

UNITED STATES INTERNATIONAL TRADE COMMISSION  
OUII Full Participation Survey

The U.S. International Trade Commission (USITC or Commission) is implementing a survey process to aid in a qualitative evaluation of three alternative staffing participation levels used by the Office of Unfair Import Investigations (“OUII”) in staffing investigations conducted under Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. The three participation levels are: (1) Full Participation; (2) Selective Participation; and (3) No Participation. This submission concerns the Full Participation Survey. The USITC’s request for generic clearance for this qualitative survey was approved by OMB, OMB Control No. 3117-0222, ICR reference No. 201107-3117-001. The Commission’s notice of submission to OMB requesting generic clearance under expedited approval provisions was published in the Federal Register on July 7, 2011. The notice is posted on the USITC Internet site at [http://www.usitc.gov/secretary/fed\\_reg\\_notices/miscellaneous/2011-16905.pdf](http://www.usitc.gov/secretary/fed_reg_notices/miscellaneous/2011-16905.pdf).

**A. The Survey Population**

For each investigation in which OUII participated fully as an independent party in the investigation, the Commission will request the private parties and USITC staff to respond on a voluntary basis to the Full Participation Survey after the investigation has been terminated. Private parties include representatives of the complainant and named respondents. USITC staff are personnel who were involved in the completed investigation and include staff in OUII, the Office of Administrative Law Judges, the General Counsel’s Office, and the Commissioners’ offices. A copy of the Full Participation Survey is attached.

**B. Field Testing**

In February 2012, the Commission field-tested the survey with regard to the reporting burden, clarity of questions, navigation through the survey, and survey format. The individuals set out in the table below were identified as participants for the field test of the survey. All of the individuals have significant experience in Section 337 investigations.

NAME	CATEGORY	EMAIL ADDRESS
Judge Shaw	OALJ	<a href="mailto:David.Shaw@USITC.gov">David.Shaw@USITC.gov</a>
Anne Goalwin	OUII	<a href="mailto:Anne.Goalwin@usitc.gov">Anne.Goalwin@usitc.gov</a>
Jeffrey Hsu	OUII	<a href="mailto:Jeffrey.Hsu@usitc.gov">Jeffrey.Hsu@usitc.gov</a>
Katie Clune	Outside Firm - Crowell & Moring	<a href="mailto:kclune@crowell.com">kclune@crowell.com</a>
Brian Busey	Outside Firm – Morrison & Foerster	<a href="mailto:gbusey@mfo.com">gbusey@mfo.com</a>
Monisha Dekka	Outside Firm – White & Case	<a href="mailto:mdeka@whitecase.com">mdeka@whitecase.com</a>
Alex Rogers	Qualcomm	<a href="mailto:arogers@qualcomm.com">arogers@qualcomm.com</a>

Attached are: (1) a copy of the Full Participation Survey; and (2) a table providing comments from field test participants and actions taken in response to those comments.

**C. Reporting Burden and Projected Cost**

The cost/burden matrix was provided in the generic clearance package under the heading “Op 2 IP-Based Inv. User Survey.” For the Full Participation Survey, the reporting burden is estimated to be:

Total number of survey respondents:	(No.)	577
Frequency of response:	(No.)	1
Average completion time per survey:	(hours)	0.75
Total burden:	(hours)	432.75
Total cost:	(dollars)	\$29,859.75

## SurveyFullPart – Post Review

Response #	<u>1. INVESTIGATOR NAME AND NUMBER</u>	<u>2. AFFILIATION</u>	<u>3. EMAIL ADDRESS</u>	<u>24. RECOMMENDATIONS TO IMPROVE SURVEY</u>	
1	hypothetical investigation	1	gbusey@mofo.com	<b>Recommendation</b>	<b>Comment/Solution</b>
				I think the survey is an excellent idea and the content seems to cover the key areas well. One suggestion that I have is to make the survey anonymous (at least optional) so that it promotes candor.	Perspective is important – need to know source – <b>Decision: do not allow anonymous</b>

## SurveyFullPart – Post Review

	Recommendation	Comment/Solution
	<p>The comment boxes needed to accommodate more text.</p>	<p>Decision: Boxes to be expanded to 1,000 characters and make 3 lines viewable.</p>
	<p>OUII should be asked for a breakdown identifying the party that it sided with on the substantive issues.</p>	<p>Decision: For question 18, when the investigation attorney (internal) gets the survey, they will get two questions in place of the current question:                      1) Did OUII support complainant(s) on key issues in the investigation (procedural, substantive, discovery)?                      2) Did OUII support the respondent(s) on key issues in the investigation (procedural, substantive, discovery)?                      The existing question will remain for outside parties.</p>
<p>Inv. No. 337-TA-XXX; Certain Electronic Gadgets and Other Stuff</p>	<p>Other comments to be sent in separate doc.                      Are the Questions Understandable. The questions are understandable.                      In regards to Question 10, the "please explain" before the comment boxes would be more clear if it asked "Please explain why, and in what way, OUII's participation was beneficial." (Question 11 should probably be rephrased as well).                      Available Choices, Order of Questions, Navigation Through Survey, Amount of Time Needed to Complete it. The questions concerning OUII's contribution to Section 337 specific issues will vary on a case by case basis, of course. Given the limited amount of time that the parties usually devote to these issues (including the limited amount of time at trial devoted to these issues), it would seem that in many investigations it might be hard for OUII to have any real impact in this area. Suggestion for Additional Questions:                      1. For an OUII specific survey, I think it would be useful to include a comment box asking for a brief summary of OUII's positions in the investigation, and which party it "sided" with on the ultimate issues relating to violation (e.g., claim construction, infringement, tech prong of DI, validity, economic prong of DI).</p>	<p>N/A                      N/A</p>
	<p>jeffrey.hsu@usitc.gov</p>	<p>Decision: The introduction/delivery instructions will contain an explanation of the various types of information which may be entered into these text boxes.                      Concern is addressed by changes outlined for question 18 noted above.</p>
	<p>6</p>	

## SurveyFullPart – Post Review

<p>2. It might be worthwhile to ask if the OUII attorney has previously been involved in investigations with the same counsel?</p>	<p>The value/purpose of this question (and subsequently required questions) is outside of the scope of this survey.  <b>Decision: No change required</b></p>
<p><b>Overall Comments</b></p> <p>1. The questions read as a referendum on the existence of OUII, not as an evaluation of the pilot program.</p>	<p><b>Decision: Comment will be considered during strategy for data extraction and analysis to ensure the pilot program evaluation is being addressed.</b></p> <p>Concern is addressed by changes outlined for question 18 noted above.</p>
<p>2. In this regard, probably in every investigation either the complainant or respondent will be unhappy with OUII's ultimate positions (and thus unhappy with OUII), even though we may have helped them along the way. In evaluating the survey results from the private parties there should be some transparent methodology to account for such potential bias and weight the responses accordingly. For example, I can think of instances in which OUII proposed unique claim constructions adopted by the ALJ, where complainant had proposed a claim construction that would very likely have rendered the claims indefinite, and where respondent argued indefiniteness. So, although OUII saved complainant's patent from being found invalid, the adopted construction also meant that a finding of infringement was very unlikely.</p>	<p>View is noted and understood by the members that will be evaluating the survey results.</p>
<p>3. While such a survey may be a useful source of information concerning the pilot program (or OUII's existence), it should be informed by other sources of information as well.</p>	<p>View is noted and understood by the members that will be evaluating the survey results.</p>
<p>4. The survey introduces a new variable into OUII's interactions with counsel for the private parties. I do not intend to take any positions in Section 337 investigations to encourage more favorable responses to such a survey, and nor to believe any of my colleagues would either. Nevertheless, it is a new consideration that did not exist before.</p>	<p>View is noted and understood by the members that will be evaluating the survey results.</p>

### SurveyFullPart – Post Review

				Recommendation	Comment/Solution
3		1	kclune@crowell.com	The question at the outset after I said I settled before close of discovery, the questions regarding whether I was successful before the ALJ and Commission did not make sense.	<b>Decision:</b> Add "N/A" as an option for questions 7 and 8.
4	337-TA-999	7	anne.goalwin@usitc.gov	Recommendation	Comment/Solution
				Question 5 is confusing because it seems to assume that involvement will only end when a party is no longer in the investigation.	<b>Decision:</b> Add text box to #4 titled "If None or Minimal, please explain."
5	337-TA-999	7	anne.goalwin@usitc.gov	Recommendation	Comment/Solution
				In questions 12 and 14 the scale is confusing; in most surveys the good is at the far right and the bad is at the far left so I assumed that the far right was helpful and it is the reverse here;	<b>Decision:</b> Reverse scales so that favorable is always on the right. Also, find some visual way to separate "No Basis to Judge" from the scale values.
6	337-TA-999	7	anne.goalwin@usitc.gov	Recommendation	Comment/Solution
				in questions 10-11 the reference to decision-maker is not clear; is this the ALJ/Commission or the party representative deciding how to proceed with its case	Issue sufficiently addressed by changes already planned. No additional changes required.
7	Hypothetical	2	arogers@qualcomm.com	Recommendation	Comment/Solution
				The "please explain" box is not always relevant and might be better as a "comments" box.	<b>Decision:</b> The introduction/delivery instructions will contain an explanation of the various types of information which may be entered into these text boxes.
				Navigation was Ok, except when "back" button is used, prior comments are erased.	<i>Action item:</i> Doug to test. If this cannot be corrected, screen will be updated with instruction not use the browser buttons.

## SurveyFullPart – Post Review

				Recommendation	Comment/Solution
8	field test	3	field test	Everything was going smoothly until this little window! Choices were good, and had open option. Order was logical. Tried going back and forth, and navigation good. Questionnaire was the right leng	Noted.

### Additional items discussed during review:

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1. For #11, remove “if any”.
2. For questions with “No Basis to Judge” as the last item on a scale, find a way to separate that answer from the good -> bad scale (e.g. a line, shading, etc.)
3. Add an “Other Comments” question/section to the end, 2,000 characters long, as an optional area for responders to use in the event they really wanted to convey additional information, but did not have sufficient opportunity in the survey. Instructions must ask the responder to specifically reference the question number relevant to the additional information being submitted.