

Acenta Steel Ltd provides in this letter comments for consideration by the Bureau of Industry and Security (“Bureau”) in the national security investigation of steel imports initiated under Section 232 of the Trade Expansion Act of 1962¹ (“Section 232”).² As requested, Acenta’s comments are directed to the criteria listed in § 705.4 of the National Security Industrial Base Regulations (15 CFR §§ 700 to 709) as they affect national security.

By way of introduction, Acenta Steel Limited is a UK based Company that produces and distributes hot rolled and cold finished (bright drawn) bars, flats, hexagons and squares in engineering steel grades to world markets (25/30 companies supplied annually). The Company has a rich history dating back to 19th century in the case of its hot rolling business, has enjoyed various different ownerships in its journey and is currently privately owned; operating from 6 sites across UK and employs 350 people. The Company has been shipping to the USA market since the early 1980’s and has developed partnerships with US based customers that span several decades. The Company is not engaged in supplying steel that would be considered a risk to national security. Acenta is proud of the added value products and services it provides to valued clients in US.

I. THE PROBLEMS AFFECTING THE GLOBAL STEEL MARKET CAN ONLY BE EFFECTIVELY RESOLVED THROUGH COORDINATED, CONCRETE ACTION BY THE US, EU, AND OTHER LIKE-MINDED GOVERNMENTS

Acenta Steel shares the US government’s and US steel producers’ concerns with respect to unfair trading practices, and excess global steel production and overcapacity. Acenta Steel has worked through EUROFER and with EU officials to address the injurious effects of these commercial problems through vigorous enforcement of domestic trade remedy laws. In addition, Acenta Steel has individually and via EUROFER strongly supported the EU’s frequent collaborations with the US government on joint efforts to address global steel overcapacity, including in such fora as the OECD and the G-20.³ Coordinated, concrete action between the EU, the United States, and other like-minded governments and industry groups is the only effective means to address these problems and secure balance in the global and US steel markets.

II. OVERVIEW OF ACENTA STEEL EXPORTS TO THE UNITED STATES

Data on Acenta Steel’s steel exports to the United States are provided in **Annex 1**. Standard practice in Europe is to group steel products into four different segments⁴ and 25 different product groups.⁵ Acenta produces low volume specialist products through long standing supply

¹ 19 U.S.C. § 1862.

² *Notice Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel*, 82 FR 19205 (April 26, 2017).

³ https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=232337,231889,230320,230321,228836,228749,228671,228133,227837,135773&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.

⁴ Carbon; Stainless; Other alloys; and Primary transformation.

⁵ Ingots; Semis Long (Blooms,Billets); Semis Flat; Semis Long (Others); Hot Rolled Wide Strip; Lengths cut from hrws; Quarto Plate; Cold Rolled Sheet; Tin Mill Products; Hot Dipped; Electrolytically; Hot Rolled Narrow Strip; Wire Rod; Forged Bars;

partnerships with US Processors and Distributors (Service Centers). These bar products are not directly linked to applications relating to national security interest. They are provided either suitable for bright cold finishing in the hot rolled form, or in the precision cold finished condition for machining into a wide variety of engineering applications across several sectors. By their nature they are not mainstream volume products and although they are substitutable by other materials, the combination of material characteristics, supply chain complexities and end use application prevent this being an option. Annex 1 provides a summary of the sales volume together with proportion of sales to the US by product group, and by distribution channel.

III. THE BUREAU'S ANALYSIS SHOULD BE NARROWLY FOCUSED ON ANY SPECIFIC IMPORTED STEEL PRODUCTS THAT DIRECTLY THREATEN US NATIONAL SECURITY

It is critical for the Bureau to focus its analysis on specific steel products that are directly related specific national security uses, and determine whether imports of those products threaten to impair US national security. This narrow approach is required by US law and international trading rules. It also is incumbent upon the Bureau to narrowly define action as to not prejudice the interests of other US industries and US consumers.

A. US Law Requires a Narrow Analysis

Investigations conducted pursuant to Section 232 and any import adjustments resulting therefrom must be limited to considerations of “national security,” as opposed to broader commercial or “national interest” considerations. This limitation is clearly established in the statute, and repeated in the governing sections of the National Security Industrial Base Regulations (15 CFR § 705). Furthermore, although the statute grants the Department some discretion in defining “national security” and making recommendations based thereupon, that discretion is limited. In *Federal Energy Administration v. Algonquin*, for example, the Supreme Court stated that the term “national security” under Section 232 must be interpreted more narrowly than simply “the national interest.”⁶ Thus, the Bureau’s analysis must be tied to national security and any recommended action must be justified on national security grounds.

In this regard we note that US government investigations typically differentiate among steel products because the markets for, physical characteristics and uses of, the products differ significantly. For example, existing US antidumping and countervailing duty orders cover 18 different steel products,⁷ and the International Trade Commission’s 2001 global safeguard investigation of steel examined 33 different steel product categories.⁸ Put simply, there is no one

Rebars; Merchant Bars; Cold Finished Bars; Heavy Sections; Cold Finished Angles, Shapes and Sections; Drawn Wires; Grain Oriented; Grain Non Oriented; Sheet piling; Others; and Railway Material.

⁶ *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 546, 569 (1976).

⁷ https://www.usitc.gov/sites/default/files/trade_remedy/documents/orders.xls. Carbon and Alloy Steel Cut-to-Length Plate; Carbon and Certain Alloy Steel Wire; Carbon steel plate; Carbon steel wire rod; Clad steel plate; Cold-Rolled Steel Flat Products; Corrosion-Resistant Steel Products; Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products; Hot-rolled carbon steel flat products; Non-Oriented Electrical Steel; Stainless steel bar; Stainless steel plate in coils; Stainless steel sheet & strip; Stainless steel wire rod; Steel concrete reinforcing bar; Steel Nails; Tin mill products; and Welded Line Pipe.

⁸ <https://www.usitc.gov/publications/safeguards/PUB3479B.pdf>.

“steel” product – there are dozens of different steel products, and the Bureau’s Section 232 investigation should recognize this reality.

B. The Bureau’s Analysis Should Begin by Identifying Steel Products with a Direct National Security Nexus

The Bureau should start its analysis by identifying specific steel products that have a strong, direct national security nexus. Only those products should be analyzed and potentially subject to import adjustment. First, the Bureau’s should identify steel uses that are directly related to national defense. Second, the Bureau should identify any “critical infrastructure” uses that directly relate to national security. In this regard, Acenta Steel notes that several of the subsectors identified by Presidential Policy Directive 21 (“PPD 21”) as “critical infrastructure” applications have little or no relevance to national security and, therefore, should be removed from the Bureau’s analysis.⁹ The Bureau should therefore undertake a thorough review of the “critical infrastructure” sectors and exclude subsectors that are directly relevant to national security. The Bureau took a similar approach in the 2001 Section 232 investigation of iron ore and semi-finished steel.¹⁰

C. The Bureau Should Then Exclude Products That Have Little or No Connection to National Security Uses

Differentiation among steel products is critical to determine the specific steel products that have a direct connection to national security versus those that do not. To analyze and propose actions on “steel” in the aggregate would capture steel products that clearly have no national security implications. Therefore, steel products that have little or no connection to national security should be excluded. In particular, **the following products are used for commercial purposes, do not affect significantly affect national security, and should be excluded:**

- **Hot rolled bar for cold finishing.** These carbon and free cutting steel products are not directly linked to end uses affecting national security, they are processed in the US, and generally machined into components for hydraulic, general engineering, industrial engineering and machinery and tooling applications in a variety of sectors including

⁹ Presidential Policy Directive No 21 of February 12, 2013 (<https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil>).

¹⁰ Section 232 Investigation of Iron Ore and Semi-Finished Steel (2001), at 13-16 (<https://www.bis.doc.gov/index.php/forms-documents/section-232-investigations/81-iron-ore-and-semi-finished-steel-2001/file>). The industries were: Crude petroleum and natural gas (industry number 8); New construction, including own-account; construction (industry number 11); Maintenance and repair construction, including own- account construction (industry number 12); Ordnance and accessories (industry number 13); Petroleum refining and related products; (industry number 31); Metal containers (industry number 39); Engines and turbines (industry number 43); Computer and office equipment (industry number 51); Audio, video, and communication equipment; (industry number 56); Motor vehicles (passenger cars and trucks) (industry number 59A); Truck and bus bodies, trailers, and motor vehicle parts; (industry number 59B); Aircraft and parts (industry number 60); Other transportation equipment (industry number 61); Railroads and related services, passenger ground; transportation (industry number 65A); Motor freight transportation and warehousing; (industry number 65B); Water transportation (industry number 65C); Air transportation (industry number 65D); Pipelines, freight forwarders, and related services; (industry number 65E); Communications, except radio and TV; (industry number 66); Radio and TV broadcasting (industry number 67); Electric services (utilities) (industry number 68A); Gas production and distribution (utilities) (industry number 68B); Water and sanitary services (industry number 68C); Finance (industry number 70A); Insurance (industry number 70B); Computer and data processing services; (industry number 73A); Health services (industry number 77A); and National defense: consumption expenditures; (industry number 96C).

automotive, mining and excavation equipment, agriculture, construction, energy and power generation.

- **Cold finished bar.** These precision finished carbon and free cutting cold drawn, machined and turned steel products are not directly linked to end uses affecting national security. They are processed near to net shape for machining into components for hydraulic, general engineering, industrial engineering and machinery and tooling applications in a variety of sectors including automotive, mining and excavation equipment, agriculture, construction, energy and power generation.

D. Aggregating All Steel Exporters Could Lead to Security-Related Measures on Imports from Allies and Companies Invested in the United States

Second, the Bureau must consider and differentiate among the varying sources of the imported steel products that are determined to have a strong, direct national security nexus. Not all foreign sources of steel are the same with respect to national security. Most basically, available data may show that some import sources have a historically small or declining share of the US market and no immediate ability or plans to expand capacity, and therefore present no threat to the US industry (and, by extension, national security). Furthermore, countries have widely-varying policies with respect to steel production and trade – the stated concern of many in the US steel industry at the Bureau’s May 24, 2017 hearing for the current investigation. Applying a uniform response to these varying policies would serve no legitimate national security purpose.

Perhaps even more importantly, certain countries and companies raise few, if any, national security risks. This is certainly true with respect to the United States and the EU, which share a long history of collaboration on national security issues. For example, 22 EU Members, including the United Kingdom, are members of the North Atlantic Treaty Organization (NATO) and are legally obligated to defend U.S. security, including by providing assistance in times of crisis. In fact, there are *dozens* of bilateral agreements between the United States and individual EU Members covering matters such as defense cooperation and weapons production. Acenta are unaware of any specific agreements by the Company for applications relevant to US national security. If there were such specific applications brought to the attention of Acenta Steel, the Company would work under various national agreements between EU member states and the US that help to *maintain*, rather than threaten to imperil, US national security. Any national security determination under Section 232 must account for these agreements.

IV. CONCLUSION

Acenta Steel strongly believes that the commercial problems with the global steel market cannot be adequately addressed through domestic measures targeting national security. Nevertheless, if the Bureau continues the current investigation under Section 232, it must (i) develop an analytical framework that accounts for wide variances among steel products and exporting countries and companies; and (ii) ensure that it has sufficient factual information from US companies and consumers, as well as foreign exporters and governments. Failure to do so would inevitably result in recommendations that do not actually address US national security in a manner consistent with US law.

Annex 1 - Acenta Steel UK Sales to USA 2016 in Tonnes

Sector/ Product	Application/ Distribution Channel	Tonnes 2016	Percentage of Total 2016 tonnes**
Hot Rolled Bar	For Cold Drawing - final application unknown	4881	5.1
Cold Finished Bar	For Machining: Hydraulic Application - final application unknown	2170	2.3
Cold Finished Bar	Service Centres - final application unknown	1682	1.8
Cold Finished Bar	For General Engineering - final application unknown	154	0.2
Total	Total Acenta Steel UK Sales to USA 2016	8887	9.3

**Acenta UK Total 2016 Sales = 95,993 tonnes