

GAO

Report to the Chairman, Committee on
Ways and Means, House of
Representatives

December 1999

INTERNATIONAL TRADE

Improvements Needed to Track and Archive Trade Agreements



G A O

Accountability * Integrity * Reliability

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Abbreviations

GDP	gross domestic product
TCC	Trade Compliance Center
USTR	U.S. Trade Representative



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Washington, D.C. 20548

**National Security and
International Affairs Division**

B-284062

December 14, 1999

The Honorable Bill Archer
Chairman, Committee on Ways and Means
House of Representatives

Dear Mr. Chairman:

International trade has become increasingly important to the U.S. economy. Since 1990, U.S. exports have increased about 70 percent, to almost \$700 billion a year. In recent decades, the United States has led the world in the effort to create a system of open trade under accepted rules, in which reduction of trade barriers such as tariffs and import quotas would help provide greater market access for U.S. goods and services. The current administration has sought to build on previous efforts by negotiating several hundred separate trade agreements since 1992 aimed at opening markets and creating wider economic opportunities for Americans. Most of these agreements were negotiated by the Office of the U.S. Trade Representative, which is part of the Office of the President and is statutorily responsible for developing and coordinating U.S. international trade policy. The rest were negotiated by the Departments of State, Commerce, and other federal agencies. Congress has expressed interest in how the executive branch monitors and enforces these agreements. One key component of this process is the method the executive branch uses to track its agreements. Another is the means by which the executive branch fosters increased public awareness of the agreements and the opportunities that they provide.

As you requested, we examined (1) the number of trade agreements the United States is party to, (2) the way in which the executive branch notifies Congress when trade agreements are entered into, and (3) the extent to which the public has ready access to information from government sources about trade agreements.

Trade agreements are negotiated understandings between two or more countries that generally address the terms of trade. There is no universal definition of a trade agreement, because agreements can take many forms and serve different purposes.

Appendix II describes our specific scope and methodology.

Results in Brief

The number of trade agreements to which the United States is currently a party is uncertain. Officials at key agencies were unable to provide a definitive count of all U.S. trade agreements that are currently in force, despite the fact that the Office of the U.S. Trade Representative, State, and Commerce have created separate archives containing many agreements. We identified 441 different trade agreements that entered into force from 1984 through 1998 among the three archives, but were not able to determine the total number of U.S. trade agreements currently in force. This is because (1) agency archives serve different purposes, (2) a governmentwide definition of what constitutes a “trade agreement” does not exist, and (3) there are record-keeping weaknesses and inconsistencies in the archives. The most comprehensive of these archives, which belongs to Commerce, was intended to include all agreements but contains only about two-thirds of the total number of agreements that we identified by examining all three sources. Commerce’s archive is incomplete because federal agencies have not worked together to establish criteria for identifying agreements to be included, and no interagency procedure has been instituted for forwarding such trade agreements to Commerce.

Congress is notified when trade agreements are entered into through two formal mechanisms. First, the Office of the U.S. Trade Representative’s annual report, distributed to each Member of Congress, includes a list (but not the text) of substantive trade agreements that it has negotiated since 1984 and that afford increased foreign market access to the United States.¹ Other agreements negotiated by the Office of the U.S. Trade Representative, such as those that only regulate imports into the United States, are not included. Second, as required by law,² State sends Congress³ a copy of any agreement that State determines is an “international agreement” based on criteria that State defines and applies. For example, State requires an international agreement to contain commitments that are judged significant and legally binding, among other criteria. Many trade

¹The Office of the U.S. Trade Representative prepares its annual report to meet a statutory requirement. The list of trade agreements, however, is not required by law.

²1 U.S.C. 112b, commonly known as the “Case-Zablocki Act,” and the accompanying regulations, 22 C.F.R. 181.1-181.8.

³State officially notifies the President of the Senate and the Speaker of the House.

agreements do not qualify as international agreements under State's criteria. Other federal agencies are required to forward to State those agreements they negotiate, including trade agreements, that might fall within the criteria that State has established. However, Congress may not have received the texts of some trade agreements negotiated by the Office of the U.S. Trade Representative that do meet the criteria because the agency has not transmitted copies of all of its negotiated agreements to State. Neither agency has records documenting whether the Office of the U.S. Trade Representative transmitted and State reviewed all trade agreements negotiated by the Office of the U.S. Trade Representative that might fall within State's criteria. Recently, the Office of the U.S. Trade Representative established new procedures to improve its transmittal of new agreements to State for review.

Although federal agencies have provided the public with greater access to information about trade agreements in recent years, government sources available to the public are not always complete and accurate. Commerce's trade agreements archive, publicly available on the internet since early 1998, is the government's principal vehicle for providing access to trade agreements. However, Commerce cannot guarantee the texts' accuracy or completeness, and the archive does not include all trade agreements. State makes copies of its agreements available in two principal ways: through the Government Printing Office and through Freedom of Information Act requests. However, due to State funding limitations, the Government Printing Office is only now printing texts of agreements signed in 1994, and commercial publishers that obtain the agreements from State require the public to pay for copies of the agreements. The Office of the U.S. Trade Representative does not routinely make copies of its agreements directly available to the public. Although the Office of the U.S. Trade Representative has provided the text of many agreements to Commerce for inclusion in Commerce's archive, our analysis indicates that nearly 30 percent of the agreements are not in Commerce's data base. Commerce officials explained that many of these agreements are not in their archive because they had either expired or were superseded by other agreements.

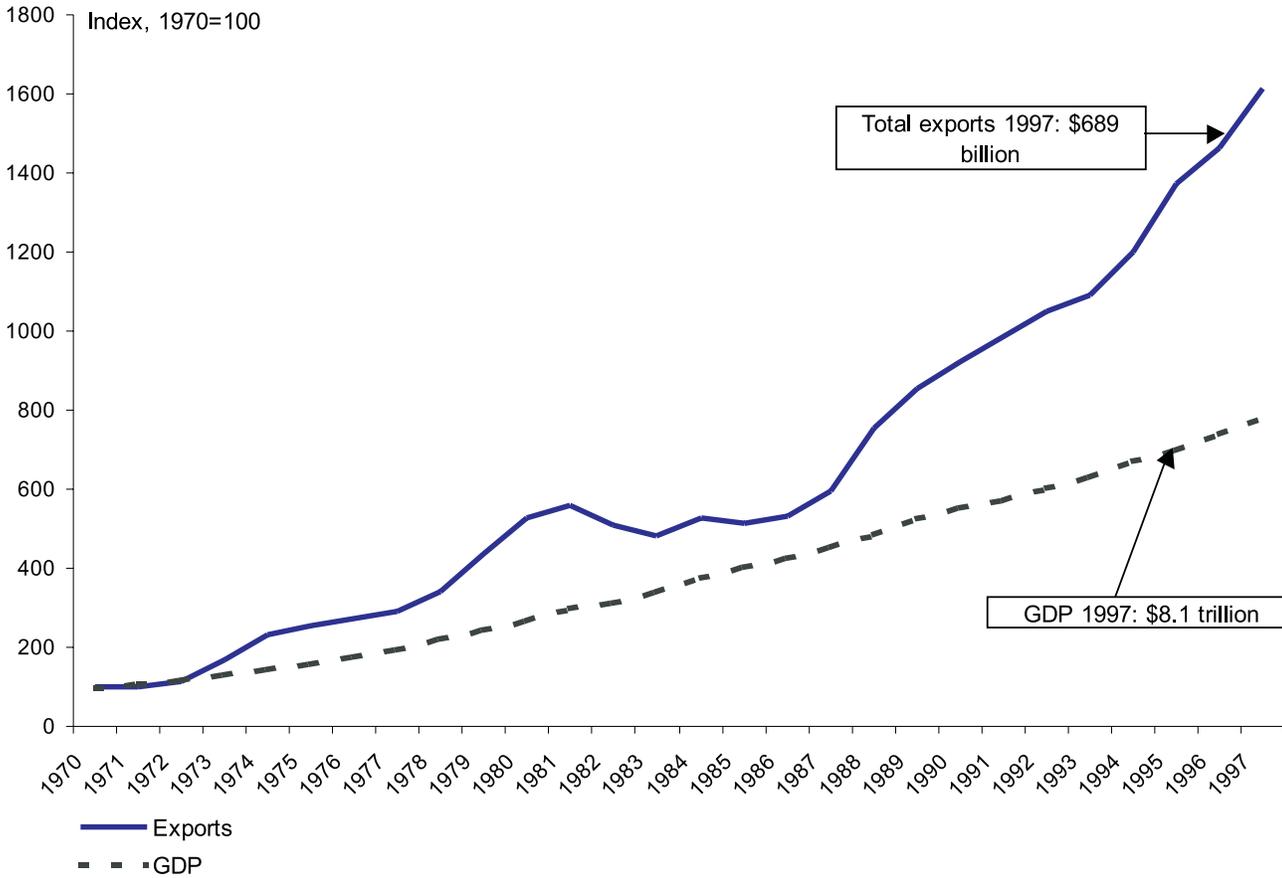
In this report, we are making recommendations to the Secretary of Commerce and the U.S. Trade Representative to improve the accuracy and completeness of trade agreement data bases. In addition, we are making recommendations to the U.S. Trade Representative and the Secretary of State to comply with the requirement for notifying Congress about international agreements that meet the provisions of the Case-Zablocki Act.

Background

The Constitution grants Congress the authority to regulate commerce with foreign nations. In practice, Congress has long delegated authority for proclaiming reciprocal tariff reductions with U.S. trading partners to the President and has encouraged the President to enter into certain trade agreements that meet congressionally mandated objectives. The Office of the U.S. Trade Representative (USTR) leads or directs negotiations with other countries on many trade matters. Other federal agencies also negotiate certain kinds of trade agreements. For example, the Department of Commerce negotiates textile import agreements with other countries, and the Department of Agriculture negotiates various trade-related agriculture provisions. Trade policy is managed at the working level by the Trade Policy Staff Committee, an interagency group with representation at the senior civil servant level, administered and chaired by USTR. Policy decisions are generally developed via interagency consensus; interagency conflicts are resolved at progressively higher levels within the executive branch. The committee also monitors the trade agreements program.

Trade has become more important to the U.S. economy; since the late 1980s, the rate of growth for U.S. exports has increasingly exceeded the overall U.S. economic growth rate (see fig. 1). Almost all U.S. trade is governed by trade agreements that employ specific language, terms, and objectives to promote U.S. trade and to reduce barriers to the export of U.S. products. For example, key trade agreements aim to improve U.S. market access abroad by setting ground rules for the treatment of U.S. exports and investments in foreign markets, establishing the maximum tariff that will apply to U.S. exports, and providing for the gradual lowering or elimination of such tariffs and other barriers over time.

Figure 1: U.S. Export Growth as Compared to Gross Domestic Product Growth, 1970-97



Note: Exports and the gross domestic product (GDP) are presented as index numbers where their value in 1970 equals 100.

Source: GAO calculations based on International Financial Statistics. (Washington, D.C.: International Monetary Fund, Jan. 1999).

Trade agreements vary considerably both in content and in form, depending on their purpose. They may be generally categorized in a number of ways. For example, agreements can be categorized by the **number of signatories**. Most trade agreements that the United States is party to are bilateral. However, regional agreements such as the North

American Free Trade Agreement⁴ and multilateral agreements such as those under the World Trade Organization⁵ govern a greater percentage of U.S. trade than the generally narrower bilateral agreements. In addition, trade agreements can be categorized by the **content of their provisions**. For example, some agreements cover specific industries or sectors such as agriculture, automobiles, and telecommunications. Other agreements focus more on technical or scientific issues affecting trade, such as establishing standards to control the health and safety of agricultural products. Also, some agreements focus primarily on opening foreign markets to the United States, while others deal largely with regulating the importation of various products into the United States. Finally, agreements can also be categorized by **whether or not they are binding**. Some binding agreements, such as the World Trade Organization agreements and the North American Free Trade Agreement, have enforceable dispute settlement provisions to resolve trade disagreements. Most other trade agreements do not contain such provisions.⁶

Trade Agreement Archives Do Not Contain All U.S. Trade Agreements Currently in Force

We were unable to determine the total number of trade agreements currently in force for several reasons. First, USTR, State, and Commerce, the main trade agencies, could not provide us with a definitive count of the number of trade agreements. While each maintains an archive that contains trade agreements,⁷ the archives serve different purposes, and there is no standard definition of what constitutes a trade agreement. Second, Commerce's archive is intended to contain all trade agreements, but does not. Finally, we found that the three archives in combination are inadequate for the purpose of identifying the total number of in-force trade agreements due to inconsistencies and record-keeping weaknesses.

⁴The North American Free Trade Agreement is a comprehensive free trade agreement between the United States, Canada, and Mexico that went into effect on January 1, 1994.

⁵The World Trade Organization, which was established in 1995, was created as a permanent organization to oversee implementation of the Uruguay Round agreements, to provide a forum for multilateral trade negotiations, and to settle disputes.

⁶Regardless of whether trade agreements contain dispute settlement procedures, U.S. trade law may be used to enforce U.S. rights under bilateral and multilateral trade agreements.

⁷As discussed, the Commerce and USTR archives include only trade agreements whereas the State archive also includes other types of international agreements.

Archives Serve Different Purposes

USTR, Commerce, and State officials could not provide us with a definitive count of the number of trade agreements currently in force. Agency officials said a standard definition of what constitutes a trade agreement does not exist either in federal law or in interagency practice. The agencies provided us with data from each of their archives. However, the three archives were created for different purposes and, as a result, do not always contain the same agreements. USTR's central archive, initiated in 1996, is for internal use and is intended to include all trade agreements negotiated by USTR; agreements negotiated by other agencies are not included.⁸ The State Department's archive is designed to capture all international agreements negotiated by federal agencies (not just trade agreements) that meet certain legal criteria such as those that are significant and intended to be legally binding. According to State and USTR officials, many trade agreements do not meet State's criteria and thus are not included in State's archive. The Commerce Department's archive, made available to the public over the internet in early 1998, was designed to contain all trade agreements negotiated by federal agencies but is not complete. (See app. I for more information about each archive.)

Commerce Archive Is Not Comprehensive

Commerce's archive does not contain all trade agreements as originally planned.⁹ Commerce officials told us they used one or more of the following criteria to create their data base: (1) the parties are national governments and agencies or intergovernmental organizations, (2) the parties intended their undertaking to be binding, (3) the agreement affects or might affect international trade, and/or (4) one or more parties is a recognized territory outside the United States. To assess the archive's completeness, we compared the names and dates of agreements in all three

⁸The central archive was established within the Monitoring and Enforcement Unit office. As discussed in appendix I, the archive includes both substantive and procedural agreements. Most of our analysis on USTR-negotiated trade agreements in this report focuses on substantive agreements that afford increased foreign market access to the United States.

⁹Congress acknowledged Commerce's intent to establish a comprehensive data base of trade agreements in the Conference Report to the Omnibus Consolidated Appropriations Act, 1997 (H.R. Rep. No. 104-863, 104th Cong., 2d Sess.). The Conference Report accompanying Commerce's appropriations legislation approved a reorganization of Commerce that established a trade compliance office to compile and utilize a comprehensive data base of trade agreements.

archives that entered into force during 1984-98.¹⁰ Commerce had only 283 of these agreements in its archive (see table 1). We found only 71 percent of USTR's agreements (that is, 180 of 252) and only 53 percent of State's archived trade agreements (that is, 112-210) in the Commerce archive (see fig. 2).

Table 1: Trade Agreements That Entered Into Force During 1984-98, Based on USTR, Commerce, and State Archives

Period when agreements entered into force	USTR ^a	Commerce	State ^b	Total (without double counting) ^c
1984-88	19	16	64	73
1989-93	97	87	71	142
1994-98	136	177	75	223
Date not provided ^d	0	3	0	3
Total	252	283	210	441

^aFigures for USTR are based on USTR's list of substantive agreements designed to increase U.S. access to foreign markets or reduce foreign trade barriers.

^bAgreements in State's archive were counted as a trade agreement if State categorized them as a trade agreement or if a particular type of agreement was included in USTR's archive.

^cWhen more than one agency included the same agreement in its archive, the agreement was counted only once.

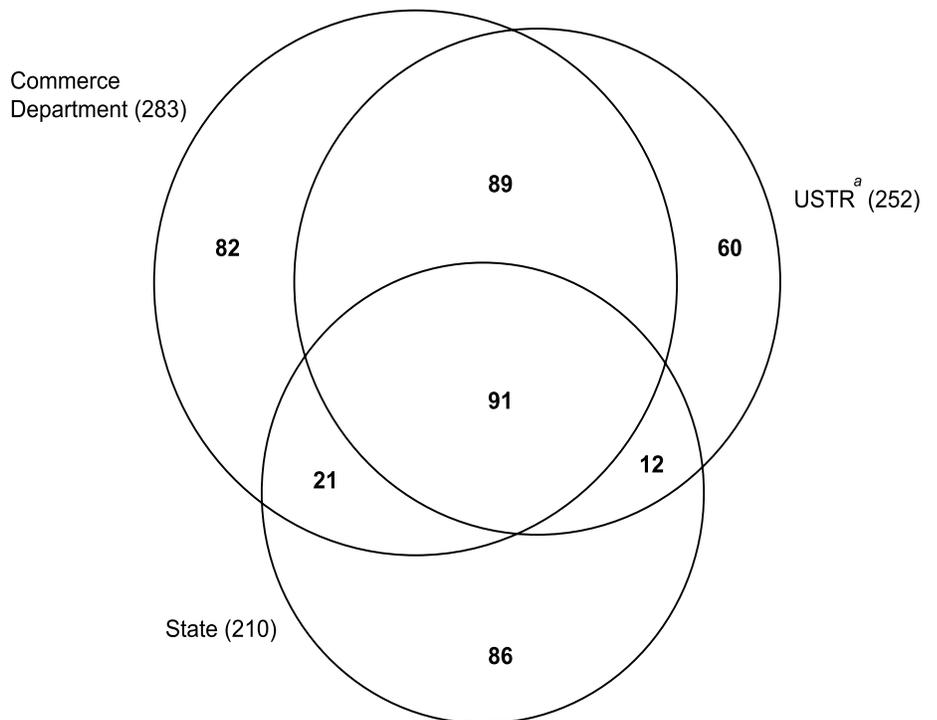
^dThree of the agreements in Commerce's archive did not include information on when the agreement was signed or entered into force. Since the agreements did not match agreements in USTR or State archives, the latter could not be used to determine when the agreements entered into force.

Source: GAO analysis of USTR, Commerce, and State archive records.

¹⁰We selected 1984 as a sample boundary because USTR's archive generally does not contain information prior to 1984. Appendix II explains our methodology in greater detail.

Figure 2: The Commerce, USTR, and State Department Archives Do Not Contain All Trade Agreements

Number of agreements



^aUSTR substantive trade agreements that afford increased access to foreign markets or reduce foreign barriers and other trade-distorting practices.

Source: GAO analysis of Commerce, State, and USTR archives.

Commerce’s archive is not complete because federal agencies have not come together to establish agreed criteria for identifying all trade agreements negotiated by federal agencies, and no procedure has been established to secure the regular participation of agencies in forwarding trade agreements to Commerce. In 1997 Commerce proposed to USTR that an interagency group be created for these purposes, but USTR did not believe that such a formal process was necessary. In addition, agency officials have expressed conflicting views about the scope of the Commerce archive. For example, according to Commerce officials currently responsible for maintaining the data base, the archive is being used primarily to display trade agreements that Commerce is directly responsible for monitoring and enforcing. However, senior Commerce officials have indicated that the archive is supposed to be a comprehensive

data base of all trade agreements. USTR officials told us that their understanding was that Commerce intended to include anything that could be called a trade agreement regardless of which U.S. government agency entered into the agreement on behalf of the United States. Commerce officials expressed surprise at this characterization, noting that USTR has not automatically forwarded the texts of new trade agreements to Commerce for inclusion in the archive.

Archives Have Record-keeping Weaknesses

We were unable to identify the total number of trade agreements currently in force from the three archives because of a number of record-keeping weaknesses and inconsistencies. First, USTR's central archive does not include agreements still in force that it negotiated prior to 1984 except for agreements that resulted from the 1967 Kennedy Round and 1979 Tokyo Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade.¹¹ Second, USTR's archive does not include all enforceable agreements that USTR negotiated since 1984. For example, four of six agreements between 1984 and 1997 with Japan on the Nippon Telegraph and Telephone telecommunications procurement are not reflected in USTR's archive. A USTR official told us that he believes USTR has included in its archive most of the enforceable agreements going back to 1984. Third, USTR and Commerce had not systematically updated their archives to remove agreements that had expired or had been effectively superseded by another agreement, although Commerce reports it has recently begun to do so.¹² Fourth, Commerce's archive contains some, but not all, trade agreements that are negotiated by agencies other than USTR, such as those establishing safety standards affecting U.S. agricultural commodity exports to specific countries. USTR includes in its central archive of trade agreements only such technical agreements that it has negotiated.

¹¹The General Agreement on Tariffs and Trade, which entered into force in 1948, was created as a multilateral framework agreement to govern trade practices among member countries. As an organization, the General Agreement on Tariffs and Trade officially ended on December 31, 1995, after the creation of the World Trade Organization.

¹²In contrast, once a year State publishes a document that lists all of the international agreements that are in force at the beginning of the year. The list includes a title that briefly describes each agreement and the dates the agreement was signed, entered into force, and became effective (if different from the date it entered into force).

We also observed a number of problems in all three agencies' archives that suggest their records are not fully complete or accurate. For example, USTR's March 1999 list of agreements and Commerce's archive omitted an important automobile agreement that USTR concluded with Korea in October 1998. Commerce's archive includes a 1995 Korean automotive agreement, along with a copy of a USTR press release dated September 1998. However, the press release is actually one that was issued by USTR in 1995 when the agreement for that year was concluded. Similarly, the Commerce archive listing for the Latvia Bilateral Investment Treaty displays the text of an agreement with references to Moldova instead, including a place for signature by a representative of Moldova. Moreover, the text of the agreement is unfinished in some places, and the document is followed by copies of letters that were exchanged between representatives of the United States and Moldova. Finally, State's list of in-force agreements at the beginning of 1998 did not include several agreements that had entered into force several years earlier but did include several agreements that had already expired, such as a voluntary restraint agreement on machine tools with Japan.

Congress Is Notified About Many, but Not All, Trade Agreements

There are two principal means by which the administration formally notifies Congress about the conclusion of trade agreements. First, USTR sends Congress an annual report with a list of the names and dates of substantive trade agreements entered into by the United States since 1984 that afford increased U.S. access to foreign markets or reduce foreign market barriers and other trade-distorting policies and practices. (USTR separately lists those agreements that have entered into force and those that have not.) The list, which was created in response to congressional interest, does not include substantive agreements that deal only with imports into the United States. It also does not include agreements negotiated by other agencies. According to USTR officials, the agreements noted in the annual report are the agreements that USTR monitors for compliance purposes. The USTR list contains a date for each agreement that typically represents either the date the agreement was signed by one or both of the parties or the date it entered into force. USTR does not indicate which type of date is reported. (For some agreements, several years intervene between the time an agreement is signed and the time it enters into force.) USTR's list also does not identify which of the agreements have expired. Although USTR does not routinely provide Congress with the texts of the agreements it negotiates, it routinely consults with congressional committees in the course of negotiations, according to USTR officials.

Moreover, any Member of Congress can receive a copy of any agreement by requesting it.

Second, as required by law, State sends Congress a copy of international agreements, including trade agreements, that meet certain criteria within 60 days of the agreement's entering into force. As directed by the Case-Zablocki Act and implementing regulations, State defines and applies criteria for deciding which agreements qualify as an "international agreement." (State's Office of Treaty Affairs performs this function.) To constitute an international agreement under the act, each of the following criteria, among others, must be met:

- There must be two or more parties (unilateral commitments do not qualify).
- The parties must be a state, a state agency, or an intergovernmental organization, and they must intend their undertaking to be legally binding. Agreements intended to have political or moral weight but not be legally binding do not qualify.
- The commitments must be considered significant. Minor or trivial undertakings, even if couched in legal language and form, are not considered as international agreements under the criteria.
- The language that sets forth the undertaking needs to be specific and must include objective criteria for determining enforceability.

According to USTR and State officials, many USTR-negotiated agreements do not meet these criteria and thus are not provided to Congress by State. The officials could not provide an estimate of the number, however, because neither agency keeps records for this purpose and because, as discussed later, not all of USTR's agreements have been reviewed by State.

USTR officials told us that agencies also use a variety of other mechanisms to keep Congress informed of both trade negotiations and new agreements. These include informal briefings and consultations with congressional trade committees and interested members and staff, as well as participation in congressional hearings and responses to congressional requests for information.¹³

¹³For example, USTR discusses the results of some of the trade agreements it has negotiated during the past few years and the progress made in efforts to negotiate certain new agreements in its annual report and its annual national trade estimate report.

Not All Agreements Provided to Congress

Congress may not have received all of the agreements and accompanying documents, as required by law. Federal agencies that have negotiated an international agreement that might fall within the criteria established in State's Case-Zablocki implementing regulations are required to transmit the text of the agreement to State within 20 days of the signing of the agreement. Once the agreement is received, State's Office of Treaty Affairs reviews the document, using its criteria, and determines whether it is an international agreement. If so, Treaty Affairs transmits the text of the agreement to the President of the Senate and the Speaker of the House no later than 60 days after the agreement enters into force.¹⁴ However, in spring 1999 officials in Treaty Affairs told us that they believed many USTR-negotiated trade agreements had never been transmitted to State for review. According to the State officials, they had previously raised this issue with USTR on several occasions.

Record-keeping weaknesses at both USTR and State prevented us from determining whether USTR agreements that were subject to congressional notification requirements but that were not in State's archive had been transmitted to State. (As previously indicated, State's archive of in-force agreements at the end of 1998 did not include 149 of the 252 agreements that were in USTR's archive.) USTR officials told us that prior to July 1999, responsibility within USTR for reviewing and forwarding such agreements was highly decentralized and that USTR had not kept systematic records of which agreements had been sent to State. Because of this and because of high staff turnover, USTR officials said they could not be certain that all relevant agreements had been reviewed and that all reportable agreements had been forwarded to State. State officials advised us that they do not keep a record of agreements received and that once they determine that an agreement is not an international agreement under their criteria, State does not systematically retain copies of such agreements. Thus, State could not tell us whether it had previously received or reviewed USTR agreements that were not in its archive.

In mid-July 1999, while our review was underway, USTR established a new system for collecting newly concluded USTR trade agreements and transmitting them to State. Overall control of the system is now centralized in one office, and a record is being kept of each agreement transmitted to

¹⁴In recent years, State has not always met the 60-day transmittal requirement because some agencies have been late in forwarding completed agreements to Treaty Affairs. Eighteen agreements were reported late in 1995, 13 in 1996, 11 in 1997, and 6 in 1998.

State. USTR officials told us that they intend to transmit to State all agreements USTR concludes. (Unlike previous practice, USTR will not first review an agreement to assess whether the agreement might possibly be considered an international agreement under State's criteria.) In October 1999, State's Treaty Affairs Office told us that the office had received the texts of six agreements through USTR's new system. The office had determined that one of the agreements had qualified for inclusion in its archive, four did not qualify, and one was still being reviewed.

USTR's new procedures do not address previously negotiated USTR agreements that may not have been transmitted to State. During our review, USTR provided State, in May 1999, with a list of the names and dates of about 250 substantive agreements that USTR had negotiated since 1984 and requested Treaty Affairs to advise USTR of any agreements it would like to review as a possible international agreement under the criteria. In October 1999, State told us that it needed to examine the text of any agreements on this list that were not already in State's archive in order to apply its criteria. As of late November 1999, State's Treaty Affairs Office had not provided us with data on the number of agreements (not already in its archive) it had reviewed to determine if they qualified as an international agreement under the act.

Many, but Not All, Trade Agreements Are Made Available to the Public

While federal officials note that improvements in public access to trade agreement texts have occurred during the past 2 years, the public does not have comprehensive and ready access to all trade agreements. Commerce and State make copies of the texts of most agreements they have in their archives available to the public. USTR does not routinely provide copies to the public.

Commerce's Archive Is Useful But Has Limitations

Commerce's internet-accessible trade agreement data base was created specifically to provide the public with a government source for trade agreement information. The data base, which Commerce began compiling in 1996, went online in mid-February 1998. According to Commerce, the archive is intended for use by U.S. businesses; trade lawyers and practitioners; federal, state, and municipal government trade policy officials; and the general public. The data base allows users to review the texts of agreements and to access, on the same site, commercial information about market conditions and market access barriers in foreign

countries.¹⁵ (See fig. 3.) The data base has a number of useful features, such as enabling users to search by title, country, and keyword. In addition, the web site allows U.S. companies to file complaints electronically when they have problems gaining access to foreign markets or believe trade agreements are being violated. (An electronic form is provided that enables users to ask questions about trade agreement implementation and commitments and report possible violations of trade agreements.) Commerce guarantees an initial response to any query or complaint about a trade agreement within 10 days. According to Commerce officials, the web site service is especially helpful to small- and medium-sized firms that do not have Washington offices and cannot afford to hire Washington lawyers.

¹⁵Country information includes commercial guides, country reports on economic policy and trade practices, national trade estimate reports, and trade policy review summaries. According to the Under Secretary of Commerce for International Trade, Commerce is also working on writing plain language, "how-to" guides that will tell firms how to use trade agreements to expand exports, how to know if they are being treated unfairly, and where to go for help.

Figure 3: Department of Commerce's Internet Site Page for Accessing Trade Agreements and Related Information

UNDER RENOVATION
CLICK HERE to Give Us Your Comments

TRADE COMPLIANCE CENTER
MARKET ACCESS AND COMPLIANCE • INTERNATIONAL TRADE ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

NOW!
**FEATURING THE
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Download
**the Commerce Department's
 First Annual Report to Congress
 on the OECD Antibribery Convention**

<ul style="list-style-type: none"> <li style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"><small>i</small> TRADE AGREEMENT DATABASE <li style="border: 1px solid black; padding: 2px; margin-bottom: 5px;"><small>i</small> MARKET ACCESS INFORMATION <li style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">TRADE COMPLAINT HOTLINE <li style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">ABOUT THE TCC <li style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">SUCCESS STORIES <li style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">LINKS <li style="border: 1px solid black; padding: 2px;">HOW-TO/HELP 	<p><u>Home of the Trade Complaint Hotline</u></p> <p>The Trade Compliance Center (TCC) helps U.S. exporters receive the fullest benefits from the more than 200 trade agreements the United States has concluded. The TCC ensures that: (1) trade agreements entered into by the United States are properly monitored; (2) compliance issues are addressed promptly; and (3) U.S. exporters are provided access to information on the opportunities created by U.S. government market opening initiatives. The TCC is part of the Market Access and Compliance (MAC) unit of the International Trade Administration (ITA), U.S. Department of Commerce. To use the Trade Agreements Database, or to access other information, click on any of the links in the left column.</p> <p>► <u>How the TCC Helps U.S. Businesses</u></p> <p>► <u>Return to MAC Homepage</u></p> <div style="text-align: center; margin-top: 20px;">  </div>
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Source: Department of Commerce.

Although the creation of the data base has considerably expanded public access to the content of trade agreements, users may not be aware of the data base's limitations. First, the site does not inform users that the data base does not include all trade agreements nor explain the basis by which agreements were selected for the archive. Second, Commerce does not guarantee the accuracy or completeness of the agreements—Commerce uses a disclaimer that the text is for general reference purposes only.¹⁶ Commerce officials noted that since they do not retain possession of the original copy of most agreements, they are not in a position to provide such a guarantee. We observed, while examining all the agreements in the data base, that some agreements did not contain the complete texts of the agreements. Further, the text of one agreement that we reviewed was for a different country than that listed in the table of contents. When the data base was initially being developed, Commerce recommended to USTR that a formal mechanism be put in place to guarantee the authenticity of agreements. The proposal was not implemented. According to a USTR official, the agency concluded it would not be cost-effective to do so; if users needed such assurances, they could contact USTR on a case-by-case basis. Third, the contents page does not include information on the dates that the agreement was signed and entered into force or which agency or agencies negotiated the agreement. Consequently, to secure this information, one must review the text of each agreement. Fourth, the data base does not tell the user if an agreement has expired or been effectively replaced by more recent agreements.

How Agreements in State's Archive of International Agreements Are Made Available

State makes copies of its agreements available to nongovernmental users by two means, according to State officials. First, State arranges for publication of its agreements by the Government Printing Office.¹⁷ An agreement is initially printed as a pamphlet in the series titled *Treaties and Other International Acts Series*. This publication is recognized by statute as legal proof of the text's authenticity for domestic law purposes, and State takes steps to ensure that the printed text is a verbatim reproduction of the authentic text in all of the agreement's languages, except for multilateral agreements concluded within international organizations. Subsequently,

¹⁶"Completeness" refers to both the text of an agreement and any accompanying documents (such as agreed minutes, side letters, or exchanges of notes).

¹⁷Under 22 C.F.R. 181.8(a)(1) through (9), the Secretary of State may determine that the publication of certain categories of agreements is not required, if certain legal criteria are met, such as that the agreements are of a limited or specialized nature or are classified.

the agreement is published in the publication titled *United States Treaties and Other International Agreements*. Both publications are sent to qualifying federal depository libraries. However, due to budget constraints, State has not prepared agreements for publishing until several years after their negotiation. In June 1999, depository libraries were receiving the pamphlet version of agreements that had been signed in June 1994. State officials confirmed that these were the most recently published agreements.

Second, when State sends a copy of an agreement to Congress, State simultaneously makes copies available to interested parties through its Freedom of Information Act office. According to a State official, several publishing firms regularly secure copies of these agreements as they become available and subsequently make them available for purchase in one of several forms. For example, Oceana Publications, Inc., a publisher of international legal materials, makes texts of the agreements available both online and by CD ROM. According to Oceana, online users can search for agreements and review and print texts for as little as \$37.50 for each 15 minutes. Oceana charges \$500 per year to obtain quarterly updates of the full text of treaties and agreements that the United States has signed since January 1990. According to Oceana, this service makes treaties accessible within 90 days of receipt by the Senate. Lexis-Nexis, a provider of legal, government, and other information, makes copies of the agreements available online to subscribers to its service. Lexis-Nexis obtains the agreements from Oceana via a licensing arrangement. According to a Lexis-Nexis spokesperson, the agreements that it posts are at least several years old.

If an agreement is deemed by State to be highly important, State also sends the agreement to the American Society of International Law and encourages it to publish the agreement in *International Legal Materials*. The Director of State's Treaty Affairs Office told us that State has plans to make the texts of its agreements available to the public at no charge via the Government Printing Office's internet site. Agreements would be posted shortly after they are sent to Congress. The Director said the Government Printing Office has agreed to do this but that he does not know when service will begin.

State has several other ways for the public to obtain summary information on trade agreements included in its archive of international agreements. State publishes a book, *Treaties in Force*, that lists the names and dates of treaties and other international agreements of the United States on record

in the Department of State on the first day of the year, as well as the principal subject matter of agreements. The publication can be viewed or downloaded from State's web site. (The January 1, 1999, publication was made available in early October 1999. At that time, the report had not yet been printed by the Government Printing Office.) Agreements that are judged to address primarily trade matters are classified under subject headings such as "commerce," "trade," or "trade and commerce." We found that most USTR-negotiated agreements that were included in State's 1999 publication of *Treaties in Force* were classified under one of the trade headings. However, some USTR agreements were classified differently by State. For example, State classified bilateral investment treaties under the subject of "investment" and intellectual property agreements under the heading "intellectual property." Consequently, the public cannot rely solely on State's subject headings to identify all trade agreements in its archive.

Another source for information about international agreements is State's online listing of agreements called *Current Treaty Actions*. This source lists the names and dates of agreements that were either signed and/or entered into force recently. Agreements are listed by year and within each year by the month when they are listed in the source. However, the source does not categorize agreements by subject and does not include a search capability. In addition, there is generally a 2-month lag between when an agreement is signed or enters into force and when it is listed in *Current Treaty Actions*. Information in *Current Treaty Actions* also appears in the printed as well as the online version of the State Department publication *Dispatch*, which is a monthly magazine providing major speeches and congressional testimony from the Department.

Treaties in Force, *Current Treaty Actions*, and *Dispatch* do not describe the Case-Zablocki Act criteria used to select agreements for inclusion in the publications. In addition, the latter two publications do not provide any direct information on how users can access copies of the agreements.

USTR Generally Does Not Provide the Public With Direct Access to Trade Agreements

USTR's trade agreement archive is not open to the public, since it was created to serve the internal needs of the agency. USTR principally makes its trade agreements available to the public via Commerce's data base, according to USTR officials. However, we observed in our review of the USTR and Commerce archives that about 30 percent of USTR's agreements were not found in Commerce's archive. USTR publishes a list of its substantive trade agreements (since 1984) in its annual report and typically issues a press release upon the conclusion of negotiations. USTR's internet

site also contains facsimile copies of a small number of recent trade agreements. USTR officials also explained that if the public requests a copy of a trade agreement from USTR directly, they will usually be directed to the Commerce trade data base. If the information is not otherwise available, however, USTR will provide a copy upon request.

Conclusions

Fully securing the benefits of trade liberalization depends, in part, on the ability of both private businesses and the public to quickly and easily access the terms and conditions of the numerous trade agreements to which the United States is a party. However, such access does not currently exist. Commerce's archive is the largest of the three archives maintained by State, Commerce, and the U.S. Trade Representative in terms of the number of trade agreements it contains and is the most accessible to the public. However, the archive is incomplete because it does not contain at least 158 agreements that we identified in the USTR and State archives. In addition, Commerce does not apply consistent criteria in determining what agreements to include in the archive, some texts in the archive contain factual errors, and none of the texts can be considered authoritative. As a result, private businesses may not be taking full advantage of the benefits secured by trade agreements because they are not aware of them, or may be misinformed about the terms of those agreements.

In addition, the U.S. Trade Representative and State do not know whether USTR has transmitted all of its trade agreements to State that should be reported for State's archive of treaties and other international agreements. As a result, State may not have transmitted the text of certain trade agreements to Congress as required by law. Lack of information on the terms and conditions of these agreements could impede Congress' oversight efforts to determine whether trade agreements are being fully implemented.

Recommendations

In order to improve the accuracy and completeness of its trade agreement archive, we recommend that the Secretary of Commerce

- clarify that the archive is intended to contain all trade agreements;
- establish, in consultation with USTR, State, the U.S. Department of Agriculture, and other appropriate federal agencies, clear criteria for the types of agreements to be included;

-
- develop procedures, in consultation with other federal agencies that negotiate trade agreements, to ensure that these agencies regularly forward trade agreements to Commerce; and
 - describe at its internet site the criteria used in determining which agreements are included in the archive and procedures by which users can obtain authenticated copies of the agreements.

We also recommend that the U.S. Trade Representative, as chair of the Trade Policy Staff Committee, ask the group to consider how its member agencies can assist Commerce's efforts to obtain accurate and timely information on trade agreements concluded by those agencies.

To comply with the statutory requirement that Congress receive copies of all agreements that qualify as international agreements, we recommend that the Office of the U.S. Trade Representative transmit to State's Office of Treaty Affairs the text of each substantive trade agreement that it has negotiated that is currently in force and that does not appear in State's present record of in-force international agreements. We also recommend that the Secretary of State direct the Office of Treaty Affairs to review each of these agreements to determine whether the agreement is an international agreement under State's criteria and, if so, notify Congress of such agreements no later than 60 days after receiving them.

Agency Comments and Our Evaluation

We requested comments on a draft of this report from the Departments of Commerce and State and from USTR. State and Commerce provided written comments, which are reprinted in appendix III and appendix IV. State's letter did not raise any issues concerning the report. We obtained oral comments from USTR officials, including the Deputy General Counsel. Commerce, State, and USTR also provided technical comments, which we incorporated as appropriate.

Commerce characterized the report as very helpful and said it would consider our recommendations carefully. While Commerce agreed that our count of 158 agreements not found in the Commerce data base was accurate, they explained that more than half of these agreements had either expired or had been superseded by other agreements. Commerce noted its data base is designed to include agreements that are currently in force. Commerce also stated that some of the remaining agreements were not included in its data base because they did not meet its criteria for trade agreements or had not been loaded into Commerce's data base at the time of our review. Commerce acknowledged that it had overlooked about two

dozen agreements that should have been included in its data base. We modified our report to reflect that many of the 158 agreements that were not included in Commerce's data base had either expired or were superseded. However, Commerce's acknowledgment that it had overlooked some agreements and that it may use different criteria from State and USTR for defining trade agreements supports our conclusion that improvements are needed to eliminate record-keeping weaknesses and establish, in consultation with other agencies, clear criteria for the types of agreements to be included in Commerce's data base.

USTR officials said that overall they found the report to be balanced and fair. However, USTR expressed concern about our recommendation that USTR, as chair of the Trade Policy Staff Committee, lead an interagency effort to assist Commerce in obtaining accurate information on trade agreements from other agencies. USTR officials said that agreements negotiated by other agencies are generally addressed outside the Trade Policy Staff Committee and that the Committee has no authority to direct other agencies to provide agreements to Commerce. They noted that the process would not work very well unless an agency with more overarching responsibility, such as the National Economic Council or the Office of Management and Budget, issued a directive. We continue to believe, however, that our recommendation is appropriate since one of USTR's functions, as chair of the Trade Policy Staff Committee, is to monitor and administer the trade agreements program.¹⁸ Moreover, legislation regarding the Committee states it should draw upon the resources of its member agencies to the maximum extent practicable.¹⁹ If the Committee is not successful in securing voluntary cooperation from its member agencies, it should consider working with the National Economic Council or the Office of Management and Budget to develop a more formal mechanism for obtaining the needed trade agreements information.

We are sending copies of this report to appropriate congressional committees. We are also sending copies of this report to the Honorable Madeleine K. Albright, Secretary of State; the Honorable William M. Daley,

¹⁸USTR's responsibilities as chair of this committee are enumerated in Executive Order 12188, January 2, 1980, signed by President Jimmy Carter.

¹⁹19 U.S.C. 1872(c).

Secretary of Commerce; and the Honorable Charlene Barshefsky, U.S. Trade Representative. Copies will also be made available to others upon request.

If you or your staff have any questions about this report, please contact me on (202) 512-3655. Key GAO contacts and staff acknowledgments are listed in appendix V.

Sincerely yours,

A handwritten signature in cursive script that reads "Susan S. Westin".

Susan S. Westin, Associate Director
International Relations and Trade Issues

U.S. Trade Representative, State, and Commerce Central Archives of Trade Agreements

The U.S. Trade Representative (USTR) and the Departments of State and Commerce each maintain a central archive containing a large number of U.S. trade agreements. However, the three archives were created for different purposes and only partially overlap. In this appendix, we describe the three archives and their contents.

USTR's Trade Agreements Archive

USTR began establishing a central archive of its trade agreements in early 1996, at the same time that it was creating a central office for monitoring and enforcing trade agreements. According to USTR officials, up to that point institutional memory and record-keeping regarding trade agreements had not been very good. Given the increasing number of trade agreements negotiated in recent years and the general, growing interest in monitoring and enforcing trade agreements, USTR considered it important to improve record-keeping.

According to USTR officials, the central archive, which was set up for USTR's internal purposes, is a work in progress. The first goal was to make sure that the archive contained all agreements negotiated by the Clinton administration. According to the officials, this objective has been met. The second goal was to capture all agreements going back to 1984; USTR maintains that goal is probably about 90 percent realized. Although USTR was established in 1962, its central archive does not include U.S. trade-related agreements it negotiated prior to 1984, nor those negotiated by other U.S. government agencies, with the exception of 40 bilateral friendship, commerce, and navigation treaties concluded between 1815 and 1968 and two major multilateral trade agreements concluded in 1967 and 1979, respectively. The archive includes (1) agreements that have entered into force, (2) agreements that have not yet entered into force because one or more of the parties have not taken necessary actions to approve them, and (3) agreements that previously entered into force but have since expired.

USTR does not employ a formal definition of a trade agreement in deciding whether to include an agreement in its archive. According to a USTR official, since all of USTR's work is related to trade and all agreements in its archive are USTR-concluded agreements, any agreement in its archive is necessarily considered a trade agreement.

USTR's central archive includes substantive trade agreements, procedural agreements, and declarations. **Substantive agreements** are those that include commitments on matters of substance that USTR considers to be

enforceable. **Procedural agreements**, such as trade and investment framework agreements, typically establish bilateral or other nonbinding consultation mechanisms. According to a USTR official, **declarations** usually occur in the context of large ministerial meetings regarding the negotiation or implementation of trade agreements and are issued at the conclusion of the meetings. Declarations sometimes include substantive undertakings but more often are process oriented and take stock of countries' positions at the time the document is issued. Procedural agreements and declarations are important, the official said, because they often help move countries toward concluding substantive agreements.

USTR maintains three principal lists of the trade agreements that are contained in its central archive. The first, or master list, refers to all USTR agreements that have been collected to date, including substantive, procedural, and declaration agreements generally going back to 1984. The most recent updated list available to us in August 1999 was for the period ending May 29, 1998. The second list includes all agreements negotiated by the Clinton administration. In September 1999, USTR provided us with a copy that included all agreements from January 1, 1993, through July 1, 1999. The third list is restricted to substantive agreements that have entered into force since 1984 that afford increased foreign market access or reduce foreign barriers and other trade-distorting policies and practices. This list is reported to Congress each year as part of USTR's annual report.

We compared the three lists of agreements and found some inconsistencies. For example, we found that the master list of agreements did not include 16 agreements included in USTR's list of substantive agreements entered into between 1984 and May 29, 1998. Our analysis also suggested that many procedural agreements and declarations that were concluded between 1984 and 1992 may not be included in the total archive. USTR officials confirmed that the total archive is incomplete and that archiving procedural agreements and declarations negotiated prior to 1993 has not been an agency priority.

Trade Agreements in State Department's Archive of International Agreements

By law¹ the Secretary of State is required to archive and publish all treaties and all international agreements other than treaties (called “executive agreements”)² to which the United States is a party that are concluded during each calendar year. State does so in the publication *Treaties and Other International Acts Series*. In addition, under the Case-Zablocki Act, the Secretary of State is required to transmit to Congress the text of any executive agreement as soon as practicable after such agreement has entered into force but no later than 60 days thereafter. Federal agencies that enter into an executive agreement on behalf of the United States are required to transmit the text of such an agreement to the State Department not later than 20 days after the agreement is signed. Federal agencies are also required to consult with the Secretary of State prior to signing or concluding an international agreement.³

The State Department is afforded some discretion in deciding what constitutes an international agreement to be published and notified to Congress. As a result, not all trade and other agreements are included in State's archive. According to State Department regulations, some of the key criteria that it uses in deciding whether an agreement is an international agreement (within the meaning of the previously cited laws) are the following:

¹U.S.C. 112a.

²There are two procedures under the Constitution through which the United States enters into international agreements. Any international agreement whose entry into force requires advice and consent from the U.S. Senate is a “treaty.” In addition to a treaty, the term “executive agreement” is used to refer to international agreements concluded by the executive branch (a) pursuant to or in accordance with existing legislation or a prior treaty, (b) subject to congressional approval or implementation, and/or (c) under and in accordance with the President's Constitutional powers.

³In situations where an interagency committee has been established for the purpose of approving agreements, the consultation requirement may be satisfied if the Secretary of State or her designee has been consulted in his or her capacity as a member of the committee. See 22 C.F.R. 181.4(g).

- *Identity and intention of the parties.* A party to an international agreement must be a state, a state agency, or an intergovernmental organization. The parties must intend their undertaking to be legally binding,⁴ and not merely of political or personal effect. Documents intended to have political or moral weight, but not intended to be legally binding, are not considered international agreements.
- *Significance of the arrangement.* Minor or trivial undertakings, even if couched in legal language and form, are not considered international agreements. In deciding what level of significance must be reached before a particular arrangement becomes an international agreement, the entire context of the transaction and the expectations and intent of the parties must be taken into account.
- *Specificity, including objective criteria for determining enforceability.* International agreements require precision and specificity in the language setting forth the undertakings of the parties. Undertakings couched in vague or very general terms containing no objective criteria for determining enforceability or performance are not normally considered international agreements. However, the intent of the parties is the key factor in assessing whether agreements are enforceable.
- *Necessity for two or more parties.* While unilateral commitments on occasion may be legally binding, they do not constitute international agreements. Care should be taken to examine whether a particular undertaking is truly unilateral in nature or is part of larger bilateral or multilateral undertakings.⁵

Department of Commerce's Trade Agreements Archive

Commerce began creating a trade agreement archive in 1996 along with the establishment of the Trade Compliance Center (TCC). According to a former Commerce official, TCC was established because the U.S. government had engaged in a continuing process of negotiating new trade agreements but had not focused on monitoring and enforcing them. At that time, the location of even the most basic trade agreements and the number of existing trade agreements were unknown, the official said. According to the Director of TCC, the original intent of TCC was to assemble all

⁴USTR officials advised us that USTR's standard for what is "legally binding" with regard to agreements that USTR negotiates may not be equivalent to the standard the State Department uses in considering whether an agreement should be considered enforceable for purposes of the Case-Zablocki Act.

⁵See 22 C.F.R. 181.2(1)-(4).

U.S.-negotiated trade agreements in one place and make them accessible to the public via the internet. To create this archive, TCC began with USTR's 1995 list of all USTR trade-related agreements and USTR's sub-list of substantive agreements that focus on increasing access to foreign markets. TCC then sought to obtain copies of these agreements from USTR. TCC obtained additional trade agreements from other Commerce Department offices. The documents were converted into an electronic and searchable format via a scanning process.

In June 1997, TCC proposed to USTR that the two agencies convene an interagency group to conduct a coordinated search for international trade agreement texts and accompanying papers. Under the proposal, the group would have employed a working definition of a trade agreement, and a process would have been agreed upon for certifying that a copy of any agreement provided to the TCC data base was an exact copy of the signed original. TCC also proposed that Commerce and USTR develop a schedule for locating, authenticating, and delivering the trade agreements to TCC and that the group meet monthly to assess progress. However, USTR officials did not believe such a formal process was necessary, and no action was taken to implement it. Instead, according to USTR officials, USTR agreed to certify the authenticity of trade agreements on a case-by-case basis and began to informally provide newly negotiated trade agreements to TCC for inclusion in its data base.

According to TCC officials, trade agreements are included in its data base if the documents meet one or more of the following criteria: (1) the parties are national governments and agencies or intergovernmental organizations, (2) the parties intended their undertaking to be binding, (3) the agreement affects or might affect international trade, and/or (4) one or more parties is a recognized territory outside the United States. The officials said that these criteria represent the TCC's working level definition of a trade agreement and do not represent either an official Commerce or U.S. government definition. They noted that applying the definition involves making judgments.

According to TCC officials, TCC updates its archive by (1) reviewing the list of USTR trade agreements published in successive annual reports, (2) consulting with USTR and other Commerce Department staff, (3) reading press releases, (4) perusing trade-related web sites, and (5) interacting with parties in the private sector. The Commerce archive was made accessible to the public in February 1998 via a Commerce Department web site on the internet.

TCC officials admit that the contents of their data base are not comprehensive and that they are still trying to determine what types of agreements should be included in the data base. During our review, we identified and discussed with TCC officials some inconsistencies that we found. They agreed, for example, that some but not all agriculture and bilateral textile agreements, and antidumping suspension notices, are included in their data base. They also said that although they had tried to make the data base strictly trade or investment related, the data base included some other agreements, such as scientific or technical agreements, made among regulatory officials of the U.S. and other governments, that might have a trade impact.

TCC's Director told us that he does not see TCC maintaining a complete archive of all trade agreements but rather only those trade agreements for which Commerce is responsible and should be held accountable. In his view, USTR is responsible for maintaining a complete archive, and the TCC data base is primarily a tool for the Commerce Department. However, other Commerce officials told us that the TCC archive should be a comprehensive archive of trade agreements in general. In addition, in testimony before the Senate Finance Committee in February 1999, the Under Secretary for International Trade asserted that one of TCC's major functions is to provide information to American companies about trade agreements, including how to use them, and how to know if their rights under these agreements are being violated. Commerce noted in agency comments on this report that its archive's focus is on nonagricultural trade, despite the inclusion of some agricultural trade agreements. Commerce says it will consult with the Departments of Agriculture and State, as well as USTR, to develop a comprehensive policy on how these agreements should be handled.

In discussing TCC's data base, USTR officials told us that USTR (1) has agreed to provide trade agreements to TCC for inclusion in TCC's database, (2) understood that TCC intended to include anything that could be considered a trade agreement regardless of which U.S. government agency negotiated it on behalf of the United States, and (3) considered that TCC's data base would be a main source for public access to U.S. trade agreements. Further, they told us that USTR considers its archive to be a subset of TCC's data base.

Objectives, Scope, and Methodology

The Chairman of the House Ways and Means Committee asked us to determine (1) the number of trade agreements the United States is party to, (2) the way in which the executive branch notifies Congress about its trade agreements, and (3) the extent to which the public has ready access to trade agreements from government sources.

To determine the number of trade agreements the United States is a party to, we reviewed documentation and interviewed officials at USTR and the Departments of State and Commerce. Since these agencies do not employ a common definition of a trade agreement, and the criteria they use in collecting data on trade agreements vary, the agencies could not provide us with a total count of how many trade agreements are currently in force. To approximate the number of agreements, we reviewed lists of the agreements in the archives of USTR, State, and Commerce and sought to create a master list that eliminated double- or triple-counting of the same agreement. We largely did this by incorporating information on the names, dates, and partners of each agreement in each agency's data base and comparing the results. To reconcile the lists, we reviewed the texts of the agreements in Commerce's data base. We did not verify whether the USTR and State lists fully reflected the contents of the archives.

We collected information on agreements that entered into force from January 1, 1984, through December 31, 1998. We could not go back farther than 1984 because USTR's central archive generally does not include (with two exceptions) agreements that it negotiated prior to 1984. We tried to identify only agreements that were still in force on December 31, 1998, but were not able to fully do so because of inadequate documentation in the Commerce and USTR archives.

From USTR's archive, we included all agreements that USTR officials identified as being substantive agreements that afford the United States increased foreign market access or reduce foreign barriers and other trade-distorting policies and practices. We excluded procedural agreements that lack enforceable provisions on increasing market access or reducing trade barriers. We also excluded agreements that USTR refers to as "declarations." Declarations, according to USTR, usually occur in the context of large ministerial meetings. They sometimes include substantive points but more often are process oriented and take stock of where the countries are at the time a document is issued. If substantive points are included, they are not considered enforceable by USTR.

From State's archive, which includes a wide variety of international agreements, we included agreements that were categorized by State as either a "trade" or "trade and commerce" agreement. In addition, we included agreements categorized under a different subject heading if the agreement appeared in either the USTR or Commerce data bases. We did not include agreements categorized by State as customs agreements. Based on criteria that State uses, any agreement in its data base is one judged by State to include significant commitments by both parties and to be legally binding.

We included most documents that appeared in Commerce's trade agreements data base. We excluded some documents that clearly were not trade agreements, that did not fall within the time period of our review, or that had not entered into force. According to Commerce, its archive contains the texts of trade agreements. According to Commerce officials, the data base includes agreements that meet any or all of the following criteria: (1) the parties are national governments and agencies or intergovernmental organizations, (2) the parties intend their undertaking to be binding, (3) the agreement affects or may affect international trade, and/or (4) one or more parties is a recognized territory outside the United States. According to Commerce officials, Commerce's archive also excludes declarations.

To determine the way in which the executive branch notifies Congress about its trade agreements, we reviewed statutes and regulations pertaining to trade policy and procedures for notifying Congress of international agreements. In addition, we interviewed agency officials from USTR, Commerce, State, and the Department of Agriculture.

To determine the extent to which the public has easy access to trade agreements from government sources, we examined Commerce's internet trade data base web site; reviewed State publications and its internet site containing information on international agreements; and inspected USTR's internet site. We also interviewed agency officials from Commerce, State, and USTR. In addition, we spoke with several companies that publish international agreements and accessed the internet sites of Oceana and Lexis-Nexis for additional information on their services.

We did our work from June 1998 through November 1999 in accordance with generally accepted government auditing standards.

Comments From the Department of State



United States Department of State

Chief Financial Officer

Washington, D.C. 20520-7427

November 19, 1999

Dear Mr. Hinton:

We appreciate the opportunity to review your draft report "INTERNATIONAL TRADE: Improvements Needed To Track and Archive Trade Agreements," GAO Job Code 711346.

The report recommends that the U.S. Trade Representative transmit to the Department's Office of Treaty Affairs the text of each substantive trade agreement that the Trade Representative has negotiated and considers to be in force that does not appear in the 1999 edition of Treaties in Force.

The Office of Treaty Affairs will review each of these agreements to determine whether the agreement is an international agreement under the criteria established by the Department of State and, if so, notify the Congress of such agreements no later than 60 days after receiving them.

If you have any questions concerning this response, please contact Mr. Robert Dalton, Office of Treaty Affairs, at (202) 647-2044 .

Sincerely,

A handwritten signature in black ink that reads "Bert Edwards".

Bert T. Edwards

cc:

GAO/NSIAD – Ms. Sirois
State/L/T – Mr. Dalton

Mr. Henry L. Hinton, Jr.,
Assistant Comptroller General,
National Security and International Affairs,
U.S. General Accounting Office.

Comments From the Department of Commerce

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



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

NOV 24 1999

Ms. Susan S. Westin
Associate Director
International Relations and Trade Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Ms. Westin:

Thank you for the draft GAO report "Improvements Needed to Track and Archive Trade Agreements" and the opportunity to comment. We found the report very helpful. Your recommendations are well thought out, and we will consider them carefully.

We would, however, like to call some of the report's conclusions to your attention, and we hope you will agree with us that the report should be revised. A principal conclusion of the report is that the Commerce database contains only two-thirds of the 441 trade agreements you identified as entering into force from 1984 through 1998 (p. 2 of your draft). The draft report goes on to note (on p. 8) that, of these agreements, Commerce listed only 283 in its database, USTR had 252 and State had 209 -- and it suggests that 158 agreements are not included in the Commerce database.

See comment 1.

While your count is accurate, there are several reasons why most of those 158 agreements do not appear in the Commerce database. The Commerce Department only includes active agreements in the database of the Trade Compliance Center (TCC) which is designed to provide the public with information on agreements that are currently in force. Our analysis shows that over half of the 158 agreements in question have either expired or been superseded -- that is, they are no longer valid or in force. Most of these are superseded textile agreements. Your draft report further notes (p. 4) that "Commerce officials explained that many of the agreements [in the State and USTR archives] are not in their archive because they had either expired or were superseded by other agreements." We believe this fact should be noted in the final report.

See comment 2.

We found that an additional one-fifth of the agreements in question have been excluded from our database as either not meeting our criteria for trade agreements (e.g., antitrust comity agreements) or are agricultural agreements. The remainder includes agreements that either: (1) had been on our website, but apparently were overlooked by the GAO team, (2) had not yet been loaded onto the TCC's database due to our switch from one system to another or (3) had been overlooked by the TCC staff. With regard to the last point, your team's search through the records of the three agencies uncovered about two dozen agreements which you were absolutely correct to point out as having been overlooked. We appreciate your calling this to our attention, and we will include these in our database.



**Appendix IV
Comments From the Department of
Commerce**

See comment 3.

Other Issues

The draft report (p. 31) quotes the Director of the TCC as saying he envisioned the TCC maintaining only those trade agreements for which Commerce is responsible and accountable. What the TCC Director meant to suggest by this comment is that we focus our coverage on non-agricultural trade. While we have some agricultural agreements in our database, we do not have them all and we need to determine whether we should cover all, some, or none. We will consult with the Departments of Agriculture and State as well as USTR to develop a comprehensive policy on how these should be handled.

See comment 4.

Finally, your draft report notes that "USTR and Commerce do not systematically update their archives to remove any agreements that have expired..." (p. 11). With regard to the Commerce database, you should be aware that since this finding was made, the TCC has begun periodic comprehensive reviews of all agreements on our database. In conducting such reviews, the Trade Compliance Center consults with ITA's country and industry officers and Import Administration officials. The August 1999 review identified some obsolete agreements which were subsequently removed from the database. This updating of our database will be an ongoing process.

Concluding Comments

Again we thank you for your work on producing this report. We hope that you will agree with our suggested revisions and that the final report will take account of our suggestions. We will be happy to meet with your staff for any further discussion of the trade agreements if that would be helpful. We look forward to continuing to work with you to improve our system for monitoring and enforcing trade agreements.

Sincerely,



Timothy J. Hauser

The following are GAO's comments on the Department of Commerce's letter dated November 24, 1999.

GAO Comments

1. Commerce's explanation for why its archive does not contain 158 of the 441 agreements that we identified in the USTR, Commerce, and State archives is based on Commerce's analysis of a list of the 158 agreements we provided to them. Since we had also identified instances in which the USTR and State archives contained agreements that were no longer in force or had been superseded by other agreements, we accept Commerce's explanation for the majority of the missing agreements.
2. Commerce reported that the remainder of the missing agreements either did not meet Commerce's criteria for inclusion, had not yet been loaded into the data base, or had been overlooked. Since Commerce did not identify to us the particular agreements in each category, we cannot comment specifically on its response. However, Commerce elsewhere notes that it is taking steps to clarify the criteria for including agreements in its data base and improve its accuracy. Such steps will address our concern about the utility of the data base.
3. We modified our report to acknowledge Commerce's intent to resolve the issue of whether or not agriculture agreements should be included in the Commerce data base.
4. We noted in our report that Commerce has begun periodic reviews of its data base to remove obsolete agreements.

GAO Contacts and Staff Acknowledgments

GAO Contacts

Elizabeth Sirois (202) 512-8989
Anthony Moran (202) 512-8645

Acknowledgments

In addition to those named above, Shirley Brothwell, Wayne Ferris, Kim Frankena, and Katharine Woodward made key contributions to this report.

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