the alloy content, type of alloy, or source of alloying elements that have been added.

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[9] Customs Ruling HQ H021135 (April 16, 2009), attached at **Exhibit 3.**

[10] *See Unwrought Aluminum ITS* at 4. *See also* **Exhibit 1, Tab 2.**

[11] Additional information regarding the production process for primary unwrought aluminum is contained in **Exhibit 4, Tab 1.**

[12] *Unwrought Aluminum ITS* at 4.

[13] *See* U.S. International Trade Commission, *Industry & Trade Summary: Aluminum*, USITC Pub. 2706 (April 1994) at 3.

[14] *Id.* at 3-4.

For customs purposes, primary unwrought aluminum is classified in the four-digit HTSUS heading 7601.[15] The heading covers all unwrought aluminum, both primary and secondary, though two ten-digit statistical breakouts appear to solely or primarily cover secondary, as opposed to primary, unwrought aluminum:[16]

- 7601.20.90.60 covers "Unwrought aluminum, aluminum alloys, other, other, other, other, containing 0.03 percent or more by weight of lead (secondary aluminum)"; and
- 7601.20.90.75 covers "Unwrought aluminum, aluminum alloys, other, other, other, other, other, remelt scrap ingot."

Imports under each of the other ten-digit statistical breakouts within heading 7601 appear to consist primarily if not exclusively of primary unwrought aluminum. As explained in more detail in **Exhibit 5**, the eight countries that account for about 94 percent of U.S. imports in these categories primarily produce primary, not secondary, aluminum, and key exporters all appear to solely produce primary aluminum. The covered ten-digit statistical breakouts within heading 7601 are: 7601.10.30.00, 7601.10.60.00, 7601.20.30.00, 7601.20.60.00, 7601.20.90.30, 7601.20.90.45, and 7601.20.90.90.[17] The current general rate of duty for imports of primary unwrought aluminum under 7601.10.30.00 and 7601.20.30.00 is 2.6 percent, for imports under 7601.20.60.00 it is 2.1 percent, and for imports under the remaining four ten-digit categories it is duty-free.[18]

The like or directly competitive domestic article in this investigation is primary unwrought aluminum, the same article as covered imports. In prior investigations, the

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[15] Relevant excerpts from the current edition of the U.S. Harmonized Tariff Schedule are attached at **Exhibit 2**.

[16] *See id.*

[17] *See id.* The import data used throughout this petition consists of imports in these seven ten-digit categories, unless otherwise noted.

[18] *See id.*

Commission has determined that when it is able to identify a domestic article that is "like" the imported article, it is not required to look further for an industry producing articles that are directly competitive with, but not like, the imported article.[19] Thus, the domestic industry should be defined as the producers as a whole of primary unwrought aluminum in the United States.[20]

When determining what constitutes the like domestic article in safeguard investigations, the Commission has traditionally taken into account such factors as the product's physical characteristics, its customs treatment, the manufacturing process (*i.e.*, where and how it is made), the product's uses, and the marketing channels through which the product is sold.[21] Among these factors, the Commission has noted that "the sharing of productive processes and facilities is a fundamental concern in defining the scope of the domestic industry."[22] The starting point for the Commission's analysis is the imported product included in the investigation.[23]

In this case, primary unwrought aluminum is the domestic article that is like imported primary unwrought aluminum. While primary unwrought aluminum may be produced with or without alloys and in an array of different shapes, there are no clear dividing lines in terms of physical characteristics. All primary unwrought aluminum is imported under heading 7601 of the HTSUS. All primary unwrought aluminum is produced in the same facilities and by the same employees through the same basic process of smelting alumina. While there are an array of uses for primary unwrought aluminum in the transportation, construction, packaging, and other sectors, there are no clear dividing lines between the primary unwrought aluminum used in

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[19] *See, e.g.,* U.S. International Trade Commission, *Steel*, Inv. No. TA-201-73, USITC Pub. 3479 (Dec. 2001) (hereinafter "*Steel 201*") at 45 n.139.

[20] *See* 19 U.S.C. § 2252(c)(6)(A)(i).

[21] *See, e.g., Steel 201* at 30.

[22] *Id.*

[23] *See id.* at 31.

different end uses. Finally, all types of primary unwrought aluminum are sold through the same marketing channels, and either consumed internally by integrated producers or sold to outside processors for further working into wrought aluminum.

The Commission should not expand the like product in this case to include secondary or recycled unwrought aluminum. Though the Commission applies a slightly different set of domestic like product factors in Title VII cases, the Commission has previously found that secondary unwrought aluminum and primary unwrought aluminum are separate like products in an antidumping investigation on secondary unwrought aluminum, and that finding is instructive in this case. In that case, the Commission found that primary and secondary aluminum differ in composition, use, and price.[24] The Commission noted that primary aluminum has a high degree of purity compared to secondary aluminum.[25] The staff report explained that primary unwrought aluminum alloys were usually "specialty" alloys that cannot be easily obtained from scrap alone and are used in applications for which secondary aluminum would be unsuitable.[26] The Commission also found that primary aluminum is more expensive than secondary aluminum because its production is more energy- and capital-intensive.[27]

The same differences persist today. First, with regard to physical characteristics, primary unwrought aluminum can be produced at higher degrees of purity because it is produced directly from alumina, with the ability to add precise amounts of alloys as needed, while secondary unwrought aluminum is produced from scrap that already contains varying amounts of alloys. As noted above, in some cases some amount of melted scrap may be added to primary

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[24] *See* U.S. International Trade Commission, *Secondary Unwrought Aluminum Alloy from the United Kingdom*, Inv. No. 731-TA-40, USITC Pub. 1143 (May 1981) at 4.

[25] *See id.*

[26] *See id.* at A-2 – A-4.

[27] *See id.* at 4.

unwrought aluminum in molten form, and the resulting product is still primary unwrought aluminum. This is distinct from secondary unwrought aluminum produced solely from scrap. According to one study, there are significant challenges in producing unwrought aluminum solely from scrap at acceptable purity levels for products other than castings, such as sheet, plate, forgings, and extrusions.[28] The differences in physical characteristics between primary unwrought aluminum and secondary unwrought aluminum lead to additional differences in end uses:

> Many premium alloys utilized today, especially in the aerospace industry where requirements for exceptionally high ductility and toughness are common, call for very tight composition controls on both iron (Fe) and Si { silicon }. Impurity levels above 0.10-0.15% Fe or 0.15-0.25% Si are unacceptable, for example, in premium high toughness aerospace alloys. High performance automotive alloys generally restrict both Si and Fe to 0.40% maximum. Both of these elements (Fe and Si) are difficult to control in recycled metal, and tend to increase modestly the more often the metal has been recycled.[29]

The Commission's most recent Industry and Trade Summary on unwrought aluminum similarly explains that primary unwrought aluminum can be used in a wide range of semi-fabricated products, such as sheet, plate, and wire, that can then be fabricated into a wide range of finished products for an array of industries, including the automotive, construction, and packaging industries.[30] Secondary unwrought aluminum, by contrast, is generally used in only three specific end uses: castings for the automotive industry, rolling ingot for beverage cans, and common alloy sheet for the construction market.[31] The Commission's report further notes that

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[28] *See* Subodh K. Das, "Emerging Trends in Aluminum Recycling: Reasons and Responses," LIGHT METALS 2006 (2006) at 912, attached at **Exhibit 6**.

[29] *Id.*

[30] *Unwrought Aluminum ITS* at 12-13.

[31] *See id.* at 13.

secondary unwrought aluminum's metallurgical properties make it unsuitable for certain end uses served by some forms of primary unwrought aluminum, including aerospace and automotive wheels.[32]

In addition to differences in physical characteristics and end uses, there are also significant differences between primary unwrought aluminum and secondary unwrought aluminum in terms of the manufacturing process through which they are made and the manufacturing facilities that produce the two products. As noted above, the sharing of productive processes and facilities is a fundamental concern in the Commission's like product determination in safeguard cases. The manufacturing processes through which primary unwrought aluminum and secondary unwrought aluminum are made are fundamentally different. Primary aluminum is made by smelting alumina at smelters in a highly energy-intensive process.[33] Secondary unwrought aluminum relies on a feedstock of new and old scrap, and it is made by re-melting that scrap in a relatively less energy-intensive process.[34] If small amounts of melted scrap are added in the process of producing primary unwrought aluminum, it is done at the smelting facility in holding furnaces, and the resulting product is primary unwrought aluminum.

The differences in the production process result in the two products being made in large part at different facilities by different employees. Many primary aluminum smelters are operated by large, globalized, highly integrated producers that also produce upstream alumina as well as downstream wrought products.[35] To the extent these companies also produce some secondary

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[32] *Id.* at 15.

[33] *Id.* at 5.

[34] *Id.*

[35] *Id.* at 5-6.

unwrought aluminum or incorporate some melted scrap into their primary unwrought aluminum, such production is limited.[36] There is a small number of primary aluminum smelters in the United States, and they are mostly located close to lower-cost sources of electricity.[37] The secondary aluminum industry is much more fragmented, with dozens of companies that serve as scrap processors and producers of secondary ingot.[38] In 2015, for example, there were only three companies producing primary unwrought aluminum at eight smelters in the United States.[39] According to one source, secondary aluminum was produced at about 500 different facilities across the United States in 2015.[40]

In terms of customs treatment, while both primary and secondary unwrought aluminum are classified under HTSUS heading 7601, there appear to be two ten-digit categories dedicated solely to secondary unwrought aluminum, as discussed above. As explained above and in **Exhibit 5**, all or virtually all of the imports in the remaining ten-digit categories within HTSUS heading 7601 appear to be primary, not secondary, unwrought aluminum.

For all of these reasons, the Commission should determine that the domestic article which is "like" imported primary unwrought aluminum is primary unwrought aluminum produced in the United States, and it should define the domestic industry as the producers as a whole of primary unwrought aluminum in the United States.

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[36] *Id.* at 6.

[37] *Id.* at 6-9.

[38] *Id.* at 8.

[39] U.S. Geological Survey, *Mineral Commodity Summary – Aluminum*, (Jan. 2016), attached at **Exhibit 7**.

[40] "Secondary Producers," Light Metal Age, attached at **Exhibit 8**.

III. PETITIONER'S REPRESENTATIVENESS[41]

The names and locations of all U.S. producers of primary unwrought aluminum from 2011 through 2015 known to the petitioner are below. Addresses for each company and location are provided in **Exhibit 9**. For each location, we also provide information regarding whether the USW represents the facility in question, and the facility's capacity in each year of the period.

Domestic Primary Unwrought Aluminum Producers, 2011-2015[42]

Company	Plant	USW	Yearend Capacity (thousand MT)				
			2011	2012	2013	2014	2015
Alcoa	Alcoa, TN	Y	*215*	0	0	0	0
Alcoa	Ferndale, WA	N	279	279	279	279	279
Alcoa	Massena East, NY	Y	125	125	84	0	0
Alcoa	Massena West, NY	Y	130	130	130	130	130
Alcoa	Rockdale, TX	Y	*267*	*191*	*191*	*191*	*191*
Alcoa	Evansville, IN	Y	269	269	269	269	269
Alcoa	Wenatchee, WA	Y	184	184	184	184	184
Century Aluminum	Hawesville, KY	Y	244	252	252	252	252
Century Aluminum	Mt. Holly, SC	N	229	229	229	229	229
Century Aluminum	Ravenswood, WV	Y	*170*	*170*	*170*	*170*	0
Century Aluminum	Sebree, KY	Y	196	196	205	205	205
Columbia Falls Aluminum Co.	Columbia Falls, MT	Y	*168*	*168*	*168*	*168*	0
Niagara Worldwide	Hannibal, OH	Y	271	271	*271*	0	0
Noranda Aluminum Holding Corp.	New Madrid, MO	Y	263	263	263	263	263
		Total Capacity	3,010	2,727	2,695	2,340	2,002
		USW	2,502	2,219	2,187	1,832	1,494
		USW %	83.12%	81.37%	81.15%	78.29%	74.63%

The USW has represented three-quarters or more of the domestic capacity to produce primary unwrought aluminum in each year of the period from 2011 through 2015.[43] The USW is

[41] This section satisfies the requirements of 19 C.F.R. § 206.14(b).

[42] U.S. Geological Survey *Minerals Yearbooks* and *Mineral Industry Surveys* for aluminum, attached at **Exhibit 10**. Plants with capacity figures in italics were reported as idled at the end of the year. Mt. Holly was a joint venture between Alcoa and Century until 2013 when it became wholly-owned by Century. Sebree was owned by Rio Tinto Alcan in 2012 before being sold to Century.

thus a certified or recognized union that is representative of the domestic industry producing primary unwrought aluminum.[44]

IV. THE GLOBAL MARKET FOR PRIMARY ALUMINUM

An important condition of competition in the market for primary aluminum is the fact that primary aluminum is a globally traded commodity. The price of primary aluminum, like many globally traded commodities, is based on a commodities exchange. As explained in Section VI.A.2, below, the London Metals Exchange ("LME") is the globally accepted commodity futures trading market for aluminum, and the prices published by the exchange form a large part of the basis of primary aluminum prices around the world. The LME price reflects global supply and demand conditions for primary aluminum.

As discussed in Section VI.A.2, LME prices, and thus global prices, declined dramatically in the period from 2011 to 2015. This reflects the fact that global supply and demand were severely and increasingly out of balance during the period. As explained in more detail in **Exhibit 11**, the principal reason for this growing global imbalance is large and growing overcapacity in China. China is a not a significant exporter of primary aluminum, because it imposes an export tax on primary aluminum to ensure low-priced supplies for downstream mills within China. But the massive overcapacity in China relative to global demand has been the driving factor in plummeting global prices for primary aluminum.

Imports of primary aluminum from other countries, which are traded at prices that reflect this global supply/demand imbalance, serve as the transmission mechanism for introducing these global prices into the United States market. The Commission has recognized that increased

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[43] The Commission's regulations request the percentage of domestic production represented by the petitioner. 19 C.F.R. § 206.14(b)(2). As facility-specific production numbers are not publicly available, we use public capacity numbers as a proxy.

[44] *See* 19 U.S.C. § 2252(a)(1) and 19 C.F.R. § 206.13.

imports can serve as such a transmission mechanism in an environment of declining commodity prices in prior safeguard investigations, and reached affirmative determinations in such cases.

In its 1978 safeguard investigation on unalloyed unwrought copper, for example, the Commission determined as follows:

> These increased imports since 1975 have been at depressed world prices, which have prevented U.S. producers from achieving a price level necessary to achieve a satisfactory operating margin .... In 1974 ... the world price of copper, as reported on the London Metal Exchange, fell sharply and since that time, the world price has remained below U.S. producers' prices .... The continued importation of increasing supplies of copper from excess world stocks threatens the domestic industry with further serious injury.[45]

In the 1984 safeguard investigation on unwrought copper, the Commission noted that global prices for the commodity were an important condition of competition:

> Copper is a commodity which is freely traded in a transparent world market. World prices are established through buying and selling on two exchanges, the London Metal Exchange and the New York Commodity Exchange. The prices on these exchanges and the fluctuation in those prices are fundamentally determined by the relative levels of world supply and world demand. The current depressed state of the domestic copper industry reflects existing world market conditions, and, therefore, is predominantly due to the low level of world prices which are transmitted to the U.S. industry through imports .... Domestic producers who fail to meet the world price as adjusted for transportation and other costs cannot compete effectively with imports. World price is an exogenous factor under which all producers of commodity products must compete.[46]

The Commission also concluded that increased imports were a substantial cause of serious injury, explaining as follows:

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[45] U.S. International Trade Commission, *Unalloyed Unwrought Copper*, Inv. No. TA-201-32, USITC Pub. 905 (Aug. 1978) at 8.

[46] U.S. International Trade Commission, *Unwrought Copper*, Inv. No. TA-201-52, USITC Pub. 1549 (July 1984) at 6-7.

> In our view market pressures resulting from this relatively low world price have had a significant negative impact on the domestic copper industry's ability to compete with foreign copper producers. The world price, however, cannot be viewed as an isolated cause of injury existing independent of the overall world supply and demand picture as well as factors of comparative advantages. Indeed, '{s}uch a line of reasoning would result in the entire U.S. market being taken over by imports .... It must be clearly understood that imports are the vehicle by which the effects of low world prices are transmitted to the U.S. industry.'[47]

The market for primary aluminum is characterized by the exact same conditions of competition. Primary aluminum is a global commodity, and it is traded at world prices that reflect the global supply and demand balance. Those prices have declined precipitously as growing oversupply burdened the global market. It is increased imports that have transmitted those prices into the United States market and been a substantial cause of serious injury and the threat thereof.

V. PRIMARY UNWROUGHT ALUMINUM IS BEING IMPORTED IN INCREASED QUANTITIES[48]

A. Increased Import Quantities

The statute requires the Commission to determine whether primary unwrought aluminum is being imported into the United States at increased quantities.[49] The Commission may find that import quantities have increased either in actual terms or relative to domestic production.[50] Imports of primary unwrought aluminum have increased from 2011 to 2015 both in actual terms and relative to domestic production.

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[47] *Id.* at 13 (citing U.S. International Trade Commission, *Sugar*, Inv. No. TA-201-16, USITC Pub. 807 (1977) at 32-33).

[48] This section satisfies the requirements of 19 C.F.R. § 206.14(c) & (i).

[49] 19 U.S.C. § 2252(b)(1)(A).

[50] *See, e.g., Steel 201* at 27.

U.S. Production and Imports of Primary Unwrought Aluminum[51]
Thousand MT

	2011	2012	2013	2014	2015	11 to 15
Imports	2,828	2,903	3,134	3,304	3,383	+19.62%
Production	1,986	2,070	1,946	1,710	1,600	-19.44%
Ratio	142%	140%	161%	193%	211%	+69 ppt

In actual terms, imports of primary unwrought aluminum increased from 2,828 MT in 2011 to 3,383 MT in 2015, an absolute increase of 555 thousand MT, or 19.62 percent. Imports increased steadily in every year of the period, and peaked in 2015.

Relative to domestic production, the ratio of imports to domestic production increased from 142 percent in 2011 to 211 percent in 2015, an increase of 69 percentage points. While the ratio of imports to domestic production fell slightly in 2012 as production temporarily increased, the ratio increased in every subsequent year of the period and peaked in 2015.

Thus, by any measure, primary unwrought aluminum is being imported into the United States in increased quantities.[52]

B. Imports from NAFTA Countries

The statute requires the Commission to determine whether imports from a NAFTA country (Canada and Mexico), considered individually: (1) account for a significant share of total imports; and (2) contribute importantly to the serious injury, or threat thereof, caused by

[51] Production data is from U.S. Geological Survey, *Mineral Commodity Summary – Aluminum* (Jan. 2016), attached at **Exhibit 7**. Imports are imports for consumption under HTSUS 7601.10.30.00, 7601.10.60.00, 7601.20.30.00, 7601.20.60.00, 7601.20.90.30, 7601.20.90.45, and 7601.20.90.90. Import data by country is attached at **Exhibit 12**. Imports are likely understated, as China has reportedly exported primary aluminum misclassified as processed aluminum to avoid Chinese export taxes on primary aluminum. *See* Christopher Clemence, "Illicit Trade in China's Semis is a Full-Blown Problem," *Aluminum Insider* (Dec. 16, 2015), attached at **Exhibit 13**.

[52] We note the Commission has previously found that an absolute increase in imports of as little as 13.7 percent and an increase in the ratio of imports to domestic production of as little as 0.5 percentage points support an affirmative increased imports determination. *See, e.g., Steel 201* at 49-50.

imports.[53] With regard to the first factor, such imports "normally" shall not be considered to account for a substantial share if the NAFTA country concerned is not among the top five suppliers in terms of import share during the most recent three-year period.[54] With regard to the second factor, the Commission is directed to consider the change in import share of the NAFTA country, and will "normally" make a negative finding if the growth rate of imports from the NAFTA country is "appreciably lower" than the growth rate of imports from all other sources.[55]

As demonstrated below, Canada accounts for a significant share of total imports, and the growth rate of imports from Canada is not appreciably lower than the growth rate of imports from all other sources, demonstrating that imports from Canada have contributed importantly to the serious injury suffered by the domestic industry and the further threat of serious injury caused by imports.

Imports of Primary Unwrought Aluminum from Canada and the World[56]
Thousand MT

	2011	**2012**	**2013**	**2014**	**2015**	**11 to 15**
Canada	1,884	1,912	2,266	2,212	2,230	18.40%
Rest of World	944	990	868	1,093	1,152	22.05%
Total	2,828	2,903	3,134	3,304	3,383	19.62%
Canada %	66.61%	65.88%	72.32%	66.94%	65.93%	

Canada was the number one source of imports of primary unwrought aluminum in each year of the period. In the most recent three-year period, imports from Canada accounted for over 65 percent of all imports from the world. Canada therefore easily satisfies the criterion of accounting for a significant share of subject imports.

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[53] 19 U.S.C. § 3371(a).

[54] 19 U.S.C. § 3371(b)(2).

[55] 19 U.S.C. § 3371(b)(2).

[56] Imports are imports for consumption under HTSUS 7601.10.30.00, 7601.10.60.00, 7601.20.30.00, 7601.20.60.00, 7601.20.90.30, 7601.20.90.45, and 7601.20.90.90. Import data by country is attached at **Exhibit 12**.

The growth rate of imports from Canada is also very similar to the growth rate of imports from other countries. While imports from Canada rose by 18.40 percent from 2011 to 2015, imports from all other sources increased by 22.05 percent, a difference of less than four percentage points. In addition, because Canada is the predominant supplier of imports, it accounted for the majority of the absolute growth in import volume over the period. From 2011 to 2015, imports from Canada increased by 347 thousand MT, while imports from the rest of the world increased by 208 thousand MT. Thus, for every additional metric ton imported from the rest of the world, the U.S. imported 1.67 additional metric tons from Canada. As a result, Canada accounted for 62.48 percent of the increase in import volume from 2011 to 2015.

Another factor the Commission has considered in determining whether imports from a NAFTA country have contributed importantly to serious injury is the unit value of those imports compared to imports from the rest of the world.[57] Where average unit values for imports from the NAFTA country are lower than average unit values for the rest of the world, and the statutory standard regarding the rate of increase is met, the Commission has found that such imports contribute importantly to serious injury.[58] That factor is also met in this case.

[57] *See, e.g., Steel 201* at 66-67.

[58] *See id.*

Average Unit Values of Imports from Canada and the World[59]
Landed-Duty Paid Value/MT

	2011	2012	2013	2014	2015	11 to 15
Canada	$2,634.77	$2,311.40	$2,171.50	$2,323.07	$2,109.62	-19.93%
Rest of World	$2,662.71	$2,496.06	$2,360.19	$2,386.77	$2,369.64	-11.01%
Difference	$(27.95)	$(184.66)	$(188.69)	$(63.70)	$(260.02)	

Average unit values for imports from Canada have been consistently lower than average unit values for imports from the rest of the world throughout the period. In addition, average unit values for imports from Canada have decreased more rapidly than average unit values for imports from the rest of the world – while average unit values for imports from Canada fell by 19.93 percent from 2011 to 2015, average unit values for imports from the rest of the world fell by 11.01 percent. As a result, while imports from Canada entered at average unit values that were $27.95/MT lower than imports from the rest of the world in 2011, by 2015 the differential had increased nearly ten-fold to $260.02/MT.

For all of these reasons, the Commission should find that imports from Canada account for a substantial share of total imports and contribute importantly to serious injury and the threat thereof.[60]

[59] Imports are imports for consumption under HTSUS 7601.10.30.00, 7601.10.60.00, 7601.20.30.00, 7601.20.60.00, 7601.20.90.30, 7601.20.90.45, and 7601.20.90.90. Import data by country is attached at **Exhibit 12**.

[60] Petitioner does not contend that imports from Mexico account for a substantial share of total imports, as they accounted for less than one percent of the volume of imports in most years of the period and were not among the top five import sources in the most recent three years. *See* **Exhibit 12**. Petitioner also does not contest the exclusion of imports from other FTA partner countries for which the Commission is required to make an individual determination. We note, however, that the U.S.-Bahrain FTA does not require such an individual determination, and thus there are no grounds for excluding Bahrain from covered imports. *See* Excerpt from U.S.-Bahrain FTA, attached at **Exhibit 14**. An analysis of imports from other FTA partners and developing countries is attached at **Exhibit 15**. Even if certain countries are excluded from the import data, the trend of increasing imports over the period remains virtually unchanged.

VI. THE DOMESTIC INDUSTRY IS SUFFERING SERIOUS INJURY AND IS THREATENED WITH FURTHER SERIOUS INJURY[61]

The U.S. safeguard statute provides that the Commission shall "determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article."[62] The statute defines the term "serious injury" to mean "a significant overall impairment in the position of a domestic industry."[63] The statute defines the term "threat of serious injury" to mean "serious injury that is clearly imminent."[64]

The statute identifies a list of certain relevant (but not exclusive) economic factors which the Commission must take into consideration when determining whether serious injury or the threat of serious injury exists. The legislative history notes that the identified "factors are not intended to be exclusive. It is important to note that the Commission is directed to take into account all economic factors it considers relevant."[65]

The "serious injury" factors are:

> (A) with respect to serious injury—
> (i) the significant idling of productive facilities in the domestic industry,
> (ii) the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and
> (iii) significant unemployment or underemployment within the domestic industry.[66]

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[61] This section satisfies the requirements of 19 C.F.R. § 206.14(d) & (e).

[62] 19 U.S.C. § 2252(b)(1)(A).

[63] 19 U.S.C. § 2252(c)(6)(C).

[64] 19 U.S.C. § 2252(c)(6)(D).

[65] S. Rep. No. 93-1298, at 121 (1974).

[66] 19 U.S.C. § 2252(c)(1)(A).

The statute also states that "the term 'significant idling of productive facilities' includes the closing of plants or the underutilization of production capacity."[67]

In a similar fashion, the statute identifies certain relevant non-exclusive economic factors which the Commission must take into consideration when determining whether threat of serious injury exists. These factors are:[68]

> (B) with respect to threat of serious injury—
> (i) a decline in sales or market share,[69] a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, productivity, or employment (or increasing underemployment) in the domestic industry,
> (ii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditures for research and development,[70]
> (iii) the extent to which the United States market is the focal point for the diversion of exports of the article concerned by reason of restraints on exports of such article to, or on imports of such article into, third country markets.[71]

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[67] 19 U.S.C. § 2252(c)(6)(B).

[68] 19 U.S.C. § 2252(c)(1)(B). With respect to the "threat of serious injury" factors, the legislative history notes:

> The existence of any of these factors such as the growth in inventory would not in itself be relevant to the threat of injury from imports if it resulted from conditions unrelated to imports. Such conditions could arise from a variety of other causes, such as changes in technology or in consumer tastes, domestic competition from substitute products, plant obsolescence, or poor management. It is the intention of the Committee that the threat of serious injury exists when serious injury, although not yet existing, is clearly imminent if imports trends continued unabated.

S. Rep. No. 93-1298, at 121 (1974).

[69] "A decline in market share is relevant because it signals that the domestic industry's market position relative to foreign competitors is deteriorating." S. Rep. No. 100-71, at 50 (1987).

[70] "The maintenance of research and development activities are, for many industries, crucial for future business operations and profitability." S. Rep. No. 100-71, at 50 (1987).

[71] "Diversion of foreign exports to the U.S. market implies that there is greater supply in the U.S. market, and therefore increased pressure on United States producers, than would occur in the absence of such diversion." S. Rep. No. 100-71, at 50 (1987).

In determining whether serious injury or threat of serious injury to the domestic industry exists, the Commission must "consider the condition of the domestic industry over the course of the relevant business cycle."[72] The statute further provides that "the presence or absence of any factor which the Commission is required to evaluate ... is not necessarily dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry."[73] In assessing whether serious injury or the threat of serious injury is present, the Commission's practice has been to examine record facts regarding the relevant factors and to reach its conclusion on the totality of those facts.[74]

A. Serious Injury

All of the factors the Commission considers in assessing serious injury – capacity reductions and idling of capacity, price trends, profitability, and employment – support an affirmative determination that the domestic primary unwrought aluminum industry has suffered serious injury over the period.

1. Shipments, Market Share, Production, and Capacity Utilization

As imports of primary unwrought aluminum increased over the period, they seized shipments and market share from domestic producers.

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[72] 19 U.S.C. § 2252(c)(2)(A).

[73] 19 U.S.C. § 2252(c)(3).

[74] *See, e.g., Steel 201* at 281 (Separate Views on Injury of Commissioner Lynn M. Bragg) ("The Commission has developed no set formula for determining whether an industry is seriously injured or threatened with serious injury, but instead has examined the relevant facts in the record of each investigation and made its determination on the basis of the totality of these facts.").

Apparent Consumption and Market Share[75]
Thousand MT

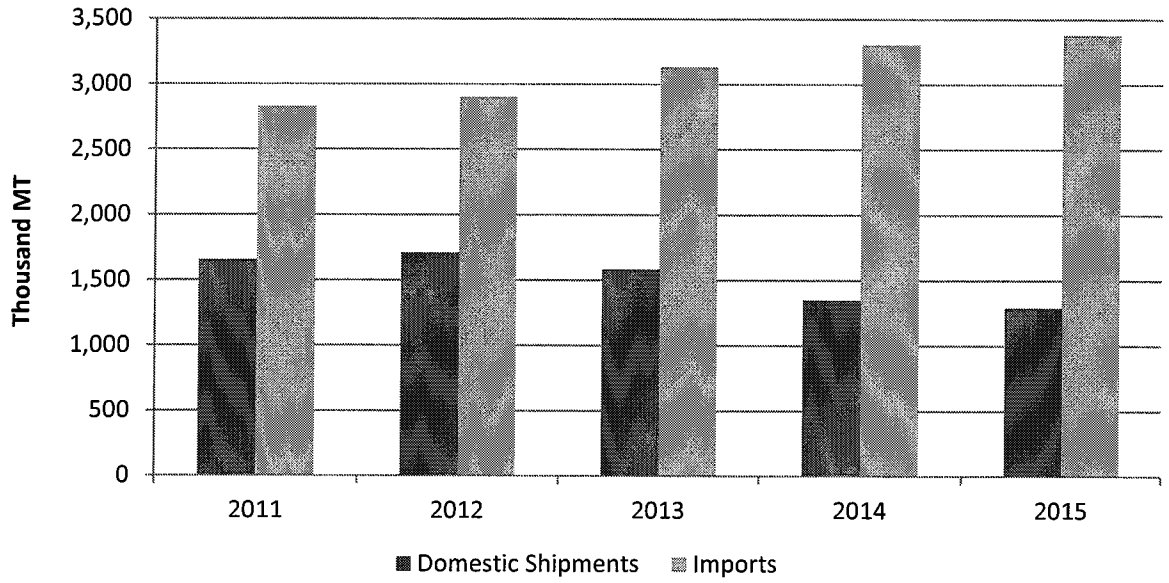
	2011	2012	2013	2014	2015	11 to 15
Domestic production	1,986	2,070	1,946	1,710	1,600	-19.44%
Domestic exports	332	360	363	360	310	-6.60%
Domestic shipments	1,654	1,710	1,583	1,350	1,290	-22.01%
Imports	2,828	2,903	3,134	3,304	3,383	19.62%
Apparent consumption	4,482	4,613	4,717	4,655	4,673	4.25%
Domestic market share	36.90%	37.07%	33.56%	29.01%	27.61%	
Import market share	63.10%	62.93%	66.44%	70.99%	72.39%	

While apparent consumption rose by 191 thousand MT, or 4.25 percent, from 2011 to 2015, imports rose more than four-and-a-half times more quickly than demand. Imports rose by 555 thousand MT, or 19.62 percent from 2011 to 2015. These rapidly rising imports displaced large volumes of domestic shipments, driving them down by 364 thousand MT, or 22.01 percent, in a growing market. As a result, imports were able to increase their market share by 9.3 percentage points at the direct expense of domestic producers, who lost 9.3 percentage points of market share.

As imports increased, seized all of the growth in demand and more, and drove domestic shipments out of the market, domestic producers were forced to dramatically cut production. From 2011 to 2015, domestic producers cut their annual production by 386 thousand MT, or 19.44 percent.

[75] Production data is from U.S. Geological Survey, *Mineral Commodity Summary – Aluminum* (Jan. 2016), attached at **Exhibit 7**. Exports are domestic exports of unwrought aluminum except for known categories of secondary aluminum, attached at **Exhibit 16**. Domestic shipments are production minus exports. Imports are imports for consumption under HTSUS 7601.10.30.00, 7601.10.60.00, 7601.20.30.00, 7601.20.60.00, 7601.20.90.30, 7601.20.90.45, and 7601.20.90.90. Import data by country is attached at **Exhibit 12**. Apparent consumption is domestic shipments plus exports.

Imports and Domestic Shipments[76]



Thus, domestic producers were not only blocked from participating in demand growth, they were forced to make significant reductions in shipments and production as imports increased. As import volume peaked in 2015, domestic shipments and production fell to their lowest level of the period.

If capacity had been held steady, these sharp declines in production over the period also would have driven down the domestic industry's capacity utilization. The only reason that the rate of capacity utilization did not decline is that the domestic industry instead slashed its primary aluminum capacity over the period. In a highly capital-intensive industry, maximizing capacity utilization is essential to spreading fixed costs and remaining financially viable. In the face of steadily rising imports, increasing production to meet this goal was not possible for the domestic industry. Instead, they shed capacity at a rapid rate, losing more than a third of their

[76] Shipment data is derived from the preceding table. Imports are imports for consumption under HTSUS 7601.10.30.00, 7601.10.60.00, 7601.20.30.00, 7601.20.60.00, 7601.20.90.30, 7601.20.90.45, and 7601.20.90.90. Import data by country is attached at **Exhibit 12**.

domestic capacity from 2011 to 2015. As explained in more detail in Section VI.A.4, below, the significant impairment of domestic capacity is another strong indicator of serious injury.

2. Price Trends

As import volumes increased and seized market share from domestic producers, average import unit values also declined dramatically. Primary aluminum is a globally traded commodity made to uniform specifications and through the same basic processes throughout the world. The price of primary aluminum, like many globally traded commodities, is based on a commodities exchange.[77] The London Metals Exchange ("LME") is the globally accepted commodity futures trading market for aluminum, and the prices published by the exchange form a large part of the basis of primary aluminum prices around the world, with regional mark-ups to reflect regional conditions such as delivery terms and costs, etc.[78] Thus, both import prices and domestic prices move in tandem as they are both influenced by the global LME price and regional mark-ups in the U.S. market.

Prices declined dramatically during the period. From January 2011 to December 2015, the average monthly import unit value fell from $2,586/MT to $1,852/MT, a decline of 27.73 percent. Prices declined steadily from mid-2011 through March of 2014. While import average unit values began to increase from March of 2014 to December of 2014, this was due to stockpiling in LME warehouses and uncertainty regarding potential rule changes being proposed by the exchange.[79] As soon as LME rules were changed to require warehouses to destock inventories, prices quickly shifted to reflect market fundamentals of supply and demand, and

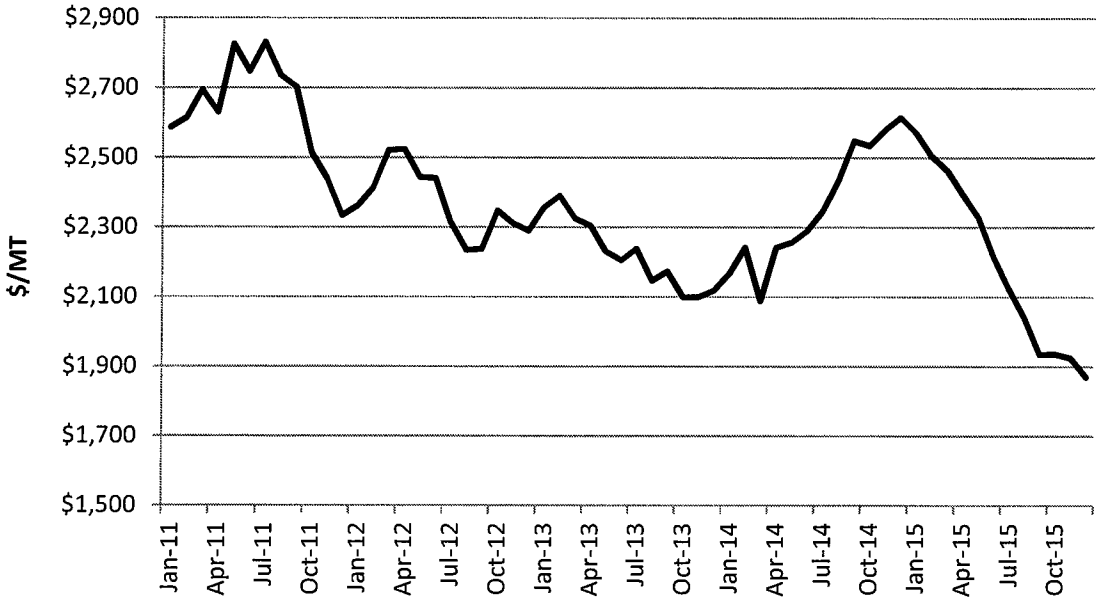
[77] *See* London Metal Exchange webpage, available at https://www.lme.com/, excerpts attached at **Exhibit 17**.

[78] *See* "The Price of US Aluminum," Platts, available at http://www.platts.com/price-assessments/metals/aluminum-transaction, excerpts attached at **Exhibit 18**.

[79] "US Midwest Premiums May Continue Descent," *Metal Bulletin* (April 24, 2015), attached at **Exhibit 19**.

prices fell precipitously. The decline in 2015 thus resumed the decline that had been seen in prior periods.

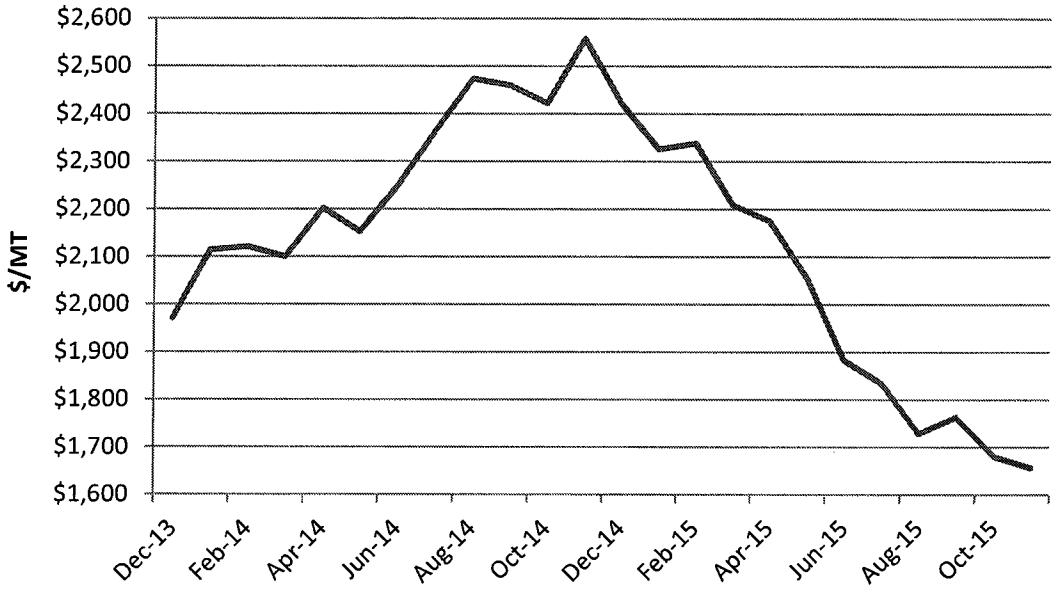
Monthly Import AUVs[80]
$/MT



The same price trends are apparent in domestic market prices, which include domestic and imported primary aluminum, based on publicly available delivered Midwest monthly price data (the monthly data is only publicly available for December 2013 through December 2015). Prices peaked in November of 2014, and then fell precipitously, dropping below December 2013 prices by June of 2015 and falling a full 33.7 percent by December of 2015.

[80] Imports are imports for consumption under HTSUS 7601.10.30.00, 7601.10.60.00, 7601.20.30.00, 7601.20.60.00, 7601.20.90.30, 7601.20.90.45, and 7601.20.90.90. Average unit values are landed-duty paid divided by quantity, and are attached at **Exhibit 20**.

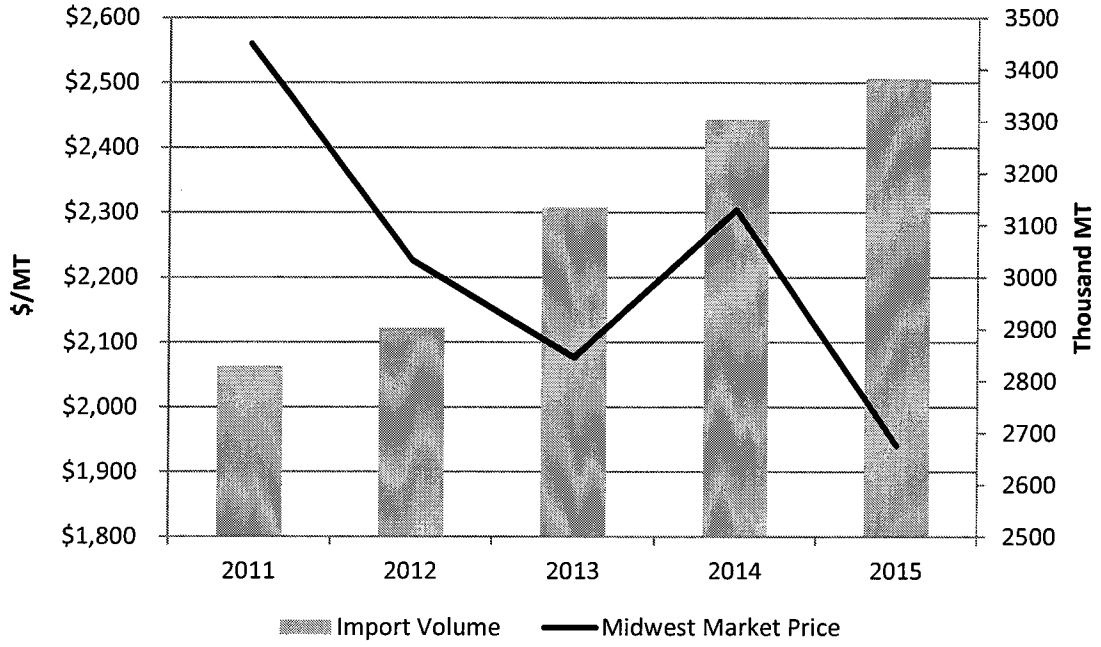
Midwest U.S. Market Price[81]



Thus, as import volumes increased throughout the period, import prices and domestic prices fell steadily with the sole exception of the temporary price spike in 2014 caused by issues with the LME pricing system. Imports increased by 19.62 percent from 2011 to 2015 and peaked in 2015. At the same time, market prices fell by 24.2 percent from 2011 to 2015, reaching their lowest level of the period in 2015 when imports peaked.

[81] Monthly Midwest market prices, attached at **Exhibit 27**.

Import Volumes and Market Prices[82]



Together with rising import volumes, falling import prices caused serious injury to the domestic industry. As explained in more detail below, the rapidly falling prices made it impossible for the industry to generate a reasonable level of profit from their domestic production operations.

3. Inability to Generate a Reasonable Level of Profit

There is no publicly available information regarding the profitability of U.S. primary aluminum producers as a whole over the period, because a number of producers report their results in segments that include non-U.S. operations or products other than primary aluminum. However, the information that is available shows that the domestic industry generated inadequate profits to maintain operations over the period, and that its profit level declined sharply as imports increased and prices dropped.

[82] Import volumes are attached at **Exhibit 12**. Annual Midwest market prices are attached at **Exhibit 10**.

Two domestic producers have declared Chapter 11 bankruptcy since 2011, evidencing their inability to generate a level of profit sufficient to maintain operations.

In 2013, Ormet Corporation, which operated the smelter in Hannibal, Ohio, declared bankruptcy. In its bankruptcy filing, Ormet cited the decline in prices since 2011, the inability of the company to lock in prices at sustainable levels, and the resulting low level of the company's sales revenues.[83] The company noted that every $100 decline in the price of primary aluminum in the open market had the potential to result in a revenue loss of $27 million.[84] As expenses continued to rise, the company was caught in a "perfect storm," requiring it to declare bankruptcy.[85]

In 2016, Noranda Aluminum Inc., which owns the smelter in New Madrid, Missouri, declared bankruptcy. In its bankruptcy filings, the company stated that the principal factor in the company's unsustainability was the "sustained and dramatic decline in the price of primary aluminum."[86] The company noted that the decline in prices was due in part to an "oversupply of aluminum in the market," and those price declines resulted in reduced margins for primary aluminum sales.[87] According to Noranda's financials (which are only available through the third quarter of 2015), the company's operating income and operating income margin fell sharply from 2011 to 2015, with only a fleeting improvement in 2014 as prices temporarily increased due to the LME issues discussed above.

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[83] Ormet Bankruptcy Declaration at ¶¶ 7 & 20, attached at **Exhibit 21**.

[84] *Id.* at ¶ 42

[85] *Id.* at ¶ 43.

[86] Noranda Bankruptcy Declaration at ¶ 29, attached at **Exhibit 22**.

[87] *Id.* at ¶ 30.

Noranda's Operations on Primary Aluminum[88]
US $M

	2011	2012	2013	2014	2015 3Q
Sales revenue	$724.1	$630.6	$622.9	$632.4	$404.1
Operating income	$82.2	$24.8	$6.7	$51.0	$(181.7)
OI %	11.35%	3.93%	1.08%	8.06%	-44.96%

The trends for Noranda are telling for the industry as a whole, as all of the company's primary aluminum operations included in these financials are in the United States. Sales revenue, operating income, and the company's operating income margin are all at their highest in 2011, when import volume was at its lowest and prices had not yet started their long decline. Sales revenue, operating income, and the company's operating income margin all steadily declined in 2012 and 2013 as import volumes rose and prices fell. By 2013, the company was achieving an operating income margin of only 1.08 percent. In 2014, the temporary run up in prices provided some relief to the company, as its indicators improved, but those indicators still did not rebound to 2011 levels. In 2015, as imports peaked and prices cratered, the company ran a huge operating loss equal to 44.96 percent of its sales revenue. Bankruptcy soon followed.

Century Aluminum's financials tell a similar story, though the company consolidates reporting for primary aluminum smelters in the United States and Iceland, as well as upstream facilities in various countries, so Century's financials may not be as representative of the domestic industry's actual experience as Noranda's financials. Nevertheless, they show a significant deterioration from 2011 to 2015, with only one year of limited temporary relief in 2014.

[88] Noranda 10-K and 10-Q excerpts, attached at **Exhibit 23**.

Century Aluminum's Financial Results[89]
US $M

	2011	2012	2013	2014	2015
Sales revenue	$1,356	$1,272	$1,454	$1,931	$1,950
Operating income	$47.3	$(7.3)	$(36.6)	$140.8	$(39.1)
OI %	3.49%	-0.57%	-2.52%	7.29%	-2.01%

While Century's overall sales revenue increased, this is likely due to its acquisition of two new facilities during the period – the Sebree, Kentucky plant in 2012 and the Mount Holly, South Carolina facility in 2013. The company's positive operating income margin turned negative in 2012 and declined further in 2013. Despite temporary price relief in 2014, the company was again incurring operating losses in 2015. Operating losses were their largest in 2015, at $39.1 million.

Alcoa does not report the results of its primary aluminum operations at a level specific enough to the U.S. market to provide a meaningful indication of the domestic industry's performance, though we note that its operating income margin on its global primary aluminum operations, which includes significant operations in the United States, did decline over the period from 4.21 percent in 2011 to just 2.00 percent in 2015.[90] In late September of 2015, Alcoa announced that it was spinning off its upstream business from its value-added operations, a move largely seen as an effort to offload unprofitable upstream assets to improve the financial performance of a stand-alone value-added company.[91]

[89] Century Aluminum 10-K excerpts, attached at **Exhibit 24**.

[90] Alcoa 10-K excerpts, attached at **Exhibit 25**.

[91] *See* **Exhibit 26**.

A November 2015 analyst's report indicates that Alcoa's U.S. operations could not have been earning per-ton sales revenue that covered their per-ton costs of production.[92] The report lists the 2015 cash costs per MT for five facilities.

Alcoa Cash Cost and Market Prices[93]
$/MT

Alcoa Facility	2015 Cash Cost	2015 LME Price	2015 Midwest Market Price
Evansville, IN (Warrick)	$1,637	June: $1,683 July: $1,638 Aug.: $1,539 Sept.: $1,588 Oct.: $1,524 Nov.: $1,465 Dec.: $1,494	June: $1,883 July: $1,835 Aug.: $1,728 Sept.: $1,763 Oct.: $1,681 Nov.: $1,657 Dec.: $1,695
Massena West, NY	$1,700		
Ferndale, WA	$1,719		
Wenatchee, WA	$1,744		

The per-ton cash cost would not include non-cash costs such as depreciation. So the company's total costs per ton at each facility are higher than the figures shown. Moreover, the per-ton cash cost likely does not include freight and delivery charges, and therefore can be compared to the LME price which also does not include such charges. The comparison shows that by June of 2015 the LME price was already below the cash cost of three out of four of Alcoa's facilities, and by August the LME price was below the cash cost for all facilities. Even looking at delivered Midwest market prices, by October these delivered prices were below the cash cost of three out of four of Alcoa's facilities.

The collapse in prices almost certainly means that all U.S. smelters were losing money in 2015. As noted in one article, when the LME price dropped below $1,500/MT it was estimated

[92] *See* Citi Research, *Alcoa Inc. (AA), Deep Dive: Will the Transformation and Split Payoff for Investors?* (Nov. 22, 2015) at 19, attached at **Exhibit 26, Tab 2.**

[93] *Id. See also* monthly LME and Midwest market prices, attached at **Exhibit 27.**

that some 60 to 70 percent of aluminum smelters **worldwide** would be losing money.[94] Another article states that most American smelters cannot make money when LME prices are below $1,500/ton.[95] This conclusion is further supported by the rash of plant idlings and closures announced in 2015 and early 2016, as discussed in more detail in the next section. Shutting down a large, capital intensive primary aluminum facility represents the loss of a significant amount of investment. As one analyst explained, "You have to be losing a lot of money to make it worthwhile to effectively shut down."[96]

As described in more detail in the next section, Alcoa announced the idling or closure of each one of the four facilities listed above in late 2015 or early 2016, though Alcoa ultimately agreed to keep the Massena West facility open with the support of New York state and is now keeping the Ferndale, WA facility operating through June 2016. The publicly available data thus strongly support the conclusion that the domestic industry as a whole was not able to generate sufficient profit to sustain its operations, that such profits declined as imports increased and prices fell, and that the domestic industry was thus seriously injured.

4. Capacity Idling and Plant Closures

As imports rose, prices fell, and imports drove down domestic shipments, market share, production, and profits, the domestic industry was forced to idle significant amounts of capacity, and, as imports continued to increase and prices continued to fall, to permanently close numerous facilities. As background, it is important to recognize that the domestic industry had reason to be hopeful about its prospects in 2011 as the economy was beginning to emerge from the great

[94] Stuart Burns, "Power Costs in the Production of Primary Aluminum," *MetalMiner* (Nov. 24, 2015), attached at **Exhibit 28**.

[95] Joe Deaux, "When 127-year-old U.S. Industry Collapses under China's Weight," *Bloomberg Business* (Nov. 3, 2015), attached at **Exhibit 29**.

[96] *Id.*

recession, which had already taken an enormous toll on the domestic primary aluminum industry. The U.S. Geological Survey reports that domestic primary aluminum production fell in 2009 to its lowest level since 1961 due to declining demand and falling prices following the 2008 financial crisis.[97] By 2010, there were fourteen primary smelters in the United States, with nine operating and five temporarily idled.[98] However, by the end of 2010 there was some hope that things were improving. While domestic production remained flat, the value of that production increased by 31 percent.[99] As a result, some of the capacity that had been temporarily idled in 2008 and 2009 was slated to be brought back online in 2011.

At the end of 2010, Century Aluminum Co. announced that it would restart a potline at its Hawesville, Kentucky facility that had been idled in 2009 due to depressed aluminum prices.[100] Restarting the potline would activate 50,000 tons of capacity, bring the facility up to full capacity by end of the first quarter of 2011, and require the recall or rehire of 100 workers.[101] On January 7, 2011, Alcoa announced that it would restart idled potlines at three primary aluminum smelters.[102] The three potlines were at Alcoa's Massena East facility, thus restarting a facility that had been temporarily idled in 2009, and the Wenatchee facility and Intalco facility (Ferndale) in Washington State.[103] The company announced that the restarted potlines would

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[97] *See* U.S. Geological Survey, *2009 Minerals Yearbook – Aluminum* (Sept. 2011) at 5.1, attached at **Exhibit 10**.

[98] *See* U.S. Geological Survey, *2010 Minerals Yearbook – Aluminum* (Sept. 2011) at 5.1, attached at **Exhibit 10**.

[99] *Id.*

[100] "Century Aluminum Announces Restart of Hawesville, KY Potline," Century Aluminum press release (Dec. 7, 2010), attached at **Exhibit 30**.

[101] *Id.*

[102] "Alcoa to Restart Idled U.S. Smelters, Fill 260 Jobs," Alcoa press release (Jan. 7, 2011), attached at **Exhibit 31**.

[103] *Id.*

increase Alcoa's production by 137,000 metric tons in 2011 and by 200,000 metric tons on an annual basis thereafter.[104] Alcoa estimated that the restarts would create 260 jobs.[105] In March of 2011, Ormet Corp. announced that following the restart of two potlines at the first of the year that produced 88,000 tons, it was running at "full steam," with a workforce nearing 1,000 employees.[106] In addition to bringing potlines back online, Rio Tinto announced that it would increase capacity at its facility in Sebree, Kentucky, and Noranda Aluminum announced that it was working to expand capacity at its facility in New Madrid, Missouri.[107] At the end of 2011, there were fourteen primary aluminum smelters in the United States – ten were actively producing, 267,000 tons of idled capacity had been brought back into production, hundreds of workers were brought back on the job, and the number of idle facilities had been reduced to four.[108]

However, things began to quickly deteriorate for the industry in 2012 and in following years as the volume of imports increased each year, driving down domestic shipments and production, and as prices declined. By the end of 2015, there were only nine primary aluminum

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[104] *Id.*

[105] *Id.*

[106] Jennifer Compston-Strough, "Ormet Running at Full Steam: All Six Potlines Operating," *The Intelligencer Wheeling News-Register* (Mar. 6, 2011), attached at **Exhibit 32.**

[107] *See* U.S. Geological Survey, *2011 Minerals Yearbook – Aluminum* (Oct. 2012) at 5.1, attached at **Exhibit 10.**

[108] *See id.* at Table 2. Smelters that were idle at the end of 2011 include: Alcoa's facility in Alcoa, Tennessee (215,000 t/yr); Alcoa's facility in Rockdale, Texas (267,000 t/yr); Century Aluminum's facility in Ravenswood, West Virginia (170,000 t/yr); and Columbia Falls Aluminum's facility in Columbia Falls, Montana (168,000 t/yr). Table 2 of the 2011 USGS report indicates that a fifth primary aluminum smelter was idle in 2011, Goldendale Aluminum Co.'s facility in Goldendale, Washington (160,000 t/yr). However, in subsequent reports the USGS has revised this data to indicate that this capacity was no longer idle, but had already been permanently removed. *See* U.S. Geological Survey, *2012 Minerals Yearbook – Aluminum* (Aug. 2013) at Table 2, attached at **Exhibit 10.**

smelters in the United States, a loss of five plants from the fourteen that existed in 2011.[109] From the end of 2011 to the end of 2015, the domestic industry shed more than a third of its capacity. Total U.S. capacity fell from 3.01 million tons per year in 2011 to 2.00 million tons in 2015, and with announced closures it is estimated that U.S. primary aluminum capacity is currently at just 1.73 million tons.[110] Despite these drastic cuts in U.S. capacity from 2011 to 2015, the industry also maintained substantial amounts of idle capacity throughout the period. Recent industry announcements indicate that a full 1.18 million tons of the remaining 1.73 million tons of capacity in 2016 is either now idle or will be idle by the end of June 2016.[111]

The table below summarizes closures and changes in capacity from 2011 through 2015. A plant represented by a "0" is a plant that was permanently closed as of the end of that year. Where a capacity figure is in italics, it signifies that the capacity was idled at the end of that year. The table below understates idle capacity, as it does not reflect plants that are partially idled. Regardless, it starkly demonstrates the drastic reductions in capacity and substantial idled capacity throughout the period.

[109] U.S. Geological Survey *Minerals Yearbooks* and *Mineral Industry Surveys* for aluminum, attached at **Exhibit 10**.

[110] *See id.*

[111] *Id.*

Domestic Primary Unwrought Aluminum Capacity, 2011-2015[112]

Company	Plant	Yearend Capacity (thousand MT)				
		2011	2012	2013	2014	2015
Alcoa	Alcoa, TN	*215*	0	0	0	0
Alcoa	Ferndale, WA	279	279	279	279	279
Alcoa	Massena East, NY	125	125	84	0	0
Alcoa	Massena West, NY	130	130	130	130	130
Alcoa	Rockdale, TX	*267*	*191*	*191*	*191*	*191*
Alcoa	Evansville, IN	269	269	269	269	269
Alcoa	Wenatchee, WA	184	184	184	184	184
Century Aluminum	Hawesville, KY	244	252	252	252	252
Century Aluminum	Mt. Holly, SC	229	229	229	229	229
Century Aluminum	Ravenswood, WV	*170*	*170*	*170*	*170*	0
Century Aluminum	Sebree, KY	196	196	205	205	205
Columbia Falls	Columbia Falls, MT	*168*	*168*	*168*	*168*	0
Niagara Worldwide	Hannibal, OH	271	271	*271*	0	0
Noranda Aluminum	New Madrid, MO	263	263	263	263	263
	Total capacity	3,010	2,727	2,695	2,340	2,002
	Idle capacity	820	529	800	529	191
	Idle %	27.24%	19.40%	29.68%	22.61%	9.54%

The swings in idle capacity volume from year to year reflect the fact that in a highly capital-intensive industry such as primary aluminum smelting, it is extremely costly to completely close a smelting facility when market conditions may improve in the near future. A greenfield primary aluminum plant costs at least $1 billion,[113] and thus preserving the value of investments that have been made is vital to the survival of the industry. Thus, when market conditions deteriorate, the industry typically idles potlines and facilities with the hopes that the market will improve soon enough to justify bringing the capacity it has invested in back on-line,

[112] U.S. Geological Survey *Minerals Yearbooks* and *Mineral Industry Surveys* for aluminum, attached at **Exhibit 10**. Plants with capacity figures in italics were reported as idled at the end of the year. Mt. Holly was a joint venture between Alcoa and Century until 2013 when it became wholly-owned by Century. Sebree was owned by Rio Tinto Alcan in 2012 before being sold to Century.

[113] *See* "Alcoa Breaks Ground on $1.1 Billion Iceland Smelter; Fjardaal Smelter On Track to Make Aluminum in Spring 2007," Alcoa press release (July 8, 2004), attached at **Exhibit 33**.

just as the industry started to do in 2011. When market conditions continue to deteriorate, however, as they have since 2011, idled capacity is eventually closed. If conditions continue to decline, more capacity is idled. Then, if conditions do not improve, that idled capacity is closed. Large volumes of idle capacity are thus a harbinger of closures to come if market conditions do not improve.

Details on the idling of domestic capacity, permanent closure of facilities, and layoffs that resulted are provided below.

On January 5, 2012, citing a 27 percent fall in aluminum prices from their peak in 2011, Alcoa announced that it planned to remove 531,000 tons of smelting capacity.[114] This included the permanent closing of Alcoa's facility in Alcoa, Tennessee, removing 215,000 tons of U.S. capacity, and the permanent idling of two of the six potlines at Alcoa's Rockdale, Texas facility, permanently removing an additional 76,000 tons of U.S. capacity.[115] Later in 2012, Ormet Corporation began to temporarily idle capacity at its facility in Hannibal, Ohio, with one potline removed in July and a second in August, each with a capacity of 45,000 tons.[116]

The deterioration of the domestic industry continued in 2013 as imports continued to increase in volume and prices continued to fall. In February, Ormet filed for Chapter 11 bankruptcy, citing low aluminum prices.[117] While Ormet signed a new contract with the USW in March to help the company reduce costs, in August Ormet temporarily idled two additional potlines with 90,000 tons of capacity and, in October, the final two potlines, with 90,000 tons of

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[114] *See* "Alcoa to Close or Curtail 531,000 Metric Tons of Smelting Capacity," Alcoa press release (Jan. 5, 2012), attached at **Exhibit 34**.

[115] *See* U.S. Geological Survey, *2012 Minerals Yearbook – Aluminum* (Aug. 2013) at 5.1, attached at **Exhibit 10**.

[116] *Id.*

[117] *See* U.S. Geological Survey, *2013 Minerals Yearbook – Aluminum* (Jan. 2015) at 5.2, attached at **Exhibit 10**.

capacity, were idled.[118] In August, Alcoa announced the permanent idling of one potline at its Massena East facility in New York, removing 40,000 more tons of U.S. capacity.[119]

In 2014, as imports continued to increase and production continued to fall, Alcoa removed additional capacity at the Massena East facility by permanently idling the two remaining potlines, which had a capacity of 84,000 tons.[120] In June, Ormet's idled facility in Hannibal, Ohio was purchased by Niagara Worldwide LLC and then permanently shuttered by Niagara in September.[121] The shuttering of the Ormet facility permanently removed 271,000 tons of U.S. capacity.[122] As a result, by the end of 2014, 670,000 tons of the 3.01 million tons in domestic capacity at the end of 2011 had been permanently removed. Of the 2,340 tons of domestic capacity that remained, 529,000 tons were idle. This included 191,000 tons at Alcoa's Rockdale facility, 170,000 tons at Century Aluminum's Ravenswood facility, and 168,000 tons of capacity at Columbia Falls' facility in Montana.[123]

In 2015, the volume of imports continued to grow, driving domestic shipments, market share, and production to their lowest level of the period. In addition, as discussed in more detail in Section VI.A.2, above, prices collapsed in 2015 after temporary trading conditions ended and market prices began to fully reflect the massive oversupply in the market. The industry was forced to further slash capacity and temporarily idle much of the capacity that remained, leading to more job losses. In March of 2015, Columbia Falls Aluminum announced that it would

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[118] *Id.*

[119] *Id.*

[120] *See* U.S. Geological Survey, *2014 Minerals Yearbook – Aluminum* (Nov. 2015) at 5.2, attached at **Exhibit 10**.

[121] *Id.*

[122] *Id.*

[123] *Id.* at Table 2.

permanently close its facility in Columbia Falls, Montana, removing 168,000 tons of capacity and resulting in 1,500 job losses.[124] Additionally, Century Aluminum announced that it would permanently close the Ravenswood, West Virginia facility, removing 170,000 tons of capacity.[125] Prior to the facility being idled, the Ravenswood facility had employed 650 workers.[126] In August of 2015, Century Aluminum announced that it would also idle its facility in Hawesville Kentucky, a facility that employed 565 workers.[127] In its press release the company noted: "The simple fact is that the recent significant decline in the aluminum price is being driven by unfair trade behavior over which our industry has no control."[128] The press release continues: "The strategy we set forth for Hawesville continues to be valid. It is solely the collapse in industry pricing, brought about by this improper trade behavior, that has put this excellent plant in jeopardy."[129]

Century Aluminum subsequently announced that it would keep the Hawesville facility open to produce high-purity aluminum, but that it would be operating at only 40 percent of its capacity.[130] Century's CEO noted that "Hawesville's ability to produce high-purity aluminum enables the smelter to produce a unique product that will hopefully allow the plant to survive,

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[124] *See* Justin Franz, "Columbia Falls Aluminum Company to Permanently Close Plant," *Flathead Beacon* (Mar. 3, 2015), attached at **Exhibit 35**.

[125] *See* Ann Ali, "Century Aluminum Permanently Closes Ravenswood, WV Plant," *The State Journal* (July 27, 2015), attached at **Exhibit 36**.

[126] *Id.*

[127] "Century Issues WARN Notice at Hawesville, KY Smelter," Century Aluminum press release (Aug. 25, 2015), attached at **Exhibit 37**.

[128] *Id.*

[129] *Id.*

[130] "Century Announces Continued Operation of Two Potlines at Hawesville, KY Smelter," Century Aluminum press release (Sept. 30, 2015), attached at **Exhibit 38**.

albeit at significantly reduced production levels, in today's market conditions."[131] Citing similar reasons, in October of 2015, Century Aluminum announced that it planned to curtail production at its Sebree, Kentucky facility by a third (70,000 tons), putting 525 employees at risk.[132] It also announced that it would curtail production at its Mt. Holly, South Carolina facility at the end of the year.[133] However, in December the company announced that lower market prices for power would allow the Sebree facility to operate.[134] The company also announced that an agreement had been struck for lower power prices that would allow the Mt. Holly facility to continue operations, but at only 50 percent of its capacity.[135]

In November of 2015, Alcoa announced plans to temporarily idle its Ferndale (Intalco) and Wenatchee facilities in Washington State, temporarily idle the Massena West facility in New York, and permanently close the Massena East facility, where potlines had been idled in 2014.[136] In total, Alcoa planned to idle 503,000 metric tons of capacity. [137] It was estimated that 500 jobs would be lost at the Massena West facility,[138] 583 jobs at the Ferndale facility,[139] and 428 jobs at

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[131] *Id.*

[132] "Century Issues WARN Notice at Sebree, KY Smelter," Century Aluminum press release (Oct. 30, 2015), attached at **Exhibit 39**.

[133] "Century Issues WARN Notice at Mt. Holly, SC Smelter," Century Aluminum press release (Oct. 22, 2015), attached at **Exhibit 40**.

[134] "Century Announces Continued Operations of its Sebree, KY Smelter," Century Aluminum press release (Dec. 17, 2015), attached at **Exhibit 41**.

[135] "Century Reaches Power Agreement for Mt. Holly Smelter," Century Aluminum press release (Dec. 18, 2015), attached at **Exhibit 42**.

[136] "Alcoa to Curtail Smelting and Refining Capacity to Further Drive Upstream Competitiveness," Alcoa press release (Nov. 2, 2015), attached at **Exhibit 43**.

[137] *Id.*

[138] Ryne Martin, "Alcoa will permanently close Massena East, end smelting at West plant and lay off up to 500 workers," *Watertown Daily Times* (Nov. 2, 2015), attached at **Exhibit 44**.

[139] Dave Gallagher, "Alcoa to idle smelters at Ferndale, Wenatchee plants," *The Bellingham Herald* (Nov. 2, 2015), attached at **Exhibit 45**.

the Wenatchee facility.[140] Alcoa announced that the curtailments would begin in the fourth quarter of 2015 and be complete by the end of the first quarter of 2016.[141] Alcoa subsequently announced that it had reached an agreement with the State of New York to keep the Massena West facility open for three-and-a-half years, though layoffs of 80 to 100 jobs were also announced.[142] While the Massena West facility would remain open, Alcoa stated: "With the Midwest transaction aluminum price down 30 percent year-to-date, Alcoa will continue with its other previously announced curtailments."[143] The next month Alcoa announced that "recent changes in energy and raw material costs have made it more cost effective in the near term to keep" the Ferndale facility open beyond the first quarter of 2016, but that the facility would be idled at the end of the second quarter of 2016.[144]

As the table below indicates, between 2011 and 2015, five domestic facilities were permanently closed and capacity was partially shuttered at a sixth, stripping more than one million tons of capacity from the domestic industry.[145]

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[140] Mike Irwin, "Local economy could suffer $60 million hit from Alcoa job losses," *The Wenatchee World* (Nov. 4, 2015), attached at **Exhibit 46**.

[141] *Id.*

[142] "Alcoa Reaches Agreement with New York State to Increase Competitiveness of Massena West Smelter," Alcoa press release (Nov. 24, 2015), attached at **Exhibit 47**.

[143] *Id.*

[144] "Alcoa to Delay Curtailment of Intalco Smelter," Alcoa press release (Jan. 19, 2016), attached at **Exhibit 48**.

[145] Two potlines at the Alcoa facility in Rockdale were permanently removed (76,000 tons), the remaining four potlines (191,000 tons) remain temporarily idle.

Primary Aluminum Capacity Reductions, 2011-2015
Thousand MT

Company	Facility	Capacity	Year
Alcoa	Alcoa, TN	215	2012
Alcoa	Rockdale, TX	76	2012
Ormet Primary Aluminum Corp.	Hannibal, OH	271	2014
Alcoa	Massena, NY (East)	125	2014
Century Aluminum Co.	Ravenswood, WV	170	2015
Columbia Falls Aluminum Co.	Columbia Falls, MT	168	2015
	Total Capacity Permanently Closed	**1,025**	

The crisis the domestic industry was suffering in 2015 has continued into 2016. While U.S. capacity declined by more than a third from the end of 2011 to the end of 2015, and plans had already been announced for idling capacity in the first part of 2016 at Alcoa's Ferndale (Intalco) and Wenatchee facilities, in January of 2016, Noranda announced that two of the three potlines at its facility in New Madrid, Missouri had been idled due to an electrical supply circuit failure and as a result the company would need to "adjust staffing" accordingly.[146] According to press reports, 133 employees were laid off following Noranda's announcement.[147] Five days after Noranda's initial announcement, the company announced that it would be letting 350 employees go by February 4, 2016, and, unless the company could secure a "more sustainable power rate for the smelter," it would curtail the remaining potline on or before March 12, 2016.[148] On February 8, 2016, Noranda announced that it was filing for Chapter 11

[146] "Noranda Issues Statement Regarding Its New Madrid Aluminum Smelter," Noranda press release (Jan. 8, 2016), attached at **Exhibit 49**.

[147] "Legislators respond to layoffs at Noranda," *Standard Democrat* (Jan. 16, 2016), attached at **Exhibit 50**.

[148] "Noranda Announces Steps to Reduce Costs and Address Business Challenges in its Upstream Business," Noranda press release (Jan. 13, 2016), attached at **Exhibit 51**.

bankruptcy.[149] In its notice, the company reported that it "expects to continue operating the single remaining pot line at its primary aluminum smelter in New Madrid, Missouri until March 2016." While all operations would be curtailed at the New Madrid facility, the company stated that it would "maintain the flexibility to restart operations at New Madrid should conditions allow."[150]

Also in January of 2016, Alcoa announced the permanent closing of yet another facility. Noting again the 30 percent drop in aluminum prices, on January 5, 2016, Alcoa announced that it would permanently close by the end of the second quarter the smelting operations at the Warrick facility, a 269,000 ton capacity facility in Evansville, Indiana.[151] According to press reports, 600 jobs would be affected by the shutdown of the Warrick facility.[152]

As noted in the declaration of Mr. Underhill, the USW Business Agent for the Warrick plant, the sudden announcement of the shuttering of the Warrick facility in 2016 was a shock to the plant's workers.[153] The plant had been operating five potlines at full capacity throughout 2015.[154] In addition, the plant was the lowest cost plant in Alcoa's system in the United States, a fact confirmed by financial analyst reports on Alcoa.[155] The union pressed the company on why the plant could not simply be idled to await an improvement in market conditions, as had been

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[149] "Noranda Initiates Chapter 11 Process to Reposition Business Operations; Expects to Receive Up to $165 Million in New Financing to Enhance Liquidity," Noranda press release (Feb. 8, 2016), attached at **Exhibit 52**.

[150] *Id.*

[151] "Alcoa to Close Warrick Smelter and Curtail Remaining Capacity at Pt. Comfort Refinery," Alcoa press release (Jan. 7, 2016), attached at **Exhibit 53**.

[152] Susan Orr, "Alcoa will shut down smelter, 600 jobs affected," *Courier & Press* (Jan. 7, 2016), attached at **Exhibit 54**.

[153] Underhill Declaration, attached at **Exhibit 55**.

[154] *See id.*

[155] *See id. See also* Citi Research, *Alcoa Inc. (AA), Deep Dive: Will the Transformation and Split Payoff for Investors?* (Nov. 22, 2015), attached at **Exhibit 26, Tab 2**.

done in the past.[156] Idling the capacity rather than closing it would not only have preserved Alcoa's lowest-cost asset in the United States, one that is on-site with value-added downstream processing mills, it also would have avoided the large and irreversible costs of permanently closing down the facility and held out hope that hundreds of jobs could return if conditions improved.[157] The company responded that massive financial support would be required to keep the plant viable in current market conditions, and the market conditions on the horizon dictated closure rather than idling.[158]

Within about two months of the January closure announcement, in mid-March, potlines started to be taken out of operation at Warrick one by one.[159] By March 26, 2016, production had ceased entirely, and all workers were laid off on April 7, 2016.[160] Prior to April 7, equipment and materials were already being taken out of the plant and sold for scrap.[161] On April 7, the same day smelter workers permanently lost their jobs, Alcoa's dedicated demolition team took over the plant and began demolishing potlines.[162] It is expected that the most that will be left at Warrick at the end of the process might be some empty buildings.[163]

Even with the closure of Alcoa's Warrick facility, it is estimated that of the 1.73 million tons in remaining capacity, a full 1.18 million tons of that capacity is now idle or will be by the end of June 2016. Thus, despite a further thirteen percent drop in the domestic industry's total

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[156] Underhill Declaration, attached at **Exhibit 55**.

[157] *See id.*

[158] *See id.*

[159] *See id.*

[160] *See id.*

[161] *See id.*

[162] *See id.*

[163] *See id.*

capacity in 2016, the remaining facilities will be operating at just over thirty percent of their capacity by the end of June.

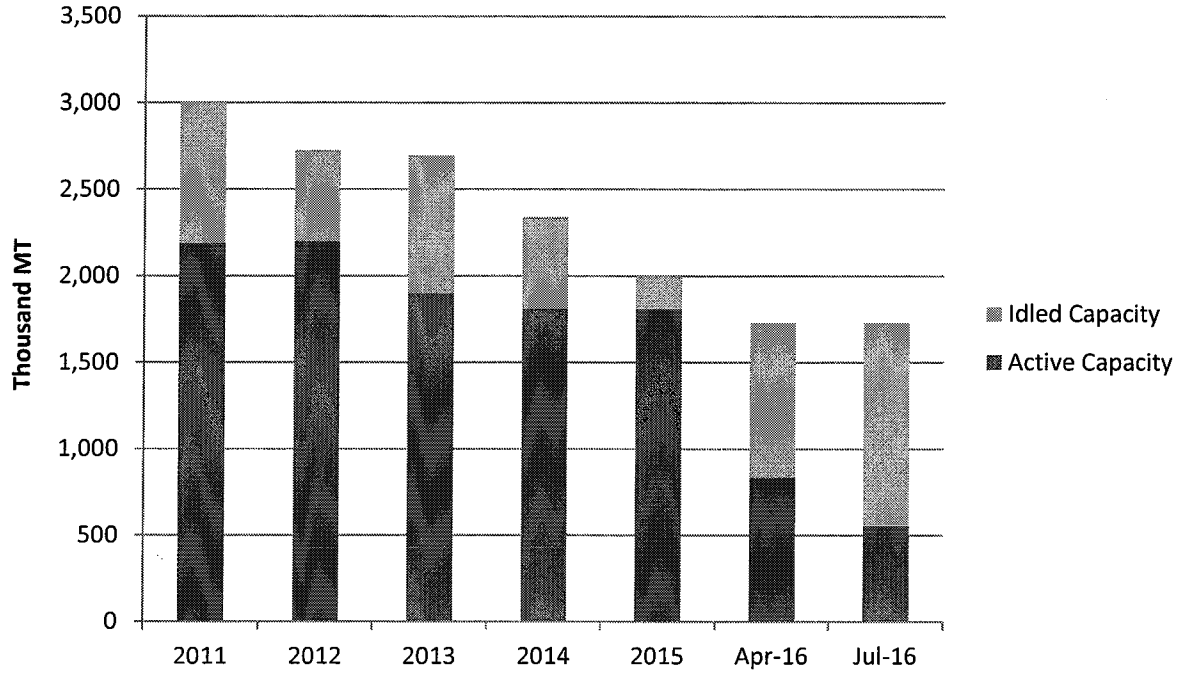
Domestic Producers' Active and Idled Capacity, April 2016
Thousand MT

Company	Facility	April 2016		
Alcoa:		Capacity	Active	Idled
	Ferndale, WA (Intalco)[164]	279	279	0
	Massena, NY (West Facility)	130	130	0
	Rockdale, TX	191	0	191
	Wenatchee, WA	184	0	184
	Total	**784**	**409**	**654**
Century Aluminum Co:				
	Hawesville, KY	252	102	150
	Mount Holly, SC	229	117	112
	Sebree, KY	205	205	0
	Total	**686**	**424**	**262**
Noranda Aluminum Holding Corp.	New Madrid, MO	263	0	263
	Total Capacity	**1,733**	**833**	**900**

As noted at the beginning of this section, because primary aluminum production is such a capital-intensive industry, producers prefer to idle capacity first when market conditions deteriorate rather than shutter expensive investments permanently if conditions may later improve. If market conditions do not improve, however, large volumes of idle capacity will imminently become plant closures. The graph below visually demonstrates how capacity has been idled and then shut since 2011, with the last bar depicting the industry situation in July of 2016 based on industry announcements.

[164] Intalco's capacity is only slated to be active through the end of June of 2016, at which point the plant will be fully idled.

Domestic Active and Idle Capacity[165]



If there is no improvement in the market, it can be expected that those facilities that are currently temporarily idle will be permanently closed. Moreover, it should be noted that three of the four smelters currently expected to operate through the middle of 2016 were themselves slated to be idled at the end of 2015. For two of those smelters, relief came only after new power contracts were negotiated to reduce their costs. And Century Aluminum's Hawesville facility was only able to remain open because it could produce high-purity aluminum, a "unique product." Any reprieve given to those facilities that are currently operating may prove insufficient if market conditions continue to deteriorate, resulting in those facilities also being temporarily idled this year and, eventually, permanently closed.

[165] 2011-2015 data from U.S. Geological Survey *Minerals Yearbooks* and *Mineral Industry Surveys* for aluminum, attached at **Exhibit 10**. The graph understates idle capacity in years where a plant was partially idled. 2016 data based on industry announcements cited above.

5. Significant Unemployment and Underemployment in the Industry

As reviewed above, the domestic industry shed one third of its capacity from 2011 to 2015, and another 13 percent of its capacity has already been shut this year, for a total loss of 1.28 million tons of capacity, or 42 percent, from 2011 to April of 2016. While employment data specific to the primary aluminum industry is not publicly available,[166] the news reports reviewed in the preceding section provide some indication of the extent of the job losses suffered by American workers in the primary unwrought aluminum industry since 2011.

The lost capacity between 2012 and 2014 resulted in significant job losses. With the permanent closing of Alcoa's facility in Tennessee in 2012, the 450 layoffs that occurred when the facility was idled became permanent.[167] With a third of the capacity of Alcoa's Rockdale facility permanently shuttered in 2012, presumably a third of the 820 jobs lost when the facility was temporarily idled[168] – or about 273 jobs – were also permanently gone. Following Ormet's bankruptcy and idling in 2013, and the subsequent closing of its facility in 2014, the 1,000 jobs that were reported by the company in 2011 were wiped out.[169] An additional 332 jobs were lost when Alcoa's Massena East facility was shuttered in 2014.[170]

As discussed in the previous section, in 2015 the closure of the Columbia Falls facility in 2015 cost 1,500 jobs, and the permanent closure of Century Aluminum's Ravenswood, West

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[166] The most specific employment data available from the U.S. Department of Labor, Bureau of Labor Statistics, is for NAICS 331300, which covers not only primary unwrought aluminum but also secondary unwrought aluminum and various upstream and downstream products. *See* **Exhibit 56**.

[167] Ed Marcum, "Alcoa Closing Blount Smelting Operation," *Knoxville News Sentinel* (Jan. 5, 2012), attached at **Exhibit 57**.

[168] "Alcoa to Curtail Remainder of Smelter in Rockdale, TX," *Reliable Plant* (Sept. 30, 2008), attached at **Exhibit 58**.

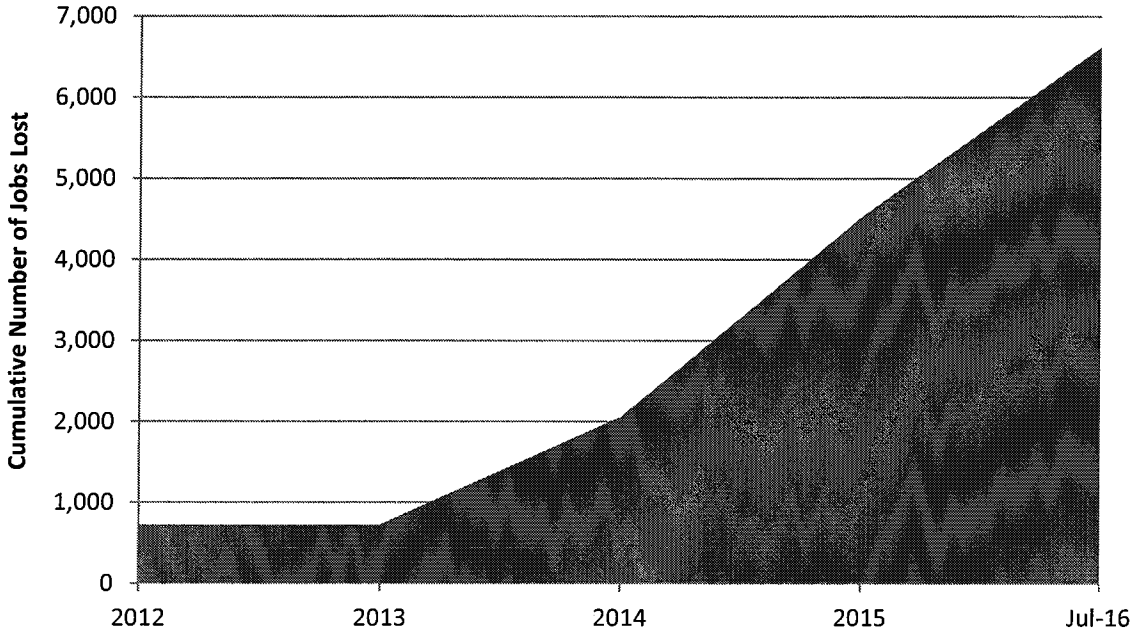
[169] Jennifer Compston-Strough, "Ormet Running at Full Steam: All Six Potlines Operating," *The Intelligencer Wheeling News-Register* (Mar. 6, 2011), attached at **Exhibit 32**.

[170] Rick Moriarty, "Alcoa to lay off 332 workers in Massena," Syracuse.com (Jan. 24, 2014), attached at **Exhibit 59**.

Virginia plant permanently eliminated 650 jobs. While Century Aluminum ultimately decided not to close the Hawesville plant in 2015, it is operating at 40 percent of its capacity, implicating about 226 of the firm's 565 workers. In late 2015, Alcoa's decision to idle production at Wenatchee in 2016 affected 428 workers, and its decision to idle Ferndale by the end of June of this year will impact 583 workers. Alcoa also announced 80 to 100 layoffs at Massena West. The idling of Noranda's plant in the first quarter of this year affected 483 jobs. Finally, Alcoa's decision to shutter its Warrick facility eliminated an additional 600 jobs in April of this year.

Altogether, more than 4,200 workers have lost their jobs due to permanent capacity closures from 2011 to 2015, another 600 workers lost their jobs at Alcoa's Warrick facility in April of 2016, and another 1,810 workers have lost work at plants that are now fully or partially idle or will be by the end of June 2016. This totals 6,615 jobs lost in the industry, demonstrating significant unemployment and underemployment of the men and women who produce primary unwrought aluminum in the United States.

Cumulative Domestic Job Losses in the Primary Unwrought Aluminum Industry



As a result of these job losses, workers at several facilities have applied for assistance under the Trade Adjustment Assistance ("TAA") program. Under TAA, the Department of Labor certifies workers for assistance when, *inter alia*, "increased imports contributed importantly to worker group separation." The Department of Labor has certified workers for TAA at the following facilities for employees separated after the indicated date.[171]

- Ormet, Hannibal Ohio (October 22, 2012)
- Alcoa, Massena East and West, Massena New York (December 15, 2014)
- Alcoa Intalco, Ferndale, Washington (November 9, 2014)
- Century Aluminum, Sebree, Kentucky (November 18, 2014)
- Century Aluminum, Ravenswood, West Virginia (January 1, 2014)
- Century Aluminum, Hawesville, Kentucky (January 1, 2014)
- Noranda Aluminum, New Madrid, Missouri (December 26, 2012)
- Noranda Aluminum, New Madrid, Missouri (February 5, 2016)

[171] TAA certifications are attached at **Exhibit 60**.

The following facility also filed for TAA, with the date of the petitions indicated, but the requests are still pending.[172]

- Century Aluminum, Mt. Holly, Goose Creek, South Carolina (March 14, 2016)
- Century Aluminum, Mt. Holly, Goose Creek, South Carolina (November 11, 2015)

This substantial job loss represents a massive loss of wages for workers in the domestic industry. Using the Aluminum Association's estimate that the average aluminum industry salary is $77,000/year, this translates into more than $500 million in lost annual wages for the 6,615 workers who will have lost their jobs by mid-2016 due to the idling of capacity and closure of facilities.

Finally, even this drastic growth in unemployment and underemployment among primary aluminum workers over the period is understated, as it only includes workers laid off when a potline or plant has been idled or closed. As explained in more detail in Section VIII, below, workers in the industry have also lost a large number of jobs due to efforts made to reduce headcount and improve productivity in order to help the industry compete. At a number of plants, the USW has agreed to combine jobs or share jobs among fewer workers in order to reduce the number of employees and reduce costs for their employers. In some cases, this has resulted in headcount reductions of almost 15 percent, even where production has not been curtailed. As imports continued to increase and prices continued to fall, these efforts, along with others made by the union and the industry detailed in Section VIII, have proven insufficient to prevent serious injury to the domestic industry.

[172] TAA petitions are attached at **Exhibit 61**.

B. Threat of Serious Injury

As noted above, the domestic industry has suffered significant declines in commercial shipments, market share, production, profits, and employment from 2011 to 2015. The industry also appears to have suffered massive declines in capital expenditures over the 2011 to 2015 period, consistent with its idling and shedding of significant amounts of capacity. While Century Aluminum and Noranda's capital expenditures were slightly above 2011 levels in 2015, the much larger Alcoa appears to be starving its primary aluminum operations of capital expenditures. From 2011 to 2015, Alcoa's annual capital expenditures on the upstream segment of its business declined from $371 million per year to just $189 million, a decline of 49 percent.[173] Far from providing net new financing for any needed improvements to their plants and equipment, the domestic industry is significantly divesting from its facilities, suggesting they are highly vulnerable to further closures if market conditions do not improve quickly.

In addition, the industry appears to be saddled with significant and growing inventories.

Aluminum Industry Inventories[174]
Thousand MT

	2011	2012	2013	2014	2015
Production	1,986	2,070	1,946	1,710	1,600
Inventories	1,060	1,140	1,130	1,280	1,350
Inv % Prod	53.37%	55.07%	58.07%	74.85%	84.38%

The data show that while primary aluminum production fell by 19.44 percent from 2011 to 2015, aluminum industry inventories increased by 27.36 percent. At the end of 2015, producers'

[173] Citi Research, *Alcoa Inc. (AA), Deep Dive: Will the Transformation and Split Payoff for Investors?* (Nov. 22, 2015) at 3, attached at **Exhibit 26, Tab 2.**

[174] U.S. Geological Survey, *Mineral Commodity Summary – Aluminum* (Jan. 2016), attached at **Exhibit 7.** Production is primary aluminum. Inventories are for the aluminum industry and may contain secondary aluminum.

inventories were 84.38 percent of production, suggesting that excess inventories may dampen growth in demand for primary aluminum.

A market saddled with growing inventories will be even less able to absorb increased imports. Continually rising imports are highly likely in the imminent future. The imminent increase is already evident in 2016 import statistics. In January and February of 2016, the most recent months for which data is available, the U.S. imported 633 thousand MT of primary unwrought aluminum, an amount that was 115 thousand MT, or 22.25 percent, higher than imports in January and February of 2015.[175]

Imminently increasing imports are also highly likely given the extent to which the U.S. market has been a focal point for major foreign producers. The top five sources of U.S. imports of primary unwrought aluminum are Canada, the United Arab Emirates ("UAE"), Russia, Qatar, and Argentina. In 2015, these five countries accounted for nearly 88 percent of total U.S. imports.[176] For all five of these countries, the U.S. market is a focal point. Indeed, for three of the five countries, the United States is their largest export market for primary aluminum. A summary of export data from UN Comtrade for each of the five countries is below.[177]

- The largest source of U.S. imports, accounting for 65 percent of total U.S. imports in 2015, was Canada. Canadian export data indicate that, based on volume, the U.S. is Canada's largest export market and accounts for 89 percent of Canadian exports of primary aluminum.[178] From 2011 to 2015, Canada's exports to the United States grew from 74 percent of Canada's total exports of primary aluminum to 89 percent.

- The second largest source of U.S. imports in 2015 was the UAE. The Comtrade data for the UAE show that the United States is the UAE's third largest export market. However, the data show that the United States is becoming increasingly important, as

[175] *See* U.S. import data attached at **Exhibit 12**.

[176] *See id.*

[177] Export data for the five countries is attached at **Exhibit 62**.

[178] Canadian export data is attached at **Exhibit 62**.

it grew from less than 1 percent of the UAE's total exports in 2011 to 11 percent in 2014.[179]

- The United States was also the largest export market for Russia. In 2014, the United States accounted for 18 percent of Russia's primary aluminum exports. While Russia was the third largest source for U.S. imports in 2015, it was the second largest source in 2012 and 2014.

- In 2014, the United States accounted for 29 percent of Argentina's total exports and was Argentina's largest export market.

- The United States is also an important market for Qatar. While Comtrade data for Qatar is only available for 2012, they show that the United States accounted for 15 percent of Qatar's total exports. U.S. import data shows that from 2011 to 2015, imports from Qatar increased by 36 percent.

In sum, the United States has been and will continue to be a focal point for growing exports from top suppliers of primary unwrought aluminum.

If imports continue to increase at the rate they have grown since 2011, they will continue to seize shipments and market share from domestic producers, further driving down capacity utilization in a highly capital-intensive industry that will be operating at only 30 percent of its capacity by mid-year 2016. As noted above, Warrick, a low-cost plant operating at full capacity throughout 2015 was suddenly closed in 2016, with all production stopped within three months of the announcement and equipment now being demolished and sold for scrap. Three more plants have already been completely idled in 2016 and another will be completely idle by the middle of the year, a first step towards closure if conditions do not improve. Only five domestic facilities are currently in active operation. One of those five (Ferndale) is scheduled to be idled at the end of June 2016, and at least two of the five are already operating significantly below capacity.

[179] We note that Comtrade data for the UAE appears to significantly understate the UAE's exports and this would appear to be true for all of the UAE's export markets. This is especially true in 2011 – 2013. Nonetheless, U.S. import data show that from 2011 to 2015, imports from the UAE increased by more than 21 percent.

The massive contraction in the domestic industry is reflected in plummeting production figures for the domestic industry. The Aluminum Association reports that annualized production of primary aluminum in the first two months of 2016 is already 26.5 percent below annualized production in the first two months of 2015.[180] After falling by more than 19 percent over the five years from 2011 to 2015, in just two months this year domestic production has already plummeted by more than a quarter.

As noted in Section VI.A.3, above, all indications are that the domestic industry suffered serious financial losses in 2015, and those losses will continue if market prices do not improve. Not only are price improvements not projected to occur – prices are in fact projected to continue falling in the imminent future. A February 2016 article explained that LME prices for aluminum are projected to remain below February prices through the third quarter of 2016.[181] Current futures markets also have aluminum trading at lower prices over the next 3 to 6 months.[182] In February 2016, Goldman Sachs again cut its price forecasts for primary aluminum, predicting that it will trade at just $1,350/MT on the 12-month horizon.[183] As noted by the Goldman analyst: "The aluminum market continues to, in our view, face the greatest bearish fundamental shock in a generation, and perhaps, in its history."[184]

Continually declining prices in the imminent future would be even farther below the domestic industry's costs of production than they were in 2015. Growing losses will put four

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[180] "U.S. Primary Aluminum Production," Aluminum Association Industry Statistics, attached at **Exhibit 63**.

[181] Andy Home, "The metals price collapse stops here, say (most) analysts," *Reuters* (Feb. 1, 2016), attached at **Exhibit 64**.

[182] *See* Aluminum futures prices, attached at **Exhibit 72**.

[183] Andy Home, "Facing new crisis, can aluminum industry learn from past crisis?," *Reuters* (Feb. 11, 2016), attached at **Exhibit 65**.

[184] *Id.*

presently or soon to be idled plants in immediate jeopardy and further threaten the only four plants that are presently slated to remain operational. In November of 2015, one industry researcher predicted that "almost all U.S. smelting plants will close by next year," *i.e.*, 2016.[185]

All public information paints an alarming picture of a domestic industry that has lost significant shipments and market share to rising import volumes, sharply curtailed production, and permanently shuttered a third of its capacity in the last five years. As prices have cratered and plants have been forced to operate at a loss, two domestic producers have gone bankrupt, and the number of active plants has shrunk from ten in 2011 to just five at the time of filing this petition and just four by the end of June 2016. Any further increase in imports, and any continued inability to earn prices that cover the cost of production, will not just imminently threaten further serious injury to the domestic primary aluminum industry, it will threaten the industry's very survival in the United States.

VII. IMPORTS ARE A SUBSTANTIAL CAUSE OF SERIOUS INJURY AND THREAT THEREOF[186]

The U.S. statute provides that, in a safeguard proceeding, the Commission shall "determine whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article."[187] The term "substantial cause" means "a cause which is important and not less than any other cause."[188] In order to make its determination, the statute requires the Commission to "take into account all

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[185] Joe Deaux, "When 127-year-old U.S. Industry Collapses under China's Weight," *Bloomberg Business* (Nov. 3, 2015), attached at **Exhibit 29**.

[186] This section satisfies the requirements of 19 C.F.R. § 206.14(f).

[187] 19 U.S.C. § 2252(b)(1)(A).

[188] 19 U.S.C. § 2252(b)(1)(B).

economic factors which it considers relevant."[189] With respect to substantial cause, the factors identified by the statute include (but are not limited to) an increase in the absolute or relative volumes of imports during the period of investigation, and a decline in the domestic industry's market share during the period of investigation.[190]

The statute also directs the Commission to consider any changes in the condition of the industry over the course of the relevant business cycle, and to examine "factors other than imports which may be a cause of serious injury, or the threat of serious injury, to the domestic industry."[191] The statute's legislative history indicates that the purpose of the "other factors" provision "is to assure that all factors injuring the domestic industry are identified."[192] Thus, for the Commission to reach an affirmative determination, "increased imports must be both an important cause of the serious injury or threat *and* a cause that is equal to or greater than any other cause."[193]

In applying the statute, the Commission has generally conducted a two-step analysis.[194] In step one, the Commission examines relevant economic data, and focuses on volume and price changes in imports and trends in financial and trade data for the industry, in the context of its conditions of competition.[195] As reviewed earlier, imports have increased significantly over the last five years and have been at declining prices, with the sharpest declines in 2015. While

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[189] 19 U.S.C. § 2252(c)(1).

[190] 19 U.S.C. § 2252(c)(1)(C).

[191] 19 U.S.C. § 2252(c)(2)(A) & (B).

[192] S. Rep. No. 100-71, at 50 (1987).

[193] *Steel 201* at 34. *See also* S. Rep. No. 93-1298, at 120 (1974) ("Substantial cause is defined in the bill to mean a cause which is important and not less than any other cause. This requires that a dual test be met – increased imports must constitute an important cause, and be no less important than any other single cause.").

[194] *Steel 201* at 32-34.

[195] *Id.* at 56-63.

apparent consumption has increased, domestic producers saw production contract sharply, closed or idled many facilities, will have laid off more than 6,500 workers by the middle of this year, and have been operating below the full cost of production of their U.S. operations. So imports are clearly a substantial cause of the serious injury the domestic industry and its workers have experienced.

In step two, the Commission considers to what extent other factors may be contributing to the industry's serious injury. For example, in the *Steel 201,* with respect to certain carbon flat-rolled steel, the Commission noted: "Respondents have suggested several alternate sources of injury to the domestic industry, including declining domestic demand, intra-industry competition, domestic capacity increases, buyer consolidation, excess leverage of domestic producers, and legacy costs."[196] For individual product categories, claims were also made about the existence of Title VII trade remedies on imports from certain countries. The Commission considered each of these suggested causes in turn and found that none of them was a source of injury to the domestic industry greater than increased imports.[197]

In assessing imports and other potential causes of injury, the Commission does not, and need not,[198] numerically value, or quantify, the amount of injury caused by various factors.[199]

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[196] *Id.* at 63.

[197] *Id.* at 63-65.

[198] *See, e.g.,* Panel Report on *United States – Definitive Safeguard Measures on Imports of Wheat Gluten from the European Communities* WT/DS166/R (July 31, 2000), at para 8.142, which stated: "A Member is not necessarily required to quantify on an individual basis, the precise extent of 'injury' caused by each other possible factor. However, a Member must conduct an examination that ensures that any injury caused by such other factors is not attributed to increased imports." *See also* Panel Report on *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia,* WT/DS177/R and WT/DS178/R (adopted May 16, 2001), at para. 7.247 (quoting *Wheat Gluten*).

[199] *See* S. Rep. No. 93-1298, at 120 (1974) ("The Committee recognizes that 'weighing' causes in a dynamic economy is not always possible. It is not intended that a mathematical test be applied by the Commission.").

Rather, the Commission examines the data relevant to the injury caused by imports and any alternative factors, and qualitatively assesses how much the industry's serious injury is attributable to imports, on the one hand, and to alternative factors, on the other. By doing so, the Commission can assess, in accordance with the statute, whether increased imports contributed as importantly to serious injury as any other factor.

Petitioner does not believe that there are any causes other than imports that have contributed importantly to serious injury. Demand has been increasing, domestic producers have not added capacity in the United States, and there are no trade remedies under antidumping or countervailing duty laws in place on primary aluminum in the United States. Below we provide a little more analysis of a few causes examined in other cases.

In some cases, the Commission has found that declining domestic demand is a more important causal factor that an increase in imports.[200] That is not the case here, as apparent consumption for primary unwrought aluminum grew by 4.25 percent from 2011 to 2015.[201] It was imports that prevented the domestic industry from participating in any of this demand growth. As imports increased 19.62 percent, domestic shipments plummeted by 22 percent, enabling imports to seize 9.3 percentage points of market share from domestic producers. As demand has grown and not contracted, demand cannot be a cause of serious injury let alone one that is more important than imports.

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[200] *See, e.g.,* U.S. International Trade Commission, *Certain Metal Castings*, Inv. No. TA-201-58, USITC Pub. 1849 (June 1986) at 22-23 (compressor housings), 29-30 (axle parts), 34 (levers), 38 (drive sprockets), 41-42 (beam hanger brackets), 44 (sockets and suspension brackets), 48-49 (parts of valves) (decline in domestic demand more important cause of injury than increased imports); U.S. International Trade Commission, *Unalloyed, Unwrought Zinc*, Inv. No. TA-201-31, USITC Pub. 894 (June 1978) at 8 (decline in domestic demand/consumption more important cause of injury than increased imports).

[201] *See* Section VI.A.1, above.

Turning to raw materials, the raw materials for the production of primary aluminum are bauxite and alumina, which are globally traded commodities.[202] Thus, the prices for bauxite and alumina are the same throughout the world, and any trends in prices would be experienced equally by producers around the globe.[203] Thus, raw material prices are not believed to be a contributing cause of the serious injury suffered by the domestic industry and its workers.

Another factor in the cost of production is the price of electricity. Production of primary unwrought aluminum is a highly energy-intensive process, and electricity accounts for about 25 percent of production costs.[204] Therefore, differentials in electricity costs can drive decisions about where to locate production and which facilities to idle or shutter if prices for primary aluminum fall below that needed to purchase required electricity.[205] As reviewed *infra*, the USW has worked with the companies and with local utilities to obtain lower energy costs over the period of 2011 to present on multiple occasions. While there may be locations that have lower energy costs, U.S. energy costs have not been a significant contributing cause to serious injury. The declining prices of imports reflecting the global supply/demand imbalance is the substantial cause. Indeed, capacity that is idled is idled exactly on the hope that if prices for primary aluminum rebound from their distressed state, facilities can be restarted. Such restarting will typically be at the prevailing energy prices.

To the extent that any significant differential in electricity prices does exist between the U.S. and major import sources, that differential would only be a cause of serious injury if the differential increased over the period. There is no evidence that this is the case. In fact,

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[202] *Unwrought Aluminum ITS* at 11-12.

[203] *Id.*

[204] *Id.*

[205] *Id.*

according to the Energy Information Administration, the average retail price for electricity for industrial users in the United States increased by only 1.09 percent from 2011 to 2015.[206] Such a small increase in electricity prices cannot have been a greater cause of serious injury than the volume of subject imports, which rose by 19.62 percent over the period, and certainly not a greater cause than the price of subject imports, whose monthly average unit values fell by 27.72 percent from January 2011 to December 2015.[207]

VIII. EFFORTS TO COMPETE[208]

The domestic industry and its workers have made significant efforts to make a positive adjustment to import competition since 2011.

At the beginning of the period in 2011, the USW had just ratified a new contract with Alcoa in the prior year that included a number of provisions to help the company compete. Alcoa's workers made significant concessions on health care and retirement benefits to reduce the company's costs. The revised health care plan included increased premiums, deductibles, and out-of-pocket expenses for USW members.[209] In addition, employees hired after the contract was reached in 2010 would no longer be eligible for retiree health care and prescription drug benefits.[210] The USW also agreed to concessions at Century Aluminum's Hawesville, KY plant in 2015, after concessions on health care and retirement benefits in the 2010 contract.[211] In

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[206] EIA Retail Electricity Prices, attached at **Exhibit 66**.

[207] *See* Sections V and VI.A.2, above.

[208] This section satisfies the requirements of 19 C.F.R. § 206.14(h).

[209] *See* USW Alcoa Contract Summary, attached at **Exhibit 67**.

[210] *Id.*

[211] *See* Meserve Declaration, attached at **Exhibit 68**.

2015, the union agreed to cuts in health care benefits and changes in overtime rules in response to employer demands to cut costs.[212]

The union has made additional efforts to help the industry compete by sacrificing significant numbers of jobs to attrition as job descriptions were combined and headcount was reduced. At Alcoa's plant in Wenatchee, WA, for example, the number of members operating each potline dropped from an estimated 137 workers in 2011 to 117 workers today, a decline of nearly 15 percent.[213] At Century Aluminum's facility in Hawesville, KY, about 80 jobs have been eliminated since the company began combining jobs in 2012.[214] Prior to the plant's closing in 2016, workers at Alcoa's Warrick plant in Evansville, IN saw the workforce in the smelting room contract from about 340 workers ten years ago to just 258 in 2015 while producing the same amount of aluminum.[215]

The union has also played a significant role in reaching out to public utility commissions and state, local, and federal lawmakers to help their employers renegotiate contracts with their power suppliers to lower electricity prices.[216] The union's role has been pivotal in helping to contain and reduce power costs over the period. As electricity accounts for 25 percent of the cost of production and can mean the difference between maintaining, idling, or closing a facility as market prices for primary aluminum decline, these efforts have made a significant contribution to the domestic industry's competitiveness. Indeed, the only reason that Alcoa's Massena West facility remains operational today and was not closed as Alcoa originally announced at the end of

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[212] *Id.*

[213] Woodard Declaration, attached at **Exhibit 69**.

[214] Meserve Declaration, attached at **Exhibit 68**.

[215] *See* Underhill Declaration, at **Exhibit 55**.

[216] Declarations at **Exhibits 68-71**.

2015 was because the USW worked with the company and government officials to obtain significant power cost savings and other state financial support for the company.[217]

Though the financial condition of the domestic industry has prevented it from maintaining or increasing capital expenditures over the period, a number of plants have attempted to invest in improvements and upgrades in order to improve productivity and reduce operating costs. Unfortunately, deteriorating market conditions have not always permitted the industry to take advantage of these investments. At its Hawesville plant, Century Aluminum invested in a new bath crusher machine and in improvements to its rodding department in 2014 and 2015, but was still forced to shut down three of its five potlines starting in mid-2015.[218] At Massena East, Alcoa was engaged in a major modernization project to shift the plant to a more modern and efficient smelting technology, but was not able to complete the project before the plant was shut down.[219] Noranda invested in an entire new, $80 million state-of-the-art rod mill three years ago, but was never able to bring it into operation.[220] Noranda was within weeks of starting to test-fire the equipment when the company declared bankruptcy and idled the entire facility.[221]

Finally, the industry has endeavored to compete through two companies declaring bankruptcy over the period. Ormet declared bankruptcy in 2013, seeking to restructure its debt and reduce costs to permit the plant to survive.[222] While the company was able to find a buyer for the plant, the purchaser did not take on Ormet's pension liabilities, stripping the union of

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[217] Smith Declaration, attached at **Exhibit 70**.

[218] Meserve Declaration, attached at **Exhibit 68**.

[219] Smith Declaration, attached at **Exhibit 70**.

[220] Snider Declaration, attached at **Exhibit 71**.

[221] *Id.*

[222] Ormet Bankruptcy Declaration, attached at **Exhibit 21**.

guaranteed benefits for their retirees.[223] Shortly thereafter, in 2014, the new owner shut down the facility permanently. Noranda is the second company to declare bankruptcy over the period. Since filing for Chapter 11 protection in early 2016, it has been in talks with the union to renegotiate its contract.[224]

In short, the domestic industry and its workers have made a wide range of painful efforts to compete throughout the period. USW workers have sacrificed jobs, health care benefits, retiree benefits, and other contract protections in an attempt to reduce employer costs. They have been pivotal in the renegotiation of long-term power contracts and obtaining other forms of state support that have been necessary in order for plants to continue operating. The domestic industry has attempted to modernize facilities and restructure debt obligations to survive. Unfortunately, these efforts have been insufficient to allow the domestic industry to compete with rising volumes of imports at continually declining prices. Without relief from these imports, the industry will not have the breathing space it requires to be able to make positive adjustments and reach a sustainable footing.

IX. RELIEF SOUGHT AND THE PURPOSE THEREOF[225]

Petitioner seeks two forms of relief: (1) a tariff on imports capped at sustainable price levels by product category; and (2) bilateral and multilateral negotiations by the U.S. government to reduce global excess capacity and restore a supply and demand balance in the global market. The second form of relief is essential to the long-term viability of the domestic industry and to creating rational market conditions that will allow it to compete once tariff relief ends. The first

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[223] *See* Matthew D. Austin, "Ormet allowed to sell bankrupt Ohio facility free and clear of unfunded pension obligation," *Lexology* (Aug. 8, 2014), attached at **Exhibit 73.**

[224] Snider Declaration, attached at **Exhibit 71**.

[225] This section satisfies the requirements of 19 C.F.R. § 206.14(g).

form of relief is essential to allowing the industry to survive long enough to see the eventual benefits of a re-balanced global market. If imports continue at their current volume and price levels without tariff relief, that short-term survival is in grave jeopardy.

With regard to the tariff remedy, petitioner seeks provisional relief and what is left of four years of relief after a final determination. Petitioner believes a provisional tariff of 50 percent is required during the pendency of this investigation. After a final determination, petitioner believes an additional tariff of 50 percentage points ("percent") in the first year, 45 percent in the second year, 40 percent in the third year, and 35 percent in the fourth year is required. The purpose of the tariff is to bring market prices back to levels that can sustain domestic production.

To the extent world prices recover or exporters charge prices that reflect sustainable pricing for U.S. producers, the USW would accept a cap on the remedy on an entry by entry basis. Because there are a wide variety of products within the primary unwrought aluminum product line, the USW believes that the most effective cap is one that is done by product so that high purity primary aluminum and various alloyed primary aluminums achieve prices that are sustainable for the domestic producers while the basic grade product has a lower cap reflecting the lower production costs. Such information will need to be developed from the companies who have access to their pricing histories and costs of production and can presumably identify sustainable prices by product for the Commission. If such information cannot be developed for the provisional relief (critical circumstances) phase or for the final phase, then the USW would suggest a cap based on 2011 customs values by HTS category.

As noted in Section VI.A.4, above, in the beginning of 2011 market prices were at levels that justified a number of producers' decisions to start bringing idle capacity back on line. Thus,

2011 customs value prices would be a rough proxy for sustainable prices. If such an approach is undertaken, the USW requests the Commission to obtain information from domestic producers on products like high purity primary aluminum and other grades as appropriate to permit an appropriate adjustment to the HTS category price.

In order to achieve those price levels, petitioner proposes that the amount of import duty assessed be capped at price levels – on a product-specific level – that are sustainable for the domestic industry. A hypothetical scenario regarding how the tariff would operate is below.

Operation of a Price-Capped Tariff

Price Cap	Import Price	Tariff Rate	Tariff Assessed	Resulting Price
$2,800/MT	$1,500/MT	50%	$750/MT	$2,250/MT
$2,800/MT	$1,867/MT	50%	$933/MT	$2,800/MT
$2,800/MT	$2,000/MT	50%	$800/MT	$2,800/MT
$2,800/MT	$2,300/MT	50%	$500/MT	$2,800/MT
$2,800/MT	$2,500/MT	50%	$300/MT	$2,800/MT
$2,800/MT	$2,800/MT	50%	$0/MT	$2,800/MT

The maximum tariff allowed by U.S. law is 50 percentage points above existing tariffs. If prices remain distressed at projected levels, the full tariff will apply, and the customs value plus duty will not exceed the cap value (in our hypothetical for a grade, $2,800/metric ton). However, if customs values rise, the amount of duty that gets assessed will fall below the full amount authorized to the extent that the customs value plus duty would exceed the cap value (here $2,800/metric ton). In successive years, as the tariff is reduced the cap would remain the same.

As noted above, the price caps should be determined on a product-specific basis in order to ensure higher value products and lower value products are all priced at appropriate levels. Otherwise, higher value products, such as high purity aluminum, will fail to attain sustainable levels, while lower value products would be subject to caps that may be higher than required.

Attached at **Exhibit 4, Tabs 2 – 4,** are lists of grades of primary aluminum. The Commission should collect information from domestic producers on what are sustainable pricing levels by product in 2016 through producers' questionnaires. In the absence of such information during the provisional relief phase, the Commission can rely on average unit values for imports at the ten-digit HTS level as the most specific product pricing data available. Average unit values for each ten digit category in 2011 are provided below.

2011 Average Import Unit Values[226]
$/MT

HTS	Average Unit Value
7601.10.3000	$2,546
7601.10.6000	$2,499
7601.20.3000	$3,972
7601.20.6000	$2,891
7601.20.9030	$2,815
7601.20.9045	$2,669
7601.20.9090	$2,790

To the extent that the Commission or the Administration views a cap as not administrable for either the provisional period of relief or the relief after an affirmative serious injury finding, the USW then simply seeks a straight tariff increase of 50 percentage points during the provisional period and the first year (or such portion as remains after provisional relief).

On a provisional basis, the tariff relief is intended to prevent further irreversible injury to the domestic industry while this investigation proceeds. In the four years that follow (or remaining time after provisional relief), the relief is intended to help the industry survive and avoid further contraction while a more lasting solution to global overcapacity is negotiated by the Administration. If prices are allowed to recover and to reflect a more balanced market going

[226] Imports are imports for consumption under HTSUS 7601.10.30.00, 7601.10.60.00, 7601.20.30.00, 7601.20.60.00, 7601.20.90.30, 7601.20.90.45, and 7601.20.90.90. Values are customs values.

forward, it will help the domestic industry make fuller use of the capacity that remains, hire back workers, and invest in its competitiveness for the long-term.

X. CRITICIAL CIRCUMSTANCES WARRANT PROVISIONAL RELIEF[227]

Petitioner alleges that critical circumstances exist and requests provisional relief. When a petition alleges that "critical circumstances" exist and requests "provisional relief," the statute directs the Commission to determine, "on the basis of available information," whether—

> (i) there is clear evidence that increased imports (either actual or relative to domestic production) of the article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article; and
> (ii) delay in taking action under this part would cause damage to that industry that would be difficult to repair.[228]

The Commission must make this determination within 60 days of the date the petition is filed.[229] This provision was enacted by the Uruguay Round Agreements Act as an amendment to the Trade Act of 1974.[230] Congress had initially provided for provisional relief due to critical circumstances in the Omnibus Trade and Competitiveness Act of 1988, which had amended the 1974 Act to provide that

> critical circumstances exist if a substantial increase in imports (either actual or relative to domestic production) over a relatively short period of time has led to circumstances in which a delay in taking action under this chapter would cause harm that would significantly impair the effectiveness of such action.[231]

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[227] This section satisfies the requirements of 19 C.F.R. § 206.14(j).

[228] 19 U.S.C. § 2252(d)(2)(A); *see also* 19 C.F.R. § 206.14(j).

[229] *Id.*

[230] Pub. L. 103-465, sec. 301(c).

[231] Pub. L. No. 100-418, 102 Stat. 1227 (1988); 19 U.S.C. § 2252(b)(3)(B) (1988) (prior statutory language).

The House report to the 1988 Act explained the basis for provisional relief, as follows:

> [T]he Committee recognizes that in certain situations the injury caused by increased import competition may be so severe or so pervasive that not imposing any relief until the end of the import relief proceeding ... may impair the effectiveness of the import relief in remedying the serious injury. This may occur because at that later point in time the harm to the industry will have become irreparable or difficult to repair, or because the injury which continues to occur during the pendency of the proceeding will significantly impair the effectiveness of the import relief ultimately provided.
>
> Critical circumstances may also occur when there are surges of imports, as foreign exporters and U.S. importers attempt to rush as many imports as possible into the United States before import relief is made effective. In their efforts to 'beat' imposition of relief, they can seriously aggravate the injury which has already occurred.[232]

The conference report to the 1988 Act also stated:

> The ITC should seek to determine whether the substantial increase in imports is so disruptive as to undercut any import relief that may be provided and consequently that measures to prevent further damage to the domestic industry pending Presidential action are appropriate.[233]

The statute itself does not indicate what factors the Commission should consider in determining whether delay in providing relief would cause damage to the domestic industry that would be difficult to repair. In practice, the Commission has reviewed evidence that imports were likely to continue to increase, that domestic producers were unlikely to decrease their vulnerability absent some change in current market conditions, and that domestic producers had closed, reduced production and employment, and were unlikely to recoup losses.[234]

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[232] H. Rep. 100-40, 100th Cong., 1st Sess. (April 6, 1987) at 92-93.

[233] H. Rep. 576, 100th Cong., 2d Sess., Pt. 2 at 672 (1988).

[234] *See, e.g.,* U.S. International Trade Commission, *Broom Corn Brooms*, NAFTA-302-1, USITC Pub. 2963 (May 1996) at I-19-20.

As explained below, these factors are relevant here, and they support an affirmative determination of critical circumstances.

A. There Is Clear Evidence that Increased Imports Are a Substantial Cause of Serious Injury or Threat Thereof

The first factor, clear evidence that increased imports are a substantial cause of serious injury or threat thereof, is met in this case. As explained in more detail in Sections V and VI.A, imports increased significantly, rising by 19.62 percent, driving down domestic shipments by 22 percent, and seizing 9.3 percentage points of market share from domestic producers. The imports entered at global commodity prices that were falling rapidly, forcing two domestic producers to declare bankruptcy and many plants to operate at a loss. As a result, domestic producers had to slash production by 19.44 percent, leading to drastic idling and shuttering of capacity. By 2015, the industry had shuttered one-third of its 2011 capacity. Additional cuts have been made in 2016 and the industry will be running at only 30 percent of that post-closure capacity by the end of June. The closures have resulted in mounting unemployment, with over 6,500 jobs already lost or being lost through June.

The industry is threatened with further serious injury in the imminent, if not immediate, future. As detailed in Section VI.B, major import sources are highly focused on the U.S. market, have already increased their exports sharply in 2016, and will continue to increase exports even as domestic industry inventories are mounting. The global price for primary aluminum is projected to continue to fall through 2016, putting additional pressure on domestic producers as imports increase. A domestic industry already operating at a loss, that has already been starved of capital investment, and that is already operating at very low capacity levels will not be able to withstand a further increase in imports at declining prices. Analysts are already predicting that if market conditions do not improve, nearly every domestic primary aluminum plant will close this

year. Indeed, Alcoa's Warrick facility in Indiana, which was operating at full capacity in 2015, shut down production completely at the end of March of this year, less than three months after the closure was announced in January, and it is already starting to be dismantled this month. Failure to provide provisional relief would not just lead to further serious injury; it would likely result in the permanent loss of an American industry that has existed for over 125 years.

There is clear evidence that increased imports are a substantial cause of this serious injury and threat of serious injury. As explained in Section VII, above, the declines suffered by the domestic industry occurred despite rising domestic demand and stable electricity prices. In addition, while falling prices were a significant source of serious injury, the fact that imports enter at such prices is purely a function of a global commodity market. The fact that prices dropped especially sharply in 2015 shows that when prices reflect market fundamentals in an over-supplied market, they fall.

For all of these reasons, there is clear evidence that increased imports are a substantial cause of serious injury or threat thereof.

B. Delay Would Cause Injury that Would Be Difficult to Repair

As noted in Section VI.A.4, above, there are currently only eight primary aluminum facilities left in the United States, and only five of those are producing aluminum, with one of those five slated to be idled at the end of June. The other three have been completely idled. Of the 1,733 thousand MT of domestic capacity that still exists in 2016, 917 thousand MT is at plants that are completely idle now or will be by the end of June, and another 262 thousand MT of capacity is idled at two plants that remain open. Thus, 68 percent of domestic capacity is currently sitting idle or will be by the end of June.

As further explained in Section VI.A.4, the industry has displayed a consistent pattern of idling capacity in the hopes that market conditions could improve and eventually justify bringing the capacity back on-line in the future, but then permanently shutting that capacity when improvements do not materialize. The 1,179 thousand MT of idle capacity in 2016 is in imminent danger of being permanently shut down, just as previously idle capacity has been shut, if market conditions do not improve. The damage that permanently shuttering four additional plants this year would cause would not only be difficult to repair; it would be impossible to repair.

Alcoa's facility in Wenatchee, WA is one example. As reviewed in Section VI.A.4, above, the plant was completely idled earlier this year. As explained in more detail in the declaration of Mr. Woodard, the local aluminum trades council president,[235] only 8 employees currently act as caretakers for the plant, down from the 360 employees working at the plant last year. Most of those 360 workers are on layoff and have recall rights to return to the plant should it resume production.

Whether the plant will resume production, remain idle, or close permanently depends on whether market conditions will improve in 2016. The plant's power contract imposes a $70 million penalty on Alcoa if it stays idle for more than eighteen months – or beyond mid-2017. Well in advance of that date, Alcoa will therefore have to decide whether market conditions justify re-starting production. If not, the company is highly likely to close rather than incur the penalty and incur the costs of maintaining the idle facility. As Mr. Woodard's declaration attests, if market prices stay at the level they are at, the facility is highly likely to close down permanently.

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[235] Woodard Declaration, attached at **Exhibit 69**.

Other idled facilities will be forced to face the same difficult choices this year if conditions do not improve. Noranda, for example, is already in bankruptcy. While the company organized the idling in a manner that attempts to retain maximum value in the facility,[236] its ability to sell the plant will ultimately depend on market conditions for primary aluminum. As attested to by the USW local president at the plant, if those conditions do not improve, it is highly unlikely a buyer would opt to purchase the idle plant, and it would be threatened with rapid closure, just as Ormet's bankruptcy led to its facility being closed in 2014.[237]

Indeed, it is not only idled facilities that are at risk. The fact that Alcoa elected to permanently close Warrick in January 2016, a plant that had the lowest cost profile of any Alcoa plant in the United States and was operating at full capacity throughout 2015, is a testament to the dire situation the industry is facing. As attested to by Mr. Underhill, the USW business agent, the decision to permanently close the plant rather than idle it in hopes of improving market conditions was shocking to the plant's employees.[238] Other plants that are continuing to operate could be closed just as suddenly and permanently as Warrick was.

Once a primary aluminum smelter is closed, its productive assets are demolished and impossible to recover. As attested to in the attached declaration of Mr. Smith, the local USW President at Alcoa's two facilities in Massena, NY, the Massena East facility, which ceased all production in February of 2014, has already been completely dismantled.[239] In a little over two years, all equipment at the plant has been removed or demolished, and only the buildings remain. As attested by Mr. Underhill, within three months of the announcement of Warrick's closure in

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[236] *See* Snider Declaration, attached at **Exhibit 71**.

[237] *See id.*

[238] Underhill Declaration, attached at **Exhibit 55**.

[239] *See* Smith Declaration, attached at **Exhibit 70**.

January, all production at the plant had ceased permanently.[240] On April 7, 2016, less than two weeks after all production stopped, hundreds of workers were permanently laid off.[241] That same day, a demolition team took over the plant, and it is starting to permanently dismantle and scrap the remaining equipment.[242]

Once a plant is permanently closed and dismantled, it will never restart production. As noted in Section VI.A.4, above, a greenfield primary aluminum smelter costs at least a billion dollars to construct. None of the six plants that have closed since 2011 have been restarted or are in a position to do so. If additional plants close, they will also be lost permanently.

Moreover, every indication is that market conditions will not improve in 2016 – and in fact are likely to deteriorate further – if no provisional relief is imposed. When LME prices were at $1,500/MT in 2015, it was estimated that the vast majority of world producers were operating underwater, and publicly available information indicates that includes every facility in the United States.[243] The result was the idling of three more facilities and the permanent closure of another in early 2016. In February 2016, Goldman Sachs again cut its price forecasts for primary aluminum, predicting that it will trade at just $1,350/MT on the 12-month horizon.[244] As noted by the Goldman analyst: "The aluminum market continues to, in our view, face the greatest bearish fundamental shock in a generation, and perhaps, in its history."[245]

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[240] Underhill Declaration, attached at **Exhibit 55**.

[241] *See id.*

[242] *See id.*

[243] *See* Section VI.A.2 & 3, above.

[244] Andy Home, "Facing a new crisis, can aluminum industry learn from past crisis?," *Reuters* (Feb. 11, 2016), attached at **Exhibit 65**.

[245] *Id.*

These continually declining prices in the imminent future would be even farther below the domestic industry's costs of production than they were in 2015. Growing losses will put three plants that are currently idled and a fourth to be idled in July in immediate jeopardy, and they further threaten the only four plants that are currently planned to remain operational. In November of 2015, one industry researcher predicted that "almost all U.S. smelting plants will close by next year."[246] In other words, not only idle plants, but even currently producing plants are predicted to close this year as market conditions continue to deteriorate.

In short, it is essential that the industry be granted relief as soon as possible. If the industry is forced to wait until this fall or winter for relief, it is highly likely to be too late for some of the remaining domestic facilities and their workers. The injury that such a delay would cause – the continued financial bleeding of domestic producers, the permanent shuttering of additional plants, and the loss of additional jobs – would be impossible to repair at a later date. For all of these reasons, the Commission should find that critical circumstances exist and recommend provisional relief to keep the industry on life support as this investigation proceeds.

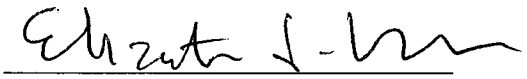
XI. CONCLUSION

The domestic primary aluminum industry is in a state of acute crisis. Imports have increased by over 19 percent since 2011 with a speedup in growth in the first two months of 2016, and the global prices of those imports collapsed by nearly 30 percent over the course of 2015. These dynamics drove prices below operating costs, forcing the domestic industry to permanently shut six out of fourteen plants, idle three more with a fourth scheduled to be idled at the end of June, and run below capacity at several remaining facilities. This has eliminated more than 6,500 jobs since 2011 through mid-2016. Imports are continuing to increase in 2016, and

[246] Joe Deaux, "When 127-year-old U.S. Industry Collapses under China's Weight," *Bloomberg Business* (Nov. 3, 2015), attached at **Exhibit 29**.

prices are projected to continue falling. Without immediate relief, the industry is likely to close additional facilities this year. Once an aluminum smelting plant closes, it is permanently lost. The only way to avoid this outcome is to provide relief that allows the industry to survive in the short term and to compete in a more rational market environment in the years to come. The USW respectfully requests that the Commission give this domestic industry and its workers that chance.

Respectfully submitted,



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