U.S. International Trade Commission

Sunset Review: Evaluation of the Adequacy Phase

OIG-ER-11-14 **September 14, 2011**

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.

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OFFICE OF INSPECTOR GENERAL

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

September 14, 2011 OIG-JJ-14

Chairman Okun:

This memorandum transmits the Office of Inspector General's final report, *Sunset Reviews: Evaluation of the Adequacy Phase,* OIG-ER-11-14. In finalizing the report, we analyzed management's comments on the draft report and have included those comments in their entirety, as an appendix to the final report.

This evaluation contains four recommendations for corrective action. 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 evaluation.

Philip M. Heneghan
Inspector General

TABLE OF CONTENTS

Background **1**

Results of Evaluation **2**

Problem Areas & Recommendations **2**

Problem Area 1: The Office of Investigations Did Not Have A Fully Developed and Documented Procedure 2

Problem Area 2: The Office of Investigations Did Not Consistently Follow Their Adequacy Memo Template 4

Management Comments and Our Analysis **5**

Objective, Scope, and Methodology **5**

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

Background

The Tariff Act of 1930 § 751(c); 752(a) (1) requires the Commission to review antidumping and countervailing duty orders every five years. The Commission determines whether revocation of an antidumping and/or countervailing duty order would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

At the outset of each five-year review, the Commission issues a notice of institution requesting that interested parties file responses with the Commission concerning their willingness to participate in the review; the likely effects of revoking each order under review; and other information, including industry data. During this "adequacy phase" of five-year reviews, the Commission assesses the adequacy of aggregate interested party responses to the notice of institution. If the Commission concludes that interested parties' responses to the notice of institution are inadequate and that no other circumstances exist that would warrant a full review, it may decide to conduct an expedited, rather than a full review. The Commission generally does not hold a hearing or conduct further investigative activities in expedited reviews.

During the "adequacy phase" of five-year reviews, the Office of Investigations prepares a privileged "adequacy memorandum" that summarizes certain background information and briefly characterizes the nature of the submitted responses to the notice of institution. Based on the available information, the Director of the Office of Investigations reviews, approves, and issues the memorandum, which includes recommendations as to the individual adequacy of responses to the notice of institution by U.S. producers, U.S. importers, and foreign producers/exporters.

Although the "adequacy memorandum" contains a description of the coverage of responses to the notice of institution, it offers no recommendations regarding the Commission's findings as to group adequacy or whether to conduct an expedited or full review.

Results of Evaluation

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

> Does the Office of Investigations follow standard procedures when evaluating responses to produce the adequacy memorandum to the Commissioners?

No. The Office of Investigations did not have a standard procedure to consistently follow when the staff drafted adequacy memoranda for the Commission's review.

Although, the Office of Investigations maintained a checklist, an adequacy memoranda template, and a three page annotated response chart checklist, these resources did not fully address all of the steps necessary to produce the adequacy memoranda, and were not incorporated in a fully developed procedure.

For purposes of this evaluation, "standard" is defined as having a set of criteria for each review, and being "consistent" is defined as applying the criteria for each review.

The evaluation identified two problem areas: (1) the Office of Investigations did not have a fully developed and documented procedure, and; (2) the Office of Investigations did not consistently follow their adequacy memo template.

Problem Areas & Recommendations

Problem Area 1:
The Office of Investigations Did Not Have A Fully Developed and Documented Procedure

To ensure effective operations, management should have a fully *developed* and *documented* procedure. A fully developed procedure does not merely identify, and describe what to do, but also *clearly* and *completely* explains what staff members must *do*, and *how* to do it. A fully developed procedure also defines key terms and criteria to ensure that the procedures are consistently applied regardless of who is applying them.

Instead of a well-developed procedure, the Office of Investigations used an adequacy phase checklist entitled, "checklist for institution (adequacy) phase." In addition to this checklist, the Office of Investigations used an adequacy memo template, and a response chart checklist which assisted staff in preparation of the adequacy memo. The checklist

did not incorporate key steps, define key terms, criteria, and did not refer staff to appropriate templates.

- The checklist omitted key steps, for example, it:
    - Omitted the step that requires filling out a response chart checklist for each interested party;
    - Omitted what to do when an industry table is requested, and one is not provided by the industry analyst;
    - Omitted what to do with import data retrieved from DataWeb; and,
    - Omitted where staff could exercise their judgment when drafting portions of the adequacy memoranda.

- The checklist did not define key terms, such as *coverage, deficiency, incomplete,* and *complete* responses to the notice of institution.[1]

- The checklist did not define any criteria to help determine what constitutes an *incomplete* or *complete* response, and the criteria provided to determine when to issue US purchaser surveys is vague.

- The checklist did not direct the staff to standard templates developed for use in the adequacy phase, such as the notice of institution, and cure letter templates.

Out of a sample of 21 cases, 5 different investigators completed adequacy memoranda in Fiscal Year 2010-2011. Before 2009, the Office of Investigations relied on one person to complete the entire adequacy phase without a checklist, but with standard templates for the adequacy memo, and a response chart checklist. Further, these standard templates were not part of a fully developed procedure.

While there has been some movement to start documenting the work to be completed and assigning responsibility of portions of the checklist to other investigators, the Office of Investigations still heavily relied on a single individual to complete a majority of the steps, this did not give staff the *full* experience in completing the steps required, because they were not completing *all* of the steps. For example, the staff interviewed explained that only one staff member completes a majority of the steps, including:

- gathering the documents to be used for the adequacy phase;
- drafting and publishing the institution notice;
- issuing deficiency letters;

[1] The Commission articulates in its procedures that it prefers to assess group adequacy on a case-by-case basis and not use a numerical guideline. 19 C.F.R. § 207.62 (2010)Federal Register Vol. 63, No. 108 (1998). The Commission does not explicitly define "adequacy" or "individual adequacy." For purposes of this report, the terms "incomplete" and "complete" are referring to the adequacy of the responses.

- running annual import data;
- determining whether US purchaser surveys should be issued; and,
- requesting an industry table from an industry analyst.

By not having a fully documented procedure, the Commission is at risk of receiving similar looking reports that mean different things based on individual interpretations of steps and definitions. In addition, because there was no clearly defined threshold for what constitutes a "complete" response, what was considered "complete" was different among investigators and led to inconsistencies in how information was presented to the Commission.

As a result of relying on a single investigator, there was a lack of knowledge and experience among other investigators in completing all the steps of the adequacy phase.

Recommendation 1: Create a clear and well-documented procedure that effectively guides investigators through the steps necessary to produce the adequacy memorandum.

Recommendation 2: Clearly define key terms such as *incomplete* or *complete* and the criteria used to determine what constitutes a *complet*e response.

Recommendation 3: Assign different investigators to handle the entire process, from the notice of institution to the Commission's adequacy vote.

Problem Area 2:
The Office of Investigations Did Not Consistently Follow Their Adequacy Memo Template

To ensure effective operations, management must be able to provide consistent direction. For processes that are repeated, it is important for the directions to be clear. The Office of Investigations has a memo template for investigators to follow when drafting memoranda. Although the template was instructive, it was not clear. As a result, the memoranda completed by the investigators were not consistently prepared, and did not completely match the memo template.

The Office of Investigations has a standard adequacy memo template, but memoranda produced did not always follow the template provided.

- Our review of 21adequacy memoranda, completed by five different staff members, identified that not all of the adequacy memoranda followed the template, for example, there were, the following inconsistencies:

- 9 instances which did not include a tabulation of the most recent year's imports; 5 instances were not explained, and 4 were explained;
- 4 instances in which information from previous reports were not included;
- 8 instances where headings were added, combined, or changed; and,
- 2 instances where text required by the criteria were out of order.

Even with the templates available to investigators, the adequacy memoranda were still inconsistent. The adequacy memoranda were inconsistent because the instructions within the templates were not clear enough to ensure that the memoranda were prepared in a consistent fashion. Additionally, the Office of Investigations did not indicate within their checklist, response chart checklist, or adequacy memo template, where staff could exercise their judgment when drafting the narrative portions of the adequacy memoranda.

As a result, the Commission was not always given the same information every time an adequacy memorandum was submitted. Similarly, the Commission was not provided with an explanation from the Office of Investigations as to why the information was different before the Commission decided what type of sunset review to conduct.

Recommendation 4: Incorporate in a well-documented process an adequacy memo template that contains clearer instructions on how to produce the adequacy memoranda.

Management Comments and Our Analysis

On September 7, 2011, Chairman Deanna Tanner Okun provided management comments on the draft report. The Chairman acknowledged that until recently the Office of Investigations relied on a single investigator to complete adequacy phase memoranda. The Chairman concurred that as the Office addresses this risk, and assigns less experienced investigators to the adequacy phase, that the Office will need to more fully develop its procedures and strengthen the adequacy memorandum template.

Objective, Scope, and Methodology

Objective:

Does the Office of Investigations follow standard procedures when evaluating responses to produce the adequacy memorandum to the Commissioners?

Scope:

- Adequacy phase of the sunset review process. Analyzing from the initial notice of institution to the issuance of the adequacy memorandum.

- A sample of 21 different adequacy memoranda completed by five different investigators during Fiscal Year 2010-2011 were reviewed.

Methodology:

- We obtained and reviewed the "checklist for institution (adequacy) phase" and other templates from the Office of Investigations, including:
    - Notice of institution;
    - Cure letter;
    - Response chart checklist; and,
    - Adequacy memo;

- We interviewed the Office of Investigations staff members;

- We reviewed templates and checklists to see if such key terms and criteria were documented;

- We extended the scope of the adequacy memoranda to 2011 because a majority of the adequacy memoranda completed in 2010 were drafted by the same staff member;

- We performed a walk-through of the entire adequacy phase;

- We analyzed 21 adequacy memoranda drafted by five different Office of Investigations staff members;

- While analyzing all 21 adequacy memoranda, we recorded and compared what was different in the memoranda against what the Office of Investigations adequacy template required; and,

- We numbered and grouped the memoranda that were inconsistent against the Office of Investigations templates.

Appendix A: Management Comments on Draft Report

Chairman

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

CO76-JJ-045

September 7, 2011

MEMORANDUM

TO: Philip M. Heneghan, Inspector General

FROM: Deanna Tanner Okun, Chairman

SUBJECT: Management Comments to the Inspector General's Draft Evaluation Report, "Sunset Reviews: Evaluation of the Adequacy Phase"

I appreciate the opportunity to review the Inspector General's draft report, *Sunset Reviews: Evaluation of the Adequacy Phase*, dated August 10, 2011, and to provide comments.

Thank you for reviewing the adequacy phase steps the Commission staff complete from the initial notice of institution to the issuance of the adequacy memorandum. The report identified two problem areas, including the lack of a fully documented procedure and inconsistent application of the adequacy memorandum template. Until recently, the Office of Investigations relied on a single investigator to complete adequacy phase memoranda. I concur that as the Office addresses this risk and assigns less experienced investigators to the adequacy phase of five-year reviews, the Office will need to more fully develop its procedures to effectively guide investigators through the steps necessary to produce the adequacy memorandum. Likewise, I concur that we should strengthen the adequacy memorandum template.

Thank you for reviewing the adequacy phase portion of the Commission's five-year reviews and making recommendations to strengthen its effectiveness.

"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

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