

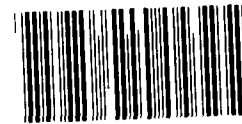
GAO

Briefing Report to the
Honorable Donald J. Pease
House of Representatives

July 1986

TRADE ADJUSTMENT

Alleged Improprieties in Commerce's Trade Adjustment Assistance Program



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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

NATIONAL SECURITY AND
INTERNATIONAL AFFAIRS DIVISION

B-207169

July 9, 1986

The Honorable Donald J. Pease
Member, House of Representatives

Dear Mr. Pease:

In response to your February 19, 1986, request, we have reviewed certain allegations of improprieties related to the Trade Adjustment Assistance Program administered by the Department of Commerce's International Trade Administration (ITA). Our review included an examination of the allegations you referred to us except those concerning the hiring and use of a consultant. Before your request was received, the allegations concerning the consultant had been sent to our office and referred to the Department of Commerce Inspector General's Investigations Division by our Fraud Hot Line unit. As agreed with your Office, we did not address those allegations in our inquiry.

We briefed your Office on April 4, and May 20, 1986, on our review and noted that the alleged extent of improprieties was not supported by the information we obtained. The attached appendixes document the briefings and include the scope of our review, information we developed, and our observations and conclusions in each of the following areas.

1. Department of Commerce Inspector General's report on the Trade Adjustment Assistance Program. (See app. I.)
2. A contractor study of the Trade Adjustment Assistance Program. (See app. II.)
3. ITA policy on Program outreach. (See app. III.)
4. ITA proposal to have firms repay the cost of technical assistance provided through the Trade Adjustment Assistance Program. (See app. IV.)
5. Financial hardships and/or liabilities experienced by Trade Adjustment Assistance Centers. (See app. V.)

B-207169

As you requested, we did not obtain official agency comments on this report. We have, however, discussed our findings with Department of Commerce officials and others and have considered their views in preparing the report. We are sending copies of this report to Congressmen Gibbons and Alexander who cosigned your request letter. After 10 days we will provide copies to the Secretary of Commerce and other interested parties.

Sincerely yours,

A handwritten signature in cursive script that reads "Frank C. Conahan".

Frank C. Conahan
Director

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ABBREVIATIONS

IG	Inspector General
ITA	International Trade Administration
OFFA	Office of Finance and Federal Assistance
OTAA	Office of Trade Adjustment Assistance
TAAC	Trade Adjustment Assistance Center

ALLEGED USE OF THE DEPARTMENT OF COMMERCE'S
OFFICE OF INSPECTOR GENERAL TO CONTRIVE A DAMAGING
REPORT ON THE TRADE ADJUSTMENT ASSISTANCE PROGRAM

SUMMARY OF ALLEGATIONS AND OUR EVALUATION

The International Trade Administration (ITA) had allegedly employed the Department of Commerce Office of Inspector General (IG) to contrive a damaging report on the Trade Adjustment Assistance Program to present to the Congress. The audit allegedly was an expensive undertaking designed to support predetermined conclusions about the Program.

We found no evidence to support the allegation that the IG was employed by ITA to contrive a damaging report on the Program. In our opinion, the estimated 600 staffdays used on the IG's audit was not excessive. However, our review disclosed some weaknesses in the IG's report that should be considered in interpreting the findings.

SCOPE AND METHODS OF OUR INQUIRY

We (1) discussed the planning and implementation of the IG's audit (report number D-068-5-006, March 29, 1985), with the Deputy Assistant IG (Auditing), Denver Regional IG Office officials, and the Audit Manager and Auditor-In-Charge for that audit, (2) reviewed the audit report, Department of Commerce's comments on the report, audit planning, implementation and reporting documents, and workpapers supporting portions of the report, (3) reviewed congressional testimony during which the report was cited in support of the administration's position, and (4) discussed the origin of the audit with the Deputy Assistant Secretary of Commerce for Trade Adjustment Assistance and the former Under Secretary of Commerce for International Trade.

INFORMATION DEVELOPED AND OBSERVATIONS

The Department of Commerce used the audit findings at congressional hearings in March 1985 to support the administration's position that the Program should be terminated. Records for the justification, planning, and implementation of the audit showed that it was initiated under normal processes. The planning process provides for consultation with Program officials on their suggestions for audit areas; but our review of

these and other records and workpapers found no evidence that Program officials improperly influenced the audit. We also found no evidence that the IG's audit was designed to arrive at predetermined conclusions about the effectiveness of the Program.

The Audit Manager and the Auditor-In-Charge told us they knew of no attempt by Program officials to influence, control, or direct their audit. The IG Denver Regional Manager and the Deputy Assistant IG (Auditing) confirmed this.

The audit was performed in about 600 staffdays which, in our opinion, was not excessive considering the scope of the work. Both IG headquarters and regional office officials believed that the audit was of high quality.

In part, the Trade Adjustment Assistance Program provides technical and financial assistance through the Department of Commerce to firms injured by import competition. Within Commerce, the Program is administered by ITA's Office of Trade Adjustment Assistance (OTAA). The Program uses 13 Trade Adjustment Assistance Centers (TAACs) throughout the United States in furnishing assistance to the firms seeking help from the Program. The TAACs are not federal agencies, but receive federal funds through agreements with ITA to support the technical assistance they provide. Firms are certified as eligible to participate in the program by OTAA. After certification, a diagnostic survey is performed by TAAC personnel to determine problems and assess the chances for a firm's recovery. If recovery appears viable, an adjustment proposal is prepared showing the recovery strategy and the type of assistance the firm will seek under the Program. If OTAA approves the proposed plan, the firm may be provided technical and financial assistance to implement the plan. Although Commerce has established criteria to determine if a firm participating in the Program has successfully adjusted to import competition, we found no criteria specified in the Trade Act for what would constitute success or failure of the Program as a whole.

The IG's report stated that Trade Adjustment Assistance Program "is no cure for import injured firms." The report established that a small percentage of the firms which were certified as being eligible under the Program participate in the complete Program. The report showed that 13 percent of the firms completing implementation in 1982 and 1983 would successfully adjust due to the Program. The IG also cited "adverse economic and market conditions" as support for negative findings on the viability of the Program.

The methodology used in the IG's audit was criticized by the Department of Commerce's Program officials in their official comments of March 5, 1985, as well as in earlier comments. The report included the official comments and addressed each one. In some cases, changes were made to the report based on these comments.

Our review of the report showed the following limitations or weaknesses which should be considered in interpreting the findings:

- The conclusions about the causes of Program failures and the potential for its future success were based on the audit staff's review of news articles on international trade issues and not on an analysis of data. The report asserts, based on these articles, that the Program could not succeed.
- The IG estimated that 13 percent of the firms completing the implementation phase of the Program would successfully adjust to imports due to the program. This projection was based on a sampling technique, which in our opinion, could be subject to a high degree of uncertainty. This and other uncertainties in the study concerning a significant level of sampling error could have been emphasized more in the report. On balance, it does not appear that the estimate was biased either toward an over or underestimate, but that the estimate was highly uncertain.
- The criteria for determining success or failure of the Program was not clearly shown in the report (that is, percent of firms successfully adjusting or the desired cost-benefit ratio the IG considered to be sufficient to judge program success or failure).
- While it does not appear that the study methods were biased, the report presentation had the appearance of being biased in some respects. For example, it used some emotional language such as "mortally wounded", "tremendous percentage", "staggering failure", and so forth. Also, the report unnecessarily interjected values and judgments which could lead readers to question the report's objectivity such as citing current budget deficits as justification for abolishing the Program and placing heavy emphasis on the importance of external market forces in judging the success potential of the Program.

ALLEGED SUPPRESSION BY ITA OF A CONTRACTOR STUDY
OF THE TRADE ADJUSTMENT ASSISTANCE PROGRAM

SUMMARY OF ALLEGATION AND OUR EVALUATION

ITA allegedly suppressed a report prepared by objective investigators which reached very different conclusions from that of the IG's report.

We found that ITA has not released the report by HCR, a private firm which performed a study of the Program's effectiveness under contract to the Department of Commerce. According to ITA, the HCR report will be released, but technical problems with the report need to be resolved.

SCOPE AND METHODS OF OUR INQUIRY

We reviewed records at OTAA relating to the conduct of the HCR study. We also discussed the release of HCR's report with the Deputy Assistant Secretary of Commerce for Trade Adjustment Assistance.

INFORMATION DEVELOPED AND OBSERVATIONS

The Department of Commerce contracted with HCR in May 1984 for an evaluation of the Program. The HCR draft report dated May 31, 1985, was received and reviewed by the OTAA staff during July and August. In August 1985, OTAA sent HCR a letter authorizing HCR to print the final report conditioned on certain technical changes to be made in the report. During September 1985, there were several letters and contacts between HCR and OTAA concerning the changes to be made to the draft report. OTAA orally authorized printing of the report based on the August and September communications. On September 26, 1985, OTAA received 150 copies of the HCR report.

This report stated that the results of the HCR study ". . . suggest that the TAAP (Trade Adjustment Assistance Program) has had a beneficial effect on their clients of import-impacted firms."

In early October 1985, anticipating the release of the HCR study, OTAA staff prepared memorandums to transmit the report to TAAC Directors and Trade Development officials. However, the report was not released. At about this time, the Deputy Assistant Secretary, the OTAA Division Directors, and the

Assistant Secretary of Commerce met and discussed the HCR report. At the meeting, the Deputy Assistant Secretary stated some concerns with the data in the report. Based on the meeting, the concerns were to be resolved and the report, if necessary, was to be modified and distributed as soon as possible.

The Deputy Assistant Secretary requested that a Commerce Department consultant review the HCR draft report. The consultant's comments were provided to the Deputy Assistant Secretary in October and November 1985 and pointed out several problems in the report. In a December 1985 meeting, involving the Deputy Assistant Secretary, the consultant, and OTAA staff, a decision was reached to ask HCR to further modify its report. OTAA records describe the requested changes as follows:

- The report's conclusions about firms adjusting under the Program are stated in broad ranges, while the statistical backup is much more specific. It was felt that these broad ranges (an estimate that successful adjustment could range from 18 percent to 79 percent) diminished the effectiveness of the report's conclusions. It was therefore suggested that the conclusions be based on the statistical findings.
- The report noted a high rate of adjustment for client firms receiving Trade Act loans. The Deputy Assistant Secretary and the consultant found this hard to believe considering the high rate of default on Trade Act loans. Further work was considered necessary to validate HCR's data.

From January through March 1986, OTAA staff and HCR discussed changes to be made in the report. On March 19, 1986, the Deputy Assistant Secretary tentatively approved changes to be made in the report and requested a confirming letter from HCR on this and on the added costs involved. On March 25, 1986, HCR proposed follow-up work on certain firms included in its study which would require more time and money. OTAA did not find this letter responsive to its request. OTAA officials subsequently provided new data to HCR for use in the report.

On April 17, 1986, HCR wrote the Deputy Assistant Secretary outlining changes that would be made in its report and stated that the data base used in the study had been modified. HCR's letter also stated that it had not verified the data provided by OTAA for use in the report nor attempted to determine why the new data differed from that collected from the TAACs during the HCR study. HCR stated that, because of programmatic changes in the

TAACs, it would not be possible to verify the OTAA-provided information at that point.

On April 18, 1986, the Deputy Assistant Secretary told us that the HCR report would be released along with ITA's comments. According to the Deputy Assistant Secretary, the HCR report had not been released because it had factual problems needing correction and that it was important to assure that the government received what it paid for. On July 9, 1986, the Deputy Assistant Secretary informed us that in June 1986, ITA wrote a response to HCR's April 17 letter with a proposal that the report be issued with ITA's comments and the April 17 letter as attachments. The Deputy Assistant Secretary indicated that HCR had not yet responded to this letter but it was ITA's position that their copies of the HCR report including the attachments were now available to requestors outside of the Department.

The HCR draft report does contain findings and conclusions which differ from those in the IG's evaluation of the Program. In part, this may be due to the methodological differences as well as differences in the data used and the time periods covered in the two studies. Our review of the HCR report draft showed that the following limitations or weaknesses need to be considered in interpreting the results of the HCR study.

- The HCR report provides information on adjustment rates for firms which have entered the implementation phase of the Program since 1981 when management of the Program was transferred from the Economic Development Administration to ITA. The report also provides information on the relative adjustment rates for different types of firms.
- Information was collected on only about half of the sampled firms.
- Firms sampled were from those submitting adjustment proposals. This is a subgroup of the total number of firms which may be adversely affected by imports. Only firms which were judged to be able to develop viable recovery strategies enter the adjustment proposal phase.
- For firms HCR found to be successful in adjusting to import competition, the extent of adjustment is not shown in the report in convincing detail (i.e., a listing by firms showing the extent of change in sales, profit, or employment).

ALLEGED EVASION OF TRADE ACT REQUIREMENTS
BY ITA WITH RESPECT TO PROGRAM OUTREACH POLICY

SUMMARY OF ALLEGATION AND OUR EVALUATION

An ITA directive to refrain from direct outreach to firms under the Trade Adjustment Assistance Program allegedly evades a Trade Act requirement that imposes an affirmative obligation on the Secretary of Commerce for such outreach.

We found no conflict between ITA's outreach restriction and the Trade Act's provisions.

SCOPE AND METHODS OF OUR INQUIRY

We (1) discussed the issue of restricting direct outreach on the Trade Adjustment Assistance Program for firms with the Deputy Assistant Secretary of Commerce for Trade Adjustment Assistance, (2) reviewed the ITA's outreach policy statement issued in October 1981, (3) discussed the policy statement with the former Deputy Assistant Secretary who wrote it, (4) reviewed pertinent provisions of the Trade Act, and (5) reviewed the provisions of cooperative agreements between the TAACs and ITA dealing with information dissemination on the Program.

INFORMATION DEVELOPED AND OBSERVATIONS

The October 1981 policy statement restricting direct outreach to firms from the TAACs was instituted, according to the former Deputy Assistant Secretary, because of a complaint by a firm that had been contacted by a TAAC about the Program. The purpose of the new policy was to reduce the possibility that firms would feel pressured to request trade assistance. Specifically, the October statement to the TAACs stated that:

". . . The TAAC staff will no longer be permitted to use letters soliciting clients, telephone calls, or other outreach activities as the vehicle for contact with potentially trade-impacted firms. When a firm contacts the TAAC requesting information or assistance this should be provided as completely and quickly as possible. Speeches, public appearances, seminars, etc. should be continued but only to explain the program, including the new emphasis on technical assistance to firms and industries, and loan guarantees. . . The reason for this new policy is to minimize the possibility of firms getting the impression that they

are being pressured to request trade adjustment assistance. Therefore, please be careful with all TAAC contacts with firms to convey the impression that the TAAC is only informing the firm about the TAA program, and that it is up to the firm to take the initiative to seek additional information or to request assistance. . ."

The scope of work section in Commerce's agreements with TAACs implements the October 1981 policy. These provisions allow the TAAC staff to participate in seminars sponsored by industry, trade, or community organizations to inform trade-impacted firms about the Program's benefits and procedures and to develop and disseminate relevant program information within the particular TAAC areas. Proposed public release of that information must be submitted to the Program Director for prior review to ensure accurate program descriptions. Information dissemination through letters or phone calls, as a first contact with potentially trade-impacted firms, is not permitted.

We found no provision in the Trade Act nor any congressional direction which would require that the TAACs engage in direct outreach to firms.

ALLEGED CONTRAVENTION OF TRADE ACT REQUIREMENTSBY ITA RELATING TO A PROPOSAL FOR FIRMSTO REPAY TECHNICAL ASSISTANCE COSTSSUMMARY OF ALLEGATION AND OUR EVALUATION

It was asserted that the Trade Act requires companies receiving trade adjustment assistance to pay 25 percent of the cost of assistance. ITA was allegedly contravening these requirements by proposing to have companies repay 100 percent of such assistance cost.

We found no conflict between ITA's proposal and the Trade Act's provisions on cost sharing for technical assistance.

SCOPE AND METHODS OF OUR INQUIRY

We (1) discussed the proposed repayment policy with the Deputy Assistant Secretary of Commerce for Trade Adjustment Assistance, (2) reviewed the OTAA files relating to the repayment policy, (3) examined provisions in current ITA agreements with TAACs on cost sharing for technical assistance, and (4) examined Trade Act requirements for sharing the cost of such technical assistance.

INFORMATION DEVELOPED AND OBSERVATIONS

Technical assistance provided by the TAACs to individual firms can include expert business advice and assistance in the development of certifications, plans, surveys, and proposals for adjustments.

The Trade Act provides that the government may share the cost of certain technical assistance to firms, but not more than 75 percent. The firms would pay a minimum of 25 percent of the cost of that technical assistance. The TAAC agreements provide that firms pay a minimum of 25 percent of the cost of technical assistance for the first \$75,000 of assistance. After the first \$75,000, the total cost sharing percentage increases by 10 percent for each additional \$10,000 of assistance up to \$115,000. The cost of assistance exceeding \$115,000 is cost shared at a 75/25 firm-to-government split. According to OTAA, firms with substantial resources are required to pay an even greater share.

In October 1985, the Deputy Assistant Secretary of Commerce for Trade Adjustment Assistance requested the New England TAAC to test a proposed policy change for the Trade Adjustment Assistance Program. The intent was to implement the concept nationwide in

the near future. This policy change, known as the repayment policy, would require firms that successfully adjust under the Program to repay the government's share of the cost of post-approval assistance. The effort to test the repayment policy was suspended when the Program's authority expired on December 19, 1985. The Consolidated Omnibus Budget Reconciliation Act of 1985, approved on April 7, 1986, extended the Program's authority to 1991, retroactive to December 18, 1985.

OTAA memorandums and other records show that:

- The repayment proposal, if successful, would create a revenue stream through grant repayments which could be used to fund the New England TAAC operations and, over time, make the Program less dependent on federal funding. The instrument to be used to ensure repayment by successful firms would be a noninterest bearing note between the TAAC and the firm, due no later than 4 years after the implementation technical assistance was provided.
- In developing the policy, many technical and legal issues have arisen on how this proposal would work. The issues, for example, include the test to be applied to the firm receiving implementation assistance to determine whether the firm has to repay, how and by whom the amounts due will be collected and under what authority, and the disposition of the payments derived from this program. OTAA memorandums show that Program officials were working with the Commerce General Counsel's Office, the Office of Finance and Federal Assistance (OFFA) and the Budget Office in developing the required documentation and procedures for the repayment policy.
- The repayment policy initiative is one of several ideas being explored by the ITA for stretching limited Program resources. These include (1) further increases in cost-sharing percentages, (2) more efficient ways of providing firms with technical assistance, (3) reducing TAAC overhead rates, and (4) consolidation or realignment of TAACs.

In our opinion, the repayment policy proposal does not appear to conflict with the Trade Act provisions on cost sharing for technical assistance.

ALLEGED FINANCIAL HARDSHIPS AND/OR LIABILITIESIMPOSED ON CERTAIN TAACsSUMMARY OF ALLEGATIONS AND OUR EVALUATION

ITA was allegedly delaying reimbursements for legitimate costs of some TAACs. These costs include obligations that some TAACs incurred during the period that the program authority had lapsed. The allegations noted that ITA provided incorrect advice to the TAACs on the extent they could incur obligations, which could have exposed the TAACs to legal liability. It was also alleged that ITA began to hasten the phase out of the TAACs after the program lapsed, incorrectly informing the Congress that ITA would not allow the TAACs to operate with existing obligations under a no-cost extension to their existing agreements.

We found no evidence that ITA was delaying payments to intentionally place a financial hardship on TAACs. ITA is aware of the concerns of TAAC directors over potential liability issues and has sought the advice of the Department of Commerce's General Counsel on these issues. We could find no basis for the allegation that ITA had misinformed the Congress about no-cost extensions.

SCOPE AND METHODS OF OUR INQUIRY

We (1) discussed the hardship and liability issues with the Deputy Assistant Secretary of Commerce for Trade Adjustment Assistance, (2) gathered data on requests for payment submitted by the Mid-Atlantic TAAC (located in Philadelphia, Pennsylvania) and discussed the issues with their officials and officials of TAAC's parent organization (Council for Labor and Industry), and (3) obtained information from the OTAA and the Department of Commerce IG on problems with cash management at the Mid-Atlantic TAAC.

The Department of Commerce's Office of Finance and Federal Assistance (OFFA) administers the payment of the Department's bills and obligations. We also reviewed records in OFFA on requests for payment from TAACs and discussed the procedures for making payments to TAACs with OFFA officials.

INFORMATION DEVELOPED AND OBSERVATIONS

On December 19, 1985, the legislative authority for the Program lapsed. On December 24, 1985, OFFA, after consultation with ITA and the General Counsel, informed the TAACs that the authority for the Trade Adjustment Assistance Program had been

extended to March 15, 1986, and that the financial ceiling of obligations and commitments for TAACs would be increased in an amount proportional to the time extension.

Subsequently, Commerce reversed their position. On January 10, 1986, the Deputy Assistant Secretary of Commerce for Trade Adjustment Assistance notified TAACs that the continuing resolution passed by the Congress did not include an extension of the Program. This mailgram also stated that the expiration of the Program's authority has raised the issue of how much and for what purposes the cooperative agreement funds, already awarded, could be used and stated that the issue was being addressed and TAACs would be promptly notified of the outcome. The mailgram also stated that TAACs could not take action which would commit the government to providing additional funds, and that no new technical assistance activities or obligations were to be undertaken.

ITA provided additional guidance to TAACs on January 17, 1986, with respect to the activities which could not be undertaken and stated that the Program was in a period of proceeding to termination. This notice also advised TAACs to suspend performance on obligations and agreements entered into after December 19, 1985. ITA has been informed of TAAC directors' concerns over the potential government liability based on the incorrect advice provided to TAACs with respect to Program authority (December 24, 1985, memorandum) and for potential liability which might arise from lapse of the Program. The General Counsel had been requested to advise on this liability question at the time our work concluded.

OFFA officials told us that payments to TAACs were running behind what they normally try to achieve because of the uncertainties over what payments were legally allowable, considering the lapse in Program authority in late December 1985. They said that they try to process payments in about a week. Data on the Mid-Atlantic TAAC and other TAACs show that payments were running behind this target in some cases, but we found no evidence in the payment files or in our interviews with Commerce officials that ITA was delaying payments to TAACs to intentionally place a financial hardship on them. Our review of the OFFA records confirm that, during December 1985 through January 1986, a number of legal questions on allowability of payments were being raised by Program and OFFA officials and referred to the General Counsel.

A cash management problem was found by OTAA personnel and later referred to the Commerce IG for investigation. In November 1985, the IG recommended to ITA that the grant to the Council for Labor and Industry (parent organization for the Mid-Atlantic

TAAC) be terminated because of the adverse cash management findings shown by its investigation. ITA plans to replace the Council for Labor and Industry because of the cash management problem.

The Deputy Assistant Secretary of Commerce told us that he was not aware of any information furnished to the Congress which contends that the ITA would no longer grant "no-cost extensions". The Department of Commerce legal advice to the Deputy Assistant Secretary was that trade adjustment assistance awards may receive no-cost time extensions where extensions are necessary for the recipients to perform under existing obligations, prepare for final audit, and proceed to termination.

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