

GAO

Testimony

Before the Subcommittee on Trade,
Committee on Ways and Means, House of
Representatives

For Release on Delivery
Expected at 10:00 a.m. EDT
Tuesday, July 21, 2009

INTERNATIONAL TRADE

Prior Updates of the Trade
Advisory System Offer
Insights for Current Review

Statement of Loren Yager, Director
International Affairs and Trade



GAO

Accountability * Integrity * Reliability

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to appear today before the Subcommittee to provide insight from GAO's work on the issues associated with the private sector trade advisory system and public participation in the development of trade policy. In particular, we have provided one detailed report specifically on the subject of the trade advisory system¹ and another on the subject of Congressional and private sector consultations under Trade Promotion Authority². The numerous negotiators, agency officials, and committee members with whom we met in the course of our work emphasized that the trade policy advisory committee system plays an important role in U.S. trade policy and has made valuable contributions to U.S. trade agreements.

In my statement today, I will provide a summary of key findings from the comprehensive report on the trade advisory system that we provided to the Congress in 2002, as well as from our more recent report in 2007 on the Congressional and private sector consultations under Trade Promotion Authority.³ In particular, I will highlight our recommendations in three key areas—committee consultations, logistics, and overall system structure—as well as the changes that have been made by the U.S. agencies since those reports were published. I believe that this material is directly relevant to the stated focus of this hearing as the reports are based on extensive input from major stakeholder groups and provide numerous insights into the revisions to the system that have been implemented as a result of the GAO recommendations.

My remarks are based primarily on the two assignments mentioned above that GAO conducted on the trade advisory system and the consultation process. To address these issues, we surveyed 720 of the 735 committee

¹GAO, *International Trade: Advisory System Should be Updated to Better Serve U.S. Policy Needs*, [GAO-02-876](#), (Washington, D.C.: September 24, 2002).

²GAO, *International Trade: An Analysis of Free Trade Agreements and Congressional and Private Sector Consultations under Trade Promotion Authority*, [GAO-08-59](#), (Washington, D.C.: November 7, 2007).

³In addition to the above reports, GAO has also done recent work on federal advisory committees in general. See GAO, *Federal Advisory Committees: Additional Guidance Could Help Agencies Better Ensure Independence and Balance*, [GAO-04-328](#), (Washington, D.C.: April 16, 2004) and GAO, *Federal Advisory Committee Act: Issues Related to the Independence and Balance of Advisory Committees*, [GAO-08-611T](#), (Washington, D.C.: April 2, 2008).

members in 2002 about their experiences in the system; interviewed every type of participant in the committee process, including selected committee chairs, members, relevant U.S. officials, nongovernmental interest groups, and trade experts; and analyzed USTR and committee data and documents. In addition, we collected information from USTR and other agencies on the changes that they have made in recent years in response to the recommendations in those reports. We conducted our work in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provided a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Congress established the trade advisory committee system in Section 135 of the Trade Act of 1974 as a way to institutionalize domestic input into U.S. trade negotiations from interested parties outside the federal government. This system was considered necessary because of complaints from some in the business community about their limited and ad hoc role in previous negotiations. The 1974 law created a system of committees through which such advice, along with advice from labor and consumer groups, was to be sought.

The system was originally intended to provide private sector input to global trade negotiations occurring at that time (the Tokyo Round). Since then, the original legislation has been amended to expand the scope of topics on which the President is required to seek information and advice from “negotiating objectives and bargaining positions before entering into a trade agreement” to the “operation of any trade agreement, once entered into,” and on other matters regarding administration of U.S. trade policy.⁴ The legislation has also been amended to include additional interests within the advisory committee structure, such as those represented by the services sector and state and local governments. Finally, the amended legislation requires the executive branch to inform the committees of “significant departures” from their advice.⁵ The Trade Act of 1974 required the President to seek information and advice from the trade advisory committees for trade agreements pursued and submitted for approval

⁴Trade Agreement Act of 1979, Pub. L. No. 96-39, § 1103, 93 Stat. 144, 308.

⁵19 U.S.C. § 2155(i).

under the authority granted by the Bipartisan Trade Promotion Authority Act of 2002.⁶ The Trade Act of 1974 also required the trade advisory committees to provide a report on the trade agreements pursued under the Bipartisan Trade Promotion Authority Act of 2002 to the President, Congress, and USTR.⁷ This requirement lapsed with TPA on June 30, 2007.

The trade advisory committees are subject to the requirements of the Federal Advisory Committee Act (FACA),⁸ with limited exceptions pertaining to holding public meetings and public availability of documents.⁹ One of FACA's requirements is that advisory committees be fairly balanced in terms of points of view represented and the functions the committees perform.¹⁰ FACA covers most federal advisory committees and includes a number of administrative requirements, such as requiring rechartering of committees upon renewal of the committee.¹¹

Four agencies, led by USTR, administer the three-tiered trade advisory committee system. USTR directly administers the first tier overall policy committee, the President's Advisory Committee for Trade Policy and Negotiations (ACTPN), and three of the second tier general policy committees, the Trade Advisory Committee on Africa (TACA), the Intergovernmental Policy Advisory Committee (IGPAC), and the Trade and Environment Policy Advisory Committee (TEPAC), for which the Environmental Protection Agency also plays a supporting role. The Department of Labor co-administers the second tier Labor Advisory Committee (LAC) and the Department of Agriculture co-administers the second tier Agricultural Policy Advisory Committee (APAC). The Department of Agriculture also co-administers the third tier Agricultural Technical Advisory Committees (ATACs), while the Department of Commerce co-administers the third tier Industry Trade Advisory Committees (ITACs). Ultimately, member appointments to the committees have to be cleared by both the Secretary of the managing agency and the

⁶19 U.S.C. § 2155(a).

⁷19 U.S.C. § 2155(e).

⁸5 U.S.C. App. 2 §§ 1-14.

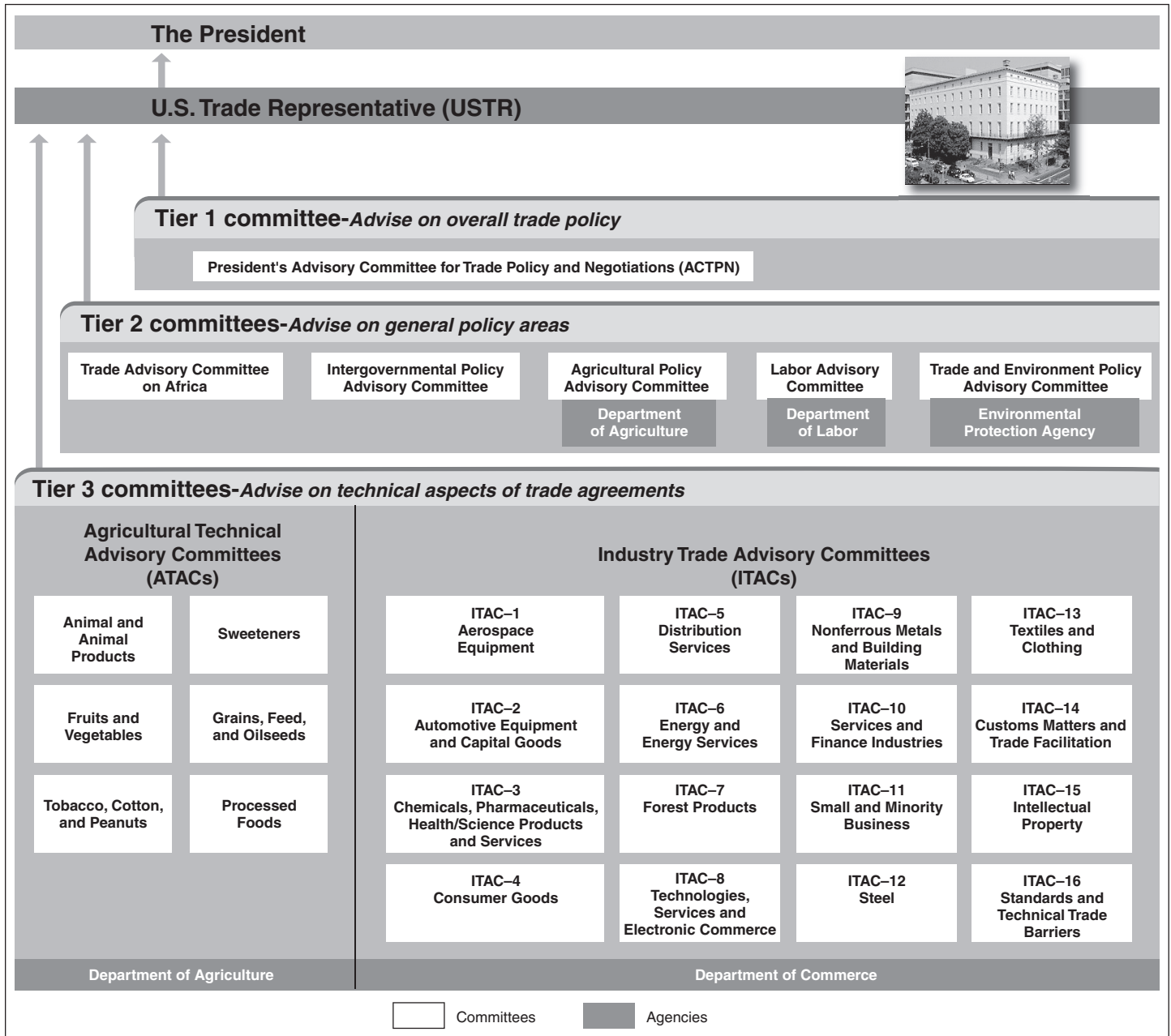
⁹19 U.S.C. § 2155(f).

¹⁰5 U.S.C. App. 2 § 5.

¹¹5 U.S.C. App. 2 § 14.

U.S. Trade Representative, as they are the appointing officials. Figure 1 illustrates the committee structure.

Figure 1: Trade Advisory Committee Structure



Sources: GAO and USTR.

Consultations with Trade Advisory Committees Have Generally Improved

Our 2002 survey of trade advisory committee members found high levels of satisfaction with many aspects of committee operations and effectiveness, yet more than a quarter of respondents indicated that the system had not realized its potential to contribute to U.S. trade policy. In particular, we received comments about the timeliness, quality, and accountability of consultations. For example, the law requires the executive branch to inform committees of “significant departures” from committee advice.¹² However, many committee members reported that agency officials informed committees less than half of the time when their agencies pursued strategies that differed from committee input.

As a result, we made a series of recommendations to USTR and the other agencies to improve those aspects of the consultation process. Specifically, we recommended the agencies adopt or amend guidelines and procedures to ensure that (1) advisory committee input is sought on a continual and timely basis, (2) consultations are meaningful, and (3) committee advice is considered and committees receive substantive feedback on how agencies respond to their advice.

In response to those recommendations, USTR and the other agencies made a series of improvements. For example, to improve consultations between the committee and the agencies, including member input, USTR and TEPAC members established a communications taskforce in 2004. As a result of the taskforce, USTR and EPA changed the format of principals’ meetings to allow more discussion between the members and senior U.S. government officials, and they increased the frequency of liaison meetings. In addition, USTR instituted a monthly conference call with the chairs of all committees, and now holds periodic plenary sessions for ATAC and ITAC members. Furthermore, the agencies created a new secure Web site to allow all cleared advisors better access to important trade documents.

When we interviewed private sector advisory committee chairs again in 2007, they were generally pleased with the numerous changes made to the committee system in response to our 2002 report. In particular, they found the secure Web site very useful. Reviews of the monthly chair conference call and plenary sessions were mixed, however. Chairs told us that their out-of-town members might find the plenaries a helpful way to gain an overall perspective and to hear cabinet-level speakers to whom they would

¹²19 U.S.C. § 2155(i).

not routinely have access, whereas others found them less valuable, largely due to the perceived lack of new or detailed information. The chairs also said that USTR and the relevant executive branch agencies consulted with the committees on a fairly regular basis, although overall views on the opportunity to provide meaningful input varied. For example, we heard from committee chairs who felt the administration took consultations seriously, while other chairs felt the administration told them what had already been decided upon instead of soliciting their advice. USTR officials told us that the fact that the advice of any particular advisory committee may not be reflected in a trade agreement does not mean that the advice was not carefully considered.

Changes Made to Improve Committee Logistics Have Not Been Fully Tested

In 2002, we found that slow administrative procedures disrupted committee operations, and the resources devoted to committee management were out of step with required tasks. In several instances, for example, committees ceased to meet and thus could not provide advice, in part because the agencies had not appointed members. However, the length of time required to obtain a security clearance contributed to delays in member appointment. To address these concerns, we recommended the agencies upgrade system management; and in response, they began to grant new advisors interim security clearances so that they could actively participate in the committee while the full clearance is conducted.

Despite these actions, however, trade advisory committee chairs we contacted in 2007 told us certain logistics such as delays in rechartering committees and appointment of members still made it difficult for some committees to function effectively. We found several committees had not been able to meet for periods of time, either because agencies allowed their charters to lapse or had not started the process of soliciting and appointing members soon enough to ensure committees could meet once they were rechartered. The Labor Advisory Committee, for example, did not meet for over 2 years from September 2003 until November 2005 due in part to delays in the member appointment process. These types of process delays further reduced a committee's ability to give timely, official advice before the committee was terminated, and the rechartering process had to begin again. This was particularly true in the case of the Labor Advisory Committee, which, at the time of our 2007 report, still had a 2-year charter.

To address these concerns, we recommended that USTR and other agencies start the rechartering and member appointment processes with sufficient time to avoid any lapse in the ability to hold committee meetings

and that they notify Congress if a committee is unable to meet for more than 3 months due to an expired charter or delay in member appointments. Furthermore, we recommended that USTR work with the Department of Labor to extend the Labor Advisory Committee's charter from 2 years to 4 years, to be in alignment with the rest of the trade advisory committee system.

USTR and the other agencies have taken some steps to address these recommendations. In May 2008, for example, the Labor Advisory Committee's charter was extended to 4 years. Not enough time has passed, however, to assess whether steps taken fully address the problems associated with rechartering and member appointment, since at present all committees have current charters and members appointed. Furthermore, even though committees are now chartered and populated, some of them have not met for over three years, despite ongoing negotiations of the Doha Round of the World Trade Organization (WTO), including the July 2008 ministerial meeting in Geneva. For example, although the ATAC charters were renewed in May 2007 and members appointed in January 2008, the FACA database shows that no ATAC has held a meeting since fiscal year 2006. In addition, although USTR held multiple teleconferences for all first and second tier advisors in fiscal year 2008, LAC and APAC members did not participate.¹³ It is unclear, therefore, whether the administration received official advice from all trade advisory committees for the Doha negotiations.

Representation of Key Stakeholders Remains Important for Any Review of Trade Advisory Committee System

In addition to the need to improve certain committee logistics, we also found that representation of stakeholders is a key component of the trade advisory committee system that warrants consideration in any review of the system. In particular, as the U.S. economy and trade policy have shifted, the trade advisory committee system has needed adjustments to remain in alignment with them, including both a revision of committee coverage as well as committee composition.

In our 2002 report, we found that the structure and composition of the committee system had not been fully updated to reflect changes in the U.S.

¹³A Department of Labor official told us that the call-in information for each teleconference was passed on to the LAC liaison group. Both LAC and TEPAC, as well as ACTPN, have liaison groups that meet more often than the official committee. According to members from these committees, liaison meetings are at the staff level and are usually fairly technical, whereas the principals' meetings tend to look at broader, political issues.

economy and U.S. trade policy. For example, representation of the services sector had not kept pace with its growing importance to U.S. output and trade. Certain manufacturing sectors, such as electronics, had fewer members than their sizable trade would indicate. In general, the system's committee structure was largely the same as it was in 1980, even though the focus of U.S. trade policy had shifted from border taxes (tariffs) toward other complex trade issues, such as protection of intellectual property rights and food safety requirements. As a result, the system had gaps in its coverage of industry sectors, trade issues, and stakeholders. For example, some negotiators reported that some key issues such as investment were not adequately covered. In addition, nonbusiness stakeholders such as environment and labor reported feeling marginalized because they have been selected to relatively few committees. The chemicals committee, representing what at the time was one of the leading U.S. export sectors, had been unable to meet due to litigation over whether the apparent denial of requests by environmental representatives for membership on the committee was consistent with FACA's fair balance requirements.

In 2007, several committee chairs we interviewed also expressed the perception that the composition of their committees was not optimal, either favoring one type of industry or group over another or industry over nonbusiness interests. Furthermore, some members were the sole representative of a nonbusiness interest on their committee, and those we spoke with told us that although their interest was now represented, they still felt isolated within their own committee. The result was the perception that their minority perspective was not influential. At the same time, while Congress mandates that the advisory committee system is to involve representative segments of the private sector (e.g., industry, agriculture, and labor and environmental groups),¹⁴ adherence to these statutory requirements has been deemed non-justiciable. For example, although the Departments of Agriculture and Commerce solicit new members for their committees through Federal Register notices which stipulate members' qualifications, including that they must have expertise and knowledge of trade issues relevant to the particular committees, neither the notices nor the committee charters explained how the agencies would or have determined which representatives they placed on committees. Without reporting such an explanation, it was not transparent

¹⁴19 U.S.C. § 2155.

how agencies made decisions on member selection or met statutory representation requirements.

As a result, we made a series of recommendations suggesting that USTR work with the other agencies to update the system to make it more relevant to the current U.S. economy and trade policy needs. We also suggested that they seek to better incorporate new trade issues and interests. Furthermore, we recommended they annually report publicly on how they meet statutory representation requirements, including clarifying which interest members represent and explaining how they determined which representatives they placed on committees.

In response, USTR and the other agencies more closely aligned the system's structure and composition with the current economy and increased the system's ability to meet negotiator needs more reliably. For example, the Department of Agriculture created a new ATAC for processed foods because exports of high-value products have increased. USTR and Commerce also split the service industry into several committees to better meet negotiator needs. Furthermore, USTR and the Department of Agriculture now list which interest members represent on the public FACA database, as the Department of Commerce has been doing for years. USTR's 2009 Trade Policy Agenda and 2008 Annual Report also includes descriptions of the committees and their composition. It does not, however, explain how USTR and the agencies determined that the particular membership appointed to each committee represents a fair balance of interests in terms of the points of view represented and the committee's functions.

Conclusion

Mr. Chairman, we appreciate the opportunity to summarize our work related to the Trade Advisory System. Based on the recommendations we have made in the areas of quality and timeliness of consultations, logistical issues, and representation of key stakeholders, we believe that USTR and other managing agencies have strengthened the Trade Advisory System. However, we support the Committee's oversight and the ongoing policy review of the system to ensure that it works smoothly and the input received from business and non-business stakeholders is sufficient, fairly considered, and representative.

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday afternoon, GAO posts on its Web site newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's Web site, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

