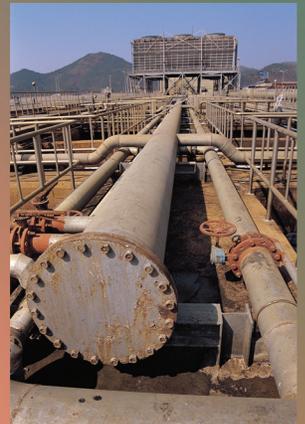


U.S. International Trade Commission

Evaluation of the Trade Remedy Assistance Office



OIG-ER-12-11

September 12, 2012



Office of Inspector General

The U.S. International Trade Commission is an independent, nonpartisan, quasi-judicial federal agency that provides trade expertise to both the legislative and executive branches of government, determines the impact of imports on U.S. industries, and directs actions against certain unfair trade practices, such as patent, trademark, and copyright infringement. USITC analysts and economists investigate and publish reports on U.S. industries and the global trends that affect them. The agency also maintains and publishes the Harmonized Tariff Schedule of the United States.

Commissioners

Irving A. Williamson, Chairman

Daniel R. Pearson

Shara L. Aranoff

Dean A. Pinkert

David S. Johanson

Meredith M. Broadbent



UNITED STATES INTERNATIONAL TRADE COMMISSION

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20436

September 12, 2012

OIG-KK-014

Chairman Williamson:

This memorandum transmits the Office of Inspector General's final report, *Evaluation of the Trade Remedy Assistance Office*, OIG-ER-12-11. This evaluation focused on whether the Commission's Trade Remedy Assistance Office was fulfilling its duties under 19 USC 1339. In finalizing this report, we analyzed management's comments to our draft report and have included those comments in their entirety as Appendix A.

The evaluation confirmed the Commission has been fulfilling their duties under the statute, and identified two areas for improvement. This report contains three recommendations to address the improvement areas. In the next 30 days, please provide me with your management decisions describing the specific actions that you will take to implement each recommendation

Thank you for the courtesies extended to the evaluators during this review.

Philip M. Heneghan
Inspector General

U.S. International Trade Commission

Evaluation Report

Table of Contents

Results of Evaluation 1

Background on Trade Remedy Assistance Office 2

Improvement Areas and Recommendations 4

 Improvement Area 1: Establish Guidelines for Record Keeping 4

 Improvement Area 2: Improve Outreach and Coordination with Other Agencies 5

Management Comments and Our Analysis 7

Objective, Scope, and Methodology 7

Appendix A: Management Comments on Draft Report..... A

Appendix B: Excerpt from 19 USC 1339.....B

U.S. International Trade Commission

Evaluation Report

Results of Evaluation

The objective of this evaluation was to answer the following question:

Is the Trade Remedy Assistance Office fulfilling its duties under 19 USC 1339?

Yes. The Trade Remedy Assistance Office is fulfilling its duties under the statute.

The statute requires that the Trade Remedy Assistance Office be established, as a separate office, to provide full information to the public concerning the remedies and benefits available under the trade laws, as well as the petition and application procedures for obtaining them. The statute also requires the office to provide technical and legal assistance and advice to eligible small businesses to enable them to prepare and file petitions in order to seek to obtain the remedies and benefits available.

The Commission established the Trade Remedy Assistance Office, as a separate office within the Office of External Relations, which is not a part of the Office of Operations.

The Trade Remedy Assistance Office provided information to the public and small businesses regarding trade remedies by providing information on its webpage and over the phone. The webpage contained an overview of the trade remedies available and the various services provided by the office, as well as a phone number to contact the office directly.

In addition, the Trade Remedy Assistance Office directed people who contacted the office to the controlling law or regulation related to their claim and provided them with an overview of the International Trade Commission's operations. The office offered interested people information to assist with their claim, including procedural information related to filing a petition or complaint.

The Trade Remedy Assistance Office provided eligible small businesses with technical and legal assistance and advice involving the preparation and filing of petitions and complaints at the Commission in order to enable them to seek the remedies and benefits available under the trade laws. The office did this by providing information on the requirements of a petition or complaint and by reviewing and providing feedback on draft complaints and petitions to ensure that the basic requirements needed to file were met. Finally, the Trade Remedy Assistance Office coordinated with either the Office of Unfair Import Investigations or the Office of Investigations to provide the standard review those offices offer to all parties filing a complaint or petition at the Commission.

We surveyed small businesses who confirmed that the Trade Remedy Assistance Office provided information and assistance consistent with the requirements under the statute.

U.S. International Trade Commission

Evaluation Report

These small businesses also reported high levels of satisfaction with the services provided by the Trade Remedy Assistance Office and the other offices at the Commission.

This report includes background on the Trade Remedy Assistance Office and a discussion of the two areas identified that could improve operations—(1) Establish guidelines for record keeping and (2) Improve outreach and coordination with other agencies.

Background on Trade Remedy Assistance Office

Section 339 of the Tariff Act of 1930, as added by section 221 of the Trade and Tariff Act of 1984, established the requirement for a Trade Remedy Assistance Office to provide full information to the public concerning remedies and benefits available under the trade laws, information about the petition and application procedures for obtaining the remedies and benefits, and to provide technical assistance to enable small businesses to prepare and file petitions to obtain those remedies and benefits¹. The office was originally part of what is now the Office of Unfair Import Investigations, until the Omnibus Trade and Competitiveness Act of 1988 amended the Tariff Act and called for the Trade Remedy Assistance Office to function as “a separate office”².

When drafting the 1988 amendment, Congress considered several additional means of assisting small businesses. A proposed Senate amendment sought to establish an Office of Small Business Trade Remedy Assistance in the Department of Commerce³. The director of that office would have been required to establish a system for paying reasonable expenses incurred by eligible small businesses in connection with any administrative proceeding under any trade law⁴. In addition, the House Ways and Means Committee proposed the idea of a private initiative that would bring together corporate, legal, and academic communities to establish an independent organization that would provide pro bono legal assistance to small businesses that lacked adequate resources to seek trade remedies on their own⁵. Ultimately, neither the House nor Senate amendments providing for more extensive assistance were included in the final bill.

Currently, the Trade Remedy Assistance Office is housed in the Office of External Relations, where one attorney spends about one-half of his time providing information and assistance on trade issues and the remainder on External Relations business.

¹ Pub. L. No. 98-573, § 221, 90 Stat. 2989 (1984).

² H.R. Rep. No. 100-40, pt. 1, at 172 (1987).

³ H.R. Rep. No. 100-576, at 1082 (1988)

⁴ Id.

⁵ H.R. Rep. No. 100-40, pt. 1, at 173 (1987).

U.S. International Trade Commission

Evaluation Report

In addition to providing general trade-related information, the Trade Remedy Assistance Office provides information relating to specific trade issues upon inquiry. If the issue is more appropriately addressed by another agency, the Trade Remedy Assistance Office will direct the requestor to the applicable agency. Responding to short informational inquiries from the public are the most frequent type of assistance the Trade Remedy Assistance Office provides.

The Trade Remedy Assistance Office, in coordination with other agencies responsible for administering a trade law, is also tasked with providing technical and legal assistance to eligible small businesses to enable them to prepare and file petitions and to seek to obtain the remedies and benefits available under the trade laws⁶. Congress added the requirement that the Trade Remedy Assistance Office provide legal assistance through the 1988 amendment, finding that a number of small firms lacked the technical and legal expertise to seek relief⁷. Importantly, the House Report noted that businesses that seek assistance and advice from the Trade Remedy Assistance Office should not expect this to serve as a substitute for legal representation⁸.

Upon inquiry, the Trade Remedy Assistance Office offers to mail a packet of materials including a summary of statutory provisions related to import relief, an overview of Commission operations, guidelines and requirements for the relevant trade petition or complaint, and a sample petition or complaint, to the requestor. Most businesses or individuals who contact the Trade Remedy Assistance Office do not proceed past this stage, citing either a lack of time, money, or resources for representation; it has been noted that representation has become an essential part of the trade remedy process, particularly with the prevalence of Administrative Protective Orders and the protection of sensitive trade information.

For eligible small businesses, the Trade Remedy Assistance Office will offer to assist with preparing a draft complaint or petition and discuss with the requestor the trade issue in more detail to ensure that the requirements needed to file are met⁹. When determining eligibility for assistance, the Trade Remedy Assistance Office consults the Small Business Administration's size standards for small businesses.

Once the Trade Remedy Assistance Office has worked with the preparer to formulate a draft, it will arrange for members of the Office of Unfair Import Investigations or the Office of Investigations to review the draft. Both these offices offer to provide unofficial pre-filing review to all potential petitioners, regardless of size. This review is distinct from the one provided by the Trade Remedy Assistance Office, focusing instead on the

⁶ Pub. L. No. 98-573, § 221, 90 Stat. 2990 (1984).

⁷ H.R. Rep. No. 100-40, pt. 1, at 173 (1987).

⁸ Id.

⁹ The trade laws applicable to the Trade Remedy Assistance Office are defined in 19 U.S.C. § 1339(c)(2); pleading requirements will vary among the different trade laws.

U.S. International Trade Commission

Evaluation Report

substance of the complaint or petition, the quality of the complaint or petition, areas that should be strengthened, and any deficiencies that might cause delays after the complaint or petition is filed. Few small businesses without representation reach the actual filing stage, or even the draft review stage. Small businesses who drafted a complaint, had it reviewed, but ultimately chose not to file, offered a variety of reasons for not doing so, including lack of finances, need for legal representation, lack of support from other companies, and settling the issue on their own.

Improvement Areas and Recommendations

Improvement Area 1: *Establish Guidelines for Record Keeping*

It is important that the Trade Remedy Assistance Office have clear guidelines for recording, maintaining, and destroying its work. Uniform record keeping ensures proper identification, storage, and disposal of documents, and allows the Commission to assess its work and impact.

Presently, there are no official policies or procedures in place for the retention and disposition of the information and documents created, collected, or provided by the Trade Remedy Assistance Office. Furthermore, the Commission's Records Disposition Schedule does not contain any guidelines specifically for the Trade Remedy Assistance Office. Documents from the Trade Remedy Assistance Office consisted mostly of handwritten notes, correspondence stored on email, drafts of complaints, and various other materials exchanged during the communication process. No documents were stored electronically other than email.

Prior to 2010, the Trade Remedy Assistance Office tracked the number of calls it received and provided this information for inclusion in the Commission's annual report. The Trade Remedy Assistance Office only noted the number of calls and no identifying information about the caller or the type of information they sought was recorded. After the requirement to provide this information for the annual report was discontinued in 2010, the Trade Remedy Assistance Office stopped tracking calls altogether. Then in early 2012, the Trade Remedy Assistance Office began recording basic information on those seeking advice or assistance (name, date, type of request), but no official policy has been created to address the documents created in response to requests.

The Trade Remedy Assistance Office received many calls regarding circumstances where

U.S. International Trade Commission

Evaluation Report

the Commission was either the inappropriate forum for the inquiry, or the question was easily and quickly answered. The office also received a fair amount of calls relevant to the Commission, and offered to send additional materials to these people. The Trade Remedy Assistance Office benefits from the retention of such information, both in order to follow up with the potential petitioner and for further analysis to better understand the requests made by small businesses.

In addition, the Trade Remedy Assistance Office retained copies of draft petitions and complaints it had reviewed. The Trade Remedy Assistance Office should evaluate the value of this practice, as it conflicts with those of the Office of Unfair Import Investigations and Office of Investigations, who routinely destroy these drafts and any comments after review with the petitioner or complainant.

Recommendation 1: That the Commission establish an official written policy to address the retention and disposition of information and documents created, collected, or provided by the Trade Remedy Assistance Office.

Improvement Area 2: *Improve Outreach and Coordination with Other Agencies*

While the Trade Remedy Assistance Office provides information and assistance on a variety of trade issues and, when applicable, directs inquirers to the appropriate agency other than the Commission, greater coordination between agencies with international trade jurisdiction would be beneficial.

The Trade Remedy Assistance Office is a unique office among agencies administering trade laws in that it is a statutorily mandated office, whose purpose is to provide independent information and assistance to small businesses. Other agencies, such as Department of Commerce and the United States Trade Representative (Trade Representative), do not have such an office.

The Department of Commerce does have a Petition Counseling Analysis Unit, to assist Title VII petitioners who must file antidumping or countervailing duties petitions separately with the Department of Commerce and the Commission, but that Unit provides petition information and assistance to all businesses regardless of size.

U.S. International Trade Commission

Evaluation Report

The Trade Representative does have a petition process whereby a company can file a complaint under Section 301 of the Trade Act of 1974 asking the Trade Representative to take action against a foreign unfair trade practice. The Trade Representative's relationship with the Commission is based primarily on drawing on the Commission's resources for advice and information in support of the Trade Representative's role in negotiating trade agreements and in the formulation of U.S. trade policy. Recently, the Trade Representative launched a small business initiative to assist small businesses involved in international trade. Perhaps due to its unique status and limited visibility, both the public and other agencies are generally unaware of the services provided by the Commission's Trade Remedy Assistance Office.

Individuals and small businesses contacted during this evaluation stated that they were pleasantly surprised to learn of the services available through the Trade Remedy Assistance Office, though a few noted that finding the right agency and office for their specific question was daunting as there are a number of different agencies that deal with international trade. Presently, agencies that administer trade laws do not have easily identifiable links to one another's websites, and there is no single government site that offers a complete list of agencies administering trade laws and explains the services they provide.

Similarly, while some staff members at other agencies that administer trade laws were familiar with the Commission's Office of Unfair Import Investigations and the Office of Investigations, they were unaware of the Trade Remedy Assistance Office. Members of these agencies indicated that when faced with a business who is considering filing a Title VII petition or a 337 complaint, they direct the parties to Office of Investigations and Office of Unfair Import Investigations respectively. The agency representatives were surprised to learn of the services offered by the Trade Remedy Assistance Office.

Simply having access to basic information and guidance can be quite helpful to small businesses, even for those who choose not to file a complaint or petition. One of the business's we surveyed, drafted a 337 complaint with the assistance of the Trade Remedy Assistance Office, but chose not to file after settling with the alleged infringer. He noted that a properly prepared draft of a 337 complaint likely helped in achieving a favorable settlement.

Since the Department of Commerce is directly involved in trade remedy assistance, and given that the Trade Representative has pushed in recent years for ways of assisting small businesses, there exists an opportunity for collaboration among these and other agencies to help inform small businesses of available assistance.

U.S. International Trade Commission

Evaluation Report

Recommendation 2: That the Commission provide links on the Trade Remedy Assistance Office webpage to other agencies and offices that administer trade law, and coordinate with other agencies and offices to provide a link to the Trade Remedy Assistance Office on their websites.

Recommendation 3: That the Trade Remedy Assistance Office coordinate with other agencies on ways to promote awareness and access to trade remedy information and assistance for small businesses.

Management Comments and Our Analysis

On September 7, 2012, Chairman Irving Williamson provided management comments on the draft report. He concurred with the findings and agreed to address the recommendations identified in the report.

Objective, Scope, and Methodology

Objective:

Is the Trade Remedy Assistance Office fulfilling its duties under 19 USC 1339?

Scope:

We reviewed inquiries and requests to the Trade Remedy Assistance Office from the public and small businesses dating back three years. We reviewed 2-3 cases from each phase of the Trade Remedy Assistance Office process. The phases are (1) parties who have brief informational calls with the office, (2) parties who had subsequent contact with the office, and (3) parties who submitted a draft complaint or petition for review.

This evaluation was limited by the lack of records kept by the Trade Remedy Assistance Office.

Entrance Conference: June 5, 2012
Exit Conference: July, 30 2012

U.S. International Trade Commission

Evaluation Report

Methodology:

- We reviewed the statute applicable to the Trade Remedy Assistance Office. (Appendix B)
 - We reviewed regulations applicable to the Trade Remedy Assistance Office.
 - We identified methods used to contact Trade Remedy Assistance Office (phone, email, etc.) and the number of requests received.
 - We analyzed the type of information and assistance provided by the Trade Remedy Assistance Office.
 - We reviewed the procedure for handling incoming requests from the public and small businesses, including a review of the office process map.
 - We reviewed the process for consulting with other offices.
 - We interviewed members of Trade Remedy Assistance Office and their liaisons in the other offices, as well as members of other agencies administering trade laws.
 - We surveyed members of the public and small business who have requested and/or received assistance from the Trade Remedy Assistance Office.
-

U.S. International Trade Commission

Appendix

Appendix A: Management Comments on Draft Report

Chairman



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

CO81-KK-06

September 7, 2012

MEMORANDUM

TO: Philip M. Heneghan, Inspector General

FROM: Irving A. Williamson, Chairman *Iaw*

SUBJECT: Management Response to the Inspector General's Draft Report, "Evaluation of the Trade Remedy Assistance Office"

I am in receipt of the Inspector General's draft report, *Evaluation of the Trade Remedy Assistance Office*, dated August 7, 2012. I appreciate the opportunity to review the draft report and provide comments.

The Inspector General's draft report found that the Commission's Trade Remedy Assistance Office (TRAO) is fulfilling its statutorily defined duties. The report also identified two improvement areas for TRAO, which include (1) the establishment of guidelines for record keeping and (2) enhanced outreach and coordination with other agencies.

We agree with the findings and the Commission will institute management decisions that address the recommendations put forth in this report. Thank you for your review.

U.S. International Trade Commission

Appendix B

Appendix B: Excerpt from 19 USC 1339

TITLE 19 - CUSTOMS DUTIES - CHAPTER 4 - TARIFF ACT OF 1930 - SUBTITLE II - SPECIAL PROVISIONS - Part II - United States International Trade Commission - Sec. 1339. Trade Remedy Assistance Office

(a) Establishment; public information

There is established in the Commission a separate office to be known as the Trade Remedy Assistance Office which shall provide full information to the public upon request and shall, to the extent feasible, provide assistance and advice to interested parties concerning -

- (1) remedies and benefits available under the trade laws, and
- (2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits.

(b) Procedural assistance by Office and other agencies

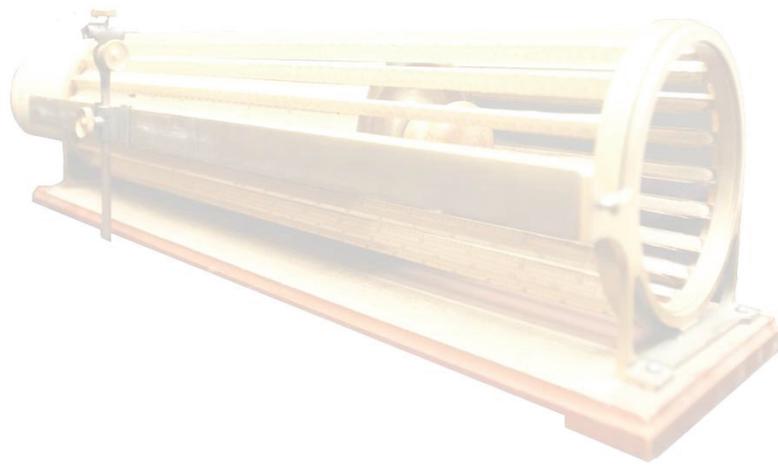
The Trade Remedy Assistance Office, in coordination with each agency responsible for administering a trade law, shall provide technical and legal assistance and advice to eligible small businesses to enable them -

- (1) to prepare and file petitions and applications (other than those which, in the opinion of the Office, are frivolous); and
- (2) to seek to obtain the remedies and benefits available under the trade laws, including any administrative review or administrative appeal thereunder.

(c) Definitions

For purposes of this section -

- (1) The term "eligible small business" means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor financial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. In determining whether a business concern is an "eligible small business", the agency may consult with the Small Business Administration, and shall consult with any other agency that has provided assistance under subsection (b) of this section to that business concern. An agency decision regarding whether a business concern is an eligible small business for purposes of this section is not reviewable by any other agency or by any court.
- (2) The term "trade laws" means -
 - (A) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to injury caused by import competition);
 - (B) chapters 2 and 3 of such title II [19 U.S.C. 2271 et seq., 2341 et seq.] (relating to adjustment assistance for workers and firms);
 - (C) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);
 - (D) subtitle IV of this chapter (relating to the imposition of countervailing duties and antidumping duties);
 - (E) section 1862 of this title (relating to the safeguarding of national security); and
 - (F) section 1337 of this title (relating to unfair practices in import trade).



“Thacher’s Calculating Instrument” developed by Edwin Thacher in the late 1870s. It is a cylindrical, rotating slide rule able to quickly perform complex mathematical calculations involving roots and powers quickly. The instrument was used by architects, engineers, and actuaries as a measuring device.

To Promote and Preserve the Efficiency, Effectiveness, and Integrity of the U.S. International Trade Commission



U.S. International Trade Commission
Office of Inspector General
500 E Street, SW
Washington, DC 20436

Office: 202-205-6542
Fax: 202-205-1859
Hotline: 202-205-6542
OIGHotline@USITC.gov