

Office of INSPECTOR GENERAL

Audit Report

*Evaluation of the Commission's Efforts
to Prepare for Sunset Reviews*

Report No. IG-01-99



October 1998

October 30, 1998

TO: THE COMMISSION

I hereby submit an *Evaluation of the Commission's Efforts to Prepare for Sunset Reviews, Report No. IG-01-99*. The 1994 Uruguay Round Agreements Act (URAA) requires sunset reviews of all outstanding antidumping and countervailing duty orders and suspension agreements, and future reviews of antidumping and countervailing duty orders initiated by the fifth anniversary of the order. Each of the outstanding orders in effect as of January 1, 1995, are to be reviewed during a transition period from July 1998 through June 2000. Beginning in the year 2000, a review must be initiated on all outstanding orders issued after January 1, 1995, by the time they have been in effect for five years.

The Commission predicted significantly increased workloads for Fiscal Years (FYs) 1999 and 2000 to conduct sunset reviews of the 321 outstanding orders in effect as of January 1, 1995. In FY 1999, the additional staff needed was estimated as 57.5 workyears, primarily in the Offices of Investigations (INV), General Counsel (OGC), and Economics. The proposed staffing consisted of detailing 19 Commission employees to work on the sunset reviews and hiring 38.5 additional employees. The new hires would include 23 temporary appointments not to exceed three years and 15.5 permanent staff. An additional 14.1 hires were identified for FY 2000.

The objective of this review was to evaluate: the impact of the sunset review provisions on the Commission workload, and the adequacy of the Commission's preparation to conduct activities mandated by the URAA amendments.

A substantial effort was made to amend the Commission's general rules of practice to establish procedures for conducting the sunset reviews. We found that the Commission complied with the requirements of the Administrative Procedures Act, and published the final sunset rules in sufficient time to meet statutory requirements. An internal deadline to publish the rules was missed. Some key terms pertaining to sunset reviews were not defined or adequately described in the final rulemaking package.

Another significant effort was preparing to conduct the sunset reviews. We found the Commission's efforts were sufficient to conduct the sunset reviews, as follows:

- INV located a copy of the final report, OGC opinion, and Commission determination for all investigations.
- Efforts to recruit/hire, detail, and reassign staff were sufficient to have resources available as needed in FY 1999.
- Space, computers, and telecommunication services for 25 to 30 additional staff will be available.
- The offices provided, or have plans to provide, on-the-job training.
- INV and OGC estimated increases for training funds that will be adequate.
- INV estimated a sizable increase for travel funds and OGC estimated a modest increase which appear to be reasonable.
- Additional funds for *Federal Register* notices and various equipment were requested for FY 1999. Additional resources were requested for printing the reports, but none were approved pending actual increases in workload.

INV and OGC developed assumptions which were used as a basis for calculating workyear estimates. The workyears were fairly accurately calculated based on those assumptions. The Offices of the Secretary and Administration had no written basis for their estimates, which were minimal requests. Our findings on these estimates are as follows:

- The workload estimates were not based upon an adequate analysis of the transition duty orders. The number of sunset reviews that would be terminated was not estimated at all. The estimate of sunset reviews that would be expedited was not based on substantive analysis, and was assumed to be offset in total by complicated cases. These factors could significantly reduce the Commission-wide workload estimate for investigations and appeals since terminated reviews require a minimal effort and expedited reviews require less than half the effort involved in a full review.
- The proposal for FY 1999 staff developed from the workyear estimates included 15.5 permanent hires, nearly all in OGC, and 23 temporary appointments. The proposal does not reasonably reflect

the needs of all Commission offices for permanent staff. Although some permanent staff increases will be needed for the future ongoing sunset reviews, OGC did not adequately justify the need for hiring virtually all permanent staff.

-- The positions for the temporary and permanent hires will not be dedicated to work on the sunset reviews.

-- Contrary to the Budget Committee proposal which stated that OP would detail/ reassign employees before hiring new positions, offices planned to hire concurrently or prior to making details/reassignments.

-- Neither INV nor OGC used actual hours worked on title VII investigations as a basis for the workyear estimates.

Multiple findings involved the budget process. First, some offices did not identify workyears and request staff for the FYs 1999 and 2000 Budget Requests consistent with the Budget Committee proposal. Second, some offices did not accurately report both workyear data and staff requests. Third, and most importantly, the FY 1999 Budget Justification did not accurately present the resources needed for the sunset reviews.

The Budget Justification identified an additional 22 workyears for title VII investigations and 7 workyears for indirect costs (operational support, litigation and rulemaking, and operating management). The 22 workyears had little relation to the 38.5 needed positions identified by the Budget Committee. Nevertheless, apparently based on these figures, a draft House Report on the Commission's appropriation recommended full funding for an additional 22 workyears for direct activities related to sunset reviews, but did not provide for the 7 additional workyears requested for administrative overhead.

Public Law 105-277, Omnibus Consolidated and Emergency Supplemental Appropriations for FY 1999, provides a funding level of \$44,495,000 for the Commission. The conference report provides that the amount provided includes funds for an additional 24 full-time-equivalents for activities related to sunset reviews, including litigation and rulemaking support. The 24 staff years is a modest increase, but significantly below the estimated staff needed.

We also found that the activity code established to record hours worked on sunset reviews is improperly defined and inconsistently used. As a result, the FY 1998 data may not be useful for making future estimates and justifications for resources needed.

We recommended that the Director of Operations, in his role as Chairman of the Budget Committee, take the following actions:

- Confirm that the Commission wants to track hours spent on sunset reviews. If so, review the definition of the code and revise as necessary; and notify all offices directors whose staff participate in sunset reviews that the code is to be utilized when recording time (page 14).
- Ensure that the Commission’s FY 2000 Budget Justification accurately reflects the Commission’s decisions for workyears and positions for title VII resources (page 18).

The Director of Operations and General Counsel submitted written comments. They disagreed with our finding on resource estimates, particularly that the analysis was inadequate. The Director of Operations agreed with the findings and recommendations on the budget. Comments were incorporated as appropriate. The Director’s comments are presented in entirety as an appendix to the report.

Jane E. Altenhofen
Inspector General

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Attachments: 1 - BUDGET COMMITTEE PROPOSAL FOR FY 1999 RESOURCES
2 - STAFFING ESTIMATES FOR SUNSET REVIEWS
3 - TRAINING AND TRAVEL STATISTICS
4 - SCHEDULE OF OP OFFICES FY 1999 BUDGET INPUT

Appendix: Memorandum from the Director of Operations to the Inspector General, dated October 15, 1998, (OP-V-036)

INTRODUCTION AND SCOPE

The Office of the Inspector General (OIG) has completed an evaluation of the Commission's efforts to prepare for the upcoming sunset review investigations pursuant to the 1994 Uruguay Round Agreements Act (URAA) amendments to title VII of the Tariff Act of 1930. The objective of this review was to evaluate: (1) the impact of the sunset review provisions on the Commission workload, and (2) the adequacy of the Commission's preparation to conduct activities mandated by the URAA amendments.

Our review was conducted from April through August 1998 in Washington, D.C. We interviewed various Commission employees concerning their respective roles in title VII and sunset reviews, the rulemaking process, and office budget estimates. These employees were from the offices of: the Commissioners, Operations (OP), Investigations (INV), Industries (ID), Economics (EC), Information Services (OIS), General Counsel (OGC), the Secretary (SE), Administration (AD), Finance and Budget (OFB), and Management Services (OMS).

We reviewed statutes authorizing title VII investigations and sunset reviews, and the Commission's rules of general application in 19 CFR Parts 201 and 207 (1997). We reviewed the proposed and final sunset rules prepared by the Commission, and attended one meeting to observe the rulemaking process. We evaluated whether the process complied with the Administrative Procedure Act of 1946 (APA), which sets forth the basic process used by federal agencies to develop and issue regulations.

In the documents we reviewed, "detail" was used interchangeably with "reassignment", and "term" was used interchangeably with "temporary". These words have technical distinctions in the official personnel sense; however, the distinctions were mostly not significant to the office preparations or this review. When important, the differences are discussed in the report.

We examined policies and procedures for conducting title VII investigations and sunset reviews. We evaluated the Commission staffing and resource needs for sunset reviews prepared by the Budget Committee (OP-U-006, "Projected Staffing and Non-Personnel Funding Requirements Due to 'Sunset' Cases", dated February 12, 1997) and other budgetary data. We reviewed workload statistics for investigations for Fiscal Years (FYs) 1996, 1997, and 1998. We reviewed mission and functions statements, job descriptions, and other office documents to develop background and statistical information.

We interviewed U.S. Department of Commerce (Commerce) officials to discuss the International Trade Administration's efforts in conducting sunset reviews. We specifically discussed how they coordinated schedules and deadline dates for sunset reviews with the Commission and their role in the development of the Commission's sunset rules and procedures. We reviewed the interim rules published by Commerce in March 1998, under which they intend to operate for a trial period. We obtained the list of 321 outstanding orders in effect as of January 1, 1995, which was divided into 106 groupings, generally by like-products, with 1 to 32 investigations in each group, and other relevant documents.

This evaluation was performed in accordance with applicable generally accepted auditing standards. Accordingly, the evaluation included an examination of internal controls and other auditing procedures that were considered necessary under the circumstances.

BACKGROUND

Under title VII, U.S. industries may petition Commerce and the Commission for relief from imports that are sold in the United States at less than fair value (“dumped”) or which benefit from subsidies provided through foreign government programs. Commerce determines whether dumping and subsidization exist and, if so, the margin of dumping or amount of a subsidy. The Commission determines whether a domestic industry is materially injured, or threatened with material injury, by reason of imports that Commerce has found to be dumped and/or subsidized. If the Commission makes a final affirmative decision, Commerce publishes a notice of the duty order in the *Federal Register* and administers the outstanding orders.

The URAA requires sunset reviews of all outstanding antidumping and countervailing duty orders and suspension agreements, and future reviews of antidumping and countervailing duty orders initiated by the fifth anniversary of the order. 19 U.S.C.A. § 1675 (Supp I. 1998). An order will be revoked, or a suspended investigation terminated, unless revocation or termination will result in continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury. Commerce makes the determination concerning continuation or recurrence of dumping or subsidy. The Commission determines continuation or recurrence of material injury.

A review of each outstanding order in effect as of January 1, 1995, is to be initiated during a “transition” period commencing in July 1998 and ending on December 31, 1999. Beginning in the year 2000, a review must be initiated on all outstanding orders issued after January 1, 1995, within five years of the order’s effective date. The same procedures will be used for both transition and ongoing sunset reviews.

The roles of Commission offices will be essentially the same for title VII investigations and sunset reviews, as follows:

- INV conducts the majority of research on specific antidumping and countervailing duty orders in order to provide a basis for a Commission determination.
- EC provides economic analysis and writes the condition of competition and pricing sections of investigative reports.
- OIS provides statistical support, data entry and validation, development of customized analytical tables, and quality assurance.
- OGC provides legal advice, drafts the Commission’s opinion, and handles all related appeals and litigation.
- SE processes documents filed, maintains the public and non-public record of each investigation and an index of all materials filed, submits items to the *Federal Register* for publication, arranges hearing and meeting logistics, coordinates publication requests, and distributes final reports.

FINDINGS AND RECOMMENDATIONS

COMMISSION REGULATIONS

We found that the Commission complied with the requirements of the APA, and published the final sunset rules in sufficient time to meet statutory requirements. An internal deadline to publish the rules was missed. Further, some key terms pertaining to sunset reviews were not defined or adequately described in the final rulemaking package.

Rulemaking Process

The Commission published a notice of proposed rulemaking, held a public hearing, and published the final rules 30 days before the effective date. The final sunset rules were published in the *Federal Register* on June 5, 1998, which was sufficient to initiate the sunset reviews in July 1988 as statutorily required. However, the Commission missed an internal deadline of June 1, 1998, that was necessary to initiate investigations on July 1, 1998.

Statutory requirements

A critical effort in preparing for the sunset reviews was the need to amend the general rules of practice to establish procedures for conducting the investigations. For substantive rules, the APA requires agencies to publish a notice of proposed rulemaking in the *Federal Register*, allowing interested persons an opportunity to participate, and publish the final rule 30 days before it becomes effective. 5 U.S.C. § 553 (1996).

The Chairman established the Sunset Working Group (SWG) in March 1997 to develop amendments to the Commission rules of practice and procedure in 19 CFR Parts 201 and 207. The Commission issued a notice of proposed rulemaking on October 23, 1997. Written comments from the public were due by December 22, 1997, and rebuttal comments were due by January 21, 1998. A public hearing was held on February 26, 1998, at which representatives of fifteen entities made statements. The Commission seriously considered the comments received, and made substantial changes to the final rules.

The URAA required that the administering authority begin its review of transition orders in the 42nd calendar month after the date such orders are issued. The 42nd calendar month was July 1998. The final sunset rules were published in the *Federal Register* on June 5, 1998, which was more than 30 days before the statutory deadline.

Publication goals

The Commission missed an internal goal for publishing the rules. The SWG hoped to issue the sunset rules as early as possible in May, maybe mid- month. When the SWG resumed its meetings in March 1998, June 1 was established as the deadline for publication of the rules, which would allow for initiation of the reviews anytime in July.

According to several SWG members, the rules were generally on track until the final few months when the process was perceived to have lost momentum following the hearing. Even though the SWG met more frequently thereafter, progress was slow in resolving the issues. The SWG Chair acknowledged resolution of issues was delayed for two weeks in discussing

a major change to the draft rules. After this specific issue was resolved, the rules moved expeditiously. He used a list of issues as a guideline and watched for consistent progress.

The Commission received the action jacket signed by the General Counsel and INV Director on June 1, 1998, with a request that action be expedited immediately, rather than the two-days per Commissioner usually provided for review. All Commissioners approved the action jacket on June 2, 1998. The SWG Chair said the standard circulation of the action jacket was not necessary because the process for preparing the sunset rules was much different. Normally, the Commissioners and their staff have not seen the contents of an action jacket until it is received, and therefore need time for review and revisions. The Commissioners' staff were members of the SWG and, between May 8 and 26, four drafts of the sunset rules were sent to the Commissioners for review and comment. The Commission reached consensus on the rules and the action jacket was largely a formality.

In May 1998, after lengthy discussions, the Commission agreed with a Commerce proposal to use a single date each month to initiate investigations. The single date would preferably be the first work day of the month, but not necessarily for the first investigations initiated in July. The SWG continued to work toward the June 1 deadline. As that date neared, Commerce indicated that the investigations could be initiated later in July with no problems.

The final sunset rules were published in the *Federal Register* on June 5, 1998. The first seven sunset reviews were initiated on July 6 rather than July 1, 1998. According to OGC, the effect was nominal as only two working days were lost.

Definitions

Some key terms pertaining to sunset reviews were not defined or adequately described in the final rulemaking package, which consisted of the preamble, the regulations, and the annexes. The definitions for and descriptions of other key terms were located in multiple places, including the preamble and annexes which would not be in the final rules. This format increased the complexity of the package for the readers rather than sending a clear message as advocated in a recent White House initiative.

Key terms on the roles a participant may play in a sunset review are defined in multiple places, or not at all. For example, "**party**" is defined in 19 CFR 201.2 and elaborated upon in 19 CFR 201.11. Four terms on reviews are defined in 19 CFR 207.60. "**Interested party**" is described and the statutory source cited in the preamble, but not in the rules. New terminology, "**respondent interested party**" and "**domestic interested party**", are described in the preamble, but not used in the rules. "**Nonparty**" is used in the preamble and once in the rules, but not defined in either. Annex A includes a definition section for the terminology used in a Notice of Institution.

We also observed that Annex B refers to the option of extending an investigation for 90 days due to its complicated nature, a significant addition to a 360-day investigation. The rules do not define complicated, reference the statutory cite, or address how or when the Commission would make this decision.

OGC stated "complicated" was adequately defined in the statute (19 U.S.C. 1675(c)(5)(C) and (D)), and Commission practice since the mid-1980s has been not to reiterate statutory provisions in the Commission regulations. The SWG Chair stated that a precise definition of

“complicated” is not necessary because the Commission can extend its deadline by 90 days in all cases and the Commission decided that “complicated” reviews would be addressed on a case-by-case basis.

OGC said because of the distinct nature of the documents, a unitary definition section would not have been legally binding, would have resulted in unneeded rules, or would have been unnecessarily cumbersome. We were aware of the distinct nature of the documents, which is why the package needed to be reviewed as a whole. For example, the need to define terms in the preamble or annex, which will not be codified, that are neither used nor defined in the regulations is questionable. The annexes should be based on the rules, which could require some information to be duplicated. Including a statutory citation, when not including the cited language, would be helpful when a definition is defined by law.

Plain language documents will vary according to the intended audience, but should have a logical organizational framework and use common everyday words, pronouns such as “you,” the active voice, and short sentences. The sentences in approximately 17 percent of the preamble and 25 percent of the rules were written in passive voice. Sentences running more than four lines across an eight inch page are common, with some sentences as long as eight, nine, or eleven lines.

An Executive Memorandum on Plain Language in Government Writing, dated June 1, 1998, calls for federal government writing to be in plain language in order to send a clear message to U.S. citizens about what the government is doing. The Executive Memorandum asks that independent agencies consider rewriting existing regulations in plain language by January 1, 2002, as opportunity and resources allow. When this is done, the Commission should consider the clarity and user-friendliness of the entire package, particularly for definitions of key terms.

The SWG Chair said the preamble and rules were written for the trade bar, and the language may be difficult for those who are not familiar with the process and terms. He said a definite effort was made to write Annex A in simpler language because the Notice of Institution would be used by company personnel. OGC said it would be difficult to write the Commission rules in plain language because the rules are for technicians, and the use of plain language may cause greater ambiguity and could lead to more litigation.

CASE ANALYSIS

INV made a significant effort to prepare for the sunset reviews by locating investigative documents for each order. A detailed analysis of the transition duty orders was not done because reliable data was not available and criteria was unknown. Offices calculated resources needed based on assumptions that did not include an estimate for terminated reviews. The estimates for expedited reviews had no substantive basis and the estimate was fully offset in the February calculation. These factors may significantly reduce the Commission-wide workload for investigations and appeals since terminated reviews require a minimal effort and expedited reviews require less than half of the effort for a full review.

In preparing for the sunset reviews, INV made a substantial effort to locate files for each of the 321 orders. INV located a copy of the final report, OGC memoranda, and the Commission determination for all investigations. INV also coordinated with Commerce to organize the orders into groupings, and develop a review schedule.

A detailed analysis of the orders to estimate how many sunset reviews were likely to be terminated or expedited was not considered feasible because data was not available. This belief was based in part on the results of a related effort. In early 1997, ID estimated how much data was publicly available that could be used in order to determine the response needed to meet the adequacy standard. ID found that some usable public data was available for about a third of the orders, incomplete data was available for another third, and no data existed for the final third. We believe considerably more data is necessary to evaluate the adequacy of the responses than to estimate whether a response is likely to be submitted.

OP, INV, and OGC also said that, in February 1997, the criteria for terminating or expediting an investigation were unknown because Commerce and the Commission had not yet published draft rules. The final preamble is more vague than in the proposed rule, making it even more difficult to predict which cases will be expedited. To date, the Commission has not reached consensus on the methodology to be used.

Instead, the basic assumptions established for estimating workload included no figure for sunset reviews that would be terminated, and ten percent for the reviews that would be expedited. However, any savings from expedited reviews were assumed to be totally offset by complicated reviews. The assumptions were significant because a full sunset review will require approximately the same level of effort as a final VII investigation, and substantially less effort will be required for reviews that are terminated or expedited.

Terminated Reviews

Commerce rules allow termination of sunset reviews 90 days after the date of initiation if there is no response from interested parties or the response is not complete. Termination leads to revocation of the duty order. Minimal work is required by the Commission, basically publishing the notices of institution and termination in the *Federal Register*.

An assumption on terminations was not officially stated, but the resource estimates had no provisions for terminations. The INV Director stated that estimates ranged from zero to fifty percent for terminations, and the conservative position of zero terminations was used on the basis that any decrease would be offset by other increases.

The Commission's industry and economic experts were not asked which cases were likely to be terminated based on lack of interest or changed circumstances in the subject industries. For example, some industries may no longer exist or the products no longer be produced. By simply skimming the list during an interview, the INV Director noticed a duty order for mechanical bicycle speedometers which are no longer manufactured in this country. Commerce notified the Commission in July 1998 that this case will be terminated because no response was received.

Even though the criteria for termination is different, we believe the statistics for title VII cases indicated that some sunset reviews will be terminated. According to statistics prepared by INV, an average of 26 percent (ranging from 4 to 68 percent) of the title VII cases filed from 1980 through 1996 were terminated. Of these, eight percent were terminated before the preliminary Commission determination.

The results of the reviews initiated in July, August, and September 1998 proved the zero estimate to be inaccurate. The three announcements included 21 groupings; fourteen groupings with twelve orders had no response and will be terminated. Further, one grouping

with four orders was superseded by a request for the Commission to review its affirmative determination pursuant to section 751(b) of the Act (19 U.S.C. 1675(b)). Effectively, the first 21 groupings initiated had a termination rate of 71 percent. Even if no additional groupings are terminated, which is unlikely, the termination rate is 15 percent.

The first investigations initiated included some of the oldest orders. The six orders with no responses to reviews initiated in July were all over 25 years old, and the eight orders with no responses to reviews initiated in August and September were all over 19 years old. The rate of no response may be less as the age of the orders decreases in future initiations, but could still be a significant reduction on the total number and timing of sunset reviews conducted. As shown below, the majority of the transition duty orders are ten or more years old, and a substantial portion are 15 or more years old.

<i>Age in Years</i>	<i>No. of Investigations</i>
30+	4
25 - 29	14
20 - 24	17
15 - 19	25
10 - 14	130
5 - 9	<u>131</u>
Total	321

Until recently, the Commission had received very few 751(b) petitions, less than one a year. Since December 1997, the Commission received three 751(b) petitions affecting ten orders. Two petitions were denied (five orders), and one was approved for a full investigation (seven orders). To the extent that 751(b) petitions are submitted and accepted for review, the number of sunset reviews will be reduced.

OGC commented that apparently some interested parties see an advantage in having a case reviewed earlier as a 751(b) investigation rather than according to the sunset review schedule. This increase was not anticipated when making the resource estimates in February 1997, and is a rescheduling, not a reduction, in workload. However, the resource estimate would be affected because the additional 751(b) petitions would be conducted using existing resources.

OGC also commented that an entire group of orders has to be terminated in order to eliminate the need for an investigation. This is not a significant obstacle. Over half of the groupings (57 of 106) have just one order, and 80 per cent have three or fewer orders.

Expedited Reviews

The Commission can decide to expedite sunset reviews that do not receive adequate responses from interested parties in response to the notice of institution. Expedited reviews do not require questionnaires, prehearing reports, hearings, or post hearing briefs, and are completed in 150 days.

OP, INV, and OGC stated that the percent of sunset reviews that will be expedited is a highly unknown factor. In February 1997, the Budget Committee proposal assumed 10 percent of the cases would be expedited, which would be offset by more complicated cases. In November 1997, OGC adjusted their estimate to 25 percent, which was not offset by more complicated cases, but this had no actual effect. Due to other changes, the OGC November staff year

estimate was higher than the February estimate, but was not used in subsequent budget documents. Neither the ten nor the 25 percent figure had a substantive basis.

An evaluation of any Commerce reviews and level of activity would have provided some information about the industry and possible lack of interest in the investigation. Commerce can adjust the level of duty annually if requested and review any duty order with no “dumping margin” three years in a row. Commerce had statistics on the number of entries and the dollar amount collected for each of the duty orders since 1993 for public data and 1995 for non-public data. For FY 1997, nearly 40 percent (125 orders) had no entries or dollars collected and another 22 percent was classified as confidential business information, indicating that less than three entries had been recorded. Of the 125 orders with activity, 52 had fewer than 100 entries and had collected less than \$10,000 in duties.

OP, INV, and OGC objected strongly that the case analysis was inadequate. The total number of cases and groupings were used as a worst case scenario. They maintained there was no way to “know” how many cases would be terminated or expedited until empirical evidence was available. Also, decreases would be offset by factors such as investigations determined to be complicated, and multiple pieces of litigation resulting from grouped reviews with multiple domestic like products. Splits in the groupings would also increase workload (we note this would not be significant as only six groupings had more than ten orders).

INV and OGC said the statistics on duties had enough shortcomings that no conclusions could be made. For example, no activity can result from the lack of production or the duty order may be so high as to discourage importers from bringing in goods. Also, an importer may adjust prices to keep profits instead of paying duty.

Finally, OGC said the cost to the Commission in making such an analysis should also be considered. For any exercise to have been useful, staff would have had to estimate interested parties’ perceptions of the likely effects of rescinding an order. For staff to have projected industries’ likely answer based on available information would have required staff to engage in the precise type of inquiry in which the law direct the Commission to engage when it conducts a five-year review.

We agree a determination cannot be based on any one factor used in isolation, but disagree that a full sunset review was necessary to estimate reviews that might be terminated or expedited. A reasonable effort to identify and analyze relevant data, including age, duties, and industry activity, would have resulted in a better basis for the caseload estimates and, thereby, greater validity for the associated workload estimates.

The OP Director said the estimate was the maximum resources that would be needed and a more precise estimate, such as we suggested, was not needed because the intent was to hire gradually as resources were needed. Neither the Budget Committee proposal nor the Chairman’s statement that requested 34 new hires indicated the resources requested were maximum amounts and employees would only be hired as needed. On the contrary, OGC documents repeatedly emphasize that the estimates may be low. Further, procedures similar to a reduction-in-force would have to be followed to terminate any temporary employees before their appointments expired.

RESOURCE ESTIMATES

The Commission predicted significantly increased workloads for FYs 1999 and 2000 and corresponding requirements for additional resources to conduct sunset reviews. The INV and OGC predictions were calculated fairly accurately based on assumptions of time estimates, but had insufficient justification for permanent positions. The estimates for additional resources for training and travel appeared to be reasonable. SE and AD had minimal requests for additional staff, and did not request additional funds for training or travel.

Staffing

The OP and OGC workyear estimates were fairly accurately calculated based on assumptions developed. The most significant change was that the number of groupings decreased from about 117 used in the estimates to 106, which would decrease the estimates. The Secretary and AD Director had no written basis for their estimates, which were minimal. The offices provided inadequate justification for requesting permanent rather than temporary positions, and the proposed increase in permanent staff does not seem reasonable.

In February 1997, the Budget Committee submitted a proposal to the Commission with projected staffing and non-personnel funding requirements. In total, 71.6 additional workyears were estimated as needed to conduct the transition sunset reviews and subsequent litigation. No workyears were identified for FY 1998. For FY 1999, 57.5 workyears were estimated as follows: 41 workyears for OP, 13.5 for OGC, 1 for SE, and 2 for AD. For FY 2000, an additional 13.1 workyears, primarily for litigation, were estimated for OGC. No workyears were identified for FY 2001. (See attachments 1 and 2.)

Office of Investigations

INV estimated the number of grouped reviews that could be handled by staff based on past workload assignments of title VII investigations, the experience of their managers and staff, and the timeline for an individual sunset review. The estimate includes work done by EC, ID, and OIS. This exercise led to the following assumptions underlying staffing estimates:

- One investigator can handle 3.5 packages per year
- One economist can handle 4.5 packages per year
- One accountant can handle 9 packages per year
- One supervisory investigator can handle 12 packages per year
- One statistical assistant can handle 12 packages per year

Our calculation using these estimates and the published schedule of sunset reviews indicated a peak increase of 47.86 work years in FY 1999. The estimated increase of 41 staff will be sufficient if the OP offices currently conducting title VII investigations (INV, EC, ID, and OIS) can absorb five to seven additional work years. The INV Director said the unusually low number of title VII investigations for several years and a predicted decline during the transitional sunset review years will free existing resources to absorb some of the work.

Office of the General Counsel

OGC maintained statistics on the number of title VII investigations initiated each year and the corresponding appeal rates from 1980 through 1996. Attorneys were interviewed to determine 1) estimated sunset review workload that could be handled by each attorney and paralegal, and 2) estimated time required to complete distinct investigative tasks. A value was assigned to

each task and possible variances that could affect the workload were identified. This exercise led to the following assumptions underlying OGC staffing estimates made in February 1997:

Sunset reviews

- One attorney can handle 4.5 sunset packages per year
- Complicated packages require an extra attorney, i.e. 2.25 packages per year
- Additional supervision will be required above current levels
- Additional administrative protective order and database responsibilities for paralegals

Litigation

- One attorney can handle six Federal Circuit appeals per year
- One attorney can handle four appeals per year to the Court of International Trade
- Paralegal work will increase by five or six positions
- Complicated packages on appeal will require an additional attorney
- Appeals rates will range from 60 to 75 percent (depending on the venue)

The workyear analysis concluded 15 attorneys, or 11.5 attorney workyears, were needed in FY 1999. This calculation included about eight workyears for sunset litigation which would not occur until FY 2000. The Budget Committee directly related the February OGC estimate for 11.5 workyears to a request for staff even though the calculation was adjusted for leave and holidays (basically reducing the year from 52 to 44 work weeks).

OGC revised the assumptions in November 1997 and refined the workyear estimates. Changes included that expedited reviews, which were fully offset in the February calculation, were estimated at 25 percent, and litigation was not included. Although these were major reductions in time, the overall estimate was higher than in February. The calculation supported nearly 16 staff years, which was adjusted to 13.3 attorney workyears for FY 1999. The Budget Committee Proposal for 11.5 additional attorneys was not changed.

OGC indicated that existing staff currently devoted to administrative law matters and OGC administration would be used for the sunset reviews. This was not supported by the February calculation. If 15 attorneys were hired in FY 1999 for 11.5 workyears, non-sunset areas would be subsidized, rather than OGC absorbing work with existing staff, since only 10.35 workyears were estimated for sunset administrative work. OGC would have to absorb about two workyears based on the higher FY 1999 estimate of 13.3 attorney workyears calculated in November.

OGC estimated that litigation will begin in late FY 1999 or early FY 2000 at rates that follow past title VII appeal patterns. Title VII reviews generated appeal rates from 34 to 84 percent annually over the seventeen years from 1980 to 1996. The average for this period was 57 percent. In addition, OGC stated the sunset reviews in general are likely to generate high rates of appeal based on Commission experience and empirical data relating to new statutory provisions. For example, the Omnibus Trade and Competitiveness Act was enacted in late 1988; the rate of appeals was 76 percent in 1989, compared to 56 percent the previous year.

OGC developed underlying assumptions for the paralegals, but did not use these assumptions to calculate the number of paralegals needed. We found the request for two paralegals was consistent with current ratio of attorneys to paralegals. In FY 1998, OGC had a ratio of one paralegal for every 2.9 attorneys. Based on the Budget Committee proposal, the FY 1999 ratio

would be one paralegal for every 3.67 attorneys, and the FY 2000 ratio would be one paralegal for every 3.82 attorneys.

Office of the Secretary

The Secretary estimated how long each task would take based on her experience with title VII investigations, the draft procedural requirements, and the tentative schedule of sunset reviews. All investigations, whether terminated, expedited, or full, will impact SE work to some degree.

The Secretary estimated two additional permanent positions were needed. The Budget Committee proposal stated two additional staff were required, but only identified one temporary position for FY 1999. The Chair of the Budget Committee stated the tasks to be performed were discussed, and a decision made that one position was sufficient.

No supporting documentation was available for review. The Secretary said that the number of orders was all she had, and everything else was an unknown. She tried to be reasonable and realistic instead of overly cautious by planning for the worst case scenario. Considering that nearly all of the 321 orders will require some processing by the SE, at least one position seems reasonable.

Office of Administration

The AD Director, as stated in the Budget Committee proposal, stated one or two workyears was likely to be needed, either temporary or permanent, to accommodate sunset printing requirements. The Budget Committee proposal identified two positions, one temporary and one permanent, for FY 1999.

No supporting documentation was available for us to review. The AD Director said that the increase in printing appears to be less than originally anticipated. The print shop is staffed with Commission and contractor employees. Rather than hiring additional staff, contractor staff will be added if and when needed.

Permanent vs. Temporary Positions

In her written statement of April 14, 1998, the Chairman stated that approximately two-thirds of the 34 new staff for the transition period will be hired on a temporary basis. That ratio is consistent with the Budget Committee proposal for 15.5 permanent hires and 23 term appointments for FY 1999. This proposal does not reasonably reflect the needs of all Commission offices for permanent staff, and the offices did not adequately justify why permanent staff are needed.

The transition sunset reviews primarily require staff in FYs 1999 and 2000 when the majority of investigations will be conducted. The transition cases will be completed in FY 2001. Some additional permanent staffing will be needed to handle the ongoing five-year reviews beginning in FY 2000, estimated to be about ten reviews annually. OGC will also need resources to handle the temporary and permanent increase in litigation. OP and OGC expect the five-year sunset reviews to lessen over time in a "diminishing rolling wave."

As shown on Attachment 1, virtually all additional permanent staff was proposed for OGC and none for INV. The additional permanent positions for the transition reviews should reflect the

resources needed after the transition period. The Budget Committee proposal provides no investigators, one economist, 20 attorneys, and six paralegals for the added workload.

OGC stated that a substantial portion of the increased staffing needs are likely to be constant and permanent. The justification was that OGC would need permanent staff for the ongoing sunset reviews and litigation. No workyear estimates were provided for years after FY 2000. An estimated 69 investigations for transition sunset reviews will be initiated in FY 1999, while the estimated ongoing sunset reviews will consist of ten investigations annually. The workload to conduct and litigate the ongoing sunset reviews does not justify the 20 attorneys requested for the transition sunset reviews in FYs 1999 and 2000.

OGC articulated various other reasons for hiring permanent rather than temporary staff, none of which we consider adequate to compensate for lack of a workload justification. OGC said using the same attorney for the case and any appeals is efficient as less time is spent learning the record, and noted that INV may not have the same need for continuity because cases are seldom remanded. Further, temporary hires tend to be less experienced in trade matters and tend to leave more quickly for permanent positions. OGC also stated it would not be able effectively to hire the needed caliber of lawyers if only temporary attorneys were hired, and the attrition rate is sufficient that staff could be reduced in response to a lesser workload.

A Commissioner's staff member stated that the two-thirds ratio was related to the Budget Committee proposal, but is the minimum rather than a final figure. Which additional positions will be permanent has not yet been addressed. The Commission already indicated in approving the first personnel actions that all of the attorneys will not be permanent hires as requested. An expenditure plan and new staffing plan will be prepared based on the Commission's FY 1999 appropriation.

Training and Travel

INV estimated sizable increases for training and travel. OGC estimated a sizable increase for training and a modest increase for travel. The estimates were reasonable based on past spending and hiring.

INV requested a 100 percent increase in training funds, from \$10,000 in FY 1998 to \$20,000 for FY 1999. The increase reflected the need for professional development of INV staff and the additional supervisory and nonsupervisory personnel. The Director said that training is important in both developing and maintaining staff expertise and building staff morale.

INV requested a 100 percent increase in travel funds, from \$50,000 in FY 1998 to \$100,000 for FY 1999. This increase was justified as being necessary for field work and verification of questionnaire responses in connection with sunset reviews, as well as some travel related to training. The funds requested for FY 1999 reflected the current travel requirement applied to the more than double workload. Foreign verification, although not anticipated, would require additional funds.

OGC requested an additional \$7,400 in training funds for sunset reviews. OGC stated this would maintain the same level of training in FY 1999 (\$640 per attorney) and address the need to train new staff who may be unfamiliar with the title VII process.

OGC requested an additional \$3,000 in travel funds related to sunset review litigation.

See attachment 3 for additional data on training and travel.

WORKYEAR STATISTICS

Neither INV nor OGC used actual hours worked on title VII investigations as a basis for the workyear estimates. Our analysis of the workyears was generally inconclusive because data was inconsistent and the normal workload was low. The code established in FY 1998 to record hours worked on sunset reviews was improperly defined and inconsistently used. As a result, the FY 1998 data may not be useful for making future estimates and justifications for resources needed for FYs 2000 and 2001.

Prior to FY 1998, hours spent on Antidumping/Countervailing Duties were recorded in the Activity Reporting System (ARS). Work hours were reported on a cumulative basis, not by individual investigation or tasks. According to the ARS reports, multiple offices charged 67,728 hours in FY 1996 and 73,266 hours in FY 1997 to the title VII code, approximately 32.4 and 35.1 workyears. Not all hours spent on title VII tasks were recorded on this code; for example, SE staff charge these hours to the codes for Operational Support or Public Assistance, and the Commissioners and their staff charge their hours to Executive Direction.

Our attempt to do a workyear analysis over a ten year period was inconclusive as consistent data was only available for FYs 1996 and 1997. In addition to the ARS, we reviewed work year and/or investigation statistics reported in annual Budget Justifications, the monthly Commission Summary Reports, and INV and SE records. Statistics were not consistently recorded over a ten year period. INV provided the investigation statistics for the annual Budget Justifications until FY 1994; the Secretary assumed the responsibility and began using a slightly different method for calculations. Also, various overhead categories (hours and dollars) were allocated to the program activities in the annual Budget Justifications through FY 1997; the overhead categories have since been reported separately.

A comparison of the workyear estimates to actual work hours was also inconclusive. Using the INV and OGC assumptions discussed on page 9, excluding litigation, we calculated that approximately one staff year was required per title VII package. In comparison, the title VII cases instituted in FYs 1996 and 1997 comprised 23 packages, and the annual Budget Justifications reported 40 and 44 work years, respectively, for title VII. This calculates as 3.7 staff years per package, significantly higher than the one year estimate. This difference was attributed to the low and moderate title VII workload in FYs 1996 and 1997, and suggested substantial idle capacity was available.

We also reviewed the relationship of hours charged to title VII by OP and OGC, and found the distribution of planned hours was significantly different than the actual hours. Using the ARS figures for FYs 1996 and 1997, OGC charged 11.6 percent of the total hours, exclusive of litigation and rulemaking and supervision. OGC assumptions indicated the legal resources will constitute 22 percent of normal sunset review and 36 percent of complicated packages.

OGC stated that the 11.6 per cent was low because the title VII workload was down and staff were assigned to non-trade-related areas, especially pertaining to labor litigation, and discretionary projects in other areas. The inability to charge comp-time and credit hours to activity codes also had an impact. If statistics were available for a longer period or a year with a normal workload, OGC said the ratio would be about 24 per cent.

At the suggestion of the General Counsel, a specific code (1CA102) was adopted to record work hours attributable to sunset reviews in the Labor Cost Module of the Time and Attendance System. According to USITC Administrative Announcement FY-98-03, this code is for “time spent on sunset reviews conducted during the transition period beginning July 1, 1998, and time spent by OGC staff in revising and updating USITC rules and procedures governing the handling of such reviews“. The code was effective October 1, 1997.

The Labor Cost Module report dated September 29, 1998, had 4,586 hours charged to the sunset reviews code in FY 1998 by staff in INV, OGC, ID, OIS and OMS. The accuracy of the figure is questionable because the definition was incorrect and all staff were not using it.

According to the definition, the code was only to be used by OGC before July 1. The code should not have had this limitation as multiple offices participated in revising and updating Commission rules and procedures governing the handling of sunset reviews.

The INV Director was initially unaware that the code existed or that any of his staff had charged time to it. He stated that he preferred not to record hours for sunset reviews in a separate code because this is additional work for timekeepers and the existing code for title VII investigations would be adequate.

Recommendation

We recommend that the Director of Operations, as Chair of the Budget Committee, confirm that the Commission wants to track hours spent on sunset reviews. If so, review the definition of the code and revise as necessary; and notify all offices directors whose staff participate in sunset reviews that the code is to be utilized when recording time.

BUDGET REQUESTS

The estimated workyears proposed by the Budget Committee were not consistently reflected in the office budget packages for FY 1999. In addition, the workyears reported in the office budget packages did not accurately reflect the number of staff requested. Further, the tables in the Commission’s FY 1999 Annual Budget Justification significantly understated the resources needed for the sunset reviews. The office budget packages for the FY 2000 Budget Request were reasonably consistent with the Budget Committee proposal and FY 1999 staffing plan.

The Budget Committee efforts to estimate the resources needed to conduct the sunset reviews and the regular budget process were separate, if related, efforts. In February 1997, the Budget Committee prepared a proposal identifying the resources needed for sunset reviews in FY 1999. The process for developing the Commission’s FY 1999 Budget Package included the following steps:

-- **May 1997.** Offices submitted input for FY 1998 Expenditure Plan/**FY 1999 Budget Request.** The input was consolidated by OFB and forwarded to the Budget Committee which made a recommendation to the Commission.

-- **February 1998.** The Commission submitted the **FY 1999 Budget Justification** to Congress. In March, the Budget Committee proposal was slightly revised as reflected in a staffing plan.

-- **July 1998.** Offices submitted input for **FY 1999 Expenditure Plan/FY 2000 Budget Request.**

A critical difference in the budget process concerns workyears and staff positions. **Workyears** are the number of hours, usually per function. Workyears may include leave and holidays or be net of these amounts. Workyears are not directly equivalent to staff positions, for example two half-time staff equal one workyear. **Staff positions** are the number of people, usually by office. Most positions are either permanent or temporary, and filled on a full or part-time basis. Within the Commission, budget development has a strong focus on staff positions. The government-wide budget process focuses on workyears.

The Budget Committee Proposal was developed primarily on workyears. The proposal directly related the workyears to staff positions, even though the OGC workyears were net of leave and holidays. The FY 1999 budget documents include both workyears and staff positions, which were not consistently used as discussed in the following sections.

FY 1999 Budget Estimates

Offices submitted input for the FY 1998 Expenditure Plan/FY 1999 Budget Request in May 1997. Some offices' input for the FY 1999 budget was not consistent with the Budget Committee proposal. Further, several offices requested additional staff, but did not report the anticipated increase in title VII workyears or corresponding decreases in other functions for detailed employees.

The combined input from OP offices (INV, ID, EC, and OIS) varied from the Budget Committee proposal as shown in attachment 4 and summarized below:

-- The Budget Committee proposal increased title VII by 41 workyears for sunset reviews; only 35 workyears were reported. EC and OIS under reported workyears (13 and 2, respectively). This was offset by duplicate reporting of 9 workyears for details by ID and INV. The ID Director said that the significant increase in workyears predicted for FY 1998 did not materialize. Therefore, he increased the workyears estimate for FY 1999 by nine instead of ten workyears. He was not aware that INV also claimed the workyears.

The INV Director said that he was aware that ID had identified the workyears for the details, but thought that the workyears should be reported by INV. Therefore, he decided to identify the ten workyears and let the Budget Committee decide on the proper presentation.

-- The Budget Committee proposal included 19 details which would have decreased 19 workyears in other functions; however, only 9 workyears were reported. EC and

OIS did not show decreases of 7 and 2 years respectively, and ID was one work year short.

-- The Budget Committee proposal included 10 details to INV. ID showed 9 instead of the proposed 10 details.

-- INV, EC, and OIS requested temporary and permanent employees as proposed by the Budget Committee.

The OP Director said that the contents of the Budget Committee proposal were discussed with each office, but not the treatment in the budget submissions. OP relied on OFB to review the workyears and staffing requests for consistency.

The OGC input was consistent with the Budget Committee proposal for an additional 13.5 staff. OGC reported 5.8 workyears in title VII and 7.7 workyears in litigation and rulemaking (not all sunset related). The allocation of workyears did not properly reflect that the sunset rules were issued in FY 1998 and litigation was not expected to start before the fourth quarter of FY 1999. The allocation was amended the following year. OGC requested 6.5 attorneys and 2 paralegals, all permanent, which was consistent with the proposal.

The SE requested more resources than the one additional position in the Budget Committee proposal. She reported two workyears, one in Assistance to the Public and one in Operational Support, and requested 2 permanent staff positions. The budget input was consistent with her initial request to the Budget Committee for FY 1999.

AD identified no additional workyears and requested no resources even though the Budget Committee proposed two additional positions. As previously discussed, the Director decided personnel hires were not necessary to accomplish any increased workload.

FY 1999 Budget Justification

The FY 1999 Budget Justification was submitted to Congress in February 1998, approximately a year after the Budget Committee proposal was developed. The Budget Justification narrative generally addressed that the sunset reviews will increase the Commission's workload, but did not specifically identify how many workyears were estimated for the sunset reviews, or how many additional staff were needed.

In April 1998, the Chairman submitted written testimony to the House Committee on Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary in support of the Commission's FY 1999 Budget Request. In her testimony, she stated all increases related to the new responsibilities for conducting sunset reviews. Specifically, 34 new staff would be hired, and 19 Commission staff would be reassigned. These figures corresponded to the staffing plan based upon the Budget Committee proposal, but not to the Budget Justification.

The summary table in the Budget Justification identified an additional 22 workyears for title VII investigations and 7 workyears for indirect costs (operational support, litigation and rulemaking, and operating management). Apparently based on these figures, a draft House Report on the Commission's appropriation recommended full funding for an additional 22 FTE for direct activities related to sunset reviews, but did not provide for the 7 additional FTE requested for administrative overhead.

The additional 22 workyears for title VII investigations had little relation to the needed resources proposed by the Budget Committee. As discussed in the prior section, the estimated increase in title VII workyears was not accurately reported in the offices' budget input. However, this was unknown to OFB. A summary table prepared from the office submissions had a total of 429.9 workyears at \$44,050,900, of which 91.1 workyears were for title VII. This reflected an increase of 35 workyears for title VII, far less than the 57.5 workyears estimated to be needed for the sunset reviews that would be charged to title VII.

OFB submitted two recommendations to the Budget Committee for FY 1999 funding and staff levels, each reflecting a minimal increase over FY 1998 funding. The figures were broken down by budget object class (i.e., personnel, rent, telephones), but not by function (i.e., Import Injury, Title VII, Section 337).

The Budget Committee made a recommendation to the Chairman of 426 workyears and \$46,125,400, which was the funding level approved by the Commission in March 1997. Once again, the figures were broken down by budget object class, and not by function.

The Commission decided on a budget figure of \$45,500,000. OFB adjusted the workyears and dollars by function so that the total would equal the \$45,500,000 figure. This resulted in 22 workyears being added to title VII, 1 to administration, and 7 to indirect personnel costs. "Other recurring reports and services" (a function to be deleted in FY 1999) was the only direct function where workyears decreased, and that was only by one workyear, instead of various functions being reduced by a total of 19 workyears to reflect details and reassignments to title VII work.

The draft House Report drew a reasonable conclusion that the seven workyears added in indirect personnel costs were for administrative overhead. Much of the increase was actually for direct activities inappropriately reported as indirect personnel costs. Litigation and rulemaking, which had an increase of 1.5 workyears, were direct costs that are being charged to the applicable activity in FY 1998. Many SE activities charged to operational support, which had an increase of 5 workyears, could also be allocated to or identified as direct costs.

The OP and AD Directors said that they did not relate the Budget Committee proposal on resources needed for sunset reviews to the OFB recommendations for the FY1999 Budget Justification. The Budget Committee focused on the requests by budget object class and the staffing plan, and not the tables with the workyears.

Public Law 105-277, Omnibus Consolidated and Emergency Supplemental Appropriations for FY 1999, provides a funding level of \$44,495,000 for the Commission. The conference report provides that the amount provided includes funds for an additional 24 full-time-equivalents for activities related to sunset reviews, including litigation and rulemaking support (the latter activities should be minimal in FY 1999). The 24 staff years are a modest increase, but still well below the estimated staff needed.

FY 1999 Expenditure Plan

The Budget Committee proposal was effectively adjusted by a FY 1999 staffing plan adopted in March 1998. The office submissions for the FY 1999 Expenditure Plan in July 1998 were fairly consistent with the staffing plan, but still had some differences and errors.

The differences and errors were:

- The duplicate reporting of workyears continued, with INV reporting ten details and ID reporting nine details. EC reported a five year increase in title VII workyears instead of previous zero, but less than the 13 workyears proposed. OIS decreased the estimate from three to two workyears, which was still two workyears low.
- INV and EC staff requests did not change from the prior year budget input. OIS requested 2 temporary statistician assistants; the computer specialist was not requested because these services were hired under contract.
- OGC reported 12.3 workyears in title VII and .5 in litigation and rulemaking. This allocation more accurately reflected the work to be performed. The total of 12.8 workyears was less than 15.5 staff requested for FYs 1998 and 1999 because OGC adjusted the workyears for partial year hires.
- OGC reflected that 5 attorneys were approved for hire in FY 1998 and requested 10.5 permanent positions (9.5 attorneys and 1.0 paralegal) for FY 1999. The request included two attorney positions that OGC planned to hire in FY 2000 according to the Budget Committee proposal. The request also included 1.5 positions that were in the Budget Committee proposal, but not approved in the FY 1999 staffing plan.
- SE reported one workyear, with the increase split evenly between Assistance to the Public and Operational Support, and requested one permanent staff position. This was consistent with the FY 1999 staffing plan.
- AD made no request for staff consistent with the FY 1999 staffing plan.

FY 2000 Budget Request

The office submissions for the FY 2000 Budget Request were reasonably consistent with the Budget Committee proposal and FY 1999 staffing plan. The OGC estimates, adjusted for the two workyears accelerated into FY 1999, had minor differences from the proposal. SE requested one additional permanent staff position, but did not identify a corresponding increase in workyears. OP and AD identified no workyear or staff increases.

OGC estimated an additional 10.2 workyears, 4.7 for title VII and 5.5 for litigation and rulemaking. The allocation reflected the change in focus from conducting the sunset reviews to representing the Commission in appeals and litigation. The 10.2 workyears did not account for .9 of the 13.1 workyears in the Budget Committee proposal. OGC requested 11 positions, 9 permanent attorneys, 1 permanent paralegal, and 1 term paralegal. The request was consistent with the Budget Committee proposal adjusted to hire two attorneys in FY 1999.

Recommendation

We recommend that the Director of Operations, as Chair of the Budget Committee, ensure that the Commission's FY 2000 Budget Justification accurately reflects the Commission's decisions for workyears and positions for title VII resources.

PERSONNEL

Efforts to recruit/hire, detail, and reassign staff are sufficient to have resources available as needed in FY 1999. Neither the temporary nor the permanent hires are positions dedicated to the sunset reviews. The offices generally have plans to provide on-the-job training. The Commission has adequately planned to provide space, computers, and telecommunication services for 25 to 30 additional staff.

The Budget Committee proposal stated that the OP would detail/reassign employees before hiring new positions. This changed in late FY 1998 as offices planned to hire the term positions first, and detail/reassign employees as the workload necessitates. Presently, hiring is being done concurrently or prior to making details/reassignments.

Recruiting/Hiring

The Budget Committee proposal identified 23 temporary and 15.5 permanent positions in FY 1999. The FY 1999 staffing plan adjusted the staffing by office and reduced the overall numbers to 22 temporary and 12 permanent positions. INV and OGC began recruitment in FY 1998 and OGC hired several attorneys. These efforts appear sufficient to gradually add resources in FY 1999.

In May 1998, the Chairman authorized INV to recruit eight temporary trade analysts as investigators. An announcement for trade analysts was issued June 1 and closed June 29, 1998, for appointments not to exceed three years. Over 100 applications were received, were reviewed by a panel, and forwarded to the INV Director for action. Three trade analysts were hire to begin work in October 1998 for three-year terms. INV will decide in November 1998 whether to hire more trade analysts and/or the financial analysts depending on the increasing workload.

In May 1998, the Chairman also authorized EC to recruit five temporary economists. An announcement for economists was issued July 6 and closed July 31, 1998, for appointments not to exceed three years. Approximately twenty applications were received. A couple offers were made to applicants, but not accepted. EC plans to attend recruiting sessions in November, and reissue the announcement sometime thereafter. EC can handle the current workload with existing resources.

In November 1997, the Chairman's office asked OGC to develop a tentative plan to augment OGC staff to meet the anticipated sunset review workload for FYs 1998 and 1999. In response, OGC submitted a proposal on November 20, 1997, requesting 12 permanent positions: five full-time attorneys and one paralegal to report for duty in April 1998, and five additional attorneys and one paralegal to report for duty in October 1998. These dates were determined based upon a matrix that indicated the impact of sunset reviews on OGC staff will reach five additional work years in September 1998, and ten additional work years in May 1999. The early hiring was justified on the basis that new staff would undergo a four to five month training period on the title VII and sunset review processes.

In February 1998, the Chairman authorized OGC to recruit two temporary and three permanent attorneys. After several attempts to recruit, as of October 16, 1998, one temporary attorney and three permanent attorneys had reported for duty.

-- An announcement for attorneys was issued February 9 and closed March 6, 1998, for appointments not to exceed three years; no applicants were selected. A second announcement was issued April 28 and closed May 12, 1998; one applicant was selected. A third announcement was issued October 15 and closes October 29, 1998.

-- An announcement for permanent attorneys was issued February 9 and closed March 6, 1998; one applicant was selected. A second announcement was issued May 8 and closed May 22, 1998; one applicant was selected.

OIS and SE had not requested authority to recruit or hire yet, as the initial workload can be handled by current employees. Additional staff will be requested in FY 1999 as needed.

In April 1998, the Chairman's written testimony addressed the new sunset-related resource requirements and specifically stated "plans now are to hire only 34 new staff for the three-year transition period". However, the announcements for neither the temporary nor the permanent staff were limited to working on sunset reviews. The duties for the trade analysts, economists, and attorneys were the same as for any hire, and the incumbents could be assigned to work on any project.

The Commissioner's staff, the General Counsel, and the OP and INV Directors said that the additional positions were never intended to be dedicated to sunset reviews. The office directors said that it would not be practical for the new staff to work solely on the sunset reviews. The OP Director said that the office planned to hire temporary positions so that staff could be prepared as workload decreased.

Details/Reassignments

Nearly half of the staff needed to conduct the sunset reviews were identified as details from ID to INV or reassignment of employees within EC and OIS to work on the reviews. The offices identified how workloads could be adjusted and ID recruited volunteers for the details which is adequate preparation.

According to the Budget Committee proposal, ID will detail ten employees to INV in FY 1999 for tours of 18 to 36 months. ID identified curtailments in programs (such as Industry and Trade Summaries, production sharing reports, professional development, and assistance to the public) in order to accommodate the shift in resources to INV. On March 3, 1998, the ID Director sent an e-mail message to all of his staff requesting volunteers to be detailed to INV. The plan was to select and train twelve analysts. In response, seven employees volunteered, one of whom has since left the Commission. The six volunteers may be sufficient if the workload is less than anticipated.

The six employees were reassigned, five to INV and one to EC, in October and November 1998. The employees were reassigned, rather than detailed, for personnel reasons. According to the weekly resource reports, the reassignments are not to exceed April 2000, which is approximately 18 months. ID managers will identify additional employees for reassignment as workload dictates.

A reassignment is a permanent transfer of an employee from one unit to another. No termination date is noted on the personnel action, and another action is required to transfer the employee to the original office. The ID Director said the employees were reassigned rather than

detailed based on advice from the Office of Personnel, but he plans on these employees returning to ID in 18 months or three years if the reassignment is extended.

According to the Budget Committee proposal, EC will assign an additional seven economists to conduct sunset reviews. EC will reassign economists from the Country and Regional Analysis Division and the Research Division to the Applied Economics Division which participates in conducting sunset reviews with INV. Adjustments, such as reductions in the rate of development of regional expertise and the level of public assistance, will be made to accommodate the reassignments. Publication of "International Economic Review", assistance in conducting 332 investigations, and assistance to the United States Trade Representative may also be reduced.

The OP Director said the staff and work adjustments would be made as the workload develops. Current staff will not be used until the temporary staff have been hired and the workload sufficiently increases. Even then, staff will be rotated on an informal basis rather than officially detailed or reassigned. If necessary, staff will be detailed for six months.

According to the Budget Committee proposal, OIS will assign an additional two statistical assistants to conduct sunset reviews. The OIS Director said that staff would be reassigned and work adjustments made as the workload develops.

Training

The offices primarily planned to use on-the-job training for new hires and prior experience for detailed employees. Staff in INV, EC, and ID without title VII experience were given developmental assignments to learn the investigative process. As discussed in the budget section, INV and OGC also requested funds for formal training. These steps seem sufficient.

INV had a procedures manual and project management checklists that will serve as training material for detailed employees or new hires in conjunction with on-the-job training.

EC identified employees who would be reassigned to work on sunset reviews and provided training. Most of the economists were familiar with and had worked on title VII reviews. In addition, INV planned to provide the existing manuals and checklists, and on-the-job training.

OIS said the staff were familiar with and had worked on title VII reviews.

OGC training plans included "double-teaming" new personnel with experienced attorneys for a four to five month period as a method of on-the-job training. The new attorney would be assigned specific tasks on several jobs simultaneously.

Space

The Budget Committee proposal included \$200,000 for space rental. AD has not requested these funds. The renovation effort in 1998 created additional space throughout the building that can absorb additional employees. A final decision has not been made as to where all new employees will be stationed, but no additional square footage will be required at least through FY 2000. Any changes to the space needed for the sunset review staff will be funded from the allocation for renovations.

The newly hired investigators were located in empty space on the 6th floor. The newly hired

attorneys were filling vacancies in double offices on the 7th floor.

Computers and Telecommunications

The Budget Committee proposal stated approximately \$200,000 was needed for computers in FY 1999. This amount was a generous guess determined without consulting the OIS Director. In late FY 1998, OIS purchased 25 computers for \$66,000 to use in the swing space during the repaint/recarpet project. These computers will be available for the staff hired to conduct sunset reviews. No additional computers will be needed other than normal replacement.

Telecommunications was not specifically addressed in the Budget Committee proposal. In the FY 1999 Expenditure Plan, OIS estimated \$26,600 was needed for additional equipment, line costs, and service charges. The estimate was based on an additional 30 staff derived from the FY 1999 Budget Justification increase of 29 workyears.

PRINTING AND EQUIPMENT

The Budget Committee proposal stated additional funds were needed for *Federal Register* notices, an imaging scanner, public reading work station, and contract microfiche conversion. These funds needed were adjusted and/or included in the office budget requests. Additional resources were requested for printing the reports, but none were approved pending actual increases in workload.

Federal Register

The Budget Committee proposal stated an additional \$30,000 was needed per year for *Federal Register* notices. SE requested a \$30,000 increase for FYs 1999 and 2000 in the FY 1999 Budget Request, and the FY 1999 Expenditure Plan/FY 2000 Budget Request. The Secretary stated that this estimate was based on past experience with title VII investigations and the roughly estimated workload for sunset reviews.

SE requested that the funds for the *Federal Register* be increased from the initial amount of \$35,000 in FY 1998 to \$65,000 in FYs 1999 and 2000. The FY 1998 funding was not sufficient and \$35,000 was added; about \$65,000 of the \$70,000 was expended in FY 1998.

Equipment

The Budget Committee proposal stated \$37,000 was needed for an imaging scanner and \$3,000 for a public reading work station. In July 1998, SE requested a both items in response to an OIS needs survey for the FY 1999 Commission-wide information technology budget. SE estimated the cost of the scanner at \$37,000 and the work station at \$3,000. The OIS Director stated the actual cost may only be a few thousand dollars each. Both items can be purchased out of the FY 1999 equipment allocation when needed.

Although not addressed in the Budget Committee proposal, SE also needed public reading room to be reconfigured for the third work station. OMS completed this work in FY 1998 for approximately \$3,000.

The Budget Committee proposal stated \$2,000 was needed for contract microfiche conversion.

SE did not request additional funds for microfiche conversion for either FY 1999 or FY 2000. The budget request remained stable at \$5,000.

Instead, substantial funds were spent on the Electronic Data Imaging System. A blanket purchase agreement (BPA) for \$50,000 was established in FY 1997 to scan sunset and section 337 documents; \$20,756 was expended. The BPA was renewed in FY 1998 for \$25,000, of which about \$12,000 was spent. The BPA will not be renewed in FY 1999.

Investigation Reports

No resources have been increased for printing the sunset review reports. OMS made several requests for additional resources on the potentially significant increase in workload based on 321 outstanding orders. The request should actually be based on an estimate of how many reports are likely to be issued; that number has not been determined, but is likely to be substantially less than 321.

OMS made several requests for additional printing resources. In May 1997, OMS requested the purchase of an additional Docu-tech machine for \$250,000 in FY 1999; this request was not approved by the Budget Committee. OMS resubmitted this request in July 1998 as a possible purchase with year-end funds, but the request was again denied by the Budget Committee. In July 1998, OMS requested \$200,000 for the lease of an additional Docu-tech printer/copier and contract personnel to operate that equipment in FY 1999. The Budget Committee decided to postpone a decision until additional work materializes.

OMS stated that the two Docu-tech machines currently owned by the Commission are operating at nearly full capacity and cannot handle a significant increase in work. OMS has not been able to obtain an estimate of the printing requirements, and estimated a significant increase in workload based on the 321 orders.

The INV Director said that the printing requirements for the sunset reviews alone is not sufficient to justify the purchase or lease of another Docu-tech. A report will be prepared for each group of orders, which is approximately 106 rather than 321. That figure will be further reduced for groups of orders that are terminated. Finally, the reports will be issued over a two or three year period, not all in FY 1999. A print job for title VII usually takes several hours, so the sunset review reports should not be a significant increase in workload.

BUDGET COMMITTEE PROPOSAL FOR FY 1999 RESOURCES					
Office	Type of Position	Detail	Term	Permanen t	Total
OP					
INV	Investigators Accountants	10 0	8 5	0 0	23
ID	Investigators	(10)	0	0	
EC	Economists	7	5	1	13
OIS	Statistician Asst. Statistician Computer support	0 2 0	1 1 1	0 0 0	5
Subtotal OP		19	21	1	41
OGC	Attorneys Paralegals	0 0	0 0	11.5 2	13.5
SE	Unspecified	0	1	0	1
AD	Unspecified	0	1	1	2
TOTAL		19	23	15.5	57.5

STAFFING ESTIMATES FOR SUNSET REVIEWS					
	OP	OGC	SE	AD	TOTAL
FY 1998	0	0	0	0	0
FY 1999	41	13.5	1	2	57.5
FY 2000	0	13.1	1	0	14.1
FY 2001	0	0	0	0	0
Totals:	41	26.6	2	2	71.6

TRAINING AND TRAVEL STATISTICS

INV requested a 100 percent increase in training funds, from \$10,000 in FY 1998 to \$20,000 for FY 1999 in the FY 1999 Budget Request and Expenditure Plan.

INV spent \$8,562 on training in FY 1997 and estimated \$7,000 will be spent in FY 1998 (\$6,072 had been spent through August 1998). Considering that staff will not be doubled for the entire FY 1999, and less time may be available for training, the \$20,000 is probably somewhat high but is reasonable.

INV requested a 100 percent increase in travel funds, from \$50,000 in FY 1998 to \$100,000 for FY 1999 in the FY 1999 Budget Request and Expenditure Plan.

INV spent \$33,280 on travel in FY 1997 and estimated \$40,000 will be spent in FY 1998 (\$34,201 had been spent through August 1998). Since there is a potential ninefold increase in sunset cases initiated, doubling the travel estimate would initially seem to be a conservative figure. However, considering that the entire travel allocation will not be spent in FY 1998, normal title VII cases are not expected to increase in FY 1999, and the uncertainty of how many sunset reviews will be initiated in full, a conservative figure is prudent.

In November 1997, OGC requested an additional \$7,400 in training funds related to sunset reviews. The input for the FY 1999 Expenditure Plan increased training funds from \$20,000 in FY 1998 to \$30,000 for FY 1999.

OGC spent \$15,008 on training in FY 1997 and estimated \$15,000 will be spent in FY 1998 (\$13,295 had been spent through August 1998). Considering that fewer staff will be hired than estimated and less time may be available for training, the \$7,400 estimate may be high, but is reasonable.

In November 1997, OGC requested an additional \$3,000 in travel funds related to sunset reviews. The input for the FY 1999 Budget Request and Expenditure Plan increased travel funds from \$30,000 in FY 1998 to \$35,000 for FY 1999.

OGC spent \$30,903 on travel in FY 1997 and an estimated \$23,000 will be spent in FY 1998 (\$16,612 had been spent through August 1998). Considering the relatively low level of travel expenses in FY 1998 and that litigation is not anticipated before the fourth quarter of FY 1999, the \$3,000 estimate may be high, but is reasonable.

SCHEDULE OF OP OFFICES FY 1999 BUDGET INPUT

Proposed Action by Budget Committee	Actual Action by Program Office
INV	
Increase title VII by 23 workyears	Increased title VII by 23 workyears
Request 5 term accountants Request 8 term investigators	Requested 5 term accountants Requested 8 term investigators
EC	
Increase title VII by 13 workyears Decrease other functions by 7 workyears	No increase in workyears for sunset reviews No decrease in workyears for other functions
Request 5 term economists Request 1 permanent economist	Requested 5 term positions Requested 1 permanent supervisory position
ID	
Decrease other functions by 10 workyears	Increased title VII by 9 workyears Decreased other functions by 9 workyears 6 from Summaries 1 from International Trade Monitoring 2 from Professional Analysis
Identify 10 details	Identified 9 details
OIS	
Increase title VII by 5 workyears	Increased title VII by 2.5 workyears Increased Information Resources Management by .5 workyears
Decrease other functions by 2 workyears	No decrease in workyears for other functions
Request 1 term statistician Request 1 term statistician assistant Requested 1 unspecified position	Requested 1 term statistician Requested 1 term statistician assistant Requested 1 term computer specialist