Slides Accompanying Testimony of Hughes Hubbard & Reed LLP and Cornerstone Building Brands, Inc.

Fabricated Structural Steel from Canada, China, and Mexico,
Investigation Nos. 701-TA-615-617 and 731-TA-1432-1434 (Final)

USITC Public Hearing
January 28, 2020

Hughes
Hubbard
& Reed

Petitioner's Inconsistent Arguments Before DOC and ITC

Arguments to Commerce

- "For the same reason that Petitioner has opposed the request by Building Systems de Mexico to exclude 'components of pre-engineered metal building systems,' it ***opposes any attempt to limit the scope with reference to the types of structures in which FSS is used***."
  - Petitioner's October 1, 2019 Scope Case Brief at 5
- "[T]he petitioner considers the phrase in question to be analogous to 'assembled, or incorporated into, structures.' . . . The petitioner noted that the scope explicitly covers 'steel products that have been fabricated for erection or assembly into structures' ***with no limitations regarding whether or not the FSS is essential to support the design loads*** of the structure."
  - Commerce Final Scope Memo at 26-27

Arguments to the Commission

- FSS produced for use in a complete pre-engineered metal building system should ***not*** be included in the domestic industry
  - *See* Petitioner's Prehearing Brief at 5-7
- "On the other hand, non-structural components, such as trim and IMPs, are not in scope and not part of the domestic like product. ***These components are not designed 'to provide structural support.'*** Instead, non-structural components of PEMBS typically serve as the skin of PEMBS and are designed to enclose the structural framework of PEMBS."
  - Petitioner's Prehearing Brief at 14

The Captive Production Provision Does Not Apply to PEMB Components

- **19 U.S.C. § 1677(7)(C)(iv): Captive production** If *domestic producers* internally transfer significant production of the domestic like product *for the production of a downstream article* and sell significant production of the domestic like product in the merchant market, and the Commission finds that—

  (I) the domestic like product produced that is internally transferred *for processing* into that downstream article does not enter the merchant market for the domestic like product, and

  (II) the domestic like product is the *predominant material input in the production* of that downstream article,

  then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

PEMB Components and Panels

- PEMB component producers do not compete against petitioning AISC members in the marketplace
  - Largest PEMB component producers are NCI, BlueScope, and Nucor Building Systems
- PEMB component producers do not compete against subject imports
- Components produced in Mexico for use in complete PEMB systems sold by NCI treated by Commerce as subject merchandise, meaning that U.S. components are part of domestic like product
- Roof and wall panels are steel fabricated for assembly or incorporation into a structure, and perform some load-bearing functions in PEMBs
  - Would fall under HTSUS subheading 7308.90.9530, which is listed in the scope
- NCI and BlueScope are not injured by subject imports and do not support the Petitions

PEMB Components – Unique Physical Characteristics, Production Processes, and Uses

PEMB Components

- PEMB construction governed by MBMA standards
- Primary structural elements are typically "built-up" frames using 55 ksi steel plate, sheet, or merchant bar
- Secondary framing is lapped cold-formed steel roof and wall framing members
- One-sided welds
- Job-site assembly typically requires only bolting together shop-welded endplates
- Designed for use in PEMBs, which are typically lighter weight structures and only one or two stories

Conventional FSS

- Conventional construction governed by AISC standards
- Primary elements are typically 50 ksi steel mill products hot-rolled from the mill to standard dimensions
- Secondary framing consists of single-span hot-rolled steel joist roof framing and hot-rolled structural wall members
- One-sided welds uncommon
- Assembly often requires welding, cutting, and fitting at the job site
- Better suited for large-scale construction projects requiring heavier compressive-load-bearing capacity