

**SUPPORTING STATEMENT
U.S. Department of Commerce
International Trade Administration**

**Interim Procedures for Considering Requests under the Commercial Availability
Provision of the United States-Korea Free Trade Agreement
OMB CONTROL NO. 0625-XXXX**

A. JUSTIFICATION

This is an emergency review request for a new information collection. The requested approval date is March 16, 2012.

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

The United States and Korea negotiated the US-Korea Free Trade Agreement (“the Agreement”) which was implemented into U.S. law pursuant to the United States-Korea Free Trade Agreement Implementation Act (“the Act”). The Agreement entered into force on March 15, 2012. Under the provisions of the Act, textile and apparel goods must contain fibers, yarns, and fabrics produced in Korea or the United States to receive duty-free tariff treatment. The Agreement also provides for the establishment of a list of specific fibers, yarns, and fabrics that are not available in commercial quantities in a timely manner from producers in the United States.^a Articles containing these commercially unavailable fibers, yarns, and fabrics are also entitled to duty-free or preferential duty treatment despite not being produced in the United States.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision of the Agreement and the Act. Under Section 202(o) of the Act (“the commercial availability provision”), interested entities from Korea or the United States have the right to request that a specific fiber, yarn, or fabric be added to, or removed from, the list of commercially unavailable fibers, yarns, and fabrics. This right becomes effective when the Agreement enters into force.

Section 202(o)(3)(F) of the Act requires that the President establish procedures for parties to follow when exercising the right to make these requests. 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 Office of Textiles and Apparel (“OTEXA”).^b Thus, as mandated by the US-KOREA FTA, and the reason for this emergency review request, these procedures need to be published as soon as possible after March 15, 2012. The publication

^a Appendix 4-B-1 of the Agreement contains the list of fibers, yarns, and fabrics that are found to be not available in commercial quantities in a timely manner from producers in the United States.

^b See Proclamation No. 8783, 77 Fed. Reg. 14265 (March 9, 2012) (delegating to CITA responsibilities related to the textile provisions of the Act).

of the procedures will allow the U.S. to honor its international obligations and address the litigation risk it may face by not publishing these procedures as soon as possible.

In accordance with the commercial availability provision, CITA will implement procedures to collect certain information about the technical specifications of certain fibers, yarns, or fabrics and the production capabilities of U.S. textile suppliers to determine whether certain fibers, yarns, or fabrics are available in commercial quantities in a timely manner in the United States.

The intent of these procedures is to foster the trade in U.S. and Korean textile and apparel articles by allowing non-originating fibers, yarns, and fabrics to be placed on or removed from a list of items not available in commercial quantities, on a timely basis, and in a manner that is consistent with normal business practice. To this end, these procedures are intended to facilitate the transmission, on a timely basis, of requests for commercial availability determinations and offers to supply the products that are the subject of the requests; have the market indicate the availability of the supply of the subject products; make available promptly, to interested entities and parties, information received regarding the requests for products and offers to supply; ensure wide participation by interested entities and parties; provide careful scrutiny of information provided to substantiate order requests and responses of offers to supply; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

To date, no interested party has exercised its right to request that a fiber, yarn, or fabric be added to, or removed from Appendix 4-B-1. If an interested party submits a request, however, CITA will be required to make a determination as to whether the fiber, yarn, or fabric should be added to or removed from the list pursuant to the commercial availability provision of the Act. Without published procedures in place, it will make it more difficult for CITA to ensure that all interested parties and the public are aware of the commercial availability determination process afforded by the Act. For example, interested parties may not know the exact nature of the information required for CITA to make such a determination.

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 a fiber, yarn or fabric to be added to Appendix 4-B-1, 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 the United States 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 United States, and why it determined that the product is not available in a timely manner. Potential suppliers from the United States 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 comment offering its contention, along with supporting information and documentation.

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 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 the Office of Textiles and Apparel (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 fiber, yarn, or fabric in the United States, 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) for posting on OTEXA's website. Confidential versions of those submissions which contain business confidential information must be delivered in hard copy to OTEXA's offices at the Department of Commerce.

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 Korean 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.

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. 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 a copy 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.

A copy of the Federal Register Notice notifying the public of this emergency review submission and requesting comments is in ROCIS, and will be processed. The comment period will conclude on April 16, 2012. Additionally, when the interim procedures are implemented, CITA will publish a Federal Register notice requesting comments from interested U.S. entities. Any comments received will be addressed when CITA publishes its final procedures.

The basic framework for the commercial availability process was established by the U.S. and Korean governments during the negotiation process for the Agreement and was thereafter written into 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.

None. CITA makes no payments or gifts to respondents.

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.

No questions of a sensitive nature are asked.

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.

<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
Total Burden Hours 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. The total annual burden for all Responses is 6 hours.

<u>Activity</u>	<u>Time Required</u>
Preparing Response	1.5 hours
Preparing Supporting Documentation	0.5 hours
Total Time per Response	2 hours
Total Burden Hours 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. 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
Total Burden Hours per Year	3 hours

TOTAL RESPONSES: 16

TOTAL BURDEN HOURS: 89

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).

It is nearly impossible to estimate exact cost figures because there is such a wide variation in the number of pages per submission, due diligence methods (i.e., telephone calls vs. emails), and shipping costs. However, 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.

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 estimated average public sector salary for persons processing the Requests is \$40 per hour. 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	3 hours	\$120

Ensure Compliance with CITA's Procedures and Sufficiency of Due Diligence, Post to OTEXA's Website (if accepted), and Notify Interested Parties (if accepted)		
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 Appendix 4-B-1 of the Agreement	1 hour	\$40
Total Cost per Request	8 hours	\$320
Total Cost to Govt. 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 estimated average public sector salary for persons processing the Requests is \$40 per hour. 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
Total Cost to Govt. 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 estimated average public sector salary for persons processing the Requests is \$40 per hour. 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

Total Cost to Govt. per Year	3 hours	\$120
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TOTAL ANNUAL GOVERNMENT COST: \$3,440

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

This is a new collection related to the implementation of the US-KOREA FTA, thus a program change.

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 fibers, yarns, or fabrics from the list of commercially unavailable fibers, yarns, or fabrics are also 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

This collection of information does not employ statistical methodologies.