



NAFTA APO Form A
Revised November 2018

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

FOR SECRETARIES OF THE SECRETARIAT AND THEIR STAFF

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. 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 certify that I am (check one):

(1) A Secretary of the United States, Canadian or Mexican section of the Secretariat, as defined in Article 1908 of the North American Free Trade Agreement (“the Agreement”) and section 207.91 of the USITC’s Rules (19 CFR 207.91), (hereinafter “Secretary”) State section of the Secretariat:

(2) A member of the Secretariat staff. State title and section of the Secretariat:

B. 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
 - i. defined by the USITC to be propriety information,
 - ii. contained in the administrative record of the USITC determination which is the subject of the above-referenced panel review and,
 - iii. 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:
 - 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.

C. Return of Materials

The United States Secretary may retain a single copy of each document containing proprietary information for the purpose of maintaining an official file of each panel review of a final determination made in the United States. When receiving from panelists, committee members or their staff documents containing proprietary information and/or statements certifying the return, destruction or entrustment of such proprietary information, the United States Secretary shall transmit those documents and/or certifications to the Secretary to the USITC. Except for documents in the official file and those returned by the panelists,

committee members and staff referenced above, I have the following obligation to return or destroy documents containing proprietary information:

Following the issuance of the requested protective order and

1. 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,
2. within ten (10) days of my resignation or removal from the position described above, or
3. pursuant to an order from the USITC instructing me to return or destroy all such documents,

I must

1. if the Secretary,
 - i. return under seal all documents containing proprietary information, and any copies made of such documents, in my possession or in the possession of any member of my staff, to the Secretary to the USITC,
 - ii. destroy all such documents, or
 - iii. if subsection C(2) applies, entrust such documents to the person appointed to replace me 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 issued to me 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 B(3) above.

2. if a member of the Secretariat staff, return to the Secretary all documents containing proprietary information, and any copies made of such documents, in my possession in order that the Secretary may certify to the Secretary to the USITC that, to the best of his or her 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

authorized under paragraph B(3) above.

D. 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.

E. 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. § 1677(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.



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Revised August 2018

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**PROTECTIVE ORDER FOR RELEASE OF PROPRIETARY INFORMATION FOR
SECRETARIES OF THE SECRETARIAT AND THEIR STAFFS**

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
Secretary

Issued: _____

