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Report to the Ranking Minority Member, Committee on Finance, U.S. Senate

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INTERNATIONAL TRADE

Advisory Committee System Should Be Updated to Better Serve U.S. Policy Needs

G A O

Accountability ⋆ Integrity ⋆ Reliability

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Abbreviations

ACTPN	Advisory Committee for Trade Policy and Negotiations
ATAC	Agriculture Technical Advisory Committee
DFO	Designated Federal Official
FACA	Federal Advisory Committee Act
IFAC	Industry Functional Advisory Committee
ISAC	Industry Sector Advisory Committee
NGO	Nongovernmental organization
OIAPL	Office of Intergovernmental Affairs and Public Liaison
USDA	U.S. Department of Agriculture
USTR	Office of the U.S. Trade Representative
WTO	World Trade Organization

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United States General Accounting Office
Washington, D.C. 20548

September 24, 2002

The Honorable Charles E. Grassley
Ranking Minority Member, Committee on Finance
United States Senate

Dear Senator Grassley:

In 1974, Congress mandated creation of a private sector advisory system to ensure that representatives from private business and other groups with a stake in trade policy could provide input as negotiations unfolded. The hope was that such involvement would result in trade agreements that Congress could approve with confidence. The law, as amended, established a three-tier structure of committees to advise the President on overall U.S. trade policy, general policy areas, and technical aspects of trade agreements. Among other things, the law requires the President to consult with these committees on a continuing and timely basis. Four agencies, led by the Office of the U.S. Trade Representative, currently administer the committee system. Legislation recently passed by Congress granted the President trade promotion authority to negotiate trade agreements—previously known as "fast track" negotiating authority—and renewed lapsed portions of the advisory committee system's mandate.[1] However, committee members and executive branch officials participating in the system have voiced concerns about the current system's operation and readiness to support trade policy.

In light of these concerns, as well as the launch of a major round of trade talks at the World Trade Organization (WTO) and accelerating negotiations for regional free trade, you asked us to examine the role, structure, and operations of the trade advisory committee system to ensure that it is still poised to meet the objectives set by Congress. In this report, we examine (1) the system's value to U.S. trade policy, (2) participants' level of satisfaction with specific aspects of the consultation process as well as aspects that participants said could be improved, (3) the degree to which the system matches the current U.S. economy and supports U.S. trade policy needs, and (4) the Office of the U.S. Trade Representative's (USTR) and the other agencies' management of the system.

[1]P. L. No. 107-210, 116 Stat. 933.

To address these issues, we surveyed 720 of the 735 committee members about their experiences in the system;[2] conducted 168 interviews with every type of participant in the committee process, including selected committee chairs, members, U.S. negotiators involved in key trade initiatives, other executive branch officials, nongovernmental interest groups, and trade experts; and analyzed data and documents relevant to committee mandates, procedures, activities, membership, economic size, and trade flows. (For a full description of our scope and methodology, see app. I.)

Results in Brief

According to many negotiators, agency officials, and committee members, 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. Officials with whom we met said that the committees are a unique forum for candid discussion of sensitive trade negotiating topics and help U.S. trade officials readily tap a wide range of private sector expertise. U.S. negotiators cited numerous specific cases of input from advisory committees that helped them secure more beneficial trade agreements. Our analysis of committee documents found ample evidence that the U.S. Trade Representative and other executive branch agencies are informing advisers about developments in U.S. trade policy and seeking their input, formally and informally, on key trade initiatives.

While our survey of committee members found high levels of satisfaction with many aspects of committee operations and effectiveness, more than a quarter of respondents indicated that the system has not realized its potential to contribute to U.S. trade policy. We identified three aspects of the consultation process that could be improved. First, consultations were not always timely enough to have an impact on U.S. policy, in part because certain committees have not met at all or meet irregularly. Second, members and negotiators believed that the consultations were not always meaningful or useful. In some cases, tight meeting agendas were not conducive to fully vetting views and formulating committee advice. In other cases, committees were asked to comment on complex initiatives but were given little time to review the initiatives and limited access to key documents. Third, members believe that the system's consultation process

[2]The response rate to our survey was 72 percent, or 515 of the 720 members surveyed. Due to variations in response rates by committee, we do not generalize the responses to all committee members. See the technical survey methodology in appendix IV.

needs greater accountability to ensure that advice is considered. An 8-year lapse of trade negotiating authority had eliminated the committees' channel for reporting to Congress, and more than a third of the respondents to our survey stated that executive branch officials are not informing them when there are "significant departures from advice," as the law requires. In addition to these member concerns, some negotiators believe the committees cannot provide the type or quality of advice they need.

The structure and composition of the committee system have not been fully updated to reflect changes in the U.S. economy and U.S. trade policy. Representation of the services sector has not kept pace with its growing importance to U.S. output and trade. Certain manufacturing sectors, such as electronics, have fewer members than their sizable trade would indicate. In general, the system's committee structure is largely the same as it was in 1980, even though the focus of U.S. trade policy has 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 has gaps in its coverage of industry sectors, trade issues, and stakeholders. On the industry side, committee rosters are only about 50 percent of their authorized levels, and some large companies do not participate. On the policy side, negotiators report that some key issues in negotiations, such as investment, are not adequately covered. Although nonbusiness stakeholders such as labor and environmental groups have membership on certain committees, they report feeling marginalized in the system as a whole because they are permitted membership on relatively few committees and perceive difficulty ensuring that their views get serious consideration. Furthermore, applicable legislation and court cases do not provide clear guidance about how nonbusiness interests should participate in the system.

Leadership direction and administrative support by USTR and the other managing agencies have not been sufficient to ensure that the advisory committee system works reliably. We found that negotiators have used inconsistent approaches to solicit committee member views, with some negotiators not consulting with committees at all. In addition, the nomination and appointment process is time consuming, making it hard to replace members or fill representation needs. Committee operations have been interrupted for 6 months or longer because some agencies failed to renew committee charters. The result has been to temporarily deny certain committees input into key negotiations. The burden of administrative tasks on agencies' resources has limited their capacity to pursue steps that would strengthen the system's performance.

Given Congress' desire for a standing system to provide the President with confidential and representative private sector advice, we are recommending that responsible agencies make changes to strengthen the advisory committee system's capacity to contribute to U.S. trade policy. Specifically, we recommend that agencies improve the consultation process, update the system's structure and membership, and upgrade system management. In addition, we suggest that Congress may wish to consider providing guidance on achieving balance among various interests in the system and easing certain administrative requirements.

In responding to our draft report, the U.S. Trade Representative and the Department of Agriculture agreed with our overall findings and outlined initial steps they are taking to implement our recommendations. Commerce characterized the report as thorough and fair, but urged us to make a number of modifications. For example, Commerce argued that in some cases we underplayed member satisfaction with the system and it took issue with our conclusions on apparent mismatches between the committee structure and the current U.S. economy and agencies' administrative capacity. In most cases, we disagreed and declined to modify this report accordingly.

Background

As part of its constitutional authority to regulate commerce with foreign nations, Congress has long delegated to the President authority to proclaim reciprocal tariff reductions with U.S. trading partners and has encouraged the President to enter into certain trade agreements that meet congressionally mandated objectives. Congress established the trade advisory committee system in Section 135 of the Trade Act of 1974[3] as a way to institutionalize domestic input into such 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.

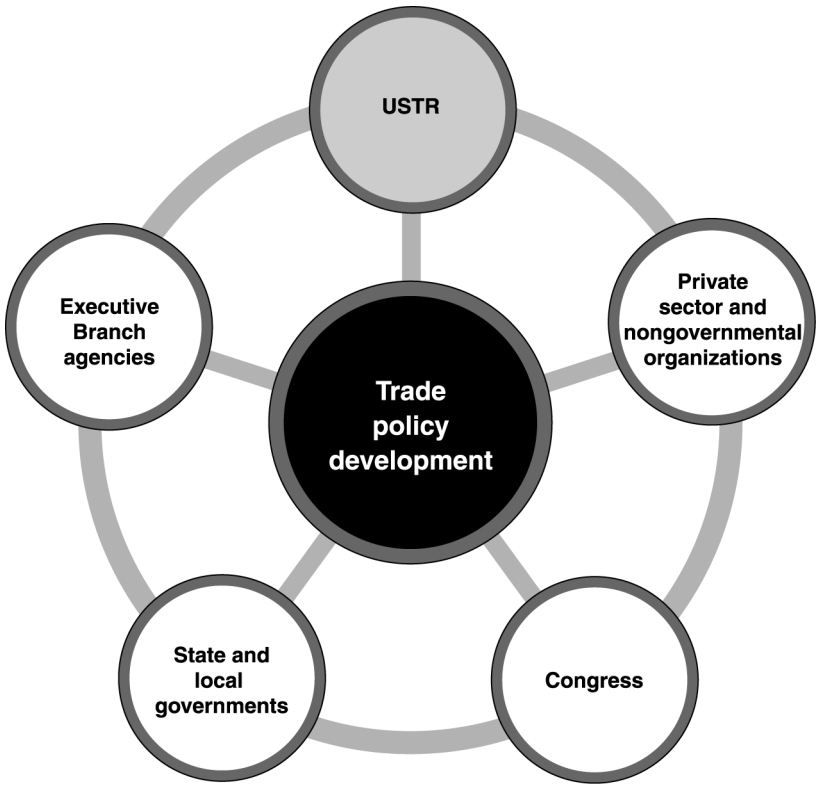
[3]P. L. No. 93-618, 88 Stat. 1996, codified at 19 U.S.C. § 2155. Throughout this report, we refer to this provision as "Section 135 of the Trade Act."

In practice, USTR has primary responsibility within the executive branch for developing U.S. trade policy, and the President has delegated to USTR the role of leading the trade advisory committee process. Additional players in developing U.S. trade policy include other executive branch agencies, particularly the departments of Commerce and Agriculture; the private sector, including business and nonbusiness groups; and state and local governments. USTR also maintains close consultation with Congress.[4] The advisory committee system is one of several ways that USTR obtains input from the private sector (see fig. 1). In fact, Section 135 of the Trade Act also requires USTR to provide an opportunity to private organizations or groups outside the advisory committee system to present their views on trade issues.[5]

[4]For example, five members from each House are formally appointed, as required by Section 161 of the Trade Act of 1974, as official congressional advisers on trade policy. Furthermore, a provision in the Trade Act of 2002 required establishment of a Congressional Oversight Group, one of whose purposes is to closely coordinate with USTR at all critical periods during trade negotiations and regarding ongoing compliance with and enforcement of trade agreements.

[5]19 U.S.C. § 2155(j).

Figure 1: Players Involved in U.S. Trade Policy Development



USTR generally takes the lead on trade policy

Source: GAO.

The system, created in 1974, 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.[6] 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.[7]

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 if they are to continue for more than 2 years.

The structure of the trade advisory committee system consists of three tiers, with the top tier directed by law to provide "overall policy advice," the second tier to provide "general policy advice," and the third tier to provide "technical advice and information." However, Section 135 of the Trade Act does not establish any formal relationship among these tiers, nor does it authorize the first tier to exercise any control over the other two. USTR, working jointly with the other relevant executive departments, has the discretion to create, change, and terminate committees in the second and third tiers.

[6]P.L. 96-39, 93 Stat. 308.

[7]19 U.S.C. 2155(i).

[8]5 U.S.C. App. §§ 1-14.

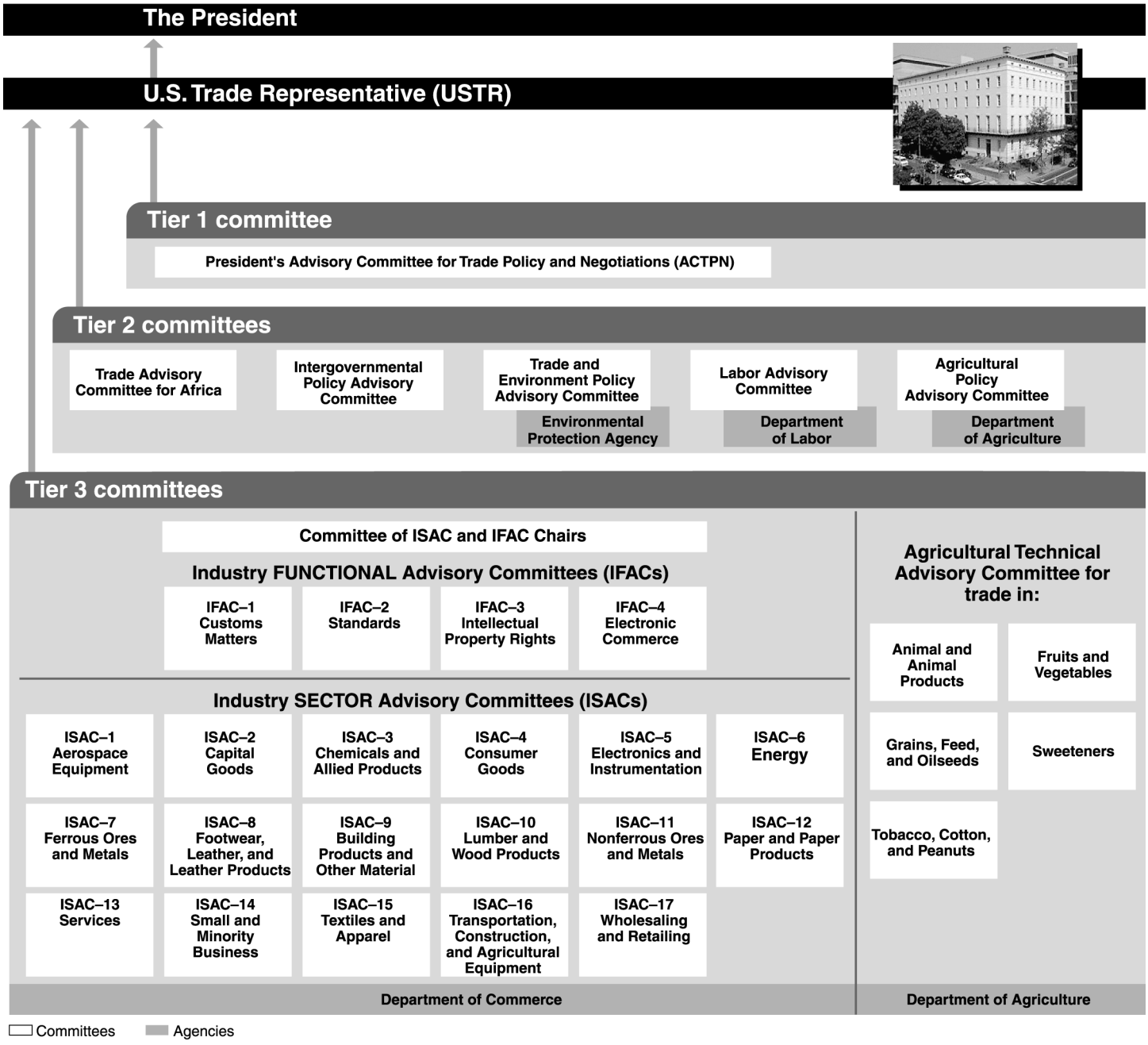
[9]19 U.S.C. § 2155(f).

[10]5 U.S.C. App. § 5(b)(2).

The system comprises about 735 advisers spread across 34 committees,[11] with the bulk of the advisers and committees in the third, technical tier. This tier consists of 17 industry sector advisory committees (ISACs), 4 industry functional advisory committees (IFACs), a committee of ISAC and IFAC chairpersons, and 5 agricultural technical advisory committees (ATACs). The second tier currently consists of five policy advisory committees. The first tier consists of just one committee, the Advisory Committee for Trade Policy and Negotiations (ACTPN), whose members are appointed by the President. Figure 2 illustrates the committee structure.

[11]Subsequent to our survey, Department of Defense officials told us that the Defense Policy Advisory Committee on Trade, a second tier committee whose charter expired in 2001, would not be reconstituted. In July 2002, USTR officials said rechartering of the committee is being considered again.

Figure 2: Trade Advisory Committee Structure



Source: GAO.

The advisory committees are administered by USTR, which assumes a leadership role, along with the departments of Agriculture, Commerce, and Labor. USTR is responsible for administering ACTPN and three of the tier-2 Policy Advisory Committees, and shares responsibility with the other agencies for administering the rest of the committees. The Department of Commerce co-administers the majority of these committees—the ISACs, IFACs, and the Committee of Chairs.[12] The Department of Agriculture (Agriculture) coadministers six others—the ATACs and the tier-2 Agricultural Policy Advisory Committee. The Department of Labor (Labor) is responsible for coadministering a tier-2 Policy Advisory Committee. The Environmental Protection Agency (EPA) plays a supportive role in the activities of the tier-2 Trade and Environment Policy Committee (TEPAC) but does not administer it directly.

Negotiators and Agency Officials Believe the Advisory Committee System Provides Value in U.S. Trade Policy

The advisory committee system's unique features give it an important role in U.S. trade policy. Many negotiators use the system and report that the committees have made important contributions to successful U.S. trade agreements. Our analysis of documents indicates that committees have been given numerous opportunities to provide formal advice at committee meetings and through informal channels.

Committee System Has Unique Features and Makes Important Contributions

The advisory committee system is unique in U.S. trade policy because it provides a forum in which business and other interested groups can consult confidentially with and provide advice to the executive branch on trade negotiations, U.S. trade policy, and implementation of trade agreements. The formal nature of advisory meetings helps ensure that representatives of the private sector and other groups have regular access to officials engaged in U.S. trade policy. Further, the system provides government officials with a body of private sector experts with whom they can develop an ongoing dialogue. Since USTR's administrative procedures for the advisory committees require advisers to obtain security clearances

[12]The Committee of Chairs of the ISACs and IFACs was established to advise the Secretary and the USTR on trade matters of interest common to the ISACs and IFACs, and comprises all the ISAC and IFAC chairs.

before participating, the committees offer an environment conducive to discussing sensitive negotiating information.

Many participants said the advisory committee system serves an important role in U.S. trade policy. A former USTR official and current committee member termed the advisory committee system "one of the great strengths of U.S. trade policy." Among the comments made by negotiators whom we interviewed and members responding to our survey were that the formal advisory committee system is often preferable to more ad hoc means of obtaining input because it is institutionalized and seeks to be representative. Moreover, they said, the system provides assurance to Congress that domestic interests with a stake in trade matters have a voice when trade policy is formulated and will support the final agreements. It thus helps make the executive branch accountable to Congress and, ultimately, to the American public. According to multiple responses, the system strengthens the U.S. bargaining position by bringing to bear on-the-ground perspective and information from the private sector that the U.S. government lacks; establishing a clear set of U.S. priorities and fuller appreciation of various American interests; and enabling the United States to present a unified front when it faces foreign nations at the negotiating table. Without the system, some participants commented, U.S. negotiators would be operating in a vacuum and businesses would be unable to effectively resolve with foreign governments issues that only the U.S. government can pursue. The bottom line, negotiators and members agree, is that when it works properly, the system results in better trade agreements. Not only does it help the United States achieve commercial benefits, it can help keep the trading system vital and responsive to actual needs.

Agency officials also cited the system's value and contributions to U.S. trade policy. According to USTR, the advisory committee process was extremely successful during negotiations (1) on China's accession to the WTO; (2) multilateral agreements on information technology, financial services, and basic telecommunications; (3) the Uruguay Round of negotiations that led to establishment of the WTO; (4) as well as regional initiatives such as the North American Free Trade Agreement, the Summit of the Americas, and the Asia-Pacific Economic Cooperation forum. Of the 27 USTR trade negotiators whom we interviewed, 18 indicated that they had obtained useful advice from the system, as did most of the 12 Commerce officials we interviewed. They cited numerous specific situations where advisory committee input had been helpful to negotiations. For example, an Assistant U.S. Trade Representative

indicated that the advisory committees are playing a vital role in identifying market-opening priorities for the more than 140 nations currently involved in WTO negotiations. A Department of Commerce official described a committee as instrumental in helping monitor implementation of China's accession commitments to the WTO. A USDA negotiator said a committee was helpful in setting the tone regarding the language on tariff reductions in the comprehensive U.S. agriculture proposal to the WTO. A USTR negotiator reported that a committee helped develop a position on defining "international standards" in the WTO's Technical Barriers to Trade Agreement and helped gain the international community's support for the U.S. proposal, expediting acceptance of U.S. goods in foreign markets.

Committee members also value the advisory committee system and devote considerable resources to participating in it on a voluntary basis. Just over one-half of committee members live outside of Washington, D.C., and pay their own travel expenses to attend committee meetings.[13] Further, when the Department of Commerce renewed the charter for the ISACs and IFACs in March 2002, more than 80 percent of those members continued.[14] Members whom we surveyed highlighted numerous benefits of committee membership, including access to USTR and other agency officials, insights into other members' views, and face-to-face dialogue with all members. Parties outside the system, such as U.S. subsidiaries of foreign-owned businesses and nongovernmental organizations (NGO), have sought representation on the committees, arguing that they should not be excluded from such an influential system.[15]

[13]Travel costs vary widely by location and depend on advance notice. According to a committee member based in Sacramento, California, the estimated cost for a recent meeting was about $1,000 for a flight, two nights' lodgings, and related expenses. Another member reported that a round-trip ticket from Chicago to Washington, D.C., given short notice of a meeting, cost $1,600.

[14]According to Commerce officials, 29 members resigned, 28 were not invited to rejoin their committees, and 309 accepted invitations to continue their membership.

[15]See appendix II for an expanded discussion of the legal issues on representation of nongovernmental organizations.

The Executive Branch Consults with Advisory Committees through Formal and Informal Channels

Our analysis of committee documents found ample evidence that USTR and other executive branch agencies are consulting committees on a wide range of trade initiatives at formal committee meetings. For example, agendas for the committee meetings during the 3 years leading up to the 4th WTO Ministerial, held in Doha, Qatar, in November 2001, listed the ministerial 60 times. Twenty of the advisory committees discussed U.S. preparations for the ministerial. Also, during fiscal years 1999 through 2001, different elements of the Free Trade Area of the Americas agreement were listed as items on more than 190 meeting agendas, at meetings of almost every committee.

Such scheduled advisory committee meetings, usually held in Washington, D.C., are the formal channels for the executive branch to consult with the private sector advisory committees. In fiscal year 2001 there were approximately 110 formal meetings across the committee system.[16] The number of meetings varied considerably by committee. The meetings generally lasted 3 to 5 hours. According to our analysis, about 80 percent of the meetings for fiscal years 1999 to 2001 were closed to the public.[17] Negotiators and other trade officials attend portions of the meetings, each in turn briefing, discussing, and consulting with the committee. The private sector committee chair and the managing agency's designated federal official (DFO)[18] generally schedule meetings and select the agenda topics, although occasionally negotiators seek out specific committees to consult on a particular topic. Consultation during meetings is oral, but some committees send their positions in writing to USTR and the corresponding secretary or head of the agency. Many committee chairmen said their committees seek to provide consensus advice, which may include

[16]The number of meetings is approximate, because General Services Administration reports and agency documents occasionally conflict on the number of meetings a committee held in one year.

[17]Between 1980 and 1996, USTR imposed a blanket closure every 2 years on all private sector advisory committee meetings that would take place in that period. However, in *Public Citizen v. Barshefsky*, 939 F. Supp. 31 (D.D.C. 1996), the court found that USTR's 1996 to1998 blanket closure was inconsistent with the Trade Act and conflicted with Congress' presumption of open meetings. USTR now determines meeting closure on a case-by-case basis.

[18]FACA uses the term "designated federal official" to indicate an agency representative with responsibility for attending each committee meeting. In this report, we use the term to mean the agency representative responsible for attending the meetings, although the title may differ by agency.

dissenting opinions. For the first- and second-tier committees, only classified transcripts were kept until recently.[19] For the third-tier committees, DFOs prepare classified minutes of closed meetings for internal committee use only, as well as unclassified public summaries.

In addition to formal meetings, USTR, Commerce, USDA, and others informally request advice from committee members through faxes, E-mails, ad hoc meetings, and teleconferences when they need a rapid response. However, committee members consulted at ad hoc meetings or through other means may provide advice only as personal opinions because, in keeping with FACA rules, formal committee advice generally can only be provided through formal committee meetings. In some cases, this informal advice is solicited by a request from a negotiator to the coordinating offices at USTR and other agencies, which then transmit the request to all advisers. In other cases, direct contact between negotiators and selected committee members occurs. Regardless of how contact is initiated, members typically provide advice directly to the relevant official and no central record is kept.

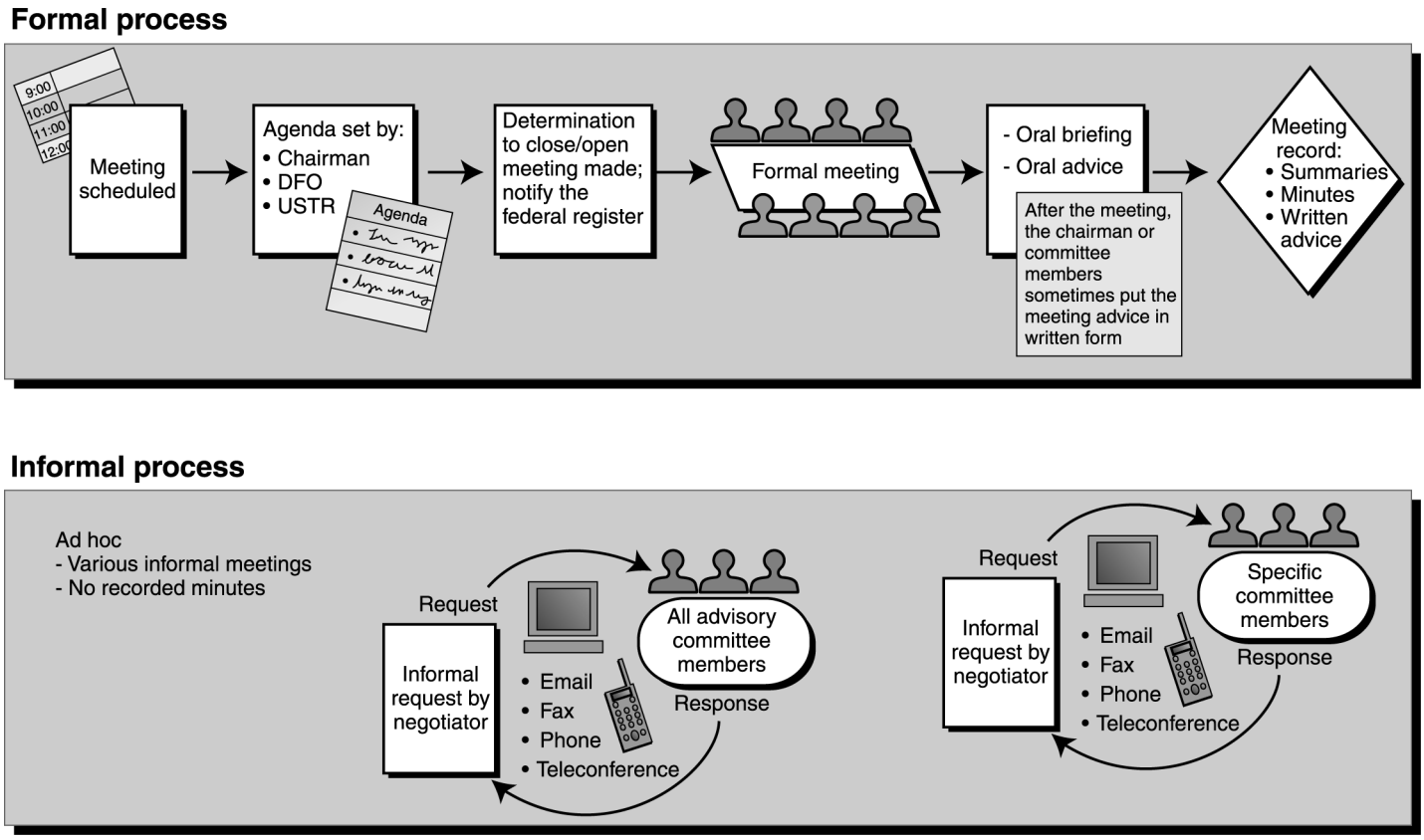
Nevertheless, our review of existing agency records indicates that such informal consultation is active. In fiscal year 2001, USTR scheduled at least nine ad hoc meetings, mostly teleconferences or in-person meetings, to which trade advisers were invited an average of 2 to 3 days in advance.[20] During this same period, USTR and Commerce faxed or E-mailed approximately 63 requests for advice,[21] usually addressed to the entire advisory system membership or all of the industry sector and functional committees; according to our analysis of available data, the advisers had an average of 7.5 days to respond. Figure 3 shows the different processes for obtaining formal and informal advice from the committees.

[19]Since October 2001, only restricted meeting minutes are prepared for the first- and second-tier committees.

[20]Documents for ad hoc meetings in August and September 2001 were not available for our analysis.

[21]Commerce indicated in agency comments that the number of requests for comment in fiscal year 2001 was slightly higher, at 84.

Figure 3: Formal and Informal Consultation Process for Advisory Committees



Source: GAO.

Most Members Generally Satisfied with Their Committees, but Cite Problems with the Consultation Process That Are Hindering the System's Effectiveness

Most advisory committee members are satisfied with key aspects of the advisory process. However, some would prefer to be included more fully in the deliberations before actual trade policies are made, and many cited several problems with the consultation process that have hindered the system's effectiveness. In addition, accountability for the use or consideration of advice could be improved.

Members Reported Varying Levels of Satisfaction with Their Advisory Committee

More than 60 percent of the members who responded to our survey reported that they were very satisfied or generally satisfied[22] with 11 of the 16 areas of committee composition, operations, and effectiveness listed in table 1. In addition, about half of the committee members responding to our survey indicated that the system is fulfilling its statutory mandate to a "very great extent" or "a great extent." The areas with the greatest levels of satisfaction (very or generally satisfied) were the knowledge of government speakers (85 percent), the committee's opportunity to ask questions of government officials (84 percent), and the opportunity for members with dissenting views to provide input at meetings (79 percent). The areas with the lowest levels of satisfaction (very or generally satisfied) were the executive branch's response to committee advice (39 percent), the use of technology to facilitate meetings (39 percent), and the time it takes to appoint new committee members (16 percent), which had by far the lowest level of satisfaction.

Table 1: Percentage of Survey Respondents Who Were Very Satisfied or Generally Satisfied with Committee Operations

	Percentage of all responses marked "very satisfied" or "generally satisfied"
1) The knowledge of the government speakers who brief your committee	85%
2) Your committee's opportunity to ask questions of government officials at meetings	84
3) The opportunity for committee members with dissenting views to provide input at meetings	79
4) The support provided by your Designated Federal Officer (DFO)	75
5) The topics on which your committee is briefed by government speakers	75
6) Amount of notice your committee receives for meetings	72

[22]We asked the committee members to rank their level of satisfaction or dissatisfaction in several areas. Respondents could choose among seven possible responses: "very satisfied," "generally satisfied," "neither satisfied nor dissatisfied," "generally dissatisfied," "very dissatisfied," "not applicable," or "no answer."

(Continued From Previous Page)

	Percentage of all responses marked "very satisfied" or "generally satisfied"
7) Representation of your business sector in the overall committee structure	72
8) Your committee's opportunity to provide advice at meetings	70
9) The clarity of your committee's operating rules and procedures	65
10) The support provided by USTR	64
11) The balance of business representation in your committee (e.g., by region, type of company, and company size)	63
12) Your committee's opportunity to provide formal advice outside of meetings	54
13) The degree of attention the executive branch pays to your committee's trade issues	45
14) The executive branch's response to the advice your committee provided	39
15) The use of technology to facilitate meetings	39
16) The time it takes to appoint new members to your committee	16

Source: GAO analysis of survey responses.

Despite reporting general satisfaction with many aspects of the system, more than a quarter of survey respondents felt that the system has not realized its potential contribution to U.S. trade policy (see app. IV, question 23). Many members responding to our survey supported actions to improve committee operations. Through our survey, member interviews, and document analysis, we identified several problems with the (1) timeliness, (2) quality, and (3) accountability of consultations between the executive branch and the committees. These problems have, at times, limited member input into and influence over trade policy. Some of these problems were particularly acute for specific issues or committees.

Consultations Are Not Always Timely because They Occur after Decisions Are Made

The timeliness of consultations was a concern to many advisers, who stated that consultations sometimes occur too late to affect policy. Overall, 30 percent of respondents felt that the executive branch scheduled its consultations so that the committees' advice could be used in trade negotiations to "some or little extent" or "no extent," while only 25 percent of the respondents believed the consultations were scheduled

appropriately to a "very great extent" or "great extent." [23] Members whom we surveyed as well as interviewees reported that advice is often sought after the executive's policy direction is already set. Several members reported that, in the past 5 years, the tendency has been for negotiators to come to committee meetings and say, "Here is the agreement, what do you think?" In one case that we documented, the administration did not consult with the President's overall policy advisory committee—ACTPN—before submitting its proposed international trade agenda to Congress, including the principles to be included in Trade Promotion Authority legislation. The staff liaisons for ACTPN and TEPAC were only briefed on the matter the day after the agenda was submitted. Furthermore, the advisory committees were not consulted before the Clinton administration announced its decision to pursue a Free Trade Agreement with Singapore. The announcement provoked considerable concern across the private sector for a variety of reasons, not least because the original proposed time frame of completing the negotiations within 6 weeks would have allowed little time for advisers to provide input.

Another problem with timeliness cited by members is that certain committees meet infrequently. USTR, Commerce, and USDA procedures generally indicate that agency officials are responsible for calling meetings. The problem of meeting frequency is particularly acute for the first- and second-tier committees, which averaged 1.7 and 2.5 meetings each year, compared with the third-tier committees, which met an average of 3.7 times each year. The ACTPN, which consists of CEO-level advisers and is designed to provide overall policy advice, met twice in fiscal years 2000 and 2001. It did not meet for more than 16 months between March 2000 and July 2001. During that period, the Jordan Free Trade Agreement—which broke new ground by including labor and environmental provisions in the text of a U.S. trade agreement for the first time—was finalized without formal executive branch consultation with the ACTPN.[24] Members and negotiators reported that the lack of regular meetings was a barrier to the effective functioning of the committees.

Although Section 135 of the Trade Act requires the executive branch to consult with the committees "on a continuing and timely basis" and "to the

[23]Of the remainder, 37 percent reported that consultations were scheduled appropriately to a "moderate extent," and 8 percent did not answer the question (see app. IV, question 6).

[24]USTR did provide five briefings on the agreement to all trade advisers in which one or two ACTPN staff liaisons participated in the 4 months leading up to the October 2000 agreement.

maximum extent feasible . . . before the commencement of negotiations," the agencies involved have not adopted guidelines to implement these directives. For example, Commerce's and USTR's procedures and rules for managing these committees do not address the principle of timeliness or consulting to the maximum extent feasible. USDA's procedures also do not refer to these issues, but in practice, the agency has developed a calendar of key negotiation events to use in scheduling advisory committee meetings in an effort to ensure that consultations are timely.

Participants Believe the Quality of Consultations Is Not Always Meaningful

Committee members, agency officials, and negotiators reported several problems that sometimes affect the quality and meaningfulness of consultations. These problems included too little time for discussion at meetings, limited access to background documents, insufficient consultation on certain issues, and poor participation by some negotiators.

Insufficient Time for Consultations at Meetings

In survey responses and interviews, many committee members said that they did not have enough time to discuss issues or provide advice at committee meetings. While respondents to our survey were broadly satisfied with the amount of time spent on presentations by USTR and the committees' principal agencies, 42 percent of the respondents reported that not enough time was devoted to providing advice, 43 percent reported that not enough time was spent on members' discussing trade issues, and 39 percent said that not enough time was devoted to presentations by other executive branch agencies (see table 2). Commerce officials confirmed that they were aware that the amount of time available for discussion is an issue, but explained in agency comments that, because of the costs and travel time associated with ISAC and IFAC meetings and the number of issues to be discussed, meeting agendas are often packed. Negotiators stated that this imposes practical constraints on the time devoted to each agenda item. According to a USDA official, the agency is carefully reviewing the number of items on committee agendas and scheduling full-day meetings for its ATACs to ensure that there is sufficient time for member discussion.

Table 2: Respondents' Opinions about the Amount of Time Devoted to Various Activities at Committee Meetings

	Too much time	About the right amount	Too little time	No basis to judge/ no answer
a) Presentations by USTR	6.8%	71.0%	19.8%	2.3%
b) Presentations by your committee's principal agency	8.5	70.4	14.5	6.5
c) Presentations by other executive branch agencies	3.5	41.3	39.4	15.8
d) Committee providing advice to all executive branch agencies	1.0	33.8	41.9	23.3
e) Committee member discussion of trade issues	1.9	51.3	42.6	4.4

Source: GAO analysis of survey responses. Also see appendix IV, question 2.

Limited Access to Documents

Limited access to certain background documents also affects the quality of consultations. USTR often provides national security classified and trade sensitive documents, such as proposed negotiating objectives or text of draft agreements, to committee members for comment. However, access to these documents—which are kept in Washington, D.C., in secured reading rooms—is often not feasible for advisers who live outside of the Washington, D.C., area, and not always convenient for advisers who work in Washington. Numerous survey respondents complained that current arrangements for reviewing such documents are inadequate.[25] Officials and members said that being able to access documents electronically, such as through an encoded Internet site, would improve the quality of committee advice. In agency comments, USTR, Commerce, and USDA indicated they are exploring options for electronic access, but stressed that safeguarding sensitive or classified negotiating material must remain paramount.

Taking a detailed look at these documents is important to members because it can materially affect negotiating outcomes. A Commerce official related an example pertaining to the Chile FTA, when ISAC members felt they had not had an opportunity to look at the negotiating text because it was put into the reading room at the last minute before a holiday. A

[25]The Department of Commerce has recently improved the comfort and convenience of its reading rooms by incorporating them as part of its new committee meeting facilities.

subcommittee of the ISAC (8 to 10 people, mostly lawyers) reviewed the text line by line at the Commerce reading room and provided numerous changes to USTR, which were presented to the Chileans. The Commerce official noted that what happens with the Chile negotiations is considered extremely important because it will set a precedent for future trade agreements.

Consultation on Certain Issues Is Insufficient, According to Some Members

Consultation on certain issues appears to be particularly problematic. First, although Section 135 of the Trade Act requires consultation regarding "the development, implementation, and administration" of U.S. trade policy, 30 percent of respondents reported that they were dissatisfied ("very dissatisfied" or "generally dissatisfied") with the extent of consultation on implementation of trade agreements, 26 percent were dissatisfied with consultation on bilateral trade negotiations, 25 percent were dissatisfied with consultation on general trade policy issues, and 23 percent were dissatisfied with consultation on multilateral trade negotiations (see table 3). In one case, the administration prepared and issued, without first consulting the top-tier committees, a comprehensive report reviewing the WTO's operation during its first 5 years, advocating that the United States should continue participation in the WTO. Advisers were only briefed on the 126-page report's contents 5 days after the date it was signed by the USTR.[26]

[26]The USTR briefly mentioned the report in the ACTPN's March 1, 2000, meeting but did not solicit comments on it. It should be noted that discussions relating to an item on the agenda for that meeting—a letter on a potential congressional vote on continued participation in the WTO—suggest that the committee supported continuation of U.S. participation in the WTO.

Table 3: Satisfaction with the Extent to which the Executive Branch Sought the Committees' Advice

	Satisfied	Neither satisfied nor dissatisfied	Dissatisfied	No opinion/ no answer
a) General trade policy issues	51.3%	18.4%	24.7%	5.7%
b) Multilateral trade negotiations (World Trade Organization – WTO)	54.3	16.5	23.1	6.1
c) Bilateral trade negotiations	49.1	18.6	25.8	6.5
d) Implementation of trade agreements	34.6	26.8	30.1	8.5
e) Other (please specify)	6.0	6.4	5.0	82.5

Note: Satisfied included responses marked "very satisfied" or "generally satisfied." Dissatisfied included responses marked "very dissatisfied" or "generally dissatisfied."

Source: GAO analysis of survey responses. Also see appendix IV, question 3.

Second, consultations with the tier-1 and tier-2 policy committees have not been satisfactory, some respondents said.[27] Table 4 illustrates differences in tiers' satisfaction rates for selected aspects of committee operations for those who responded to our survey.

[27]The second-tier committees, and particularly the Intergovernmental Policy Advisory Committee and the Labor Advisory Committee, had low response rates. Consequently, the results reported by survey respondents in those tiers and committees might not be representative of all the members of those tiers and committees.

Table 4: Differences among Committee Tiers in Satisfaction with Committee Operations

	Tier 3	Tier 2	Tier 1
1) The knowledge of the government speakers who brief your committee	87%	80%	84%
2) Your committee's opportunity to ask questions of government officials at meetings	86	77	71
3) The opportunity for committee members with dissenting views to provide input at meetings	82	71	68
4) The support provided by your Designated Federal Officer (DFO)	78	64	58
5) The topics on which your committee is briefed by government speakers	84	49	36
6) Amount of notice your committee receives for meetings	78	52	52
7) Representation of your business sector in the overall committee structure	78	49	52
8) Your committee's opportunity to provide advice at meetings	72	63	61
9) The clarity of your committee's operating rules and procedures	71	49	36
10) The support provided by USTR	68	50	58
11) The balance of business representation in your committee (e.g., by region, type of company, and company size)	68	45	45
12) Your committee's opportunity to provide formal advice outside of meetings	57	38	48
13) The degree of attention the executive branch pays to your committee's trade issues	47	36	39
14) The executive branch's response to the advice your committee provided	42	29	38
15) The use of technology to facilitate meetings	40	33	36
16) The time it takes to appoint new members to your committee	18	10	10

Source: GAO analysis of survey results.

At the tier 1 ACTPN, as discussed above, lack of meetings and timely consultation were additional concerns. Although the tier-2 Labor Advisory Committee's (LAC) formal steering committee met six times in 1999, six times in 2000, and three times in 2001, the full committee did not meet at all between 1994 and 2002. Steering Committee Members whom we interviewed felt that USTR consulted them more out of obligation rather than to obtain advice. One member added that USTR has treated the committee like a "dissent group" and did not provide the same level of briefings as it did to other advisory committees. Although members singled out a few USTR negotiators for their willingness to listen to the committee's views, USTR acknowledges that it did not even have an official liaison to the LAC between 1993 and 2001. None of the labor respondents to our survey reported that they were satisfied with the degree of attention the executive branch paid to their committee's issues or the executive branch's response to the committee's advice.[28] Further, members of the tier-2 Trade and Environment Policy Advisory Committee, comprising business and environmental interests, generally agreed that the committee had not been a successful vehicle for addressing environmental aspects of trade policy. While members and negotiators said that the committee made significant contributions to the development and implementation of President Clinton's executive order regarding the review of environmental implications of trade agreements, many members cited frustrations over the committee's inability to provide advice on other environmental policy issues. Few recognized environmental organizations still participate in the committee, and some members reported that the diverse interests represented in the group meant they had difficulty reaching agreement and providing clear advice.[29] Finally, despite USTR's efforts to convene meetings of the tier-2 committee designed to address the trade issues of concern to state and local governments, the Intergovernmental Policy Advisory Committee met only once in fiscal year 2000 and once in fiscal year 2001, both via telephone conference calls. Both members and negotiators reported that the lack of regular meetings was a barrier to the optimal functioning of the committees.

[28]All but two of the Labor Advisory Committee respondents had attended steering committee meetings in the past year.

[29]All TEPAC members responding to our survey reported that their committee had "mixed" or "different" views on trade policy; no member reported that the committee had similar views. In comparison, about half of the other respondents to our survey stated that their committee members held similar views on trade policy.

Third, members and negotiators believe the system's capacity for cross-fertilization among committees should be strengthened. Although functional committees on issues such as customs and standards have been established and are supposed to include representatives from industry committees, participation by such representatives is reported to be limited. Many issues—such as antidumping, biotechnology, and transparency in trade regulation—cut across several committees, but the system's capacity to handle them is limited. A negotiator for antidumping, for example, generally consults only with the ferrous ores and metals committee (ISAC 7), which includes steel, on such matters. Although FACA and Section 135 of the Trade Act do not preclude agencies from consulting with a cross-section of members on such issues, USTR and Commerce have not generally taken advantage of this opportunity. Consulting with members from different committees on an ad hoc basis also would not produce the formal committee advice negotiators prefer. Some mechanisms for cross-fertilization already exist. A Committee of Chairs of the ISACs and IFACs is empowered to provide collective advice and provide a cross-section of views. Joint meetings of committees have also been convened. For example, members of the labor committee reacted favorably to an initiative by the USTR services negotiator to conduct a joint meeting of the services and labor committees to discuss the issue of temporary entry of foreign workers into the United States. Survey respondents supported additional steps to better address cross-cutting issues, such as sharing meeting agendas and recommendations—an idea that USDA is exploring.

Officials and Members Indicate Limited Involvement by Some Negotiators

Some agency officials and committee members believe that the quality of consultations suffers because USTR is not as engaged as it should be with the advisory process. While 88 percent of the members responding to our survey supported ("strongly support" or "generally support") actions to ensure that USTR officials attend committee meetings on a regular basis (see app. IV, question 18), we found that some committees have had little or no contact with USTR. For example, although the head of the USTR office that manages the advisory committee system said the office works actively to ensure that USTR's negotiators consult with the advisory committees, several DFOs told us that arranging for USTR negotiators to meet with their committees is one of their most difficult tasks. In one example, two DFOs said they had never met their USTR liaison, nor had they been able to arrange for the liaison to attend their committees' meetings. One of these DFOs added that, despite attempts, they have not been able to identify anyone at USTR who covers their issues, and, consequently, no one from USTR has attended the last five committee meetings. Even obtaining negotiating calendars is difficult, another official

reported, making it hard to ensure that committee meetings are scheduled to support trade policy demands.

Our analysis of documents provided by USTR revealed that USTR negotiators have not been actively working with some committees. Attendance records do not indicate who was present for what portions of committee meetings. As a proxy for this data, we reviewed scheduled speakers at tier-3 committee meetings in fiscal years 1999 to 2001. We found that, on average, USTR negotiators were scheduled to brief committees on 42 percent of the topics raised at the meetings. However, for 10 of the tier-3 committees, the USTR negotiators were scheduled to brief on 32 percent or fewer of the topics discussed.[30] USTR argues that at tier-3 committee meetings the most knowledgeable speaker is often an employee of another agency, not a USTR official, because that agency works most closely with the technical information that is important to the committees. However, a perceived lack of attention by USTR was a source of concern to some members, who believe that the committee system was intended as a mechanism for negotiators to obtain advice on trade policy and agreements. For example, a committee chairman told us that a USTR negotiator had not been meeting with its committee and put forward a tariff proposal in ongoing FTA negotiations that placed the committee's product in the longest phase-out category. However, because many U.S. producers now import, the committee actually favors lowering tariffs more rapidly.

Seven of the 27 USTR negotiators with whom we met stated that they prefer to obtain advice outside the system because advisory committees cannot provide the type or quality of advice that they need. For example, three of the seven negotiators handle bilateral issues with key trading partners and shared this view. One negotiator said that the committees could not provide guidance on cross-cutting regulatory issues, so he speaks to associations or key companies that can provide the necessary advice. The negotiator also said that the committees generally do not provide timely, targeted responses orally or on paper. The second negotiator does not work with the ISACs or IFACs at all and, instead, uses informal contacts to obtain industry input. She explained that the ISACs are too broad to assist with the detailed issues she handles in bilateral trade negotiations. The third negotiator agreed that the ISACs were most useful when dealing with major, comprehensive negotiations like the Uruguay

[30]The 10 committees are ISAC 1, ISAC 3, ISAC 4, ISAC 5, ISAC 6, ISAC 9, ISAC 11, ISAC 14, IFAC 4, and the ATAC on Fruits and Vegetables.

trade round. She had not used the system very much in the past 4 years and stated that, in her opinion, the system was not designed to handle the specific disputes, often involving litigation, that dominate bilateral trade relations. One of the two USTR agriculture negotiators we interviewed said the committees these negotiators work with often fail to advance policy because they do not narrow differences among members' competing interests. A senior industry negotiator, meanwhile, indicated that the wealth of information she obtains through informal channels is more helpful than advisory committee input.

Consultation Process Provides Limited Accountability and Means to Ensure Consideration and Use of Advice

The committee system provides limited accountability to ensure that committee positions on trade negotiating objectives are considered, as called for in Section 135 of the Trade Act. Prior to January 15, 1994, trade advisory committees affected by certain bilateral or multilateral trade negotiations were required to report to the President, Congress, and USTR at the conclusion of negotiations.[31] This requirement was linked to legislation that gave the President the authority to negotiate certain trade agreements and submit them for congressional approval under expedited legislative procedures. The reporting requirement lapsed when the negotiating authority expired in 1994 and was not renewed until the recent passage of the Trade Act of 2002, which granted the President Trade Promotion Authority.[32] According to a former USTR official, this lapsed requirement was an essential element in the trade advisory committee process because it assured Congress that the executive branch had sought and considered private sector advice. Without this reporting requirement, there was limited accountability in the advisory committee system.

Moreover, mechanisms for tracking and distributing committee advice to senior agency officials are not routine or reliable. Instead, agency officials report that advice is transmitted through diffuse channels that range from formal to informal. At the formal end of the spectrum, there is no requirement that advisory committee input be sought before USTR officials submit documents on U.S. trade policy for interagency clearance by the Trade Policy Staff Committee. Although such documents sometimes include a section on private sector views, our examination of selected documents drafted by USTR in 2000 to 2002 revealed that many did not

[31] 19 U.S.C. §§ 2155(e), 2902 (e)(4).

[32] P. L. No. 107-210, 116 Stat. 933.

acknowledge solicitation or use of advisory committee input. The problems of tracking and distributing committee advice are aggravated bathe predominance of oral, nonconsensus committee advice offered during discussions at meetings. While oral advice from a range of perspectives can be valuable, it does not provide as clear guidance as written, consensus advice, which is easier to track and respond to. Commerce's training manual for DFOs notes that "advisors should be encouraged to provide advice in writing, as advice imparted at meetings is often not captured for follow-up and is difficult to document. Members often incorrectly assume that resolutions made at meetings are passed to action officials by the DFO or that minutes are widely circulated in a timely manner."

Questions have been raised about how responsive agencies are to written committee advice. A number of chairmen felt such advice received more serious consideration, but several chairmen expressed frustration to us about nonsubstantive or untimely replies to their committees' letters. One Commerce DFO stated that, at Commerce, committee letters are not always sent to officials responsible for the issues involved and instead go up the administrative chain and end up in a bureaucratic "black hole"; another DFO reported that the letters from the committee on which he serves have not been answered. Commerce denies that this is typical, indicating that committee letters are considered controlled correspondence that involves distribution of the incoming letter and review of the draft reply by responsible officials. Although officials at Commerce told us that it is common to send pro forma, rather than substantive, responses to committee letters, they noted in agency comments that this is generally because final U.S. policy has not been decided. USDA recently initiated a practice of summarizing resolutions made and sensitive issues raised at advisory committee meetings for senior USDA and USTR officials in an effort to improve agency awareness of and accountability for committee advice.

Finally, Section 135(i) of the Trade Act requires the executive branch to inform committees of "significant departures" from committee advice. However, 41 percent of survey respondents reported that agency officials informed committees less than half of the time when their agencies pursued strategies that differed from committee input; only 22 percent reported that they were always or almost always informed of significant departures from committee advice (see app. IV, questions 8 and 9). About 86 percent of the respondents reported that they would support obtaining more feedback from USTR (see app. IV, question 18).

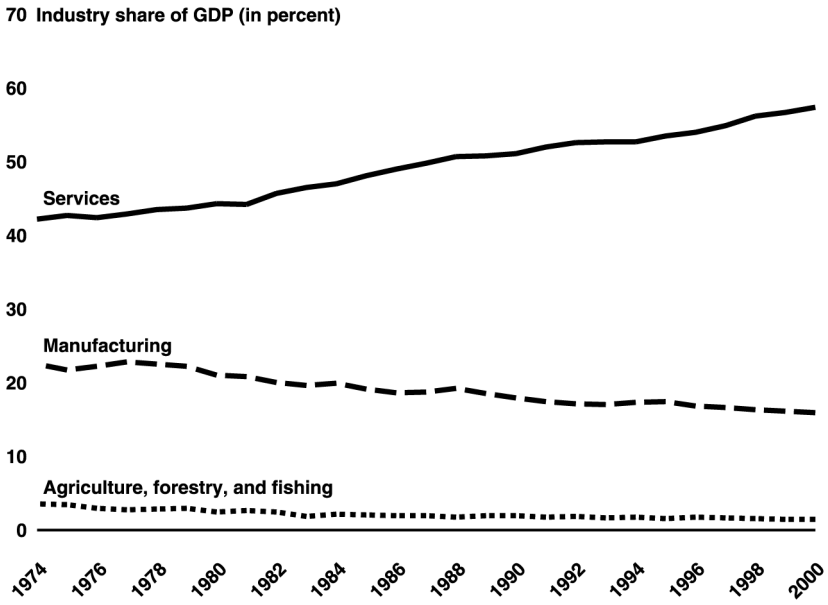
Advisory Committee System's Structure and Composition Do Not Fully Reflect U.S. Economy and Trade Policy Needs

Mismatches between the advisory committee system and the U.S. economy and trade policy issues suggest that the system is not positioned to provide the executive branch with all the advice it needs or to assure Congress that negotiated agreements are fully in U.S. interests. While most U.S. agricultural and industry sectors are represented in the committee structure, the composition of the system does not proportionally match each sector's economic significance. Also, some specific industry committees have gaps in coverage. The structure of the system has not evolved fully to address new trade policy issues and stakeholders, and incorporating nonbusiness groups has been difficult.

Major Industry Sectors Represented but Membership Composition Not in Balance with Economy

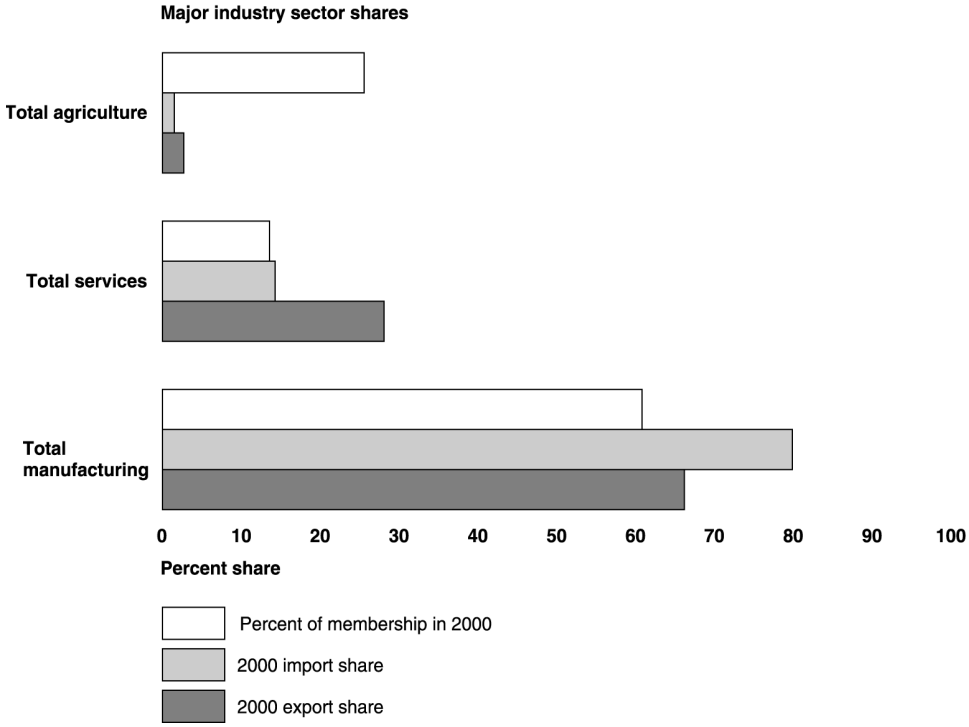
In the 28 years since the advisory system's creation, the U.S. economy and trade have shifted toward services and high-technology industries (see fig. 4). However, membership composition and the number of committees that comprise the system's structure are still heavily weighted toward the agriculture and manufacturing sectors (see fig. 5). In 1974, the committee structure was largely designed to enable the private sector to provide input on tariff negotiations, the principal issue in multilateral trade negotiations at that time.

Figure 4: Industry Share of GDP, 1974-1999



Source: GAO analysis.

Figure 5: Major Industry Shares of Membership and Trade, 2000



Source: GAO analysis.

To determine whether the advisory committee system's structure and composition reflect the current U.S. economy, we examined calendar year 2000 U.S. industry sector trade and output data and compared these with the corresponding membership data from the tier-3 industry sector advisory committees and agricultural technical advisory committees.[33] We found the following:

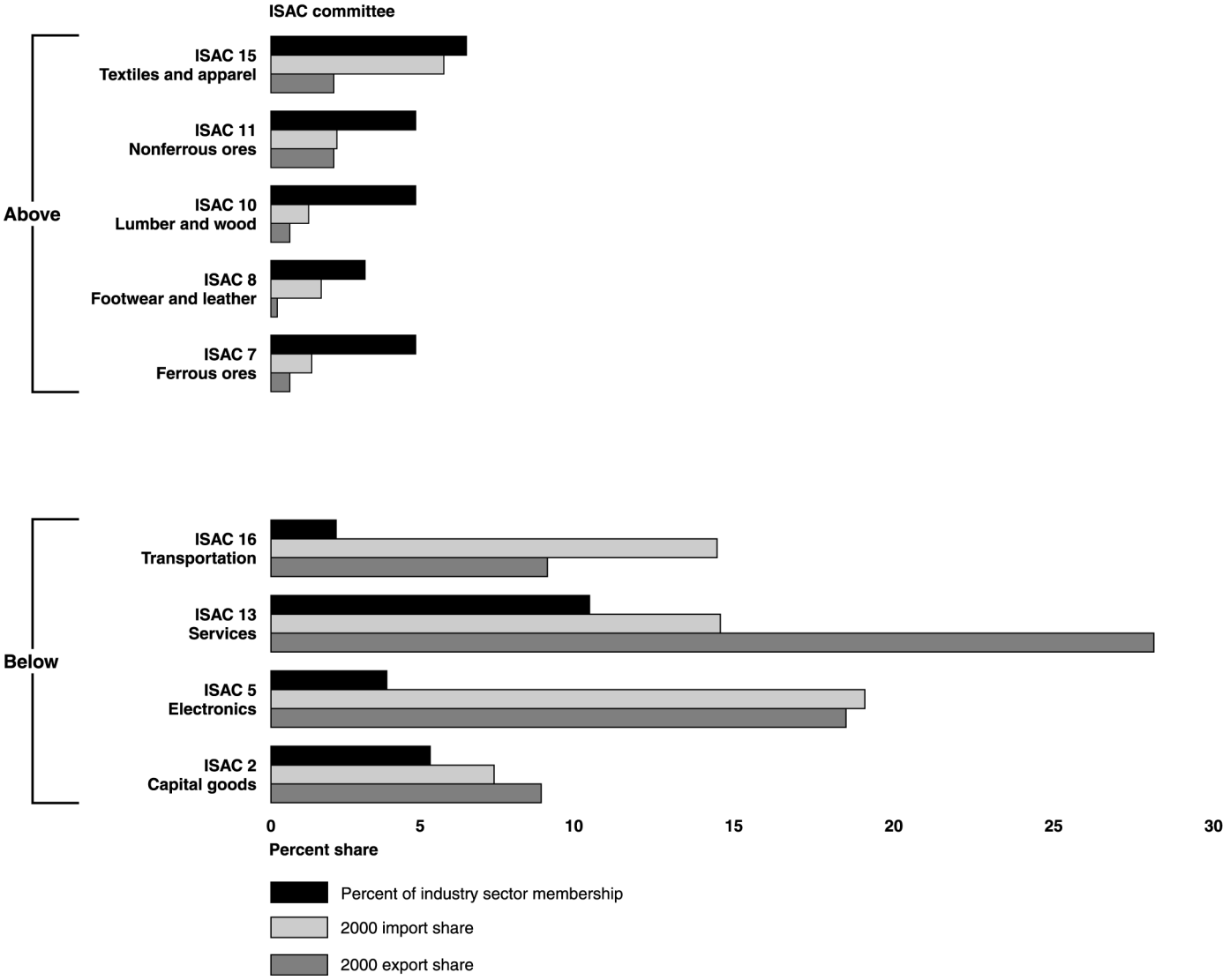
- The services sector accounts for the largest share of U.S. output (more than 50 percent) and a sizable share of U.S. exports (almost 30 percent); these shares both increased sharply since 1974. Yet the committee system's structure has only two services sector committees (the same number it had 20 years ago), and its composition includes fewer than 50 members from services.

- The number of committees in the system's structure is heavily weighted toward manufacturing, which has 15 of the 33 committees. This appears to be consistent with manufacturing's large share of U.S. goods exports. However, within manufacturing, some sectors such as textiles and apparel, nonferrous ores, and lumber and wood appear to be overrepresented in the committee system's membership compared with their shares of U.S. trade, while large, exporting sectors such as electronics (18.3 percent of U.S. exports) are underrepresented (see fig. 6).

- Committee member composition is heavily focused on agriculture, even though agriculture accounts for less than 1.5 percent of U.S. output and 2.7 percent of exports. In 2001, USDA boosted the number of agricultural technical advisory committee members from 111 to 180. As a result, 222 of the 745 members in the entire system during fiscal year 2001 represented agricultural interests.

[33]We used calendar year 2000 data in our analysis because at the time of our study it was the most current year for which complete annual trade data were available.

Figure 6: Manufacturing Committees with Membership Shares above or below Shares of Exports and Imports, 2000



Source: GAO analysis of Commerce and GSA data.

This is not to suggest that there should be an automatic and linear relationship between trade levels and committee membership. In a few cases, other factors, such as policy considerations, might justify the imbalances between economic importance and committee representation.

For example, sizable agriculture committees may be appropriate, since exports represent 40 percent of agricultural output and trade barriers are high. In services, the main services committee has been meeting monthly to keep up with comprehensive negotiations to improve the WTO General Agreement on Trade in Services. The government services negotiators we spoke with believed that the committee represents the sector well, and 70 percent of services committee respondents to our survey reported satisfaction with their sector's representation in the system. Certain manufacturing sectors such as textiles are recognized as import sensitive. Nevertheless, such reasons may not apply to the remaining committees. Indeed, according to Commerce and USDA officials, in most cases, current committee membership levels are functions of private sector interest in participating, rather than a deliberate effort by the agencies to determine appropriate levels of representation.[34]

Gaps in Industry Representation on Committees

Membership in the system is also not fully aligned with the economy because of gaps in industry representation that occur for at least two reasons. First, there are gaps based on whether companies choose to join the system or not, resulting in a lack of balance needed by negotiators to cover all the industry-specific issues they must address in trade negotiations. For example, according to one USTR negotiator, a major telecommunications services provider opted not to participate because it had access to USTR through other venues. The electronics committee does not yet have a representative from the software industry, and the intellectual property rights committee does not have a representative from the generic drug or noncontent producing copyright industry.[35] Second, major foreign companies, such as DaimlerChrysler, cannot participate because foreign-owned companies are generally prohibited from membership on committees under USTR and Commerce procedures and

[34]However, USDA officials applied a more selective process in choosing members for its tier-2 agricultural policy committee, focusing on representative interests and a membership ceiling of about 35 advisers.

[35]In its August 2002 comments on our draft report, Commerce reported that it was taking steps to fill the void in representation of the software industry.

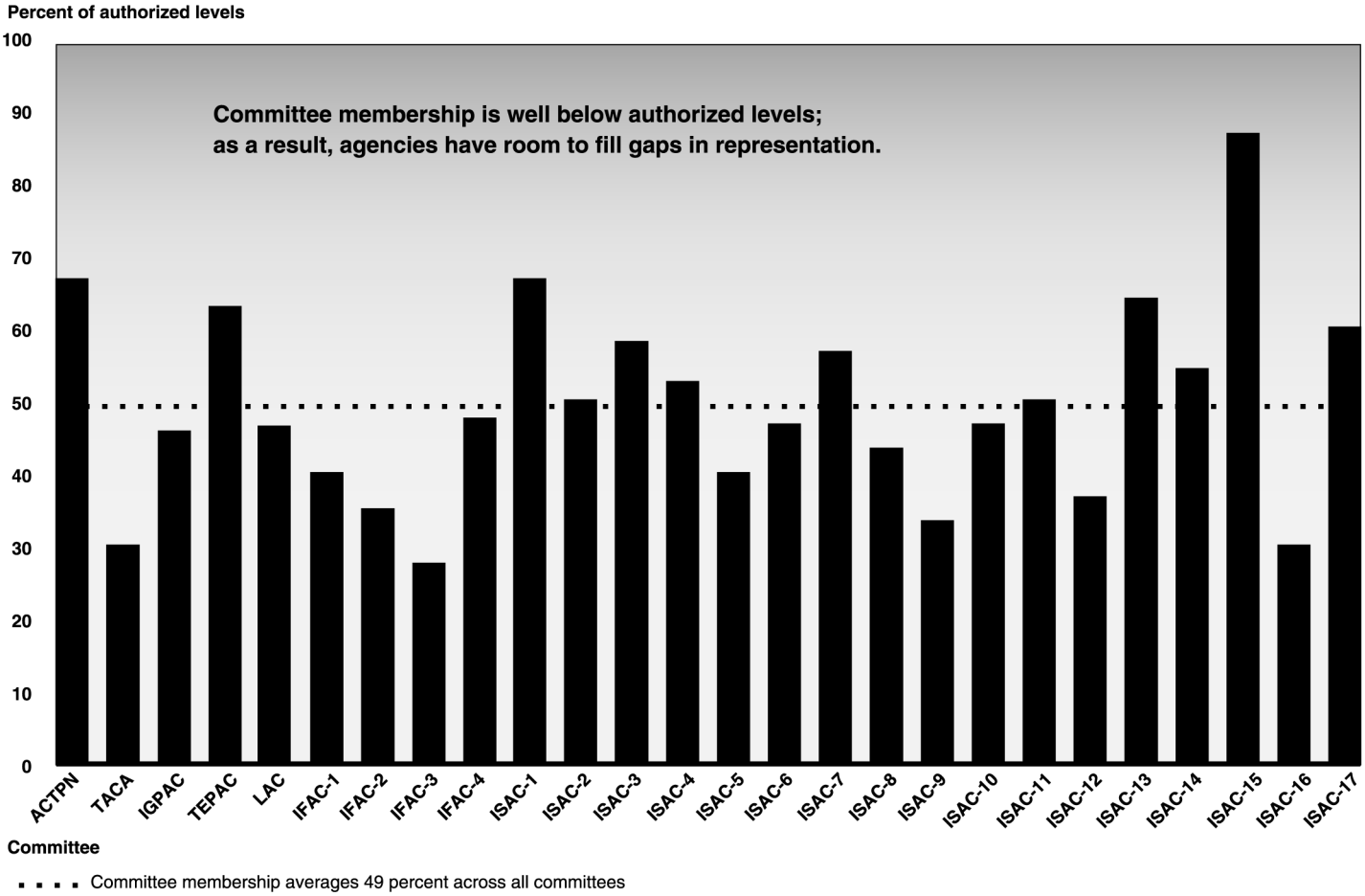
rules.[36] In commenting on a draft of this report, Commerce stated that the rationale for this long-standing policy is the sensitivity of the subject matter considered by the committees and possible conflicts that might be experienced by U.S. firms that have foreign owners. U.S. subsidiaries of foreign-owned firms accounted for more than 5 percent of U.S. employment and more than 20 percent of U.S. goods exports in 1999; such foreign ownership has grown with globalization and is particularly high in certain manufacturing sectors, such as transportation equipment and chemicals. These gaps in industry representation have encouraged negotiators to seek advice outside the advisory committee system, including from foreign-owned firms or trade associations that include such firms.

Need for More Outreach to Fill Gaps on Committees

Committee membership is significantly below the levels authorized in committee charters, averaging 49 percent of authorized capacity (see fig. 7) in 2001 and 48 percent of authorized capacity as of August 2002. The low membership rates can at times severely limit the availability of advice for negotiators from certain committees, particularly since just over half of the members attend meetings, on average, according to the attendance records made available to us. One negotiator with overall responsibility for a major bilateral FTA said he had hoped to rely on the committee system exclusively for advice, but had concerns that certain committees were not sufficiently filled to provide a meaningful cross-section of industry views. In addition, some meeting records we reviewed indicated that more government officials were in attendance than committee members. On the other hand, the fact that some committees are far below authorized membership levels means agencies have opportunities to fill gaps in industry representation.

[36]USDA does not prohibit membership of foreign-owned companies, though internal procedures and rules indicate that this factor can be taken into consideration in the nomination review. In practice, however, foreign-ownership was not considered in the most recent rechartering of USDA's six committees because USDA's application materials did not request information on ownership.

Figure 7: Committee Membership Levels as a Percentage of Authorized Membership Levels, Fiscal Year 2001



Source: GAO analysis of committee charters and membership rosters.

Officials at USTR, Commerce, and USDA acknowledge the need for increased outreach to fill gaps in membership and have recently taken steps toward this end. In the past, agencies primarily relied on recruitment through *Federal Register* notices to attract new members, rather than targeting specific needs or groups. Furthermore, negotiators were not always actively involved in identifying candidates to fill gaps in composition or representation. However, Commerce has stepped up its outreach by encouraging current members to recruit applicants, directly soliciting applicants at trade shows, holding meetings outside of Washington, and speaking before trade associations and outside groups. In

addition, USDA solicited applications through different means, including widely disseminating notices to state departments of agriculture and other farm groups. Some USTR negotiators reported urging industry contacts and experts to become involved, but USTR reports that a key obstacle to filling vacancies is the difficulty in identifying qualified individuals in the private sector who are willing to join the advisory committees, due to the significant amount of time and resources required to serve.

Committee System Generally Does Not Reflect Changes in Trade Policy Issues and Stakeholders

With little restructuring to mirror emerging trade policy issues and new stakeholders, the committee system is unable to provide some negotiators with all of the advice necessary to support trade policy development. New trade issues and stakeholders have emerged since 1974, as trade negotiations expanded beyond tariffs to include nontariff barriers to trade and other complex trade-related issues, such as intellectual property rights and health and safety. Moreover, the WTO negotiations launched in November 2001 cover topics such as the relationship between WTO rules and multilateral environmental agreements, and negotiations on a free trade agreement with Chile cover investment and competition (antitrust) policy. These issues require functional expertise and expand the number of U.S. interests concerned with and affected by trade agreements. Trade negotiators with whom we spoke stated that there are gaps in the committee system structure regarding functional issues such as investment and government procurement and in representation of stakeholders in such areas as public health.

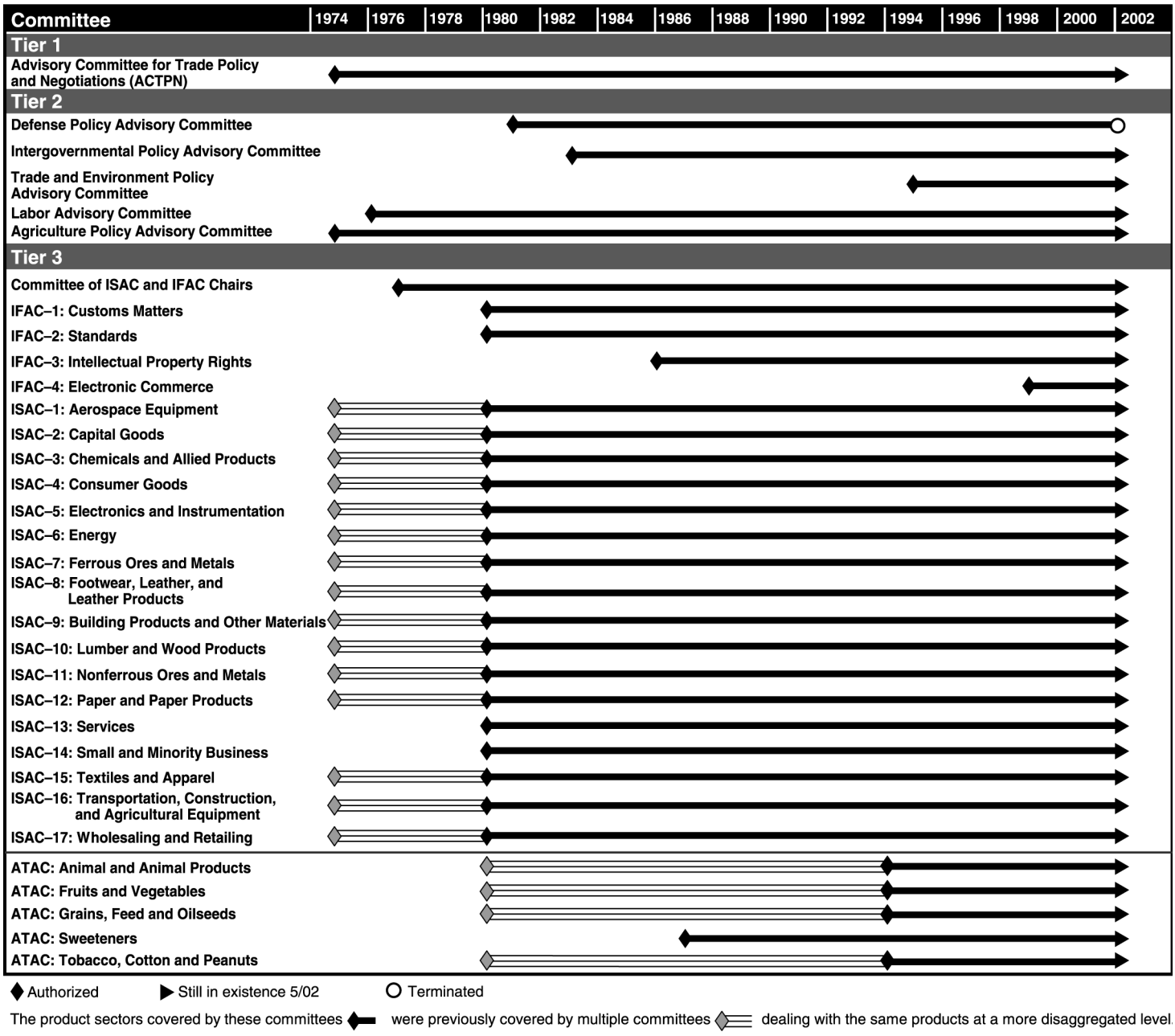
There have been few changes in the committee system's structure to address these new issues and avoid gaps in coverage. Section 135 of the Trade Act gives USTR flexibility to restructure the committee system to reflect changes in U.S. international trade interests. However, in the past decade, only 3 committees—the Trade and Environmental Policy Advisory Committee, the Trade Advisory Committee for Africa, and the Industry Functional Advisory Committee on Electronic Commerce—have been

added to the 34-committee structure.[37] Most of the remaining committees have existed for more than 20 years (see fig. 8).[38] USTR officials acknowledge the need to update the committee system to reflect the current economy and new trade issues, but add that the agency would need external guidance to support any sensitive decisions affecting existing committees.

[37]Although neither Section 135 of the Trade Act nor agency implementing procedures and rules limit the number of committees that may be formed for tiers 2 and 3, executive order 12838 places some restrictions on the overall number of advisory committees subject to FACA. The legislative history of Section 135 indicates that at least in 1974, Congress thought that approximately 30 advisory committees might be sufficient. S. Rep. No. 93-1298, at 102 (1974); H.R. Rep. No. 93-571, at 38 (1973). Furthermore, the legislative history of the 1979 amendments to Section 135 show congressional intention to substantially reduce the number of committees from the 45 that were operating at that time. S. Rep. No. 96-249, at 259 (1979); H.R. Rep. No. 96-317, at 188 (1979).

[38]Some consolidation of the agriculture committees in the mid-1990s eliminated technical advisory committees on oilseeds and processed foods. The committee on intellectual property rights was created in 1986.

Figure 8: Timeline for Authorization of Existing Trade Advisory Committees



Source: GAO summary of GSA committee data.

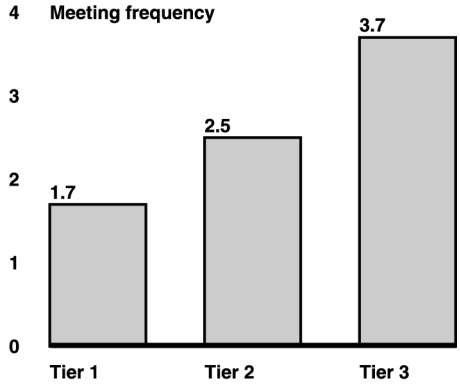
Note: The Trade Advisory Committee for Africa, first chartered in 1995 and still technically in existence, is not pictured in figure 8 because it has never been constituted or met.

According to a former USTR official, a USTR effort to review the committee system in 2000 did not even address the question of how well the system was meeting USTR needs, because the agency did not have the time to ask negotiators what they wanted from industry advisers. In some cases, agencies forego addressing some recognized needs for advice on new issues because of the time and effort required to create and amend committees. For example, two USTR and Commerce negotiators, who are in charge of their offices and oversee other negotiators, told us that current ad hoc methods for obtaining advice on investment policy are inadequate and that they believe a separate committee on investment would be desirable. However, they expressed reservations about undertaking the considerable effort involved to form one. (Commerce spent more than a year establishing the E-commerce advisory committee.)

Difficulties Incorporating Nonbusiness Stakeholders as Committee Members

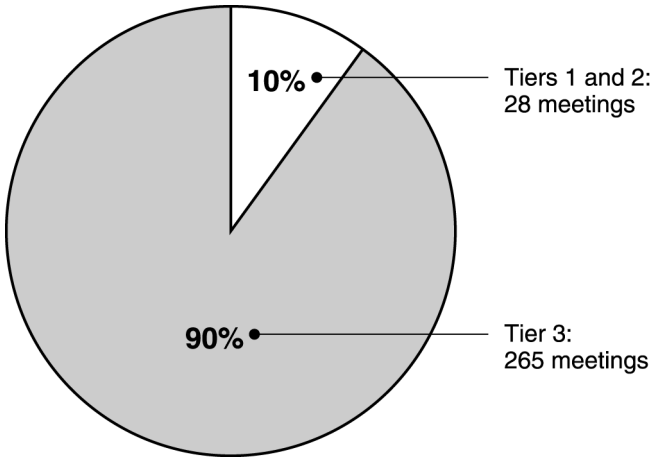
Although many new trade issues impinge upon domestic regulatory areas that are of concern to nonbusiness groups, USTR and the other managing agencies have had difficulty incorporating nonbusiness stakeholders into the committees. Some nonbusiness interests from the labor, environment, and consumer communities participate in the committee system but stated that they feel marginalized within it. Most nonbusiness members currently participating in the system are placed on a few committees in the second tier, where committees are less active and productive than in the third tier, as shown in figures 9 and 10. New stakeholders in the trade process, such as public health, development, and gender advocates, have limited or no participation in the formal committee system, even though topics such as intellectual property are of interest to them. Some negotiators on this topic and on services believe that nonbusiness stakeholders' perspective is useful and necessary in formulating U.S. trade policy. However, the extent of participation by nonbusiness members on tier-3 committees is still an unresolved legal issue.

Figure 9: Average Number of Meetings Per Committee by Tier, Per Year, Fiscal Years 1999-2001



Source: GAO analysis of advisory committee meeting records and annual reports.

Figure 10: Absolute Number of Meetings by Tier, Fiscal Years 1999-2001



Source: GAO analysis of meeting data.

Nonbusiness participants with whom we spoke also feel marginalized because they have difficulty ensuring their views get serious consideration. For example, the ACTPN is meant to provide overall policy advice and is required to be broadly representative of key sectors and groups affected by trade. Six of the 33 current members represent nonbusiness interests. In 2000, the three labor representatives temporarily resigned from this

presidential committee because the chair said the committee would only meet once and its sole focus would be the granting of Permanent Normal Trade Relations to China. The labor representatives felt that their issues were not being addressed and in their resignation letter said that the advisory process "relegates minority views to a marginalized dissent."

Key Representation Issues Have Not Been Resolved, Despite Legal Challenges

Most of the 22 committees administered by Commerce do not routinely allow representation from nonbusiness interests. As a result of legal challenges to the business-only composition of several of the Commerce committees,[39] two of these committees (lumber and paper products) now have environmental representatives and are reported to be functioning productively. A third committee, chemicals, represents the second-leading manufacturing export sector but still lacks a permanent environmental representative as called for by a settlement order, resulting in the committee's operations being interrupted for the second time in 2 years.

Outside of these three committees, the extent to which nonbusiness interests, including environmental interests, can be represented on tier-2 and tier-3 committees has not been completely resolved. Neither Section 135 of the Trade Act nor its legislative history is clear about how that statute relates to the Federal Advisory Committee Act's "fair balance" requirement[40] or about how to apply "fair balance" in the context of a trade advisory committee system largely composed of discrete interests (see app. II). Recently, the Commerce Department published a notice indicating that except for environmental representation in the three committees where representation has been successfully challenged, "non-government organizations and academic institutions do not qualify for representation on a committee."[41] Nevertheless, without further clarification by U.S. appellate courts or amendments to the current legislation about what fair balance means for trade advisory committees, some ambiguity about this issue will remain. Negotiators, agency officials, and committee members have suggested the need for Congress to clarify its intent for representation in the committee system.

[39]*Northwest Ecosystem Alliance v. USTR*, Civ. No. C99-1165R (W.D. Wash. 1999); *Washington Toxics Coalition v. USTR*, Civ. No. C00-0730 (W.D. Wash. 2001).

[40]5 U.S.C. App. § 5(b)(2).

[41]67 Fed. Reg. 12969-70 (Mar. 20, 2002).

The current legal uncertainty also raises several practical issues. First, the lack of clarity in what fair balance means for these committees makes the system more vulnerable to court challenges. Second, our interviews with agency officials suggest that these uncertainties may make it difficult for agencies to consider revisions in the committee structure to better address functional issues such as investment and public health, which are of interest to business and nonbusiness groups.

Other Issues Related to Nonbusiness Stakeholders

The appointment of environmental representatives to tier-3 committees has generated concerns among some current committee members. For example, the committee of ISAC/IFAC chairmen wrote to USTR expressing concern that having nontraditional members on their industry sector and functional committees would make the committees less productive in performing their primary mission of ensuring that U.S. negotiators were aware of industry interests and positions. One committee chair said that business members would be less forthcoming about discussing trade issues because of concern that nonbusiness representatives might release sensitive information to the public, thus undermining candor and confidence. More than 60 percent of respondents to our survey opposed adding more nonbusiness interests to their committees (see app. IV, question 18). These concerns were echoed many times in our interviews with members who feared they would lose their voice in trade policy or said that they would be unwilling to participate if the committees become unproductive "debating clubs." As an alternative, the ISAC/IFAC chairmen recommended "the establishment of a functional committee or committees to serve as parallel and equal fora for involvement by non-traditional groups."

Our interviews and review of agency documents found that USTR has been making efforts to provide information to, and obtain input from, various nongovernmental organizations outside the formal advisory committee process. We contacted several such organizations that had demonstrated an interest in U.S. trade policy by submitting formal comments in response to USTR *Federal Register* notices or attending USTR public briefings. While these groups welcomed increased outreach by USTR, most felt that having a role in the formal advisory committee system was still desirable, saying it would enhance accountability and add balance to U.S. trade policy. However, several feared that creating NGO-only committees would "ghettoize" them within the system and fail to ensure equal access to information and decision makers. These NGOs favor a broader overhaul of the system but acknowledge that NGOs often do not have the requisite resources or desire to participate.

System Lacks Sufficient Leadership, Administrative Support to Reliably Meet Mandated Responsibilities

Despite relatively high rates of member satisfaction with the support by USTR and other agencies such as Commerce and USDA, we found in our review that lack of policy direction and weak system administration at executive branch agencies are limiting the advisory committee system's capacity to accomplish its statutory mission and contribute to U.S. trade policy. USTR, as the lead agency, has not provided clear policy direction. Execution of administrative tasks needed to keep advisory committees operating and relevant has been slow. The limited resources USTR and the other key agencies devote to managing the advisory committee system have not been sufficient to position them to maximize input from the committees.

Clear Policy Direction and Commitment to Advisory Committee System Lacking

Several experts and committee members stressed the importance of organizational leadership from the top in creating an environment for vital and effective advisory committee input into U.S. trade policy. However, USTR has taken a decentralized and delegated approach to obtaining private sector advice and has not demonstrated a commitment to assume a leadership role in the advisory committee system. Through interviews with USTR negotiators and other officials, we learned that the agency's overall policy of consulting with the private sector generally has not ensured that the formal statutory advisory committees are systematically consulted. Agency officials explained that negotiators are encouraged to consult with the private sector but that they exercise individual discretion over whether to consult with the advisory committees. As noted earlier, some negotiators whom we interviewed reported using the committee system to obtain advice, while others consult the committees only on a pro forma basis or do not consult them at all. This unevenness has economic consequences: In one example, USTR did not inform a committee that a general effort to reduce discriminatory tariffs against U.S. goods in central and eastern Europe was under way, and as a result, its industry sector was not included in the final package of agreed tariff cuts.

Our examination of USTR and Commerce procedures found that they do not provide broad guidance to USTR officials and other negotiators on their obligation to consult with advisory committees or on when, how, and with whom to consult. Instead, they are largely aimed at committee members and agency administrators and focus on committee operations. A USTR negotiator and committee members have suggested that clearer expectations for the consultation process need to be developed for both negotiators and advisers. Without them, misunderstandings do occur. For

example, one committee chairman, who is generally satisfied with USTR's use of advisory committees, was outraged when USTR neglected to consult his committee on an issue of long-standing interest and, instead, sent a position paper in a broadcast E-mail to all advisers in the system with a 2-day deadline and then presented the proposal to other nations. Although, at the time, a USTR administering official said the broadcast E-mail was typical, the negotiator responsible later acknowledged that USTR mishandled the process for seek advice in this instance.

Slow Administrative and Security Procedures Disrupt Committee Operations

Slow and cumbersome administrative and security processes have also hindered committee operations. Under FACA, Section 135 of the Trade Act and implementing guidance and procedures, USTR and other federal agencies are responsible for placing new members on committees, rechartering committees, and creating new committees. These are important functions that keep the advisory committee system operating and relevant. However, our work at three key administering agencies—USTR, Commerce, and USDA—suggests that present methods for accomplishing these responsibilities do not ensure that the system functions reliably.

Turnover of membership occurs regularly given the pace of global business, industry consolidation, and distress in certain segments of the U.S. economy. Yet, applications for prospective members spend months in the approval pipeline before the members can participate (see app. III). For example, USTR submitted a list of candidates for appointment to the White House for a presidential appointment to the Advisory Committee for Trade Policy and Negotiations in mid-February 2002, which, as of early September 2002 had not yet been cleared by the White House.[42] Agency officials acknowledged that these delays are frustrating for potential members and can be a disincentive to joining the system. Indeed, 40 percent of our survey respondents were dissatisfied with the time it takes to appoint new members to committees and 35 percent said the time to appoint new members has deteriorated (see app. IV, questions 17 and 22).

[42]A White House official indicated to us in early September 2002 that over 100 candidates had been considered for the more than 35 vacancies on the committee, that the President had approved a list of persons whom he intends to appoint, and that these persons were presently undergoing the full background investigation associated with a presidential appointment. USTR's security clearance process will not begin until after this background investigation is complete.

Our analysis of agency documents indicates that the full appointment process, which includes the time for members to complete the application materials and the time for a required security clearance, regularly takes 6 months or longer. Some time-consuming elements of the clearance process are beyond the trade agencies' control.[43] However, all three agencies now pay for the expedited security investigation offered by the Office of Personnel Management. Some agencies have taken other streamlining steps, such as providing interim security clearances.[44] According to DFOs and other agency officials, applying these reforms more widely could alleviate this major irritant.

FACA's requirement that committees continued beyond 2 years must be rechartered has been disruptive for the trade advisory committee system, posing a particular burden for new administrations until their key policymaking vacancies are filled. In several cases during our audit period, committees ceased to meet and thus could not provide advice, because the agencies had not adopted new charters and appointed members. For example, the agriculture advisory committees did not meet between April and October 2001 while USDA went through the process of appointing members for its six committees.[45] The committee charters and rosters expired before the United States was able to vet its market access proposal for the Chile FTA negotiations, and as a result, a lead USDA negotiator reported that he was not able to use the committees to obtain input on the proposal. The Labor Advisory Committee's charter expired in July 2001 and was not renewed until February 2002. As a result, the LAC Steering Committee could no longer meet or provide formal committee advice as

[43]Aspects over which agencies have limited control include the information required on standardized forms, the time it takes members to return paperwork, and the time it takes the Office of Personnel Management (OPM) to complete a background investigation.

[44]For instance, the Department of Commerce conducts the major portion of its internal vetting of candidates concurrently with the security clearance process, resulting in the most timely appointment process of the three agencies. Commerce also sends the membership applications to the various offices required for internal vetting at the same time, rather than sequentially. Members of committees administered by USTR and USDA, on the other hand, only begin undergoing security clearance procedures at the conclusion of the full internal vetting period, which can also be quite time consuming. Both USTR and USDA, however, have offered interim clearances to appropriate candidates, which allow them to participate pending the outcome of the investigation. Although Commerce uses this procedure for its employees, it has not adopted the procedure for committee members. Commerce officials said they are exploring the possibility of interim clearances for future appointments.

[45]According to USDA, the rechartering process was also delayed due to the change in administration and pending arrival of senior agency officials.

efforts to launch new WTO negotiations at the Doha Ministerial in Qatar were under way. (Only one of the LAC respondents to our survey reported that the system was fulfilling its statutory role in U.S. trade policy.) Commerce successfully avoided disruptions in its most recent rechartering by starting the process for the 22 committees it manages well before their charters expired. However, the effort to appoint new members and obtain security clearances required the full-time attention of two of the three Commerce employees responsible for managing the committees and took 7 months to complete. Commerce, USDA, and USTR officials said the tasks associated with the rechartering process—such as preparing new charters, analyzing the attendance records of members up for reappointment, and reviewing member application information—places a significant burden on their ability to manage the committee system and detracts from their ability to support committee operations.

Resources Devoted to Committee Management Out of Step with Required Tasks

The resources USTR and the other agencies devote to managing the advisory committee system do not match the tasks that must be accomplished to keep the system running reliably and well. (We recently testified on human capital shortages at trade agencies, including USTR and Commerce.[46]) According to annual reports that the agencies prepare for the General Services Administration, federal staff time allocated to managing all the committees totaled 15.60 full-time equivalent (FTE) positions[47] in fiscal year 2001 and averaged 0.47 FTEs per committee.[48] USTR officials said the current staffing levels in the office responsible—three positions with multiple responsibilities besides the committee system—do not allow them time to proactively manage committee operations. The recent head of the office said that simply restarting all the lapsed committees and keeping the rest of the system operating were occupying much of the time she could devote to the system.

[46]U.S. General Accounting Office, *Human Capital: Major Human Capital Challenges at SEC and Key Trade Agencies*, GAO-02-662T (Washington, D.C.: April 23, 2002).

[47]One FTE is equal to one person working full-time; two people working half-time; one person working half-time and two people working one-quarter-time, etc. A fraction of several employees' time can add up to half of an FTE.

[48]This does not include the time that negotiators spend briefing and discussing issues with committee members. We estimate that committee members themselves collectively spent about 4,320 hours of their time last year attending meetings. Our estimate assumes that half of the 720 members who attended meetings last year attended an average of 3 meetings that lasted an average of 4 hours.

Commerce and USDA manage more committees and face similar challenges. Commerce officials responsible for managing the Commerce committees reported that they must focus their limited staff on the rechartering and appointment processes, which has not allowed them to meet their responsibilities to attend all the committee meetings. However, some improvement may be forthcoming: In its official comments on our draft report, Commerce stated that it will shortly hire two new full-time staff to support administration of the committee system. Meanwhile, a USDA official in the office responsible for managing Agriculture's committees—which has one professional position devoted to advisory committee work and two other positions with multiple responsibilities in addition to managing the committees—said the reappointment process in 2001 took more than 85 percent of her time and prevented her from fulfilling other key job responsibilities, such as legislative liaison.

Resource limitations also affect the use of technology. Although committee members supported the use of technology to improve committee operations (79 percent strongly or generally supported increased technology to inform members and 60 percent supported the use of videoconferencing technology to enable greater participation in meetings), the cost of new technology is a significant determining factor in its adoption and use. Commerce is examining options to expand the use of its Web site for committee members, but the cost of options at the high end of estimates ($200,000)—which include the security safeguards needed for improved member access to sensitive documents—far exceeds available funding. Finally, a USTR official reported that the agency's live Web casts from the WTO Doha Ministerial were very costly (estimated at $50,000) and cannot be done on a routine basis. However, USTR plans to examine less expensive technological options, such as taped presentations through its Web site.

Conclusions

Despite several weaknesses we identified, negotiators, agency officials, and members told us that the advisory committee system Congress created 28 years ago still provides value to U.S. trade policy. Many negotiators report that input from the system has helped the United States achieve more beneficial trade agreements. Members devote time and contribute much to the process and report generally high satisfaction with many aspects of committee operations and effectiveness. Nevertheless, our work suggests that the committee system is not being used to full advantage and has lost some of its vitality in providing useful advice on trade policy matters. Consultations are not always timely or meaningful, and when

advice is provided, there is little assurance that executive branch officials are held accountable for considering it. Furthermore, the committee structure has not evolved fully to reflect today's economy. Some key trade interests that have recently surfaced—industries, issues, and stakeholders—are missing or poorly represented in the system. Conflicts over interpreting how FACA's fair balance requirement applies to the advisory committees have complicated the task of incorporating nonbusiness stakeholders. Low membership rosters for most existing committees further reduce the opportunity for negotiators to obtain a full range of private sector views. Finally, USTR's decentralized management of the committees has left the system without sufficient direction or support. With limited resources devoted to the system's functioning, agencies are struggling with administrative tasks such as security clearances associated with appointments and 2-year rechartering requirements. To perform the unique role in U.S. trade policy Congress has given it, the advisory committee system's capacity to provide frank and representative advice needs strengthening.

Because important multilateral, regional, and bilateral negotiations are currently under way for which ongoing advisory committee input is expected and desirable, improvements should be made to the existing system, particularly with regard to the timeliness and quality of consultations, gaps in representation, and committee administration. However, given the issues we identify, improving the system's readiness to play its envisaged role in U.S. trade policy will also require more fundamental reform.

Recommendations for Executive Action

As Congress seeks to provide new direction to the President on U.S. trade policy, we recommend that the U.S. Trade Representative, as the lead agency for the committee system, work with the Secretaries of Agriculture, Commerce, and Labor and the EPA Administrator to make the existing system's consultation process more meaningful and reliable.

1. Specifically, we recommend that the agencies adopt or amend guidelines and procedures to ensure that

- advisory committee input is sought on a continual and timely basis,
- consultations are meaningful,

- committee advice is considered and committees receive substantive feedback on how agencies respond to their advice;

2. continue to increase outreach efforts to fill gaps in committee composition and revitalize membership;

3. streamline the nomination and appointment process for committee members and prevent disruptions in committee activity due to lapses in charters; and

4. provide sufficient technological and human resources to support meaningful consultations and ensure effective functioning of the system.

In addition, we recommend that the U.S. Trade Representative work with the Secretaries of Agriculture, Commerce, and Labor and the EPA Administrator to conduct an assessment of the entire system and update it to make it more relevant to the current U.S. economy and trade policy needs.

In conducting this assessment and updating the system, USTR, in conjunction with the other agencies, should seek to

1. more closely align the system's structure and composition with the current economy,

2. better incorporate new trade issues and interests,

3. more reliably meet negotiator needs, and

4. better match agency resources to the tasks associated with managing the system.

Matters for Congressional Consideration

To assist the U.S. Trade Representative and the other agencies in updating the system and improving advisory committee operations, Congress may wish to consider

1. clarifying its intent regarding how to apply the FACA fair balance requirement to the trade policy advisory committee system, and

2. providing an exception to FACA administrative requirements by extending the charter period for the trade policy advisory committees beyond 2 years.

Agency Comments and Our Evaluation

We provided draft copies of this report to the following agencies for review: the Office of the U.S. Trade Representative, the Department of Agriculture, the Department of Commerce, the Department of Defense, the Department of Labor, and the Environmental Protection Agency. We received formal comments from USTR, Agriculture, and Commerce (see apps. VI through VIII). The three agencies, as well as Labor and EPA, also provided technical comments, which we incorporated in the report as appropriate. The Department of Defense reviewed the report but did not provide formal comments.

USTR and USDA agreed with our overall findings and reported on initial steps they are taking to implement our recommendations. Commerce characterized the report as thorough and fair, but urged us to make a number of modifications. In general, Commerce believes that we underplay member satisfaction with the system. Commerce also took issue with our conclusions on apparent mismatches between the committee structure and the current U.S. economy and agencies' administrative capacity. Some of Commerce's comments contain new information or useful clarifications that we have added to the report—for example, language about the agency's concerns over security breaches and additional details about outreach efforts. However, as explained in appendix VIII, we do not agree with Commerce's changes related to members' concerns about the timeliness and quality of consultations, accountability for seeking and responding to committee advice, and the need to update the system's structure. We believe that the recent passage of Trade Promotion Authority and the ambitious negotiating plans that have since been announced only heighten the urgency of taking steps to ensure that U.S. negotiators have timely, meaningful, and representative input from the private sector on U.S. trade policy.

As agreed with your office, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to appropriate congressional committees and to the U.S. Trade Representative, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Defense, the Secretary of Labor, and the Administrator of

the Environmental Protection Agency. Copies will also be made available to others upon request. In addition, this report is also available on GAO's Web site for no charge at http://www.gao.gov.

If you or your staff has any questions about this report, please contact me on (202) 512-4128. Other GAO contacts and staff acknowledgments are listed in appendix IX.

Sincerely yours,

Loren Yager
Director, International Affairs and Trade

Scope and Methodology

This appendix discusses the scope and methodology for our work. We have included a separate segment at the end of appendix IV providing technical information on our methodology for the survey of committee members.

Scope

The scope of our review included analysis of 34 private sector advisory committees on all aspects of committee activities, as well as the 4 agencies that currently administer them: the Departments of Commerce, Labor, and Agriculture and the Office of the United States Trade Representative (USTR). The time period covered by our review was generally fiscal years 1999 to 2001.

At the time we initiated our review, three policy advisory committees in the second tier were in uncertain stages of activity. The charters for the Labor Advisory Committee and the Defense Policy Advisory Committee on Trade had expired in 2001, but Labor and Defense officials indicated that their agencies were rechartering the committees. A third policy advisory committee dealing with trade with Africa has a charter and seven members, but the committee had not met during our review period.

Our survey of members, which focused on committee operations, was under way when these uncertainties existed. Defense and Labor committee members were included in our survey, but the Africa committee's members were not. Ultimately, the Department of Labor rechartered its committee in February 2002. However, in January 2002, Defense officials informed us that the Department of Defense did not intend to reconstitute its committee, which had 10 members on its latest roster, as part of a departmental effort to reduce the number of advisory committees. Regarding the Africa committee, USTR informed us in March 2002 that it had rechartered the committee and was seeking to appoint more members to it. As a result, the Labor and Africa committees are included in our discussion of the committee's current structure and count of committees and members, but the Defense committee is not.

Methodology

For our first and second objectives--determining the advisory system's value to U.S. trade policy and which aspects of the consultation process participants indicate are and are not satisfied--we used three methods of inquiry: interviews, a survey, and document analysis.

Regarding interviews, in initial meetings with agency officials and other trade experts involved in the committee process, we were told that the best way to obtain information on how well the trade advisory committee system functions is to interview the key participants. These officials and experts stated that the available documentation on committee activities would not provide as comprehensive a picture as interviews. We therefore first conducted 168 interviews with every type of participant in the process, including 25 executive branch negotiators, 40 other agency officials, 30 committee chairmen, 50 committee members, and 15 trade experts. To gain the perspectives of organizations that do not currently participate in the advisory committee system, we interviewed selected representatives of nonbusiness non-governmental organizations (NGOs) having a demonstrated interest in trade policy. Interest was evidenced by submitting formal comments in response to USTR *Federal Register* notices or attendance at USTR public briefings.

In addition to interviews, we conducted a Web-based survey of 720 committee members and staff liaisons[49] between January and March 2002 to obtain views on matters such as overall satisfaction with committee operations and effectiveness. We surveyed all the members and staff liaisons whose names appeared on lists obtained from the Departments of Agriculture, Commerce, Defense, Labor, and USTR. We developed our questionnaire in November and December, 2001. We put the instrument on a special Web site on the GAO server, activated it on January 17, 2002, and kept it open until March 15, 2002. In all, we received a total of 515 usable responses to our survey, for an overall adjusted response rate of 72 percent. The response rate varied considerably by committee and by tier. For example, seventy-eight (78) percent of tier-3 members responded to the questionnaire, compared with 55 percent of tier-2 members and 57 percent of tier-1 members. Consequently, while we present the aggregated responses for all committee members who responded, we are not generalizing to the universe of all committee members. The survey also allowed for some open-ended responses. Members provided considerable commentary, which is reflected in the body of the report but is not summarized statistically. The survey results and a technical description of the survey methodology are in appendix V.

[49]Members of the Advisory Committee for Trade Policy and Negotiations (ACTPN), the Trade and Environment Policy Advisory Committee (TEPAC), and the Intergovernmental Policy Advisory Committee (IGPAC) are permitted to appoint one or more staff liaisons to help them prepare for and participate in committee deliberations. These liaisons have clearances and meet on their own; some also participate in member meetings.

Third, we collected and analyzed documents from four agencies that currently administer committees. Documentation generally covered fiscal years 1999 through 2001. Specifically, we collected and reviewed applicable laws, legislative history, and implementing rules; committee charters and rosters; agency operating procedures and other guidance; meeting notices, agendas, summaries, minutes, and transcripts; interagency decision memos; formal committee reports; and agency correspondence with advisory committees. We also reviewed written responses to an April 2000 *Federal Register* notice requesting suggestions to improve the advisory committee system.

To investigate whether the system matches the current U.S. economy and supports U.S. trade policy needs, we obtained and analyzed U.S. trade data and committee membership rosters, as well as information obtained during our interviews and Web-based survey. Specifically, we examined data on annual industry sector contributions to U.S. gross domestic product from 1974 to June 2000 and determined commodity shares of U.S. imports and exports using data collected by Commerce, the U.S. International Trade Commission, and the Department of Treasury. We defined commodity groups using Commerce's 4-digit Standard Industrial Classification level codes,[50] and we used Commerce's determination of how best to match each advisory committee to a commodity group.[51] We determined which industries are over- and under-represented in the committee system with respect to their U.S. import and export contributions by comparing this data with lists showing annual numbers of members on each committee in fiscal years 1999 through 2001. We also discussed the adequacy of coverage of industry sectors with agency and industry officials. We identified trade issues and associated stakeholders that have emerged since 1974 by reviewing academic and agency literature. We discussed the system's coverage of these issues and stakeholders in interviews with agency officials and selected business and nonbusiness organizations.

[50]These codes are available at dataweb.usitc.gov.

[51]Although services data were all grouped under the Services Industry Sector Advisory Committee (ISAC) 13 group, some services trade may be covered by ISAC 6 (Energy), ISAC 7 (Ferrous Ores and Metals), and ISAC 17 (Wholesaling and Retailing) groups. The data available did not allow the level of disaggregation needed to assign portions of overall services trade to these groups.

To examine how well USTR and the other agencies are managing the advisory committee system, we collected and examined available data from USTR, USDA, and Commerce about the time involved in the appointment process for new members. We also interviewed agency officials, negotiators, and committee members about agency practices and other factors that affect the extent of consultation with the advisory committees and the capability of the managing agencies to maintain full and active committees. Finally, for information about agency resources devoted to the committee system we obtained and reviewed the annual reports for each advisory committee for 1999 to 2001 from the General Services Administration (GSA) and conducted interviews with agency officials.

We conducted our work from August 2001 through May 2002 in accordance with generally accepted government auditing standards.

Applying Fair Balance Requirement to Trade Advisory Committees

The Federal Advisory Committee Act (FACA) includes a fair balance requirement that applies to each advisory committee covered by the act. In this regard, the legislative history of FACA shows that the focus of committee membership should be on the groups directly affected by the work of a committee, rather than whether these groups represent business or nonbusiness interests. The broad language of section 135 of the Trade Act of 1974 making FACA generally applicable to the trade advisory committees indicates that the fair balance requirement applies to them. Nevertheless, there is still some legal ambiguity about what this means within the context of the trade advisory committee structure. Aside from lack of clarity in the legislation, at this point, there appear to be too few decided court cases to show any trend in fair balance challenges by nonbusiness groups to the composition of trade advisory committees.

FACA Requires Fair Balance on Federal Advisory Committees

FACA, passed in 1972, sets forth certain requirements for Congress to follow in creating federal advisory committees.[52] One such requirement states that any legislation establishing an advisory committee shall require that the membership of the committee be fairly balanced in terms of points of view represented and the functions the committee performs.[53] GSA guidelines implementing FACA[54] indicate that to attain a fair balance of membership on an advisory committee, agencies should ensure that they consider a cross-section of those directly affected, interested, and qualified, as appropriate to the nature and functions of the committee.[55]

The legislative history of FACA shows that the fair balance requirement was intended to ensure that persons or groups directly affected by the work of a particular advisory committee would have some representation on the committee.[56] In this regard, the House Report on FACA criticized the composition of an advisory council for only having industry representatives. The report suggested that representatives of conservation,

[52]5 U.S.C. App. §§ 1-14.

[53]*Id.* § 5(b)(2).

[54]41 C.F.R. § 102-3.

[55]*Id.* § 102-3.60(b)(3).

[56]*National Anti-Hunger Coalition v. Exec. Comm. of the President's Private Sector Survey on Cost Control*, 711 F.2d 1071, 1074n.2 (D.C. Cir. 1983).

environment, clean water, consumer or other public interest groups should have been present at meetings with government officials to consider a proposed questionnaire regarding national industrial wastes inventory.[57]

FACA's Fair Balance Requirement Applies to Trade Advisory Committees

The Trade Act of 1974,[58] which mandated creation of advisory committees on trade policy, was enacted 2 years after FACA was passed. Section 135(f) of the Trade Act states that the provisions of FACA do apply to the trade advisory committees, with limited exceptions relating to open meetings and public availability of documents.[59] As the fair balance requirement is not one of the excepted FACA provisions, the requirement and the implementing GSA guidance would apply to the trade advisory committees established under section 135 of the Trade Act. This was one of the findings made by one of the two United States courts that have considered application of the FACA fair balance requirement to section 135.[60]

Trade Act Not Clear on What Fair Balance Means within Trade Advisory Committee Structure

Although the language of FACA indicates that the fair balance requirement applies to each advisory committee, there is some ambiguity about what this means within the context of the trade advisory committee structure. Section 135 of the Trade Act called for formation of three different kinds of trade advisory committees for the purpose of creating an institutional framework to ensure that representative elements from the private sector have the opportunity to present their views to U.S. negotiators.[61] The three-

[57]H.R. Rep. No. 92-1017, at 6 (1972).

[58]P. L. No. 93-618, 88 Stat. 1978 and following.

[59]19 U.S.C. § 2155(f)(2).

[60]*Northwest Ecosystem Alliance v. USTR*, No. C99-1165R (W.D. Wash. 1999). The other court did not directly address this issue.

[61]19 U.S.C. § 2155.

tier structure established by section 135, as amended,[62] (1) requires establishment of an Advisory Committee for Trade Policy and Negotiations (ACTPN) whose function is to provide overall trade policy advice (tier 1); (2) authorizes establishment of general policy advisory committees whose function is to provide general policy advice (tier 2); and (3) requires establishment of industry sector and functional advisory committees, as may be appropriate, whose functions are to provide technical advice and information about negotiations over particular products and other factors relevant to positions of the United States in trade negotiations (tier 3).[63]

The language of section 135(b), as amended, does show that ACTPN, the tier-1 committee, is to include both business and nonbusiness interests. Specifically, ACTPN is to be broadly representative of the key sectors and groups of the economy affected by trade and "shall include representatives of non-federal governments, labor, industry, agriculture, service industries, retailers, non-governmental environmental and conservation organizations, and consumer interests."[64] However, section 135 of the 1974 Trade Act and its legislative history do not specifically discuss how the fair balance requirement of FACA was intended to apply to the tier-2 and tier-3 committees. With regard to the general policy advisory committees of tier 2, section 135 authorizes, but does not require, the President to establish such committees for industry, labor, agriculture, services, investment, defense, and other interests, as appropriate. Section 135 states that these committees, to the extent practicable, are to be representative of all industry, labor, agricultural, service, investment, defense, and other interests, including small business interests. Regarding the industry sector

[62] Section 135 has been amended several times over the years to broaden the purposes for which trade advisory committees provide advice to executive branch officials and to increase the kinds of committees that are to be established. For example, the 1979 amendments added the "operation of any trade agreement once entered into," and "other matters arising in connection with the administration of trade policy of the United States" to the matters on which the President should seek advice from the trade advisory committees. These amendments also added "services" to the tier-2 and tier-3 committees that should be formed. P. L. No. 96-39, 93 Stat. 308-10. The 1994 amendments added "nongovernmental environmental and conservation organizations" to the list of interests required to be on the tier-1 committee. P. L. No. 103-465, 108 Stat. 4836.

[63] The three-tier structure is the term commonly used to describe the three different kinds of committees. It should be emphasized, however, that section 135 neither establishes any formal relationship among the three different kinds of committees nor specifically authorizes the first tier to exercise any control over the other two tiers.

[64] 19 U.S.C. § 2155(b).

and functional advisory committees of tier 3, the President is directed to establish them as appropriate, and similar to the tier-2 committees, to the extent practicable each tier-3 committee is to be representative of all industry, labor, agriculture, or service interests, including small business interests in the sector or functional areas concerned.[65] The language of section 135 suggests that each of the tier-2 and tier-3 committees is to be composed of members involved in the particular sector, and does not indicate any intention to expand these committees to include other interests.

The legislative history of the 1974 act, which shows that Congress was concerned that in prior trade negotiations there had not been adequate input from U.S. producers, would appear to support this view. In this regard, the Senate report stated that the purpose of the procedures in section 135 were to "strengthen the hand of U.S. negotiators by improving their knowledge and familiarity with the problems domestic producers face in obtaining access to foreign markets."[66] Similarly, the House report stated that in past trade negotiations "there has not been adequate input from U.S. producers who are in the best position to assess the effects of removing U.S. and foreign trade barriers on their particular products." Nevertheless, the legislative history of the 1979 amendments to section 135[67] indicates congressional interest in broadening representation of the tier-2 and tier-3 committees to include other interests. In this regard, the Senate report states that in establishing the membership of the policy, sector, or functional advisory committees, it was expected that each of these committees "will fully represent the interests of the Government, small business, retailers, wholesalers, distributors, consumers and the general public, as well as labor, industry, agriculture and services, as the case may be."[68] The House report has similar language and also stated that "[a]ll major recognized organizations, regardless of their point of view, should be invited to participate in appropriate advisory groups."[69] These statements are consistent with the legislative history of FACA, which shows that the

[65]*Id.* § 2155(c).

[66]S. Rep. No. 93-1298, at 101-02; H.R. Rep. No. 93-571, at 38.

[67]P. L. No. 96-39, 93 Stat. 308-10.

[68]S. Rep. No. 96-249, at 259.

[69]H.R. Rep. No. 96-317, at 187-88. This comment was made partly because of the initial failure to include a major, well-recognized farm group in the agricultural advisory process.

focus of committee membership was intended to be on the groups directly affected by the work of a committee, rather than whether those groups represent business or nonbusiness interests.

Court Decisions Provide Little Guidance in Applying Fair Balance

An additional problem in applying the FACA fair balance requirement to the trade advisory committees concerns the relatively small number of court decisions that have considered the issue. Although several U.S. Courts of Appeal had rejected challenges under FACA to the composition of other federal advisory committees,[70] until 1999 no case had involved a civil-society, fair-balance challenge to membership on a trade advisory committee.[71] Since then, two rulings have been issued, and a settlement agreement has been reached in another case. These dispositions have affected three tier- 3 advisory committees.

- In November 1999, several environmental organizations brought an action in the Federal District Court for the Western District of Washington, *Northwest Ecosystem Alliance v. USTR*,[72] challenging the composition of two tier-3 industry advisory committees that deal with forest products. The district court found that fair balance meant

[70]For example, the U.S. Court of Appeals for the District of Columbia rejected (1) a fair balance challenge to membership on an advisory committee appointed to study social service programs, which was brought by individual recipients of federal food assistance benefits and an anti-hunger coalition, and (2) a fair balance challenge to membership on an advisory committee established to provide advice and recommendations on development of microbiological criteria for foods, which was brought by various public interest and consumer groups. *National Anti-Hunger Coalition v. Exec. Comm. of the President's Private Sector Survey on Cost Contro*l, 711 F.2d 1071, 1074-75 (D.C. Cir. 1983); *Public Citizen v. National Advisory Comm. on Microbiological Criteria for Foods*, 886 F.2d 419, 423-24 (D.C. Cir. 1989)(Per Curiam). See also *Cargill, Inc. v. United States*, 173 F.3d 323, 336-39 (5th Cir. 1999). (The court rejected a fair balance challenge by mine owners to composition of the National Institute for Occupational Safety and Health's Board of Scientific Counselors.)

[71]In an earlier action brought by domestic electronics producers, which challenged the composition of the industry sector advisory committee for electronics and instrumentation, the U.S. Court of International Trade held that there was no statutory requirement that a representative from any specific industry be included in any of the advisory committees established under section 135. *Kemet Electronics Corp. v. Barshefsky*, 969 F. Supp. 82, 87 (Ct. Int'l Trade (1997).

[72]No. C99-1165R (W.D. Wash. 1999).

balanced representation within each trade advisory committee, not among all advisory committees, and ruled that the two committees should include environmental representatives.[73] Two of the factors the court relied on in making its ruling were that (1) the forest product committees routinely advised the government on trade issues that affected the environment, both nationally and internationally, and (2) the positions supported by the committees were directly contrary to those supported by the environmental organizations challenging their fair balance. Importantly, the court also rejected USTR's position that fair balance is fulfilled if the membership of an industry sector advisory committee is broadly representative of the industry sector for which the committee was established. The court found that this position contradicted one of the primary purposes of FACA, which was to end industry domination of advisory bodies. To implement its holding, the court ordered USTR to make a good faith effort to expedite the appointment of at least one properly qualified environmental representative to each of the two committees.[74] USTR and Commerce appealed the case to the U.S. Court of Appeals for the Ninth Circuit, and the United States filed a brief in support of the appeal.[75] Nevertheless, the United States later dropped the appeal, and environmental representatives were appointed to the two forest product advisory committees.

- After the decision in *Northwest Ecosystem Alliance*, various public interest groups filed a lawsuit in the same federal district court, *Washington Toxics Coalition v. USTR*,[76] asking the court to require USTR and Commerce to appoint one or more environmental representatives to the chemical and allied products industry sector advisory committee. In March 2001, the parties entered into a settlement agreement in which USTR and Commerce agreed to make a good faith

[73]Both the plaintiffs and the U.S. government defending agencies agreed that the industry sector advisory committees involved were subject to FACA's balanced representation requirement and that the proper test was whether a committee's members represent a fair balance of viewpoints given the functions to be performed. *Id.*

[74]*Northwest Ecosystem Alliance v. USTR*, No. C99-1165R (W.D. Wash. Nov. 8, 1999). This was soon followed by an order requiring USTR and the Department of Commerce to name interim environmental representatives while the appointment process was being completed.

[75]Brief for Appellants, *Northwest Ecosystem Alliance v. USTR*, No. 00-35060 (9th Cir. Mar. 23, 2000).

[76]Civ. No. C00-0730R (W.D. Wash. 2001).

effort to expedite the appointment of one or more qualified environmental representatives to this committee. In response to the Washington Toxics Coalition case, in early 2001, several members of the chemical and allied products advisory committee brought an action before the U.S. District Court for the District of Columbia, *Gamble v. Zoellick*,[77]asking the court to preclude environmental representatives from becoming members of their committee. The court rejected this position and held that the committee members lacked standing to challenge the appointment of an environmental representative to their committee.[78] In support of its ruling, the court also found that there was nothing in the Trade Act of 1974 that prohibited USTR and Commerce from appointing an environmental representative. The court noted that the appointment of other members was not precluded by the mandatory language of section 135 requiring that the industry sector advisory committees be representative of all industry, labor, agricultural, or service interests in the sector concerned. In this regard, the court endorsed the U.S. government's position that the language of section 135 gave the government considerable discretion in making appointments to the chemical and applied products committee beyond those required.[79]

Current Status

To date, there have been no further court challenges by environmental or other civil society groups to the composition of trade advisory committees. Without further clarification by U.S. appellate courts or the Congress about how to apply the FACA fair balance requirement to the trade advisory committee system, some ambiguity about this issue will remain.

Current executive branch policy is that tier-3 committees are generally not open to nonbusiness groups. A March 20, 2002, *Federal Register* notice issued by the U.S. Department of Commerce states that with the exception of the 3 committees affected by fair balance challenges—ISAC 3 (chemicals), ISAC 10 (lumber and wood products) and ISAC 12 (paper and

[77]Civ. No. 01-0018 (D.D.C. Jan. 4, 2001).

[78]*Id.* (D.D.C. May 8, 2001). The court found that the chemical committee members did not have standing because they failed to show an injury that was "actual or imminent, not conjectural or hypothetical," and could cite no authority for their contention that consensus of opinion on the chemical committee was required.

[79]*Id.* This decision was appealed, but the appeal was dismissed at the request of the chemical and allied products committee members who brought the case. *Gamble v. USTR*, No. 01-5236 (D.C. Cir. Aug. 17, 2001).

paper products)—"non-government organizations do not qualify for representation on a committee."[80] Regarding to the *Washington Toxics Coalition* case, the settlement agreement provided that until an environmental representative was appointed, USTR and Commerce could call meetings of the chemical and applied products advisory committee but had to make a good-faith effort to include an interim qualified environmental representative at any such meetings. An interim environmental representative has attended all but one of the nine committee meetings held since the settlement, but he declined to continue to serve beyond the renewal of the committee's charter in March, 2002. The committee--which represents the second-leading manufacturing export sector--has not met since March 13, 2002. One potential environmental representative has applied to serve as environmental representative on the committee, and the application is being considered. To date no appointment has been made.

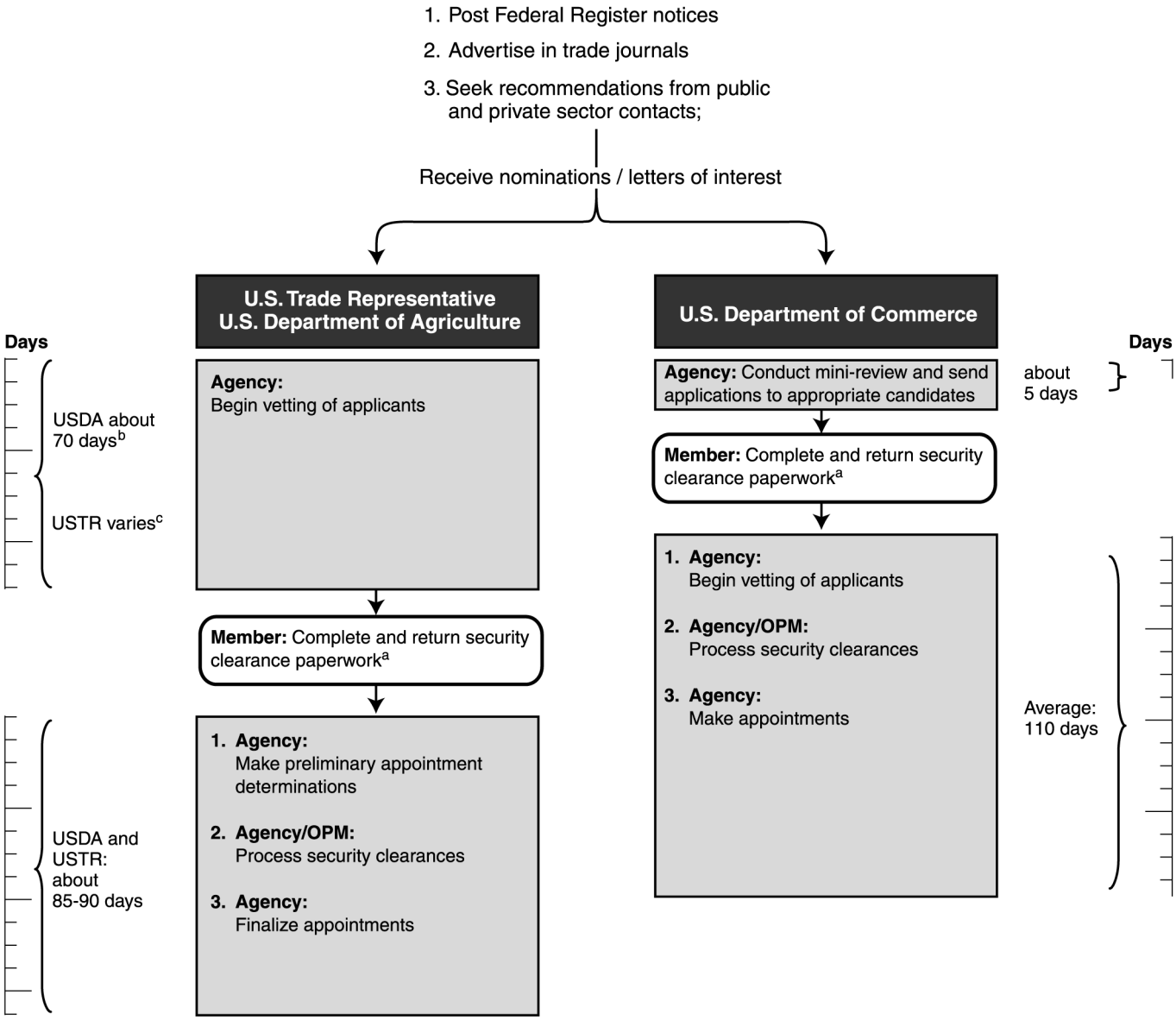
[80]67 Fed. Reg. 12969-70 (Mar. 20, 2002).

Nomination and Security Clearance Process for Trade Advisory Committees

Commerce, USDA, and USTR follow slightly different procedures in screening applicants for advisory committees and in obtaining security clearances. Generally, the vetting process for new members includes an internal agency review and a security clearance investigation performed by the Office of Personnel Management (OPM). This appendix provides information on the nomination and security process, based on data provided by the three agencies.

Agencies begin a review process after they receive a nomination or a letter of interest from a prospective member. Figure 11 illustrates the screening process by each agency and the approximate time for applicants to move through different stages of the process toward committee membership. For example, the initial review process averages 70 days at the Department of Agriculture, while the Department of Commerce conducts an initial, 5-day review and then saves time by continuing the review concurrently with the security clearance process. Figure 11 does not include the time spent by committee members in completing the application materials and assembling the documents required for the security clearance because agency data on this part of the process is not systematic or complete. Based on our review of available agency data and interviews with agency officials about their typical experience, we found that the appointment process can regularly take 6 months or longer to complete, if additional time for completing application materials is added.

Figure 11: Advisory Committee Appointment Process and Timetable for USTR, USDA, and Commerce



[a]Tracking of the time it takes for members to return the security clearance paperwork varies across agencies, but according to data and interviews with agency officials, it can take as long for applicants to complete and correct paperwork as it takes for agencies to complete the security clearance investigation.

[b]This reflects the timeframe for the appointments made during the 2001 rechartering process.

[c]USTR stated there was no standard duration for vetting a candidate.

Source: GAO analysis of data from USTR, USDA, and Commerce.

The security clearance process can take about 3 months, according to agency officials and data. Although we found an average waiting time for clearances at USTR of 227 days for the period fiscal years 1999 to 2001, the average wait time for a clearance fell to 84 days when USTR began using the OPM to perform its security clearances in 2000. Department of Agriculture officials said the process of obtaining a clearance takes about 3 months once the completed paperwork is submitted. Security clearance data provided by the Department of Commerce show that the process takes an average of approximately 105 days. All members receive a secret-level national security clearance, following a background investigation from the OPM. The clearance is valid for 10 years.[81]

[81]Until 2002, USDA granted clearances for 5 years.

Results of GAO's Survey of Trade Advisory Committee Members

Between January and March 2002, we conducted a survey of current members and staff liaisons of the trade advisory committees.[1] This appendix provides the aggregated responses to most of the survey questions. It does not include the written comments provided by the respondents.

Appendix I contains a summary of our methodology for the survey. A more technical discussion of our methodology is provided at the end of this appendix.

Section I: Committee Activities and Advice

Q2) In general, do you feel that too much, too little, or about the right amount of time was devoted to the following activities at your committee meetings?

	Far too much	Somewhat Too much	About the right amount	Somewhat too little	Far too little	No basis to judge	No answer
a) Presentations by USTR	0.8%	6.0%	71.0%	15.0%	4.8%	0.6%	1.7%
b) Presentations by your committee's principal agency	0.8%	7.7%	70.4%	11.0%	3.5%	1.5%	5.0%
c) Presentations by other executive branch agencies	0.4%	3.1%	41.3%	29.4%	10.0%	7.5%	8.3%
d) Committee providing advice to all executive branch agencies	0.0%	1.0%	33.8%	29.2%	12.7%	10.8%	12.5%
e) Committee member discussion of trade issues	0.0%	1.9%	51.3%	28.8%	13.8%	0.6%	3.8%

n=480 (number of responses to question)

Q3) How satisfied or dissatisfied are you with the extent to which the Executive Branch sought your advice on the following matters during the last 3 years?

	Very satisfied	Generally satisfied	Neither satisfied nor dissatisfied	Generally dissatisfied	Very Dissatisfied	No opinion	No answer
a) General trade policy issues	8.0%	43.3%	18.4%	17.5%	7.2%	1.6%	4.1%
b) Multilateral trade negotiations (World Trade Organization – WTO)	12.0%	42.3%	16.5%	17.1%	6.0%	1.6%	4.5%
c) Bilateral trade negotiations	10.3%	38.8%	18.6%	18.4%	7.4%	1.6%	4.9%
d) The implementation of trade	7.2%	27.4%	26.8%	21.6%	8.5%	2.9%	5.6%

[1]Members of the ACTPN, TEPAC, and IGPAC are permitted to appoint one or more staff liaisons to help them prepare for and participate in committee deliberations. These liaisons have clearances and meet on their own; some also participate in member meetings.

agreements							
e) Other (please specify)	1.0%	5.0%	6.4%	2.3%	2.7%	7.2%	75.3%

n=515

Q4) How satisfied or dissatisfied are you with the opportunities your committee had to provide advice for the following trade agreements/ negotiations?

	Very satisfied	Generally satisfied	Neither satisfied nor dissatisfied	Generally dissatisfied	Very dissatisfied	Not applicable	No answer
World Trade Organization (WTO) Negotiations							
a) Ministerial/New round (Doha)	13.5%	39.8%	20.6%	13.1%	5.4%	1.3%	6.3%
b) Dispute settlement	5.4%	26.9%	34.6%	14.6%	4.6%	5.0%	9.0%
c) Accession	6.9%	33.3%	28.3%	11.5%	4.4%	3.5%	12.1%
d) Implementation of Uruguay round agreements	5.4%	30.0%	31.1%	14.6%	4.6%	4.4%	9.8%
e) Agriculture	4.6%	19.6%	20.6%	7.3%	5.4%	18.1%	24.4%
f) Services	4.6%	18.3%	25.2%	6.7%	2.3%	17.1%	25.8%
Bilateral and Regional Negotiations							
g) NAFTA (including Canada and Mexico)	10.6%	39.6%	19.4%	10.2%	6.3%	6.3%	7.7%
h) Jordan Free Trade Agreement (FTA)	5.2%	23.1%	33.5%	11.5%	5.6%	9.2%	11.9%
i) Singapore FTA	5.6%	26.5%	32.5%	12.7%	4.2%	6.7%	11.9%
j) Chile FTA	9.8%	35.0%	23.8%	14.0%	4.4%	3.5%	9.6%
k) China	9.4%	35.6%	23.5%	13.8%	5.8%	3.8%	8.1%
l) Japan	4.0%	16.9%	36.9%	12.5%	3.8%	11.3%	14.8%
m) Other Asian issues (Asia-Pacific Economic Cooperation (APEC) Asian financial crisis)	2.5%	24.8%	37.3%	12.5%	3.5%	9.2%	10.2%
n) European Union (Transatlantic Economic Partnership/ Dialogue, Mutual Recognition Acts (MRAs)	5.2%	26.3%	29.8%	16.7%	4.2%	6.7%	11.3%
o) Free Trade Act of the Americas (FTAA)	7.7%	44.8%	18.1%	14.4%	6.7%	1.9%	6.5%
p) Regional trade preferences (Caribbean Basin Initiative (CBI), Andean Trade Promotion Act (ATPA) African Growth and Opportunities Act (AGOA)	2.3%	27.7%	30.8%	15.0%	5.8%	8.1%	10.2%
Overall Trade Policy							
q) Trade Promotion Authority	12.1%	42.9%	15.2%	15.6%	7.3%	1.0%	5.8%
r) Investment Policy	2.5%	17.7%	37.3%	11.5%	5.4%	11.9%	13.8%
s) Environmental Agreements	1.9%	20.0%	31.9%	17.1%	5.4%	11.0%	12.7%
t) Other (please specify)	0.4%	1.9%	3.5%	1.5%	2.3%	8.3%	82.1%

n=480

Q5) During the last year, about how often did you provide advice to the executive branch outside of your committee meetings?

1) Weekly ❒ 5.6%
2) More than monthly but less than weekly ❒ 15.0%
3) Monthly ❒ 4.9%
4) 5 to 11 times a year ❒ 16.7%
5) 1 to 4 times a year ❒ 36.5%
6) Never ❒ 15.3%

7) No answer ❒ 6.0%

n=515

Q6) In general, to what extent do you feel that the executive branch times its requests so that your committee's advice can be used in trade negotiations?

1) Very great extent ❒ 2.9%
2) Great extent ❒ 22.1%
3) Moderate extent ❒ 37.3%
4) Some or little extent ❒ 25.4%
5) No extent ❒ 4.6%

6) No answer ❒ 7.7%

n=480

Q7) How satisfied or dissatisfied are you with the extent that (a) USTR and (b) your committee's principal agency considered your committee's advice during the last 3 years?

	Very satisfied	Generally satisfied	Neither satisfied nor dissatisfied	Generally dissatisfied	Very Dissatisfied	No answer
a) USTR	7.5%	38.3%	17.9%	12.1%	5.8%	18.3%
b) Your committee's principal agency	11.3%	41.5%	19.6%	10.6%	2.7%	14.4%

n=480

Q8) In your opinion, during the last 3 years, how often did the executive branch pursue negotiating strategies that significantly departed from the advice your committee provided?

1) Always/almost always	❒ 4.8%
2) More than half the time	❒ 10.4%
3) About half the time	❒ 9.8%
4) Less than half the time	❒ 18.8%
5) Rarely	❒ 28.3%
6) Never	❒ 6.5%
7) No answer	❒ 21.5%

n=480

Q9) During the last 3 years, when the executive branch pursued negotiating strategies that significantly departed from the advice your committee provided, how often did it inform your committee?

1) Always/almost always	❒ 22.3%
2) More than half the time	❒ 14.7%
3) About half the time	❒ 9.8%
4) Less than half the time	❒ 11.3%
5) Rarely	❒ 22.5%
6) Never	❒ 7.5%
7) No answer	❒ 11.8%

n=346

Section II: Meeting Agendas and Attendance

Q10) In general, how would you rate your committee's agendas in terms of the completeness of the information they provide for your purposes?

1) Excellent	❒ 24.8%
2) Good	❒ 50.0%
3) Fair	❒ 15.2%
4) Poor	❒ 2.3%
5) Very poor	❒ 1.5%
6) No basis to judge	❒ 1.3%
7) No answer	❒ 5.0%

n=480

Q11) To what extent were you given the opportunity to place items on your committee's meeting agendas?

1) Very great extent ❒ 22.1%
2) Great extent ❒ 30.8%
3) Moderate extent ❒ 18.1%
4) Some or little extent ❒ 11.0%
5) No extent ❒ 6.7%

6) No answer ❒ 11.3%

n=480

Q12) What effect, if any, did the following factors have on your incentives to attend or not attend your committee's meetings?

	Very Positive	Generally Positive	Neither positive nor negative	Generally negative	Very Negative	Not applicable	No answer
a) Amount of notice provided for the meetings	26.9%	44.0%	12.9%	6.5%	4.6%	0.2%	5.0%
b) Clarity of the agenda items	21.0%	50.2%	18.8%	3.1%	0.6%	0.8%	5.4%
c) Your interest in the agenda items	29.2%	47.7%	13.5%	2.5%	0.4%	0.4%	6.3%
d) Your other commitments	15.2%	19.0%	31.9%	16.9%	4.2%	2.3%	10.6%
e) Your perception of the degree to which USTR considers your committee's advice	11.5%	40.0%	20.8%	14.2%	4.6%	1.0%	7.9%
f) The distance you have to travel	11.9%	13.3%	36.5%	12.7%	2.7%	15.6%	7.3%
g) The costs of attending the meetings	10.6%	9.8%	42.7%	8.8%	4.0%	16.3%	7.9%
h) Other (please specify)	1.3%	1.0%	2.7%	1.7%	2.7%	5.6%	85.0%

n=480

Section III: Committee Composition and Membership

Q13) In your opinion, do the current members of your committee generally have similar, different or mixed views on trade policy?

1) Very similar	❒ 15.4%
2) Somewhat similar	❒ 33.8%
3) Mixed views	❒ 31.9%
4) Somewhat different	❒ 5.2%
5) Very different	❒ 6.3%
6) No answer	❒ 7.5%

n=480

Q14) In your opinion, did the dissimilarity of views on your committee make it easier or more difficult for your committee to provide advice to the executive branch?

1) Much easier	❒ 0.0%
2) Somewhat easier	❒ 1.8%
3) Neither easier nor more difficult	❒ 18.2%
4) Somewhat more difficult	❒ 34.5%
5) Much more difficult	❒ 36.4%
6) No basis to judge	❒ 5.5%
7) No answer	❒ 3.6%

n=55

Q15) During the past 3 years, how often has your committee provided written or oral advice to the executive branch that reflected a consensus position?

1) On all issues	❒ 9.2%
2) On most issues	❒ 34.2%
3) On some issues	❒ 32.1%
4) Never	❒ 3.1%
5) No basis to judge	❒ 9.0%
6) No answer	❒ 12.5%

n=480

Q16 When your committee provided advice reflecting a consensus position, did it also provide a dissenting opinion?

1) On all positions	❒ 2.2%
2) On most positions	❒ 5.5%
3) On some positions	❒ 27.9%
4) Never	❒ 31.8%
5) No basis to judge	❒ 20.7%
6) No answer	❒ 11.9%

n=362

Section IV: Overall Satisfaction

Q17) Overall, how satisfied or dissatisfied are you with the following aspects of your committee?

	Very satisfied	Generally satisfied	Neither satisfied nor dissatisfied	Generally dissatisfied	Very dissatisfied	Not applicable	No answer
Committee composition and membership							
a) Representation of your business sector in the overall committee structure	23.1%	48.7%	8.5%	7.8%	5.4%	1.9%	4.5%
b) The balance of business representation in your committee (e.g., by regions, type of company, and company size)	13.2%	49.9%	14.4%	10.7%	4.9%	2.3%	4.7%
c) The time it takes to appoint new members to your committee	2.3%	13.6%	28.0%	26.8%	15.7%	3.1%	10.5%
Committee operations and procedures							
d) Amount of notice your committee receives for meetings	28.0%	43.9%	9.1%	11.1%	3.9%	0.2%	3.9%
e) The clarity of your committee's operating rules and procedures	20.0%	45.4%	17.1%	9.3%	2.7%	0.6%	4.9%
f) The use of technology to facilitate meetings	8.9%	29.7%	33.6%	13.6%	2.1%	3.9%	8.2%
g) The topics on which your committee is briefed by government speakers	21.0%	53.8%	13.6%	6.0%	0.6%	0.4%	4.7%
h) The knowledge of the government speakers who brief your committee	35.0%	50.3%	7.4%	2.3%	0.8%	0.2%	4.1%
i) The support provided by your Commerce Designated Federal Officer (DFO)	41.9%	33.6%	9.9%	1.6%	2.1%	2.9%	8.0%
j) The support provided by USTR	22.7%	41.6%	18.3%	6.0%	1.7%	1.7%	8.0%
Effectiveness and impact of your committee							
k) Your committee's opportunity to ask questions of government	41.0%	42.7%	8.0%	3.5%	0.2%	0.2%	4.5%

officials at meetings							
l) The opportunity for committee members with dissenting views to provide input to the committee	33.4%	45.6%	9.7%	4.3%	1.0%	0.8%	5.2%
m) Your committee's opportunity to provide advice at meetings	28.7%	41.4%	12.0%	10.9%	1.6%	0.2%	5.2%
n) Your committee's opportunity to provide formal advice outside of committee meetings	18.8%	34.8%	24.5%	11.5%	2.3%	0.8%	7.4%
o) The degree of attention the executive branch pays to your committee's trade issues	8.0%	36.9%	22.3%	17.1%	7.6%	1.0%	7.2%
p) The executive branch's response to the advice your committee provided	6.6%	32.6%	25.6%	16.9%	7.0%	1.7%	9.5%
q) Other (please specify)	0.6%	1.0%	1.6%	2.9%	3.5%	3.7%	86.8%

n=515

Section V: Possible Improvements

Q18) Recently, a number of suggestions have been made for improving the committee's structure and operations. To what extent would you support or oppose the following actions?

	Strongly support	Generally support	Neither support nor oppose	Generally oppose	Strongly oppose	Not applicable	No basis to judge
a) Encouraging occasional attendance by Congressional staff	38.6%	42.5%	8.7%	5.2%	1.7%	0.0%	3.1%
b) Obtaining more feedback/comments by USTR	36.1%	49.7%	8.7%	0.0%	0.2%	0.2%	5.0%
c) Speeding up the appointment/ nomination process for committee members	42.5%	35.7%	15.1%	0.2%	0.2%	0.6%	5.6%
d) Increasing the number of members on your committee	10.3%	18.6%	31.3%	24.7%	10.5%	0.0%	4.7%
e) Broadening the range of business sectors/ interests represented on your committee	11.1%	20.6%	31.1%	22.5%	8.7%	0.8%	5.2%
f) Decreasing the range of business sectors/ interests represented on your committee	2.9%	7.6%	31.7%	29.1%	17.9%	1.9%	8.9%
g) Adding more nonbusiness interests (labor, environment, and consumer groups) to your committee	6.8%	11.1%	12.6%	28.2%	36.1%	1.4%	3.9%
h) Establishing separate committees for nonbusiness interests such as labor, environmental and consumer	12.4%	27.8%	27.6%	14.2%	12.2%	1.6%	4.3%

groups							
i) Ensuring that USTR officials attend meetings on a regular basis	41.4%	47.0%	6.0%	0.0%	0.0%	1.6%	4.1%
j) Merging committees that represent similar sectors	7.4%	24.7%	33.8%	17.7%	6.0%	2.5%	8.0%
k) Sharing documents, meeting agendas, and recommendations among all committees	18.8%	44.9%	24.1%	4.9%	1.4%	0.4%	5.6%
l) Allowing the representatives of foreign-owned U.S. companies to sit on committees	1.6%	13.0%	19.4%	27.4%	32.6%	1.0%	5.0%
m) Providing briefing materials to committee members earlier	29.3%	52.2%	13.4%	0.6%	0.4%	0.4%	3.7%
n) Opening more meetings to the public	4.7%	9.9%	22.1%	34.8%	24.1%	0.2%	4.3%
o) Setting up cross-functional committees when issues affect multiple committees	19.0%	55.9%	17.3%	1.7%	0.6%	0.6%	4.9%
p) Using videoconferencing to enable greater participation in committee meetings.	18.3%	41.2%	24.3%	9.3%	2.9%	0.0%	4.1%
q) Increased use of technology (e.g., e-mail, fax) to inform members	25.8%	53.4%	15.0%	0.8%	0.4%	1.0%	3.7%
r) Other (please specify)	8.3%	2.7%	1.0%	0.0%	0.0%	3.9%	84.1%

n=515

Q19) In your opinion, what effect have the following recent actions had on the effectiveness of your committee operations?

	Very Positive	Generally Positive	Neither positive nor negative	Generally negative	Very Negative	Not applicable	No answer
a) Teleconferencing	4.0%	17.5%	30.8%	2.7%	0.6%	31.9%	12.5%
b) Webcasting	5.4%	21.9%	29.6%	3.1%	0.8%	25.6%	13.5%
c) Videoconferencing	2.9%	8.5%	31.7%	2.5%	0.6%	38.1%	15.6%
d) Mass e-mails and/or faxes from USTR	14.8%	54.0%	16.7%	2.5%	0.0%	3.3%	8.8%

n=480

Section VI: Benefits of Committee Membership

Q20) In your opinion, to what extent do you obtain the following benefits as a result of being a committee member?

	Very great extent	Great extent	Moderate extent	Some or little extent	No extent	Not applicable	No answer
a) Access to classified information	9.2%	17.5%	33.1%	21.5%	10.6%	1.7%	6.5%
b) Access to (non-classified) inside information	7.9%	24.6%	37.1%	18.8%	5.4%	0.2%	6.0%
c) Access to USTR officials	11.5%	31.9%	35.0%	11.5%	3.8%	0.2%	6.3%
d) Access to your principal agency's officials	14.4%	32.3%	29.8%	10.4%	4.2%	1.7%	7.3%
e) Access to government officials from agencies other than USTR and your principal agency	6.0%	20.2%	32.3%	22.5%	11.3%	1.3%	6.5%
f) Ability to influence trade negotiations	7.5%	19.2%	34.8%	21.0%	10.6%	0.2%	6.7%
g) Ability to influence U.S. trade policy	7.5%	18.1%	36.5%	21.3%	10.6%	0.2%	5.8%
h) Insights into other members' views and perspectives	19.0%	47.7%	22.3%	4.6%	0.6%	0.2%	5.6%
i) Face-to-face dialogue with all members	21.5%	45.8%	19.8%	4.4%	1.0%	0.6%	6.9%
i) Other (please specify)	1.9%	1.7%	1.0%	0.4%	0.8%	4.0%	90.2%

n=480

Section VII: Changes in Committees over Time

Q21) How many years have you been a member of the trade advisory committee system?

Less than 1 year ❒ 18.3%
Between 1 and 2 years ❒ 10.4%
Between 2 and 5 years ❒ 30.2%
More than 5 years ❒ 35.4%
No answer ❒ 5.6%

n=480

Q22) During the time you have been a member of the committee system, what has improved, what has deteriorated, and what has stayed about the same? *(Asked only of those members who indicated in Q 21 that they have served more than 5 years.)*

	Greatly improved	Somewhat improved	Stayed about the same	Somewhat deteriorated	Greatly deteriorated	Not applicable	No answer
Committee composition and membership							
a) Representation of your business sector in the overall committee structure	8.2%	20.0%	52.9%	11.8%	2.9%	1.8%	2.4%
b) The balance of business representation in your committee (e.g., by regions, type of company, and company size)	5.9%	23.5%	46.5%	15.9%	2.9%	2.4%	2.9%
c) The time it takes to appoint new members to your committee	0.6%	7.6%	48.8%	23.5%	11.2%	0.0%	8.2%
Committee operations and procedures							
d) Amount of notice you receive for meetings	17.1%	27.1%	45.9%	7.6%	0.6%	0.0%	1.8%
e) The clarity of your committee's operating rules and procedures	10.6%	23.5%	52.9%	7.1%	1.8%	1.2%	2.9%
f) The use of technology to facilitate meetings	11.8%	28.2%	54.1%	2.4%	0.0%	1.8%	1.8%
g) The topics on which your committee is briefed by government speakers	11.2%	36.5%	42.9%	5.9%	1.2%	0.0%	2.4%
h) The knowledge of the government speakers who brief your committee	11.2%	30.0%	51.8%	4.7%	0.0%	0.0%	2.4%
i) The support provided by your Commerce Designated Federal Officer (DFO)	22.9%	30.0%	35.9%	1.8%	2.4%	1.8%	5.3%
j) The support provided by USTR	8.2%	25.9%	52.4%	6.5%	2.4%	0.6%	4.1%
Effectiveness and impact of your committee							
k) Your committee's opportunity to ask questions of government officials at committee meetings	8.2%	28.2%	56.5%	5.3%	0.6%	0.0%	1.2%
l) The opportunity for persons with dissenting views to provide input at meetings	6.5%	20.6%	65.9%	3.5%	0.0%	1.8%	1.8%
m) Your committee's opportunity to provide advice at committee meetings	7.1%	24.1%	56.5%	7.6%	2.9%	0.0%	1.8%
n) Your committee's opportunity to provide formal advice outside of meetings	5.3%	19.4%	62.4%	8.8%	1.8%	0.6%	1.8%
o) The degree of attention the executive branch pays to your committee's issues	4.1%	24.7%	42.9%	19.4%	6.5%	0.6%	1.8%
p) The executive branch's response	5.3%	16.5%	46.5%	22.9%	5.9%	0.0%	2.9%

to the advice your committee provided							
q) Other (please specify)	1.2%	1.8%	4.7%	0.6%	2.4%	3.5%	85.9%

n=170

Section VIII: Overall Assessment

Q23) Overall, to what extent do you feel that the advisory committee system is (a) fulfilling its statutory role in U.S. trade policy, and (b) realizing its potential contribution to U.S. trade policy?

	Very great extent	Great extent	Moderate extent	Some or little extent	No extent	No answer
a) Fulfilling its statutory role in U.S. trade policy	15.9%	32.4%	32.0%	12.0%	1.4%	6.2%
b) Realizing its potential contributions to U.S. trade policy	7.8%	20.4%	36.7%	25.4%	2.7%	7.0%

n=515

Section IX: Questions for Committee Chairs

Q25) During the last 3 years, when your committee provided written advice, how often did the Executive Branch acknowledge that it had received the advice?

1) Always/ almost always ❒ 40.6%
2) More than half the time ❒ 12.5%
3) About half the time ❒ 6.3%
4) Less than half the time ❒ 6.3%
5) Rarely ❒ 3.1%
6) Never ❒ 12.5%

7) No answer ❒ 18.8%

n=32

Q26) Generally speaking, how would you rate the support you receive, as the committee chair, from USTR, your principal agency, and other Executive Branch agencies?

	Excellent	Good	Fair	Poor	Very Poor	Not applicable	No basis to judge
a) Support from USTR	25.0%	21.9%	28.1%	9.4%	3.1%	3.1%	9.4%
b) Support from your principal agency	31.3%	34.4%	9.4%	3.1%	6.3%	3.1%	12.5%
c) Support from other Executive Branch agencies	6.3%	25.0%	15.6%	15.6%	9.4%	15.6%	12.5%

n=32

Section X: Demographic Question

Q29) About how many meetings have you attended during the last 12 months?

1) 0	❒ 5.2%
2) 1-2	❒ 39.6%
3) 3-4	❒ 35.3%
4) 5 or more	❒ 13.4%
5) Not sure	❒ 1.0%
6) No answer	❒ 5.4%

n=515

Technical Survey Methodology

To obtain the views and opinions of trade advisory committee members on matters such as committee activities and advice, committee composition, overall satisfaction, and possible improvements, we conducted a Web-based survey of all the members and staff liaisons[2] whose names appeared on lists obtained from the Departments of Agriculture, Commerce, Defense, Labor, and USTR. When the agencies' lists did not contain some or any of the e-mail addresses, we obtained this information through telephone calls and Web searches.

Based on these lists, we surveyed all the members of 32 out of the 34 full committees, as well as the 3 liaison committees. We did not survey the policy advisory committee that deals with Africa because this committee was not operational and had not met during our audit period. We did not survey the Committee of the Chairs as a separate committee because its members were all Chairs of individual committees, and we surveyed them in that capacity. Initially, we did not include the Labor Advisory Committee (LAC) because its charter had expired and its membership was uncertain; however, we added the LAC to our survey after it was rechartered on February 5, 2002.

We developed our questionnaire in November and December, 2001. We put the survey on a special Web site on the GAO server, activated it on January 17, 2002, and kept it open until March 15, 2002. During the course of the survey, we learned that a number of members had resigned from the committees before our survey had begun, or they had only recently become members and therefore had limited experience with the committee system. We did not remove members who had resigned, but we removed members who indicated that they had not attended any committee meetings and did not have the experience to respond to the survey. We also removed a few members for whom we could not obtain valid e-mail or telephone

[2]Members of the ACTPN, TEPAC, and IGPAC are permitted to appoint one or more staff liaisons to help them prepare for and participate in committee deliberations. These liaisons have clearances and meet on their own; some also participate in member meetings.

numbers despite repeated attempts to do so. As a result of these adjustments, our universe was reduced from 755 to 720.

In all, we received a total of 515 usable responses to our survey. Four hundred and eighty (480) of these were responses to the original, full version of the questionnaire and 35 were responses to a short version of the questionnaire containing 8 of the most important questions that we sent to respondents who had not completed the survey after three follow-up e-mails. The overall adjusted response rate was 72 percent. Sixty-seven (67) percent responded to the original, full version and 5 percent responded to the short version of the survey. The response rate varied considerably by committee, ranging from 11 percent for the Intergovernmental Policy Advisory Committee to 100 percent for IFAC 3. The response rate also varied by tier. Seventy-eight (78) percent of tier 3 members responded to the questionnaire, compared to 55 percent of tier 2 members and 57 percent of tier 1 members. Consequently, while we are confident that we can generalize the tier 3 responses to the universe of all tier 3 members, we do not have the same confidence that we can generalize the tier 1 and tier 2 responses to all tier 1 and tier 2 members. In addition, while we present the aggregated responses for all committee members who responded, we are not generalizing to the universe of all committee members even though the overall response rate is 72% because of low response rates for tiers 1 and 2.

Due to the fact that web-based surveys are set with the "no answer" radial dial as an initial default, we cannot say whether committee members who did not answer particular items did so because they genuinely did not have an answer for that question (i.e., they had no basis to judge, were not certain of the answer, or were ineligible for that item) or because they simply ignored it even though they could have answered. Consequently, in our survey results, we also present the percentage of respondents for whom a "no answer" was recorded.

The practical difficulties in conducting surveys of this nature may introduce various types of errors, commonly referred to as non-sampling errors. For example, questions may be misinterpreted or the respondents' answers may differ from those of people who did not respond. We took several steps to reduce such errors. For example, we developed the survey with the assistance of two survey specialists. We conducted pre-tests with five committee members. As we described above, we sent out a series of follow-up e-mails and made follow-up phone calls to boost the response rate. Finally, we compared respondents' answers for questions that were related and found that they were broadly consistent.

Comparisons of Committee Structure with Trade Indicators

To examine how well the committee structure reflects the current economy, we identified the range of goods or services represented by individual third tier committees and the export and import shares of those goods and services in total U.S. exports and imports.[82] We then compared this data to membership data for each committee obtained from the GSA, which maintains annual reports covering each fiscal year covered by our review. Based on these calculations, table 5 shows the export and import shares as well as the relative percentage of membership for each committee in 2000.

Table 5: Shares of Total U.S. Exports and Imports and Percentage of Membership by Committee, 2000

Committee	Share of total U.S. exports	Share of total U.S. imports	Percent of membership
ISAC-1: Aerospace Equipment	5.2%	1.9%	4.1%
ISAC-2: Capital Goods	8.6	7.1	5.1
ISAC-3: Chemicals and Allied Products	9.1	6.4	9.0
ISAC-4: Consumer Goods	5.9	7.4	6.0
ISAC-5: Electronics and Instrumentation	18.3	18.9	3.7
ISAC-6: Energy	1.3	8.6	3.0
ISAC-7: Ferrous Ores and Metals	0.6	1.3	4.6
ISAC-8: Footwear, Leather, and Leather Products	0.2	1.6	3.0
ISAC-9: Building Products and Other Materials	2.0	2.2	2.8
ISAC-10: Lumber and Wood Products	0.6	1.2	4.6
ISAC-11: Nonferrous Ores and Metals	2.0	2.1	4.6
ISAC-12: Paper and Paper Products	1.6	1.5	2.1
ISAC-13: Services	28.1	14.3	10.1
ISAC-14: Small and Minority Business	N/A	N/A	N/A
ISAC-15: Textiles and Apparel	2.0	5.5	6.2
ISAC-16: Transportation, Construction, and Agricultural Equipment	8.8	14.2	2.1
ISAC-17: Wholesaling and Retailing	N/A	N/A	3.5
ATAC: Animal and Animal Products	0.4	0.8	5.3
ATAC: Fruits and Vegetables	0.4	0.6	5.5
ATAC: Grains, Feed, and Oilseeds	1.6	0.1	6.2

[82] See Appendix I for a discussion of the information and data we used to identify the goods and services represented by individual tier -3 committees.

(Continued From Previous Page)

Committee	Share of total U.S. exports	Share of total U.S. imports	Percent of membership
ATAC: Sweeteners	0.0	0.0	3.5
ATAC: Tobacco, Cotton, and Peanuts	0.3	0.0	5.1
Total Manufacturing	66.2	79.9	60.8
Total Services	28.1	14.3	13.6
Total Agriculture	2.7	1.5	25.6
Other (govt, etc.)	3.0	4.3	0.0

N/A=Not applicable.

Note: ISAC 14 (Small and Minority Business) is not included in the calculations for committee shares of membership.

Source: GAO analysis of data from the Department of Commerce, Treasury Department, International Trade Commission, and the General Services Administration.

Comments from the Office of the United States Trade Representative

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

August 1, 2002

Loren Yager, Ph.D.
Director, International Affairs and Trade
U.S. General Accounting Office
Washington, D.C. 20548

Dear Dr. Yager:

Thank you for the opportunity to submit comments on the draft General Accounting Office (GAO) report entitled "International Trade: Advisory Committee System Should Be Updated to Better Serve U.S. Policy Needs." The Bush Administration considers the advisory committee system to be an integral part of U.S. trade policy that provides valuable input as we push forward with our ambitious trade agenda designed to improve economic opportunities for America's farmers, workers, businesses, and consumers.

Your comprehensive report provides an in-depth assessment of the role, structure, and operation of the system, which Congress created in 1974 to ensure that U.S. trade policy adequately reflects our commercial and economic interests. As your report points out, the advisory committee system exists to facilitate consultations between our negotiators and other interested groups in order to create trade agreements that Congress can approve with confidence.

I am pleased that your report confirms that the committee system is of great value to U.S. trade policy and plays a key role in helping the United States achieve more beneficial trade agreements. As the report states, a strong majority of committee members have "high levels of satisfaction" with the system. Furthermore, the report found "ample evidence" that the Office of the U.S. Trade Representative and other executive branch agencies are "informing advisers about developments in U.S. trade policy and seeking their input, formally and informally, on key initiatives."

Your report identifies some components of the system that could benefit from strengthening, including the timeliness of consultations, mechanisms for feedback to committees, alignment of committee structure with the current U.S. economy, and resources devoted to management of the system. The following comments address GAO's four recommendations contained in the draft report:

- USTR is developing internal guidelines clarifying procedures for consulting with trade advisory committees. The agency also is working with the Departments of Commerce, Agriculture, Labor, Environmental Protection Agency, and Defense to coordinate communications strategies;

- USTR, working with the Departments of Commerce, Agriculture, Labor, Environmental Protection Agency, and Defense, is continuing to seek qualified candidates to serve on committees as vacancies arise. USTR also supports GAO's recommendation that Congress amend the Federal Advisory Committees Act to extend the two-year rechartering requirement for the trade policy advisory committees;

- USTR is consulting with security agencies to identify solutions for streamlining the security clearance process;

- USTR is exploring the feasibility of technological solutions for consulting with advisors, including webcast technology, which was used successfully at the World Trade Organization negotiations in Doha, Qatar, last November. USTR also hopes - pending budget approval and certification by security officials - to build a password-protected encrypted website for advisors so they can obtain information in a timely and convenient manner.

USTR is committed to ensuring that the advisory committee system continues to meet the objectives set by Congress of providing frank and representative advice on U.S. trade policy. Your report provides a valuable overview of the system, and offers ideas for improvements that match our own goals for strengthening the system. We appreciate the time and attention of your auditors, and are grateful to have had the opportunity to give our input during the final drafting of this report.

Sincerely,

Josette Shiner

Josette Shiner
Associate U.S. Trade Representative

Comments from the U.S. Department of Agriculture

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

United States Department of Agriculture

Farm and Foreign Agricultural Services

Foreign Agricultural Service

1400 Independence Ave, SW
Stop 1001
Washington, DC
20250-1001

AUG - 5 2002

Mr. Loren Yager, Ph.D.
Director, International Affairs and Trade
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548-0007

Dear Dr. Yager:

Thank you for the opportunity to provide comments on the General Accounting Office's (GAO) draft report GAO/02-876, "INTERNATIONAL TRADE: Advisory Committee System Should Be Updated to Better Serve U.S. Policy Needs." For this report, requested by Senator Charles E. Grassley, GAO examined the advisory committee system's role, structure, and operations to assess if the system meets the 1974 legislative objectives for input by the private sector as trade negotiations unfold.

In particular, GAO reviewed the management of the advisory committee system by the lead agency, the Office of the United States Trade Representative (USTR), along with five other agencies, including the U.S. Department of Agriculture (USDA). As a result of the eleven-month review, GAO concludes that while the advisory committee system provides value in U.S. trade policy and most members are satisfied with their committee, the responsible agencies need to strengthen the system's capacity to contribute to U.S. trade policy.

We appreciate that GAO confirms that there is general member satisfaction with the system while substantiating what we too believe are areas for improvement. Recognizing the need to shore up the process, USDA in cooperation with USTR developed and implemented a communications strategy to clarify interaction between USDA and USTR and strengthen the interaction with the advisory committee members. The enclosed paper dated January 30, 2002, describes USDA and USTR's leadership and management responsibilities and establishes procedures for formal and informal communications with committee members.

The following comments address GAO's four recommendations contained in their draft report:

Recommendations 1: To adopt or amend guidelines and procedures to ensure those consultations are timely, continual, and meaningful.

USDA in cooperation with USTR will revise the January 30, 2002, Communications Strategy to establish a process so that members are notified in a timely manner.

USDA is an Equal Opportunity Employer

A calendar of upcoming negotiations will be developed and updated on a continuing basis to share with the members.

USDA frequently met with the advisory committees in the past nine months (October 2001 and February, May, and July 2002). USDA and USTR carefully planned the agendas to allow sufficient time for advice and counsel of the members, limiting the agenda topics and presentations' length. For the Agricultural Policy Advisory Committee (APAC), the top leadership from USDA and USTR were available for most, if not all, of the meeting's agenda.

Recommendation 2: To increase outreach efforts to fill gaps in committee composition and revitalize membership.

For the 2002 rechartering and nomination process for the agriculture trade advisory committees, USDA made a concerted effort to maximize outreach. Contacts included: 1,062 constituents on the USDA Outreach List; 50 Farm Service Agency state executive directors; 16 Cooperative State Research, Education, & Extension Service electronic mailing lists; American Farm Bureau Federation state directors; Agricultural Research Service headquarters and regional directors; 70 Foreign Agricultural Service (FAS) Foreign Market Development Cooperators and Market Access Program participants; and 100 State Commissioners of Agriculture and State Agriculture Department's Communication Officers. In addition, USDA published two *Federal Register* notices to solicit committee nominations.

USDA revitalized the advisory committees' representation. For example, the APAC's past membership was mostly comprised of representatives of commodity interests. For the 2001 nomination process, USDA sought people with broad experience in food and agriculture trade policy that were well known and widely respected throughout the domestic and international industry. To balance the membership, nominations were encouraged from all geographic regions, commodities and products, producer and processor organizations, and trade facilitating organizations.

In addition, USDA is establishing a processed foods technical advisory committee for trade, reflecting the importance of high-value products in the export market. High-value products now account for two-thirds of total export sales compared with only half in 1990.

Recommendation 3: To streamline the nomination and appointment process for committee members and prevent lapses in committee charters.

See comment 1.

USDA streamlined the 2001 nomination and appointment process. Nominations closed at the end of June 2001, and on September 6, 2001, all the appointment letters were sent to the newly appointed members – a quick turnaround of less than 8 weeks. The documentation is enclosed.

2

The lapse in the agriculture advisory committee's charter has been a problem and will be a challenge when the current charter expires in April 2003. To prevent the charter from expiring, USDA must begin the nomination process in January 2003 – 18 months from the last renewal. In the best of circumstances, processing the paperwork with over 200 applications is a time consuming responsibility. Part of the solution would be to change the Federal Advisory Committees Act's (FACA) 2-year rechartering requirement. We firmly support GAO's recommendation for Congress to authorize exceptions to the FACA to allow exemptions to the 2-year rechartering requirement for the trade advisory committees.

Recommendation 4: To provide sufficient technological and human resources to support meaningful consultations and ensure effective functioning of the system.

USDA agrees that we need to increase the use of technology. Efforts are underway to establish a secure website to communicate on a more regular basis with the committee members on trade sensitive information. USDA will explore other means to maximize computer technology for more efficient management of the advisory committees.

Concerning human resources, the FAS Legislative Affairs Office, responsible for managing the agriculture trade advisory committees, will be fully staffed by October 2002, providing sufficient resources to manage the committees.

The security clearance process continues to be a challenge. FAS is hiring a Security Officer who will assist in managing the security process. In anticipation of potential problems, FAS will also work closely with USTR and USDA Security Offices to expedite the security clearances in the next appointment process.

USDA is committed to continue working with USTR in further refining the trade advisory committees' management. The ongoing efforts will be expanded to include GAO's recommendations. Again, we appreciate the opportunity to provide comments on this important subject.

Sincerely,

A. Ellen Terpstra
Administrator

Enclosures

3

COMMUNICATIONS STRATEGY WITH USTR AND TRADE ADVISORY COMMITTEE MEMBERS

PURPOSE

There is a renewed commitment by USDA and USTR to improve communications between the two responsible staffs concerning the Agricultural Policy Advisory Committee (APAC) and the Agricultural Technical Advisory Committees (ATAC). Similarly, both staffs are dedicated to strengthening the dialogue with the trade advisory committee members by facilitating consultations and obtaining information and advice from the members on a continuing and timely basis.

Working with the International Trade Policy program area, the FAS Administrator, the ATAC Executive Secretaries, the Legislative Affairs Office, the Under Secretary for FFAS, and USTR the following steps are recommended:

Communications and Coordination with USTR

Matt O'Mara, representing the Under Secretary, will be the lead person coordinating with Sharon Bomer, USTR on critical and sensitive matters concerning the trade advisory committees, and will troubleshoot and facilitate communications between FAS and USTR.

Sharon McClure will manage the day-to-day matters relating to the trade advisory committees, and work closely with Matt O'Mara to plan and implement committee business. Her principle contacts in USTR will be Sharon Bomer and Christina Sevilla. In addition, Sharon McClure will coordinate trade committee activities within FAS with the International Trade Policy program area and the five ATAC Executive Secretaries, to inform, advise and clear matters with the FAS Administrator. In addition, she will serve as the Executive Secretary for the APAC.

Procedures

- **Setting Committee Meeting Dates:** FAS in conjunction with USTR will recommend possible dates for upcoming meetings. Matt O'Mara will finalize the dates with the Under Secretary and Office of the Secretary, and Sharon Bomer and Christine Sevilla will confirm with USTR leadership.

- **Agenda Planning:** For both APAC and ATAC agendas, Sharon Bomer and FAS, including ITP representative(s), appropriate Executive Secretary, Matt O'Mara, and Sharon McClure, will jointly develop a draft agenda to allow all parties to be involved from the onset. Matt O'Mara will ensure USDA and USTR leaderships' approval.

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- **Chairing Committee Meetings**: APAC and ATAC members will vote on a Chairperson to run the meetings, respectively. Both FAS Executive Secretaries and USTR leadership will remain in attendance while the APAC and ATAC meetings are in session.

- **Committee Minutes**: As required by the USDA Trade Advisory Committee Procedures and Rules, the official minutes will include:

  Content
  1) Meeting time, date, and place;

  2) List of attendees, including committee members, committee staff and Department employees;

  3) Accurate description of each matter discussed and resolution, if any;

  4) Copies of all reports or other documents received, issued, or approved by the committee, if appropriate; and,

  5) A description of public participation in all meetings open to the public and a list of who attended the meetings.

  Distribution
  To ensure communications of the committee members' interests, the APAC and ATAC minutes will be distributed to committee members, USTR leadership, the FAS Administrator, Deputy Administrators, and the APAC Executive Secretary in the Legislative Affairs Office.

Consultations with Committee Members
The following procedures will be followed for formal and informal communications:

1) Formal - Committee Resolutions and Trade Concerns

For each committee meeting, the Executive Secretaries will draft an informational memorandum from the FAS Administrator to the Secretary, the USTR and the Under Secretary (clear through Sharon McClure and Sharon Bomer) that provides:

- Resolutions passed by the committee deemed appropriate for action, recognizing resolutions do not require the full consensus of the membership.

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- If after consultation with USTR, action is recommended, also draft an options memo from the FAS Administrator to the Secretary, USTR if appropriate, and the Under Secretary outlining the recommendations.
- Description of the priority/sensitive issues debated by the membership.

To clarify required Department action concerning committee advice or recommendations, 19 USCA Sec. 2155 states USTR/USDA . . . "**shall not be bound** by the advice or recommendations of such advisory committees, but **shall inform** the advisory committees of significant departures from such advice or recommendations made. . ."

2) Informal Communications
To encourage routine feedback, comments, questions, or other forms of exchange, FAS will institute procedures to communicate regularly with committee members. The following procedures will be followed:

- **"International Trade Policy Monthly",** a monthly electronic newsletter for APAC/ATAC members will be drafted by the International Trade Policy area in cooperation with the Legislative Affairs Office and the Commodity and Marketing Programs area, drawing from the FAS Weekly Report to the Under Secretary. Items in the report will be organized within the following categories by priority: multilateral, bilateral, and regional. A calendar of upcoming events also will be included. Example Attached.

  FAS contact names and numbers will be included at the end of the report. The Trade Policy staff, FAS Administrator, and USTR will review and clear the monthly report. The APAC/ATAC Executive Secretaries will transmit the report to their members by the 15th of each month.

- **USTR Press Releases and Memoranda:** As in the past, APAC/ATAC Executive Secretaries will continue to forward to committee members relevant press releases, policy documents, and other materials that USTR requests to be sent.

  Executive Secretaries will continue to respond to questions and e-mails from individual members. The Executive Secretaries will forward any of these communications to other USDA and USTR personnel as needed.

W:\TradeAdvisory Committees\COMMUN~1, January 24, 2002

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ACTIONS TAKEN BEGINNING MAY 19 TO AUGUST 8

2001 TIME LINE	ACTION
• May 19	*Federal Register* notice announcing USDA/USTR reestablishing the APAC and ATAC Committees; requesting Committee nominations
• June 6	Memo from M. Chambliss to H. Shipman requesting guidance and providing draft time line
• June 15	Under Secretary Penn's memo to Secretary Veneman notifying her of the two week extension of the nominations; list of nominees received to date
• June 19	*Federal Register* notice announces extension of the deadline by 2 weeks to ensure that every effort has been made to solicit broad representation on the Committees
• June 21 and 22	Memos to White House Liaison and OCR providing list of all nominees for USDA clearances
• June 26	Memo from M. Sharpless to Dr. Penn re applications received from June 19 to June 26
• July 5	Memo from M. Sharpless to Dr. Penn providing list of nominees By Committee, By Region-Organization, and by Organization along with the list of 14 APAC nominees at 6 year limit
• July 12	Memo from M. Sharpless to Under Secretary Penn providing criteria for selection and list of nominees received to date
• July 16	Preliminary list of APAC nominees from Dr. Penn with instructions to move other APAC members to appropriate ATAC Committees
• August 8	Memo from M. Sharpless to Dr. Penn on procedures to finalize membership selection and planning for the first Committee(s) meeting (s)

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ACTIONS REQUIRED TO ENSURE OCTOBER 12 MEETING(S)

RECOMMENDED TIME LINE	ACTIONS
• August 13 - 17	Verify accuracy of nominees lists (completed)
	Draft appointment letter (rough draft)
	Verify mailing list for CCU (completed)
	Draft waiver letter (completed)
	Reconcile nominee clearances with White House Liaison (completed)
• August 20 - 24	Forward waiver memo to Lou Gallegos, Assistant Secretary for Administration
	Consult Secretary's schedule to determine availability for meeting dates
	Clear draft appointment letter up to Dr. Penn
	Provide CCU mailing list
• August 28 - 31	Final decision on Committees' membership with info memo to Secretary Veneman for her concurrence, which allows only 30 days to arrange for an October 12 (tentative date) for first Committee meetings
• September 3 - 6	1. Mail out appointment letters (requires Secretary Veneman and Zoellick's signatures). Recommend including date of first Committee meeting.
	2. Determine how the first meeting will be structured, i.e., plenary session (open, closed meeting and/or separate APAC/ATAC meetings following general session)[1]
	3. Draft meeting agenda in cooperation with USTR
	4. Arrange Committee meeting room, Jefferson Auditorium for Plenary meeting
	5. Arrange court reporter

[1]An open meeting requires a *Federal Register* Notice 15 days prior to the meeting date. Closed meeting requires USTR approval and is based on agenda topics.

The following is GAO's comment on the Department of Agriculture letter dated August 5, 2002.

GAO Comment

1. Regarding our findings that the nomination and appointment process is slow and cumbersome, USDA indicated that it took steps to streamline the process during the most recent rechartering period. We appreciate that the rechartering was completed within 4 months of being started. However, we note that it did not begin until May 2001---more than a month after the APAC and ATAC charters had expired in March 2001. As a result, as our report indicates, none of the six agricultural advisory committees met during the April to October 2001 period. Moreover, we note that USDA indicated in a July 2002 meeting with us that many advisers appointed to the current charter term have yet to receive final security clearances.

Comments from the Department of Commerce

Note: GAO comments supplementing those in the report text appear at the end of this

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

AUG - 5 2002

Loren Yager
Director, International Affairs and Trade
United States General Accounting Office
Washington, D.C. 20548

Dear Loren:

Thank you for sharing with us the draft United States General Accounting Office (GAO) report entitled, "International Trade: Advisory Committee System Should Be Updated to Better Serve U.S. Policy Needs," and for the opportunity to comment on the report. We believe the report is, in general, thorough and fair, and your investigative team deserves credit for a job well done.

In particular, we believe the report, as well as its conclusions and recommendations, affirms our view that the United States Trade Advisory System constitutes a highly productive partnership between the United States Government and the private sector in a significant policy area that is unique among the United States and its trading partners, and has made a tremendous contribution to our national economic well-being. Of course, every program as large, diverse, and important as this needs to be managed as efficiently and effectively as possible, and we will study the report's recommendations carefully.

Based on our very thorough review of the draft report, we have a number of comments and corrections. They are enclosed for your consideration.

Again, thank you for your work in producing this report.

Sincerely,

Grant D. Aldonas

Enclosure

U.S. Department of Commerce Technical Comments on Draft United States General Accounting Office (GAO) Report Entitled, "International Trade: Advisory Committee System Should Be Updated to Better Serve U.S. Policy Needs" (GAO-02-876)

A. Timeliness, Quality, and Accountability of Consultation Process

The GAO has identified three aspects of the trade advisory committee consultation process that it believes could be improved: timeliness, quality, and accountability.

1) **Timeliness: Consultations were not always timely enough to have an impact on U.S. policy, in part because certain committees have not met at all or meet irregularly. [Page 6, para. 1; Pages 16, 19, 20]**

See comment 1.

Comments: The Draft Report underplays the fact that, according to the GAO survey, 62 percent of the members responding felt that consultations were held on a timely basis to a moderate or great extent (another 8 percent did not respond to this question).

See comment 2.

The Draft Report should make clear that with regard to the third-tier Industry Sector and Functional Advisory Committees (ISACs and IFACs), jointly administered by the United States Department of Commerce (Commerce) and the United States Trade Representative (USTR) through the Industry Consultations Program (ICP), two of the ISACs meet on a monthly basis and the rest typically meet four to six times a year. The Designated Federal Officer (DFO) of each committee schedules meetings in consultation with the Committee Chair, who in turn frequently consults with the membership regarding the need for and scheduling of additional meetings. Because members must pay for their own travel to Washington, D.C., in scheduling meetings the DFO and Chair must balance the need for timely consultations against the need for advance planning in order to permit orderly scheduling and avoid placing undue financial burdens on committee members and their companies.

See comment 3.

The Draft Report should accord greater emphasis to the fact that, in order to ensure timely consultations on fast-moving issues and to reduce costs, Commerce and USTR have been using their information technology (IT) resources increasingly effectively over the past several years, particularly by releasing more information and documents via e-mail for review by ISAC and IFAC members. The Draft Report points out (page 16) that in FY01, USTR scheduled at least nine ad hoc meetings, mostly teleconferences or in-person meetings, and faxed at least 63 requests for advice, usually addressed to the entire advisory system membership or all of the ISACs and IFACs, with an average of 7.5 days to respond. During the same period, the Industry Consultations Program, in conjunction with USTR, sent out to ISAC and IFAC members approximately 139 distributions of which 84 were for request for comments (other distributions included USTR press releases and other trade policy issues of interest). In FY02 to date, the ICP has sent out by e-mail over 135 requests for

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comments, press releases, and other information of importance to ISAC and IFAC members, outside of the normal committee meeting schedules.

See comment 4.

Although USTR does often require quick turnaround times for requests for comments on fast-moving issues, USTR has allowed ISAC and IFAC members to contact the trade negotiator directly and has assured our ISAC and IFAC members that their comments would still be accepted beyond the due date. On many occasions, the ICP has requested extensions from USTR on request for comments so that ISACs and IFACs can meet on an issue and have enough time to formally respond.

See comment 5.

The Draft Report should also mention that Commerce has also begun research on upgrading its technology to allow trade-sensitive documents to be viewed over a secure interactive website. As GAO has noted, the costs of such solutions are potentially very high, and will have to be balanced against other pressing budgetary needs.

See comment 1.

The Draft Report states (page 19) that "members who we surveyed" reported instances of advice being sought after decisions are made; and that "several members" reported a "tendency" toward seeking views after the fact. Given that 62 percent of the members are reportedly satisfied with the timeliness of consultations, we think these assertions clearly do not represent the majority view; as such, they should either be more precisely stated or dropped.

See comment 6.

The Draft Report states (page 20) that Commerce's and USTR's procedures and rules "do not address the principle of timeliness or consulting to the maximum extent feasible." The Draft Report should make clear that these procedures and rules apply only to ISACs and IFACs jointly administered by Commerce and USTR, and not to the first- and second-tier committees cited as having the most acute meeting-scheduling problems. The procedures and rules are based upon the legal framework created by section 135(c) of the Trade Act of 1974, as amended, the Federal Advisory Committee Act (FACA), and other laws and Executive Orders relating to the handling of security classified information, public access to information, and other matters. The procedures and rules leave it up to the DFO, the Chair, and respective committee members to set their meeting schedules.

2) **Quality: Members and negotiators believed that the consultations were not always meaningful or useful, and that in some cases, tight meeting agendas were not conducive to fully vetting issues and formulating committee advice. In other cases, committees were asked to comment on complex initiatives, but were given little time to review the initiatives and limited access to key documents. [Page 6, para. 1; Pages 21, 22, 25, 26]**

Comments: The Draft Report should reflect that, because of the costs and travel time associated with ISAC and IFAC meetings, and the number of issues to be discussed, most meetings frequently include a very full agenda. Meetings typically feature all-

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See comment 7.

day agendas in order to cover necessary topics as thoroughly as possible as well as make the best use of out-of-town members' time. Meetings typically commence at 8:45 a.m. and last until 3:00 p.m. or later, with members typically working through lunch. Every effort is made to schedule as much time as possible for thorough discussion and deliberation on each major topic.

See comment 8.

The Draft Report notes (page 22) that "officials and members said that being able to access documents electronically, such as through an encoded internet site, would improve quality of committee advice. While we do not disagree, we believe the Draft Report could better reflect the overriding importance of adequately safeguarding classified and trade-sensitive materials. Commerce and USTR have continuing and legitimate concerns regarding their ability to safeguard classified and trade-sensitive information from inadvertent release. On three recent occasions, extracts of negotiating texts of the U.S.-Chile Free Trade Agreement, not publicly released, have appeared in private trade publications. Commerce is actively researching creating and maintaining a secure, interactive website for use by ISAC and IFAC members; however, we have determined that the cost is considerable (approximately $200,000 for an effective system) and our resources are limited. Although Commerce and USTR recognize that security leaks are rare among advisory committees, electronic access to documents can be offered only in conjunction with adequate provision for security.

See comment 9.

See comment 10.

The Draft Report (pages 25, 26) states that "members and negotiators believe the system's capacity for cross-fertilization among committees should be strengthened. Although functional committees on issues such as customs and standards have been established and are supposed to include representatives from industry committees, participation by them is reported to be limited." [1] The Draft Report should reflect that Commerce and USTR established the Committee of Chairs of the ISACs and IFACs to bring to the table the cross-cutting issues of their respective committees. In addition, we note that ISAC and IFAC advice is considered to have been submitted in confidence and the statute provides that such advice may be shared with only a specified number of people; therefore, Commerce and USTR have provided access to committee advice only to those individuals provided for in the statute on a need-to-know basis.

3) <u>Accountability</u>: **Members were concerned that the system's consultation process provides little accountability to ensure that advice is considered. The lapse of trade negotiation authority eliminated the committees' channel for reporting to Congress, and many members stated that executive branch officials are not**

[1] This sentence should be changed to "Although functional committees on issues such as customs, standards, intellectual property rights, and electronic commerce have been. . . "

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informing them of "significant departures from advice," as the law requires. [Page 6, para. 1; Pages 28-29]

See comment 11.

Comments: Commerce and USTR consider all advice rendered by the committees to be of the utmost importance, and believe that it receives significant weight in the formulation of trade policy and trade negotiating positions. Commerce believes that, overall, the GAO Survey supports this belief, and that the Draft Report ought to reflect more prominently this conclusion. We believe that "significant departures" from committee advice are extremely rare, and that in those infrequent instances committee members are appropriately informed.

The Draft Report refers to a statement by one DFO that "committee letters are not always sent to officials responsible for the issues involved. . . ." Commerce believes this reference is misleading, does not represent the substantial practice of the agencies or the overall views of committee members, and is limited to a very small number of isolated instances. Furthermore, it confuses the issue of with whom the advice is shared with the issue of whether and how it is acknowledged.

See comment 12.

ISAC and IFAC advice is primarily rendered orally during committee meetings while trade negotiators are present. When formal ISAC and IFAC written advice is sent to the Secretary of Commerce, it is reviewed by his policy staff and then the appropriate ITA unit is tasked to prepare the draft response. Commerce internal procedures require that all responses for Secretarial signature go through a concurrence process which includes clearance on the response by the official responsible for the issue. Although there are several clearance levels, the concurrence process ensures that the appropriate level Commerce officials are seeing the advice and have a chance for comment. All responses from ITA units must be approved by the Under Secretary of Commerce for International Trade prior to signature by the Secretary of Commerce, which ensures that ISAC and IFAC advice is weighed and considered.

The Draft Report should recognize that in those instances where agency responses may be characterized as "pro forma," this is generally because final decisions regarding the advice, or the underlying issue, have yet to be made.

B. <u>Structure and Composition of the Trade Advisory Committee System</u>

The Draft Report contains a number of conclusions regarding the structure and composition of the Committees with which Commerce finds potentially misleading or inadequately supported.

1) **The trade advisory committee system has not been updated to reflect changes in the U.S. economy and U.S. trade policy, and is largely the same as it was in 1980, even though the focus of U.S. trade policy has shifted from tariffs toward other complex trade issues such as protection of intellectual property rights . . . and as**

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a result the system has gaps in its coverage of industry sectors, trade issues, and stakeholders. [Page 6, para. 2; Page 33]

See comment 13.

Comments: Since 1980, Commerce and USTR have made changes to the sectoral and functional committees' structure, including creating an Industry Functional Advisory Committee on Intellectual Property Rights (IFAC-3) in 1986; abolishing the Industry Policy Advisory Committee in 1998; and with the emergence of the electronic commerce sector, creating an Industry Functional Advisory Committee on Electronic Commerce (IFAC-4) in 1999. Commerce and USTR will continue to work together in re-evaluating sectoral and functional advisory committee alignments to ensure that the ISACs and IFACs adequately reflect the changing U.S. economy.

As GAO has noted, there need be no "automatic and linear relationship between 'trade levels' and committee membership." Indeed, committee structure and membership are necessarily based on a number of factors, including industry interest, current and pending trade policy issues, specific issues in ongoing trade negotiations, general level of Washington representation, export competitiveness, import sensitivity, and other factors besides raw export numbers.

Commerce and USTR actively and continuously recruit nominations for membership from all sectors of the U.S. economy, in a wide range of venues, and will continue to do so. We attempt to portray active participation in the most favorable possible terms, while recognizing that it places substantial financial and programmatic demands on the participants. However, as GAO recognizes in the Draft Report, the choice whether to participate in the system ultimately lies with industry.

2) **Representation of the Services sector has not kept pace with its growing importance to U.S. output and trade. [Page 6, para. 2; Pages 29-33]**

See comment 14.

Comments: Commerce does not agree that the services sector is inadequately represented on the third-tier sectoral and functional level. The Industry Sector Advisory Committee on Services (ISAC-13) is one of the most active committees in the ICP and meets on a monthly basis. The committee currently has 32 very active members. The Draft Report should afford greater prominence to the fact that a majority of the members of the Services ISAC who responded to the GAO survey have expressed satisfaction with the level of sector representation on the Services ISAC.

3) **Certain manufacturing sectors, such as electronics, have fewer members than their sizeable trade would indicate. [Page 6, para. 2; Page 32]**

Comment: As the Draft Report points out (page 32), there need be no "automatic and linear relationship between trade levels and committee membership." Committee membership can depend in part on the number and prominence of issues raised by pending trade negotiations, as well as other issues such as import sensitivities.

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Commerce and USTR amended the charter of the Electronics and Instrumentation ISAC for the 2002-2004 charter period to allow members from the software industry to be included on the committee. Commerce is now actively recruiting new members from the software industry. Depending on the number of new members from the software industry, Commerce and USTR have already decided to re-evaluate ISAC-5 at the next re-chartering in 2004 to reconstitute the committee and change the committee's name to reflect changes in the electronics and instrumentation sector.

4) Participation of Foreign-Controlled Firms. [Page 33]

See comment 15.

The Draft Report states (page 33) that "major companies, such as DaimlerChrysler, cannot participate because foreign-owned companies are prohibited from membership on many of the committees." Commerce believes the Draft Report should note and explain USTR's longstanding policy against including foreign and foreign-controlled firms among committee membership. The policy is based on the sensitivity of the subject matter considered by the committees and the possible conflicts that would be experienced by U.S. firms that have foreign owners. We recognize that in today's more globalized economy, this policy may occasionally appear anomalous; however, we believe it continues to be a sound policy and there is no current intention to revisit it.

5) Participation Levels and Outreach. [Pages 34, 35]

See comment 16.

The Draft Report states (page 34) that Committee membership averages only "49 percent of authorized capacity." This statement implies both that the committees are under-enrolled, and that "authorized capacity" of a committee represents a reasoned conclusion as to how many members that committee should have. In fact, neither is the case. "Authorized capacity" is a somewhat arbitrary figure, based principally on the FACA limit of 50, with enough leeway built so that reasonably anticipated increases in membership should not require that the charter be amended. Because the ceiling is arbitrary, membership "percentages" based on the ceiling are not particularly useful. Also, Section 135 (c)(2)(B) of the Trade Act, as amended, allows Commerce and USTR to take into account "the necessity for reasonable limits on the number of such advisory committees" and "the necessity that each committee be reasonably limited in size."

See comment 17.

For the record, corrections to Figure 7 (page 35) of the Draft Report (as rounded to the nearest percent) are attached.

See comment 18.

The Draft Report states (page 34) that the agencies "often rely on passive recruitment through the *Federal Register*. . . . " This statement is misleading. As part of the biennial re-chartering process, Commerce places notices in the *Federal Register* on a recurring basis. However, these notices are merely the starting point – a legally required threshold – for Commerce recruitment and outreach efforts. Commerce officials recruit for the committees in many venues and fora. Commerce has

increased its already significant outreach and recruitment efforts by holding ISAC and IFAC meetings outside of Washington, D.C., with either open/partially open meetings for the public to attend, speaking before trade associations and outside groups on the ICP, and coordinating trade shows and events with our U.S. Export Assistance Centers to help recruit new members.

As noted above, Commerce and USTR actively and continuously recruit nominations for membership from all sectors of the U.S. economy, in a wide range of venues, and will continue to do so. We attempt to portray active participation in the most favorable possible terms, while recognizing that it places substantial financial and programmatic demands on the participants. However, as GAO recognizes in the Draft Report, the choice whether to participate in the system ultimately lies with industry.

6) Nonbusiness membership. [Pages 6, 10, 38, 39, 40]

The Draft Report states (page 6) that "nonbusiness stakeholders report being marginalized . . . because they are permitted membership on relatively few committees. . . . " On page 38, the Draft Report further states: "Most nonbusiness members currently participating in the system are placed on a few committees in the second tier . . . "

See comment 19.

Commerce believes that treatment by the Draft Report of the issue of nonbusiness participation may be somewhat misleading. First, the Draft Report should contain a more detailed and specific discussion of the Congressional delegation as evidenced in the statute, particularly in distinguishing the functions and make-up of each of the three "tiers" of committees. For example, the statute provides specifically for representation of consumer interests only in the first tier committee, the ACTPN – not in the second or third tiers. Likewise, environmental interests are specifically provided for only in the first tier.[2] Although the Draft Report implies that environmental and labor interests have been "relegated" to "a few committees in the second tier" (page 38), in fact their representation on committees such as the TEPAC – established by Executive Order -- actually goes beyond what the statute requires. (As noted elsewhere in the Draft Report, this attempt to "marry" inconsistent interests in one Committee is widely regarded as unproductive.)

The Draft Report notes (page 10, para. 1; pages 39, 40) that 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. We think this issue could benefit from a more clearly focused discussion. With regard to "fairly balanced," Commerce and USTR have interpreted this to mean "fairly balanced"

[2] The Trade and Environmental Policy Advisory Committee was created pursuant to Presidential Executive Order Number 12905, March 25, 1994.

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among industry points of view. We believe this is a reasonable interpretation, well supported by the legislative history, and our legal position is that section 135(c) of the Trade Act, as amended, allows the President to establish sectoral and functional committees comprised solely of industry representatives.

The Draft Report refers (page 39) to "successful legal challenges" brought by nonbusiness groups; however, it should make clear that the Clinton Administration elected not to pursue a pending appeal in one case, and the current Administration voluntarily settled the second case.

However, the Draft Report does fairly conclude that until the issue of nonbusiness participation is clarified, there will continue to be confusion and ambiguity in this area.

C. Management Issues

1) Leadership direction and administrative support by USTR and the other managing agencies. [Page 7]

See comment 20.

The Draft Report states (page 7, para. 1) that "leadership direction and administrative support by USTR and the other managing agencies have not been sufficient to ensure that the advisory committee system works as intended." Commerce does not agree with this conclusion of the Draft Report.

Commerce and USTR believe that the ICP is effectively managed and is functioning effectively as intended by Congress. Commerce has a good working relationship with USTR and will continue to work more closely in providing leadership for the ISACs and IFACs. USTR oversees a large number of committees and it is a small agency. Of the 34 trade advisory committees in the system, Commerce is responsible for 22 of them, and believes it is making available adequate resources for managing the system, given competing budgetary priorities. The average cost to administer each of commerce's 22 committees is approximately $50,000 (excluding travel). Commerce will shortly hire an additional two FTEs to work solely on ICP management.

Both agencies have a broad mandate and many other statutory responsibilities, and operate under tight budgetary constraints. Our resources are properly and appropriately allocated to meet our many responsibilities. Commerce is committed to improving the efficiency of the advisory committee operations, and is taking many steps to do so within its existing budget.

D. Miscellaneous Comments

Commerce has the following additional technical comments on the Draft Report:

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1) **USTR has the discretion to create, change, and terminate committees in the second and third tiers. [Page 10, para. 2]**

Comment: USTR's discretion is to be exercised jointly with the relevant Executive Department.

2) **The advisory committees are administered by USTR, which assumes a leadership role; the Departments of Agriculture, Commerce, Labor, and the EPA. [Page 11, bottom]**

Comment: The advisory committees are administered jointly by the USTR and the Secretaries of Commerce, Defense, Labor, Agriculture, the Treasury, or other executive departments as appropriate. EPA does not administer any advisory committees under Section 135 of Trade Act, as amended.

3) **Footnote 11: The Committee of Chairs was established to advise the Secretary and the USTR on trade matters. . . . [Page 12]**

Comment: Change footnote 11 to "The Committee of Chairs of the ISACs and IFACs was established to advise the Secretary of Commerce and the USTR. . . ."

4) **Footnote 13: . . .and 303 accepted invitations to continue their membership. [Page 14]**

Comment: Correct Footnote 13 to read ". . .and 309 accepted invitations to continue their membership." [ICP re-appointed 309 for 2002-2004 charter term.]

5) **While the DFOs take and distribute both restricted and unclassified summaries and minutes of the third-tier committee meetings, only classified transcripts are kept for the first-and second tier committees. [Page 16]**

Comment: The sentence should read, "The DFOs of the ISACs and IFACs prepare classified minutes of closed meetings for internal committee use only, and prepare unclassified public summaries. Only classified transcripts. . ."

6. **Figure 8: Time-line for Trade Advisory Committees. [Page 37]**

Comment: Since GAO is using the 1980 re-constituted period of advisory committees for time-line, the arrow for the Committee of Chairs should be moved to 1980 for alignment with the other ISACs and IFACs that were re-constituted at that time.

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Attachment

ATTACHMENT - FIGURE 7 [Page 35]

ISACs -- Committee Name	Charter/Current Members/ Percentage		
Aerospace Equipment	30	17	56%
Capital Goods	30	15	50%
Chemicals and Allied Products	50	23	46%
Consumer Goods	40	24	60%
Electronics and Instrumentations	50	11	22%
Energy	30	11	37%
Ferrous Ores and Metals	30	14	47%
Footwear, Leather and Leather Products	30	13	43%
Building Products and Other Materials	30	10	33%
Lumber and Wood Products	30	13	43%
Non-Ferrous Ores and Metals	30	15	50%
Paper and Paper Products	30	8	27%
Services	50	31	62%
Small and Minority Businesses	35	19	54%
Textiles and Apparel	30	19	63%
Transportation, Construction, Mining and Agricultural Equipment	30	8	27%
Wholesaling and Retailing	30	17	57%
***IFACs Committee Name**			
Customs Matters	20	12	60%
Standards	25	14	56%
Intellectual Property Rights	20	13	65%
Electronic Commerce	30	17	57%

**Note: Percentage is based for number of private-sector members the IFAC charters allow. One member (or in exceptional circumstances two members) from each ISAC may serve on each IFAC. Such service does not count as additional company representation.*

The following are GAO's comments on the Department of Commerce's letter dated August 5, 2002.

GAO Comments

1. The Department of Commerce stated that our draft report understated member satisfaction with the timeliness of consultations, arguing that 62 percent of the respondents to our survey reported that consultations were held on a timely basis to a moderate or great extent. We do not agree with this characterization of our survey data. In our survey, we asked to what extent the executive branch timed requests so that committee input could be used in trade negotiations. Respondents answered this question according to a five-point extent scale that ranged from "No extent" through "Very great extent." Only 25 percent of respondents checked the top two categories, "Great extent" and "Very great extent." As the Department of Commerce notes, another 37 percent of respondents checked the middle category on the scale, which was "Moderate extent." If all three of these categories are added together, they total 62 percent of respondents. However, we do not agree that all three categories should be added together. Our report includes the full range of responses to the question, adding together only the top two (very great and great extent) and bottom two (some or little and no extent) categories, and reporting those who checked "to a moderate extent" separately. As the report already notes, 37 percent of respondents reported that they were satisfied to a moderate extent, the third point on a five-point scale. Furthermore, 30 percent checked the final two points on the scale, "Some or little extent" and "No extent." Consequently, we believe our finding that "[C]onsultations were not always timely enough to have an impact on U.S. policy . . ." is justified. Finally, we are accurately reporting member statements in both the survey and interviews that there were instances when advice was sought after the fact or not sought at all.

2. We agree that the frequency of meetings varies considerably across committees, and we have added language to this report to that effect. With respect to scheduling meetings on a timely basis, we recognize that there is a tension between scheduling meetings far enough in advance and scheduling additional meetings as needed. However, it is clearly important to have timely consultations.

3. We recognize that Commerce, USTR, and USDA have made extensive use of electronic transmissions to provide information to and seek input from committee members. To capture the extent of such

communication, we reported on our analysis of such transmissions during fiscal year 2001. Specifically, we calculated the number of times during fiscal year 2001 that USTR officials used electronic means to request comment from advisers, including when USTR sent requests for comment to Commerce's Industry Consultations Program (ICP) office, which relayed them to advisers electronically. Our analysis yielded a result of 63 requests for comments, rather than the 84 suggested by Commerce in its agency comments. Commerce may have additional information not made available to GAO about the content of each communication that could account for the discrepancy between our counts of agency requests for comment in fiscal year 2001. However, because GAO and Commerce are analyzing the same data for the same period, the number of requests for comment is certainly not 63 plus 84, as Commerce's comments imply. We welcome the fact that use of electronic means to communicate with advisers is continuing in fiscal year 2002, a period that was outside the scope of our document review.

4. Commerce reports that USTR has been responsive to ICP requests to extend deadlines for ISAC and IFAC members to provide comments on fast-moving issues. However, we note that in earlier interviews ICP officials told us that the reason they have requested extensions from USTR was because members complained that the given deadlines were too short to provide meaningful input.

5. We believe that, if implemented, the technological improvements Commerce and USTR are pursuing to allow sensitive documents to be viewed on a secure interactive Web site could help remedy member concerns over access to key documents required for meaningful and timely advisory committee input.

6. Regarding agency procedures, Commerce does not disagree with our statement that Commerce's and USTR's procedures and rules "do not address the principle of timeliness or consulting to the maximum extent feasible." However, it requests a clarification in the report to the effect that these rules and procedures only apply to the ISACs and IFACs operating at the third, technical tier of the advisory committee system. But in reaching the conclusion that Commerce's and USTR's procedures and rules do not address the principle of timeliness and consulting to the maximum extent feasible, we examined procedures that apply to all three tiers of the advisory process, including the first- and second-tier committees having the most severe scheduling problems. Specifically, we examined the procedures for the USTR-only,

Commerce-USTR, and USDA-USTR committees. The procedures for USTR-only committees pertain to the first- and second-tier committees having the most acute meeting scheduling problems. The Commerce-USTR procedures pertain to 22 of the third-tier committees. Neither the USTR-only nor the Commerce-USTR procedures address the principle of timeliness or consulting to the maximum extent feasible. The USDA procedures—which apply to six committees at the second and third tier—also do not address these issues. Although we recognize that the procedures are based on the legal framework created by Section 135 of the Trade Act as well as other laws and orders, Section 135 (i) states that it shall be the responsibility of the United States Trade Representative, in conjunction with the Secretary of Commerce and other executive departments, "to adopt procedures for consultation with and obtaining information and advice from the advisory committees" on "a continuing and timely basis."

7. Commerce recognizes that committee meetings frequently include a very full agenda, but stresses that this reflects efforts to balance a variety of factors, including cost, members' time, and the number of issues to be addressed. We have added language to the report to this effect, but we note that many survey respondents expressed a desire for more time for committees to discuss issues and formulate advice. Survey respondents and interviewees also indicated that the format of meetings is sometimes not conducive to the two-way dialogue that would characterize quality consultations. Formulation of advice is the fundamental purpose of the advisory committees, and we urge Commerce to consider time available for committee deliberations as it seeks to structure meetings to make best use of members' time.

8. We have added language to the report noting Commerce and USTR's concerns over safeguarding classified information.

9. We have added language to the report noting that Commerce and USTR already have some mechanisms to bring to the table crosscutting issues including the Committee of the Chairs of the ISACs and IFACs. We note that according to documents we obtained from Commerce, that committee met three times in fiscal year 1999, twice in fiscal year 2000, and twice in fiscal year 2001.

10. Commerce notes that the statute places limits on sharing of advice and information across advisory committees that could inhibit the trade advisory committee system's capacity for cross-fertilization. Although

we agree that Section 135 places some limitations on the disclosure of trade secrets and confidential information, it does not appear to preclude provision of confidential information to designated advisory committee members who possess the requisite security clearances.

11. Commerce asserted that significant departures from committee advice are rare, and that in those infrequent instances committee members are appropriately informed. This point of view is supported by the GAO survey, in Commerce's opinion. In our survey, we asked committee members how often the executive branch had pursued negotiating strategies that significantly differed from the committee advice. One hundred twenty committee members responding to our survey reported that the executive branch significantly departed from their committees' advice about half of the time, or more frequently. These 120 members constitute 25 percent of all respondents to our survey, and about one-third of those who provided an answer to this question. While they, by no means, constitute a majority of respondents, they do represent a sizable minority. In any case, significant departures from committee advice do not seem to be a rare event, as Commerce suggests. Our survey then asked a follow-on question for respondents who indicated that there had been significant departures from committee advice. Thirty percent of those answering this question indicated that they had rarely or never been informed of these significant departures. Another 21 percent of those who answered this question indicated that they had been informed of significant departures about or less than half of the time. As a result, we do not agree with Commerce's statement that committee members are appropriately informed when there are significant departures from advice. Section 135(i) clearly states that USTR "shall inform the advisory committees of significant departures" from committee advice or recommendations.

12. We have updated this report with the information Commerce provided about its practices for handling formal letters from advisory committees. We note that chairmen and members with whom we spoke expressed some frustration about lack of feedback from the government as to how it intends to use or respond to committee advice—a sentiment not inconsistent with Commerce's practice of providing pro forma responses to committee advice unless it has already made a final decision on policy. Moreover, 21.9 percent of committee chairmen responding to our survey reported that their committees written advice was not acknowledged most of the time

(see Q25). In general, the members told us they want to have an opportunity to influence policy before it is finalized and expressed dissatisfaction when feedback on committee input was not substantive or timely in nature.

13. Regarding changes to sectoral and functional committee, our report already notes that only three committees have been created in the past decade to respond to emerging needs. We believe that continued efforts by Commerce and USTR to reevaluate the sectoral and functional advisory committee alignments with the economy and trade policy needs are warranted.

14. Commerce's position on the services committee is consistent with the statements in this report that certain services negotiators and 70 percent of ISAC 13's members said that the services sector is well represented in the system. However, we note that some negotiators with whom GAO spoke made a point of saying that the services sector is a large share of U.S. output and trade and that it is only represented in 2 of the 17 industry sector advisory committees; in the scheme of the whole committee system, therefore, they stated that services is underrepresented relative to manufacturing. This report has been updated to note that Commerce has efforts under way to fill the gap in representation of the software industry.

15. Commerce asks us to "note and explain" USTR's long-standing policy against including foreign-owned or –controlled firms among committee membership. Commerce indicates that this policy is based on the sensitivity of the matters considered by the committees and the possible conflicts that would be experienced by U.S. firms that have foreign owners, and we have added language to this report to that effect. However, we note that first, the U.S. government does not have a uniform policy against inclusion of foreign-owned firms on the trade advisory committees. USDA stated in its technical comments on our draft report that it does not preclude foreign-owned firms from participating in its trade advisory committees. Indeed, USDA indicates that at least one foreign-owned or -controlled firm already participates. USDA officials indicate that although foreign ownership can be considered in the nomination review process, in practice, it was not actually considered during the 2001 rechartering of the six USDA trade advisory committees. Second, as to the rationale for the USTR/Commerce exclusion, we note that there does not appear to be any bar in Section 135, FACA, and GSA implementing regulations

specifically precluding participation by foreign-owned or -controlled firms from having representatives on trade advisory committees. The legislative history of Section 135 does not deal directly with this issue, and in their comments, neither USTR nor Commerce bases its long-standing policy on a legal prohibition. Third, while we recognize Commerce's and USTR's concerns about the sensitivity of the subject matters considered by the committees, we note that neither Commerce nor USTR has provided us with requested explanations of why the requirements that advisory committee members obtain security clearances and sign a legally binding nondisclosure agreement to protect classified information, along with giving members procedural guidance on safeguarding trade sensitive information, are not sufficient to address these concerns. Fourth, we acknowledge that a majority of our survey respondents expressed reservations about inclusion of foreign-owned firms in the system. However, several members and negotiators still suggested that the long-standing policy barring foreign-owned firms from membership altogether should be revisited, in part because of the contribution to U.S. employment and production that some of these firms provide. Indeed, several U.S. negotiators reported to GAO that they already actively work with foreign-owned firms on an informal basis during trade negotiations, many of which are already members of key trade associations.

16. Regarding participation levels and outreach, Commerce took issue with our position that the number of members specified in each committee's charter represents a proper level of membership. We note Commerce's assertion that the "authorized capacity" numbers specified in each committee's charter are "somewhat arbitrary," but we hold that they do provide useful guidance regarding committee size. Each committee charter specifies that it "consists of approximately X members," and each committee's charter specifies a distinct membership number, ranging from 30 to 50 members. For example, the charter for the Small and Minority Businesses Committee states that it "consists of approximately 35 members," while the charter for the Chemicals and Allied Products Committee specifies approximately 50 members. Further, while for some trade advisory committees managed by other agencies the charter states that these numbers represent a maximum, this is not the case for the committees that Commerce administers. Even if the numbers specified in the charters do not represent an absolute ideal, our conclusion that the trade advisory committees were at 49 percent of their authorized capacity in fiscal year 2001 highlights

the ample room available on the committees that could be used to fill gaps in representation.

17. We appreciate that Commerce provided us with current membership numbers as of August 2002, although the scope of our document review was through fiscal year 2001 (September 30, 2001). We note that according to these current membership numbers, at 48.3 percent of charter levels, the committees administered by Commerce remain just below half of their authorized capacity, and well below the 55 percent of capacity they had reached in fiscal 2000.

18. We recognize Commerce's efforts to recruit new members and have updated the report to reflect them more fully. These efforts may alleviate the difficulties of maintaining robust and representative membership, concerns that both Commerce and USTR officials expressed during our review.

19. Commerce believes that the draft report's treatment of the issue of nonbusiness participation may be somewhat misleading and states that the report should contain a more detailed and specific discussion of the congressional delegation in Section 135 of the Trade Act of 1974, particularly in distinguishing the functions and makeup of each of the three "tiers" of committees. We believe this report's treatment of the nonbusiness issue is fair and accurate and note that appendix II of our draft report contains a detailed discussion of the functions and committee structure for each tier.

20. We recognize that many members expressed satisfaction with the support provided to committees by USTR and other managing agencies, including Commerce and USDA, and we have added language to this report to that effect. However, certain members also expressed concerns about overall leadership of the system and stated that delays or disruptions associated with agency execution of administrative tasks such as rechartering and new appointments were hindering the system's ability to fulfill its statutory purpose. Our report already notes that—unlike USTR, USDA, and Labor—Commerce's ICP successfully avoided disruptions in committee operations typically associated with rechartering. This report has been updated to note that Commerce is taking steps to fill administrative support needs by hiring additional staff. With the renewal of trade promotion authority on August 6, 2002, the U.S. negotiating agenda and resulting demands on the committee system are likely to increase.

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