



*NAFTA APO Form E
Revised November 2018*

**UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436**

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

Panel Review No: _____

Panel Caption: _____

Date of First Request for Panel Review: _____

A. Instructions

Contractor personnel expected to have access to proprietary information, as defined in paragraph C(2) below, pursuant to protective order must complete and submit this application for protective order.

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

B. Contractor Personnel

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 panel review, or subsequent 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 certify that I am under contract to provide services in connection with the above-referenced panel review, or subsequent committee proceeding.

C. Obligations of Contractor Personnel

As a condition for access to the requested proprietary information as defined in paragraph C(2) below, 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 *Rules of Procedure for NAFTA Article 1904 Panel Reviews* (“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 other additional terms and conditions included in the requested protective order;
2. Treat all information which is
 - i. defined by the USITC to be proprietary information,
 - ii. contained in the administrative record of the USITC determination which is the subject of the above-referenced panel Review or subsequent committee proceeding, if any, and,
 - iii. obtained pursuant to the protective order (hereinafter “proprietary information”) as confidential;
3. Not disclose any proprietary information, not otherwise available, to any person other than:
 - i. 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,
 - ii. the person from whom the information was obtained
 - iii. 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
 - iv. a clerical person retained or employed by and under the direction and control of a person described in (3)(iii) (hereinafter, “clerical persons”) if such clerical person has signed and dated a statement that he or she
 - a. 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
 - b. 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:
 - i. with a cover sheet identifying the document as containing proprietary information;
 - ii. with all proprietary information enclosed in brackets and each page warning that the document contains proprietary information;
 - iii. 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 discs) 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 or similar 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 applicants' 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 C.F.R. § 207.91.

D. Return of Materials

When directed by the United States Secretary or the USITC, I shall

1. transmit to the United States Secretary, under seal, for return to the USITC, 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 or other computer system,
2. destroy such documents, or
3. if subsection D(2) applies, entrust such documents to a replacement person who is authorized to receive the proprietary information.

At such time as I return or destroy or entrust such documents containing proprietary information pursuant to this paragraph, I shall transmit to the United States Secretary for filing with the USITC a statement 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.

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. 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 CFR §§ 207.93(g) and 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 _____.
(day) (month) (year) (city, state)

_____ (Print or type full name)

_____ (Signature)¹

_____ (Title)

¹ 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.



NAFTA APO Form E
Revised August 2018

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

PROTECTIVE ORDER FOR RELEASE OF PROPRIETARY INFORMATION TO
CONTRACTOR PERSONNEL
FOR USE IN PANEL AND COMMITTEE PROCEEDINGS

Panel Review No: _____

Panel Caption: _____

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): _____

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 Commission.

Lisa R. Barton

Issued:

Secretary