

SUPPORTING STATEMENT FOR REQUEST FOR EMERGENCY ACTION–PART A
UNITED STATES INTERNATIONAL TRADE COMMISSION QUESTIONNAIRE

China: Effects of Intellectual Property Infringement and
Indigenous Innovation Policies on the U.S. Economy

A. Justification

1. Request for emergency action

The U.S. International Trade Commission (Commission) is seeking approval on an emergency basis of a questionnaire in connection with its investigation No. 332-519, *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy*, which it is conducting at the request of the Senate Committee on Finance (SFC). The information is needed in connection with a report the Commission must prepare for the SFC. The Commission must transmit the report to the SFC by May 2, 2011, and, in the absence of emergency clearance, the Commission cannot reasonably collect, confirm, compile, and analyze the needed data in order to complete its report by the SFC's deadline.

The Commission received the request on April 19, 2010. The SFC made the request under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). Section 332(g) provides that the Commission, whenever requested, "shall put at the disposal of the Senate Committee on Finance" (or the House Committee on Ways and Means or the President) "all information at its command, and shall make such investigations and reports as may be requested by the SFC" or House Committee on Ways and Means or the President. Section 333(a) of the Tariff Act of 1930 authorizes the Commission, in carrying out its functions and duties in connection with any investigation authorized by law, to obtain information, including by subpoena or other order to furnish information. Copies of section 332(g) and section 333(a) of the Tariff Act of 1930 are attached to the supporting statement.

As indicated above, the SFC asked that the Commission to transmit its completed report by May 2, 2011. This deadline necessitates prompt issuance of questionnaires. The Commission cannot reasonably comply with the normal clearance procedures under 5 CFR 1320.10(b) for this investigation. The questionnaires are tentatively scheduled to be mailed on or before September 28, 2010, in order to give respondents sufficient time to fill out the questionnaires, which are due back to the Commission by October 26, 2010. The collection of these data is integral to the successful fulfillment of the request of the SFC.

2. Purpose

The information collected will be consolidated by the Commission in a report and sent to the SFC by May 2, 2011. The information to be collected is critical to the Commission's task in addressing the request letter elements, as it will provide data on sales, revenue from royalties and licenses, employment, research and development expenditures, IPR enforcement actions, IPR activities in China, location of known product infringement, firm strategy in competing with infringed products or strategies to combat infringement, and the effects of Chinese IPR infringement on a firms operations. This questionnaire also collects information on known indigenous innovation polices in China and how firms perceive these policies.

In its letter, the SFC requested that the Commission produce two reports on Chinese IPR infringement and Chinese indigenous innovation policies. In the first of these two reports, which will be sent to the SFC on November 19, 2010, the Commission is relying on publicly available sources of information to describe the size and scope of IPR infringement and indigenous innovation policies, as well as

develop an analytical framework to quantify the effect of IPR infringement and indigenous innovation on the U.S. economy and jobs. The second report, with the analytical framework as a guide, works to quantify these effects.

The SFC requested the Commission transmit its report within twelve months of the receipt of the letter, compared to seven months for first report. This longer time frame was deemed necessary to allow for the collection of primary data with this questionnaire to help address the elements of the request.

According to the request letter, the USITC is to deliver a report that describes the size and scope of reported IPR infringement in China, provide a quantitative analysis of the effect of this reported infringement on the U.S. economy and U.S. jobs, and discuss, to the extent feasible, the effect of China's indigenous innovation policies on the U.S. economy and jobs. The request also asks that the Commission include a sectoral analysis as well as the potential effects on sales, profits, royalties, and license fees of U.S. firms globally, to the extent primary data could be collected. The questionnaire will collect vital information relevant to fulfilling the Commission's statutory duty to provide information related to all of the above mentioned topics.

The questionnaire as drafted makes a response by recipients mandatory. As indicated above, the Commission, pursuant to section 333(a) of the Tariff Act of 1930, is authorized to compel persons, firms, a partnership, a corporation, or an association to furnish in writing, in such detail and in such form as the Commission may prescribe, information in their possession pertaining to such investigation. Failure to require mandatory responses would likely significantly depress response rates. Without a robust response, the Commission will be unable to furnish the information requested by the SFC and will be unable to satisfactorily discharge its responsibility under section 332(g) of the Tariff Act of 1930.

3. Use of technology

All available information technology has been incorporated into the questionnaire design, including the use of the Microsoft Word form feature that will allow respondents to complete the questionnaire electronically. This interactive Word document will be available for download from the USITC website at <http://www.usitc.gov/documents/usitc.questionnaire.doc>. While recipients will not be required to submit their questionnaire response electronically, they will be able to provide the responses via electronic submission of the questionnaire through a secure upload system or via email. Staff are also working to develop a web-based form so that firms may fill in their questionnaire online. We believe that it may be operational in October, 2010, after in-house testing has occurred.

4. Non-duplication of available data

To the extent possible, the Commission's investigation will rely on existing publicly available data. Staff has worked with Customs, the USTR, and U.S. embassy personnel to obtain data that may be used in the report. In addition to data provided by U.S. government agencies, staff are also using publicly available databases, such as ORBIS, to obtain firm characteristics and investment information. After a thorough background search of data sources for this investigation, it has been determined that no other industry, government, or academic organizations collect or publish data that are duplicative of the data requested in the questionnaire.

In order to assess the extent that relevant data or information may be collected by other agencies, and to make other agencies aware of the SFC request to examine the effect of IPR infringement and indigenous innovation policies on the U.S. economy and jobs, Commission staff have consulted with numerous U.S. government agencies and subagencies, including the U.S. Department of Commerce, International Trade Administration, U.S. Department of Justice, the Federal Trade Commission, the

U.S. Patent and Trademark Office, U.S. Customs and Border Protection, the Office of the U.S. Trade Representative, the White House’s Intellectual Property Enforcement Coordinator, and U.S. embassy and consulate personnel in China. Commission staff have also consulted other IPR related questionnaires. Based on discussions with these agencies and a review of existing publically available data, the Commission determined that data do not exist in a form or at a level of detail that could address all the elements of the request letter from SFC.

5. Impact on small businesses

The Commission estimates that very few “small business,” as specified under the Small Business Administration Rules (13 CFR Part 121) will be required to submit responses. Moreover, to minimize the reporting burden, the questionnaire was designed to be as brief as possible, consistent with information requirements. Check-in-the-box, list selection, and range type questions are used where appropriate to simplify questionnaire response. Also, the questionnaire indicates that carefully prepared estimates are acceptable; this should further reduce the potential burden on smaller firms that may not have sufficient administrative resources or automated record-keeping systems.

6. Consequences of non-collection

Due to the lack of suitable data from other sources, without this information collection, the Commission will be unable to fulfill the request of the SFC and therefore will be unable to satisfactorily discharge its responsibility under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

7. Frequency of data collection

This is a one-time, nonrecurring data collection.

8a. Consistency with 5 CFR 1320.6 guidelines

No special circumstances exist that require the collection to be conducted in a manner inconsistent with the guidelines of 5 CFR 1320.6. If any respondents do not maintain information in the format requested by the questionnaire, they are requested to submit carefully prepared estimates based upon available information and their best estimates.

8b. Consultations with affected public

The Commission’s notice of submission to OMB requesting clearance under emergency approval provisions was published in the Federal Register on September 3, 2010. The notice is posted on the Commission’s Internet site at http://www.usitc.gov/research_and_analysis/What_We_Are_Working_On.htm.

In July 2010, the Commission field-tested the intellectual property rights questionnaire with regard to the availability of data, reporting burden, product coverage and definitions, clarity of instructions, disclosure, and reporting format. The following table provides comments from industry sources and actions taken during preparation of the questionnaire for business firms.

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| General | For yes or no questions that require a follow-up, provide arrows from the original question to the follow-up in order to reduce errors. | Follow-up questions have been modified to be very explicit about when they should be completed. |
| General | Scale questions could be improved with a numeric (not letter) scale and should also have a neutral value. | Scale questions were improved. |

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| General | Make sure page references are correct (change "refer to page 7 for instructions" to "...page 4...", where instructions are actually located). | Pages references were corrected. |
| Definitions/ Instructions | Confidentiality information should be first in the document as it is very important. | Confidentiality is addressed on the first page of the questionnaire as well as on page 2 in the certification section and on page 6 in the definitions section. |
| General | On page 4, an "is" should be "if". | Corrected. |
| Instructions | In instructions, all steps are numbered sequentially even though some are sub-steps. Consider numbering sub-steps specifically within their larger steps. | Sequence clarified. |
| Instructions | Remove reference to missing "Who must complete this questionnaire?" box. | Removed. |
| Q 1.14 and 1.15 | In the instructions box, it is unclear whether respondents who answer "yes" to both 1.14 and 1.15 should skip to section 8. | Filter questions and instructions clarified. |
| Q 1.10 and 1.11 | Questions 1.10 and 1.11 could use a bit more clarification to ensure that responses are within the scope of the rest of the questionnaire. | Clarified. |
| Q 1.13 | For question 1.13, an "other" option would be helpful. | Added. |
| Definitions | Provide a definition/description to explain China's Indigenous Innovation policies. | Definition added. |
| Q 2.7 | Question 2.7a: provide an area in which respondents can write down the year for which they are estimating losses. | Latest year available field added to question 2.8. |

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| Q 2.7 | Question 2.7a: should respondents write their figures in nominal current dollars or in nominal dollars from the year described? | Clarity provided in the definitions. |
| Q 2.7 | Question 2.7a: include a follow-up question that asks about how IP infringement losses were calculated, given that there are so many different loss calculation methods. | Added. |
| Q 3.1a | In question 3.1a, consider making it more obvious that the "specify percentage" line is a separate option. | Added. |
| Q 4.4, 5.4, and 6.4 | In 4.4, 5.4, and 6.4, "proceed to the next question" should be "proceed to the next section" to avoid confusion. | Directions clarified. |
| Q 4.5, 5.5, and 6.5 | Questions 4.5, 5.5, and 6.5: these questions initially ask for city and province but later only ask for province; edit for consistency. Also questions 4.5, 5.5, and 6.5: providing the names of Chinese provinces or referencing an earlier question that does so would help respondents who may have trouble spelling these names. | References to city and province removed. Questions where geography is requested (questions 2.12–2-13) now only ask for province. |
| Q 4.7–9, 5.7–9, 6.7–10, 7.6–7 | Questions 4.7-9, 5.7-9, 6.7-10, 7.6-7: these questions should include an "if you answered 'no' to the question, please skip to section ___" option. | The questions have been consolidated. |
| Q 1.13 | In question 1.13, respondents who choose "yes" are instructed to skip 1.14. Is this intended? | Filter questions and skip instructions clarified. |
| Q 2.1 | Differentiate in questions like 2.1 between "insignificant" and "not applicable" (or "firm does not have this type of IP") in order to accurately gauge perceived severity of IP infringements among the relevant population. | Information added to differentiate between insignificant and not applicable. |
| Q 2.1 | Add an extra space between the "not applicable" column and the other parts of the scale in question 2.1 to avoid confusion. | Done. |

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| Q 2.3 | Question 2.3: "not applicable" category may be inappropriate here, but if it is relevant, then it should be separated from the rest of the scale. Additionally, the difference between "concerned" and "moderately concerned" is unclear. It might be best to remove "not applicable" altogether and replace the whole scale with a Likert scale of concern levels (keeping the "other" option but adding a "specify" area to it). | The "not applicable" category was removed, the scale was relabeled, and a "specify" section was added to "other." |
| Q 2.4 | In question 2.4, it is not clear whether this question refers to infringers against the respondent firm's copyrights, or general IP infringement in the overall marketplace. | Question clarified to indicate "for your firm's products," not the general market. |
| Q 2.6 | Question 2.6 could be considered a leading question and should be reworded (possibly to "Please indicate whether or not your firm's profits have been..." or by revising the answer options to "yes, my firm's profits have been lowered" and "no, my firm's profits have not been lowered"). | The question has been revised as suggested and a "please explain" section has been included. |
| Q 2.8 | In question 2.8, the last column's label, "latest available year, if not 2009", is unclear and could possibly be less ambiguous if changed to simply "year". | The question has been reworded to read "If 2009 data are not available, use latest year available and specify this year in the last column below." |
| Q 2.1 | Questions that ask about provinces such as 2.1 may have misleading results because respondents may just pick provinces that are well-known. Possibly remove this. | Although it may produce imperfect data, this information is important. |
| Q 3.4a and 3.5a | Questions 3.4a and 3.5a: the answer options would be clearer if revised to "yes, sales would likely increase" and "no, sales would not be likely to increase". | Done. |
| Q 4.1, 5.1, 6.1, and 7.1 | Questions 4.1, 5.1, 6.1, 7.1: consider revising the answers to "yes, my firm has experienced material losses" and "no, my firm has not experienced material losses" for clarity. | Done. |
| Q 8.2 | Question 8.2 should also have a "not applicable" or "not anticipated to be a problem" column in order to avoid being a leading question. | Column added indicating "Existing Problem" and then asked for future expectations. |
| Q 8.3a | Question 8.3a: "not applicable" is unclear in this question. | "Not applicable" option was removed. |
| Q 8.5 | Question 8.5a could be better structured as a "check all that apply" question rather than "some combination of the above". | Done. |

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| Definition | The questionnaire's definitions section should include an explanation of "China" to describe whether or not that includes Hong Kong, Taiwan, or just mainland China. | The definition of "China" has been clarified. |
| Q 1.4 | Modify the "firm information" section so that the "Yes" section starts with "My firm is headquartered in the United States" and the "No" section starts with "My firm is headquartered outside the United States". | Not done, this change would change the meaning of this section from its intended purpose. |
| General | Under "how to complete...", change "leaders" to "leader" in paragraph one and add a "the" to "On second page,..." in the first bullet point under 4. | Done. |
| Definition | Under the "Copyrights" definition, make sure that list items are all followed by the same type of punctuation. | Done. |
| Definition | Remove "In China, patents may be granted for inventions, utility models, and designs" from the definition of patents. | Not done, this sentence helps to clarify the definition. |
| Q 1.6 | Question 1.6: change "Location of employees" to "Location". | Question clarified. |
| Q 1.10 | Use "4-digit" instead of "4 digit". | Done. |
| Q 2.8 | Question 2.8: change "third country markets" to "other country markets". | Done. |
| Q 2.9, 2.10, and 3.6 | Questions 2.9, 2.10, 3.6: change "countries' relative economic..." to "China's relative economic..." | Done. |
| Q 2.10 | Question 2.10: add a "you" between "If" and "answered". | Done. |
| Q 3.6 | Question 3.6: remove the "be" from between "would you" and "hire more". | Done. |
| Q 4.13, 4.14, 5.13, 5.14, 6.11, 7.11 and 7.12 | Questions 4.13, 4.14, 5.13, 5.14, 6.11, 6.12, 7.11, 7.12 need an option where it is possible for respondents to answer "no". | Done. |
| Q 6.4 | Question 6.4: change "provide brief explanation" to "provide a brief explanation". | Changed to "briefly explain." |
| Q 8.8 | In question 8.8, remove the option "Applying for status as a Chinese high-tech firm". | Done. |

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| Q 9.2 | Question 9.2: fix the misspelling of "connection". | Done. |
| General | There should be a question about secrets stolen by US employees that were then taken to China and impossible to enforce. | A line regarding this issue has been added to question 2.3. |
| General | In order to keep the questionnaire brief is it possible to remove the differentiation between copyrights, trademarks, patents, and trade secrets? | Not done, consolidation creates confusion about topic, differentiating allows for collection of information by IP infringement type collection. |
| General | The MSWord SaveAs requirement should be changed because MSWord is not used universally at firms. | SaveAs instructions have been clarified. As MSWord is the most commonly used word processing program and is compatible/convertible with other word processing programs MSWord form-fillable file is kept. |
| Q 1.10 | Question 1.10 asks respondents to list NAICS codes. It would be helpful to have a URL provided where firms can look up NAICS codes by product. | The question has been amended to include a URL for NAICS search. |
| General | Rather than requiring MSWord 2003, it might be a better idea to require rich text submissions or use an online survey submission program instead to make the questionnaire more widely usable. | MSWord 2003 submissions are no longer required but the questionnaire will still be issued as a MSWord 2003 form-fillable file. Staff are developing a web form for questionnaire submissions. |
| Definition | Under definitions, "phonorecords" by itself is a relatively obsolete term. It would be more relevant to use "DVDs, CDs, phonorecords, tapes, or digital uploads" or something similar. | Definitions and questions that include the word "Phonorecords" have updated. |
| Q 3.6 | In question 3.6, "would you be hire" appears to be a typo. | Done. |
| Q 4.5 | Question 4.5 asks about the total number of seized products but should ask about the total number of seized products that infringe on the responding firm's copyrights. | Questions that ask for number of seized products were removed due to comparison issues among expected responding industries. |

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| General | Making questions on internet infringements more explicit and asking for enforcement and piracy statistics rather than loss statistics would add a lot of clarity and usefulness to responses. | Done, questions were created to explicitly address copyrights and internet infringement. |
| Definition | The definition of copyright should be modified... (multi-page suggested revision of definition). | Many of the concerns listed were addressed. |
| Definition "Sales (Total)" | Change last sentence to "Depending on the context, sales may also refer to sales of pirate or counterfeit products." | No change, counterfeit sales will not be quantified. |
| Q 2.8 and 2.9 | In questions 2.8 and 2.9, include options related to estimated pirate sales and losses due to online infringements. | Pirated sales information is located later in the questionnaire, online infringement option was added. |
| Q 2.X | Add a follow-up to question 2.7 that compares level of infringement/piracy to sales of legitimate goods. | Included in updated Q 2.9. |
| Q 3.1 | Add in a follow-up to 3.1 that asks whether piracy is the motivation for the firm's price-discounting in China or if there is some other reason. | Done, this is asked in 3.1c. |
| Q 4.2 | To question 4.2, add "While not a formality to copyright protection, please..." | Not done to avoid making the question subjective. |
| Q 4.3 | Question 4.3: add "(whether registered, recorded, or not)" after "copyrights". | Done. |
| Q 4.4 | Add a sub-question to 4.4 that asks about the number of enforcement proceedings pertaining to internet-based infringements. | Not done, this is outside the scope of the request and questionnaire. |
| Q 4.6 | Question 4.6: find a way to differentiate between monetary relief from civil cases and from administrative cases. | Monetary relief question consolidated and number of proceedings separated out. |
| Q 4.7 | In question 4.7, ask about the results of criminal cases related to Chinese infringements on respondent's IP (number of indictments, number of convictions, etc.). | Not done, this is beyond the scope of the questionnaire. |
| Q 4.8 | Question 4.8: Ask for details about shares of infringement values by country and/or region. | Not done, this is beyond the scope of the questionnaire. |
| Q 4.13 | In question 4.13, add a "has caused no change in your employment of U.S. workers" option. | Done. |
| General | Ask questions about how China ranks in terms of respondent's IP infringement-related losses, discriminatory treatment related to enforcement, and any additional | Not done, these questions are beyond the scope of the questionnaire and request. |

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| | measures in China which might lead to increased infringement. | |
| Q 9.1 | Question 9.1: change "R&D" to "R&D or investment in new creations/products". | Changed to "R&D and innovation." |
| Q 9.2 | Expand the question set to include inquiries about market access and access discrimination. | Done, market access included in question 9.2. memo field included for recipients to describe. |
| General | Asking questions about administrative enforcement may not yield clear responses because enforcement structures are very different between the U.S. and China (including which types of agencies have administrative enforcement authority). | We recognize there is a difference and will take this into account in our analysis. These questions also ask for additional information to provide clarity to the response. |
| Definition | Under the "Copyrights" definition, remove the ; after "quyi". | Done. |
| Q 2.6 | Question 2.6: include an option that covers respondents who have made no efforts to determine whether there is a link between profit losses and IP infringements. | Done, an "unknown" option has been added to the list of possible answers. |
| Q 2.2 and 2.7 | Is a "no" response here (2.7) at all related to the response given in 2.1 and 2.2? Did the respondent decide not to estimate losses because IPR violations are insignificant? | The reference to 2.2 was removed from 2.7 since firms may experience IPR infringement but not estimate the scope or size of that infringement. |
| Q 3.6 | Question 3.6: remove the "be" from between "would you" and "hire more". | Done. |
| General | Questions in the copyrights section should incorporate options related to internet-only IP infringements and Chinese sites that are used for illegal IP uploading. | Done, these questions have been added. |
| Q 4.1 | Question 4.1: add to the question to include "due to China's manufacture and/or export of infringing goods or internet sites offering infringing goods". | Not done, it is vital that this question emphasize losses due to copyright infringement. Questions pertaining to online infringements are included later in the questionnaire. |
| Q 5.1 | Change question 5.1 to read "...due to China's manufacture and/or export of infringing goods during 2007-2009?". | Not done, it is critical that this question emphasizes trademarks. |

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| Q 5.2 | Question 5.2: remove "pending or" from the options, and consider amending the question to be about customs-registered patents that are in force rather than about total trademark registrations given that IP concerns may only affect a small share of total trademarks for some firms. | No change, pending approvals are important indicators to be used for this study given the associated length of time for filing approval. |
| Q 6.2 | Question 6.2: remove "pending or" because pending patent rights are unenforceable. | No change, pending approvals are important indicators to be used for this study given the associated length of time for filing approval. |
| Q 6.5 | Pertaining to question 6.5, US companies may not be in contact with customs in non-US countries because of customs practices in the US. | No action taken. |
| Q 1.12 | Differentiate between contract manufacturing and in-house production/manufacturing in questions. | Done. |
| Q 1.12 and 2.5 | Question 1.12, 2.5: clarify the use of "licensing of technology" to explain whether it involves end users, other companies, foreign entities, all licensees, or any other entity. | Clarified that we are asking for all entities. |
| Q 1.13 | Question 1.13: seems that question is meant to ask whether the respondent experiences IPR infringements from China, but the wording is unclear. | Done, clarified question to "Does your company experience IPR infringement of your products or services by Chinese entities or individuals?" |
| Q 1.14 | Question 1.14: because some infringement problems are related to issues like licensing, "sales" and "revenues" might not be the most appropriate measures of harm from state policies. | Clarified and standardized questionnaire to reference revenues. |
| General | It is recommended that all questions that ask about the period from 2007–09 be amended to ask for information about each of the three years individually in order to avoid losing some potentially valuable data about IPR over time. | Not done, implementation of this comment would lead to an unnecessary increase in respondent burden. Questions that ask about 2007–09 are designed to determine the scope of the problem rather than to find out specifics about any given year or trends over the period. |
| Q 2.3 | Question 2.3: include additional options relating to decreased US employment, limited R&D investments in the US, and other topics similar to the ones discussed later in the questionnaire when specific data is called for. | Added options to capture this information. |
| Definition and Q2.4 | This question is unclear on whether, by patent infringement, this question means (i) unauthorized use of a product that includes a patented technology, (ii) unauthorized implementation of a patented | The definition has been modified to reflect Chinese law on these points. |

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| | technology in the infringer's own product; or (iii) both. This should be clarified. | |
| Definition and Q2.4 | The question should clarify whether it is asking only about infringement of patents (and trademarks) that are protected as such under Chinese law, or also about patents and trademarks that are not protected under Chinese law but are protected under U.S. law. | Changed to clarify that we are asking about infringement of intellectual property protected in China under Chinese law. |
| Q 2.5 | Question 2.5: break "IPR concerns" down into "barriers to obtaining protection for IPRs in China", "barriers to monetizing IPRs in China", and "barriers to enforcing IPRs in China". | Done. |
| Q 2.6 | Change question 2.6 to qualify "than they would have been in the absence of such infringement" and to add "or did not expand existing facilities" to the 3rd and 4th options under "Yes". | Done. |
| Q 2.8 | In question 2.8, provide some instruction to respondents as to how to quantify losses and also provide more narrow loss ranges as well as separate spaces for data from each year (2007, 2008, 2009). | Range estimates have been clarified to indicate lost revenue for 2009. If 2009 is not available last year available is accepted and column asking for that year has been added. The estimate ranges have also been changed to include \$3-\$4 million, with a space if over \$4 million to specify actual loss |
| Q 2.8 | Clarify in questions whether "lost sales" refers to sales lost due to exports of infringing/counterfeit goods from China or to something else. | This differentiation is made in the question. |
| Q 2.8 | Because some companies sell licenses rather than products, "lost royalty fees and license fees" could be misinterpreted to mean the same thing as "lost sales". There should be a clarification in questions that use this to explain that it refers to losses to due to infringing implementers of the technology. | Clarified language to differentiate between royalties, licenses fees, and lost sales. |
| Q 2.13 | The data requested in this question would be difficult to obtain, you may wish to qualify this or drop the question. | The language in the question was changed to include "estimates". |
| Q 3.3 | In question 3.3, include an option that describes items where one legal copy is purchased from which multiple illegal copies are made. Also include a category (other) for those that do not believe these categories fit their experience. | This is included in the "exact replica" category. Reworded. Other option added to the table. |

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| Q 3.4 and 3.5 | Questions 3.4 and 3.5: it is likely that many respondents would expect sales and fee receipts to increase by 50-90%, so having the highest bound be 20% will make it impossible to show variation in the higher percentages. Additionally, clarify "other countries" in this question. | The range values have been changed and changed "other countries" to "all other countries." |
| Q 3.6 | Rather than using estimated percentage ranges, the questionnaire should first ask for precise numbers and then ask for estimated percentages only if no other data is available. | Not done throughout. Ranges reduce the burden on the respondents and increase the likelihood of responding. Most questions requesting range information allow for precise estimates if available. |
| Q 4.2 | Regarding question 4.2, copyright registration is not required for protection under US or Chinese law. | Clarified question, "whether registered, recorded, or not" has been added. |
| Q 4.3 | Question 4.3: this should ask for an estimate of how many infringements there are per infringed copyright. | No change, asking the number of infringements per infringed copyright is unduly burdensome. |
| General | In questions where responses involving numbers or explanation are requested, provide enough space for a response. | Form-fillable spaces expand to the size of the response. |
| Q 4.6 | Question 4.6: this question should ask respondents to break down relief by payee, location of legal proceedings, and amount of damages awarded in relation to retail value of infringed products. | Not done. This is too much detail for the scope of the survey. |
| Q 4.7 | Question 4.7: this should go into more detail about the punishments given. | Not done. This is outside the scope of the questionnaire. |
| Q 4.9 | Question 4.9: additional expenses may include R&D, technology, and marketing. | Done. |
| Q 4.10 | Question 4.10 should include an option for customers who purchase a legal copy of a product and then make illegal copies of it. | This question has been consolidated into another question in the survey. |
| Q 4.13 and 4.14 | Questions 4.13 and 4.14 might be better worded if it asked whether Chinese copyright infringement has "affected the number of employees you would have hired" or affected the amount you would have spent on R&D if not for the infringements. | Done. |
| Q 5.3 | Question 5.3: this question should ask for specifics about which types of trademark infringements occurred and at what frequency. | Not done. This is outside the scope of the questionnaire. |
| Q 5.4 | Question 5.4: a proceeding may involve infringements that fall into multiple of the categories in this questionnaire (trademark, copyright, patent, etc.) and may therefore be double-counted on this survey. | Although this is true, the instructions have been clarified to address this issue. |
| Q 6.3 | Question 6.3: there are multiple forms of | Not done. This question is designed just to |

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| | patent infringement, and the question should clarify to which type or types it refers. | get a general response. |
| Q 7.3 | Question 7.3 should be reworded so that it also covers secrets that are misappropriated in other locations but then utilized in China. | Done. |
| Q 8.2 | Question 8.2: the "compulsory licensing" option should not include "at or below market rates" because compulsory licensing may create a trade barrier even if it is above market rates. | "At or below market rates" has been removed from this question's options. |
| Q 8.2 | Question 8.2: add an option that describes policies that restrict market access for foreigners. | A "closure of sector to foreign participants" option has been added to this question. |
| Q 8.3 | Question 8.3c may ask respondents to qualify harm that already exists from policies that have not been fully implemented yet, but it should ask about the threat of harm from these policies to gain a better view of the scope of the problem. | The question has been changed to ask respondents about how they believe their 2015 sales will be affected by these policies. |
| Q 8.3 | Question 8.3c: this should be worded so that it asks what sales will be with the policies as compared to what it would be without them, and it should ask respondents to quantify their estimates. | This question has been reworded, but asking for specific estimates goes beyond the scope of this exercise. |
| Q 8.4 | As in questions 3.4 and 3.5, the range options in 8.4 are probably lower than most firms would use. It might be a good idea to reassess the bounds on that question. | The brackets have been changed in the revision. |
| Q 8.6 | Question 8.6a: this question should also cover respondents who think that they would have had higher sales in the absence of the policies. | 8.6b is a screen for the next question which asks about the ease of making sales. No change made. |

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| Q 8.6 | Question 8.6c: this question should also cover other indigenous innovation policies beyond registration and ownership of IP, because there are many of them that act as barriers. | This question is about gauging IP in China, not specifically about indigenous innovation policies. No change made. |
| Q 8.10 | Question 8.10 could be reworded as follows: "Has China proposed or adopted any technical standards that apply to your firm's products or services and which are incompatible with or redundant of widely adopted standards that your products or services already implement? Please indicate whether these Chinese standards are mandatory, preferred, optional, or other." | Done. |
| Q 9.2 | Question 9.2: correct the misspelled version of "connection". | Done. |
| Definition | Add in an extra IPR definition for Plants Variety Protection. | Plant variety protection is identified in the definitions as "Other IPR," and addressed in Question 10.1. |
| Q 1.7 | Question 1.7: Clarify "employee" to explain whether this includes shareholder employees, employees in China, etc. | Changed in definitions section. |
| Q 1.11 | Question 1.11: Clarify "product" to explain whether this includes testing/research goods. | Changed in definitions section. |
| Q 1.14 | Question 1.14: Add questions about IPR enforcement, bribes, budget of local authorities, misinterpretations of local laws, etc. in addition to questions about whether indigenous innovation policies are harmful. | No change. This is outside the scope of the questionnaire. |
| Q 2.5/ Definition | Question 2.5: Clarify "Chinese entity" to explain whether this includes partners and affiliates or other firms. | Clarified in the definitions. |
| Q 2.9 | Question 2.9: Rather than asking companies to estimate losses in retail value, use wholesale price or cost plus a margin because that is what courts would use. | Question has been changed to reflect this. |
| Q 2.11 | Question 2.11 mentions all Chinese provinces but does not list the Hainan province. | Hainan added. |
| Q 3.1 | Question 3.1 asks if the firm generally discounts its prices in China (relative to US prices), but sometimes this question is unanswerable because products and costs are not comparable across countries. | The question was amended to specifically mention comparable products. |

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| Q 3.3 | Question 3.3: "infringing product" might be unclear because some goods are not substitutes but rather goods created with stolen knowledge such as DNA. | There is already an option under "infringing product" that refers to stolen-knowledge goods. |
| Q 4.10 | Question 4.10 asks if lost sales might be due to lack of customer knowledge about the goods they are purchasing, but there are a variety of reasons that consumers might purchase counterfeit goods. | Question has been removed. |
| Q 5.5 | In question 5.5, "customs officials" are mentioned in regard to seizing goods, but sometimes other government agents seize counterfeits. | The question has been amended to use the term "government officials" rather than "customs officials". |
| Q 8.2 | Question 8.2: this question does not address the issue of respondents being required to invest in R&D. | A "Research and development requirements in China for your firm or affiliate" option has been added to this question. |
| General | Questions 1.4, 1.6, and 1.9 ask for financial information that companies may consider confidential/sensitive, but the questionnaire does not explicitly state that data is kept confidential. | Confidentiality of information submitted is now addressed more prominently on pages 1, 2, and 6 of the questionnaire. |
| General | Could industry associations respond to the questionnaires instead of individual companies (in order to minimize confidentiality risks)? | The Senate Committee on Finance requested that the Commission collect primary information from industry. Also a collection of primary industry data from individual firms must be used in the models required to respond to SFC. |
| Definition | The term "Research and Development" ("R&D") is used throughout the questionnaire, but that term's definition in the questionnaire does not encompass music industry "R&D" which includes Artists and Repertoire (A&R). That should be changed to gain a more meaningful response set from music entertainment companies. | No Change, the OECD definition of R&D is used. It is considered the most comprehensive and standard definition across industries and the inclusion of the proposed addendum to the definition would likely respondents not part of the music industry. |
| Q 1.6 | In Question 1.6, "location of employees" is used to describe regions from which revenue is generated, but companies do not always have employees physically present in these areas. | Done. |

9. Payments or gifts

Not applicable. Questionnaire recipients will not be provided with any payments or gifts for their responses.

10. Assurances of confidentiality

On the page 1 of the questionnaire, the Commission provides recipients with an assurance of confidentiality, indicating that: “The Commission has designated as “confidential business information” the information you provide in the response to this questionnaire to the extent that such information would reveal the operations of your firm and is not otherwise available to the public. The commission will not disclose such confidential business information unless required by law. Information received in response to this questionnaire will be aggregated with information from other questionnaire responses and will not be published in a manner that would reveal the operations of your firm. The Senate Committee on Finance has asked the Commission to provide a non-confidential (public) report to the Committee.”

On the page 6 of the questionnaire, the Commission quotes from its rules (19 CFR 201.6(a)) that limit the Commission’s ability to release confidential business information: “In Section 201.6(a) of its Rules of Practice and Procedure (19 CFR 201.6(a)), the Commission defines “confidential business information” to mean: “Information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or corporation, or other organization, or other information of commercial value, the disclosure of which is likely to have the effect of either impairing the Commission’s ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm tot the competitive position of the person, firm, partnership, corporation, or other organization firm which the information was obtained, unless the Commission required by law to disclose such information.”

11. Sensitive information

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

12. Respondents’ project cost

The Commission has reduced the reporting burden on respondents by limiting the length and complexity of the questionnaire. Furthermore, the questionnaire only contains questions that the Commission believes to be readily available from firms’ existing records and not all sections will apply to all firms.

The reporting burden is estimated to be:

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| Number of respondents | (No.) | 5,675 |
| Frequency of response: | (No.) | 1 |
| Annual burden per respondent: | (hours) | 40 |
| Total burden: | (hours) | 227,000 |

These estimates are based on input from field testing firms. The majority of field testers reported that completing the questionnaire, including time to gather necessary information, would take approximately 20–40 hours depending on the size and complexity of the firm. The Commission used the highest burden estimate from field testers, which was 40 hours. Additionally, the actual burden experienced by individual firms will likely be considerably lower because not all section may apply to that firm. Moreover, the total burden is likely to be considerably lower because the total response rate will likely be less than 100 percent.

The Commission has included a notice of the above response burden averages in the questionnaires, along with a request that respondents send comments to the Commission and to OMB. The Commission used the standard format recommended by OMB.

The combined annualized cost to all respondents for the estimated hour burdens identified above is as follows:

$$\text{Cost} = 227,000 \text{ hours} \times \$73.32^* \text{ per hour} = \$16,643,640$$

*This is the same hourly cost estimate used in item 14 below. The Commission projects that this is an accurate hourly cost estimate for personnel who will likely complete the questionnaire.

The Commission estimates that each firm will require 40 hours to complete the requested information, including time to gather and synthesize the information requested. This estimate is based on the experience of field testers. The burden on individual respondents may vary.

13. Annual public response burden

This is a one-time collection of information so, as explained below, the total recurring annual cost burden is zero.

a. Total capital and start-up cost component: The Commission does not expect any capital and start-up costs because all information likely already exists in firms' records storage facilities.

b. Total operation and maintenance and purchase of service component: The Commission does not expect respondents will need to purchase any services in completing the questionnaires.

14. Federal change in burden

The estimated total cost to the Federal Government is \$213,836 as detailed below. No new equipment will be purchased because existing equipment will be used to process the questionnaires.

The estimated number of work hours includes designing the questionnaires, soliciting field test comments, editing results (i.e., contacting respondents after completion of the questionnaires to clarify responses), and compiling and tabulating questionnaire responses.

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| Personnel cost* | = \$195,336 |
| Operational costs** | = <u>\$ 18,500</u> |
| Total cost | = \$213,836 |

*The hourly figure was approximated by dividing the Commission's average salary level (\$150,429) by the number of work hours per year (2,080), which is equivalent to an average cost of \$72.32 per hour. The Commission estimates that 2,700 personnel hours will be spent on the questionnaire, which is 20 percent of the total personnel hours the Commission has budgeted for the study.

**Operational costs include printing, mailing, and consultant fees.

15. Program change justification

The Commission currently imposes no reporting burden on firms regarding IPR infringement and indigenous innovation policies. The burden increased because of a request from the SFC for a report on the effects of IPR infringement and indigenous innovation policies on the U.S. economy and jobs. Such data are not publicly available. This is a one-time collection for such data. The request letter is attached as a supplemental document.

16. Project plan and schedule

After receiving completed questionnaires, Commission staff will edit and review each response for accuracy, resolve any questions with the respondent, and tabulate the returns. Data will be analyzed, compiled in a form that will not reveal the individual operations of any respondent, and prepared for publication. The questionnaire is scheduled to be mailed on or after September 28, 2010. The respondents are requested to respond by October 26, 2010. The report, incorporating questionnaire information, will be transmitted to the SFC on May 2, 2011.

17. Non-display of expiration date

Not applicable, the expiration date appears on page 1 of the Commission questionnaire

18. Exceptions to certification statement to form OMB 83-I

Not applicable.