

B-133381-O.M.

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Director, ID

WILSON SOOZMAN

TOP General Counsel - Paul G. Dembling

General Accounting Office audit authority over United States International Trade Commission - B-133381-O.M.

This memorandum is in response to a request from Ms. Eleanor M. Hadley, Assistant Director, ID, for our advice concerning GAO's authority to undertake audits and reviews of the activities of United States International Trade Commission (ITC). The request indicates that the ITC Chairman, Will E. Leonard, takes the position that this Office has no authority to review the ITC except as the Congress specifically requests. Ms. Hadley characterizes the ITC as "hybrid" in nature, with responsibilities to both the President and the Congress, and wonders if that fact supports the Chairman's contention.

Section 312 of the Budget and Accounting Act, 1921, 31 U.S.C. § 531 (1970), confers upon the Comptroller General the power to investigate all matters relating to the receipt, disbursement and application of public funds. Section 313 of that act, 31 U.S.C. § 541 (1970), provides in part:

"All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them * * *."

Section 2 of the 1921 Act, 31 U.S.C. § 21 (1970), defines the term "department [and/or] establishment" to include--

"* * * any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government, including any independent regulatory commission or board * * *."

Section 117 of the Accounting and Auditing Act of 1950, 31 U.S.C. § 671 (1970), states that, except as otherwise provided by law, the financial transactions of each executive, legislative, and judicial agency, shall be audited by GAO in accordance with rules and regulations prescribed by the Comptroller General. The term "executive agency" is defined to mean, with certain exceptions not relevant here "any executive department or independent establishment in the Executive branch of the Government * * *."

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19 USC 2281(b)(1)(B)

Section 171 of the Trade Act of 1974 Pub. L. No. 93-618, (January 3, 1975) 88 Stat. 1978, 2009, renamed the United States Tariff Commission (established by section 330 of the Tariff Act of 1930) the United States International Trade Commission. The original Tariff Act did not specify the precise organizational status of the Tariff Commission; nor does the amended act specify the precise status of the ITC. Sections 172-174 of the Trade Act amended various sections of the Tariff Act of 1930 relating, inter alia, to membership on the ITC, the terms of office, and the requiring of votes on the record. See 19 U.S.C. §§ 1330, 1332, and 1333 (1970 & Supp. V, 1975). It also authorized the ITC to have its own attorneys represent it in court proceedings, as well as the Attorney General at the ITC's request. Section 175 of the Act prohibited the President from revising ITC budget requests and eliminated OMB apportionment of ITC appropriations. These and other provisions of the Act certainly give the ITC a high degree of independence from Presidential control but this is not a relevant factor in determining our audit authority. The ITC, as did its predecessor, the Tariff Commission, clearly falls within the broad definitions of 31 U.S.C. §§ 2 and 67, supra.

Moreover, the ITC, as in the case of its predecessor, is financed by public funds (i.e., appropriated by the Congress). GAO has audited the United States Tariff Commission pursuant to our authority under 31 U.S.C. §§ 53 and 67, (see "Review of Selected Aspects of the Financial Management System of the United States Tariff Commission, Washington, D.C., B-133381, dated April 28, 1966,) which authority is not dependent on a direct request from the Congress. We can find no reason for holding that our authority, which admittedly extended to audits of the U.S. Tariff Commission under the above cited provisions of law, does not also extend under those same provisions of law, to its successor, the ITC.

We are aware of no statutory provisions which restrict GAO audits of, or access to records of, the ITC. Section 204(a) of the Legislative Reorganization Act of 1970, as amended, 31 U.S.C. § 1154(a) (Supp. V, 1975), authorizes the Comptroller General to "review and evaluate the results of Government programs and activities carried on under existing laws" when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses, having jurisdiction over such program and activities. Since no Government program or activity is specifically exempted from self-initiated Comptroller General review and evaluation, and we can find no such exemption in any of the relevant legislation relating to the ITC, it must be concluded that the programs and activities of the ITC are subject to self-initiated Comptroller General review and evaluation pursuant to 31 U.S.C. § 1154(a) (Supp. V, 1975).

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Since an agency which performs functions which are exclusively executive, legislative or judicial in nature is subject to our review and evaluation authority, it logically follows that the fact that such functions are combined within one agency can not serve, in and of itself, to create an exemption where none existed before. Finally with respect to your characterization of the ITC as "hybrid", we must point out that all agencies in the executive branch of Government are, in effect, responsible to both the President and the Congress, and many such agencies perform quasi-legislative and quasi-judicial functions as well.

Therefore, it is our opinion that the ITC falls within the scope of each of the provisions of law discussed above dealing with GAO audits and access to records. Although not pertinent to your particular question, we have attached a copy of an Office Memorandum of this date which holds that GAO has no supervisory responsibility over the ITC for purposes of the Federal Reports Act (44 U.S.C. § 3501~~et seq.~~) since the ITC is not an independent regulatory agency.

Attachment