

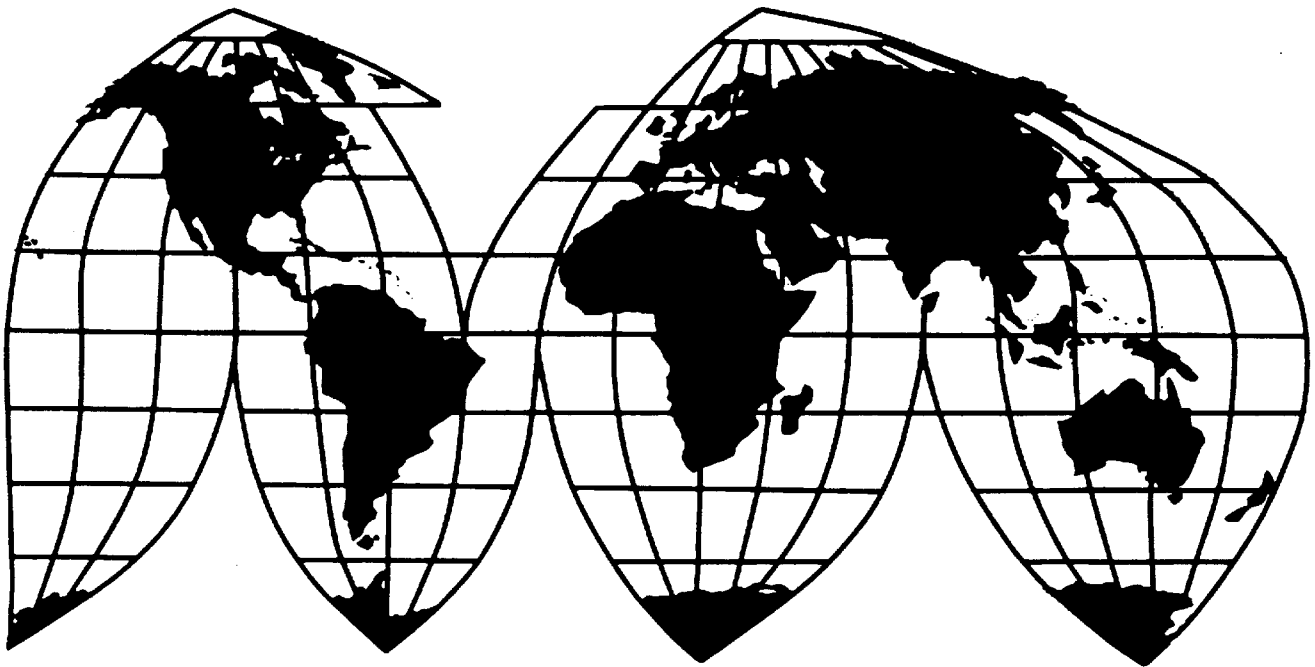
# Carbon and Certain Alloy Steel Wire Rod From Canada

Investigation No. 731-TA-954 (Final) (Remand)

**Publication 3730**

**October 2004**

**U.S. International Trade Commission**



Washington, DC 20436

# **U.S. International Trade Commission**

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## VIEWS OF THE COMMISSION

By decision dated August 12, 2004, a United States-Canada Binational Panel remanded the Commission's determination in Carbon and Certain Alloy Steel Wire Rod from Canada, Inv. No. 731-TA-954 (Final), USITC Pub. 3546 (October 2002).<sup>1</sup> On remand, we determine that an industry in the United States is materially injured by reason of imports of carbon and certain alloy steel wire rod ("wire rod")<sup>2</sup> from Canada found to be sold in the United States at less than fair value ("LTFV"). We maintain all of our prior findings and conclusions in these investigations that were not remanded by the Panel, and incorporate them in this remand determination.<sup>3 4</sup> We have complied with the remand order and instructions, and considered the relevant record evidence as instructed. We address the issues remanded to us below.

### I. Background

On October 2, 2002, the Commission determined that an industry in the United States was materially injured by reason of subject imports of wire rod from Canada as well as other subject countries.<sup>5</sup> On November 27, 2002, Canadian Respondent Ivaco, Inc. and Ivaco Rolling Mills, Inc. ("Ivaco") requested a panel review of this determination pursuant to Article 1904 of the North American Free Trade Agreement ("NAFTA").<sup>6</sup>

Ivaco filed a complaint ("Complaint") challenging the determination on December 19, 2002. In its Complaint, Ivaco challenged: 1) the Commission's failure to collect second quarter 2002 data in the investigations; 2) the Commission's discounting of the weight of first quarter interim 2002 data due to the pendency of the investigations; and 3) the Commission's rejection of a submission containing certain 2002 data as untimely.<sup>7</sup>

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<sup>1</sup> In the Matter of Carbon and Certain Alloy Steel Wire Rod from Canada; Final Injury Determination, Secretariat File No. USA-CDA-2002-1904-09 (August 12, 2004) ("Panel Decision").

<sup>2</sup> The wire rod subject to investigation is defined in Commerce's final less than fair value determination regarding wire rod from Canada. 67 Fed. Reg. 55782, 55783-84 (Aug. 30, 2002).

<sup>3</sup> Following a thorough review of the record evidence in this investigation, Commissioner Lane adopts the Commission's prior views on domestic like product, domestic industry, related parties, negligibility, cumulation, conditions of competition, and the material injury analysis of volume, price effects and the impact of subject imports on the domestic industry, which were not subject to the Panel Review in this matter.

<sup>4</sup> Commissioner Pearson is recused from this remand determination, and is not participating in it.

<sup>5</sup> Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago and Ukraine, 67 Fed. Reg. 66,662 (Nov. 1, 2002). The Commission's views were published in Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Germany, Indonesia, Mexico, Moldova, Trinidad and Tobago, Turkey, and Ukraine, Inv. Nos. 701-TA-417-421 and 731-TA-953, 954, 956-959, 961 and 962 (Final) USITC Pub. 3546 (October 2002). Citations in these remand determinations are to the confidential version of these views ("Confidential Commission Determination").

<sup>6</sup> Ivaco's challenge to the Commission's determination is filed at the NAFTA Secretariat under Secretariat File No. USA-CDA-2002-1904-09.

<sup>7</sup> Complaint of Ivaco at 5-8 (December 19, 2002). In its Complaint, Ivaco also challenged the Commission's finding on cumulation. However, it failed to present any argument on this issue in its brief. In its Decision, the Panel ordered Ivaco to show cause within 10 days why the cumulation issue challenged in its Complaint should not be dismissed from the Panel review. In the absence of that showing, the Panel stated that the cumulation issue would be dismissed. Panel Decision at 29-30. As Ivaco has not filed any response to this show cause order, and the Panel stated that it would dismiss the cumulation issue, we do not discuss it further. Ivaco's complaint also

The parties briefed and argued the case before the Panel, and on August 12, 2004, the Panel issued its decision. The Panel remanded the determination to the Commission for further action as follows:

- (A) the Commission is to provide its reasoning as to why it did not collect second quarter 2002 data, as requested by Ivaco,
- (B) the Commission is to address all of Ivaco's arguments that allegedly rebut the legal presumption that changes in each of subject import volume, price effects and impact were related to the pendency of the investigation, and
- (C) The Commission is to explain further its decision to reject the information filed by Ivaco on September 24, 2002.<sup>8</sup>

## II. The Commission's Period of Investigation

Consistent with its regular practice in original Title VII investigations, the Commission gathered questionnaire data in these investigations for the most recent three full calendar years, 1999 to 2001, and the most recent interim (partial year) data available at the time that the questionnaires were issued, which were interim (January to March) 2001 and 2002 data. The questionnaires were due to be returned to the Commission in May 2002, and final comments were scheduled to be submitted on July 23, 2002.<sup>9</sup> The Department of Commerce ("Commerce") extended the schedule in the case.<sup>10</sup> After Commerce extended the schedule, there were several requests from parties to expand the period of investigation to include second quarter 2002, and to collect data for that quarter:

- On June 19, 2002, Brazilian respondents asked the Commission to gather second quarter 2002 financial and pricing data solely from domestic producers. The offered rationale for this request was that, in the second quarter of 2002, demand improved in the steel sector of the U.S. economy and prices for steel wire rod increased.<sup>11</sup>
- On August 1, 2002, Ivaco argued in a letter to the Commission that the end of the recession in 2002, and the effects of the newly defined region-specific quotas in the Section 201 safeguard for steel wire rod,<sup>12</sup> justified collecting second quarter 2002 data.<sup>13</sup> Ivaco argued that the

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challenged other aspects of the Commission's determination that the Panel has not yet addressed.

<sup>8</sup> Panel Decision at 30-31.

<sup>9</sup> 67 Fed. Reg. 22105, 22106 (May 2, 2002).

<sup>10</sup> Commerce extended the date for its final determinations in the subject investigations from June 17, 2002 to August 23, 2002. 67 Fed. Reg. 17367 (April 10, 2002) (Ukraine); 67 Fed. Reg. 17379 (April 10, 2002) (Trinidad and Tobago); 67 Fed. Reg. 17389 (April 10, 2002) (Canada); 67 Fed. Reg. 18165 (April 15, 2002) (Brazil); 67 Fed. Reg. 20728 (April 26, 2002) (Mexico); 67 Fed. Reg. 32013 (May 13, 2002) (Indonesia and Moldova).

<sup>11</sup> Letter to the Commission dated June 19, 2002 from Belgo Mineira and Gerdau at 2-3. Ivaco joined in filing that request.

<sup>12</sup> The Section 201 wire rod tariff rate quota ("wire rod TRQ") applied to wire rod imports from all countries except Canada and Mexico. It began on March 1, 2000, and was in place for three years, with quota years running from March to February. Under the wire rod TRQ, imports within the quota entered at the lower "within quota" duty rate, as opposed to the higher "over quota" duty rate. Under the wire rod TRQ's original parameters, the quota was

Commission should gather additional data because it did so in the contemporaneous antidumping and countervailing duty investigations on cold-rolled steel.<sup>14</sup>

- On August 21, 2002, Respondents (including Ivaco) reiterated their request for second quarter 2002 data in the Joint Respondents' Pre-Hearing Brief, noting that their request was consistent with the Commission's additional data request in the separate antidumping and countervailing duty investigations regarding cold-rolled steel.<sup>15</sup> On September 4, 2002, Ivaco asked for additional 2002 data in their Posthearing Brief, based on their argument, which the Panel has since rejected, that the Commission had the obligation to seek the most recent data available, citing to Usinor v. United States, No. 01-00010, Slip Op. 02-70 (Ct. Int'l Trade, July 19, 2002).<sup>16</sup>
- On September 23, 2002 (two days before the record closed), Ivaco submitted another letter to the Commission in which it again requested that the Commission obtain additional data. In this letter, Ivaco emphasized again that additional data had been gathered in the cold-rolled steel investigations. In addition to arguing that the improvement in the health of the domestic industry, and the change in the structure of the TRQ required the Commission to gather second quarter 2002 data, Ivaco argued that additional data were necessary due to increased nonsubject imports.<sup>17</sup>

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one-third of the annual quota for the first three quarters of each quota year. In the fourth quarter, only any unused quota from the earlier quarters was available. Due to the uncertainty regarding whether any quota would remain available in the fourth quarter of the quota year (December to February), wire rod imports tended to decrease in that period. Confidential Staff Report ("CR") at I-11-13; Public Staff Report ("PR") at I-9-11.

In November 2001, the President modified the structure of the wire rod TRQ such that the in-quota quantity would be allocated among supplying countries. The modification established sub-quotas for a country or a group of countries that supplied wire rod to the United States. The sub-quotas were effective beginning November 24, 2001. 66 Fed. Reg. 59353, 59355 (November 28, 2001). The President also modified the structure of the wire rod TRQ to "even-out" the in-quota allocations, effective in March 2002, thereby reducing uncertainty regarding the availability of the lower in-quota duty rate in the last quarter of each quota year. CR at I-12-13; PR at I-9-11.

In the antidumping duty investigations at issue in this remand, Petitioners stressed the ineffectiveness of the wire rod TRQ due to its high in-quota levels. Petitioners' Prehearing Brief at 3-7.

<sup>13</sup> Letter to the Commission dated August 1, 2002 from Ivaco at 3-4.

<sup>14</sup> On March 5, 2002, near the end of the period of investigation in the cold-rolled steel investigations, a 30-percent tariff was placed on cold-rolled steel under Section 201. Unlike the wire rod TRQ, this newly-imposed remedy was a fundamental change to the conditions of competition, not just a modification of relief already in place, as was the case in the wire rod investigations. The Commission gathered additional data for the second quarter of 2002 because the effects of this significant condition of competition, the 30-percent tariffs, would not have been effectively reflected in any other data. Certain Cold-Rolled Steel Products from Australia, India, Japan, Sweden and Thailand, Inv. Nos. 731-TA-965, 971-972, 979, and 981 (Final), USITC Pub. 3536 (Sept. 2002) at 23, 27 -28 & 31, n.185.

<sup>15</sup> Joint Respondents' Prehearing Brief at 54, n.145.

<sup>16</sup> Ivaco Posthearing Brief at 8.

<sup>17</sup> Letter from Ivaco to the Commission dated September 23, 2002 at 1, 4. Ivaco also requested that the Commission gather second quarter 2002 data from domestic producers in its Final Comments, but at that point, the Commission's record had already closed. Ivaco Final Comments at 3, n.4.

Consistent with its longstanding general practice when Commerce extends its schedule,<sup>18</sup> the Commission did not extend its period of investigation or issue supplemental questionnaires to cover data for second quarter 2002. As discussed more fully below, the Commission was not presented with sufficient reason to deviate from its standard practice. As the Panel recognized in its Decision, the courts have allowed the Commission considerable discretion in conducting its investigations.<sup>19</sup> The courts have recognized that the Commission has a short statutory period in which to conduct its investigations, and that obtaining the requisite information to make our determinations can be difficult. They have therefore only remanded determinations for failure to seek necessary information.<sup>20</sup> If substantial evidence exists to support a Commission determination, the thoroughness of the Commission's investigations will not be examined further.<sup>21</sup> As long as the agency's methodology and procedures are a reasonable means of effectuating the statutory purpose, and there is substantial evidence in the record supporting the agency's conclusions, the courts have not imposed their own views as to the sufficiency of the evidence.<sup>22</sup> As the Panel acknowledged in its Decision, there is no legal precedent requiring the Commission to expand the period of investigation if the deadline for completion of an investigation is extended.<sup>23</sup>

We did not gather an additional quarter of data in these investigations because it was not necessary to obtain additional data to allow us to perform our analysis, in addition to the fact that it was not our general practice to do so.<sup>24</sup> The record in this case, including arguments made by respondents in their requests for additional data, did not indicate that an additional quarter of 2002 data would differ materially from the 2002 data already on the record, or that the second quarter 2002 data would have had a material effect on the Commission's analysis. In the June 19 request, Respondents asked for second quarter 2002 data because demand for steel in general had increased and because there had been some price increases.<sup>25</sup> However, changes in the steel market generally, as opposed to the steel wire rod market specifically, did not in our view necessitate collecting more data. Moreover, Respondents did not indicate that the first quarter 2002 data on the record were insufficient to analyze these conditions of competition.

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<sup>18</sup> It is not uncommon for Commerce to extend its schedule in antidumping and countervailing duty investigations. E.g., Ceramic Station Post Insulators, Inv. No. 731-TA-1023, USITC Pub. 3655 (Dec. 2003) (Final), (Commerce extended schedule, 68 Fed. Reg. 39897 (July 3, 2003), Commission vote on December 2, 2003, most recent financial data reviewed - June 2003); Silicomanganese from India, Kazakhstan, and Venezuela, Inv. Nos. 731-TA-929-931 (Final), USITC Pub. 3505 (May 2002) (Final) (Commerce extended schedule, 66 Fed. Reg. 63522 (Dec. 7, 2001) (India and Kazakhstan) and 66 Fed. Reg. 67185 (Dec. 7, 2001) (Venezuela), Commission vote April 29, 2002, most recent financial data reviewed - September 2001).

<sup>19</sup> Panel Decision at 5 ("It is 'not within the Court's domain either to weigh the adequate quality or quantity of the evidence for sufficiency. . . ." Citations omitted; emphasis supplied.)

<sup>20</sup> Hannibal Industries, Inc. v. United States, 710 F. Supp. 332, 336-37 (Ct. Int'l Trade 1989).

<sup>21</sup> Atlantic Sugar, Ltd. v. United States, 744 F. 2d 1556, 1561 (Fed. Cir. 1984); See also Acciai Speciali Terni v. United States, 118 F. Supp. 2d 1298, 1307 (Ct. Int'l Trade 2000).

<sup>22</sup> Nucor Corp. v. United States, 318 F. Supp. 2d 1207, 1212 (Ct. Int'l Trade 2004), citing to Ceramica Regiomontana S.A. v. United States, 636 F. Supp. 961, 966 (Ct. Int'l Trade 1986), aff'd, 810 F. 2d 1137 (Fed. Cir. 1987).

<sup>23</sup> The Panel cited to case law that parties are not entitled to quarterly analysis "on demand." Panel Decision at 11, citing to American Spring Wire Corp. v. United States, 590 F. Supp. 1273, 1279 (Ct. Int'l Trade 1984), aff'd sub nom. Armco Inc. v. United States, 760 F. 2d 249 (Fed. Cir. 1985).

<sup>24</sup> We also note that it is in general difficult to meaningfully update questionnaire responses when more than a very few questionnaire recipients are involved, as is the case here. Questionnaire recipients would be required not only to respond to requests for second quarter 2002 data, but to requests for second quarter 2001 data as well, for comparative purposes.

<sup>25</sup> Letter to the Commission dated June 19, 2002 from Belgo Mineira at 2.



In Ivaco's requests, it argued that the end of the recession and the new region-specific quotas in 2002 warranted gathering additional data. It did not explain, however, why the first quarter 2002 data on the record were insufficient to analyze these conditions of competition.<sup>26</sup> For example, Ivaco's request overlooked the fact that the first quarter 2002 data already reflected increased apparent U.S. consumption,<sup>27</sup> and the changes to the wire rod TRQ regarding the region-specific quotas that became effective in November 2001.<sup>28</sup>

Ivaco's arguments based on the data collection efforts in the cold-rolled steel investigations have no merit because the situation in those investigations was fundamentally different from the situation here. The Section 201 30-percent tariff on cold-rolled steel, the same product at issue in the Title VII investigations, was a newly imposed remedy that significantly affected the market, not merely a modification to a program that had been in place. In the cold-rolled investigations, the Commission decided to collect second quarter 2002 data in order to assess the impact of the new 201 remedy, which became effective in March 2002. Moreover, the Commission collects the data appropriate to the facts of each investigation, which may not result in the same comparative periods being examined in different investigations.

### **III. Impact of the Pendency of the Investigation**

The Panel remanded the issue regarding the impact of the pendency of the investigation to the Commission to address all of Ivaco's arguments that allegedly rebut the legal presumption that changes in subject import volume, price effects and impact, respectively, were related to the pendency of the investigation.<sup>29</sup> As discussed below, the Commission may presume that a significant change in data is related to the pendency of the investigation, unless the presumption is rebutted by "sufficient evidence" that the change is related to other factors. The record does not contain sufficient evidence to rebut the presumption that these significant changes were caused by the pendency of the investigations.

As the Panel correctly stated in the Decision, the starting point for analysis is the statute that authorizes the Commission to give reduced weight to post-petition data. 19 U.S.C. § 1677(7)(I) provides as follows:

The Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise<sup>30</sup> since the filing of the petition in an investigation under Part I or Part II of this subtitle is related to the pendency of the investigation, and if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury,

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<sup>26</sup> Letter to the Commission dated August 1, 2002 from Ivaco at 3-4; Letter to the Commission dated September 23, 2002 at 4.

<sup>27</sup> In interim 2002, apparent U.S. consumption was \*\*\* million short tons as compared to \*\*\* million short tons in interim 2001. CR/PR at Table C-2.

<sup>28</sup> CR at I-12; PR at I-9-10.

<sup>29</sup> Panel Decision at 30-31.

<sup>30</sup> The Panel references an argument that 19 U.S.C. § 1677(7)(I) applies to total imports of wire rod, including nonsubject imports, rather than subject imports of wire rod. That argument is incorrect under the plain meaning of the statute. 19 U.S.C. § 1677(7)(I) only relates to "imports of the subject merchandise." Subject merchandise is defined in 19 U.S.C. § 1677 (25) as "the class or kind of merchandise that is within the scope of an investigation. . ."

threat of material injury, or material retardation of the establishment of an industry in the United States.

We disagree with the Panel that 19 U.S.C. § 1677(7)(I) requires us to consider separately whether significant changes in all three statutory factors (volume, price effects, and impact) are related to the pendency of the investigation in order to discount, respectively, volume data, price effects data and impact data.<sup>31</sup> The statute only states that the Commission must consider whether there has been “any change in the volume, price effects or impact of imports of the subject merchandise” since the filing of the petition, not a change with respect to each factor.<sup>32</sup> In the Uruguay Round Agreements Act (“URAA”), Congress stated that the Statement of Administrative Action (“SAA”) “shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the [URAA] in any judicial proceeding in which a question arises concerning such interpretation or application.” 19 U.S.C. § 3512(d). The SAA provides that:

... when the Commission finds evidence on the record of a significant change in data concerning the imports or their effects subsequent to the filing of the petition or its imposition of provisional duties, the Commission may presume that such change is related to the pendency of the investigation. In the absence of sufficient evidence rebutting that presumption and establishing that such change is related to factors other than the pendency of the investigation, the Commission may reduce the weight to be accorded to the affected data.<sup>33</sup>

While the statute does not require us to separately consider volume, price effects, and impact, we do so for the sole purpose of this remand determination in order to fully address the Panel’s concerns. As discussed below, subject import volume, data related to price effects, and the condition of the domestic industry underwent significant changes during the pendency of the investigation, and the record does not establish that such change or changes are related to factors other than the pendency of the investigations.

#### **A. Interim 2002 Subject Import Volume**

We find that there was a significant change in cumulated subject import volume after the filing of the petition in these investigations, and that this change was related to the pendency of the investigations.

Subject import volume steadily increased from 1999 to 2001. The volume of cumulated subject imports increased from \*\*\* short tons in 1999 to \*\*\* short tons in 2000 and \*\*\* short tons in 2001, an overall increase of approximately \*\*\* short tons or \*\*\* percent. The volume of subject imports increased from 2000 to 2001, despite a simultaneous decline in apparent domestic consumption of \*\*\* short tons (a drop of \*\*\* percent). From 1999 to 2001, U.S. market share held by cumulated subject imports increased by \*\*\* percentage points.<sup>34</sup>

In contrast, the absolute volume of cumulated subject imports was lower, \*\*\* short tons, in interim 2002 as compared to \*\*\* short tons in interim 2001,<sup>35</sup> despite increased domestic consumption in

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<sup>31</sup> Panel Decision at 25.

<sup>32</sup> 19 U.S.C. § 1677(7)(I)

<sup>33</sup> SAA, H.R. Rep. 316, 103 Cong., 2d Sess., vol. 1 at 854 (1994).

<sup>34</sup> Confidential Commission Determination at 39-40; OINV Memorandum INV-Z-162, Table C-2a.

<sup>35</sup> Confidential Commission Determination at 39-40; OINV Memorandum INV-Z-162, Table C-2a.

interim 2002 of \*\*\* short tons.<sup>36</sup> The change in subject import volume trends from a steady increase over a three-year period, when demand decreased irregularly from 1999 to 2001,<sup>37</sup> to lower subject import volume in interim 2002 as compared to interim 2001, when demand was higher, is significant. Moreover, U.S. market share held by cumulated subject imports was lower by \*\*\* percentage points in interim 2002 as compared to interim 2001.<sup>38</sup>

We conclude that this significant change in the volume data was related to the pendency of these investigations. “Courts have repeatedly recognized that the initiation of antidumping and countervailing duty proceedings can create an artificially low demand for subject imports, thereby distorting post-petition data compiled by the Commission.”<sup>39</sup> The petitions were filed in August 2001; the Commission made its preliminary determinations in October 2001; and Commerce imposed preliminary countervailing duties on Canada and Trinidad and Tobago and made affirmative critical circumstances determinations as to Mexico, Moldova, Trinidad and Tobago, and Ukraine in February 2002.<sup>40</sup> We find that these elements of the investigations, and the expectation of future duties, led to the decline in subject import volume in interim 2002, even as total apparent U.S. consumption of wire rod increased at the same time.<sup>41</sup> In other words, the significant post-petition change in subject import volume in interim 2002 was related to the pendency of these investigations.

Ivaco argued that subject import levels were not affected by the pendency of the investigations, and that subject import levels were steady from August 2001, when the petitions were filed, until December 2001. Rather than reflecting a “steady” level of subject imports, the data it relies on actually show an approximate one-third drop in subject import volume from October 2001 to November 2001, the month immediately following the Commission’s October 2 affirmative preliminary determinations. These data do not support Ivaco’s claims that the pendency of the investigations had no effect on subject import volume.<sup>42</sup>

Ivaco argued that the decline in subject imports in late 2001 was due to the original structure of the wire rod TRQ. December 2001 was the beginning of the fourth quarter of the TRQ. At that time, according to Ivaco, the original structure of the TRQ caused imports to decrease. In contrast, the new quota year beginning in March 2002 caused imports to increase “sharply.”<sup>43</sup>

However, Ivaco has made inconsistent arguments relating to the changes in post-petition subject import volumes. It argued to the Panel that the change in the wire rod TRQ that allocated imports evenly throughout the quota year caused lower subject import volumes in the month of March 2002 than in

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<sup>36</sup> Calculated from OINV Memorandum INV-Z-162, Table C-2a.

<sup>37</sup> U.S. apparent consumption for wire rod increased from \*\*\* short tons in 1999 to \*\*\* short tons in 2000, before decreasing to \*\*\* short tons in 2001. CR/PR at Table C-2.

<sup>38</sup> OINV Memorandum INV-Z-162, Table C-2a.

<sup>39</sup> SAA at 854, citing to Metallwerken Nederland, B.V. v. United States, 744 F. Supp. 281, 284 (Ct. Int’l Trade 1987); USX Corp. v. United States, 655 F. Supp. 487, 492 (Ct. Int’l Trade 1987).

<sup>40</sup> CR/PR at I-2.

<sup>41</sup> The SAA provides that the “imposition of provisional duties, in particular, can cause a reduction in import volumes and an increase in prices of both the subject imports and the domestic like product.” SAA at 854.

<sup>42</sup> Joint Respondents’ Prehearing Brief at 57-58 & Exhibit 24. Respondents stated that “[i]mports of subject merchandise were 200,768 short tons in August 2001; 244,412 short tons in September; 318,639 short tons in October; and 210,095 short tons in November.” Id at 57.

<sup>43</sup> Respondents’ Joint Prehearing Brief at 57-58.

March 2001, because it lowered import volume to “normal” levels.<sup>44</sup> This argument could not have rebutted the presumption reached by the Commission and its finding that the change in subject import volume in interim (first quarter) 2002 was related to the pendency of the investigations, because the argument was never made to the Commission at all. In fact, Ivaco told the Commission the exact opposite during the investigation -- that subject imports increased in March 2002 due to the wire rod TRQ.<sup>45</sup>

The Commission is not required to demonstrate that the change in the post-petition data is not related to any other factor.<sup>46</sup> The Commission’s exercise of discretion may only be countered by a showing that no other evidence is so substantial as to undermine the Commission’s conclusion that the change in the data is related to the pendency of the investigations. Ivaco presented evidence as to the structure of the modified TRQ, but no evidence as to its specific effects on subject imports. This point is critical, because only approximately half of the subject imports are subject to the wire rod TRQ. Subject imports from Canada and Mexico, which are not subject to the wire rod TRQ, accounted for approximately half of total subject imports in 2001.<sup>47</sup>

Subject imports from only three countries were lower in interim 2002 than in interim 2001: Mexico, Indonesia and Ukraine.<sup>48</sup> The decline in subject imports from Mexico cannot be attributed to the effects of the wire rod TRQ.<sup>49</sup> While Indonesia and Ukraine had much lower levels of subject imports into the United States in interim 2002 than in interim 2001,<sup>50</sup> Ivaco provides no evidence, much less “sufficient evidence to rebut the presumption,” that the precipitate declines in subject imports from Indonesia and Ukraine were due to the “evening out” of the wire rod TRQ in March 2002. Ivaco’s theory is nothing more than speculation.

Pursuant to the Panel’s remand instructions, we have also considered other arguments raised by Ivaco. Ivaco asserted that the modification to the TRQ “smooth[ed] out” permitted levels of imports over the entire quota year.<sup>51</sup> It asserted that the domestic industry supported the modification due to its “expectation” that the modification would even out import surges, and limit volume from certain

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<sup>44</sup> Ivaco Panel Brief at 27-29. We note that contrary to Ivaco’s statement in its Panel Brief, the Commission staff report does not summarize Respondents’ position “as to why there was a first quarter spike in imports in 2001, but not 2002.” *Id.* at 29. The staff report summarized only the former argument. It stated that “[t]he original TRQ structure is what led to the [sic] what the respondents characterize as a “brief spurt” in import volumes in the spring of 2001.” CR at I-14; PR at I-10.

<sup>45</sup> “Consistent with this analysis, [that subject imports reacted to the original structure of the wire rod Section 201 in December of 2001], in response to the beginning of the new quota year in March 2002, imports subject to the Section 201 regime increased sharply.” Respondents’ Joint Prehearing Brief at 58.

<sup>46</sup> SAA at 854.

<sup>47</sup> In 2001, subject imports from Canada and Mexico were \*\*\* short tons and 266,925, respectively. In the aggregate, they were \*\*\* short tons. Total subject imports in the same year were \*\*\* short tons. OINV Memorandum INV-Z-162, Table C-2a. Therefore, combined, subject imports from Canada and Mexico constituted \*\*\* percent or approximately half of subject imports in 2001.

<sup>48</sup> OINV Memorandum INV-Z-162, Table C-2a.

<sup>49</sup> Subject imports from Mexico, which were not subject to the wire rod TRQ, were lower by 19,346 short tons or 31.2 percent in interim 2002 as compared to interim 2001. OINV Memorandum INV-Z-162, Table C-2a.

<sup>50</sup> Subject imports from Indonesia were zero in interim 2002, compared to 29,781 short tons of wire rod imports in interim 2001. Subject imports from Ukraine were lower by 53,505 short tons, or 92.4 percent in interim 2002 as compared to interim 2001. OINV Memorandum INV-Z-162, Table C-2a.

<sup>51</sup> Joint Respondents’ Prehearing Brief at 26, 32.

countries. It also argued that the Commission should focus on the end of the period of investigation due to the changes in the wire rod TRQ.<sup>52</sup>

These arguments fail to refute the Commission's findings and were not even clearly related to the pendency of the investigation issue. The only 2002 volume data Ivaco presented to the Commission containing monthly data were in Exhibit 24 of the Joint Respondent's Prehearing Brief. However, these data (which cover all imports, not just subject imports) refute Ivaco's claims that the TRQ evened out import levels beginning in March 2002.<sup>53</sup> Approximately half of the subject imports were subject to the TRQ, whereas all of the non-subject imports were subject to it.<sup>54</sup> Thus, if the TRQ had the effect posited by Ivaco, it would be demonstrated most clearly by the nonsubject import data. However, while Ivaco's data reflect lower subject imports in March, April, and May 2002 than in the corresponding months in 2001, (consistent with our conclusions), they show much higher nonsubject imports in March and April 2002 than in the corresponding months in 2001, and significant volatility in nonsubject import levels.<sup>55</sup> The data thus do not rebut the presumption that subject import volumes were lower in interim 2002 than in interim 2001 due to the pendency of the investigations.

Based on the information in the record as explained above, we find that the significant post-petition change in subject import volumes was related to the pendency of the investigations.

## **B. Interim 2002 Subject Import Price Effects**

We find that after the filing of the petition in these investigations, there was a significant change in underselling and data related to price suppression by cumulated subject imports, and that these changes were related to the pendency of the investigations.

Underselling was less prevalent in the post-petition data than in the annual periods surveyed. The Commission's pricing data for 1999 to 2001 reflected that subject imports undersold domestic products in 167 out of 250 comparisons, or in 66.8 percent of all comparisons.<sup>43</sup> The Commission's pricing data for interim (first quarter) 2001 reflected underselling in 18 out of 25 comparisons or 72.0 percent of all comparisons.<sup>44</sup> In contrast, the Commission's pricing data for interim (first quarter) 2002 reflected underselling in 11 out of 20 comparisons, or in 55.0 percent of all comparisons.<sup>45</sup> In our original determination we found underselling to be particularly prevalent for the relatively higher volume/industrial/standard quality products 1-3.<sup>46</sup> For two of the high volume products (Products 1 and 2), our data reflect that the margin

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<sup>52</sup> Joint Respondents' Prehearing Brief at 52-54.

<sup>53</sup> Joint Respondents' Prehearing Brief at 26.

<sup>54</sup> The wire rod TRQ applied to goods imported from all countries except Canada and Mexico into the United States. CR/PR at I-11.

<sup>55</sup> Joint Respondents' Prehearing Brief, Exhibit 24. This exhibit shows nonsubject import levels of 180,977 short tons in March 2002 and 95,623 short tons in March 2001. *Id.*

<sup>43</sup> Confidential Commission Determination at 42.

<sup>44</sup> Calculated from CR/PR at Tables V-3-V-9 (excluding Germany).

<sup>45</sup> Calculated from CR/PR at Tables V-3-V-9 (excluding Germany).

<sup>46</sup> Confidential Commission Determination at 43, n.180. Products 1, 2 and 3 are low/medium-low carbon industrial/standard quality wire rod. *See* General Information, Instructions and Definitions for Commission Questionnaires. \*\*\* percent of U.S. shipments by domestic producers in interim 2002 were of low/medium-low carbon industrial/standard quality wire rod. CR at Table D-1. The same data for U.S. shipments of subject merchandise by importers reflect that \*\*\* percent of importer shipments of subject imports from Brazil, \*\*\* percent from Canada, \*\*\* percent from Mexico, \*\*\* percent from Moldova, \*\*\* percent from Trinidad and Tobago, and \*\*\*

of underselling in interim 2002 was lower than the average margin of underselling for subject imports from 1999 to 2001.<sup>47</sup> We find that the pendency of the investigations caused subject import prices generally to follow domestic prices more closely, which resulted in fewer instances of underselling in interim 2002.<sup>48</sup>

We found significant price effects due to price suppression, not price depression. Under the statute, there is no requirement that prices decline for the Commission to reach an affirmative determination, as Ivaco appears to argue.<sup>49</sup> When the domestic industry is experiencing price suppression, it cannot raise its prices to cover increased costs. In evaluating price suppression in these investigations, we considered cost of goods sold (“COGS”) as a percentage of net sales, consistent with our regular practice.<sup>50</sup>

Price suppression by subject imports of the domestic product was less acute in interim 2002 than in the earlier periods. In the earlier periods, the domestic industry’s COGS as a share of net sales steadily increased from \*\*\* percent in 1999 to \*\*\* percent in 2000 and then reached \*\*\* percent in 2001.<sup>51</sup> Unit cost of goods sold also steadily increased from 1999 to 2001, rising from \*\*\* in 1999 to \*\*\* in 2000 and to \*\*\* in 2001. These data indicate that as the domestic industry’s costs increased from 1999 to 2001, producers were unable to raise their prices to cover them. We note that we based our price suppression analysis in part on the effects of steadily increasing volumes of subject imports on domestic prices from 1999 to 2001.<sup>52</sup>

In contrast, in interim 2002, COGS as a share of net sales was \*\*\* percent as compared to \*\*\* percent in interim 2001.<sup>53</sup> Domestic industry prices for Products 1, 4, and 5 were higher in interim (first quarter) 2002 than in the fourth quarter of 2001.<sup>54</sup> These higher prices resulted in somewhat higher net sales value, which had declined irregularly by \*\*\* percent from 1999 to 2001.<sup>55</sup>

Although there had been earlier domestic price increases, unlike earlier increases that occurred at the same time as unit COGS increased, these increases came at the same time as unit COGS decreased in interim 2002. As the volume of subject imports decreased in interim 2002, as compared to interim 2001, the adverse effects of the subject imports on the domestic prices also decreased. The domestic industry’s

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percent from Ukraine, were of low/medium-low carbon industrial/standard quality wire rod in interim 2002. CR at Table D-2; OINV Memorandum INV-Z-163. We further note that our pricing data for Products 1 and 2 in interim 2002 were based on \*\*\* of wire rod than our pricing data on Product 3. OINV Memorandum INV-Z-162, Tables V-3b-5b.

<sup>47</sup> OINV Memorandum INV-Z-162, Tables V-3b-5b.

<sup>48</sup> CR/PR at Tables V-3-V-9 (excluding Germany).

<sup>49</sup> Ivaco Posthearing Brief at 5-7.

<sup>50</sup> See, e.g., Ferrovaniadium from China and South Africa, Inv. Nos. 731-TA-986-987 (Preliminary), USITC Pub. 3483 (January 2002) at 16 (“When assessing whether the domestic industry has experienced price suppression, we generally consider the industry’s cost of goods sold as a percentage of net sales.”)

In its “metal market” arguments, Ivaco maintains that we should have focused solely on raw material costs, and not total cost of goods sold in evaluating price suppression. Joint Respondents’ Prehearing Brief at 46-47. We see no reason to deviate from our regular practice in considering total cost of goods sold in this context. Although scrap metal costs are certainly an important component of wire rod costs, the record in these investigations reflects no reason why factory overhead and direct labor costs should not also be considered.

<sup>51</sup> CR at Table C-2.

<sup>52</sup> Confidential Commission Determination at 44-45.

<sup>53</sup> CR at Table C-2.

<sup>54</sup> CR/PR at Tables V-3-V-9 (excluding Germany).

<sup>55</sup> CR at Table C-2.

increase in net sales contributed to an improvement in the COGS to net sales ratio. In sum, we conclude that there was a significant change in postpetition interim 2002 price effects data, both with respect to data on underselling and data relating to price suppression.

The record contains no evidence that rebuts the presumption that the changes in the post-petition pricing data were related to the pendency of the investigations. Ivaco argues that price increases occurred well before the filing of the petition,<sup>56</sup> and that \*\*\*.<sup>57</sup> In our original determination we acknowledged that our pricing data showed “stable or small increases in domestic prices for at least some of the products surveyed from 1999 to 2001.”<sup>58</sup> However, increases in domestic prices do not explain lower levels of underselling by subject imports in interim 2002. Moreover, regardless of whether the domestic industry raised its prices prior to the filing of the petition, during the period of investigation it still experienced price suppression by the subject imports to a significant degree.

Ivaco argues that the end of the recession brought “soaring” demand for wire rod in interim 2002 leading to increased domestic prices.<sup>59</sup> Our data reflect, to the contrary, that interim 2002 brought only a modest \*\*\* percent increase in U.S. apparent consumption for wire rod, and the domestic industry’s share of the U.S. market decreased by \*\*\* percentage points during the same time.<sup>60</sup>

Thus, we find that the significant changes in subject import price effects were related to the pendency of the investigations.

### **C. Interim 2002 Impact of Subject Imports**

We find that there was a significant change in the impact of cumulated subject imports after the filing of the petition in these investigations, and that this change was related to the pendency of the investigations. In particular, the operating margin (operating income as a percentage of sales) for the domestic industry increased to \*\*\* in interim 2002, as compared to \*\*\* in interim 2001.<sup>61</sup> Domestic industry production, capacity utilization, sales and shipments measured in value (but not quantity),<sup>62</sup> productivity, and capital expenditures for the domestic industry were also higher in interim 2002 as compared to interim 2001.<sup>63</sup>

We find that this improvement in the domestic industry’s condition in interim 2002 was related to the pendency of the investigations. As explained above, the decline in cumulated subject import volume and their price suppressing effects in interim 2002 were largely attributable to the pending investigations.

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<sup>56</sup> Joint Respondents’ Prehearing Brief at 41, 58.

<sup>57</sup> Joint Respondents’ Prehearing Brief at 58.

<sup>58</sup> Confidential Commission Determination at 44.

<sup>59</sup> Joint Respondents’ Prehearing Brief at 44.

<sup>60</sup> CR/PR at Table C-2.

<sup>61</sup> CR/PR at Table C-2.

<sup>62</sup> Ivaco argued that we should have considered only commercial shipments in our analysis, rather than total shipments. Joint Respondents Prehearing Brief at 26-28. We do not disregard internal consumption and transfers to related firms in analyzing our shipment data as a captive segment of the market can still be materially injured by subject imports. A domestic producer that ships wire rod internally could be forced to cut back on its wire rod production or to leave the industry entirely if subject imports were materially injuring the domestic industry.

<sup>63</sup> CR/PR at Table C-2. We note that some indicators for the domestic industry, such as capacity, sales and shipments measured in quantity, market share, number of production workers, hours worked and wages paid, were lower in interim 2002 than in interim 2001. However, we do not consider these declines to outweigh the improvements in the important indicators discussed above, particularly the operating income ratio. Id.

The imposition or threat of provisional duties also contributed to lower subject import volume, lower levels of underselling, and lower levels of price suppression by subject imports in interim 2002.

The domestic industry was able to increase prices somewhat to better cover costs when the steadily increasing volume of subject imports was restrained, and fewer lower-priced subject imports competed against the domestic like product in interim 2002.<sup>64</sup> Moreover, the domestic wire rod industry has high fixed costs,<sup>65</sup> and thus was able to produce wire rod more cost efficiently when it was able to produce it in greater quantities in interim 2002, when competition from subject imports was restrained.<sup>66</sup> These factors all contributed to improved profitability and other positive financial indicators for the domestic industry in interim 2002.

Ivaco argues that the improvement in the financial health of the domestic industry in interim 2002 was due to reductions in the cost of production due to restructuring by a minority of inefficient domestic producers.<sup>67</sup> Contrary to Ivaco's arguments, the \*\*\* in operating margin in interim 2002 was widespread, and not limited to a minority of allegedly inefficient domestic producers.<sup>68</sup> Although restructuring may have improved cost efficiencies for some of the domestic producers, there is evidence on the record that competition from steadily increasing volumes of subject imports at lower prices was a factor in causing the bankruptcies and shutdowns experienced by the domestic industry.<sup>69</sup> Therefore, the pendency of the investigations limited the negative impact of the subject imports and fostered improved profitability for the domestic industry. As stated earlier, the Commission is not required to demonstrate that no other factors affected postpetition data. The question is whether the evidence on the record refutes the Commission's conclusions as to the post-petition effect.<sup>70</sup> It simply is insufficient under the applicable standard of review for Ivaco to suggest that there may be an alternative outcome that is possible based on the record.

Ivaco also argues that the improved health of the domestic industry in interim 2002 is due to cost-cutting measures undertaken late in the period of investigation that were only successful when the recession that began in 2000 ended in interim 2002.<sup>71</sup> Cost-cutting measures in the annual years surveyed is consistent with a domestic industry facing a severe price-cost squeeze. Respondents acknowledge that prior to taking these measures, the "production costs of the domestic industry were above the sales revenue."<sup>72</sup> Ivaco's claim that the domestic industry engaged in cost-cutting measures buttresses our conclusion that steadily increasing subject import volumes at lower prices were materially injuring the

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<sup>64</sup> OINV Memorandum INV-Z-162, Table C-2a.

<sup>65</sup> Confidential Commission Determination at 44.

<sup>66</sup> CR/PR at Table C-2 (improvement in unit COGS and ratio of COGS to net sales in interim 2002).

<sup>67</sup> Joint Respondents' Prehearing Brief at 63.

<sup>68</sup> \*\*\*. In contrast, \*\*\*. CR/PR at Table VI-2.

<sup>69</sup> GS Industries Vice President Ted Dillon testified that his company closed its Kansas City wire rod mill, which was unprofitable despite significant capital investments, because of unfairly traded imports. Tr. at 53-54. Bill Lundberg of North Star Steel testified that wire rod was no longer produced at its Kingman, Arizona plant due to unfair import competition. Tr. at 63. He acknowledged that the company had experienced increased electricity costs and environmental problems, but testified that they would have been manageable if the company had been able to sustain a reasonable return on the sale of wire rod. Tr. at 61-62. Northwestern stated in a public Securities and Exchange Commission statement that it had problems obtaining financing due to poor operating results caused largely by imports. Petitioners' Posthearing Brief, Exhibit 1 at 51-54; see also CR/PR at Appendix F \*\*\*.

<sup>70</sup> SAA at 854.

<sup>71</sup> Joint Respondents' Prehearing Brief at 59, 63-64.

<sup>72</sup> Joint Respondents' Prehearing Brief at 64.



domestic industry, and that the pendency of the investigations brought some relief to the domestic industry in interim 2002.

Several of these cost-cutting measures were initiated in 2001 or earlier.<sup>73</sup> Ivaco explains that the recession caused the effects of these cost-cutting measures to be delayed. We disagree with this analysis because the end of the recession does not appear to have materially benefitted the domestic industry. While U.S. apparent domestic consumption of wire rod improved modestly by \*\*\* percent in interim 2002 as compared to interim 2001, the domestic industry experienced lower sales volume by quantity, lower employment indicators (except for hourly wages paid) and lower U.S. market share.<sup>74</sup>

Moreover, the modest increase in consumption in interim 2002, \*\*\* percent,<sup>75</sup> cannot explain the increase in domestic industry profitability. Indeed, the domestic industry's market share was lower in interim 2002 than in interim 2001 by \*\*\* percentage points.<sup>76</sup> This is consistent with the pendency of the investigations having an impact on curbing subject import volume in interim 2002, but not with Ivaco's arguments that the end of the recession triggered increased profitability for the domestic industry.

Similarly, increased nonsubject import volume in interim 2002 is consistent with a moderate increase in demand in the U.S. market and with reduced competition from subject imports due to the pendency of the investigations.<sup>77 78</sup>

Data and other record evidence do not rebut the presumption that the improvement in the impact data in interim 2002 was due to the pendency of these investigations. We have considered all of the record evidence regarding the 2002 data, and find that the lower subject import volumes, the reduction in the cost of goods sold as a percentage of net sales, and the improvement in the profitability of the domestic industry in this period were related to the pendency of the investigations.

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<sup>73</sup> \*\*\* cost-cutting measures were over the period of investigation. \*\*\* "from 2001 to 2002." \*\*\* cost-cutting measures were "recent." Joint Respondents' Prehearing Brief at 63-64.

<sup>74</sup> CR/PR at Table C-2.

<sup>75</sup> CR/PR at Table C-2.

<sup>76</sup> CR/PR at Table C-2.

<sup>77</sup> Ivaco argues that increased nonsubject imports in interim 2002 with lower average unit values ("AUVs"), which resulted in an increase in total imports, in the face of improvement in the financial health of the domestic industry, demonstrates that there is no causal nexus between the subject imports and the financial condition of the domestic industry. Ivaco Posthearing Brief at 8-10 & A-8.

The existence of nonsubject imports in the market does not detract from the impact of the subject imports on the domestic industry. Subject imports remained at all times during the period of investigation at higher absolute volume levels than nonsubject imports, and held a higher U.S. market share. OINV Memorandum INV-Z-162, Table C-2a. Ivaco's argument does not rebut the presumption that the financial condition of the domestic industry improved due to the pendency of the investigations. The fact that the domestic industry became more profitable despite the presence of increased nonsubject imports does not mean that the pendency of the investigations involving subject imports did not contribute to the domestic industry's improving condition.

We note further that we have not relied on AUV data in these investigations because the broad array of wire rod products contained within our domestic like product definition makes AUV data unreliable. Allegheny Ludlum Corp. v. United States, 287 F. 3d 1365, 1373-74 (Fed. Cir. 2002).

<sup>78</sup> Ivaco has argued that the cold-heading quality wire rod ("CHQ") market was abandoned by domestic producers, which caused subject imports to increase to service those markets during the annual periods surveyed. The record reflects that, to the contrary, the domestic industry has not abandoned the CHQ market. \*\*\* domestic producers make some type of CHQ wire rod. CR/PR at Table D-3. The domestic industry's domestic shipments of CHQ meeting IFI-140 specifications and total CHQ were higher in interim 2002 than in interim 2001. CR/PR at Table D-1.

## D. Conclusion

Based on the information in the record as explained above, we discount the weight of interim 2002 volume, price effects and impact data, pursuant to 19 U.S.C. § 1677(7)(I). We find that these changes were related to the pendency of the investigations. We have considered Ivaco's arguments to the contrary and find that the data and other evidence in the record do not rebut our findings.

## IV. Ivaco's September 24, 2002 Submission

The Panel remanded for further explanation the Commission's decision to reject a submission filed by Ivaco on September 24, 2002, as untimely. We disagree with the Panel that the document was timely filed. We discuss below why we deemed the filing of the document to be untimely in the original investigation.

Courts have recognized that the Commission has broad discretion to fashion its own rules of administrative procedure, as long as they are a reasonable means of fulfilling its statutory duties, including "the authority to set and enforce time limits on the submission of data and other materials."<sup>79</sup> This discretion allows the Commission to make an informed decision in an orderly fashion, and ensures that the administrative process does not go on indefinitely.<sup>80</sup>

Under 19 U.S.C. § 1677m(e) and (g), parties must timely submit information, and the information must be released to other parties for comment.<sup>81</sup> This process provides parties with an equal opportunity to comment on other parties' submissions. The Court of International Trade has specifically upheld on several occasions the Commission's right to set deadlines for written submissions.<sup>82</sup>

Consistent with its rules, the Commission set explicit deadlines for filing information in these investigations. The Commission's rules provide that prehearing and posthearing briefs are intended to contain information, not just arguments.<sup>83</sup> Prehearing briefs are to be filed a few days before the hearing

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<sup>79</sup> Avesta A. B. v. United States, 689 F. Supp. 1173, 1188 (Ct. Int'l Trade 1988), citing to Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 543-45 (1978).

<sup>80</sup> Avesta A. B. v. United States, 689 F. Supp. 1173, 1188 (Ct. Int'l Trade 1988) citing to ICC v. Jersey City, 322 U.S. 503, 514 (1944).

<sup>81</sup> 19 U.S.C. § 1677m (e) and (g), provide in pertinent part as follows:

In reaching a determination under section 1671b . . . the Commission shall not decline to consider information that is submitted by an interested party, . . . if - (1) the information is submitted by the deadline established for its submission. . . [1677m(e)]

Information that is submitted on a timely basis to the . . . Commission . . . shall be subject to comment by other parties to the proceeding within such reasonable time as the . . . Commission shall provide. The . . . Commission, before making a final determination. . . shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the . . . Commission . . . upon which the parties have not previously had an opportunity to comment [1677m(g)].

<sup>82</sup> Cheflin Corp. v. United States, 219 F. Supp. 2d 1303, 1307-08 & n.5; (Ct. Int'l Trade 2002); General Motors Corp. v. United States, 827 F. Supp. 774, 782 (Ct. Int'l Trade 1993); Avesta A. B. v. United States, 689 F. Supp. 1173, 1188 (Ct. Int'l Trade 1988). We note that in General Motors, the Court found that the Commission did not act unreasonably in returning a letter that was filed after the posthearing briefs were due.

<sup>83</sup> Commission rules 207.3, 207.25.

and posthearing briefs are to be filed as specified in the notice of hearing or by the presiding official at the hearing.<sup>84</sup>

Pursuant to its usual practice in Title VII investigations and Commission rule 207.21, the Commission published a scheduling notice in the *Federal Register* for the final phase of these investigations. The scheduling notice set deadlines for filing written submissions, including prehearing and posthearing briefs, in a manner consistent with the Commission's rules.<sup>85</sup> The revised scheduling notice in this case scheduled a hearing date for August 27, 2002, and set the deadline for prehearing briefs as August 23, 2002.<sup>86</sup> It set the deadline for posthearing briefs as September 4, 2004, which presiding official Chairman Okun reiterated at the hearing.<sup>87</sup> Thus, the Commission set deadlines for filing information consistent with its rules and its notice of scheduling.

Commission rules provide procedures for filing requests to file information after these deadlines have passed. Commission rule 201.14(b)(2) provides that the Chairman shall determine whether to grant "for good cause shown extensions of time for performing any act required by or pursuant to the [Commission's rules]." Therefore, if parties do not file information in a timely fashion, they must request an extension of time for good cause shown.<sup>88</sup>

In these investigations, Ivaco submitted two requests to file information, one dated September 24, and one dated September 25, 2002. The Commission accepted the September 25 request in which Ivaco substantially complied with Commission procedures. This request reflects that Ivaco was aware of these procedures. Ivaco requested that the Commission accept the September 25 submission, stating that the information in the submission "came to our attention after the posthearing brief."<sup>89</sup> These documents contained recent information (September 12 and 23, 2002) that would not have been available for submission in the posthearing brief (due September 4).

In contrast, Ivaco made no attempt to comply with these procedures with respect to the September 24 request (the "September 24 Submission"), which contained second quarter financial reports for two companies. Ivaco stated that it filed the submission to "supplement our earlier letter requesting second quarter 2002 data."<sup>90</sup> The Commission rejected this request to file information as untimely. Ivaco had submitted a summary of one of the companies' second quarter data in its prehearing brief (Exhibit 23, Respondents' Joint Prehearing Brief). Thus, this information was available at the time Ivaco filed its posthearing brief, and was appropriately rejected as untimely consistent with the Commission's rules and practice, and with 19 U.S.C. § 1677m(g).

Notwithstanding our position regarding the timeliness of the submission, we have reopened the record in this case, placed this document on the record, allowed parties to comment on it, and examined the information contained in the submission.<sup>91</sup> For the following reasons, this information does not affect our analysis in these investigations.

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<sup>84</sup> Commission rules 207.23 and 207.25.

<sup>85</sup> 67 Fed. Reg. 22105 (May 2, 2002). The schedule for the final phase of the investigations was revised twice. 67 Fed. Reg. 36022 (May 22, 2002); 67 Fed. Reg. 57849 (Sept. 12, 2002).

<sup>86</sup> 67 Fed. Reg. 36022, 36022 (May 22, 2002).

<sup>87</sup> 67 Fed. Reg. 36022, 36022 (May 22, 2002). Tr. at 286.

<sup>88</sup> See Commission rule 201.12, entitled "Requests."

<sup>89</sup> Ivaco Submission dated September 25, 2002, at 1.

<sup>90</sup> September 24 Submission at 1.

<sup>91</sup> 69 Fed. Reg. 56458 (September 21, 2004). We have received comments from Petitioners and Ivaco with respect to the September 24, 2002 Submission. Comments dated September 24, 2004 by Ivaco. Comments dated September 24, 2004 by Petitioners.

The September 24 Submission contains public data on domestic producer Keystone Consolidated Industries, Inc. (“Keystone”)’s and Co-Steel Raritan (“Co-Steel”)’s second quarter 2002 operations.<sup>92</sup> Ivaco argues that the submission reflects increased prices, sales and profitability for these two companies in their wire rod operations in second quarter 2002.<sup>93</sup>

The information contained in the submission is unusable in the context of the Commission’s investigation. It relates to only two domestic producers: Co-Steel and Keystone. The Commission is required to consider the effect of subject imports on the industry as a whole in reaching its injury determinations.<sup>94</sup> Co-Steel accounted for \*\*\* percent of domestic production in 2001, and Keystone accounted for \*\*\* percent in that year. The Commission gathered at least some production data with respect to 14 domestic producers and financial data pertaining to 11 domestic producers.<sup>95</sup>

Ivaco maintains that Keystone and Co-Steel Raritan experienced higher wire rod prices,<sup>96</sup> and Commission price data reflect some price increases.<sup>97</sup> Ivaco also asserts that Keystone had higher sales volumes and increased wire rod production in second quarter 2002 over second quarter 2001.<sup>98</sup> Commission data already reflect that \*\*\*, and \*\*\*.<sup>99</sup> Ivaco also asserts that the September 24 submission reflects increased profitability for Co-Steel Raritan in second quarter 2002 over second quarter 2001.<sup>100</sup> Commission data \*\*\*.<sup>101</sup>

Further, Keystone management largely attributes the company’s recovery in 2002 as compared to 2001 to lower import levels in 2002 as compared to import levels in 2001. Keystone’s report states that “[m]anagement believes the increase in shipment volume during the 2002 second quarter was due to abnormally low shipment volume in the 2001 second quarter resulting from high levels of imported steel and wire products.”<sup>102</sup> Co-Steel Raritan’s report states that preliminary import duties on wire rod range

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<sup>92</sup> September 24, 2002 Submission at 1-2.

<sup>93</sup> September 24, 2002 Submission at 1-2.

<sup>94</sup> Committee for Fair Coke Trade v. United States, Court No. 01-00826, Slip Op. No. 04-68 at 43 (Ct. of Int’l Trade, June 10, 2004); Altx, Inc. v. United States, 167 F. Supp. 2d 1353, 1369-70 (Ct. of Int’l Trade 2001); Encon Industries Inc. v. United States, 16 CIT 840, 841-42 (1992); Copperweld Corp. v. United States, 682 F. Supp. 552, 569 (Ct. of Int’l Trade 1988).

<sup>95</sup> CR/PR at Table III-1 & Table VI-2. We note that even if the two producers had comprised the entire domestic industry, the September 24, 2002 data could not have been directly added to the data in our staff report because the data series are not directly comparable.

For example, a table in the September 24 Submission shows Keystone’s wire rod sales by quantity to have been 82,000 short tons in first quarter 2002 (calculated by subtracting second quarter data from half year data), whereas the Commission’s data shows Keystone’s wire rod net sales by quantity to have been \*\*\* short tons in first quarter 2002. September 24 Submission, Keystone production table; CR/PR at Table VI-2. \*\*\*.

Another table in the September 24 Submission shows Co-Steel Raritan’s sales by value to have been \$45.1 million in first quarter 2002, whereas Commission data reflect that Co-Steel Raritan’s sales by value in that period were \*\*\* million. September 24 Submission, Co-Steel Raritan, Segmented Quarterly Information; CR/PR at Table VI-2.

<sup>96</sup> September 24 Submission, cover letter at 2.

<sup>97</sup> CR/PR at Tables V-3-V-9 (excluding Germany).

<sup>98</sup> September 24 Submission, cover letter at 2.

<sup>99</sup> CR/PR at Table VI-2.

<sup>100</sup> September 24 Submission, cover letter at 2.

<sup>101</sup> CR/PR at Table VI-2.

<sup>102</sup> September 24 Submission, Keystone report, page 24.

from 7 percent to 369 percent, and that “final duties . . . should have a positive impact on Raritan.”<sup>103</sup> These assessments are consistent with the Commission’s analysis that the pendency of these investigations caused a decline in subject import volumes, which improved the financial health of the domestic industry.<sup>104</sup>

In summary, the data in the September 24 submission are unusable, the trends presented by Ivaco for second quarter 2002 for the individual companies reflect trends \*\*\*, and the submission does not support Ivaco’s claims that the financial health of the domestic industry improved in 2002 for reasons unrelated to the pendency of the investigations.

## CONCLUSION

Based on the foregoing and our final Views, we determine that a domestic industry in the United States is materially injured by reason of imports of wire rod from Canada that are sold at less than fair value.

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<sup>103</sup> September 24 Submission, Co-Steel Raritan report, page 3-4. See also Petitioners’ Comments dated September 24, 2004 at 4.

<sup>104</sup> Ivaco’s comments that the September 24 Submission provides evidence of an improving domestic industry whose rejuvenation in 2002 was totally unrelated to the pendency of these investigations is rejected, consistent with our findings regarding the pendency of the investigations. Ivaco Comments dated September 24, 2002 at 3-4.

