

UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, DC 20436

FOR COUNSEL AND PROFESSIONALS

PROTECTIVE ORDER APPLICATION FOR PROPRIETARY INFORMATION FOR BINATIONAL PANEL REVIEW UNDER ARTICLE 1904 OF THE NORTH AMERICAN FREE TRADE AGREEMENT

Panel Review No. _____

(Panel Caption)

Date of First Request for
Panel Review

A. Instructions

An authorized applicant defined in 19 C.F.R. § 207.93(b)(2) requesting release of proprietary information, as defined in paragraph C(2) below, pursuant to protective order must complete and submit this application. Applicants may attach additional pages to this form if necessary. This application for release of proprietary information may be filed after a Notice of Request for Panel Review or a Notice of Request for Extraordinary Challenge Committee, if any, concerning a final determination of the United States International Trade Commission (USITC) has been filed with the Secretariat.

The applicant shall file and serve copies of this application in accordance with Rules of Procedure for NAFTA Article 1904 Panel Reviews (Art. 1904 Rules), and The Rules of Practice and Procedure of the U.S. International Trade Commission (USITC Rules)(19 C.F.R. Part 207 subpart G). A copy of the completed application must be retained by the applicant in order that clerical persons (as defined in paragraph C(3)(d) below) may sign onto it in accordance with paragraph F below.

Additional information about release of proprietary information and definitions of terms not defined in this application are contained in the USITC Rules.

B. Authorized Applicant

To obtain access to proprietary information contained in the administrative record of the determination by the USITC which is the subject of the above-referenced binational panel (panel) review, or subsequent extraordinary challenge committee (committee) proceeding, if any I, the Undersigned,

(Insert Name) submit this application for disclosure of proprietary information, but not including any information as to which privilege has been claimed, in the administrative record of the USITC Investigation No. _____ pursuant to a protective order.

I represent _____ (state the name of the individual or entity) and I certify that I am (check one):

() (1) An attorney, but not an in-house corporate counsel, for an individual or an entity which is a participant or plans to become a participant in the above-referenced panel review, or subsequent committee proceeding, if any, and that I do not participate in any competitive decision-making activity of the participant or the future participant or of any other individual or entity which would gain competitive advantage through knowledge of the proprietary information sought in this application. List the jurisdictions in which you are admitted and are in good standing to practice:

_____.

() (2) An in-house corporate counsel for a participant or a future participant in the above-referenced panel review, or subsequent committee proceeding, if any, but I do not participate in any competitive decision-making activity of the participant or future participant or of any individual or entity which would gain competitive advantage through knowledge of the proprietary information sought in this application. I have attached a written justification for the statement that I am not involved in competitive decision-making. List the jurisdictions in which you are admitted to practice:

_____.

() (3) A professional retained by, or under the control or direction of, a counsel of record for a participant in the above-referenced panel review, or subsequent committee proceeding, if any, and do not participate in any competitive decision-making activity of the participant represented or of any individual or entity which would gain competitive advantage through knowledge of the proprietary information sought in this application. This attorney has also signed this application to indicate that the attorney is held responsible for my compliance with the administrative protective order (APO). Provide signature of counsel of record exercising direction and control and confirming position:

_____.

C. Obligations of the Applicant

As a condition for access to the requested proprietary information, I agree that, upon issuance of the protective order granting this application (hereinafter, requested protective order), I shall:

(1) Be bound by the applicable provisions of the Art. 1904 Rules, Rules of Procedure for Article 1904 Extraordinary Challenge Committees (ECC Rules), the North American Free Trade Agreement Implementation Act (Pub. L. 103-182) (the Act), USITC Rules and any additional terms and conditions included in the requested protective order;

(2) Treat all information which is

(a) defined by the USITC to be proprietary information,

(b) contained in the administrative record of the USITC determination which is the subject of the above-referenced panel review and,

(c) obtained pursuant to the requested protective order (hereinafter, proprietary information) as confidential;

(3) Not disclose any proprietary information, not otherwise available, to any person other than:

(a) personnel of the USITC participating in the above-referenced panel review, or subsequent committee proceeding, if any, in which the proprietary information is part of the record,

(b) the person from whom the information was obtained,

(c) a person who, pursuant to a Commission protective order, is also authorized to have access to the same proprietary information in the record of the panel review, or

(d) a clerical person retained or employed by and under the direction and control of a person described in (3)(c) (hereinafter, clerical persons) if such clerical person has signed and dated a statement that he or she

(i) will comply with the terms and conditions of the requested protective order issued granting the application of the person who employs or retains him or her, and

(ii) does not participate in, or provide clerical support to anyone who participates in the competitive decision-making activity of any participant in the above-referenced panel review, or committee proceeding, or any individual or entity that would gain competitive advantage through knowledge of the proprietary information released pursuant to the protective order issued to the person who employs or retains him or her;

NOTE: The examination of documents in transit between Canada or Mexico and the United States by customs authorities will not be considered to be a protective order violation.

- (4) Not use any of the proprietary information for purposes other than the above-referenced panel review, or subsequent committee proceeding, if any;
- (5) Not copy or otherwise reproduce any proprietary information obtained hereunder except in accordance with the terms of the requested protective order;
- (6) Not consult with any person not described in paragraph C(3) of this application concerning proprietary information disclosed under the requested protective order without first having received the written consent of the USITC Secretary and the party or the attorney of the party from whom such proprietary information was obtained;
- (7) Transmit each document containing proprietary information disclosed under the requested protective order:
 - (a) with a cover sheet identifying the document as containing proprietary information;
 - (b) with all proprietary information enclosed in brackets and each page warning that the document contains proprietary information;
 - (c) if by mail, within two envelopes, the inner one sealed and marked "Proprietary Information To be opened only by [name of recipient]", and the outer one sealed and not marked as containing proprietary information;
- (8) Whenever documents and materials (e.g., word processing or computer diskettes) containing such proprietary information are not being used, store such material in a locked file cabinet, vault, safe or other suitable container;
- (9) Not enter proprietary information onto a word-processing system or other computer device unless access to the database is restricted to persons authorized to receive the proprietary information (N.B.: storage of proprietary information on so-called hard disk computer media is to be avoided because mere erasure of data from such media may not irrecoverably destroy the proprietary information and may result in a prohibited act;
- (10) Comply with the provisions of the requested protective order and with all pertinent Commission Rules;
- (11) Make true and accurate representations in the authorized applicant's application and promptly notify the USITC Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (e.g., change in personnel assigned to the investigation;
- (12) Report promptly to the USITC any possible prohibited act as defined in 19 U.S.C. §1677f(f) (3) or 19 § 207.91.

Return of Materials

Following the issuance of the requested protective order and (a) within ten (10) days of the effective date of the Notice of the Completion of Panel Review, as defined in Part VIII of the Art. 1904 Rules, (b) within ten (10) days of my resignation or removal from the position described above, or (c) pursuant to an order from the USITC instructing me to return or destroy all such documents, I shall:

- (1) return to the USITC under seal all documents containing proprietary information and any copies made of such documents including all materials created by or for me using the proprietary information, such as charts and notes, and any proprietary information that has been entered onto a data processing system,
- (2) destroy such documents, or
- (3) if I have resigned or been removed from my position described above, entrust such documents to the person who is replacing me in the panel review or committee proceedings and who is authorized to receive the proprietary information, if any.

At such time as I return or destroy the documents containing proprietary information pursuant to this paragraph, or entrust them to a person authorized to receive proprietary information, I shall file a statement with the Secretary to the USITC attesting that to the best of my knowledge and belief all such documents have been returned, destroyed, or entrusted pursuant to the terms of this application and that no copies of such documents have been made available to any person to whom disclosure was not specifically authorized under paragraph C(3) above. I shall also include a copy of the Acknowledgement for Clerical Personnel form signed by the clerical persons permitted access to proprietary information pursuant to paragraph F below.

E. Sanctions for Breach of the Protective Order

I acknowledge that if I commit a prohibited act as defined in 19 U.S.C. §1677f(f)(3) or 19 C.F.R. §207.91, I may be subject to sanctions under 19 U.S.C. §1677f(f), 19 C.F.R. §207.100, as well as sanctions established under applicable Canadian or Mexican law. I further acknowledge that my partners, associates, employers, or employees may be disbarred from practicing before the Commission if I commit a prohibited act.

I acknowledge that I will be responsible for assuring compliance with the terms of the requested protective order by any persons retained or employed by me and under my direction and control who have signed onto this application for protective order.

F. Access by Clerical Persons

I understand that I may permit access by my clerical persons, as defined in paragraph C(3)(d) above, to documents containing proprietary information if such access is necessary and if such clerical persons comply with the requirements set forth below and the limitations, either express or incorporated by reference, in this application. Such clerical persons need not apply separately for access but must sign and date an Acknowledgment for Clerical Personnel form before being given access to any proprietary information.

I acknowledge that, upon the filing of this application, I must retain a current list of those of my clerical persons who will have access to proprietary information. If, at a future date, other clerical persons require access, I shall amend the list. In addition, I acknowledge that I must return a copy of this application containing the signed and dated final list of all those granted access under this section when I certify to the USITC that I have returned, destroyed, or entrusted all documents containing the proprietary information pursuant to the terms of the requested protective order.

I further acknowledge that I will be responsible for ensuring that all copies of proprietary information and any documents or materials containing such information in the possession of my clerical persons are destroyed, returned or entrusted pursuant to the terms of this application.

I understand that I am chargeable with the actions of each of my clerical persons who has signed and dated the Acknowledgment for Clerical Personnel form.

Any clerical person who signs the Acknowledgment for Clerical Personnel form acknowledges that a breach of any provision of a protective order may subject him or her to sanctions under 19 U.S.C. § 1677f (f), 19 § 207.100, as well as sanctions established under applicable Canadian or Mexican law.

Modification and Revocation

I acknowledge that the requested protective order may be modified or revoked in accordance with the provisions set forth in 19 U.S.C. §1677f(f), 19 C.F.R. §207.93(g), and 19 C.F.R. § 207.100(a)(3).

Oath

I declare under penalty of perjury under the laws of the United States of America, Canada, and Mexico, as applicable, that the foregoing is true and correct.

Executed on this _____ day of _____, _____ in _____
(month) (year) (city, state)

(Print or type full name)

(Signature)*

(Title)

*NOTICE: 18 U.S.C. §1001 and other laws of the United States provide severe penalties for the submission of false, fictitious, or fraudulent statements on this form. Similar provisions may also be applicable under Canadian or Mexican law.

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**PROTECTIVE ORDER FOR RELEASE OF PROPRIETARY INFORMATION TO COUNSEL AND
PROFESSIONALS FOR USE IN NAFTA PANEL AND COMMITTEE PROCEEDINGS**

A. Subject to (1) the terms and conditions in the foregoing application for protective order filed by _____ on _____, and (2) any additional terms and conditions listed in Part B below, the U.S. International Trade Commission (USITC) hereby issues a protective order to said applicant permitting access to proprietary information in the administrative record of the USITC Investigation No(s):

B. Additional terms and conditions on release of information:

This order may be modified or revoked by the USITC in accordance with 19 U.S.C. § 1677f(f) and Part 207, subpart G of the USITC's Rules of Practice and Procedure (19 C.F.R. Part 207, subpart G).

By order of the USITC:

Lisa R. Barton
Secretary to the Commission

Issued: