

SUPPORTING STATEMENT FOR  
UNITED STATES INTERNATIONAL TRADE COMMISSION INFORMATION COLLECTION  
(SURVEY REGARDING OUTSTANDING SECTION 337 EXCLUSION ORDERS)

In its Strategic Plan (available on the agency's website at <http://www.usitc.gov>) the Commission set itself the goal of obtaining feedback on the effectiveness of its exclusion orders from complainants who obtained such orders under 19 U.S.C. §1337. As the Commission is authorized to issue both general and limited exclusion orders, two survey forms are proposed, one for each type of relief. The proposed surveys seek to gather feedback to allow the Commission to assess the effectiveness of statutory relief offered by the Act. This information will allow the Commission both to assess its remedial efforts and to develop and implement proposals to bolster enforcement.

Each survey asks whether and to what extent Commission exclusion orders are effective in preventing the importation of covered goods. If imports have continued, the survey asks for an estimate of the magnitude and effect on the U.S. market of such imports. The survey also requests information regarding the cost, if any, to complainants of policing the Commission's exclusion orders and the level of satisfaction among complainants with the efforts of the U.S. Bureau of Customs and Border Protection in enforcing the Commission's exclusion orders. It will be sent to complainants who obtained an exclusion order, that currently remains in effect, from the Commission following an investigation under Section 337. Responses are voluntary. While the survey will be made available on the Commission's website, responses must be in paper form. The Commission estimates that the survey, which is voluntary, will impose no burden, and will take less than 1 response hour for each of the approximately 54 firms that may choose to respond.

As the proposed survey constitutes an information collection as defined by the Paperwork Reduction Act of 1995, this supporting statement is for clearance from the Office of Management and Budget (OMB) to issue it. Copies of the proposed surveys and cover letter with instructions are attached.

**A. Justification**

**1. Request**

The U.S. International Trade Commission has the responsibility of investigating unfair methods of competition and unfair acts in the importation of articles into the United States under Section 337 of the Tariff Act of 1930 (19 U.S.C. §1337). Under Sections 337(d)(1) and (d)(2) of the Act, if the Commission determines, as a result of an investigation under this section, that there is a violation of this section, it generally enters either a limited or a general exclusion order directing U.S. Bureau of Customs and Border Protection to deny entry into the United States to goods covered by the order.

**2. Purpose**

The proposed surveys seek to gather feedback from prevailing complainants in the above section 337 investigations to allow the Commission to assess the effectiveness of statutory relief offered by the Act. This information will allow the Commission both to assess its remedial efforts and to develop and implement proposals to bolster enforcement.

**3. Information Technology**

The survey will be posted on the Commission's website but responses must be in paper form.

**4. Non-duplication**

The requested information is not available elsewhere.

## **5. Small businesses**

Although some of the firms that will receive a survey are "small businesses," as specified under the Small Business Administration Rules (13 CFR Part 121), this information collection will not have a significant economic impact on these entities. All of these small businesses have previously petitioned the Commission in order to obtain the relief at issue and currently have exclusion orders in effect. To minimize the reporting burden, the surveys were designed to be as brief as possible, consistent with information requirements. Check-in type questions are used to simplify survey response and no supporting documentation is requested. Also, the surveys indicate that estimates are acceptable; this should further reduce the potential burden on smaller firms that may not have the administrative resources or automated record systems of larger firms.

## **6. Consequence of non-collection**

Missed opportunity to improve remedial efforts and to develop and implement proposals to bolster enforcement.

## **7. Special Circumstances**

There are no special circumstances that would cause the survey to be issued in a manner inconsistent with the items specified in item 7 of the specific instructions for the Supporting Statement.

## **8. Consultations**

The Commission's notice which solicited comments on the proposed information collection (the surveys) prior to submitting it to OMB was published in the *Federal Register* on September 3, 2004, page 53944 (copy attached), as required by 5 CFR §1320.8(d). Further, a draft of the proposed surveys was placed on the Commission website, which is regularly accessed by the trade law firms that appear before the Commission in Section 337 proceedings.

In addition, at the time of publication of the Notice, the Commission informally advised the International Trade Commission Trial Lawyers Association (ITCTLA) of the Notice and the Commission's interest in receiving comments on the availability of data, reporting burden, clarity of instructions, disclosure and reporting format, and on the data elements to be disclosed or reported. The ITCTLA is an association of attorneys that regularly appear before the Commission representing parties in Section 337 proceedings. Since January 2000, 17 new exclusion orders have issued. In over 70% of these investigations (12/17), Complainants have been represented by law firms that are members of the ITCTLA.

On October 29, 2004, comments on the proposed surveys were received from the International Trade Commission Trial Lawyers Association (ITCTLA). The ITCTLA made no comment regarding the Commission's estimated burden of reporting. The Commission has fully considered the ITCTLA's comments and has made revisions to Question Nos. 4 and 8 of the survey. The ITCTLA proposed that Question No. 4 include an additional answer, "effectively stopped" and that the order of the answers be reversed. In addition, the ITCTLA proposed that Question No. 8 be broken into two questions. The Commission has adopted these proposals.

The Commission did not adopt ITCTLA's additional questions and revisions. Specifically, the ITCTLA proposed an additional question asking for the identity of the goods subject to the exclusion order and average sales price of such good. The Commission rejected the proposal as unduly burdensome since the nature of the good is apparent from the exclusion order itself and the inclusion of such a question might complicate responses inasmuch as many orders cover "systems, components, and products containing same." Additionally questions regarding the

respondent's knowledge of exclusions by Customs and estimated value of excluded goods and increased sales were rejected by the Commission as unnecessary and needlessly lengthening the survey. Exclusion order recipients are not notified of exclusions by Customs and therefore could not reliably estimate the value of goods excluded or the amount, if any, by which their sales have increased as a result of exclusions. Finally, ITCTLA proposed eliminating Question No. 5 as redundant. Question No. 5 asks for a general assessment of the level of harm caused by covered infringing imports. The Commission rejected this proposal because Question No. 5 adds information regarding the efficacy of exclusion orders beyond the dollar and sales percentage estimates requested in Questions 2 and 3 and does not impose an undue burden on survey respondents.

In addition, substantially the same survey was pretested in September 1999 prior to the last survey by sending copies of the surveys to four potential responding firms. The cover letter sent to all survey recipients in 2000 specifically requested comments regarding the accuracy of the Commission's estimate of the reporting burden and suggestions for simplifying the survey. The Commission received no comments.

**9. Payments or gifts to respondents**

There is no provision for any payment or gifts to respondents.

**10. Confidentiality**

The Commission does not intend to publish the identities of respondents.

The cover letter to the survey states: "Any commercial or financial data furnished in response to this survey that reveals the individual operations of your firm will be treated as confidential by the Commission to the extent that such data is not otherwise available to the public and will not be disclosed except as may be required by law." The authority for accepting submissions of information as confidential is codified under 19 CFR §§201.6, 210.7, and 210.72.

**11. Sensitive information**

Information on issues of a sensitive nature involving persons is not being sought.

**12. Estimates of burden (October 2004 - September 2005)**

The Commission estimates that responding to this information collection will take less than 1 response hour for each of the approximately 50 respondents who chose to respond. This estimate is based on the Commission's prior experience in pretesting the surveys and the absence of comments regarding the Commission's estimated burden from both the survey recipients in 2000 and the ITCTLA in 2004. The estimated total cost to respondents of the proposed collection is \$3240 (54 hours times \$60 per hour).

**13. Total annual cost burden**

Not applicable. This is a nonrecurring data collection with no capital or start-up cost components.

**14. Annualized cost to the Federal Government**

The estimated total project cost to the Federal Government for distributing the survey and compiling responses is estimated to be \$1,650 (30 hours times \$55 per hour). The survey will be conducted within the 2005 fiscal year.

**15. Program changes and/or adjustments**

This is a new data collection.

**16. Plans for tabulation and publication**

After the completed surveys are reviewed and the responses compiled by the Commission staff, the results will be presented to the Commission for follow-up as appropriate, such as inclusion in performance reports under the Government Performance and Results Act. The surveys are scheduled to be mailed on or about September 7, 2005 and responses requested within 10 days after receipt of the survey. The survey is scheduled to be conducted within the 2005 fiscal year.

**17. Approval to not display the expiration date for OMB approval**

Not applicable. The survey will display the expiration date for OMB approval of the information collection.

**18. Consistency with CFR 1320.9 guidelines**

There are no known exceptions to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I for this proposed information collection.

**B. Collections of Information Employing Statistical Methods**

Not applicable.