

SUPPORTING STATEMENT
U.S. Department of Commerce
International Trade Administration
Interim Procedures for Considering Requests under the Commercial Availability
Provision of the United States - Peru Trade Promotion Agreement Implementation Act
OMB Control No. 0625-0265

A. JUSTIFICATION

This is a request for extension of an existing information collection.

1. Explain the circumstances that make the collection of information necessary.

The United States and Peru negotiated the U.S.-Peru Trade Promotion Agreement (the “Agreement”), which entered into force on February 1, 2009. Subject to the rules of origin in Annex 4.1 of the Agreement, pursuant to the textile provisions of the Agreement, a fabric, yarn, or fiber produced in Peru or the United States and traded between the two countries is entitled to duty-free tariff treatment. Annex 3-B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Peru or the United States. The fabrics listed are commercially unavailable fabrics, yarns, and fibers, which are also entitled to duty-free treatment despite not being produced in Peru or the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.3, Paragraphs 5–7 of the Agreement. Section 203(o) of the Act implements the commercial availability provision of the Agreement. Under this provision, interested entities from Peru or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3-B.

Section 203(o) of the Act provides that the President may modify the list of fabrics, yarns, and fibers in Annex 3-B by determining whether additional fabrics, yarns, or fibers are not available in commercial quantities in a timely manner in the United States or Peru, and that the President will issue procedures governing the submission of requests and providing an opportunity for interested entities to submit comments. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (“CITA”), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (“OTEXA”) (See Proclamation No. 8341, 74 FR 4105, Jan. 22, 2009). Interim procedures to implement these responsibilities were published in the Federal Register on August 14, 2009. See Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Peru Trade Promotion Agreement Implementation Act and Estimate of Burden for Collection of Information, 74 FR 41111 (Aug. 14, 2009) (Commercial Availability Procedures).

The intent of the Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications and the production capabilities of Peruvian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in commercial quantities in a timely manner in the United States or Peru, subject to Section 203(o) of the Act.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

For an additional fiber, yarn or fabric to be added to Annex 3-B, an interested entity must submit to CITA a Request for a Commercial Availability Determination (“Request”) which states that the subject product is not commercially available in either the United States or Peru within a commercially reasonable timeframe (i.e., timely). In support of its claim, the requestor must provide information to CITA regarding its attempts to source the subject product in the region, and why it determined that the product is not available in a timely manner. The potential suppliers from the United States or Peru may submit a Response with an Offer to Supply (“Response”), asserting their capability and capacity to supply the subject product. These Responses must include information supporting the capability and capacity assertion. If the requestor disputes a responder’s assertions, the requestor may submit a Rebuttal (“Rebuttal”) comment offering its contention, along with supporting information and documentation. The lists of reporting requirements are in ROCIS.

The information collected by CITA from Requests, Responses and Rebuttals will be used to determine whether the subject product is available in commercial quantities in a timely manner in the United States or Peru under the commercial availability provision of the Act. Requests, Responses, and Rebuttals must identify confidential information. Entities submitting confidential information in their Requests, Responses, or Rebuttals to CITA must submit both a public and a confidential version of their submissions. If the submissions are accepted, the public submissions or public versions of submissions will be posted on the dedicated commercial availability section of OTEXA’s website. Business confidential information will not be shared with the public. Requestors and potential suppliers of the product named in the Request may use the public version as a basis for Responses and Rebuttals.

This information collection is not required to comply with the Department's Information Quality Guidelines because the documents that will be made available to the public are public filings by private entities requesting that CITA make a determination as to the commercial availability of a particular fabric, yarn, or fiber in the United States or Peru, or by private entities responding to such a request. These documents are not authored by CITA, nor are they intended to represent CITA's views. Further, the information collected is used solely as the basis for administrative determinations under the Act. These filings will become part of the record of the proceedings, but may not be used to make determinations in any future proceedings.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

Participants in a commercial availability proceeding must submit public versions of their Requests, Responses or Rebuttals electronically (via email) to be posted on OTEXA's website. Confidential versions of those submissions which contain business confidential information must be delivered in hard copy to OTEXA.

4. Describe efforts to identify duplication.

The information provided by participants in a commercial availability proceeding is unique in each case in that it relates to the availability of a particular fiber, yarn or fabric from a requestor and U.S. or Peruvian suppliers. No other U.S. government agency collects this information, so there is no chance for duplication.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

Standardized criteria, instructions, and certifications are utilized to help ensure that the burden on small businesses is minimized. In addition, the amount of information requested has been reduced to the minimum necessary to determine whether or not the subject product is commercially available in a timely manner from suppliers in the United States or Peru.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If the collection is not conducted, CITA would be unable to determine if certain textile and apparel goods were commercially available in a timely manner from suppliers in the United States or Peru. In that case, the United States would not be in compliance with its obligations under the Agreement.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

None.

8. Provide information of the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

The request for comments from the public was published December 22, 2009 (Volume 74, Number 244, pg. 68035). No comments were received in response to the notice.

The basic framework for the commercial availability process was established by the U.S. and Peruvian governments during the negotiation process for the Agreement and was thereafter written into the text of the Agreement and the Act. CITA's procedures follow this framework.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

Not Applicable.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

Any information provided by participants in a commercial availability proceeding that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law. Specifically, these provisions include 5 U.S.C. § 552(b)(4), which protects confidential information from disclosure under the Freedom of Information Act, and 18 U.S.C. § 1905, which prohibits disclosure of confidential information by U.S. government employees or officers.

When business confidential information is provided, participants must also provide a public version of its submission in which business confidential information is summarized or, if necessary, deleted. The public submissions will be available to the public via OTEXA's website to allow potential participants in a proceeding to base any subsequent submissions on the information provided.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Not Applicable.

12. Provide an estimate in hours of the burden of the collection of information.

It is estimated that 10 Requests will be filed per year. The average amount of time required to prepare each Request is estimated at 8 hours. The total annual burden for all Requests is estimated to be 80 hours; estimated public sector salary is \$40 per hour. Some private sector entities may choose to engage legal counsel or other consultants to assist in the due diligence process, which would add an additional cost.

<u>Activity</u>	<u>Time Required</u>
Due Diligence	5 hours
Summarizing Due Diligence and Preparing Request	2 hours
Preparing Supporting Documentation	1 hour
Total Time per Request	8 hours
Times 10 Requests per Year	80 hours

It is estimated that 3 Responses to Requests will be filed per year. The average amount of time required to prepare each Response is estimated at 2 hours; estimated public sector salary is \$40 per hour. The total annual burden for all Responses is 6 hours.

<u>Activity</u>	<u>Time Required</u>
Preparing Response	1 hour, 30 minutes
Preparing Supporting Documentation	30 minutes
Total Time per Response	2 hours
Times 3 Responses per Year	6 hours

It is estimated that 3 Rebuttals will be filed per year. The average amount of time required to prepare each Rebuttal is estimated at 1 hour; estimated public sector salary for processing Requests is \$40 per hour. The total annual burden for all Rebuttals is 3 hours.

<u>Activity</u>	<u>Time Required</u>
Preparing Rebuttal	1 hour
Total Time per Response	1 hour
Times 3 Responses per Year	3 hour
Total Number of Respondents/Responses = 16	

Total Estimated Annual Burden = 89 hours.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

Not Applicable.

14. Provide estimates of annualized cost to the Federal government.

The average amount of time to review and process Requests is estimated at an average annual total of 80 hours (8 hours per Request for an average of 10 Requests per year). The total annual cost to the government is estimated at \$3,200 per year.

<u>Activity</u>	<u>Time Required</u>	<u>Cost</u>
Initial Processing of Request: Review and Ensure Compliance with CITA's Procedures and Sufficiency of Due Diligence, Post to OTEXA's Website (if accepted), and Notify Interested Parties (if accepted)	3 hours	\$120
Process Offers to Supply (if applicable)	1 hour	\$40
Draft Memo to CITA and Obtain Proper Clearances	2 hours	\$80
Prepare Federal Register Notice for Publication	1 hour	\$40
Publish Decision on OTEXA's Website and Amend Annex 3-B of the US-PERU TPA	1 hour	\$40
Total Cost per Request	8 hours	\$320
Times 10 Requests per Year	80 hours	\$3,200

The average amount of time to review and process Responses is estimated at an average annual total of 3 hours (1 hour per Response for an average of 3 Responses per year). The total annual cost to the government is estimated at \$120 per year.

<u>Activity</u>	<u>Time Required</u>	<u>Cost</u>
Review Response to Ensure it Follows CITA's Procedures	30 minutes	\$20
Notify Requestor	15 minutes	\$10
Post to OTEXA's Public Website	15 minutes	\$10
Total Cost per Response	1 hour	\$40
Times 3 Responses per Year	3 hours	\$120

The average amount of time to review and process Rebuttals is estimated at an average annual total of 3 hours (1 hour per Rebuttal for an average of 3 Rebuttals per year). The total annual cost to the government is estimated at \$120 per year.

<u>Activity</u>	<u>Time Required</u>	<u>Cost</u>
Review Rebuttal to ensure it follows CITA's Procedures	30 minutes	\$20
Notify Responder	15 minutes	\$10
Post to OTEXA's Public Website	15 minutes	\$10
Total Cost per Rebuttal	1 hour	\$40
Times 3 Rebuttals per Year	3 hours	\$120

15. Explain the reasons for any program changes or adjustments.

Not Applicable.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Respondents will provide electronic copies of the public versions of Requests to be posted to OTEXA's website. Determinations to add or remove fabrics, yarns, or fibers from the list of commercially unavailable fabrics, yarns, or fabrics are published in the Federal Register.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

Not Applicable.

18. Explain each exception to the certification statement.

Not Applicable.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not Applicable.