

Office of INSPECTOR GENERAL

Audit Report

Evaluation of 332 Investigations

Report No. IG-01-98



February 1998

February 27, 1998

I hereby submit an *Evaluation of 332 Investigations*, Report No. IG-01-98. Under section 332 of the Tariff Act of 1930, the Commission is authorized to conduct general investigations on any matter involving tariffs and international trade. The Commission initiates most section 332 investigations at the request of the President through the Office of the United States Trade Representative (USTR), the Senate Finance Committee, and the House Ways and Means Committee. Some reports mandated by law and some self-initiated reports are also classified as section 332 investigations.

The objective of this evaluation was to determine (1) whether the desired results in conducting section 332 investigations were being achieved, (2) the effectiveness of the process, and (3) compliance with applicable laws and regulations. An early focus on how cost reductions and streamlining could be achieved was incorporated into a broader issue of effectiveness when language on reducing the costs for section 332 investigations that was in the Conference Committee Report for the fiscal year 1995 appropriations was not repeated in subsequent years.

We found that section 332 investigations were achieving the desired result of producing a report that addressed the request or statutory requirement within the agreed upon or mandated time frame. We identified several ways to improve the process and increase Commission compliance with Federal regulations, as follows:

Based on the reports in our review, the official length of time for conducting section 332 investigations requested by USTR has significantly decreased. The shortened time frames impact the way in which investigations are conducted but also reflect a conscious and strategic decision by the Commission to provide critical real-time assistance to its customers.

The current USTR instructions to the Commission for classifying section 332 reports do not comply with the terms of the classification system. Documentation on the outlines and the instructions provided was not always available. Working papers were not marked to appropriately reflect their national security classification and we identified one technical security violation.

The way in which reviews were conducted varied greatly depending on the type and timing of each investigation, reflecting the flexibility intended in the system. The review process has been simplified and was generally perceived to work well, although the role of the primary reviewers was not clearly defined or well understood.

Postmortem briefings were not held for most reports, and were not needed according to various team members. The office guidance does not specifically address who is to arrange the briefings, or who decides that a briefing is not necessary.

The Commission was not complying with its rules on initiation of investigations and public notice requirements. These rules contain inaccuracies and do not reflect current Commission practices.

Commission policy and guidance on maintaining files and working papers for section 332 investigations were not consistent. Commission staff were unaware of either the Commission policy or the guidance. We identified one instance where working papers were destroyed prematurely.

Much action had been taken on recommendations in a prior audit report issued in March 1993 and a report by a committee of Commission employees issued in September 1993. However, the actions did not always completely address the finding or recommendation. Some actions were tested, but did not work.

Recommendations addressing these findings are numbered sequentially in this report and can be found on pages 6, 9, 10, 12, 14, 15, 17, and 21.

An exit conference was held with the Directors of Operations, Industries, and External Relations on December 11, 1997. The Director of External Relations subsequently met with senior USTR officials to discuss the draft findings and recommendations pertinent to their organization.

Written comments were submitted by the Director of Operations. He agreed with most of the findings and recommendations. Even though he disagreed with several findings, he agreed to implement the recommended or alternative corrective action. We deleted one recommendation based on the Director's comment that the recommended action is currently done on an ongoing basis. A summary of the Director's comments are presented after each section of the report with recommendations and are presented in entirety as an appendix to the report.

Jane E. Altenhofen
Inspector General

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Attachment 1 - List of Reports Reviewed

Attachment 2 - Statistics on 332 Investigations

Attachment 3 - Length of 332 Investigations Requested by USTR

Appendix - Memorandum from the Director of Operations to the Inspector General, dated February 13, 1998 (OP-V-005) on Response to the Inspector General's January Draft Report

INTRODUCTION AND SCOPE

The Office of Inspector General (OIG) has completed a review of the Commission's process for conducting investigations under section 332 of the Tariff Act of 1930. The objective of this audit was to determine (1) whether the desired results in conducting section 332 investigations were being achieved, (2) the effectiveness of the process, and (3) compliance with applicable laws and regulations.

Our review was conducted from May through December 1997 in Washington, D.C. We interviewed officials concerning their role in section 332 investigations in the following offices: Operations; Industries; Economics; External Relations; General Counsel (OGC); Information Services (OIS); and the Secretary. We interviewed senior officials from the Office of the United States Trade Representative (USTR) to discuss that agency's role in the conduct of section 332 investigations. In addition, we consulted with the Information Security Oversight Office (ISOO) of the National Archives and Records Administration (NARA) on Federal policy on classification of information. In addition, we observed the post-mortem briefing held on July 29, 1997.

We reviewed legislation authorizing section 332 investigations and the rules of general application in 19 CFR Part 201. We examined policies and procedures for conducting these investigations set forth in various Commission directives, the Section 332 Procedures Manual (332 Manual) maintained by the Office of Industries, and the Records Disposal Schedule submitted to NARA in May 1978 with its three subsequent revisions. We reviewed personnel records for job descriptions and various Commission documents, such as the 332 Bi-weekly Status Report and the monthly Summary of Commission Activity, to develop background and statistical information.

We reviewed the Federal Managers' Financial Integrity Act report for fiscal year (FY) 1996 and performed other procedures as appropriate to determine whether any internal control weaknesses were identified in the section 332 process. No weaknesses had been identified by management.

Our review focused on 38 reports issued between October 1995 and June 1997 for 24 section 332 investigations. Data on these reports is presented in Attachments 1 and 2.

We followed up on recommendations concerning section 332 investigations in two reports to determine what action was taken. Audit report IG-01-93 "Evaluation of Commission's Role in Preparing Recurring Reports," was issued in March 1993. In September 1993, a committee of Commission employees, primarily staff in the Commissioners' offices, issued a report on their review of the section 332 investigation process (332 Committee Report).

We began reviewing the process for preparing section 332 reports for publication. We identified several tentative findings involving policy, communication, errors, time frames, and software packages. The issues warranted a more detailed examination than was possible in this review. Accordingly, a separate review of this process was included in the FY 1998 annual audit work plan.

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

BACKGROUND

Under section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), the Commission is authorized to conduct general investigations on any matter involving tariffs and international trade. As stated in the 332 Manual, these investigations can be classified into three general categories:

Fact finding investigations for the President and the Congress on international trade and related economic issues;

"Probable effect" studies for the President that analyze the likely effect of a proposed change in trade policy on U.S. trade levels, industry, and consumers; and

Monitoring reports on import levels and domestic markets in specific commodity areas and with statistical information and analyses.

Most section 332 investigations are initiated by the Commission at the request of USTR pursuant to authority delegated by the President, the Senate Finance Committee (SFC), or the House Ways and Means Committee (HWM). The Commission can also initiate investigations on its own motion.

Conducting section 332 investigations is a primary Commission function, utilizing significant resources in the Offices of Industries and Economics. Statistics for the last three FYs are:

	FY 1995	FY 1996	FY 1997
Investigations instituted	8	5	15
Reports issued	30	23	23
Staff hours	97,944	75,360	93,381

Section 332 investigations generally include the following cycle of events: planning/ preparatory work, institution, research/data collection and compilation, prehearing report and hearing, report preparation, final Commission review and approval, distribution of reports to requesting agencies, and release of public reports. Written public comments are solicited for all investigations. The research/data collection and compilation may include a questionnaire and/or public hearings.

The length of time to conduct an investigation is dictated to a large extent by the nature of the work. The time is usually set forth in the request letter or determined based upon the statutory mandate. The times vary greatly, but average between six to twelve months. Some investigations are significantly shorter, such as for probable effect reports.

In FY 1994, Congress was interested in reducing the costs for section 332 investigations and included language in the Conference Committee Report for the FY 1995 appropriations that any program reductions should be taken from the amount requested for section 332 investigations. No program reductions were necessary for FY 1995, and this language was not repeated in subsequent Conference Committee Reports.

FINDINGS AND RECOMMENDATIONS

USTR REQUESTS

Based on the reports in our review, the official length of time for conducting section 332 investigations requested by USTR has significantly decreased. Shortened time frames impact the way in which investigations are conducted. The reasons for the reduced time are specific to each situation and cannot be controlled by the Commission, or by USTR in some circumstances. However, in certain circumstances, the Commission may be able to influence the timing of the request or initiation of the study.

According to the Director of Operations, the Commission has no written guidelines regarding time requirements for conducting section 332 investigations because such guidance could be misinterpreted and restrict the flexibility needed to conduct investigations. The Director of Operations has been encouraging shorter, but still reasonable, requests as a way to make Commission research capabilities more attractive to requestors. He stated that, increasingly, international negotiations require real-time assistance and studies have to be provided more quickly if the Commission is to be of value to its clients.

The length of time to conduct an investigation generally correlates to the scope and complexity of the subject. According to interviews with office directors, project managers, and trade analysts, the time period for conducting section 332 investigations averaged between six to twelve months until FY 1997. We estimated that an investigation of average scope and complexity usually takes six to eight months to conduct. This includes one month for initiation and planning, three months for field work, and two months for review and publication. Using a questionnaire and/or scheduling a public hearing could take an additional two or three months.

The length of time to conduct the first nine reports in our review that were requested by USTR averaged nearly seven months (204 days, with a range of 91 to 372 days). See Attachment 3. For the last five reports, issued between November 1996 and April 1997, the length of time averaged barely one month (34 days, with a range of 16 to 55 days). The pattern is not as dramatic using investigations initiated during the same period, but still reflect a general downward trend in the number of days between receipt of the request letter and the due date of the report. The trend appears to have been partially reversed in recent months.

The 332 Committee Report recommended that requestors be made aware of the effect timing is likely to have on the Commission's ability to respond to a request. The Directors of Operations and External Relations stated that they convey to USTR officials the impact of late timing on scope and conduct of section 332 investigations.

Senior officials at USTR emphasized the cooperative relationship between the two agencies in developing the requests. They were aware that the Commission had received short notice on some recent reports, but had not realized the frequency and extent to which this had occurred. They explained the section 332 investigation initiation process is decentralized in USTR; requests for Commission assistance originate from various USTR offices and are not coordinated through any central office even though all letters are signed by the United States Trade Representative. Rapid changes in international trade and highly politicized conditions surrounding certain trade issues resulted in some requests for reports with a short turnaround.

The senior officials also acknowledged that a lack of communication and awareness at USTR may have contributed to the pattern of decreased time between requesting letters and report due dates. Turn over in USTR staff may have resulted in a loss of the institutional memory of the complexity and length of time necessary to conduct section 332 investigations and produce a final report. A senior official at USTR suggested that when it appears that a request may not be timely, these situations could be brought to his attention and he would provide assistance in facilitating the process.

Impact on Conduct of Investigations

Many project leaders, staff analysts, and division chiefs expressed concern that very short time periods for conducting investigations directly affect the quality of section 332 investigations by impacting their ability to adequately plan and conduct investigations. Preliminary efforts are made to the extent possible, but the investigation cannot be focused until the request letter is received, nor is the administrative process to institute an investigation initiated. The shorter time frames affect the staff's ability to schedule hearings, use questionnaires, conduct field work, make site visits, and adequately review draft and final reports.

The effect of shortened time frames can be seen in an analysis of public hearings, a method for collecting information and comments. A hearing was scheduled on six of the first nine reports requested by USTR, but only on one of the five most recent reports requested. Commission officials said that a hearing would not have been scheduled on at least three of the investigations, but agreed that the timing gave the appearance that a hearing could not have been scheduled.

Truncated time frames inevitably led to drastically altered review procedures. Some reports were presented to primary reviewers by chapter, which were not in any particular order. Reviewers were expected to comment on one chapter at a time, and often never saw the entire report as one product. Some primary reviews had to be completed within a two to three day period and one editorial review was asked to be completed in one hour. Primary review, senior-check off, and editorial review sometimes occurred simultaneously. Sections of one report (332-381: NAFTA) were sent to the Commission before the primary and editorial review phases had been completed. These altered procedures precluded efforts to review entire reports for consistency, methodology, readability, and style as proscribed by the 332 Manual.

The short time frames have had another effect. On one investigation, the time frame was too short to schedule a public hearing. Written public comments were solicited, as is standard procedure. The comments were included in the final report as attachments, but an analysis was not prepared. A lawsuit filed by U.S. capacitor producers against USTR in the U.S. Court of International Trade in June 1997 alleged, *inter alia*, that advice provided by the Commission with respect to the elimination of U.S. tariffs on capacitors under the Information Technology Agreement was inadequate because USTR had given the Commission too little time to conduct an investigation and the Commission had not held a public hearing. The suit is pending.

Self-Initiation

The Commission anticipated that USTR would make a request for the five investigations with short time frames and were aware that the reports would need to be completed in accordance with trade-related due dates or legislative mandates. Accordingly, the Commission began planning for the investigations at least four months in advance, including gathering preliminary data, but did not formally initiate an investigation.

Based on 19 U.S.C. 1332(b), the Commission has the authority to self-initiate section 332 investigations. In a response to a 1993 OIG audit report (OP-Q-022, dated February 22, 1993), the Director of Operations set forth criteria on when the Commission may want to self-initiate under section 332(b). Although the criteria were developed in a slightly different context (deciding whether to self-initiate as opposed to when to initiate), we think they can be applied in a broader context. Self-initiation is considered when one or more of the following conditions are present:

- (a) A substantial number of staff work hours are likely to be involved (generally a work-month or more.)
- (b) The effort is likely to result in the preparation of a report that will be released to the public and/or transmitted to the President or the Congress and which the Commission will want to become part of the Commission's permanent records.
- (c) The Commission will issue a public notice to solicit public input through written documents and/or a public hearing.
- (d) The Commission plans to collect industry data through questionnaires, and through having instituted a formal proceeding wants to ensure that it has clear access to its subpoena authority for data collection purposes."

The Director of Operations said this is current policy, but in practice the Commission is reluctant to self-initiate investigations. Although at least three of the above conditions were present for the five reviews with short time frames, the Directors of Operations and Industries both stated that the Commission would likely not have approved actions to self-initiate section 332 investigations. The Commission wants to know exactly what USTR needs in order to provide the best service possible, and believes that a self-initiated investigation may not provide the exact information needed.

In fact, the timing has a substantial impact on the request. The Commission often performs preliminary work based upon the anticipated request from USTR. That work is subject to change based upon the specifics in the official request. However, as the desired report date approaches, USTR is increasingly limited in being able to change the request because it needs to correspond with the work performed in the "planning" phase. In at least two instances (332-380:ITA and 332-381:NAFTA), the request could basically ask for no more than what had already been done in order to meet the desired report date.

In some circumstances, self-initiation could enable the Commission to provide a better product and allow sufficient time to conduct the investigation in an orderly manner. If a subsequent USTR request is received, the investigation could be terminated and a new one initiated incorporating the results of the prior investigation. This would allow a more orderly progress and the inclusion of techniques such as public hearings and questionnaires.

This approach has been used at least once in the past (332-307:Probable Economic Effect on U.S. Industries and Consumers of a Free-Trade Agreement Between the United States and Mexico). The Commission initiated an investigation on its own motion in February 1991 and gave notice of the anticipated request and a schedule of dates for public hearings and deadlines for written submissions. Upon receipt of the USTR request, the Commission initiated a new investigation and published a notice of institution and incorporation of the prior investigation in April 1991. This allowed the Commission to officially begin the investigation nearly sixty days before the request was received.

The Director of Operations stated that the office directors in Operations and External Relations are fully aware of the self-initiation option and will consult with the Commission in any instance in which

it appears to be a viable option. We agreed with his comment that a policy to this effect was not appropriate for inclusion in the 332 Manual.

Recommendation

We recommend that the Director of Operations:

1. Develop guidance on time frames needed to conduct an investigation to be incorporated into the 332 Manual and coordinate with the Director of External Relations to ensure USTR staff are aware of the process and the particular dates by which a request is needed.

Commission Comments

The Director of Operations agreed with this finding and recommendation. He will develop guidance on the time frames to incorporate in the 332 Manual. He stated that Commission staff already discuss such time frame issues in the course of every initial contact on section 332 investigations with USTR or Congress. In the future, they will use printed information if appropriate. The Director of Operations also stated that staff can only advise USTR in this area.

NATIONAL SECURITY CLASSIFICATION

According to ISOO, the current USTR instructions to the Commission for classifying section 332 reports do not comply with the terms of the Federal classification system. The Commission must comply with the instructions until they are revised. USTR also provided classification instructions in the request letters and on draft report outlines. Documentation on the outlines and the instructions provided was not maintained by the project leaders and was not always available for review. Working papers were not marked to appropriately reflect their national security classification and we identified one technical security violation.

Classification Policy

The USTR instructions to the Commission require all section 332 investigations to be classified “confidential” upon initiation, regardless of content. According to ISOO, this blanket requirement does not comply with the terms of the Federal classification system. Further, the reports for most investigations are declassified upon review.

Federal regulations and guidance emphasize the restrictions against unnecessary classification of information and the need for specific justification for each instance of classification. The classification of national security information is restricted in order to minimize unnecessary classifications, as follows:

Executive Order 12958, “Classified National Security Information,” dated April 17, 1995, prescribes a uniform system for classifying, safeguarding, and declassifying national security information. It states “if there is significant doubt about the need to classify information, it shall not be classified.” It also requires that agencies with original classification authority should have classification guides to facilitate classification, and these should be updated periodically.

ISOO regulations, 32 CFR Part 2001, “Classified National Security Information,” references Executive Order 12958 and states that “the ability to describe why information could damage national security is critical to the classification process.”

USTR rules, 15 CFR 2008.5, Level of original classification, states that “Unnecessary classification, and classification at a level higher than is necessary, shall be avoided. If there is reasonable doubt as to which designation ... is appropriate, or whether information should be classified at all, the less restrictive designation should be used, or the information should not be classified.”

The Commission does not have original authority to classify national security information, but does mark documents in accordance with instructions provided by the USTR, which has classification authority. USTR provided instructions in two letters as follows:

A February 16, 1989, letter states that *all reports* prepared by the USITC under section 332 of the Tariff Act of 1930, ... are classified confidential. (Emphasis added.) The letter also states that detailed classification guidance will be provided for each request directed at the Commission. The Commission should provide USTR with an outline for each report. Based on the outline, a USTR official with classification authority will provide further instructions to the Commission on classification.

An August 25, 1989, letter clarifies the treatment of working papers. Papers that are so far advanced that they reveal USITC findings, opinions, or recommendations, including but not limited to drafts of reports and portions of draft reports, should be classified. In addition, USTR will specifically identify the papers gathered or generated by the Commission or class of papers that should be classified.

In a March 6, 1989, memorandum to Division Chiefs, the (then) Acting Director of Industries, distributed the February USTR letter with additional instructions. The memorandum states “In the event that USTR does not respond to our draft report outline with specific instructions, we are to *assume* that all portions of the report are classified confidential.” (Emphasis added.)

USTR requested 14 of the reports that we reviewed; detailed classification guidance was provided for 13 requests. The letters for eight investigations specifically directed that the report should be classified (wholly or partially); five letters stated that the report would be unclassified; one letter did not address classification (332-354:Services Schedule), and therefore, would have to be treated as classified.

According to the established procedures, a draft report outline should have been provided to USTR for nine reports in order for a USTR official to provide further instructions on classification. The project leaders did not keep any records of sending the draft report outlines to USTR or of the response received. Those who remembered sending the draft report outlines said they did not usually receive a response. No project leaders remembered an investigation in which USTR specifically identified working papers that should be classified. The Director of External Relations said that the draft report outlines and responses are usually transmitted through his office; he had documentation for four reports in our review that remained classified.

Obtaining guidance from USTR on the draft report outline is a significant step of importance to the Commission. Reports that are judged to be non-confidential eliminate the need to identify, mark, and safeguard classified working papers. Because this is a critical step, documentation should be maintained to support the Commission's treatment of reports and working papers.

The final decision about classification was made when USTR received a classified version of the report and provided instructions on the final classification. Five of the nine investigations had classified reports. Four reports were declassified, including the one for which no guidance was included in the requesting letter.

Senior officials at USTR could not locate a classification guide and stated that the decision on classifying reports is a decentralized process made at the program office level. Each USTR program office generates the request letter with the initial classification guidance and later works with the Commission in communicating classification determinations of draft report outlines and the final report. USTR does not have a policy on how this guidance should be provided and it is done through a variety of methods, including meetings, telephone conversations and e-mail.

We met with ISOO in July 1997 to discuss USTR's instructions to classify all section 332 investigations. Subsequently, in a letter dated August 19, 1997, the Director of ISOO notified USTR that the policy established in 1989 "does not comply with the terms of the classification system." He requested that the instructions contained in the 1989 correspondence be rescinded, and revised procedures be established in consultation with ISOO. In September 1997, USTR agreed to revise and reissue the instructions to the Commission regarding classification of section 332 investigations and submitted a draft memorandum to ISOO for review. ISOO reviewed and approved the USTR draft revised guidance for the Commission, dated February 2, 1998, concerning the classification of all or portions of reports that the President or USTR may request pursuant to various authorities. The final guidance had not been provided to the Commission as of the date of this report.

Marking Classified Working Papers

We found that many working papers and draft reports were not marked in accordance with Federal regulations to appropriately reflect their national security classification. We identified one technical security violation involving a draft report marked "confidential" that was in an unmarked file and inappropriately stored; no information appeared to have been compromised.

ISOO provides guidance to agencies on classification in 32 CFR 2001, which includes specific details on how to mark and keep classified material. Working papers are defined as "documents or materials, regardless of the media, which are expected to be revised prior to the preparation of a finished product for dissemination or retention. Working papers containing classified information shall be dated when created, marked with the highest classification of any information contained in them, protected at that level, and destroyed when no longer needed."

We reviewed the working papers for the eight reports that USTR requested upon initiation to be classified, five of which remained classified. We found that draft reports were generally properly marked when circulated for primary, senior, and editorial review. However, numerous working papers that clearly met the USTR definition as revealing USITC findings, opinions, or recommendations (mostly preliminary or partial draft reports) were not marked "confidential". In a particularly egregious example (332-365:APEC), virtually no working papers, including some draft reports, were marked as classified even though the final report is classified.

Project staff generally said they were unaware or uncertain of the requirements for marking working papers and draft reports. Several staff members stated that since final reports were often declassified upon release, they assumed the working papers did not require marking.

The working papers that were marked as "confidential" were kept in appropriate storage containers, with one exception. We found one confidential document that was in a file of unclassified material. The document was a draft summary of the report, which was issued in a classified and unclassified version. The file was not marked as containing classified material as required in USITC Directive 1350.1, "National Security Information," dated February 20, 1992. Further, the file was maintained in a cabinet with a key lock rather than a combination padlock as required. No information appeared to have been compromised, and we were told the classified document was subsequently properly secured.

OIG Audit Report No. IG-07-90, Review of USITC's Information Security Program, issued in September 1990, identified many of these same issues. We reported that the Commission's confidential reports and working papers were not properly marked and recommended that office directors be familiar with current USTR guidance and provide instructions to their employees. In response, the Director of Industries, the primary office involved in marking documents, issued additional instructions to his employees in 1991. He also stated that management will provide additional emphasis on marking/storage issues in the 332 Manual and a checklist that will be provided to project leaders.

Every instance in which a confidential working paper is not properly marked is a security violation. Unmarked classified working papers are likely to be improperly safeguarded for storage and disposition, significantly increasing the risk of unauthorized access. According to the Commission's Table of Penalties, the minimum penalty for a first offense is a written reprimand. Employees should be held responsible for properly marking and safe-guarding classified working papers. Management should be held equally responsible for ensuring that staff are aware of and comply with the classification requirements.

Recommendations

We recommend that the Director of Operations:

2. Request that the Director of External Relations coordinate with USTR to obtain classification instructions for section 332 investigations that comply with terms of the classification system;
3. Prepare instructions for marking, handling, and safekeeping classified material to be incorporated into the 332 Manual; and
4. Initiate a review of all working papers for ongoing investigations and classified reports to ensure documents are properly classified and marked.

Commission Comments

The Director of Operations agreed with these findings and recommendations. The Director of External Relations is currently coordinating with USTR to obtain classification guidance. USTR has committed to providing new guidelines which, when received, will be incorporated in the 332 Manual. Additional cautions will be added to the 332 Manual regarding proper document marking and storage. The Director of Operations also stated that project files will be reviewed for proper marking and storage, and he will work with project leaders on each new classified report to ensure compliance.

Concerning the technical security violation that we identified, the Director of Operations commented that our observation that no information appeared to have been compromised should be added to the two summary locations in the report where the violation is referenced. We did not add this language because it seemed to give undue assurance. Based on our observation that day, no information appeared to have been compromised. However, we did not investigate potential past access to the unmarked file which would be necessary for us to make a stronger statement.

PRIMARY, SENIOR, AND EDITORIAL REVIEWS

The way in which reviews were conducted varied greatly depending on the type and timing of each investigation, reflecting the flexibility intended in the system. The review process has been simplified

and was generally perceived to work well, although the role of the primary reviewers was not clearly defined or well understood.

The 332 Manual provides the following guidance on reviews:

- **Primary review** is conducted by the lead office, two established primary reviewers and relevant outside offices.
- **Senior check-off** is the final substantive check and sign off prior to sending the final action jacket for editorial review.
- **Editorial review** is to ensure that the grammar and style of the final product delivered to the Commission is acceptable.

The 332 Manual does not address the time period allowed or sequence for each review. Commission staff said that the expected time is usually one to two weeks for primary review, several days for senior checkoff, and one to two weeks for editorial review. Specific information on time frames for conducting studies is defined within the initiating action jacket. The sequence of the review varies depending on the amount of time allowed for the entire investigation, but generally follows this order.

For the 17 reports with working papers that we reviewed, most had evidence of the review process. Of the six recurring reports, two did not undergo review outside of the branch except for the Director of Industries, and another two had abbreviated reviews. The most significant factor affecting the review process was the amount of time allowed to conduct the investigation. The problems associated with truncated time frames are discussed earlier in this report.

The 332 Committee Report had three recommendations pertaining to the review process. One, the review of section 332 reports should be limited to one to two "primary reviewers". Two, continue the review by Statistical Services and shorten senior review. And three, staff changes should end following senior review and editorial review will precede Commission review.

In a January 1993 memorandum, the Director of Operations stated that staff review had been streamlined into three steps: primary review, senior check-off, and editorial review, which partially addressed the recommendations. The review process was simplified by eliminating consecutive reviews by senior level staff into one primary review.

Primary Review

The role of primary reviewers was not clearly defined or well understood. The 332 Manual implies the primary reviewers have unique responsibilities, in accordance with the recommendations in the 332 Committee Report. In practice, the primary reviewers participate in the same manner as other staff in the primary review.

The primary review process and primary reviewers is not an exclusive relationship. Primary review is conducted simultaneously by the designated primary reviewers, the lead office, and relevant outside offices. Standard distribution included: the Directors of Industries, Economics and External Relations, an OGC attorney, and the Chiefs of the Publishing and Statistical Services Divisions. For the reports we reviewed, an average of six to eight Commission employees participated in the primary review process, varying from one to thirteen employees.

Immediately following the definition of primary review, the 332 Manual states:

“Primary reviewers should be designated early in the study, attend briefings, keep up with interim status reports and briefing documents, and provide the project leader and ED/OP (editors) a written summary of comments. The primary reviewers are called upon to read the report from cover to cover and comment on all phases, including organization, approach, methodology, and style.”

The phrasing implies that the primary reviewers have unique responsibilities, but in practice, all of the participants in primary review performed a similar review. We found that various participants provided voluminous comments addressing style, substance, methodology, grammar, and tables. Others made only minor editorial or grammatical comments on the same report and never addressed issues of content, methodology, or readability. In some cases, the primary reviewers made the least number of substantive comments. Some primary reviewers stated that they were not responsible for editorial comments or statistical review, although these types of comments were made by others participating in the primary review.

We believe the process envisioned by the 332 Committee was for one or two primary reviewers to conduct the first review and identify most of the basic problems in a report, thereby reducing the effort required by others conducting subsequent reviews. The Directors of Operations and Industries said they tested a process wherein the designated primary reviewers received the draft product first, but found this added layer was burdensome to the team. As it is essential that other reviewers be involved, the preferred solution was to have all comments made at one time early in the report review process. They said this approach has worked very well.

Senior Check-off

The senior check-off is a short review step performed by the senior reviewers who had participated in the primary review process. The 332 Manual states the purpose of the senior check-off is a “final substantive check and sign off”. Most participants in the senior check-off process stated that the purpose was to ensure their comments from primary review had been incorporated. The Director of Industries said that the time required for the second level review is significantly shortened in current practice.

Even for reports with adequate time frames, staff changes did not end following senior review. Changes continued to be made up until the time the report was printed. The Director of Operations stated that the nature and extent of review comments may necessitate further refinement of a study past senior check-off. Teams may continue to make non-substantive changes, such as refining report format and footnotes style, after senior check-off.

Editorial Review

Editorial review usually occurred after primary review and senior check-off, and before Commission review. The 332 Manual provides that reviews may be done earlier in the process, and this was done for investigations with short time frames. The editors frequently had a substantial number of comments on style and grammar.

OIS is responsible for performing the editorial review. Due to limited resources, the standard time for editorial review was one or two weeks, which was not always acceptable to the program staff. In June 1997, OIS began using professional editors/proofreaders under contract to facilitate report reviews. This change has allowed reports to be reviewed more quickly.

Recommendation

We recommend that the Director of Operations:

5. Clarify the roles of primary reviewers and others in conducting primary review and incorporate guidance in the 332 Manual.

Commission Comments

The Director of Operations disagreed with the finding. He stated that reviewers are not all alike nor do they bring the same skills to the review, but the current mix ensures that each report receives a good, balanced review. The review process typically includes persons with economic, industry, and legal perspectives, much like the background mix of the ultimate readership.

Nevertheless, the Director agreed to take action in accordance with the recommendation. He stated that additional language will be added to the 332 Manual regarding the usual time frames for each review and to clarify the roles and responsibilities of each type of reviewer in order to eliminate any remaining confusion.

POSTMORTEM BRIEFINGS

Postmortem briefings were not held for most reports, and were not needed according to various team members. The office guidance does not specifically address who is to arrange the briefings, or who decides that a briefing is not necessary. The briefings discuss new techniques that could be used to avoid problems in the future, but additional effort is needed to take action on those techniques.

According to the 332 Manual, project teams should arrange a postmortem for the Director of Operations within 10 days of study completion (interpreted as when a report is issued). A postmortem should cover the following areas: 1) new ideas/methods/databases that worked well and should be used in future studies; 2) significant problems encountered (e.g. scheduling, support from other offices, review) and solutions that worked effectively; 3) travel effectiveness and planning; and 4) recommended changes in the section 332 procedures.

The 1993 Committee Report recommended that procedures be established to evaluate completed studies. The subsequent 332 Manual included guidance on holding a postmortem briefing for every study. However, we found postmortem briefings were only held after 4 of the 38 reports in our review were issued. Several project leaders stated that recurring reports, of which there were 24, did not require a postmortem briefing. The project leaders for the other 10 reports did not arrange briefings for disparate reasons, such as the reports were statistical in nature or had no problems.

Postmortem briefings were held for four reports on three large, complex investigations (332-362: Africa, 332-381: NAFTA, 332-325: Import Restraints). None of the briefings were scheduled within ten days as required by policy. Two briefings were held months after the reports were issued. The project leaders for the other two reports had no record or memory of when the briefings were held, but did not think that it was within ten days.

No written records were kept on two of the post mortem briefings. Records for the other two briefings were in the project files. One record was quite brief. The other had a detailed outline on the areas that were supposed to be covered. Project staff who had attended briefings said that problems areas, planning, staffing, and coordination were usually discussed.

We observed the postmortem briefing for one report (332-381: NAFTA) held on July 29, 1997, approximately a month after the report was issued. The Directors of Operations and Industries and approximately 20 members of the investigation team attended the meeting. The briefing was an open discussion of the successes and difficulties in conducting the investigation, problems

encountered, what worked well, and ideas for improvement. Project staff indicated this was typical of the briefings held. Multiple suggestions for improving the section 332 process were discussed, including the role of the team leader and technical problems.

The limited number of postmortem briefings and the current procedures on how they were conducted make it difficult to generalize about whether they are useful. A few staff said that the briefings were useful. This attitude may spread if more briefings were held soon after the report is issued and the procedures improved. To accomplish this, the procedures need to clarify for which reports a briefing should be arranged and assign responsibility to a specific team member (probably the project leader) to arrange the briefing. The procedures should also provide for a mechanism to record events and follow up on suggestions made for changes.

The Directors of Operations and Industries agreed that the general concept of postmortems is good, but they are not productive or advisable for every report. They said that the Director of Operations should decide on an individual basis whether a postmortem is needed.

Recommendation

We recommend that the Director of Operations:

6. Clarify guidance on postmortem briefings and incorporate into the 332 Manual.

Commission Comments

The Director of Operations agreed with the finding and recommendation. He will incorporate procedures for holding postmortem reviews into the 332 Manual. The procedures will include a memorandum from the project leader to be used in determining whether to hold a post mortem. Suggestions for adjusting procedures would be included in a memorandum and distributed to other teams and managers if appropriate.

COMMISSION RULES

The Commission was not complying with the Federal regulations it issued on initiation of investigations and public notice requirements. These rules, which are of general application and not limited to section 332 investigations, were published in 1980. They contain inaccuracies and do not reflect current Commission practices. After we asked about the rules, a revision was published that addressed some deficiencies. However, the rules still include unnecessary requirements and inaccurate data.

Initiation of Investigations

Commission rules in 19 CFR, Subpart B §201.7 “Investigative authority and initiation of investigations” state:

Investigations may be initiated by the Commission on the Commission’s own motion, upon request of the President or the Special Representative for Trade Negotiations, upon resolution of the Committee on Ways and Means of the House of Representatives or the Committee on Finance of the Senate, upon resolution of either branch of Congress or upon application, petition, complaint or request for private parties, as required or provided for in the pertinent statute, Presidential proclamation, Executive Order or in this chapter.

According to the Director of External Relations, the title Special Representative for Trade Negotiations has not existed for more than ten years; the correct title is the United States Trade Representative. Further, we believe the rest of this rule does not clearly state the Commission practices for initiating investigations.

The General Counsel stated the rule is accurate except for the reference to the Special Representative for Trade Negotiations. The rule incorporates language from various laws on initiation of investigations in addition to section 332 investigations.

Public Notice

Commission rules in 19 CFR §201.10 "Public Notice" include the following provisions:

- Formal notice of the receipt of documents properly filed, of the institution of investigations, of public hearings and, as required or appropriate, of other formal actions of the Commission, will be given by publication in the *Federal Register*.
- Copies [of each notice] will be sent to press associations, to trade and similar organizations of producers and importers, and to others known to have an interest in the subject matter.
- An announcement regarding the notice will be furnished to the Treasury Department for publication in *Treasury Decisions* and to the Department of Commerce for publication in *International Commerce*.

Notices of the institution of investigations and public hearings are published in the *Federal Register*. Notices are not published for "the receipt of documents properly filed" or for all other "formal actions of the Commission". The revised rules retain these requirements with the caveat "As required or necessary". We did not object to this language at the time the proposed rule was circulated for comment in September 1997 because our review was not complete. However, we believe the latter two requirements should be deleted from the rules as they are not required by law and have no apparent purpose. Eliminating the clauses would have no impact on the Commission's ability to publish notices of the "receipt of documents properly filed" or for "formal actions of the Commission" if an applicable circumstance arose. As of the date of this report, OGC was in the process of preparing a notice of final rulemaking.

The Public Affairs Officer is responsible for providing Commission announcements to the media and public. She sent copies of each notice to press associations, but not to trade and similar organizations of producers and importers. The revised rules retained these requirements. We believe all of the requirements should be deleted as they are not required by law. The Commission could still send notices as desired, but would not be bound by regulation to do so.

The Public Affairs Officer did not provide public notices to either the Department of Treasury or Commerce. The Public Affairs Officer has been at the Commission since March 1993, and has never provided notice to the Department of Treasury. She provided copies to the Department of Commerce, but stopped several years ago when she learned the notices were not being published. We found that the Treasury Department stopped publishing *Treasury Decisions* in 1987, and the Department of Commerce retitled *International Commerce* as *American Business* in 1992. The revised rules deleted these requirements.

Recommendation

We recommend that the Director of Operations:

7. Coordinate with the General Counsel to revise Commission rules 19 CFR 201.7 and .10 to correct inaccuracies and delete unnecessary requirements.

Commission Comments

The Director of Operations objected that this recommendation was addressed to him because the General Counsel typically reviews and updates Commission rules. We agree that the General Counsel traditionally initiates revisions of the Commission rules, but we believe this is primarily done on a reactive basis, i.e. in response to audit recommendations. It is apparent that the rules have not been reviewed based on the inaccuracies we identified in initiation and public notice that have existed for years. Commission policy does not clearly set forth who is to review and initiate changes to Commission rules. We consider this to be part of the Director of Operation's overall responsibility for the coordination and direction of the Commission's investigative work.

The General Counsel agreed that section 201.7 had one inaccuracy and section 201.10 contained inaccuracies which were corrected in the proposed rule. The General Counsel disagreed that certain wording should be deleted from the proposed section 201.10 as she believes that it reflects current Commission practice. Our primary focus is not on the accuracy of this wording, but that we believe there is not a need for a rule binding the Commission to make such notices.

Although we believe the entire 19 CFR 201 would benefit from a comprehensive review, we conceded that the recommendation in the draft report was an extrapolation outside of the scope of this audit. Therefore, we modified the recommendation to limit it to the two sections in which we identified inaccuracies and/or unnecessary clauses.

RECORDS MANAGEMENT

We found that the Commission policy and guidance on maintaining files and working papers for section 332 investigations was not consistent. Most of the Commission staff interviewed were unaware of either the Commission policy or the guidance. We identified one instance where working papers were destroyed prematurely.

USITC Directive 3150, Records Management Program, dated June 23, 1977, states that working papers used in the preparation of investigation reports (including tabulations, memoranda, duplicates of correspondence) are to be sent to the Records Center five years after the investigation is completed with instructions to destroy after five years. USITC Directive 1350.1 "National Security Information", dated February 2, 1992, states that section 332 investigation working papers, if classified or sensitive, must be kept in appropriately secured storage space. The 332 Manual does not address either the storage or retention of files and working papers.

The policy in Directive 3150 is not consistent with the Records Disposal Schedule the Commission submitted to NARA. The Schedule sets forth that investigation files, which include general working files as well as documents in the official dockets maintained by the Office of the Secretary, are to be destroyed three years after the close of a case file. According to OIS staff, who maintain the Schedule, the case is closed when the report is issued.

The guidance in the Schedule for investigation files conflicts with the guidance for recurring reports and official docket case files. The Schedule states that working papers for recurring reports should

be destroyed one year after publication of the report, unless created in the production of investigative reports. At the time the Schedule was developed, all recurring reports were not investigations. The Schedule also provides that microfiche copies of the closed docket files are transferred to the National Archives when 75 years old, or sooner if there are no restrictions, for permanent storage. Accordingly, the investigative files maintained by the Office of the Secretary are kept indefinitely.

The working papers maintained by the project staff were kept according to the preference of the project leaders, who were mostly unaware that the Commission had a records management policy. Project leaders and team members stated they kept working papers anywhere from a few weeks to twelve years. We attempted to review the working papers for 20 of the 38 reports in our review, with the following results:

-- The working papers for 17 reports were maintained by project leaders and staff in private offices and in common storage areas belonging to the Offices of Economics and Industries. Some project leaders said that they sent the working papers to storage two or three years after the report was issued. The non-classified working papers were properly secured in locked file cabinets. See the prior section on marking classified working papers.

-- No working papers were generated for two reports according to the project leaders. One report (332-207:Autos) had no working papers because the data was derived from previous reports. The second report (332-354:Services Schedule) had no working papers because the information was transmitted to the Commission electronically and the final report was not published in hard copy. These reports did have action jackets which were maintained elsewhere.

-- The working papers for one report (332-369:GSP) had been destroyed by the project leader within a few weeks of completion of the report.

Recommendations

We recommend that the Director of Operations:

8. Contact the Director of OIS to determine the proper record retention policies; and
9. Incorporate policies on record retention into the 332 Manual.

Commission Comments

The Director of Operations agreed with the findings and recommendations. He stated that OIS has been asked to prepare written guidance on the proper retention periods and disposal procedures for section 332 working papers, both classified and non-classified. When completed, this guidance will be incorporated into the 332 Manual.

FOLLOW UP ON PRIOR REPORTS

We followed up on recommendations in audit report IG-01-93 "Evaluation of Commission's Role in Preparing Recurring Reports," issued in March 1993 and the 332 Committee Report issued in September 1993. As discussed below and in the body of this report, we found some action had been taken on the recommendations, although the actions did not always completely address the finding or recommendation. Some actions were tested, but did not work in practice.

Most of the policies were not incorporated into the 332 Manual. The Director of Industries said that the concern is that the 332 Manual will not be used by staff if it is too lengthy. We believe that policy that is not in the 332 Manual is difficult for staff to find, which leads to noncompliance.

OIG Audit Report

Recommendation: Coordinate with the Director of Congressional Liaison to establish procedures to review and comment on proposed legislation and provide input into proposed letter requests for studies.

Written procedures have not been established, but the practice is to closely monitor proposed legislation and potential requests and ask that requests for studies be put into letter requests and sunset dates be incorporated in all mandated and requested studies.

Since the OIG report was issued, multiple new studies required by law had sunset dates but some new requests for recurring reports did not have sunset dates. Five new studies were required by legislation; of these, the four recurring reports all had sunset dates. Three new requests for recurring reports, all from USTR, did not include sunset dates.

Recommendation: Establish a schedule to communicate with committee staff, either in letters or meetings, on recurring reports. Develop policies on what information should be provided and how many reports should be discussed simultaneously.

The Directors of Operations and Industries developed a schedule and policies in a memorandum dated June 2, 1993 (ID-Q-062). Beginning in October 1993, and annually thereafter, staff would prepare a submission to advise congressional committees and USTR on the status of all Commission recurring reports and seek confirmation that there is a continuing need for them. Sample profiles of recurring reports included current significance and estimated annual expenditures.

The policy was not incorporated into the 332 Manual. Also, rather than using the annual October schedule, the Office of Industries prepares the submission periodically, often during the budget process, and provides it to the Office of External Relations which maintains very close working relationships with congressional committees on a continuous and ongoing basis.

Since the OIG report was issued, multiple recurring reports were terminated. Four reports issued on a monthly, quarterly or annual basis that had no sunset dates were terminated and one quarterly report had a sunset date adopted.

Recommendation: Establish criteria in coordination with the Office of General Counsel for determining which studies should be initiated under section 332 and assign or delete 332 numbers to the recurring studies consistent with that criteria.

Criteria was established in response to the draft report, but was not incorporated into the 332 Manual. Since March 1994, the Commission policy has been to classify investigations for certain reports mandated by law and some self-initiated investigations with reports that will be reviewed and approved by the Commission as section 332 investigations.

Recommendation: Formulate policies applicable to the initiation and report issuance of recurring reports via the action jacket process and coordinate with the Acting Secretary to incorporate these policies in USITC Directive 1201.

Applicable policies were developed, but not incorporated into the 332 Manual. USITC Directive 1201 was not updated.

Recommendations: Transfer all mailing lists for recurring reports to the Arclist. Notify the Acting Secretary that recurring reports should not be sent to names on the master list and coordinate in revising the form so that recurring reports must be specifically requested in order to receive them. Develop a coordinated approach with the Acting Secretary to periodically validate mailing lists for recurring reports. Require the Directors of Industries and Economics to approve any packaging to be performed by program staff.

All mailing lists were consolidated in the Office of the Secretary. The system was revised to eliminate the "master list" that received a copy of all reports. The mailing lists are validated periodically. Packaging is no longer performed by program staff.

Recommendations: Determine what is the minimum distribution of each recurring report that the Commission must make in order to meet the requirements of section 332. In coordination with the Director of Administration, meet with the Superintendent of Documents at the Government Printing Office (GPO) to identify which recurring reports GPO is willing to sell. For reports accepted by GPO, reduce the Commission's mailing lists to the minimum level identified and coordinate with the Office of Public Affairs to revise the press release to include instructions on how to procure the report from GPO.

For approximately two years, the Commission used GPO to sell selected recurring reports, seven as of April 1996. The Director of Operations reported that the experience with GPO was generally not positive as regards service delivery, marketing, or customer satisfaction and proposed discontinuing the use of GPO for all current and future sales. The OIG did not object to the proposal because a number of other cost cutting measures resulted in a significant drop in printing/mailing costs. In May 1996, the proposal was adopted.

332 Committee Report

Recommendation: In outside discussion on 332s, Congressional or Executive Liaison should be the agency lead.

As stated in the Mission and Functions Statement for the Office of External Relations, the Director is the liaison for the Commission's varied external customers. The 332 Manual does not address this. No problems were reported.

Recommendation: Requestors should be made aware of the effect timing is likely to have on the ITC's ability to respond to a request.

See discussion in this report on USTR requests.

Recommendation: Early assembly of the 332 team is essential. Related comments in the summary of the report were that supervisory review for the purposes of a 332 comes from the project leader, dual office leadership should be discouraged, regular communication among team members is essential, team members should be allowed direct communication with the project leaders, and experiment with expanded, possibly restructured, teams.

The 332 Manual addresses early assembly of the team and the importance of communication. The reports we reviewed had a single designated project leader, although a second staff member could be assisting in that role for training purposes, who was responsible for supervisory review. No investigations had dual office leadership. Team

members were allowed direct communication with project leaders, and no problems were reported. Teams are expanded and structured to meet the needs of the specific investigation.

Recommendation: Each 332 should be instituted immediately, but then several weeks should be devoted to preparing a detailed study design and outline of the Commission's review.

The 332 Manual sets forth this process and we found it was followed in practice.

Recommendation: The Commission should make clear that, if necessary, study plans can be modified, with Commission approval. The Commission should emphasize that there can be flexibility in approaches.

The 332 Manual does not state this policy. However, the Directors of Operations and Industries fully support it and Commission staff stated they were aware of and followed this policy.

Recommendation: When instituting a study, consideration should be given to whether or not additional Library funds will be necessary in support of the research of this report.

The 332 Manual does not address Library funds. According to the librarians, they may be contacted early on, but only occasionally are they asked about funding.

Recommendation: A mechanism should be identified to give the Commission a greater sense of what is happening on specific reports.

Ongoing communication with the Commission was greatly increased. As set forth in the 332 Manual, periodic meetings and pre-hearing briefings were held with Commission staff. In addition, the Director of Operations regularly briefed the Commission on the status of section 332 investigations.

Recommendation: Procedures should be established to evaluate completed studies.

See discussion in this report on postmortem briefings.

Recommendation: Limit review of 332 to one to two "primary reviewers". One intent as stated in the summary of the report was that the reports should aim to be succinct and precise.

See discussion in this report on reviews.

Recommendation: Continue review by Statistical service and shorten senior review.

See discussion in this report on reviews.

Recommendation: Staff changes should end following senior review and editorial review will precede Commission review.

See discussion in this report on reviews.

Recommendation: Interleaf may not be necessary for every 332 report.

The 332 Manual does not address printing the report. Interleaf was not used for every 332 report.

Recommendation

We recommend that the Director of Operations:

10. Incorporate policies developed in response to recommendations in the prior OIG audit report into the 332 Manual.

Commission Comments

The Director of Operations agreed with this finding and recommendation. He will incorporate policies into the 332 Manual where appropriate. He will also take new actions on certain items, where applicable, to ensure compliance with federal regulations and to improve procedures.

