

Office of
INSPECTOR GENERAL

Semiannual Report

April 1 - September 30, 1995



October 1995

Date Issued



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

October 31, 1995

**OFFICE OF INSPECTOR GENERAL
SEMIANNUAL REPORT**

TO THE COMMISSION AND THE UNITED STATES CONGRESS

I hereby submit this Semiannual Report which summarizes the major activities and accomplishments of the Office of Inspector General (OIG), U.S. International Trade Commission for the period April 1 through September 30, 1995. The submission of this report is in accordance with the Inspector General Act of 1978, as amended. Section 5 of the Inspector General Act requires that the Chairman transmit this report to the appropriate committees or subcommittees of the Congress within 30 days of its receipt.

During this period, one audit and seven inspection reports were issued. Eight new investigations were initiated and eight investigations were closed; three referrals were made to the Department of Justice based on these investigations. In addition, the OIG reviewed three regulations and prepared a final regulation to clarify provisions on initial denial authority concerning requests for OIG documents under the Freedom of Information Act and the Privacy Act.

The audit report issued during this period was on the USITC Financial Statements for Fiscal Years 1994 and 1993. The Commission received a clean opinion on its financial operations. This is the third such opinion covering six years, which is a significant accomplishment contributing to the federal government's goal to have audited financial statements.

In August 1994, the OIG conducted an audit which found material internal control weaknesses in the property management system. This finding was particularly significant because material weaknesses were reported in the property system in November 1991, and reported as having been corrected in September 1992. To ensure that the weaknesses are corrected this time, we recommended quarterly reporting to the Chairman. The OIG evaluated the quarterly inventories and reported our findings in three inspection reports, the final one issued in October 1995. The findings in the final report included that inappropriate management practices identified in the February 1995 inspection report had not been corrected, and the fixed asset listing had not been updated as recommended in a July 1995 audit report. We expressed concern that the property system continued to have ongoing discrepancies despite a significant amount of resources devoted to its improvement. We suggested that either employees be held accountable for complying with the process, or the process be revised to reduce controls.

The potential funding reductions faced by the Commission for FY 1996 will result in a reduced staffing level for the OIG that will significantly impair the OIG's ability to accomplish our statutory mission. The Commission approved a staffing level of 1.5 FTE for my office in FY 1996, myself and a part-time attorney. The elimination of two permanent positions and a part-time temporary position will have the following effect:

Without an auditor position, I will have to rely entirely on contract funds which are primarily used to conduct financial audits. Program audits and inspections will be virtually eliminated.

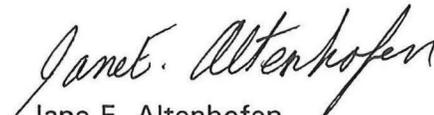
Investigations will have to be curtailed or done over a much longer period; some will have to be referred to another agency or not done, which is more likely.

Without a staff assistant position, the attorney and I will have to perform the administrative functions intrinsic in any office, which is not an efficient use of resources.

I believe that reducing the OIG to 1.5 FTE is contrary to guidance issued on how to apply budget reductions in recognition of the Inspector General Act. In November 1992, the Office of Management and Budget provided guidance on key statutory provisions in the Inspector General Act to the heads of the designated agencies, which includes the Commission. The guidance on budget formulation and execution states that entity heads will apply budget reductions to the OIG with due consideration of the effect that such application would have on the office's ability to carry out statutory responsibilities.

I have demonstrated a willingness to share in the Commission budget reductions. I voluntarily filled the full-time auditor position as part-time in FY 1995 (this position is now vacant) and did not request a part-time temporary student assistant for FY 1996. I am also prepared, if necessary, to eliminate the part-time auditor position, particularly since the Commission has provided some contract funds. This will result in a reduced FTE of 2.5 positions, which I believe is the minimum level necessary to operate.

I appreciate the support of all Commission employees in achieving the accomplishments set forth in this report.


Jane E. Altenhofen
Inspector General

COMMISSION PROFILE

The Commission is a quasi-judicial, independent, nonpartisan agency established by Congress with broad investigative powers on matters of trade. The Commission has a unique mission to develop factual, objective research and information on a wide variety of matters pertaining to international trade. Major Commission activities include: determining whether U.S. industries are materially injured by reason of imports sold at less than fair value or benefiting from subsidies; conducting studies on tariff and trade issues; and participating in the development of statistical data on imports, exports, and domestic production and the establishment of an international harmonized commodity code.

The Commission conducts investigations under several statutory provisions, generally upon petition or complaint, with respect to the impact of imports on U.S. industries. The Commission also provides advice and information, upon request, to the President and the Congress on tariff and trade matters. When appropriate, the Commissioners conduct public hearings and evaluate testimony and other information in making findings and recommendations. Decisions of the Commissioners under certain statutory provisions administered by the Commission are binding and subject to judicial review.

The Commission has six Commissioners, appointed by the President and confirmed by the Senate, who serve one term of nine years, unless appointed to fill an unexpired term. The Chairman is designated by the President and serves a two-year statutory term. No more than three Commissioners may be of the same political party and the Chairman must be of a different political party than the Chairman for the immediately preceding term. No changes were made to the Commission during this period.

The Commission had a single salaries and expense appropriation in the amount of \$44,500,000 for fiscal year (FY) 1995, including an appropriation of \$42,500,000 and a carry-over from FY 1994 of \$2,000,000. Approximately 70 percent of the Commission's appropriation was allocated to personnel compensation and benefits, reflecting the labor intensive nature of the Commission's mission. In addition, approximately 17 percent of the appropriation was allocated for space rental. The balance of expenses consisted primarily of communications, travel, supplies and equipment.

The Commission had an authorized staffing level of 502 permanent positions in FY 1995 of which 456 positions were funded. All of its employees are located in one building at 500 E Street, SW, Washington, D.C.

THE OFFICE OF INSPECTOR GENERAL

The Commission established the Office of Inspector General (OIG) pursuant to the Inspector General Act Amendments of 1988 (P.L. 100-504). The Inspector General reports directly to the Chairman as head of the agency, subject to the limitations of section 331 of the Tariff Act of 1930 (19 U.S.C. §1331). The Inspector General is responsible for directing and carrying out audits, investigations and inspections relating to Commission programs and operations, and for recommending and commenting on proposed legislation, regulations and procedures as to their economy, efficiency and effectiveness. Certain information and statistics that are required by section 5(a) of the Inspector General Act to be included in the Semiannual Reports are summarized in Attachment A.

RESOURCES

FY 1995

The OIG was allocated four staff years. This provided for three full-time positions (the Inspector General, a staff auditor and a staff assistant) and one half-time permanent position (attorney-advisor). A graduate student employee assisted with audit, inspection, and investigative functions.

The OIG continued to experience staff vacancies during this reporting period. The auditor position, which was announced as a part-time position due to potential cutbacks, was filled on June 1, 1995. Regrettably, due to an unforeseen medical condition, the auditor resigned effective August 18, 1995. The position was announced in August 1995, but remains vacant due to potential staff reductions.

The staff assistant position, which became vacant in March 1995, was filled with a series of temporary employees through most of the period. A permanent employee was selected and reported for duty on July 24, 1995. The staff assistant received a reduction-in-force notice on October 27, 1995, which will become effective on January 1, 1996, if the Commission receives a FY 1996 appropriation of \$38.25 million or less.

The OIG's budget allocation of \$50,000 for contract audit services was increased by \$15,000. Three firms were awarded funds to conduct three reviews and an inspection.

The Office of Personnel continues to provide support in accordance with a Memorandum of Understanding that was updated on April 26, 1993.

FY 1996

Pending enactment of an appropriation, the Commission is operating under a continuing resolution. The uncertainty of the FY 1996 funding has had an immediate detrimental effect on the OIG. The auditor position has not been filled pending the Commission decision on FY 1996 position allocations. The student assistant, who was working full-time during the summer, was terminated rather than switching to a part-time basis.

The Commission prepared a budget and position allocation plan based on an anticipated reduced funding level of \$38.25 million. The OIG was reduced to 1.5 FTE, the Inspector General and a half-time attorney-advisor. The auditor and staff assistant positions were eliminated. As discussed in my transmittal memorandum preceding this semiannual report, a reduction of this magnitude would significantly impair the ability of the OIG to accomplish its statutory obligations.

A cut below 3.0 FTE would result in the Commission's OIG having the lowest number of staff resources of any ongoing entity in FY 1995. Agencies with comparable staffing size have three or four FTE. Four agencies approximately half the size of the Commission have at least three FTE, and one has seven FTE.

**Procurement
Issues**

The issue of my authority to procure audit services through other means was satisfactorily resolved in mid-October 1994 with a confirmation that the OIG could determine the best method for procuring audit services. We exercised this authority by entering into Memoranda of Agreements with the Departments of Labor and State for audits to be done on a task order basis. To date, this process appears to provide greater flexibility to the OIG in selecting those firms with the best qualifications and competitive prices.

A considerable amount of OIG resources were expended this period on an access issue that we thought had been resolved a year ago. At that time, the General Counsel raised an issue as to whether contract auditors had access to privileged information. We addressed the right of contract auditors to have the same access to all information that OIG staff would obtain in the course of an audit, including privileged information. We thought the overall issue had been resolved, particularly since a subsequent award had been made to contract auditors with no problems.

When the OIG initiated a review of local area network operations, the General Counsel raised the access issue again in an even broader context, questioning access to confidential business information, privileged information, and other non-public information. In a memorandum to the Commission, the General Counsel stated that disclosure of non-public information could constitute a waiver of applicable legal privilege. She reached this conclusion even though the disclosure was for a limited purpose, the contract auditors agreed to sign a Nondisclosure Agreement with specific, detailed provisions prohibiting them from disclosing such information and the Agreement specifically stated that such disclosure does not constitute a waiver of any applicable privilege.

Further, the General Counsel made inconclusive references in the memorandum asserting that: the Commission may, in certain instances, not be subject to the requirements of the Inspector General Act to provide information and assistance; disclosure of information to contract auditors may violate the Privacy Act; and access to information by the contract auditors as part of the review of LAN operations raised Fourth Amendment concerns related to probable cause and search and seizure.

We refuted these assertions, which required a significant amount of limited OIG resources, and the audit was conducted. We are concerned that the General Counsel will continue to raise questions on a sporadic basis necessitating repetitious and unwarranted review of the issue and attempted to reach a final resolution with the General Counsel on this issue. On October 26, 1995, the General Counsel requested comments from the Commission on whether her office should continue to raise the issue of access to privileged documents. The comments were too inconclusive to resolve this issue. The General Counsel and I have arranged to meet to discuss how we can reach agreement on this issue.

In the prior semiannual report, we identified a need for clarification of the procurement authority given in the Inspector General Act, including whether legal advice on OIG purchases should be provided by the Counsel to the Inspector General or the General Counsel. Although other priorities prevented us from addressing procurement authority during this period, we intend to do so as soon as possible.

AUDIT ACCOMPLISHMENTS

Audits and Reviews One audit report was issued during this period. Report No. IG-01-95 was an Audit of the USITC Financial Statements for Fiscal Years 1994 and 1993. As stated in the audit report, which is summarized in Attachment B, the Commission received a clean opinion on its financial operations. This is the third such opinion covering six years, which is a significant accomplishment. A review of financial statement audit reports shows that auditors have not been able to issue clean opinions of other agencies' operations.

This accomplishment also contributes to the federal government's goal to have audited financial statements. In September 1995, the Financial Reports Branch of the Department of Treasury inquired about the status of audited financial statements for FYs 1992, 1993, and 1994. We were able to provide copies of the audit reports covering FYs 1991 through 1994.

As of September 30, 1995, the two ongoing efforts were:

- A Review of LAN Operations; and
- A Review of Building Security.

Audit Followup Agreed upon actions were not completed within one year on two audit reports, although actions were completed shortly thereafter. The two reports were: REVIEW OF WAYS TO INCREASE THE ECONOMY AND EFFICIENCY OF THE PROCESS FOR CONDUCTING SECTION 337 INVESTIGATIONS, IG-03-94, August 19, 1994; and AUDIT OF PROPERTY AND SUPPLIES MANAGEMENT, IG-04-94, August 26, 1994.

INSPECTIONS

Reports During this period, seven inspections were completed and the following reports were issued:

- Report No. 8-95 Cash Counts of USITC Imprest Funds
- Report No. 9-95 Review of USITC's Compliance with Guidelines for the Federal Workplace HIV/AIDS Education Initiative
- Report No. 10-95 Verification of March 1995 Property Inventory
- Report No. 11-95 Quarterly Review of Travel Expenditures
- Report No. 12-95 Cash Counts of the USITC Imprest Funds
- Report No. 13-95 Commission's Use of Form 120 "Printing Work Request" and Form 121 "Distribution/Mailing Reports Report"
- Report No. 14-95 Review of Selected Telephone Policies and Use

The inspections had no significant findings, although various suggestions were made to improve operations or internal controls. See Attachment C for a summary of the inspection findings.

FRAUD, WASTE AND ABUSE

Investigations A summary of investigative activity is presented below:

Open 04/01/95	8
Initiated	<u>8</u>
Total	16
Closed	<u>8</u>
Open 09/30/95	8

Four of the investigations open as of March 31, 1995, were closed during this reporting period. These investigations entailed allegations of racial discrimination against minority employees, Privacy Act concerns raised in connection with call detail records, abuse of staff resources, and use of unauthorized software on government computers.

Four of the eight investigations initiated during this period were closed. These investigations included harassing phone calls made to an employee, the distribution of an unofficial press release, inappropriate distribution of Privacy Act data, and the use of a non-existent title by a Commission employee in official correspondence. Of these four investigations, one was declined for prosecution by the Criminal Division of the Justice Department.

Four investigations initiated in prior periods remain open. Of these four investigations, two were declined for prosecution by the Criminal Division of the Justice Department, and one was declined for prosecution by the Civil Division. In addition, one of these investigations resulted in the removal of an employee for prolonged and egregious abuse of a government phone.

Four of the eight investigations initiated this period remain open. These involve allegations of misuse of a copy machine, misuse/abuse of government staff resources, use of a government phone for personal, long-distance calls charged to the Commission, and misuse of official mail.

**Review of
Legislation,
Regulations,
Directives**

As set forth in the Inspector General Act, a duty and responsibility of the Inspector General is to review existing and proposed legislation and regulations relating to programs and operations of the Commission. We reviewed two proposed amendments and one final amendment to the Commission's Rules. These were:

-- Proposed rules to eliminate Federal Register publication requirements for certain notices not required by law and to reduce the number of documents that are served on other Federal agencies pursuant to 19 U.S.C. § 1337 (These rules were proposed in response to recommendations made in Audit Report IG-03-94, Review of Ways to Increase the Economy and Efficiency of the Process for Conducting Section 337 Investigations, August 19, 1994.);

-- Proposed rules to conform the Commission's rules to the requirements of the Uruguay Round Agreements Act (URAA), and to improve the effectiveness and efficiency of the Commission's procedures in conducting antidumping and countervailing duty investigations and reviews; and

-- Final rules requiring section 337 complainants to file an equal number of confidential and non-confidential copies of supplements to complaints.

Regarding the proposed rules to conform the Commission's Rules of Practice and Procedure to the URAA, the OIG made a number of substantive comments. We recommended against including Commission and Department of Commerce notices, which are already published in the Federal Register, in staff reports. We commented that a proposal requiring only "new auditors" to initial and date Verification Handbooks was problematic because of the difficulty of defining the phrase "new auditor" in terms of education and/or experience. Further, the policy could be construed as creating a different degree of exposure and accountability for new auditors which might influence their findings. The OIG suggested that it would be more appropriate for all relevant staff to initial the Handbook.

The OIG recommended against publishing a schedule of investigative activities in the Federal Register since such a schedule did not appear to be based on either statutory or regulatory requirements. We also noted that critical issuance language required by the Federal Register for both proposed and final rules was missing from this proposed rule.

On July 13, 1995, the Commission approved amendments to the Commission's Rules of Practice and Procedure proposed by the OIG in April 1995 to clarify provisions on initial denial authority concerning requests for OIG documents under the Freedom of Information Act (FOIA) and the Privacy Act. On July 20, 1995, the Federal Register published a notice of the final rule incorporating these amendments.

The Inspector General also has the responsibility to review all proposed Commission directives to evaluate the impact that new or revised procedures will have on the efficiency of operations and to minimize the potential for fraud or abuse. No directives were reviewed during this period because no changes were proposed to the directives system. We did make multiple substantive comments on proposed guidance for use of the Internet on government computers. This guidance will become the basis for an upcoming Administrative Order to be issued by the Commission.

LIAISON ACTIVITIES

**ECIE/
PCIE**

The Inspector General is an active member of the Executive Council on Integrity and Efficiency (ECIE), which consists primarily of the Inspectors General at the 34 Federal entities designated in the 1988 amendments to the Act. She also participates in activities sponsored by the President's Council on Integrity and Efficiency (PCIE), which consists primarily of the Presidentially-appointed Inspectors General. The ECIE and PCIE have identical functions and joint responsibility to promote integrity and efficiency and to detect and prevent fraud, waste, and abuse in Federal programs.

The Inspector General became Chair of the ECIE Peer Review Committee in October 1993. As such, she is responsible for arranging peer reviews when requested by an Inspector General and for coordinating the peer review activities. During this period, she arranged and/or coordinated six reviews that are in process and two that were completed.

Since January 1995, the Inspector General has been the ECIE Liaison to the PCIE Professional Development Committee (PDC) and Chair of an ECIE ad hoc Committee on Professional Development. She agreed to also serve on the Editorial Board of the PDC. As Chair of the ad hoc Committee, she has assisted in organizing the joint PCIE/ECIE meeting and ECIE session to be held in October at the Federal Law Enforcement Training Center.

**General
Accounting
Office**

The Inspector General Act states that each Inspector General shall give particular regard to the activities of the Comptroller General of the United States with a view toward avoiding duplication and ensuring effective coordination and cooperation. A summary of the General Accounting Office (GAO) reviews that include, in part, Commission activities follows:

Ongoing Reviews 03/31/95	3
Reviews Initiated	1
Total	4

Reviews Completed	3
Ongoing Reviews 09/30/95	1

The review initiated this period is entitled "Investigation of Extent to Which Problems of Misconduct Exist Within OIGs".

GAO issued two reports entitled:

- U.S.-CANADA FREE TRADE AGREEMENT Factors Contributing to Controversy in Appeals of Trade Remedy Cases to Binational Panels; and
- BACKGROUND INVESTIGATIONS Impediments to Consolidating Investigations and Adjudicative Functions.

The reports included no recommendations for the Commission.

**Commission
Projects**

OIG Counsel continued her liaison efforts within the Commission to disseminate information on recent legal developments and policy trends in administrative law, including federal personnel law, labor law, and FOIA and Privacy Act issues. For example:

On April 24, 1995, she sent a memorandum to various office directors analyzing a recent Comptroller General (CG) decision concerning participation by federal employees in frequent flyer programs, and emphasizing the increased incentives for federal employees to participate in such programs based on the CG's more liberal interpretation of the Federal Travel Regulations.

In June 1995, she discussed a recent District of Columbia Court of Appeals case with an Assistant General Counsel which held that OIGs are not required to negotiate with a union about OIG procedures during investigatory interviews of agency union members.

**INFORMATION REQUIRED BY SECTION 5(a)
OF THE INSPECTOR GENERAL ACT**

Certain information and statistics based on the activities accomplished during this period are required by section 5(a) of the Act to be included in the Semiannual Reports. These are set forth below:

Section 5(a)

- (1), (2), (7) - The OIG did not identify any significant problems, abuses or deficiencies relating to the administration of programs.
- (3) - Corrective action has been completed on all significant recommendations which were described in the previous semiannual reports.
- (4) - Three matters were referred to prosecutorial authorities. There were no prosecutions or convictions.
- (5) - No reports were made to the Chairman that information or assistance requested by the Inspector General were unreasonably refused or not provided.
- (6) - A listing by subject matter is located in Attachment D.
- (8), (9) - The audit report issued during this period included no recommendations on questioned costs or funds that could be put to better use. See Tables 1 and 2.
- (10) - There are no audit reports issued before the commencement of the reporting period for which no management decision has been made by the end of the reporting period.
- (11) - No significant revised management decisions were made during the reporting period.
- (12) - There are no significant management decisions with which I am in disagreement.

SUMMARY OF THE AUDIT REPORT

TITLE: **AUDIT OF THE USITC FINANCIAL STATEMENTS FOR FISCAL YEARS 1994 AND 1993**

REPORT NUMBER: IG-01-95

REPORT DATE: July 21, 1995

FINDINGS: The objective of this review was to issue an opinion as to the fairness of the USITC financial statements for the FYs ending September 30, 1994 and 1993, in presenting the financial condition and results of operations; a statement on the adequacy of internal controls; and a statement on compliance.

The auditors expressed the following opinions:

-- The statements of financial position of the USITC as of September 30, 1994 and 1993, present fairly, in all material respects, the financial position of the USITC as of September 30, 1994 and 1993, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

-- For the items tested, USITC complied in all material respects with the provisions of applicable laws and regulations that could have a material effect on the financial statements. For the items not tested, nothing came to their attention that caused the auditors to believe that USITC had not complied, in all material respects, with such provisions.

-- No matters involving the internal control structure and its operation were considered to be material weaknesses, although certain suggestions involving the internal control structure and its operations were reported in a letter to USITC management.

RECOMMENDATIONS: We recommended that the Chief of the Finance Division capitalize all fixed assets in accordance with Title 2 guidelines; establish a policy to determine the date goods and services are received; and notify Cost Center Managers that a receiving report is necessary prior to making payment. We also recommended that the Property Management Officer follow USITC guidelines in order to keep an accurate and updated listing of all assigned property.

The Director of Operations agreed with the findings and recommendations.

SUMMARY OF INSPECTION REPORTS

INSPECTION REPORT:

FINDINGS:

Report No. 8-95
Cash Counts of USITC Imprest Funds
May 9, 1995

The imprest funds were in balance.

Report No. 9-95
Review of USITC's Compliance with Guidelines for the Federal Workplace HIV/AIDS Education Initiative
May 10, 1995

We found that most Commission employees attended HIV/AIDS training which conformed with guidelines, and most of the remaining employees were provided alternative training.

Report No. 10-95
Verification of March 1995 Property Inventory
June 15, 1995

We found that the inventory was properly conducted, although inappropriate management practices identified in the last inspection had not been corrected and the fixed asset listing needed to be updated.

Report No. 11-95
Quarterly Review of Travel Expenditures
June 21, 1995

We found that most Commission employees complied with requirements to only use the American Express Government Credit Card for official travel related expenses away from their duty station.

Report No. 12-95
Cash Counts of the USITC Imprest Funds
August 7, 1995

The imprest funds were in balance.

Report No. 13-95
Commission's Use of Form 120 "Printing Work Request" and Form 121 "Distribution/Mailing Reports Report"
August 16, 1995

We found that the forms were not available in most of the offices specified and an outdated form was used over 30 percent of the time.

Report No. 14-95
Review of Selected Telephone Policies and Use
September 12, 1995

We found that most Commission employees complied with selected policies pertaining to use of phones and calling cards and that the Commission had implemented some restrictions on phone use to prevent abuse.

**LIST OF AUDIT REPORT
BY SUBJECT MATTER**

<u>Report Title</u>	<u>Report Number</u>	<u>Questioned Costs</u>	<u>Unsupported Costs</u>	<u>Ineligible</u>	<u>Funds Be Put To Better Use</u>
ADMINISTRATION					
Audit of the USITC Financial Statements for Fiscal Years 1994 and 1993	IG-01-95	0	0	0	0

Table 2

**INSPECTOR GENERAL ISSUED REPORTS WITH
RECOMMENDATIONS THAT FUNDS BE PUT TO
BETTER USE FOR THE SIX-MONTH PERIOD
ENDING SEPTEMBER 30, 1995**

	Number of Reports	Dollar Value
A. For which no management decision has been made by the commencement of the period	0	0
B. Which were issued during the reporting period	0	0
Subtotals (A + B)	0	0
C. For which a management decision was made during the reporting period	0	0
(i) Dollar value of recommendations that were agreed to by management	0	0
(ii) Dollar value of recommendations that were not agreed to by management	0	0
D. For which no management decision has been made by the end of the reporting period	0	0
Reports for which no management decision was made within six months of issuance	0	0

