



NAFTA APO Form D
Revised November 2018

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**FOR DESIGNATED OFFICERS AND EMPLOYEES OF THE CANADIAN, MEXICAN
OR UNITED STATES GOVERNMENT**

**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 CFR §§ 207.93(b)(5) or (6) 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.

This application for release of proprietary information may be filed after the date on which the United States Trade Representative, the Canadian Minister of International Trade or the Mexican Secretary of Commerce and Industrial Development, submits to the USITC, a list of the designated officers or employees of the United States, Canadian Government or Mexican Government, respectively, who require access to the record of a final determination of the USITC that was the subject of the above-referenced binational panel (“panel”) review, in order to evaluate whether the United States, Canada or Mexico, as applicable, should seek an extraordinary challenge committee (“committee”) review of that panel decision or of the conduct of a panelist during that panel review (hereinafter, “the ECC Review Group”).

An applicant defined in 19 CFR § 207.93(b)(5) must file an original and three copies of this application and any amendments to this application with the Secretary to the USITC. An applicant defined in 19 CFR § 207.93(b)(6) must file the original application form with the

Canadian or Mexican Secretary, as applicable, who shall file the original and three copies of the application with the Secretary to the USITC.

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 evaluation by the ECC Review Group of whether or not the United States, Canada or Mexico, as applicable, should request a committee proceeding, if any, I, the undersigned,

(Insert Name)

(Title)

(Nationality)

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.

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 *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 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.

D. Return of Materials

Following the issuance of the requested protective order and upon the ECC Review Group deciding whether or not to request a committee review, or within ten (10) days of my

resignation or removal from the position described above, or pursuant to an order from the USITC instructing me to return or destroy all such documents, I shall return to the USITC or destroy 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. 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 form Acknowledgment for Clerical Personnel for 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) (iv) 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 include, in the space provided below, the signature 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 file an amended list with the Secretary of the USITC. 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 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 document 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 this application.

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 C.F.R. § 207.100, as well as sanctions established under applicable Canadian or Mexican law.

G. 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 D
Revised August 2018

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**PROTECTIVE ORDER FOR RELEASE OF PROPRIETARY INFORMATION TO
DESIGNATED OFFICIALS AND EMPLOYEES OF THE CANADIAN, MEXICAN, OR
UNITED STATES GOVERNMENT**

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:



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Revised August 2018

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, DC 20436

**PROTECTIVE ORDER FOR RELEASE OF PROPRIETARY INFORMATION TO
CLERICAL PERSONNEL**

FOR USE IN PANEL AND COMMITTEE PROCEEDINGS

Panel Review No: _____

Panel Caption: _____

We, the undersigned, are persons described in paragraph C(3)(iv) of NAFTA APO Form B/Form C/Form D, the Administrative Protective Order (APO issued in the subject investigation. We hereby agree to be bound by the provisions of the APO. We acknowledge that we may be subject to the sanction described in paragraph E of the APO. The authorized applicant exercising direction and control over us in the investigation has also signed this acknowledgment to indicate the applicant is responsible for our compliance with the APO.

We declare under penalty of perjury that the foregoing is true and correct. Executed on

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

(Name--Please Print) (Title) (Signature) (Date)

(Name--Please Print) (Title) (Signature) (Date)

(Name--Please Print) (Title) (Signature) (Date)

(Name--Please Print) (Title) (Signature) (Date)

(Name--Please Print) (Title) (Signature) (Date)

(Name--Please Print)

(Title)

(Signature)

(Date)

PERSON EXERCISING DIRECTION AND CONTROL

_____ (Print or type full name)

_____ (Signature)²

_____ (Title)

² 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.